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Administrator Lisa Jackson
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Subject: Comments on EPA's proposed TSCA Inventory Update Reporting Modifications for Docket EPA-HQ-OPPT-2009-0187

Dear Administrator Jackson:

NPRA, the National Petrochemical and Refiners Association, is pleased to provide comments on the Agency's proposed TSCA Inventory Update Reporting Modifications (FR 49656; 8/13/10).

Please see the attachment for NPRA's discussion of this issue.

Sincerely,

Gregory M. Scott

Attachment

exposure information. EPA should be using TSCA Section 8(a) in the form of a Preliminary Assessment Information Rule (PAIR) to obtain the detailed use and exposure information it seeks, not IUR.

EPA Objectives for IUR Modifications

NPRA agrees that certain IUR modifications will ensure that EPA's database accurately reflects the reported data and increase the availability of that information for the public. NPRA does not, however, agree that the modifications will increase the "usability of collected information" or "focus reporting" on what is "most needed" by EPA. As stated in the background section, the last reporting cycle was the first time EPA attempted to collect downstream use and exposure information from upstream chemical manufacturers. This led to information of little utility to the Agency, which EPA clearly states in the FR notice. Little has changed in the way business is conducted within the manufacturing supply chain since the last cycle; therefore, the result will be the same. The proposed modifications will not increase usability.

EPA has not developed a transparent prioritization process to identify the information that it needs, so it is doubtful that the proposed modifications will "focus reporting" any more that it focused reporting during the last IUR cycle. The proposed modifications reflect a "shotgun" approach to information collection, the very opposite of a "rifle-shot" approach, which is much more targeted to one's needs. For example, EPA does not need detailed exposure information for closed-system intermediates because they are used in a manner that does not result in exposures. Even the European Union recognized this fact when exempting intermediates from certain hazard testing requirements under the Registration, Evaluation and Assessment of Chemicals (REACH) regulations. Under IUR, EPA should only collect the information that it needs to prioritize chemicals for further work and not try to collect detailed use and exposure information that may never be used. However, EPA must first establish a process to prioritize chemicals in commerce.

Proposed e-IURweb Reporting

NPRA generally supports the concept of web-based electronic reporting. Certain issues remain, however, that could place more of a reporting burden on manufacturing companies than EPA intends. For example, companies that would use the system have had no input into the design of the system. By the time the rule is finalized and the reporting system is made available to users, there may not be adequate time to become familiar with the software and for EPA to make necessary adjustments. NPRA members have experienced difficulties in the past with Central Data Exchange (CDX) reporting to EPA because of system requirements, such as firewall configurations. EPA must allow adequate time to become familiar with the reporting software and solve any technical problems that arise. Additionally, our members will have to resolve any incompatibilities between their internal company software and the EPA software. We urge the EPA to provide a more flexible timeline before requiring mandatory electronic reporting.

EPA specifically seeks comment on the number of individuals having access for reporting. According to a wide variety of NPRA members, the system will need multi-user capability, or else EPA should distribute reporting software that allows an individual to upload a centralized report after review and editing. Either way, it will be critical that the software allow multiple users and contain review and edit features. EPA also seeks comments on whether or not there should be a single electronic signature and CDX registration for all TSCA programs. NPRA members are subject to many different types of TSCA reporting and most likely have different entities reporting to different programs. It is highly unlikely that

large to medium sized companies would have the person submitting Pre-Manufacture Notices (PMNs) also submitting Inventory updates.

Modifications to Definitions

EPA proposed to modify the definition of "manufacture" by adding language that would make a company that contracts a toll manufacturer to make a product, primarily responsible for reporting. Historically, companies have worked out among themselves which entity would take responsibility for IUR, but the primary responsibility was with the site that manufactured the product (i.e., the toll processor). This practice should be allowed to continue. Primary responsibility for manufacturing should not be placed on a company that has no control of the manufacturing at the site.
The inclusion of extraction from domestically-purchased waste as "manufacture" will result in multiple counting of certain substances and distort the actual amount of chemical in commerce, which is counter to the statutory language in Section 8(b). The "keep current" phrase in the language implies that a certain degree of accuracy should be assured when publishing IUR data. In addition, the Data Quality Act provisions provide assurance for the accuracy of government-collected data made available to the public. To avoid double-counting, EPA should modify the proposal to state that an extracted substance has to be reported only when it results in an addition to the total volume in commerce of that particular substance.

EPA should define "site" in the IUR instructions, versus the Code of Federal Regulations, to allow flexibility for various site scenarios. For instance, some contiguous properties have several plants owned by different corporate entities that should report updates to the Inventory separately.

Modifications to Reporting Thresholds

EPA proposes that hitting the threshold in any year between the reporting cycles means that the substance has to be reported. This modification would be retroactive and many manufacturing companies would not have collected information prior to the target year (2010). NPRA does not oppose this approach to mandate reporting; however, because it is so late in the reporting cycle, NPRA urges EPA to wait and implement this approach for the next reporting cycle and not in 2011.

EPA proposes to eliminate the 300,000 pound threshold for use and exposure reporting. NPRA opposes the threshold reduction, as elimination of the 300,000 pound threshold would unnecessarily collect vast amounts of information that may be of little utility. According to the FR notice, EPA will use the information for screening-level risk assessments. Since EPA has no defined prioritization process and conducts very few assessments per year, the objective of focusing only on information that the Agency needs (Objective 4) will clearly not be met.

