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The Competitive Enterprise Institute

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Advancing the Principles of Free Enterprise and Limited Government

July 30, 2002

No. 86

Senators Attempt Balancing Security and “Right to Know”

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The Department of Justice (DOJ) warned in year 2000 that the risk of a terrorist attack on a U.S. industrial facility was “both real and credible.”² Since September 11, members of Congress have debated how to address security issues, including security at industrial plants that use chemicals. This paper discusses two proposals that are now pending in Congress.

The Senate Environment and Public Works Committee recently approved the “Chemical Security Act of 2001” (S. 1602), which the Senate may include as part of its bill to create a Department of Homeland Security. Sponsored by Senator Jon Corzine (D-N.J.), S. 1602 is being marketed as a security measure, yet it is really designed to serve a radical environmental agenda at the expense of national security. Hailed as a “breakthrough” by the radical group Greenpeace,³ the bill would slap industrial plants that use chemicals with new regulations and would give EPA unprecedented power to meddle in manufacturing and other industrial processes.

Recently, Senator Christopher Bond (R-Mo.) has taken an important step by offering the “Community Protection from Chemical Terrorism Act” (S. 2579). Bond’s bill would reform an existing “right-to-know” law that currently makes accessing sensitive information about industrial facilities easy. Reforming this law is necessary to ensure that this information won’t be available to terrorists who might use it to select targets and plan attacks on industrial facilities. Bond’s proposal to reform this law recognizes the danger of releasing sensitive information and the need for controlling its distribution to protect public safety. However, he needs to make some critical improvements to ensure that his proposal legislation will adequately address this problem.

Background. A provision buried in the 1990 amendments to the Clean Air Act requires facilities to develop risk management plans (RMPs), which were supposed to help them prepare for accidental chemical releases. The law then directs EPA to make these plans publicly available.

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² Department of Justice, Criminal Division, *Department of Justice Assessment of the Increased Risk of Terrorism or Other Criminal Activity Associated with the Posting of Off-Site Consequence Analysis Information on the Internet*, April 18, 2000, p. 2, <http://www.usdoj.gov/criminal/april18final.pdf>.

³ Meredith Preston, “Senate Committee Approves Legislation on Safety Measures at Chemical Plants,” *Daily Environment Report*, July 26, 2002, p. AA1.

In its RMP, each facility must identify the chemicals it uses, state what quantities it stores on site, and detail mitigation measures it employs to control potential releases. The most controversial part of RMPs is the section on "offsite consequence analysis" (OCA), which includes a hypothetical "worst case scenario." For the worse case scenario, facilities detail what they think would happen in the event of a catastrophic chemical release, detailing: the potentially exposed population; the distance a release could travel under specified wind conditions; whether schools, daycare centers, and other receptors are located nearby; and related information. Security officials warn that this information could assist terrorists in launching attacks. In fact, RMPs provide six out of nine pieces of information that the Department of Defense (DOD) lists as critical in launching a successful terrorist attack on an industrial facility.⁴

According to DOJ, the types of facilities that submit data to EPA are "preferred targets" for terrorists, such as plants located in high-population areas, military installations, and infrastructure. Fifteen percent fall into the category of basic infrastructure: about 2,000 are water supply and irrigation facilities; 80 are military installations; 56 are related to electricity supply, transmission, and control; and 14 involve natural gas distribution. "Disruption of even one of these facilities could wreak havoc on an entire region or locality," said DOJ in 2000.⁵

When the deadline for plants to submit RMPs drew to a close in 1998, EPA indicated its intent to post the plans on the Internet. But security experts — the FBI, CIA, International Association of Fire Chiefs (IAFC), and various other groups — raised alarm.⁶ They feared that Internet posting would give terrorists easy access to an anonymous, searchable database of potential targets. In particular, OCA data would enable terrorists to rank facilities according to potentially exposed populations.

Congress revised the law in 1999, passing what security expert Amy E. Smithson of the Henry L. Stimson Center aptly calls "a dismally shortsighted compromise."⁷ This new law requested that DOJ and EPA issue a rule governing the process for releasing data in a way that minimizes security risks. Unfortunately, the agencies promulgated a rule that made the information readily available to nearly anyone.

The new law did include one key reform: It provided EPA with a Freedom of Information Act exemption that prevented environmental groups from accessing the full information in electronic format (which would allow easy posting on the Internet). Yet this reform mattered little given that EPA opted to post the bulk of the information on the Internet in 2000 — including about 50 percent of the "worst-case scenario" section as well as full executive summaries.

