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COMMENT

SAFETY VS. SECURITY: HOW BROAD BUT SELECTIVE PUBLIC ACCESS TO ENVIRONMENTAL DATA PROPERLY BALANCES COMMUNITIES' SAFETY AND HOMELAND SECURITY

BRAD SCHWEIGER

I. INTRODUCTION

The Supreme Court articulated the principle that “[p]eople in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.”¹ Freedom of information is a primary freedom guaranteed to the American people.² As such, Americans have developed an expectation of access to government information, or a community right-to-know.

Consider now Bhopal, India,³ where, far away from American soil, at 12:30 in the morning on December 3, 1984, a toxic cloud started to disperse over a makeshift village of 100,000 people surrounding the Union Carbide facility.⁴ The toxic cloud spread across Bhopal and turned the city of one million people into a gas chamber.⁵ By morning, the toxic cloud had taken 2,000 lives and injured 200,000 others living in the surrounding areas.⁶ Authorities estimate that 3,500 people died within

1. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980).

2. Stephen Gidiere & Jason Forrester, *Balancing Homeland Security and Freedom of Information*, 16 NAT. RESOURCES & ENV. 139 (Winter 2002).

3. Government of Madhya Pradesh, *Bhopal Gas Tragedy Relief and Rehabilitation*, <http://www.mp.nic.in/bgtrrdmp/profile.htm> (last visited Oct. 12, 2006) [hereinafter *Bhopal Gas Tragedy*].

4. ABC News Online, *Union Carbide Disaster Haunts Bhopal*, available at <http://www.abc.net.au/news/newsitems/200412/s1256766.htm>.

5. *Bhopal Gas Tragedy*, *supra* note 3.

6. Kathryn Durham-Hammer, *Left To Wonder: Reevaluating, Reforming, and Implementing the Emergency Planning And Community Right-To-Know Act of 1986*, 29 COLUM. J. ENVTL. L. 323, 325 (2004).

days of this "Chemical Hiroshima."⁷ Evidence indicates an incident similar to the one in Bhopal could occur in the United States.⁸ Congress responded to the public's growing concern regarding the safety of chemical facilities and enacted The Emergency Planning and Community Right to Know Act ("EPCRA") in 1986.⁹

Extending the right to know into the area of environmental law,¹⁰ EPCRA's provisions created the Toxic Release Inventory ("TRI").¹¹ This program was designed to track and compile facility data regarding releases of hazardous chemicals.¹² Under the TRI requirements, the Environmental Protection Agency ("EPA") is required to make TRI information electronically available.¹³ Since 1986, the TRI has expanded to encompass a greater number of chemicals and require facilities to report at lower release thresholds. Included in these expansions is the addition of *Envirofacts*, an on-line and publicly accessible database that combines TRI information with a wide variety of environmental data.¹⁴

However, after the September 11, 2001 terrorist attacks, people began to fear that information, electronically available and otherwise, might be used to aid the perpetration of another terrorist act.¹⁵ People feared the Internet provides society with too much information, including environmental information, quickly and cheaply.¹⁶ Consequently, the EPA began removing information from its Web site. Today, the *Envirofacts* database provides only limited public access. Moreover, the EPA also reduced the TRI's facility reporting requirements, despite heavy opposition to this measure.

It is important to keep in mind the words of Thomas Jefferson that, "an informed citizenry is vital to the functioning of a democratic soci-

7. ABC News Online, *supra* note 4.

8. Susan Hazen, EPA, *Chemicals in the Environment, Public Access Information, The History of TRI* (Fall 1997), available at <http://www.epa.gov/oppt/cie/archive/issue06j.htm#A>.

9. Joseph D. Jacobson, *Safeguarding National Security Through Public Release of Environmental Information: Moving The Debate To The Next Level*, 9 ENVTL. LAW 327, 349 (2003).

10. 42 U.S.C. § 1101-11050 (2006).

11. 42 U.S.C. § 11023 (2006).

12. 42 U.S.C. § 11023(a) (2006).

13. 42 U.S.C. § 11023(j) (2006).

