

Before the

UNITED STATES HOUSE OF REPRESENTATIVES

**Committee on Resources
Subcommittee on Energy and Mineral Resources**

Testimony of

Fern Abrams

**Director of Environmental Policy
IPC - The Association Connecting Electronics Industries**

**1333 H Street, NW
11th Floor West Tower
Washington, DC 20005**

On

**The Toxic Release Inventory
and its
Impact on Federal Minerals and Energy**

September 25, 2003

DISCLOSURE REQUIREMENT
Required by House Rule XI, clause 2(g)
And Rules of the Committee on Resources

A. This part is to be completed by all witnesses:

1. Name: Fern Abrams
2. Business Address: 1333 H Street NW, 11th Floor West Tower, Washington, DC 20005
3. Business Phone Number? 202-962-0460
4. Organization you are representing: IPC - The Association Connecting Electronics Industries
5. Any training or educational certificates, diplomas or degrees or other educational experiences which add to your qualifications to testify on or knowledge of the subject matter of the hearing:
MS in Environmental Engineering, Virginia Polytechnic University, 1999. BS, Chemical Engineering, University of Pennsylvania, 1990.
6. Any professional licenses, certifications, or affiliations held which are relevant to your qualifications to testify on or knowledge of the subject matter of the hearing:
NA
7. Any employment, occupation, ownership in a firm or business, or work-related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:
Director of Environmental Policy for IPC - The Association Connecting Electronics Industries since May 2000.
8. Any offices, elected positions, or representational capacity held in the organization on whose behalf you are testifying:
Director of Environmental Policy for IPC - The Association Connecting Electronics Industries

B. To be completed by nongovernmental witnesses only:

1. Any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 2000, which pertain to issues in this hearing, the source and the amount of each grant or contract:
NA
2. Any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 2000, by the organization(s) which you represent at this hearing, including the source and amount of each grant or contract:
U.S. Department of Commerce, International Trade Administration Award No. 02-3057 Federal Assistance under the Market Development Co-operator Program. Matching grant up to \$400,000 over a 3 yr period from October 1, 2002 to September 30, 2005.
3. Any other information you wish to convey which might aid the members of the Committee to better understand the context of your testimony:
NA

Good morning Madame Chairman, Ranking Member Kind and members of the Committee. My name is Fern Abrams and I am the Director of Environmental Policy for IPC, the trade association for the electronic interconnection industry. IPC's 2,200 members manufacture and assemble printed circuit boards, the backbone of our nation's high tech industries, including consumer, industrial, and defense electronics. While some of these are large, name brand, international companies, sixty percent of IPC members are small businesses. On behalf of IPC and our member companies, I'd like to thank you and your staff for organizing this hearing.

IPC members support cost-effective environmental regulations which are based upon sound scientific and economic analysis. Environmental regulations that are not based on such analysis often create unnecessary burdens while failing to achieve their goal of environmental protection. My testimony today will focus on one such rule, the Environmental Protection Agency's (EPA's) lowered reporting threshold for lead under the Toxic Release Inventory (TRI) program.

EPA's regulation lowering the TRI reporting threshold for lead and lead compounds from 25,000 lbs to 100 lbs. took effect on April 17, 2001, and included an unprecedented retroactive application of the reporting requirements to January 1, 2001. Equally unprecedented was EPA's decision to put the proverbial cart before the horse by basing the regulation on the questionable application of persistent, bio-accumulative and toxic ("PBT") criteria which were developed for the evaluation of synthetic organic compounds, while promising, in the final regulation, to conduct an ex-post facto Science Advisory Board review of critical assumptions on which EPA's rule was based.¹

In July 2000, the House Science Committee Chairman, Subcommittee Chairmen and Ranking Members sent a letter to EPA stating that "questions have arisen regarding the scientific validity of applying the PBT criteria to metals and inorganic metal compounds, and that this specific issue has not received the benefit of SAB [Science Advisory Board] or other independent scientific peer review."

¹ 66 Fed. Reg. 4500, 4518 (Jan. 17, 2001) ("external peer review [will address] the issue of how lead and other, as yet, unclassified metals such as cadmium, should be evaluated using the PBT chemical framework, including which types of data (and which species) are most suitable for these determinations)."

Two and a half years later, a panel of independent experts appointed by EPA has just concluded that the principal theoretical features of the model used by EPA in evaluating the bio-accumulative portion of the PBT criteria that make it applicable to the neutral organic substances also “make it inapplicable to inorganic metal substances.”²

IPC members, along with many other industries affected by the rule, have repeatedly voiced our concerns that the burden of this rule upon business, especially small businesses, has been significantly underestimated by EPA. During the development of the rule, EPA chose not to convene a Small Business Advocacy Review Panel as required under the Small Business Regulatory Enforcement and Fairness Act (SBREFA), deciding instead to certify the proposed and final rules as having no significant economic impacts on a substantial number of small entities. Yet, EPA admitted that its assessment was inadequate, stating that there were other industries “that may be affected by the rule, but for which existing data are inadequate to make a quantitative estimate of additional reporting,” and thus excusing their omission from the cost assessment.³ On April 24, 2001, the Senate Committee on Small Business held a hearing on the effectiveness of SBREFA, with the GAO testifying that EPA’s assertion that the rule would not have a “significant impact” on small entities ignored more than 30 industry groups’ concerns about the rule. Early outreach to small businesses could have helped EPA determine the number of small companies that would be significantly impacted by the rule.