By the time the rule is finalized, there will not be sufficient time for manufacturers to set up systems to collect the detailed use and exposure information that the modifications would require, even if that information were ascertainable. Additionally, EPA will not be able to use the expanded information in a timely manner. EPA has made limited use of the information it collected in the last cycle of IUR. The proposed elimination of the 300,000 pound threshold will result in much more information, similar in nature to what was reported in the last cycle. How will EPA use even more information that will have the same limitations as the data collected in 2006?

exposure information will have little practical utility, much like similar information collected in the last reporting cycle.

4. Electronic reporting will not reduce the reporting burden on submitters. Submitters will have to learn the new reporting system, make adjustments to their internal collection and reporting systems, and still collect and centralize the information for reporting.

5. EPA should not attempt to collect information similar to that found on a PMN. IUR is not an appropriate regulatory tool to collect information at that level of detail. Furthermore, EPA has not demonstrated in practice that it would be able to use that information in a time frame where the data would have practical utility. Casting a wide net to collect information results in wasteful and inefficient use of scarce resources. Additionally, as addressed previously, chemical manufacturers will not have access to much of the information that would be on a PMN-type form.

6. Chemical manufacturers should not be required to keep records of data to which they typically do not have access.

7. As a third-party, chemical manufacturers should not be expected to take the responsibility of data generation on behalf of other parties.

## Conclusion and Recommendation

NPRA supports the goals of EPA in collecting information sufficient to carry out its mission of protecting human health and the environment. EPA should use the most appropriate tools that follow the intent of Congress. Updates to the Inventory should allow EPA to "compile, keep current, and publish a list of each chemical substance" that is produced in the United States, but should not be used as a regulatory vehicle to collect information for risk assessments or regulatory actions.

Congress provided EPA with a wide variety of regulatory tools and authorities to collect more detailed information. NPRA recommends that EPA first establish a prioritization process to identify chemicals that warrant further study or work, and use the appropriate mechanism and regulatory tool provided under TSCA to meet those needs. The prioritization process should consider the quantity of a chemical in commerce and the uses of the chemical, along with the associated hazards (which can be derived by way of EPA's conservative models).

After EPA begins the prioritization process and places a sufficient number of chemicals into categories for low, medium and high priorities for further work, it should then issue PAIR rules to collect more detailed use and exposure information on a targeted list of chemicals. As the data from the PAIR rules are submitted to EPA, the Agency should issue Section 4 test rules to elicit more conclusive hazard data for those chemicals that have a greater potential for exposures or consent orders to circumvent the risk posed by such chemicals. If EPA would follow this sequence, it would maximize its chances for success when taking targeted regulatory actions on those uses of chemicals that may present an unreasonable risk. NPRA is willing to work with EPA and other stakeholders to develop a prioritization process and a tiered, targeted and risk-based approach to data collection.

KOCH INDUSTRIES INC

**JAMES L. MAHONEY**
EXECUTIVE VICE PRESIDENT
OPERATIONS EXCELLENCE & COMPLIANCE

Document Control Office (7407M)
Office of Pollution Prevention and Toxics (OPPT)
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460-0001

October 12, 2010

**RE: Docket ID: EPA-HQ-OPPT-2009-0187**
TSCA Inventory Update Reporting Modifications
VIA US Mail

Dear EPA's OPPT:

On behalf of Koch Industries, Inc. (KII) and its affiliate companies, we appreciate this opportunity to comment on EPA's TSCA Inventory Update Reporting (IUR) Modifications. KII owns a diverse group of companies involved in refining and chemicals; process and pollution control equipment and technologies; minerals; fertilizers; polymers and fibers; commodity trading and services; and forest and consumer products. Koch companies have a presence in nearly 60 countries with approximately 70,000 employees.

The EPA has proposed substantial changes to the IUR program. Given these broad changes, it would seem appropriate for EPA to hold a series of listening sessions providing the regulated community with a greater ability to discuss the changes to the IUR program and better understand EPA's goals related to the significant changes in the proposed modifications.

Below, we have summarized our concerns with the proposed IUR Modifications.

**Relevant to the changes proposed for the 2011 report:**

Modification of Data Reporting Requirements

Requiring manufacturers to provide production volume for each of the years since the last principal reporting year suggests an historic look-back for data that was not required to be retained and managed for reporting on the IUR report. Asking manufacturers now to generate this data is unreasonable, and depending on record retention policies, may result in a manufacturer spending considerable time to develop records from other sources and the inability to accurately report the required information. In addition, when modifying the Inventory Update Rule (IUR), EPA's authority is governed by the limits of authorities granted under TSCA and the procedural limits established in the

Federal Administrative Procedure Act (APA). Asking manufacturers in 2010 to report data not required under the current regulation from operations in 2006-2010 imposes a retroactive responsibility on the regulated community for compliance. Under the APA, rules created by administrative agencies should only possess a prospective effect. Rules are defined as agency statements having general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy. 5 USCS Section 551(4). In addition, although unsettled, the U.S. Supreme Court tends to find a presumption against retroactive rules as they generally result in unjust results and lack fair notice to the regulated community. Retroactive legislation is said to be unfair because it deprives citizens of notice and can create economic uncertainty. United States v. Ubaldo-Figueroa, 347 F.3d 718 (9th Cir. Cal. 2003), see also, National Mining Association v. Department of Labor, 292 F. 3rd 849, 859 (D.C. Cir. 2002), Bowen v. Georgetown University Hospital, 488 U.S. 204, 215 (1988), holding that agencies could not adopt retroactive rules without explicit congressional authorization, and Landgraf v. USI Film Prods., 511 U.S. 244, 265 (1994), holding that the "presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic."

