



June 5, 2009

Environmental Protection Agency  
EPA Docket Center (EPA/DC)  
Mailcode 6102T  
Attention Docket ID No. EPA-HQ-OAR-2008-0508  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Re: OMB Watch Comments on Docket ID No. EPA-HQ-OAR-2008-0508  
Mandatory Reporting of Greenhouse Gases

Dear Sir/Madam:

OMB Watch is submitting these comments on the proposed mandatory greenhouse gas (GHG) reporting rule 74 Fed. Reg. 16448–16731 (April 10, 2009).

OMB Watch is a nonprofit research and advocacy organization whose core mission is to promote government accountability and improve citizen participation. Public access to government information has been an important part of our work for more than 15 years, and we have both practical and policy experience with disseminating government information. For example, in 1989, we began operating RTK NET, an online service providing public access to environmental data collected by the Environmental Protection Agency (EPA). Additionally, we are engaged in agency regulatory processes and encourage agency rules to be sensible and more responsive to public needs.

### **Schedule for Reporting**

EPA has proposed that covered facilities begin collecting emissions data on January 1, 2010, and report the 2010 data to EPA by March 31, 2011. We strongly encourage EPA not to delay the start of data collection activities. EPA has acknowledged the urgency of the issue and the need to begin data collection as soon as possible.<sup>1</sup> Additionally, the Government Accountability Office (GAO) has stressed the importance of accurate and thorough emissions data to the success of future climate change policies, in particular, a cap-and-trade system that distributes at least a portion of carbon credits via auction.<sup>2</sup> A baseline comprising several years' worth of facility-level emissions data is most valuable to accurately measuring and allocating emissions credits

<sup>1</sup> Letter from Acting Assistant Administrator for Air and Radiation Elizabeth Craig to Karin Ritter, Manager, Regulatory and Scientific Affairs, American Petroleum Institute. Available at <http://www.epa.gov/climatechange/emissions/downloads/APIresponse5685.pdf>.

<sup>2</sup> GAO. International Climate Change Programs. Lessons Learned from the European Union's Emissions Trading Scheme and the Kyoto Protocol's Clean Development Mechanism. November 2008. GAO-09-151. <http://www.gao.gov/new.items/d09151.pdf>.

and to measuring emissions reductions. Considering the rapidity with which the U.S. Congress is proceeding, pending climate change policies will need emissions data as soon as possible to improve the chances for successful implementation.

EPA has further determined that the three-month period from the end of the reporting year to the due date for submitting the emissions report is "a reasonable time to compile and review the information needed for the annual GHG emissions report and to prepare and submit the report."<sup>3</sup> Facilities will need to monitor their activities on an ongoing basis in order to comply with the data collection requirements of this proposed rule. Therefore, OMB Watch agrees that three months is enough time for facilities to process, quality-assure, and submit the data to EPA. Any postponement of submissions past this three-month time frame would be unnecessary and delay the eventual publication of emissions data, thus reducing the timeliness of the data and posing potential difficulties to future greenhouse gas mitigation programs that rely on timely and accurate emissions data.

### **Reporting Frequency**

EPA has proposed that facilities report their emissions data on an annual basis. OMB Watch encourages EPA to review this decision and instead require quarterly reporting from all covered facilities. In addition to the Acid Rain Program, quarterly reporting is already a feature of the EPA's Office of Transportation and Air Quality's registration program for fuels and fuel additives.<sup>4</sup> Also, Title VI of the Clean Air Act requires quarterly reporting from producers, importers, and exporters of ozone depleting substances.<sup>5</sup>

EPA acknowledges, "The data needed to estimate emissions and compile the report would be collected by the facility on an ongoing basis throughout the year, so facilities could begin data summary during the year as the data are collected."<sup>6</sup> With much of the work needed for reporting already having been done, the burden of reporting every three months is eased. EPA should consider, at least, phasing in over several reporting years the quarterly reporting requirement, beginning with the largest emitters. It may also be reasonable to require a smaller set of data to be reported quarterly than the data set that is required for the annual report, thus further easing the reporting burden. Facilities that report quarterly to the Acid Rain Program should also report quarterly to this proposed registry.

