

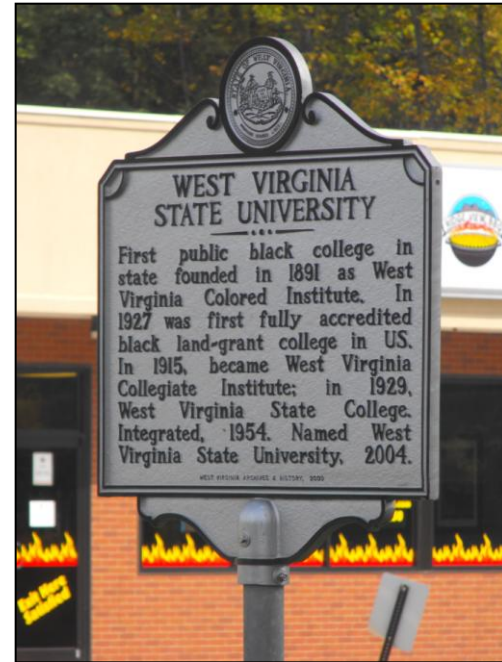
EPCRA at 25:

A Case Study in Environmental Right to Know Laws

Danielle M. Purifoy
Toxics Release Inventory Conference
April 11, 2012

+ Institute, WV

- Unincorporated
- No census data/No political representation
- Majority African-American/Low income-Middle class
- WV Colored Institute/WV State University
- Union Carbide/Bayer CropScience



+ EPCRA

- 1984: Bhopal Disaster
- 1985: Leak at Institute Union Carbide plant Methylene chloride & aldicarb oxime (Temik) injured 6 workers, 135 residents sent to area hospitals
- 1985-People Concerned About MIC
- 1986-EPCRA (SARA Title 3)
 - Emergency Planning (SERCs & LEPCs)
 - Toxics Release Inventory (TRI)
 - Emergency Release Notification
 - Hazardous Chemical Storage Reporting
 - Citizen Enforcement





A History of Accidents and Noncompliance



- 1985 UC notified EPA – since 1980, 190 leaks at Institute (61 MIC, 107 Phosgene, and 22 of both)
- 1987 – UC paid OSHA \$408,500 for 556 health & safety violations, SC and Institute plants
- 1988 – Fire & explosion 4,300 lbs. EO and 3,000 fish kill at Institute
- 1990 – MIC and muriatic acid injures 7 workers, 15,000 told to SIP
- 1993 – 1 worker killed, 2 injured (died) at R-P Larvin unit; 27 safety violations.
- 2008 – Massive explosion & fire at Methomyl-Larvin unit killed 2 workers, injured 8 employees, 2 contractors & 6 fire-fighters, western Kanawha Co. SIP (~40,000 residents)



TRI in Institute and Beyond: Right to Know or Right to Information?



- Accessibility
 - FOIA
 - Trade Secrets
 - National Security
 - Disaggregated Information
- Transparency
 - Training
 - Contextualized Data
 - Public Translation
 - Enforceability





Local Initiatives to Translate TRI Data



- National Institute for Chemical Studies (NCIS)
 - Annual Scorecard Report
 - Tracked TRI chemical lists

- Community Safety Assessment Groups
 - Precursor to Community Advisory Panels (CAPS) under Responsible Care Program
 - Met with facilities to collect direct information about chemicals produced and operational processes

- People Concerned About MIC
 - Material Safety Data Sheets
 - Extensive training on TRI data



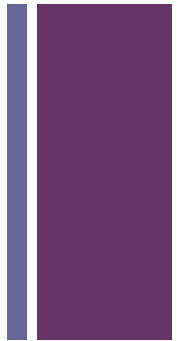
TRI for the Future: “myRTK” + RSEI



- **myRight-to-Know**
 - Simplified interface
 - Data aggregation
- User-friendly/translatable
- Mobility/GPS technology
 - Bilingual
- Facility rankings
 - Fun?
- **RSEI**
 - Connects TRI data to human exposure
 - Tracks trends in risks to public and environment
 - Fact-based tool for environmental justice advocacy