TSCA 8(a) does not provide EPA with the statutory authority to adopt retroactive rules, especially those related to IUR reporting. In particular, TSCA 8(a) directs the EPA to require the reporting of data "insofar as known to the person making the report or insofar as reasonably ascertainable" (2). In addition, TSCA directs EPA not to require "any reporting which is unnecessary or duplicative." The provisions of TSCA 8(a) do not authorize EPA to adopt retroactive rules or require reporting for years not identified in previous rulemakings. Therefore, EPA should not require companies to generate information for past years because EPA has not provided the regulated community with fair notice of this new requirement.

Modification of Threshold for Processing & Use Information

The EPA should focus the reporting of processing and use information based on risk. Without a risk basis, any lowering of the threshold for reporting this information for all substances subject to IUR reporting is arbitrary and would result in significant additional time and resources for the regulated community. The EPA has not provided sufficient transparency for why this information is needed or how it will be used. Furthermore, gathering and summarizing processing and use information requires reporting entities to obtain information that is largely out of the control of an importer or a manufacturer. In addition, downstream users are often not willing to be forthcoming with this type of information. Some examples of the difficulties with modifying this requirement are:

1) In 2006, the EPA did not expect manufacturers to survey customers. It is not clear with the change in the reporting standard to "known or reasonably ascertainable" if surveying customers is an expectation. Until now, manufacturers and importers have not been made aware of this proposed new standard as well as the change in reporting threshold for this information. As such, they have not been gathering it from downstream users and will not be prepared to report it.
2) In 2006, certain of our affiliates conducted interviews or customer surveys to gather processing and use information even though it was not required. Our experience was that customers were not forthcoming and responsive to this request. Processing and use information for lower volume chemicals have a higher likelihood to be of a confidential nature as their applications will oftentimes be more specialized and considered trade secret. Examples include additives that enhance processibility or product performance or impart a specific quality to a product. Many of

these chemicals are designed to function at lower concentrations in the finished product and are typically manufactured and used at lower volumes.

3) Trading companies who import large volumes of commodity chemicals that could change hands numerous times in the supply chain before the ultimate end user receives the material will be especially challenged to gather this information and report it.
4) Downstream users have no obligation or incentive to provide this information as the customers do not have a compliance requirement. This unnecessarily and unfairly burdens the supplier to gather and report the information.

To better illustrate the impact, and to put the current and proposed threshold amounts into perspective, we offer the following example, for a year around, 365 day/year operation:

- 300,000 lb./year is the same as manufacturing or importing two 55 gallon drums per day,
- 25,000 lb./year is the same as manufacturing or importing one 55 gallon drum per week.

Requiring processing and use information for all reportable chemicals will result in data gaps due to these challenges. The additional burden to industry to gather this information for chemicals manufactured at lower volume chemicals with lower potential for exposure and risk far outweighs any benefit given significant data gaps will exist in the dataset based on the 2006 data gathering and reporting experience. We recommend leaving the trigger for reporting processing and use information at 300,000 lbs.

Modification of the Reporting Standard for Processing & Use

It is unclear whether the change from a "readily obtainable" to a "known or reasonably ascertainable" standard would require significantly different level of effort for reporting processing and use information. The 2006 reporting instructions specifically stated that customer surveys were not required. The instructions for the 2011 report are silent in this regard, so it is not clear whether customer surveys will be required. The EPA believes the lack of information reported in this category during the last reporting cycle was due to a more lax standard for reporting. It appears that EPA believes that a more stringent reporting standard will result in an increase in the quality of information reported. This may be a wrong assumption if the reason for lack of reporting stemmed from the data not being available (confidentiality of downstream use information) or inability to obtain it versus a lack of effort to gather and report it. (See comments above regarding challenges with gathering processing and use information.) This will also place a substantial burden on downstream users of chemicals to respond to various surveys and provide information, if that is, in fact, the EPA's expectation. We request that EPA provide further clarification of and guidance on what is expected under the "known or reasonably ascertainable" standard. Examples of what constitutes this standard of reporting and what does not would be helpful.

General Concerns with Recycling IUR Reporting Guidance -

Reporting of Chemical Substances Already Accounted for in Commerce

The EPA's definition of by-product and its by-product reporting guidance is confusing. Based on our interpretation of the guidance, it can result in multiple counting of the same molecules as well as reporting of chemical substances that have otherwise already been accounted for as chemicals in commerce by an upstream supplier. This multiple counting can result in misleading information. This is concerning, because the EPA uses production volume as a surrogate for exposure in chemical risk

assessment and prioritization of chemical substances. For example, unreacted raw materials or regenerated raw materials that are recycled and reused in a process, may be counted multiple times when they have already been accounted for in commerce by the original manufacturer or importer. This is not a true reflection of the amount of these substances in commerce. In addition, it is misleading to the public and dilutes the goal of providing transparency.

Reporting a chemical substance as "manufactured" where, in fact, a processor or user has not caused the formation of a chemically different substance but rather is simply processing a chemical substance for reuse, can unnecessarily cause that manufacturer to be subject to HPV testing as well as section 4 test rules and section 8(a) PAIR reporting. Processors or users who are using good practices to conserve resources and minimize waste are penalized as this unfairly subjects them to these additional compliance requirements. They are considered to be a manufacturer when, in fact, they have not manufactured any new molecules of the chemical substances. They have simply recovered and reused the same molecules they have purchased from a supplier, thereby acting as a processor of the chemical substance.

