

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives

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January 13, 2012

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

On August 16, 2011, your agency published the final version of the Chemical Data Reporting Rule. This major rule mandates reporting of various types of information from businesses from February 1 to June 1, 2012. It affects chemical manufacturers and importers, chemical byproduct users and processors, utilities, paper manufacturers, metal manufacturers, and electronic component manufacturers.

In three weeks thousands of employers must provide your Agency reams of data on chemicals their businesses use. We are concerned that EPA will be enforcing a program it does not fully understand and cannot explain to the people who must follow it.

We have known for some time that the regulated community has been having trouble understanding how to comply with this rule. We had hoped your Agency would make a serious effort to competently educate people about what is and is not required. Yet, during and after an EPA webinar on November 16, 2011, we understand little was provided in the way of helpful answers or guidance from EPA personnel on a regulation EPA pronounced fully ready three months ago. Below are several, but not all, of the examples of how EPA could not explain this major Chemical Data Reporting rule during the webinar. Unable to respond then, EPA staff asked participants to e-mail questions to EPA. As of January 5, 2012, your Agency had still not posted answers to these questions on its website:

1. Must a manufacturer report on its entire byproduct stream or just on the amount sent for recycling? EPA declined to answer, saying no internal EPA consensus existed.
2. Must a metal extracted from a byproduct be reported under the rule? Agency officials declined to answer this and other byproduct-related questions during the webinar, merely saying vaguely that the answers are "context specific."
3. Is double reporting required for extracted substances if sold as individual chemicals? EPA's answer was that the proper Agency official was not participating in the webinar.

4. What is an "exporter" under the rule? EPA said answering this question would take too much time.
5. Is reporting required if the same chemical changes concentration?
6. Must a used solvent that is resold be reported?

Besides failing to answer these and other basic questions about how the rule works, EPA officials said instructions on how to use the electronic reporting system, the required compliance medium, would not be available until "at least two weeks" after the webinar. That was last November 16. The training materials for electronic reporting and other compliance tools are still nowhere to be found in the public domain.

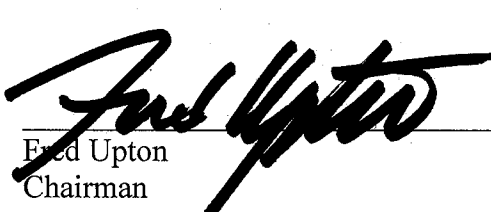
From top to bottom, the people you regulate are asking fair and urgent questions. They deserve better than vague promises of future answers. These facts make us wonder whether your EPA is either unready to implement this costly regulation, or worse, playing "hide the ball" with the regulated community – setting folks up for noncompliance. In addition to the expense and disrupted operations, violations resulting from confusion and uncertainty make well-intentioned Americans vulnerable to lawsuits by EPA and others – including competitors – raising the specter of steep fines and other civil and criminal penalties.

We know some Agency personnel have been persuaded to participate in a workshop on January 19, 2012. We are worried, though, that this event, twelve days before required filings are to commence -- will be too little, too late.

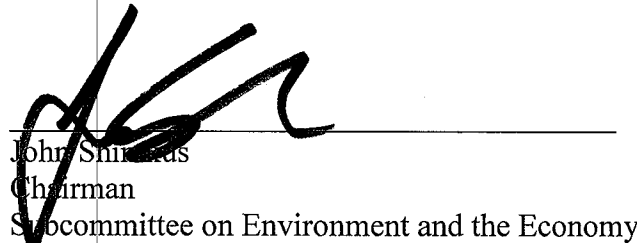
Until the chaos caused by EPA over the Chemical Data Reporting rule's implementation is cleared up a stand-down seems necessary. We urge you to postpone the implementation and compliance deadlines of the Chemical Data Reporting regulation from February 1, 2012, to align it with the future Chemical Data Reporting submission periods -- June 1 to September 30, 2016. Allowing the additional time in 2012 will allow EPA time to comprehend your own rule and provide regulated entities time to understand and comply with the new requirements.

Please advise us of your intentions by January 20, 2012. Please contact Committee staff David McCarthy at (202) 225-2927 if you have any questions.

Sincerely,



Fred Upton
Chairman



John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Gene Green, Ranking Member
Subcommittee on Environment and the Economy