14. Franklin S. Reeder, *Access To Information On The Environment In The United States*, 163, 171, available at www.oecd.org/dataoecd/54/12/2537183.pdf (2001).

15. Gidiere & Forrester, *supra* note 2, at 139.

16. See Stephen M. Johnson, *Junking The "Junk Science" Law: Reforming The Information Quality Act*, 58 Admin. L. Rev. 37, 53 [hereinafter "Junk Science"] (Winter 2006) (stating that the Internet allows a broad range of information available to a large segment of the public).

ety.”¹⁷ Otherwise, it is difficult for society to question the government’s action when formerly available information is withdrawn.¹⁸ Moreover, a secretive climate fosters fraud, waste, and exploitation.¹⁹ As a result, community, industry, and the government can benefit only through disclosure of information.²⁰

The Bush Administration’s limitation of public access to TRI data is misguided, because the TRI data is mostly available from nongovernmental sources and has little utility for terrorist plotting. Also, TRI provide an array of vital information with which to hold industry and government accountable. Communities with access to necessary information can protect themselves from present threats to their safety – toxic chemicals. Part II of this comment will describe how and why the TRI was established. A discussion of the subsequent dismantlement of TRI requirements will follow. Part III will analyze the impact of TRI and its subsequent changes, as demanded by the Bush administration following the September 11th terrorist attacks. Solutions will then be presented to address security concerns while preserving TRI’s value to our society. Part IV concludes that TRI’s value to Americans can be preserved, even though policies regarding access to TRI may change to better serve America’s new security environment.

II. BACKGROUND

A. HISTORICAL DEVELOPMENT OF ENVIRONMENTAL REPORTING STATUTES

1. *The Truman Era*

The Truman administration launched a new era in the ability of Americans’ to access government information. In 1946, Congress approved the Administrative Procedure Act (“APA”), which allowed limited access to federal agency records.²¹ Under the APA, records were accessible to the information seeker who was “properly and directly concerned,”

17. Gidiere & Forrester, *supra* note 2, at 139.

18. Joseph A. Siegel, *Combating Terrorism in the Environmental Trenches: Responding to Terrorism: Terrorism and Environmental Law: Chemical Facility Site Security vs. Right-To-Know?*, 9 WIDENER L. SYMP. J. 339, 368 (2003).

19. Jessica Barkas, *Nuking Freedom Of Information And Community Right-To-Know: How Post-9/11 Secrecy Politics Could Make America Less Safe*, 28 ENVTL. L. & POLICY J. 199, 214 (2005).

20. See Stephen Johnson, *Terrorism, Security, and Environmental Protection*, 29 WM. & MARY ENVTL. L. & POLICY REV. 107, 134 (2004) (explaining the advantages of information disclosure laws compared with traditional command and control laws).

21. See James T. O’Reilly, “Access to Records” Versus “Access to Evil.” *Should Disclosure Laws Consider Motives as a Barrier to Records Release?*, 12 KAN. J.L. & PUB. POLICY 559, 560 (2003) (discussing how cultural expectations of information entitlement has not changed since September 11, 2001).

except where other legislation required the information's secrecy.²² However, the APA did not include enforcement procedures to protect citizens' rights where governmental officials unjustifiably refused access to records.²³ The lack of an enforcement procedure had a chilling effect on the public's ability to obtain government records.²⁴ In addition, despite the public's apparent access to governmental records, agencies were granted broad discretion to label records secret or confidential with a showing of good cause.²⁵

2. *The Freedom of Information Act*

The road leading to the Freedom of Information Act ("FOIA") was long and arduous.²⁶ It took ten years of civil rights groups and newspaper lobbyists pressuring for improved public access to government information to enact FOIA.²⁷ By the 1960's, newspapers sought greater access to government information to make investigation of government misconduct easier, without relying primarily on government leaks.²⁸ The newspaper lobbyists prevailed, and Congress enacted FOIA on July 4, 1966.²⁹

The FOIA grants to "any person"³⁰ the right to a copy of any document requested from a government agency.³¹ However, an agency may still withhold all or part of a document upon a showing of any of nine narrowly construed³² exemptions, including national security.³³ Despite

22. *Id.* at 560-61.