The reformed law also mandated that EPA make the entire plans available in 50 federal "reading rooms" throughout the nation, which the agency did starting in January 2001. Individuals merely need to show an identification card to view all the details and take notes on up to 10 facilities per month. Furthermore, the law does not bar anyone from collecting and posting all of this information online.

⁴ Ibid., pp. 40-41.

⁵ Ibid., p. 20.

⁶ For more discussion on this debate see Angela Logomasini, "The Clean Air Act's Terrorist Assistance Program," *CEI On Point*, May 21, 1999.

⁷ Statement of Amy E. Smithson, Ph.D., Director of Chemical and Biological Weapons Nonproliferation Project, Henry L. Stimson Center, Before the House Committee on Transportation and Infrastructure, Subcommittee on Water Resources and Environment, November 8, 2001.

After September 11, public officials finally pulled the RMPs and their summaries off federal Internet sites. Yet the federal government still makes the full information easily accessible at federal libraries.⁸

Unfortunately, at least one so-called “citizen group” had already downloaded the summaries from EPA’s website, and it continues to host them online today.⁹ Some summaries include OCA data, but the amount and quality of information they offer varies widely from one summary to the next. Some summaries are nearly as detailed as the plans themselves and some include additional details. Many summaries feature figures related to potentially exposed populations.

Why Distribute This Information? Environmental and “citizen” activists claim this information is valuable because they say it informs the public about risks in their communities. In reality, it does nothing of the sort. RMPs include fictitious scenarios of the most highly unlikely catastrophic chemical releases. Accidents may happen in the real world, but these scenarios go well beyond the realm of reality. They assume every mitigation measure at a plant would fail and that nothing would be done to control a release. Nor do the plans provide the type of information that could save lives should an accidental release occur: RMPs don’t educate the public on how to respond in the event of an emergency.

There is a reason why the Clean Air Act demands that RMPs be drafted in this manner. Those who wrote the provision designed it to serve a radical environmental agenda, one that focuses on elimination of chemicals. If activists can use this information to scare the public, they can mobilize them to push for greater regulation and eventual bans.

In fact, three months after EPA made RMPs available in public libraries, Greenpeace published horror stories on the Internet: “Greenpeace and the Working Group on CRTK [community right to know] collected this alarming data from the U.S. EPA reading room in Washington, D.C.,” the organization’s press release read. “The data released today is for companies reporting worst case scenarios that could put 100,000 or more people at risk,” it continued. Along with the press release, Greenpeace posted numerous maps of potential releases, which include the location of schools, hospitals, and population figures. The activist group even listed 50 facilities along with population data, enabling terrorists to rank those plants according to the size of populations at risk — exactly what security experts wanted to avoid.¹⁰

Chlorine is among their biggest targets. Greenpeace’s Joe Thornton once noted, “There are no known uses for chlorine which we regard as safe.”¹¹ More recently, perhaps in recognition that this

⁸ I scheduled an appointment at EPA to view the full RMPs. After simply showing my license and signing a sheet of paper, I collected data on 10 facilities in less than an hour. I selected facilities before going to the library by searching the executive summaries online.

⁹ OMB Watch and the Center for Public Data Access host the summaries on a page called The Right to Know Network, <http://www.rtk.net>.

¹⁰ “Bhopal In The Bayou. Are Chemical Accidents A Trade Secret?: Environmental Groups Release Unpublished Accident Scenario Reports,” March 22, 2001, <http://www.greenpeaceusa.org/media>.

¹¹ Ivan Amato, “The Crusade against Chlorine,” *Science* 261, no. 5118, July 9, 1993, pp. 152-154. For more information on chlorine issues see Michelle Malkin and Michael Fumento, *Rachel’s Folly: The End of Chlorine* (Washington, D.C.: Competitive Enterprise Institute, March 1996).

standard is politically untenable, he suggested allowing limited use of chlorine for “some pharmaceuticals” and “some water disinfection,” but only until other options become available.¹²

