



Authors



Jeanine L.G. Grachuk
Principal
(781) 416-5713
jgrachuk@bdlaw.com



Stephen M. Richmond
Principal
(781) 416-5710
srichmond@bdlaw.com

Does Your Toxic Release Inventory Make You a Target for Enforcement?

Summary: *The U.S. Environmental Protection Agency's Office of the Inspector General is examining the Agency's usage of Toxic Release Inventory data to evaluate companies' compliance with surface water discharge permitting requirements and risk management planning filing requirements. Companies with facilities subject to these requirements should be aware of this increased scrutiny so as to avoid becoming a target of enforcement.*

The U.S. Environmental Protection Agency (EPA)'s Office of the Inspector General (OIG) is investigating how EPA uses Toxic Release Inventory (TRI) data to identify potentially unregulated facilities in its major media programs. This may indicate that the watchdog office thinks EPA has underutilized this data and that more facilities should be subject to more stringent regulation.

OIG, an independent office within EPA that aims to prevent and detect fraud and identify ways EPA can be more effective and efficient, will evaluate how EPA can use TRI data to look for noncompliance with TRI reporting, surface water discharge permitting requirements, and risk management planning (RMP) filing requirements by evaluating the following:

- Have TRI facilities identified as surface water dischargers received the required permits from the EPA or the delegated state?
- Have TRI facilities meeting RMP criteria filed these plans with EPA for all chemicals?
- Have RMP filers and surface water dischargers subject to TRI reporting filed TRI reports?

Surface Water Discharge Permitting Requirements

For surface water dischargers, this evaluation should be straightforward. The TRI requires facilities to report discharges to receiving streams or water bodies including the estimated amount released, the percent from storm water and the name of receiving streams. It should be a simple matter for the EPA to determine whether the TRI filer has a surface water discharge permit that authorizes discharge of the chemicals reported.

ABOUT B&D

Beveridge & Diamond's 100 lawyers in seven U.S. offices focus on environmental and natural resource law, litigation and dispute resolution. We help clients around the world resolve critical environmental and sustainability issues, relating to their products and facilities.

Learn more at www.bdlaw.com.

RMP Filing Requirements

The RMP evaluation is slightly more complicated, but it applies only to those chemicals that are subject to both programs (such as ammonia and chlorine). TRI requires each facility to report the maximum amount of the chemical present at the facility at any time during the year, using two-digit codes. Applicability of RMP depends on whether the facility has more than a threshold quantity of a specific chemical in a process. Because the TRI data may include chemicals that are not in a process, the report will not, on its own, show whether a violation of the requirement to file an RMP has occurred. However, EPA could then develop a list of companies that have more than a threshold quantity at a facility, and then investigate further, perhaps by sending a request for information.

The OIG has in the past criticized EPA's program implementation, including several reports critical of EPA's enforcement of the RMP program (see March 28, 2012, March 21, 2013, and April 28, 2014 reports, which are available at the [OIG's website](#)), as described in Beveridge & Diamond's August 2015 article, "[RMP and General Duty Clause Enforcement Continues at EPA Region 1](#)." In response to these pressures and for other policy reasons, EPA has substantially retooled and expanded its RMP enforcement. Given the current importance to EPA of the RMP program and its pending RMP rule revisions, it would be expected that this OIG effort will result in more enforcement focus on TRI filers who are not currently in the RMP system.

Implications

In short, if EPA is not already using TRI data to identify potential targets of enforcement for failing to file RMPs and surface water discharge permits, as well as using such documents to determine if TRI filings are being made, the OIG inspection will likely encourage EPA to do so. For this reason, it is worthwhile for companies to closely examine their facilities' TRI data to look for discrepancies with other environmental compliance reports and permits. Taking this step could help a company avoid becoming a target of enforcement.

For more information on EPA's use of TRI data, please contact the authors.