23. *See id.* at 560 (indicating that the Administrative Procedure Act did not provide a mechanism to enforce the discretionary option to keep records confidential "for good cause").

24. *See id.* at 560-61 (explaining that the Administrative Procedure Act lacked could not prevent an unwilling bureaucrat from withholding records).

25. *Id.* at 560-61.

26. *See id.* at 560 (stating that the Freedom of Information Act was eventually adopted, but over stern warnings from the Executive Branch).

27. Barkas, *supra* note 19, at 203.

28. *See O'Reilly, supra* note 21, at 560 (explaining that the newspaper lobby viewed government information as a commodity, therefore by pushing for FOIA the newspaper lobby gained more leverage over that commodity).

29. *See id.* at 560 (acknowledging the drudgery reporters would endure prior to the passage of FOIA in digging through stacks of government papers to find evidence of government misconduct).

30. *See id.* at 561 (indicating that the access granted to "any person" does not take into account location, status, or motivation in requesting information).

31. Barkas, *supra* note 19, at 204.

32. Susan Nevelow Mart, *Let The People Know The Facts: Can Government Information Removed From the Internet Be Reclaimed?*, 98 LAW LIB. J. 7, 9 (2006); *see also*, *Dep't of the Air Force v. Rose*, 425 U.S. 352, 361 (1979).

33. *See Barkas, supra* note 19, at 204 (providing examples of some exemptions including but not limited to: national security, trade secrets, and an employee's personal records); *see also* 5 U.S.C. § 552(b) (2006) (listing all nine FOIA exemptions).

these exemptions, the new FOIA rules forced agencies to release most information.³⁴ Aware of governmental agencies' and their employees' reluctance to disclose records under the Administrative Procedure Act, Congress intended the new FOIA provisions to force agencies to disclose requested records.³⁵

Providing greater access to government records, FOIA bolstered support for the right-to-know movement.³⁶ Some argue the inception of FOIA bred an entitlement to government information and expectation of government disclosure into the American psyche.³⁷ This expectation grew as FOIA developed and expanded.

3. *Later Amendments to the Freedom Of Information Act*

Like the original FOIA, early amendments to the statute met rigorous opposition.³⁸ In 1974, President Ford vetoed a FOIA amendment to broaden the definition of an agency; revise the time limit for responding to requests for information; require agencies to index information for easier access; clarify congressional intent by allowing judicial review of challenges to nondisclosure due to a document's classified status; and require annual reports to Congress.³⁹ Among President Ford's concerns was that the amendment provided too much judicial review of classified documents.⁴⁰ However, the Ford Administration failed to preserve the status quo when Congress overruled the Ford's veto and passed the FOIA amendment.⁴¹

In 1996, Congress further tightened existing FOIA requirements by closing loopholes in the act.⁴² One example was the enactment of the Electronic Freedom of Information Act,⁴³ which required every govern-

34. Nevelow Mart, *supra* note 32, at 8.

35. See O'Reilly, *supra* note 21, at 560 (stating that government employees would not turn over information that disclosed their own actions unless Congress forced them).

36. See Nevelow Mart, *supra* note 32, at 8.

37. O'Reilly, *supra* note 21 at 560.

38. See *generally*, Nevelow Mart, *supra* note 32, at 9.

39. *Id.* (discussing President Ford's veto of the 1974 FOIA amendment, as counseled by Chief of Staff Donald Rumsfeld and Deputy Chief of Staff Dick Cheney and noting that, Antonin Scalia, the then Assistant Attorney General, interjected that the proposed FOIA amendments would be unconstitutional).

40. See *id.*

41. *Id.*

42. See *id.* at 10 (explaining that between 1974 and 1966, a number of FOIA amendments were enacted, but the 1996 Electronic Freedom of Information Act was the next major amendment).