This anti-chemical agenda is not in the public’s interest. The freedom to develop and use thousands of manmade chemicals has played a crucial role in human well-being by making possible such things as pharmaceuticals, safe drinking water, disease reduction, protection of our food supply through pest control, and numerous other items. Chlorination of water in particular has saved millions of lives. For example, since local engineers and industry introduced chlorination in the 1880s, waterborne-related deaths in the United States dropped from 75 to 100 per 100,000 people to fewer than 0.1 per 100,000 annually in 1950.¹³ Rather than curtailing the use of chlorination, as Thornton suggests, we should be expanding access. According to the World Health Organization (WHO), in the developing world, diarrhoeal diseases (such as cholera and dysentery) annually kill about two million children under five years of age because of such things as poor sanitation and unsafe drinking water.¹⁴

Given such realities, the social cost of anti-chemical policies — including the use of RMP horror stories to promote chemical elimination — is high. We can and do use chemicals responsibly. Policies designed to scare the public with absurdly unrealistic hypothetical scenarios are only counter-productive. A more constructive approach to provide the public with much more useful information is discussed in the final section of this paper.

Security Experts’ Heightened Concern in a Post-September 11 World. “The information [about worst-case scenarios] is important to local emergency responders, but we are not for putting it out there for anyone to use ... online or in reading rooms,” says John Eversole, retired fire chief for the Chicago Fire Department and current chair of the Hazardous Materials Committee of the IAFC. Chances are too high that someone will use it to attack the nation’s infrastructure, Eversole contends.¹⁵

Eversole does not oppose providing reasonable information to the public. He says that fire chiefs should be the ones to communicate with individuals regarding risks. Fire chiefs, says Eversole, will provide better information, including what to do in the case of an emergency. “But we are not going to tell you specifics such as what is there, in what tanks, or how one could create an accident,” he says. The IAFC has opposed the distribution of that information, but since September 11, fire chiefs are “doubly” concerned about the availability of RMPs, says Eversole.

Security expert Amy Smithson called the release of RMPs a “terribly ill-advised regulation” during a congressional hearing. She and her colleagues conducted interviews with emergency first responders in 33 cities within 25 states during 1999 and 2000. According to Smithson, these responders echoed her concerns about the release of this information.¹⁶

¹² Joe Thornton, *Pandora’s Poison: Chlorine, Health, and a New Environmental Strategy* (Cambridge Mass.: MIT Press, 2000), p. 14.

¹³ Michael J. LaNier, “Historical Development of Municipal Water Systems in the United States, 1776 to 1976,” *Journal of the American Water Works Association*, April 1976, p. 177.

¹⁴ Statement by Dr. David L. Heymann, Executive Director for Communicable Diseases, World Health Organization, Before the Committee on International Relations, U.S. House of Representatives, June 29, 2000.

¹⁵ Telephone conversation with Mr. Eversole, February 19, 2002.

¹⁶ Statement of Amy E. Smithson Before the House Committee on Transportation and Infrastructure.

The Community Protection from Chemical Terrorism Act. S. 2579 represents an important step in the right direction. However, it needs considerable improvement before it can achieve its purpose. The most important contribution of this bill is that it finally provides official recognition in Congress that this information is dangerous and needs restriction. Accordingly, the bill begins what could become a constructive process that could eventually produce a solution.

The bill would still allow the public to view plans at libraries, but the plans would no longer include any plant identifying information. If logically applied, that means EPA would eliminate public access to name, address, and such things as a plant's longitude and latitude. The public would simply view plans without knowing to which plant they pertained. This provision wisely recognizes that providing OCA details on specific plants poses too great a risk.

In addition, the bill prohibits note taking by those who view the plans. This is a critical improvement over current law because if someone still figures out what plant a particular RMP covers, this provision would make it difficult for them to collect and distribute that information. In particular, it would hinder the efforts of groups like Greenpeace that collect RMP information at libraries and then post it on the Internet.

The critical weakness of the bill is that it stops short of complete removal of RMPs from public libraries. Allowing people to view plans without knowing to which facility they apply poses two basic problems. First, it does not provide the public with good information, and second, it runs the risk that terrorists could still discover a way to select plans for specific facilities.

On the first point, the elimination of all identifying information begs numerous questions for the public. How will people specify what plans they want to view? Will they be able to select a plan for viewing by specifying its geographic location, effectively selecting the facility they know is located there? If citizens can view facilities within their communities, they will likely know which ones they are viewing, even without reading the name on the RMP. A provision in the bill suggests that individuals might even be able to request an RMP for a specific facility by name since the bill notes that librarians must note which facility an individual selects for viewing.

