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EPA Docket Center
U.S. Environmental Protection Agency
Mailcode 2844
1200 Pennsylvania Ave., NW
Washington, DC 20460
and via email: oei.docket@epa.gov

Office of Information and Regulatory Affairs
Office of Management and Budget
Attn: Desk Officer for EPA (TRI)
725 17th St., NW
Washington, DC 20503
and via fax: (202) 395-3047

Re: Comments on EPA's request for OMB reauthorization of TRI forms R and A under the Paperwork Reduction Act, 67 FR 72168-70, 72167-68, Dec. 4, 2002 (EPA dockets OEI-2002-0003 and -0004)

Dear EPA and OMB:

The still-pending EPA proposal to add diisononyl phthalates (DINP) to the Toxics Release Inventory (65 FR 53681, Sept. 5, 2000) has raised significant issues concerning EPA's request for renewal of Paperwork Act clearance of TRI generic forms R and A.

The DINP proposal is to add a whole new category of chemicals to the TRI without an OMB ICR review under the PRA. The proposal asserted that a new ICR for DINP was not necessary because OMB had previously approved TRI generic forms R and A. This proposed avoidance of OMB PRA review is particularly significant because the proposal raises significant issues of "practical utility" under the PRA and "utility" and "objectivity" under the Data Quality legislation and guidance. In brief, as pointed out in extensive public comments on the DINP proposal, the hazard/risk assessment forming the basis for the proposal was seriously flawed due to omission of important data and failure to comply with the EPA listing guidelines.

CRE has previously commented on the need for OMB PRA, Data Quality, and E.O. 12866 review of the DINP TRI proposal in letters to OIRA Administrator Graham dated October 15, 2002 and EPA Assistant Administrator for OEI Kimberly Nelson dated October 29, 2002. (Copies attached.) At that time, it appeared that final action on the proposal was likely before the end of 2002. Since then, apparently final action on the DINP proposal has been delayed, since the Unified Agenda now indicates final action is not contemplated until the end of 2004. (See EPA Unified Agenda item No. 3410, 67 FR 75280, Dec. 9, 2002.) Consequently, OMB's review of TRI generic forms R and A has assumed increased significance, since final action on those generic form ICRs will apparently precede final action on the DINP proposal.

A significant regulatory and PRA action such as the DINP addition to TRI should not be able to escape OMB review. This is especially true since PRA clearances such as the requested clearance of TRI generic forms R and A require agency "certification" that all collection of information under the form meets the standard of "practical utility"(Form OMB 83-01, sec. 19 and instructions), which has now been interpreted by OMB to encompass the Data Quality requirements, including "utility" and "objectivity"/"completeness". (OIRA Administrator's June 10, 2002 Memorandum to the President's Management Council, Sec. IV.) It is not possible for EPA to certify that it has met these standards, and obtain OIRA approval of such a certification, in advance of its final action on DINP and other chemicals.

To resolve this situation, OIRA approval of TRI forms R and A must include "terms of clearance" which require that significant additions to TRI will require a new ICR.

In addition, EPA has still not made available electronically the public comments submitted on the ICRs, on either its TRI website or its EDOCKET, as it committed to do in its December 4, 2002, *Federal Register* notice. Consequently, any OMB approval of forms R and A should not become effective until at least 30 days after EPA has posted the public comments.

Respectfully,

Jim J. Tozzi
Member, CRE Advisory Board

Attachments
cc w. att.: EPA EDOCKET (www.epa.gov/edocket)