43. See *id.* (describing two main provisions of the Electronic Freedom of Information Act that require each agency to (1) make copies available for public inspection, any records released to any person or are likely to be requested and (2) make these records available by computer telecommunications or other electronic means).

mental agency to create “electronic reading rooms” for FOIA requests.⁴⁴ In 2002, however, the Homeland Security Act exempted agencies’ compliance with FOIA, where the information requested related to voluntarily disclosed information regarding infrastructure or other potential terrorist targets.⁴⁵

4. *Emergency Planning and Community Right-to-Know Act*

With, FOIA’s success,⁴⁶ the public’s entitlement to government information has expanded into a general community right-to-know about the environmental dangers that exist in his or her own community.⁴⁷ The community’s heightened desire for information set the stage for more recent statutes such as the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”).

i. *The Genesis of EPCRA*

In 1978, following the discovery of California pesticide manufacturing plant employees’ increased incidence of reproductive problems, chemical plant workers started demanding better access to chemical information.⁴⁸ The national chemical workers’ union demanded a right to know the health risks posed by workplace chemicals.⁴⁹ However, it took two industrial accidents to initiate a general demand for a right to know environmental information.⁵⁰

The first accident occurred on December 3, 1984, at a Union Carbide facility in Bhopal, India.⁵¹ Recall that a tank containing toxic gas developed a leak⁵² and by morning, the toxic gas killed 2,000 and injured

44. *See id.* (stating that a 1999 study showed that most agencies failed to meet the statutory deadline for compliance with E-FOIA).

45. *See id.* at 11 (suggesting that business may “protect information from FOIA request merely by providing it to the Department of Homeland Security.”)

46. *See Barkas, supra* note 19, at 204 (illustrating that FOIA requests have lead to finding radioactive waste in New Mexico drinking water as well as a specific Congressional findings that “FOIA has led to disclosure of waste, fraud, abuse, and wrongdoing in the Federal Government”) (citation omitted).

47. *See Jacobson, supra* note 9, at 349 (explaining that ERPCA was the first statute to promote an “inherent right to be made aware of environmental hazards which may affect” an individual).

48. *See O’Reilly, supra* note 21, at 562 (indicating that the chemical exposure was to a chemical used to combat an insect infestation in Central America).

49. *See id.* at 563 (stating that the head of the union called on local unions demand their right-to-know the risks chemicals at the workplace pose).

50. Durham-Hammer, *supra* note 6, at 325.

51. *Id.*

52. Rosanne Muller, *A Significant Toxic Event: The Union Carbide Pesticide Plant Disaster in Bhopal, India, 1984*, http://www.tropmed.org/rreh/vol1_10htm (last visited Oct. 20, 2006).

200,000 others living in the surrounding areas.⁵³ Authorities estimate that 3,500 people died within days of this event.⁵⁴ Some activists estimate that 33,000 others have died in the years following.⁵⁵ The next accident occurred in August 1985 at the Union Carbide's Institute in West Virginia, where the facility leaked pesticide injuring six workers and hospitalizing 135 local residents.⁵⁶ People then realized an incident similar to the one in Bhopal could occur in the United States.⁵⁷

The EPA found that chemicals similar to the one leaked at the Bhopal, India plant were stored and manufactured in the United States.⁵⁸ However, manufacturers did not disclose much information about the chemicals.⁵⁹ The existing regulations did not provide information needed for emergency plans. Under the regulations, the public would not know about the chemicals until after major accidents occurred.⁶⁰ Congress responded to the public's growing concern regarding the safety of chemical facilities by enacting EPCRA in 1986.⁶¹

ii. Sections of EPCRA

The EPCRA has three subsections. The first subsection describes the "Emergency Planning and Notification" requirements.⁶² The second and third subsections create the Toxic Release Inventory ("TRI") requirements.⁶³ The second subsection requires that facilities use toxic chemical release forms,⁶⁴ and the third subsection mandates public access to the toxic chemical release forms.⁶⁵ The EPCRA objective most closely related to TRI is to "provide the public with information regarding the

53. Durham-Hammer, *supra* note 6, at 325.

54. ABC News Online, *supra* note 4.

55. *Id.*

56. See Durham-Hammer, *supra* note 6, at 325; see also Jacobson, *supra* note 9, at 349; *Chronology of the Union Carbide Corporation*, <http://www.endgame.org/carbide-history.html> (last visited Oct. 13, 2006) (showing that there were twenty-eight leaks of MIC at the Institute, West Virginia facility between 1980 and 1984. The Union Carbide subsequently spent five million dollars to improve safety to no avail, for two more leaks occurred in 1990 where MIC leaked injuring seven workers and muriatic acid leaked causing the ordering of 15,000 residents indoors).

