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**STATEMENT OF
KIMBERLY T. NELSON
ASSISTANT ADMINISTRATOR AND CHIEF INFORMATION OFFICER
FOR ENVIRONMENTAL INFORMATION
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
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INTRODUCTION

Good afternoon, Chairman Cubin, and Members of the Subcommittee. I appreciate this opportunity to discuss with you “The Toxics Release Inventory and its Impact on Federal Minerals and Energy.” I will speak briefly on the recent court decisions involving EPA and the mining industry, the Agency’s current positions on lead reporting, and our efforts to reduce reporting burden for the regulated community.

TRI BACKGROUND

The Emergency Planning and Community Right-to-know Act (EPCRA) of 1986, which is the authorizing statute for the Toxics Release Inventory (TRI), directs EPA to provide information to the public on releases and other waste management quantities of toxic chemicals. Since its implementation in 1987, TRI has been the centerpiece of the Agency’s right-to-know programs and a useful tool for assisting communities in protecting their environment and making businesses more aware of their chemical releases. EPA does this by gathering data and making this information publicly available through the Internet and published reports. Congress initially required the manufacturing sector (Standard Industrial Classification (SIC) Codes 20 - 39) to

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report to TRI. Congress also included in the statute at section 313(b) authority for EPA to add other industry sectors. In 1997, EPA issued a final rule that added seven industry sectors to the list of facilities subject to the reporting requirements of section 313. The industry groups that were added by this rule included metal mining and coal mining.

Before a facility in a covered industry sector is required to report to TRI, the facility must “manufacture,” “process,” or “otherwise use” a listed toxic chemical in an amount exceeding a statutory threshold. For most chemicals on the TRI list, the threshold for manufacturing is 25,000 pounds, the threshold for processing is 25,000 pounds, and the threshold for “otherwise use” is 10,000 pounds. Reporting thresholds for those TRI chemicals classified as persistent, bioaccumulative, and toxic (PBT) are lower: 100 pounds for PBT chemicals that are persistent and bioaccumulative; 10 pounds for PBT chemicals that are highly bioaccumulative and highly persistent; and 0.1 gram for dioxin and dioxin-like compounds. Once the designated threshold is exceeded for a listed chemical, the facility is required to report data on the quantity of that toxic chemical released and otherwise managed as a waste.

TRI data have proven to be a very valuable and useful source of information not only to communities but to businesses as well. Communities use TRI data to: learn about their local environment and harmful exposures to toxic chemicals; begin dialogues with local facilities to encourage the reduction of releases; develop pollution prevention plans; and improve local environmental conditions. Businesses use TRI data to: identify opportunities for pollution

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prevention; increase efficiency or find cost savings in processes; demonstrate environmental progress; and improve local environmental conditions. These uses of the data are integral to the achievement of the TRI program goal which is to leverage the power of public access to information to improve our environment and, in this case, effect changes in behavior that lead to decreases in the release of toxic chemicals to the environment. The TRI data, in conjunction with other information, can be used as a starting point in evaluating harmful exposures that may result from releases and other waste management activities which involve toxic chemicals. The determination of potential risk depends upon many factors, including the toxicity of the chemical, the fate of the chemical, and the amount and duration of human or other exposure to the chemical after it is released.

SUMMARY OF NATIONAL MINING ASSOCIATION AND BARRICK GOLDSTRIKE MINES**DECISIONS**

In 1997, EPA issued a final rule that added seven industry sectors, including mining, to the list of facilities subject to the reporting requirements of section 313 (62 Federal Register 23834). In May 1998, the National Mining Association (NMA) filed a lawsuit challenging the 1997 rule. In a 2001 decision, the U.S. District Court for the District of Colorado upheld EPA's authority to add the mining industry to the TRI program. The Court did, however, set aside EPA's interpretation of how the statutory requirements for TRI reporting in the statute apply to certain extraction and beneficiation mining activities. In the 1997 rule that added the mining sector, the Agency interpreted the extraction and beneficiation of undisturbed ores to fall within

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EPCRA section 313's definition of "processing," on the basis that the naturally occurring, undisturbed ores were first manufactured in the ground by natural forces. The court disagreed with this interpretation ruling that a toxic chemical cannot be processed unless it first has been manufactured under the law.

In the April 2003 decision in Barrick, the U.S. District Court for the District of Columbia upheld EPA's interpretation that mine tailings are not eligible for the *de minimis* exemption to reporting in EPA's existing TRI regulations. The Court, however, set aside EPA's interpretation of the exemption as it applied to waste rock. As a result, listed chemicals in *de minimis* concentrations in a mine's waste rock may now be eligible for this exemption from TRI reporting requirements.

EPA recognizes that the court's 2001 decision in the NMA lawsuit has generated uncertainty regarding the reporting requirements as they apply to extraction and beneficiation. The Agency intends to propose a rule in the next several months to adopt a revised interpretation that will designate how extraction and beneficiation should be characterized for the purposes of the TRI threshold determination.