Compliance with the lowered reporting thresholds has imposed a large and significant burden on affected businesses, including IPC members. For a small business, the job of interpreting and complying with the agency’s instructions and guidance for the TRI is a substantial source of burden. The reporting forms, instructions, and guidance for complying with the reporting requirements for lead and lead compounds together total 746 pages, not including twelve industry specific guides, which, after two years, still have not been updated to include the lowered reporting thresholds. According to EPA’s own estimates, the cost of compliance for new reporters in the electronics industry was \$7,400 per facility in the first year alone.⁴ We believe this underestimates the actual costs, but in any event it is a

² Issue Paper on the Bioavailability and Bioaccumulation of Metals, Draft, August 2003, p. 32.

³ Lead and Lead Compounds; Lowering of Reporting Thresholds; Community Right-to-Know Toxic Chemical Release Reporting, 66 FR 4534 January 17, 2001.

⁴ *Ibid.*

significant sum of money when you consider those costs must come entirely from profits in an industry with ever decreasing customer prices and in many cases paper-thin margins.

In the supporting documentation for the TRI reporting forms, EPA states that, “According to many, the TRI program is one of the most effective environmental programs ever legislated by Congress and administered by EPA. The information collected under Emergency Planning and Community Right-To-Know Act (EPCRA) Section 313, and subsequently distributed through EPA outreach and awareness programs, is provided at relatively low cost compared to the value it represents to the general public.”⁵

Examination of the data collected under the lowered reporting threshold for lead will cause even the casual observer to question this statement. The lowered reporting threshold for lead significantly increased the reporting burden on industry, but has resulted in little data. In 2001, the most recent year for which reporting data is available and the first reporting year under the lowered reporting threshold for lead, 8,561 Form Rs were filed for lead and lead compounds. Forty percent of new reporters under the TRI lead rule reported zero releases, while the median reported release of lead to the environment is **one** pound. To put this in context, the average automobile battery contains seven pounds of lead.

In the electronics and electrical equipment manufacturing sector (SIC 36), 1,252 Form Rs were filed for lead and lead compounds. The total releases reported by this sector amount to less than 0.1% of all lead releases. Fifty-four percent of all electronics sector Form Rs for lead and lead compounds reported **zero** pounds of lead released to the environment. Surely, this can not be EPA’s idea of a cost-effective regulation.

In the two years since the regulation was finalized, EPA has repeatedly failed to reduce the burden of compliance through simplification of reporting, or at a minimum the provision of effective compliance assistance. During the time the rule was under consideration and after its adoption, many concerns were raised about the enormous burdens it would impose on small businesses throughout the country. We were pleased when in April, 2001 President Bush recognized this problem, and directed EPA to help small businesses.⁶ In a May, 2001 letter to 73 concerned trade associations, the EPA’s Office of Environmental Information (OEI) reiterated this point by promising to help reduce the burdens imposed

⁵Toxic Chemical Release Inventory, Toxic Chemical Release Reporting, Information Collection Request Supporting Statement, OMB Control Number 2070-0093 EPA ICR#1363.13 June 2003, pg 6.

⁶ Statement by the President, White House Office of the Press Secretary, April 17, 2001.

on small businesses by developing a final guidance document by October, 2001.⁷ Unfortunately, EPA did not finalize the promised guidance document until the end of January 2002, after the entire first reporting year had passed.

Last summer, your colleague, the Honorable Mike Pence, chaired a hearing which examined the burden this regulation placed upon small businesses by a rulemaking process that had not included adequate review. Following his June, 2002 hearing, Chairman Pence asked EPA Administrator Kim Nelson what steps EPA would take to ensure reduced burden and reduced compliance costs for the TRI July 2003 reporting deadline. Assistant Administrator Nelson wrote in response that, “EPA will continue to provide compliance assistance on the lead rule targeted to small business, such as developing a Small Business TRI Lead Rule Hotline, sponsoring more workshops specifically for the lead rule, etc.” Assistant Administrator Nelson went on to promise, “EPA is committed to working with small business sectors to try to streamline their reporting...”⁸ I’m saddened to report that the July 2003 deadline has come and gone without EPA having established the promised hotline, conducted additional training, or streamlined reporting in any way.

In January, 2003, the Office of Management and Budget (OMB), noting significant industry concern with the rising TRI burden of compliance, approved EPA’s TRI Information Collection Request (ICR), “with a shorter than usual clearance in order to provide the EPA an opportunity to examine in more detail the TRI burden estimates and opportunities for reducing burden and enhancing the practical utility of the data.”⁹ Despite OMB’s encouragement, EPA has failed to take any actions that would significantly reduce reporting burdens. Instead, EPA’s new ICR relies on inadequate data and flawed assumptions in order to derive imaginary reduced burden estimates.

Our members take their responsibility to environmental stewardship very seriously. As small business owners they and their families live, work and play in the communities where their businesses operate.

⁷ Letter from Margaret N. Schneider, Acting Assistant Administrator, Office of Environmental Information, to Jane C. Luxton, King & Spalding, May 25, 2001. Ms. Schneider’s letter responded to a letter sent to EPA by seventy-three associations, including many small business groups, that had written to the Agency expressing concerns about the rule.

⁸ Letter from EPA Assistant Administrator Kim Nelson to the Honorable Mike Pence, July 24, 2002.

⁹68 FR 39074 July 1, 2003

The TRI reporting requirements for lead are just one of many burdensome, unjustified regulations that plague America's businesses daily as they struggle to continue providing jobs in their communities.

In conclusion, I ask you to consider whether it is reasonable to require thousands of small businesses to continue to incur the substantial regulatory burden imposed by TRI in order to report insignificant or nonexistent releases. We believe EPA should immediately undertake serious efforts to streamline TRI reporting and re-focus the program on significant environmental releases.

Thank you again, Madame Chairman for giving IPC the opportunity to express our concerns and I welcome any questions.