In any case, if the public can only view random plans, what use would that serve other than to scare those individuals who come upon some of the more alarming scenarios? They would simply be left to wonder whether they lived near the facility. This approach would work to the advantage of activist groups that use RMPs to scare the public. In that case, activists could highlight the most dangerous-sounding scenarios and then exclaim that the federal government won't let the public know if the plant is located near their homes.

The second concern focuses on whether terrorists could still figure out ways to request RMPs for specific plants even without asking for them by name. Although the addresses and names may be missing, other information can serve identification purposes. For example, if they select plans based on geographic criteria, they may be able to easily select specific plans. In addition, they can use executive summaries that self-designated "citizen groups" continue to keep on the Internet. Unfortunately, these summaries alone are dangerous enough, and Congress has few options other than to ask private groups to voluntarily remove them from their sites. The existence of the summaries strongly supports a policy that involves the complete removal of the RMPs from libraries. That is because the summaries may make it

relatively easy for terrorists to develop criteria that would enable them to request specific RMPs at the libraries.

The ban against copying and note taking does play an important role in mitigating these concerns, but it does not eliminate serious risks. For example, after taking a trip to one federal library, journalist Michael Fumento concluded that it would not be difficult to take photos of RMPs with a miniature-sized camera.¹⁷ While the average citizen is not likely to take that risk, terrorists are willing to take extraordinary risks.

Finally, S. 2579 includes a provision that would make it mandatory that all local emergency planning committees include representatives from national environmental groups. Federal law does not bar anyone from participating on committees now, and it already explicitly states that committees must include representatives from local environmental groups.¹⁸ No other national organization has the right to serve on local committees. Why grant this special privilege to national environmental groups — whose representatives probably won't even live in the area of concern? Although well intended, this provision will inadvertently shift the security and emergency planning focus of these committees toward the national environmental groups' political agenda. Particularly in these times, it does not make sense to pursue a policy that will simply embroil emergency planning committees in the political agenda of organizations outside their own communities and interests.

Chemical Security Act of 2001. The main effect of S. 1602 is to thrust the EPA into areas in which it does not belong and where it can create serious problems. First, it further elevates the agency's role in the security field — an area in which it has already demonstrated very poor judgment. Second, it gives agency bureaucrats dangerous and unprecedented authority to intrude on industrial processes. Neither approach promotes security; instead, both seem more directed at promoting a radical environmental agenda that includes reduction and elimination of chemicals — even at the expense of security and public safety.

Under this bill, the agency would have a year after passage to designate combinations of chemicals¹⁹ and chemical sources as “high priority categories.” To that end, the agency would consider such things as severity of harm that could result from accidents or attacks at the plants in these categories. When setting categories, EPA would consider the proximity of plants to high population centers, potential threats to national security and infrastructure, threshold amounts of substances stored at sites, and whatever else it deems appropriate.

The agency would set regulations for all facilities that meet criteria of “high priority categories.” With these regulations, the agency would have to require firms to implement what the bill calls “safer design and maintenance” using “inherently safer technology.” While “safer design” and “inherently safer” are reassuring phrases, these provisions will not make the world any safer. The idea that EPA

¹⁷ Michael Fumento, “Easy Reading: The EPA's Terrorism Handbooks,” *New Republic*, January 21, 2001, <http://www.fumento.com/readingrooms.html>.

¹⁸ 42 U.S.C. § 11001(c) reads: “Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental ...”

¹⁹ EPA would have great leverage in deciding what substances would be part of “high priority categories.” The agency may select from “substances of concern,” which include: the 800 substances listed as “hazardous substances” under CERCLA (40 CFR § 302.4, Table 302.4); any substance that it could label as a “pollutant or contaminant” under a very open ended definition under CERCLA (42 USC § 9610); and “petroleum, crude oil and any fraction of crude oil.”

alone can decide which technologies are inherently safer for thousands of industrial plants of numerous kinds and circumstances should raise alarm. The bill demands that EPA become entangled in myriad industrial processes and encourages the agency to second-guess the expertise of process safety engineers and environmental health and safety personnel.