57. Susan Hazen, *supra* note 8.

58. *Id.*

59. *Id.*

60. *Id.*

61. Junk Science, *supra* note 16, at 45-46.

62. Joseph A. Siegel, *supra* note 18, at 343

63. See *id.* at 344 (explaining what is needed to comply with TRI and discussing the importance of the subsection).

64. See 42 U.S.C. § 11023 (2006) (explaining how to comply with the statute and defining the various important terms found throughout the statute).

65. See 42 U.S.C. § 11044 (2006) (explaining the relevant section of the statute on public availability of the forms as required under subsection 2).

presence of hazardous chemicals in the community . . .”⁶⁶ Thus, one might argue TRI creates an indispensable “right to know” about the chemicals in one’s environment.⁶⁷

B. TOXIC RELEASE INVENTORY

1. *Evolution of Reporting Requirements*

i. *Early TRI*

The TRI is the first statute requiring the government to make collected data electronically available.⁶⁸ It requires the EPA to compile information on an electronic database, thereby making the information publicly available online.⁶⁹ At first, TRI required facilities⁷⁰ that manufactured, processed, or used more than a specific threshold⁷¹ amount of any listed toxic chemical to file a report with the EPA annually.⁷² The list of toxic chemicals included approximately 300 chemicals and implicated users in 28,000 facilities.⁷³ The annual report required an accounting of the quantity of toxic chemicals “released.”⁷⁴ The public was then able to view this information.⁷⁵ The first public disclosure of TRI information educated some owners and managers of manufacturing plants who had little understanding of the amount or type of chemicals released from their facilities.⁷⁶ TRI creates an environmental reporting

66. 61C Am. Jur. 2d *Pollution Control* § 1506 (2006).

67. Johnson, *supra* note 20, at 135-36.

68. Bradley C. Karkkainen, *Information as Environmental Regulation: TRI and Performance Benchmarking, Precursor to a New Paradigm?*, 89 GEO. L.J. 257, 289 (2001).

69. *Id.*; see also Siegel, *supra* note 18, at 345 (explaining the role of the filing forms that TRI requires).

70. See 42 U.S.C. § 11049 (2006) (defining facility as “all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person . . . the term includes motor vehicles, rolling stock, and aircraft.”)

71. See 42 U.S.C. § 11023(f) (2006) (setting out the threshold requirements as follows: 75,000 pounds of toxic chemical per year on or before July 1, 1988; 50,000 pounds of toxic chemical per year on or before July 1, 1989; 25,000 pounds of toxic chemical per year on or before July 1, 1990; and 10,000 pounds of toxic chemical per year today).

72. Susan E. Dudley, *It Is Time To Reevaluate The Toxic Release Inventory*, 12 Mo. ENVTL. L. & POL’Y REV. 1, 2 (2004) (stating that data used on and movement of chemicals within a facility are also required to file a TRI report); see also Karkkainen, *supra* note 69, at 287 (discussing the results of the mandatory form-filing that TRI demands).

73. Hazen, *supra* note 8.

74. Dudley, *supra* note 72, at 2.

75. Barkas, *supra* note 19, at 205.

76. Karkkainen, *supra* note 69, at 287, 297 (explaining that after the first year of TRI reporting in 1988 many manufacturers, undoubtedly surprised by what they found in their TRI filings, implemented plans to reduce TRI releases).

requirement, but not a typical environmental regulation.⁷⁷

ii. Pollution Prevention Act

Shortly after TRI went into effect, the Pollution Prevention Act of 1990 (“PPA”) amended its reporting requirements.⁷⁸ One important change under the PPA involved a more inclusive definition of “release” than under the previous TRI regime.⁷⁹ The new definition of “release” included chemicals recycled, treated, or transferred off-site as waste. The new definition also included chemicals routinely or accidentally released into the land, air, or water,⁸⁰ as well as chemicals combusted for energy recovery.⁸¹

iii. The Clinton Administration

Three years later, in 1993, President William Clinton issued an Executive Order directing all federal agency facilities to comply with the provisions of EPCRA, including TRI.⁸² Further, President Clinton acknowledged the usefulness of community right-to-know laws by encouraging informed environmental decisions and providing a strong incentive for businesses to engage in self-regulation.⁸³ While talking about TRI, President Clinton stated, the “Community Right to Know [sic] should be enhanced wherever possible. . .”⁸⁴

