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KNOW YOUR COMPANY'S CHEMICAL FOOTPRINT – YOUR COMPLIANCE DEPENDS ON IT!

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In recent years, US companies of all sizes have taken extraordinary and voluntary efforts to quantify their greenhouse gas emissions and to identify their carbon footprints. These developments have demonstrated a much increased sensitivity to companies' impacts on climate change, and a heightened public awareness of these issues. While carbon footprint and climate change concepts may attract attention at the global level, usage of industrial chemicals serves as a basis for evaluating public health risks at the local level. A facility's chemical footprint can cause significant concern to the public, and continues to be a paramount area of focus for the Environmental Protection Agency, as well as state and local environmental agencies.

A full range of federal planning, reporting and usage requirements for industrial chemicals have existed for years under the [Toxic Substances Control Act](#), the [Clean Air Act](#) and the [Emergency Planning and Community Right-to-Know Act](#) ("EPCRA"). Sometimes overlooked by industry, these programs present substantial compliance obligations and significant enforcement risks for companies that handle and use industrial chemicals. These programs are very important to EPA, and have been aggressively enforced. It is critical for corporate in-house counsel not only to ensure compliance with these obligations, but to ensure that the obligations are carried out correctly and accurately.

An area that warrants particular focus is EPA's EPCRA program. EPCRA establishes both emergency planning and reporting obligations for facilities that use certain hazardous substances. EPCRA requires the submission of reports and other information about chemicals used on-site to state and local emergency responders, and to EPA. A centerpiece of EPCRA obligations is the [Toxic Release Inventory](#) ("TRI") report, an annual report that must be submitted by facilities within identified industrial codes that manufacture, use or process specified amounts of listed chemicals. According to EPA, TRI reports submitted by 21,695 facilities in 2008 detail waste, air, and water emissions for over 650 chemicals and chemical categories. While sometimes burdensome, evaluation of TRI applicability and accurate TRI reporting is important for several reasons.

First, for some facilities, the identification and quantification of chemicals subject to TRI reporting can be a difficult task. Reliance on facility material purchase records is sometimes problematic, where usage or processing of the chemicals is not predictably related to their purchase. The presence of

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Know Your Company's Chemical Footprint (cont'd)

covered chemicals in product mixtures must be examined and quantified, which requires a detailed understanding of material constituents. While TRI reporting is distinct in many ways from other environmental reports, reported emissions of chemicals to air, water and in waste materials should be consistent with data reported in air emission statements, wastewater discharge monitoring reports and hazardous waste manifests.

Second, EPA takes a strong stand with respect to the timeliness and accuracy of TRI reports. EPA's [Enforcement Response Policy](#) for TRI violations details EPA's approach for calculating penalties associated with missed reports, incorrect reports, incomplete reports and untimely reports. Such penalties can be significant, in some cases calculated on a per day basis, and for each chemical required to be reported.

Finally, EPA compiles and publishes the information contained in TRI reports on an annual basis, and the data is subjected to rigorous public scrutiny by environmental groups and others. The USA Today special report entitled "The Smokestack Effect: Toxic Air and America's Schools" used TRI data to examine the impact of industrial chemicals on 128,000 schools across the country. As noted by [EPA Administrator Lisa Jackson in an April, 2009 speech](#), the USA Today report prompted EPA and state agencies to undertake air monitoring near schools around the nation. Such scrutiny underscores the need for accurate and intimate knowledge of facility chemical usage and emissions, which may at any time become subject to public criticism or concern relating to health or environmental impacts.

Also in 2009, EPA reinstated TRI reporting requirements that had been relaxed during the prior administration, particularly with respect to persistent, bioaccumulative, toxic (PBT) chemicals. In that context, Administrator Jackson has indicated that EPA intends to explore a recent decrease in the overall number of facilities submitting TRI reports, as well as the increase in PBT chemicals in the environment. According to Administrator Jackson, EPA is "back on the job" with respect to TRI. For these reasons, now more than ever, companies should be well aware of their chemical footprint.