Bayer CropScience on myRTK



FACILITY REPORT

BAYER CROPSCIENCE LP
 Toxics Release Inventory ID = 25112RHNPLROUTE
 RT 25, INSTITUTE, WEST VIRGINIA 25112
 Industry: Chemicals

CONTEXT

County
 34% of TRI releases in KANAWHA County , WV
 12 TRI facilities in KANAWHA County , WV

National
 Ranks 85 out of 2895 TRI facilities in Industry: Chemicals
 (Rank 1 = highest releases)

ON SITE RELEASES TOTALS

Source	Pounds Released
Air	449698
Water	377270
Land	263

ON SITE RELEASES BY CHEMICAL

Chemical	(Pounds Released)	Health Effects
		Cancer Other
NITRIC ACID	0.0	✓
NITRATE COMPOUNDS	290202.0	✓
HYDROCHLORIC ACID (1995 AND AFTER "ACID AEROSOLS" ONLY)	193846.0	✓
2-ETHOXYETHANOL	173901.0	✓
DICHLOROMETHANE	99019.0	✓ ✓
HYDROGEN FLUORIDE	23613.0	✓
N-HEXANE	16002.0	✓
CHLOROFORM	9253.0	✓ ✓
TOLUENE	5569.0	✓
METHANOL	5417.0	✓
NAPHTHALENE	3061.0	✓ ✓
ETHYLENE GLYCOL	2853.0	✓
PYRIDINE	1894.0	✓
ANILINE	497.0	✓ ✓
METHYL ISOBUTYL KETONE	419.0	✓
METHYL ISOCYANATE	360.0	✓
TRIETHYLAMINE	328.0	✓
CHLORINE	251.0	✓
SILVER COMPOUNDS	196.0	✓

COMPLIANCE

Facility has permits/records for:

Air	Water	Waste
✓	✓	✓

3 Year Compliance Status (quarterly):

■ Compliance ■ Significant Non-Compliance
■ Non-Compliance ■ Status Unknown/Unavailable

Last Full Inspection : 117 days ago

Formal Enforcement Actions (5yr) : 6



Citizen Enforcement after *Steel Co. v. Citizens for a Better Environment*

- Section 11046 of EPCRA creates a citizen cause of action for facilities who do not comply with the informational mandates of the statute, including filing TRI data.
- The Supreme Court's decision in *Steel Co.* (1998) held that citizens have no standing to sue facilities for wholly past violations.
 - No redressability of harm for wholly past violations under the statute as written—therefore, no standing.
 - Justice Stevens' concurrence—the citizen suit provision only allows standing for ongoing violations. If TRI data is filed within the 60-day notice period, citizen standing disappears.
- Creates disincentive for facilities to comply with essential TRI reporting requirements, and has chilling effect on citizen suits under EPCRA.
- 37.9% of EPA LEPC Survey Respondents in 2008 indicated that they needed assistance with enforcement for TRI data.



Making EPCRA Work for All



■ TRI Accessibility and Translatability

- Better integration of databases (i.e. MSDS/RSEI/myRTK)
- Uniformity in use of Tier 2 Submit to replace paper filing
- Modify MSDS for non-occupational purposes
- Eliminate need for complicated database software, where possible.
- Ensure that databases are compatible with different computer types (i.e. Macs & PCs)
- Maintain a paper-based library of aggregated TRI data by year, and make it available in a public place (i.e. libraries).
- Promote TRI data and community right-to-know through PSAs/billboards/newspaper ads.

■ Citizen Enforcement

- Deterrence is redress.
- Propose amendments to citizen suit provision with language specifying timeliness as a requirement for TRI data.
- Continue to bring suits for non-compliance if have good-faith belief of ongoing violation.
- Propose amendments to citizen suit provision allowing for violators to pay into community funds for EPCRA-related projects.

+ Feedback?

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of

People Concerned About MIC