THE TRI LEAD RULE AND AGENCY-WIDE INITIATIVE ON METALS ASSESSMENT

The basis of the TRI lead rule, promulgated in 2001 (66 Federal Register 4499), is EPA's determination that lead and lead compounds are persistent, bioaccumulative, and toxic

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(PBT) chemicals. EPA preliminarily concluded in its August 1999 proposal that lead and lead compounds met the criteria for being classified as highly persistent, highly bioaccumulative toxic chemicals. Before determining whether lead and lead compounds are highly bioaccumulative, EPA believes that it would be appropriate to seek external scientific peer review from its Science Advisory Board (SAB), and EPA intends to do so. During internal Agency discussions about the planned SAB review, it became clear that the Agency would benefit from an Agency-wide initiative focused on the scientific approach to the assessment of metals. Accordingly, EPA initiated a more comprehensive review than originally set out in the TRI lead rule. The approach envisioned a two-phase process – development of a Metals Action Plan and then development of specific guidance documents called for in that Plan – with SAB involvement at each phase.

As part of the effort to engage stakeholders and the scientific community and to build on existing experience, the Agency has commissioned the development of scientific papers on issues and state-of-the-art approaches to metals risk assessment. Material contained in these papers, when finalized, may be used in total, or in part, as source material for the assessment framework. To develop the issue papers, EPA assembled teams of experts drawn from academia, consulting firms and other federal agencies to work with Agency scientists. The draft versions of these issue papers were released this past Monday, September 22 to the public for comment (68 Federal Register 55051) as part of EPA's continuing effort to provide opportunities for external input to the Agency's metals assessment effort. In addition to written comments,

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EPA plans to hold a stakeholder workshop next month (October of 2003) to discuss the issue papers. In December of 2003, EPA plans to have completed an interim draft version of the metals framework. In the spring of 2004, EPA plans to submit the draft metals framework document for peer review by its SAB and then release the final document in the summer of 2004. Issuance of the metals characterization/ranking guidance document will follow soon thereafter. It is our intent to take the final documents and apply it to the TRI program, as appropriate.

TRI REGULATORY BURDEN REDUCTION EFFORTS

Finally, let me address EPA's ongoing efforts to identify and ameliorate any unnecessarily burdensome reporting requirements imposed on the mining sector, as well as the rest of the regulated community by the TRI program.

The information collection burden of TRI reporting is associated with labor hours that staff at each facility will spend to gather relevant information, make compliance determinations, complete calculations, fill in the report, and submit it to appropriate authorities. The burden hour estimates for TRI reporting reflect the time that facilities spend using readily available data or reasonable estimates to complete the TRI reports. These types of estimates are sometimes referred to as "engineering" estimates because they reflect expert judgement rather than burden hour data from responding facilities.

EPA has responded to concerns expressed by the mining industry and others regarding

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the burden of complying with TRI reporting requirements. First, there are a number of burden-limiting features already built into the program:

- By statute, only facilities with 10 or more full-time employees or the equivalent are subject to TRI.
- Facilities only file TRI reports for specific chemicals that are manufactured, processed, or otherwise used above threshold quantities.
- TRI requires facilities only to report using readily available data, or reasonable estimates. No additional monitoring or measurement is required.
- EPA developed some industry specific exemptions in light of comments received during the 1997 facility expansion rulemaking such as: the coal extraction exemption and the overburden exemption.
- TRI reporting provides for certain “common sense” exemptions for intake air and water, enclosed articles (lead-acid batteries), personal use by employees, laboratory use, etc.
- If a facility exceeds the reporting threshold for a chemical, it must complete and submit a 5-page form for that chemical. EPA has developed an automated reporting software package (*TRI-Made Easy*) that over 90 percent of facilities used for the most recent reporting year.
- EPA has created a reduced-burden certification statement (Form A) for facilities that meet certain criteria. This option is available to almost 40 percent of all reporting facilities.
- The Agency has implemented a range of compliance assistance activities, such as the

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Toxic Chemical Release Inventory Reporting Forms & Instructions (which is published and mailed every year as well as being available on-line), the industry training workshops, the chemical-specific and industry-specific guidance documents, and the EPCRA Call Center (a call hotline).

EPA is about to undertake a “TRI Stakeholder Dialog” to continue to explore burden reduction options for the TRI program. This is actually the second phase of an ongoing effort to make the TRI program more efficient and relevant for the public. In the first phase, EPA solicited comments on ways to streamline the submission and processing of TRI data, as well as improve TRI compliance assistance programs. Based on feedback from this process, the TRI Program has been working toward releasing the data earlier, and working towards even greater use of electronic submissions through the use of award-winning *TRI-ME* reporting software (E-Gov Pioneer Award, June 2003) to report through the Internet to EPA’s Central Data Exchange (CDX).

As part of the second phase of outreach, EPA is currently developing a white paper that is intended to promote a lively public discussion on burden reduction opportunities. This TRI Stakeholder Dialog is the first step toward entering a regulatory process that will provide meaningful burden reduction associated with TRI reporting while continuing to provide valuable information to the public as required by the statute.

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CONCLUSION

In conclusion, I would like to reiterate EPA's strong commitment to implementing right-to-know statutes passed by Congress in a balanced manner. It is our firm belief that public access contributes positively to our citizen's ability to understand environmental issues and to make better decisions in their daily lives. We will continue to identify improvements that will help ensure the best possible compliance and best quality of information for the public.

Thank you, Chairman Cubin, and Members of the Subcommittee for the opportunity to appear today. I would be glad to take any questions you may have at this time.