A serious risk of this approach is that EPA may force plants to make changes that look good on agency and environmentalist press releases, yet create greater risks. For example, a Fertilizer Institute representative pointed out at a congressional hearing that there are no substitutes for ammonia — which is essential for productive farming. The Institute also contends there are no safer ammonia production processes than those in use. What would happen if EPA were to cave in to the agenda of environmental activists and decide that plants can meet the mandates of this law by reducing ammonia production domestically? We might then experience increased risks associated with transportation of ammonia from the Middle East, moving it through U.S. ports in potentially high population areas.²⁰

Moreover, the idea that there is a clear path to “inherently safer” processes is naïve. Everything in life carries a trade off; deciding what’s best depends on the circumstances. For example, environmentalists and some local officials have bragged that they reduced the amount of chlorine stored at some facilities, suggesting they have reduced risks. They say others could be led to do the same under S. 1602. But what about risks associated with more frequent transportation of chlorine to those facilities? Would there be more transportation-related accidents? What happens if a transportation problem holds up deliveries to one of these facilities, and it runs out of supplies? Without adequate supplies of chlorine on hand, do we risk inadequate treatment of our water supplies? Has EPA conducted a “worst case scenario” to estimate how many thousands of people could die from unsanitary water?

For example, one industry representative pointed out the potential peril of such policies at a recent congressional hearing. He noted that when Olympic officials requested that Union Pacific temporarily halt rail transportation of chlorine through Salt Lake City during the 2002 Winter Olympics, they naively thought it would serve as a security precaution. But since facilities usually keep only a couple days supply of chlorine on hand, a moratorium could have caused serious public health problems if the supply had been held up.²¹ Residents in Peru learned about the dire impacts of inadequate water disinfection in 1991. Inadequate chlorination is cited in scientific literature²² as a key contributor to the cholera epidemic that started in Peru and then spread throughout South America, leading to 533,000 cholera cases and 4,700 deaths.

Some plants have switched from chlorine to other disinfectants — another move that some call “inherently safer.” At issue is whether replacements are as effective. Similar recommendations by environmental activists that we switch to allegedly safer alternatives have created serious problems in the past. In one case, environmentalists pushed hospitals to eliminate products that contain mercury. When hospitals complied with those demands and began removing mercury-containing blood pressure equipment, doctors found that reliance on inadequate substitutes can have devastating effects. *New York*

²⁰ Everett Zillinger, Statement of The Fertilizer Institute on S. 1602 — The Chemical Security Act of 2001, Before the Committee on the Environment and Public Works, United States Senate, November 14, 2001.

²¹ Frederick L. Webber, President and Chief Executive Officer, The American Chemistry Council, Testimony Before the Senate Environment and Public Works Committee, Subcommittee on Superfund, Toxics, Risk and Waste Management, November 14, 2001; Union Pacific employed extra security personnel as an alternative to stopping shipments.

²² For example, see David L. Swerdlow et al., “Waterborne Transmission of Epidemic Cholera in Trujillo, Peru: Lessons for a Continent at Risk,” *The Lancet*, July 4, 1992; “Of Cabbages and Chlorine: Causes of Cholera Epidemic in Peru,” *The Lancet*, July 4, 1992.

Times science reporter Gina Kolata documented cases in which readings of alternative equipment were so far off the mark that doctors provided damaging treatment. In one case, the alternative equipment produced an incredibly high blood pressure reading for one patient whose pressure was actually low. The reading led doctors to administer medicine that reduced the woman's blood pressure so much that she suffered a stroke.²³

A More Constructive Approach. Senator Bond deserves praise for taking the first step by introducing this bill. In contrast, S. 1602 moves in the opposite direction by placing a radical environmental agenda above both public health and national security.

To make his legislation effective, Senator Bond needs to address the issue head-on by eliminating the general public's access to RMPs, while maintaining access for emergency officials. Understandably, Bond's approach seeks to balance security with right-to-know, but there is a better way to meet that goal.

A better balance would be achieved by having emergency responders serve as the source of public information on potential risks. They can inform communities on how to respond in the case of an emergency, as John Eversole of the IAFC recommends. Plans should be removed from libraries and private groups that host summaries on their websites could be encouraged to remove them voluntarily.

This approach would serve communities better by giving them valuable information, rather than inundating them with fictitious horror stories. Emergency responders would provide the public with a better perspective on likely risks and practical information on how to respond. This approach does not affect the free exchange of information or freedom of speech. It simply recognizes that it is unwise for the federal government to distribute such highly sensitive information as RMPs. More importantly, it recognizes that the public needs to know how to respond to an emergency, which is something that RMPs fail to provide.

²³ Gina Kolata, "Tools Gauging Blood Pressure Raise Questions," *New York Times*, June 16, 2002.