

MEXICO'S POLLUTANT RELEASE REGISTRY: TAKING STOCK, LOOKING AHEAD

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Introduction

Society's "right to know"—peoples' right to access information—is the corner-stone of any toxic release inventory. The idea that society has the right to know how their taxes are being used has only recently become widely accepted. In the United States, the Freedom of Information Act, passed in 1966, established the bases for the Emergency Planning and Community Right to Know Act (EPCRA) of 1986. The first pollutant release and transfer registry, the TRI (Toxic Release Inventory), was the EPCRA's primary tool. These registries are inventories that specify the amount and toxicity of a series of chemicals emitted by companies, based on data that the firms are required to report. Compiled by government agencies (usually federal), pollutant release and transfer registries (PRTRs) are environmental policy instruments that allow citizens to exercise their right to know about the kinds of environmental risks that they face.

However, a tendency towards "obfuscation" (which comes from the general perception that "information is power") is still very deeply rooted. Recently, however, thanks to the pressure generated by a wide range of civil society organizations, the Mexican government created the Federal Law for Transparency and Access to Information (LFTAIPG in Spanish).

Pollutant release inventories were not designed to oblige the government to be more accountable, but rather to force polluters to reduce their emissions. However, they can act as an indirect accountability mechanism.¹ These policy instruments were created under four main premises.

The first premise is that access to information about the status of the environment (especially in regards to the volume of chemical substances produced and released into bodies of water, the earth and the air) is a *fundamental citizen's right*. The second is that it is the *government's obligation* to regulate pollutants as well as to provide information

¹ Thanks to Jonathan Fox for pointing this out to me.

on the status of the environment in which citizens live. If a company is polluting, the government should know about it. It should obtain information about the volume of toxics that the business generates, in order to transmit that information to the common citizen. The third premise is that as soon as the government *ceases to fulfill* these obligations, it should be held accountable. This is why PRTRs are considered an integral part of community right-to-know laws. Finally, the fourth premise is that members of civil society, having access to information on how much pollution manufacturing plants are emitting, *will have the capacity and the will to use that information*, to pressure businesses through information campaigns, community mobilizations, protests, and dialogues with corporate executives.

Given the above mentioned premises, PRTRs can be used as instruments to strengthen government transparency and accountability. For this instrument to work, a basic prerequisite needs to be fulfilled: civil society needs to be strong and active, and it should establish mechanisms for dialogue not just with the government (the mediating agent), but also with industry (the target).

In Mexico, a handful of environmental non-governmental organizations have participated in the design and implementation of the Pollutant Release and Transfer Registry (RETC in Spanish) since its inception. Without their committed, vigorous participation, the RETC would not have advanced very far. However, there is still a long way to go in this area, especially in terms of environmental education. The general public does not really know very well what the RETC is, or how they can use it.² The responsibility for forcing polluting industries to reduce their emissions is not solely the duty of government or of a group of specialized organizations. The very design of this instrument requires that society assume its responsibility and make use of the information in ways that will get industry to respond.

Successes, Accomplishments, and Progress

There has been significant progress in regards to rights to environmental information in the last decade, but the whole field is still incipient. Without a law on access to information in Mexico, it would have been hard to even design the RETC, or it would have required major modifications. However, even before the LFTAIPG was passed, there

² Although the registry was launched recently in Mexico, and a first draft of the annual report was published August 18, 2006, the results are still preliminary and should be subjected to rigorous scrutiny.

had been progress in the struggle for the environmental right to know.³ The RETC began (unlike its counterparts in the US and Canada) as an entirely voluntary instrument. Industry participation in the process of reporting their pollutants depended on business' own interest and willingness—or lack thereof. In contrast, the Canadian and US counterparts have always been mandatory. As of December 2001, reporting of toxic emissions became legally mandatory in Mexico.