EPA has also recognized that future climate change mitigation policies, especially a cap-and-trade program that creates a market for emissions credits, may require more frequent reporting. EPA is correct when it stated that, with such market-based policies, "it may be more appropriate [to] require quarterly reporting."<sup>7</sup> Considering that such markets already exist in the European Union and as part of the Regional Greenhouse Gas Initiative (RGGI), and that the likelihood is high that a national emissions market will emerge from the U.S. Congress, the proposed registry should provide the public with quarterly emissions reports.

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<sup>3</sup> 74 Fed. Reg. 16472.

<sup>4</sup> Instructions for fuel manufacturers are available here: <http://www.epa.gov/otaq/regs/fuels/forms/12q-instruct.pdf>.

<sup>5</sup> Reporting requirements for the Ozone Layer Depletion Program are available here: <http://www.epa.gov/Ozone/record/index.html>.

<sup>6</sup> 74 Fed. Reg. 16472.

<sup>7</sup> Ibid.

In addition to providing emissions market participants with greater transparency, quarterly reporting aids in the identification of emissions trends that are impacted by short-term or seasonal changes. A greater understanding of emissions variability helps identify the forces influencing emissions levels. This information, in turn, could facilitate the development of new policies and technologies to mitigate those emissions. Facilities that report quarterly are also in a better position to identify monitoring problems in a timely manner, before such problems impact a whole year's worth of emissions data.

### **Publication of Data**

We encourage EPA to make publicly available the emissions data as soon as possible following the March 31 submission deadline. It is understood and expected that EPA will work to assure the accuracy of the data after they have been submitted. However, OMB Watch believes that there needs to be a balance between data quality and control and the expedient release of these important data. By making an initial release of raw emissions data soon after the submission deadline, the public is provided the opportunity to identify data gaps and errors that might be missed during the agency review of the data. Moreover, facilities are provided additional incentive to ensure the accuracy of their monitoring and reporting if it is known that the public will have access to the emissions reports before agency-level quality control checks occur.

EPA will soon begin a similar early release of raw data in the Toxics Release Inventory (TRI) program.<sup>8</sup> The TRI program collects data from thousands of facilities on their releases, transfers, and waste management of more than 650 toxic chemicals. Reports for the preceding calendar year are due by July 1. In 2009, EPA plans to release the most recent raw TRI data approximately one month after the reporting deadline. Historically, the TRI public data release has not occurred until up to nine months following the reporting deadline. This early release of raw data will provide the public with much more timely, useful data with which to analyze pollution trends and make informed personal and policy decisions. OMB Watch encourages EPA likewise to provide a rapid release of raw greenhouse gas emissions data at the facility level.

In addition to the release of raw emissions data soon after the March 31 reporting deadline, we strongly recommend that EPA subsequently provide thorough analyses of the data. EPA is well suited to provide crucial data analysis and context, improving the usability of the vast amount of emissions data this proposed rule will generate. Such expert analysis should include, among other items, identification of various emissions trends such as geographic variations and trends by source category, highest emitting facilities within the various sectors and overall, and facilities that have made the greatest emissions reductions and those that have seen the greatest increases. In addition to this basic data analysis, EPA should identify the driving forces behind emission trends and highlight new technologies and efficiencies that have succeeded in decreasing emissions.

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<sup>8</sup> The early release of raw Toxics Release Inventory (TRI) data, without EPA analysis, was discussed at the 2009 TRI National Training Conference, March 31- April 1, 2009, Bethesda, Maryland. Information is available here: <http://ecostrivedv.forumone.com/content/overview-recent-regulatory-and-other-tri-activities-and-qa>

The publication of greenhouse gas emissions data is also an excellent opportunity for EPA to take advantage of new interactive technologies such as wikis and other Web applications that allow the public to integrate emissions data with other data sources, such as interactive cartographic maps. EPA should ensure that, among other formats, the emissions data are available in a database format that is accessible by the public using all search engines. However, it is not enough for EPA to just make the data easy to find. EPA must also ensure that the information is presented in a simple, straightforward manner that allows average citizens to understand and use the data.