This situation also has the potential to discourage the recycling of some by-product streams as the amount of resources and time to identify, characterize, and report these streams can, in some instances, outweigh the economic benefit to recycle or reclaim the substances. With EPA's efforts to provide increased transparency to the public, it also unfairly and inappropriately stigmatizes a manufacturer in the eyes of the public as they appear to be a manufacturer of large volumes of chemicals, when they are actually using good environmental and economic practices around the reuse of raw materials.

*Solvent or Excess Reactant Recovery*

We provide several examples quite common in industry which underscore this point:

**Recovery and reuse of a solvent** – A site purchases a solvent for use in a chemical process to "carry" material through the process which does not involve any chemical reaction of the solvent in that process. The site recovers and purifies the solvent in a manner that does not involve the making or breaking of chemical bonds for reuse in the process. Based on current guidance, the site must report the recovery of that solvent as manufacturing every time it is recovered. We are aware of at least one example where the site appears to be the largest U.S. manufacturer of that solvent when, in fact, they have not manufactured any new molecules of the solvent. They have simply purchased it from an upstream supplier and reused it within their manufacturing process. [See Diagram 1]

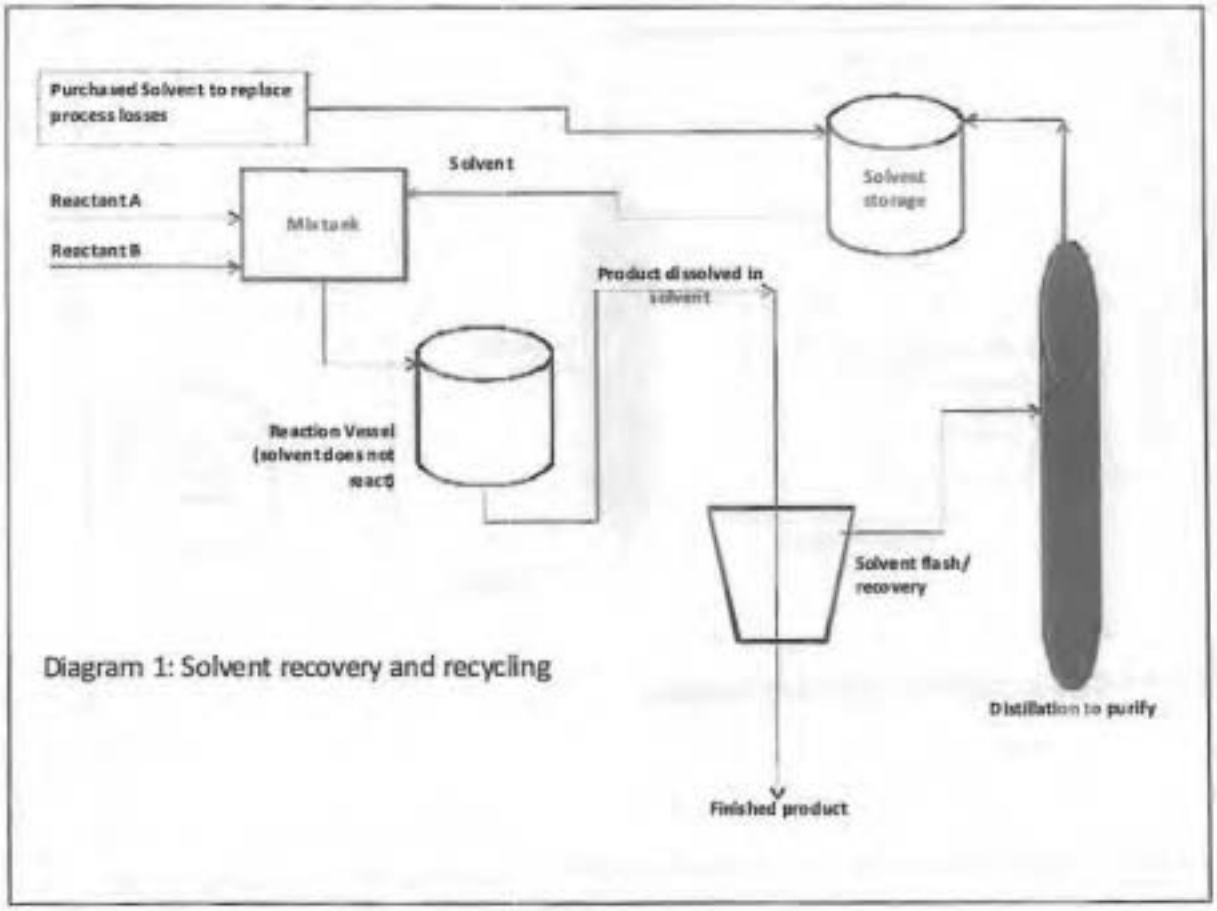



Diagram 1: Solvent recovery and recycling

**Recovery of an excess reactant** – If a site uses excess amounts of a reactant to drive a reaction to completion and then recovers the excess reactant, in a manner that does not involve the making or breaking of chemical bonds, for reuse in the process, they must report the recovery of that excess reactant as manufacturing every time it is recovered. Again, in this example, the site appears to be a manufacturer of that reactant when, in fact, they have not manufactured any new molecules of the reactant. They have simply purchased it from an upstream supplier and recycled it within their manufacturing process. [See Diagram 2]

