

News

# Advocates Sue Safety Board Over Company Emissions Reporting Rule

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- Advocates sue Chemical Safety Board to create chemical release reports
- Authorizing statute called for the regulation but CSB has not issued it
- Court may force CSB to write rule even as agency says it wouldn't help

Companies could be required to report emissions data to a little-known federal agency if a court sides with public interest groups seeking an order to issue a stalled regulation.

The lawsuit filed by Houston-area organizations and the Public Employees for Environmental Responsibility seeks to compel the U.S. Chemical Safety Board to issue regulations requiring companies to report accidental chemical releases within 18 months.

Companies are already required to report unplanned releases of chemicals to local and state emergency planning committees under the Emergency Planning and Community Right-to-Know Act, or EPCRA. But federal law called for companies to do more, the lawsuit contends.

Mark Farley, a partner in the Houston office of the law firm Katten Muchin Rosenman LLP, said in an email to Bloomberg Environment the plaintiffs are likely to prevail in the suit because the law was clear that the CSB is mandated to issue the regulation.

But the requirement that CSB complete the regulation is likely to consume limited agency resources while providing little benefit, Farley said.

## Law Saw Role for CSB

Under the Clean Air Act Amendments of 1990, the CSB was [directed](#) to “establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board’s investigatory jurisdiction.” Once the regulations are finished, companies could either submit the information to CSB or to the National Response Center, the law states.

The lawsuit filed by Air Alliance Houston, Public Employees for Environmental Responsibility, Louisiana Bucket Brigade, United Support and Memorial for Workplace Fatalities, and Neil Carman, the clean air program director of the Sierra Club’s Texas chapter, asks the CSB to finish the reporting regulation.

The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg, the ultimate owner of Bloomberg Environment.

In failing to issue the regulation, CSB violated the Administrative Procedure Act, the groups alleged.

The lapse harmed chemical release investigations and emergency response efforts, including at the Arkema SA facility in Crosby, Texas, that saw chemical fires and explosions after Hurricane Harvey hit the area this year.

## Board Relies on Outside Sources

Setting up a process by which companies report directly to CSB could improve the quality of accident information the board receives. In the absence of such a system, the CSB monitors for chemical safety events on its own, including through media reports, but that monitoring may not be as effective.

“A news clipping service is not an adequate safeguard for the health of communities, workers, and first responders,” PEER Staff Counsel Adam Carlesco said in a statement Dec. 7. “American communities are forced into a game of Russian roulette, never knowing when an explosive round will go off—or what it contains.”

The EPA inspector general, which has oversight of CSB, has repeatedly flagged the issue in reports, and the CSB considered starting the rulemaking in 2009.

In 2016, the IG’s office said CSB “believes it receives adequate incident notifications through constant media and internet searches, as well as existing federal sources such as the National Response Center.”

The IG [said](#) CSB believed “even if it had already adopted a reporting rule, the agency would have essentially no capacity to collect or interpret much of the data it received, or seek enforcement action against any non-reporters.”

However in July, the IG [removed](#) establishing a chemical reporting regulation from a list of CSB management challenges. The change occurred because CSB provided “corrective actions” and “additional justification,” the document said.

The CSB issued an advance notice of proposed rulemaking on the issue in 2009 but took no further action. The CSB didn’t immediately respond to Bloomberg Environment’s request for comment Dec. 7.

The case is ([Public Employees for Environmental Responsibility et al v. U.S. Chemical Safety and Hazard Investigation Board](#), D.D.C., 1:17-cv-02608, 12/7/17).