### **Confidential Business Information**

Protecting legitimate trade secrets is an important responsibility of the EPA and all agencies that collect data from private industry. Businesses are allowed under certain limited circumstances to claim that information is confidential business information (CBI) and is therefore exempt from public disclosure rules. EPA's challenge is to ensure that the public can access the fullest possible range of data while accommodating the reporters' need to keep certain information protected. EPA has notified potential reporters that under the proposed rule and previous agency guidance, most emissions data cannot be considered CBI.<sup>9</sup> OMB Watch believes it is crucial to the successful functioning of future climate change mitigation policies, that all claims of confidentiality should be substantiated by the submitter up front, at the time of submission. EPA already requires such substantiation for reporters to the Toxics Release Inventory.<sup>10</sup> The GAO likewise has identified inappropriate CBI claims as an extensive and perennial problem afflicting the regulation of dangerous chemicals.<sup>11</sup>

Secondly, EPA should limit the amount of time substantiated CBI claims may stand. Confidentiality claims should be subject to clear, strict time limits. The agency may review requests for extensions to a confidentiality claim on a case-by-case basis.

The proposed rule includes a list of records related to this GHG registry that covered facilities will be expected to manage and retain for five years.<sup>12</sup> These materials should be made available to the public, except for information protected by legitimate, substantiated claims of confidentiality.

### **Corporate Reporting**

OMB Watch agrees with EPA that having emissions reported at the facility level is most likely to supply consistent, uniform, and accurate data. However, considering both the existence of regional market-based mechanisms like the Regional Greenhouse Gas Initiative (RGGI) and the likelihood of a national cap-and-trade system and auction, collecting data on corporate-level emissions is essential. EPA should be sure to collect from facilities data identifying the corporate parent of each facility. Identifying parent companies will allow existing and future financial

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<sup>9</sup> 74 Fed. Reg. 16463.

<sup>10</sup> An example of the requirement for trade secrets substantiation is available here: <http://www.epa.gov/TRI/report/tradeseecret/ts-form2.pdf>.

<sup>11</sup> John Stephenson. Testimony before the Subcommittee on Commerce, Trade, and Consumer Protection, Committee on Energy and Commerce, House of Representatives Chemical Regulation. Options for Enhancing the Effectiveness of the Toxic Substances Control Act. February 26, 2009. GAO-09-428T. <http://www.gao.gov/new.items/d09428t.pdf>.

<sup>12</sup> 74 Fed. Reg. 16463.

markets that trade emissions credits to operate with greater transparency and provide participants with the data needed to make more informed investment decisions. It is understood that ownership of individual facilities changes over time. By collecting parent company identification data at the time of the submission of the emissions report, EPA at least can calculate corporate-level emissions for a particular point in time.

### **Summary**

OMB Watch strongly supports EPA in its efforts to create a comprehensive registry covering the majority of greenhouse gas emissions. Acquiring such data is the first, fundamental step toward developing policies that can succeed in mitigating the impacts of climate change. This first step also requires that the data are accurate and easily accessible by the public. As EPA states, "Transparency helps to ensure data quality and build public confidence in the data so the data can be used to support the development of potential future climate policies."<sup>13</sup> To help ensure the transparency of this proposed mandatory greenhouse gas registry, OMB Watch recommends that EPA:

- Adhere to the proposed reporting schedule that sets January 1, 2010, as the start of the first reporting year and March 31 of the following year as the deadline for submission of emissions reports.
- Require quarterly reporting of emissions data rather than annual reporting.
- Provide timely release to the public of emissions data, first with a release of raw data soon after the reporting deadline, then followed by the release of comprehensive analysis of emissions trends and highlights.
- Use current technologies, including interactive Web applications, to present the data in formats that allow enhanced public understanding and encourage additional analysis and utilization by the public and other government agencies.
- Limit the overuse of trade secrets claims by requiring substantiation of CBI claims up front and placing a time limit on CBI protections, and ensuring that facility records generated for the purpose of this registry are publicly disclosed.
- Collect parent company identification data from reporting facilities to allow corporate-level emissions calculations.

We appreciate your consideration of our comments on the proposed rule. Please do not hesitate to contact us at 202.683.4840 if you have any questions.

Sincerely,

Brian Turnbaugh  
Policy Analyst, Environmental Right-to-Know

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<sup>13</sup> 74 Fed. Reg. 16595.