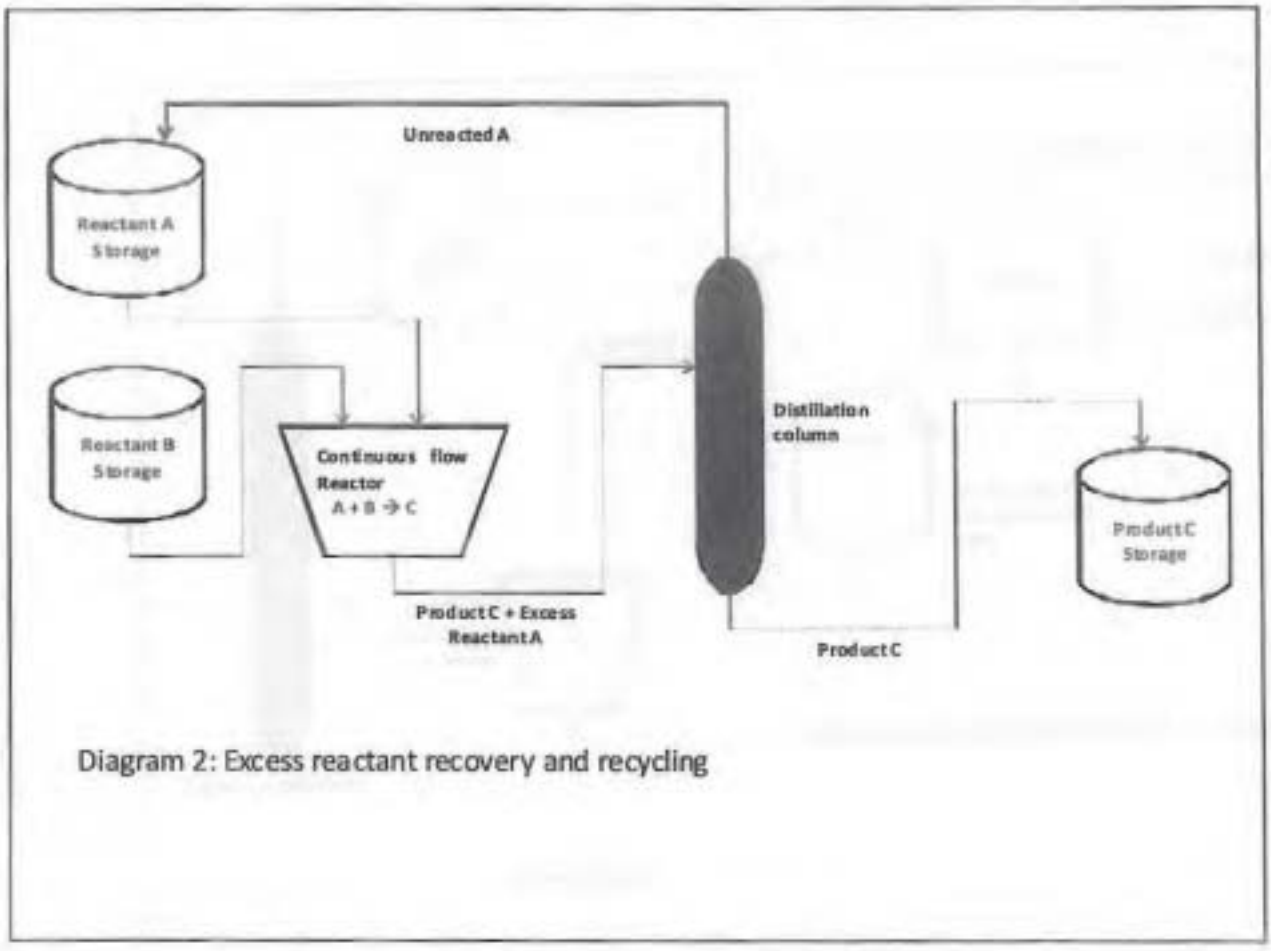



Diagram 2: Excess reactant recovery and recycling

*Regeneration of Raw Materials & Processing Aids*

Similarly, raw materials that are regenerated from by-product streams for reuse in the same chemical process should not be reported as production. Where a by-product is produced and subsequently processed to regenerate (i.e. by chemical reaction or other means) the original chemicals from which it was derived for use again in the same process from which it was produced, the annual volume of chemicals regenerated for reuse in the original process should not be reportable.

As an example, in the Kraft pulping process, wood chips are digested with pulping liquors (white liquor) at high temperature and pressure, resulting in pulp and spent pulping liquor (black liquor). To recover the component chemical substances present in the black liquor, the black liquor is combusted in a recovery furnace, and the smelt is recovered for reuse in the pulping process. The smelt is referred to as green liquor due to its color. By adding water and lime, the green liquor is processed, and white liquor is regenerated for reuse in the digesting process. For the white liquor that is regenerated onsite, only the annual net (non-repetitive) volume of reportable chemicals in the cycling process should be reportable. The calcium carbonate that is evolved from the process to regenerate the white liquor is processed by chemical reaction to regenerate lime for reuse in the white liquor recovery process. The regenerated lime should not be reportable as it is accounted for in commerce by the supplier who originally manufactured it.