A significant transformation in the way pollutants are reported, and the passage of the LFTAIPG have been the two most important achievements since then; they have established the groundwork for the RETC to truly begin to function adequately. The third achievement was the definition of implementing regulations concerning the RETC, although this was delayed until mid-2005. This set of regulations establishes RETC as a mandatory, publicly-accessible instrument, which will provide information that should be disaggregated by business location, chemical substance and the means by which the pollutant is being released or transferred.

The team from the Ministry of the Environment and Natural Resources (Semarnat in Spanish) that was responsible for designing and implementing the Mexican RETC has taken on the arduous task of making this register comparable to its North American counterparts very seriously, not just in design, but in effectiveness.⁴ The financial contribution from the North American Environmental Cooperation Commission has also been important; funding provided by this organization was directed toward training and activities to involve civil society in the use of the registry. There has, however, been a visible lack of support from top decision-makers at Semarnat. The fourth and most recent achievement was Semarnat's publication of the information from the registry's first annual cycle, on August 18, 2006.

Limitations

Among the main limitations to the success of the RETC are: industry opposition; government resistance to publishing the information in an easily accessible manner; and

³ For an historical description of the role of environmental NGO's in the development of the RETC, see Raul Pacheco Vega, "Democracy by proxy: Environmental NGOs and policy change in Mexico," in Aldemaro Romero, y Sara West (eds.), *Environmental Issues in Latin America and the Caribbean* (Dordrecht, The Netherlands: Springer Publishers, 2005). Industry has lobbied against the RETC, first trying to make it a voluntary survey, and then reducing the list of substances subject to publication and trying to influence and delay the publication of the RETC Regulations.

⁴ As part of its commitments as a signer to NAFTA, Mexico must comply with Resolution 00-07 on Pollutant Release and Transfer Registries.

the scarcity of resources to strengthen the reports, which comes from a lack of interest at the highest levels of Semarnat. Traditionally, other programmatic areas have received much larger amounts of the overall environmental budget; and now, problems that have had increasing relevance in international agendas (compliance with the Kyoto Protocol on climate change, for example) have also begun to absorb resources, shifting the RETC and other issues further down on the list. Access to information about the management of toxins, although it galvanizes the public and promotes participation of members of civil society, is not high among budget priorities.

A second kind of limitation is the lack of educational and training programs. Industry leaders need to understand why they have to be transparent, and provide the most accurate and detailed information they can. Civil society, on the other hand, needs to know how to access and use that information. Therefore, environmental education in general needs to be strengthened, especially in regards to chemical substances and their toxicity.

A third type of limitation that the RETC faces is that someone has to oversee business compliance with the reporting requirements. This is a perpetual problem in environmental politics: as long as government allows dirty industries to continue to do “business as usual” and avoid sanctions, unsustainable conditions will persist. However, this is also an opportunity for civil society to take up monitoring roles in anti-pollution activism and industry lobbying, increasing their transparency and forcing them to be accountable for their polluting activities.

Perspectives

- Adequate use of information on the part of civil society requires fairly substantial collective action. The challenge will be to get more citizens to participate in this struggle.
- Common citizens now have the right to access information, but are they interested in accessing it? After accessing it, what can they do with it?
- This instrument requires businesses to comply fully by providing information to Semarnat. By law, they are obliged to do so. The RETC will be effective if, and only if, there is effective supervision and sanctions when businesses do not comply.

- It is foreseeable that organized Mexican civil society will continue to participate in consultation-type activities to strengthen the RETC and to distribute it. Groups could also continue education efforts toward industry in regard to best practices of reporting chemical substances subject to inventory.
- Although the publication of the first round of obligatory reporting of toxins in Mexico was a substantial step forward, now it is important to review the information to ensure that it is sound and useful.

Conclusions and Recommendations

- Increase the budget for the RETC office.
- Strengthen training programs in environmental education.
- Establish funding mechanisms for NGOs focused on access to environmental information, especially on information about toxics.
- Set up multi-stakeholder round tables that contribute to dialogue in and among civil society, government and industry.
- Promote industrial practices of providing information to the public and establish mechanisms to supervise compliance.
- Monitor the businesses that participate in the RETC over time.