

This class determination remains applicable insofar as it does not conflict with *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019). The Agency is in the process of evaluating whether any changes need to be made to its regulations and guidance to conform with this recent U.S. Supreme Court decision and will update class determinations, as appropriate.

US EPA ARCHIVE DOCUMENT

DISCLOSURE OF EFFLUENT AND EMISSION DATA OBTAINED UNDER TITLE III OF SARA, THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT

A. Findings

Under 40 C.F.R. §2.207 I have the authority to issue class determinations concerning what constitutes effluent and emission data under §§2.301 and 2.302. I find that:

1. EPA possesses, and will continue to receive, data regarding releases to the air and water, including chemical identity, on the §313 Toxic Chemical Release Inventory Reporting Form (EPA Form R).

2. Data received in response to sections 5.1, 5.2, 5.3 and 6.1 of Part III of the EPA Form R is necessary for implementing statutory responsibilities conducted under the Clean Water Act (including implementation of §304(1) of the Clean Water Act, and development and enforcement of NPDES permit limits) and the Clean Air Act, and therefore constitutes effluent and emission data respectively under those acts.

3. Questions in sections 5.1, 5.2, 5.3 and 6.1 of Part III of EPA Form R each specifically require reporting of quantities of a covered toxic chemical discharged to the air, water or a publicly owned treatment works. Therefore, the data may be properly treated as a class.

4. A class determination will serve the useful purpose of clarifying that certain types of data will not be entitled to confidential treatment, thereby reducing the time and resource burden on the Office of Air, Office of General Counsel, Office of Toxic Substances, and Office of Water by expediting the review of individual claims.

B. Background

The 1986 Superfund Amendments and Reauthorization Act, Pub. L. 99-499 (hereinafter cited as SARA), signed into law on October 17, 1986, amended and reauthorized portions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 *et seq.* Title III of SARA includes the Emergency Planning and Community Right-to-Know Act of 1986, itself a free-standing statute. Sections 303, 311, 312, and 313 of Title III contain provisions requiring facilities to report to State and local authorities, and EPA, information regarding the presence, use and release of extremely hazardous substances, hazardous, and toxic chemicals. This class determination, issued pursuant to 40 C.F.R. §2.207, finds that certain information collected under §313 of Title III relating to discharges to the air or water, will be considered emission or effluent data under the Clean Air Act and Clean Water Act, respectively, and will not be accorded confidential treatment. This information will be disclosed by EPA to the public according to the procedures set out in 40 C.F.R. Part 2.

Section 313 of the Emergency Planning and Community Right-to-Know Act requires that a Toxic Chemical Release Inventory Reporting Form (reporting form) be filed with a designated State agency and the EPA. The reporting form must be filed for any chemical described in §313 which is manufactured, processed or otherwise used in amounts exceeding the threshold quantity at a covered facility. The information sought includes the total amount of releases of the chemical from a covered facility to the environment, including air or water. A covered facility is any facility with 10 or more employees in Standard Industrial Classification Codes 20-39, and which manufactures, processes, or otherwise uses a listed chemical above an applicable threshold. See 40 C.F.R. Part 372.

A submitter may under certain circumstances claim the identity of chemicals reported under §313 as trade secret. Section 322 of SARA contains procedures for claiming trade secrecy for information submitted under §§303(d)(2) and (d)(3), 311, 312, and 313 of the Act. Section 322(b) provides that a submitter under §313 who claims trade secrecy for chemical identity must demonstrate that the chemical identity is “not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.”

Federal law identifies information which is not entitled to confidential treatment. See Clean Water Act, §308(b), 33 U.S.C. §1318(b); Clean Air Act, §114(c), 42 U.S.C. 7414(c). Section 308(b) of the Clean Water Act and section 114(c) of the Clean Air Act provide that effluent and emission data, respectively, must be disclosed even if they would otherwise constitute trade secret information. Effluent data, for example, consist of data, including chemical identities, concerning point source discharges to waters of the United States. See 40 C.F.R. §2.302(a)(2)(i). This would include information required on a National Pollutant Discharge Elimination System (NPDES) permit or permit application or provided on a discharge monitoring report, or releases to publicly owned treatment works. Similarly, emission data consist of data, including chemical identities, concerning the emission of substances into the air. See 40 C.F.R. §2.301(a)(2)(i). Data determined to be effluent or emission data are therefore data required to be disclosed to the public under other federal law.

EPA's Offices of Air and Water plan to use certain data collected in response to sections 5.1, 5.2, 5.3 and 6.1 on Part III of the §313 reporting form to implement their responsibilities under the Clean Air Act and Clean Water Act, respectively. Such data consist of descriptions of the nature, amount, and frequency of pollutants discharged into waters of the United States or emitted into the air. Data used to characterize effluents or emissions is treated as effluent or emission data. Therefore, claims of confidential treatment for §313 data pertaining to discharges to the air or waters of the United States will be routinely denied on the ground that they are emission or effluent data under 40 C.F.R. §§2.301 and 2.302, respectively.

This determination under 40 C.F.R. §2.207 abbreviates the Agency's procedures under 40 C.F.R. Part 2 for making required case-by-case findings. Disclosure of such data will take place following the 10-day notice period required under 40 C.F.R. §2.205(f).

C. Determination

I have determined that data collected on questions 5.3 and 6.1 of the SARA Title III §313 Toxic Chemical Release Inventory Reporting Form (EPA Form R), including chemical identities, is necessary within the meaning of section 2.302 of 40 CFR Part 2 to characterize effluents. Data collected on questions 5.1 and 5.2 of the SARA Title III §313 Toxic Chemical Release Inventory Reporting Form (EPA Form R), including chemical identities, is necessary within the meaning of Section 2.301 of 40 CFR Part 2 to characterize emissions. EPA will deny claims of confidentiality under §313 for all such information on the grounds that it constitutes effluent and emission data, respectively. If the information for which the submitter is seeking trade secret protection falls within this category, such a request will be denied. The Agency will give ten (10) days notice to the submitter prior to release of such information. See 40 C.F.R. §2.205(f).

/s/

Craig B. Annear
Associate General Counsel
Grants, Contracts & General
Law [sic]

Dated: July 8, 1989