Since the primary reason the black liquor is combusted is to recover the component chemicals present in the liquor without chemical reaction, the black liquor should not be reportable under IUR, based on the by-product exemption. [Diagram 3a]

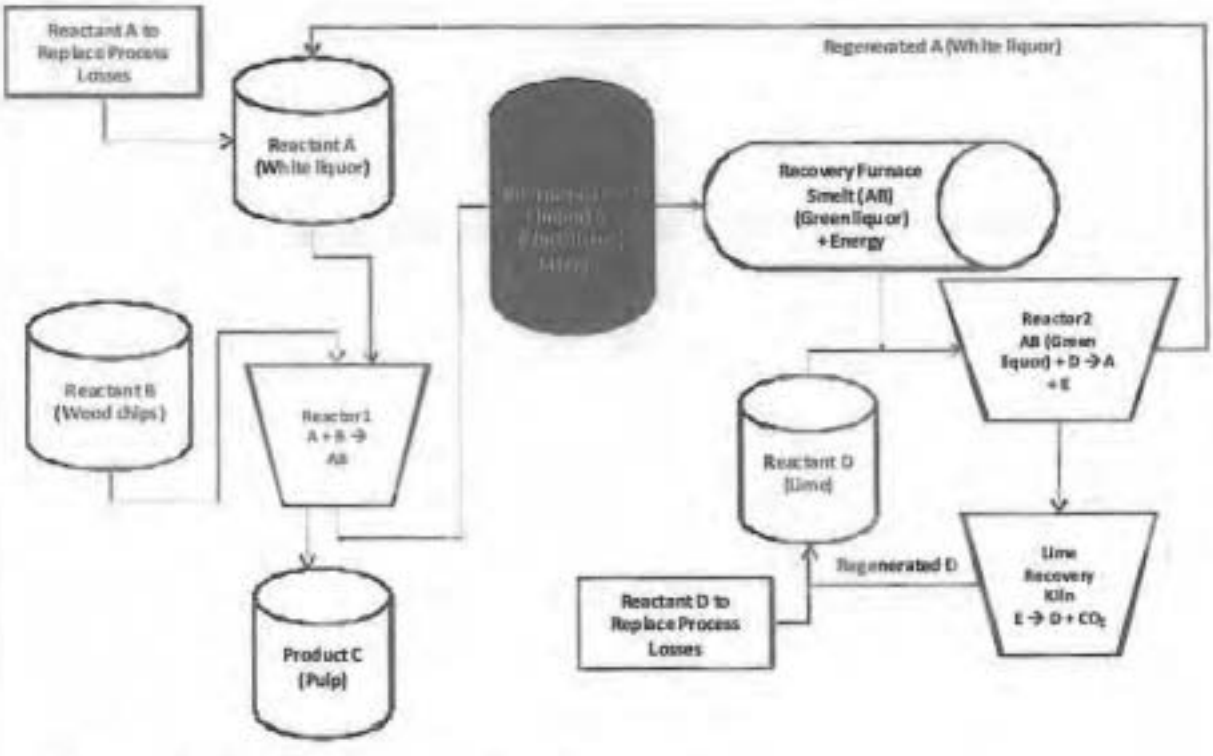



Diagram 3a: Regeneration and reuse of a reactant

As another example, metal-acetate catalyst is purchased and diluted with acid water to feed into the reaction system. The catalyst chemically changes in the reaction system, is separated from the product in a residue stream, and recovered by washing the residue with acetic acid water to convert back to metal-acetate. [Diagram 3b]

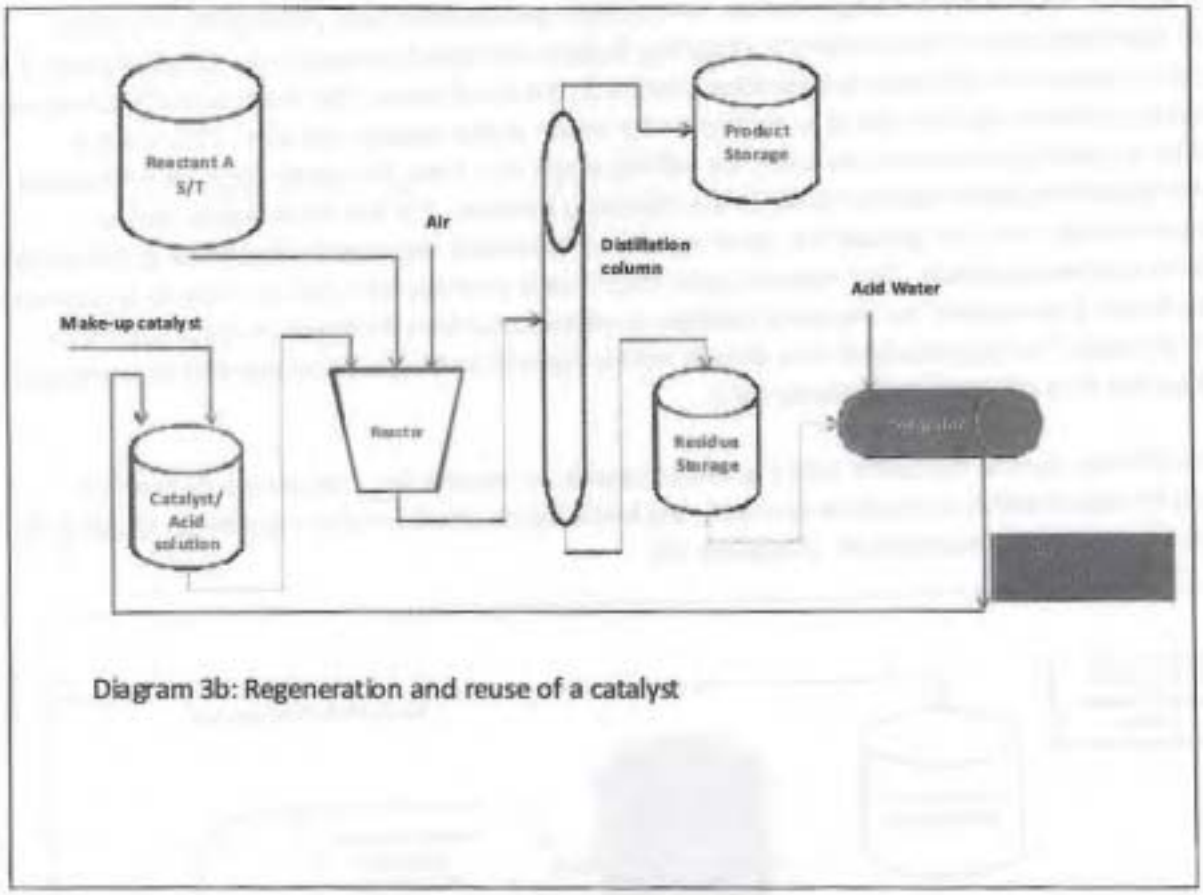



Diagram 3b: Regeneration and reuse of a catalyst

Reporting of Spent Catalyst

The EPA's by-product reporting exemption, (40CFR720.30(g)), needs to be expanded to further exempt reclamation or recycling activities where a spent catalyst must undergo chemical reaction in order for a recycler to recover the chemical of interest. Requiring the manufacturer that generated the spent catalyst to report as a "manufacturer" of the spent catalyst is unreasonable for the following reasons:

- Details of the recovery process are not always known to the by-product manufacturer. Furthermore, it is also not always known what substances are of commercial interest to the reclaimer or recycler. As such, this unnecessarily burdens the upstream supplier of the by-product stream with knowing or obtaining information that isn't known or reasonably ascertainable.
- In many instances, the specific composition of the catalyst may not be known to the purchaser due to confidentiality claims by the supplier. This may require execution of confidentiality agreements in order to understand potential compositions of the spent material.
- Finally, catalysts which are oftentimes metal complexes which have undergone complex chemical reactions when spent are not easily characterized or described chemically. Requiring the reporting of this by-product by the manufacturer who chooses to recycle the spent catalyst versus land filling or disposal as hazardous waste discourages recycling and conservation of resources.

In some instances, a spent catalyst remains unchanged chemically, and only its activity is diminished during use. If the spent catalyst is sent to a reclaimer or recycler who through no chemical reaction recovers the catalyst for reuse, EPA's guidance is that neither the spent catalyst nor the recovered catalyst should be reportable since there has been no making or breaking of chemical bonds.

On the other hand, if the recycler or reclaimer were to reclaim or recover impurities deposited on the catalyst for a commercial intent by converting the impurities through chemical reaction to recover the substances of interest, the impurities recovered by the reclaimer or recycler would be reportable by the reclaimer or recycler. However, EPAs guidance also suggests that based on this activity, the upstream supplier of the spent catalyst might also be required to report for IUR purposes. Recall that the spent catalyst is still chemically unchanged during use, and as such, those chemicals have already been accounted for by the catalyst manufacturer. The only manufacture that occurs is when the reclaimer recovers, by chemical reaction, the impurities that have deposited on the catalyst during use.

Oftentimes, the subsequent recovery activities of reclaimers and recyclers are not known by the upstream generator of the spent catalyst. Furthermore, the chemical identities which might often be complex and difficult to speciate, would not be known to the company that provides the spent catalyst to the reclaimer or recycler.

The EPA needs to provide further guidance on reportability of spent catalysts in the context of different potential recycling scenarios for both the original catalyst as well as recovery of impurities that may be deposited on the catalyst during its useful life. To promote rather than discourage the recovery of recyclable resources, spent catalysts, as a general category, should be exempt from IUR reporting.

Lack of a Definition for Produce

EPA states that manufacturers are subject to IUR reporting and defines *manufacturer* as "a person who imports, produces, or manufactures a chemical substance." This definition creates confusion in that it suggests that "producing" is an activity separate from manufacturing. Furthermore, EPA's definition of *manufacture* includes "to . . . produce . . . ", yet, it has not provided industry with a definition for the term "produce." EPA defines *by-product* to mean "a chemical substance produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance(s) or mixture(s)." One solution that could simplify industry's efforts to determine applicability and reporting of by-products under the IUR may be to provide a definition for "produce". We suggest that "*produce*" should be defined as "formation or creation of a chemical substance coincidental to the manufacture of another chemical substance that is chemically different from the starting materials." As such, a substance that is not chemically different from a starting material is neither a manufactured or produced substance.

EPA's Recycling Guidance is Inconsistent

EPA's *Q&A Document: Recycling and the TSCA Inventory of Chemical Substances: Premanufacture Notification and Inventory Update Reporting Requirements* introduces confusion regarding "purification" and "extraction" as discussed in the examples. Example B states that, when an 80% pure chemical is purified to 98% purity, this is not considered manufacturing. However, Example D states that, when a component chemical in a by-product is extracted by heating (distillation or fractionation), the component substance is considered to have been manufactured. Furthermore, in order for the by-product stream from which it was extracted to be exempt from reporting, the component chemical must actually be present in the by-product stream. To add further confusion, in the response to question 8 regarding the recycling of spent solvents, EPA describes the re-distilled solvents as "purified," but says that they are reportable substances. This is in conflict with the guidance given in Example B where EPA has stated that "purification" does not constitute chemical manufacturing.

EPA needs to clarify what distinguishes purification (which is not considered manufacturing in Example B) from extraction of a component chemical substance (which is considered manufacturing in the Example D). If a chemical is present at 80% purity in a byproduct and distilled to 98% purity, is it purification or extraction of a component chemical? Why would re-distilled solvents, which EPA refers to as "purified solvents," be reportable if purification does not constitute manufacturing? Furthermore, the original manufacture of the solvents in all of the examples would already be accounted for as part of the volume of the chemical in commerce. Subjecting the recovery and recycle of those solvents to additional IUR reporting would result in multiple counting of those chemicals.

EPA's Use of Information on Recycled By-Products

While our technical concerns are based on the practical aspects of actually implementing the regulation and reporting, there are other more overarching concerns about how the data EPA receives will be used to inform their prioritization process. Where the EPA has equated risk and exposure with production volumes, we have concerns where there is multiple counting of chemicals that were originally manufactured and accounted for by a manufacturer upstream, and the chemicals are simply reused or regenerated over and over in primarily closed and often site limited processes.

Changing the 4 month submission period to another 4-month period later in 2010

The EPA has solicited comment on changing the 2011 submission period to another 4 month period in 2011. KII supports the proposed shift in the submission period to be later in 2011. Companies will need as much time as possible to review the final rule, particularly where it imposes substantially new requirements from the prior reporting period. The EPA anticipates finalizing the rule by spring 2011 which is just prior to the commencement of the submission period in June. It is not reasonable to finalize a rule with significant changes and new reporting software just before the submission period is scheduled to begin. Reporting entities need sufficient time to understand the modified and new data collection and reporting requirements, as well as to work through the implementation of a new electronic reporting system.

It is important to also note that if the release of the final rule and the reporting software is delayed, then the reporting entities will not have sufficient time to review, understand and implement the new rules. As such, KII suggests that minimizing the number of changes for this IUR reporting cycle as well as phasing in mandatory electronic reporting as the most appropriate approach for the agency to address this concern. In the alternative, we recommend that the agency schedule the submission period to commence 9 to 12 months after the effective date of the final rule. This will allow the regulated community sufficient time to implement the changes as well as enable the agency to work through any electronic reporting issues that may arise.

**Relevant to the changes proposed for years beyond 2011:**

General Concern

Given the breadth of changes proposed for the 2011 reporting cycle, we suggest addressing changes beyond 2011 through an Advisory Panel or outreach to the regulated community. We also suggest EPA consider a separate invitation for comment on proposed changes beyond 2011 given the possibility of TSCA reform and the issues that are being raised in those discussions that are directly applicable to potential IUR reporting changes.

Lower Production Volume Threshold for Reporting

Reducing thresholds to require reporting of volumes of chemicals lower than 25,000 pounds is arbitrary and does not serve to inform the EPA's risk assessment or prioritization process. In addition, it dilutes the benefit of providing transparency to the public. Reporting information about insignificant amounts of chemicals in the commercial sense fails to serve the purpose of informing the EPA's risk assessment and prioritization processes or informing to the public about potential concerns. As indicated earlier in these comments, at a reporting threshold of 25,000 lbs., reporting entities that manufacture or import one 55-gallon drum of a chemical substance per week are already subject to IUR reporting for that chemical substance. Lowering the threshold would essentially trigger the reporting of what are typically specialized chemicals that have a limited and narrow range of end uses or that are used for research and development purposes. The threshold should be left as is. Any reduced thresholds for reporting should be risk-based and focused to specific chemical substances.

Increased Frequency of Reporting

In 2005, EPA recognized the need to extend the reporting cycle to allow increased time for industry to learn how to comply with the amended IUR. 70 Fed. Reg. 75,059, 75,065 (December 19, 2005). One of the purposes for extending the reporting timeline was to reduce errors in submissions. *Id.* EPA

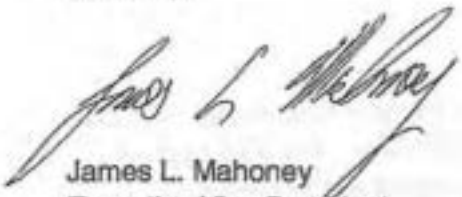
should employ this same logic and allow companies time to review the modifications, and enter into a dialogue with the regulated community to understand the desire for more information. This would provide the regulated community with a better understanding of EPA's goals for requesting lower reporting thresholds and possibly a shortened reporting cycle. Understanding this basis would help the industry to respond and suggest more effective and efficient alternatives for achieving the goals where appropriate.

Collection of additional exposure information (similar to PMN)

Requiring the collection of additional exposure information, similar to a PMN, would be very burdensome and difficult for upstream suppliers to gather and report. It is unclear what value is obtained, or how EPA intends to use this information. More importantly, requesting this information is outside of the scope of the current IUR authority granted in TSCA Section 8(b). Section 8(b) authorizes EPA to "compile, keep current, and publish a list of each chemical substance" that is produced or imported into the US. The IUR program is not the appropriate mechanism to use to gather exposure or risk assessment information, and EPA is not authorized to request such information under Section 8(b) of TSCA.

KII appreciates the opportunity to submit these comments. If you have any questions, please don't hesitate to contact me at (316) 828-4008.

Sincerely,



James L. Mahoney
Executive Vice President
Operations Excellence & Compliance