Further expansion of the TRI occurred when Vice President Al Gore unveiled the Chemical Right-to-Know Initiative on Earth Day in 1998.⁸⁵ This initiative provided greater information regarding the toxicity of chemicals and encouraged self-testing of toxicity.⁸⁶ Vice President Gore also proposed the inclusion of several persistent bioaccumulative toxic (“PBT”) chemicals in TRI reporting, as well as lowering the threshold for

77. See *id.* at 289 (explaining the benefits for TRI reporters, including trimming costs and filing much less paperwork since everything is done electronically).

78. Dudley, *supra* note 72, at 2; see also Evan Slavitt & Gregory Cote, *National Security vs. Public Disclosure: The War on Terrorism's Implications Upon Federal Emergency Planning and Right to Know Laws* (2003), available at http://www.fed-soc.org/publications/pubID.113/pub_detail.asp (outlining the basic provisions of the Pollution Prevention Act of 1990).

79. See Dudley, *supra* note 72, at 2 (discussing the new changes to the more inclusive definition of “release”).

80. *Id.*

81. Maria Doa, EPA, *Chemicals in the Environment, Public Access Information, Expanding the Public's Right to Know* (1997), available at <http://www.epa.gov/oppt.cie/archive/issue06j.htm#B>.

82. Exec. Order No. 12,856, 58 Fed. Reg. 41,981 (Aug. 3, 1993).

83. 60 Fed. Reg. 41,791 (Aug. 8, 1995).

84. *Id.*

85. Dudley, *supra* note 72, at 3.

86. *Id.*

PBT chemical releases.⁸⁷ Vice President Gore's proposed TRI reporting change went into effect in October 1999.⁸⁸

2. TRI Provisions

TRI requires any owner or operator of a facility having ten or more employees to report listed chemicals annually for those chemicals manufactured, processed, or otherwise used during the calendar year.⁸⁹ TRI requires each facility to submit its annual report no later than July 1st.⁹⁰ Furthermore, the EPA Administrator ("Administrator") may add or delete chemicals from the list.⁹¹ Guided by generally accepted scientific principles,⁹² the sufficiency of the evidence⁹³ will guide the Administrator's decision. Therefore, there must be evidence that the chemical may cause: (a) "significant adverse acute health effects;" (b) cancer or teratogenic effects; (c) serious or irreversible reproductive, neurological, heritable, or other chronic health effects; or (d) "significant adverse effect on the environment of sufficient seriousness" due to the toxicity, persistence, or bioaccumulate effect.⁹⁴ An important feature of TRI is the power of individuals to petition the EPA for the addition or deletion of chemicals from the list.⁹⁵

TRI also includes annual quantitative requirements for reporting listed chemicals. For chemicals used at facilities, the reporting requirement is 10,000 pounds.⁹⁶ In addition, for facilities that manufacture or process listed chemicals, the threshold is 25,000 pounds of toxic chemicals per year.⁹⁷ Again, the Administrator may change these reporting

87. *See id.* (explaining that PBT chemicals are chemicals that exist in the environment for a certain length of time before they degrade).

88. *See id.* (stating that in 1997, the EPA expanded the industries covered by the EPA, increasing the number of facilities to approximately 6,000); *see also* Doa, *supra* note 81; Dwight Peavey, EPA, *Chemicals in the Environment, Public Access Information, Using TRI to Measure Progress: A Regional Perspective* (1997), available at <http://www.epa.gov/oppt.cie/archive/issue06j.htm#E> (stating that since the inception of TRI reporting, the EPA has added over 350 chemicals, more than doubling the size of the TRI to include over 650 chemicals and chemical categories, while subtracting only sixteen chemicals).

89. *See* 42 U.S.C. § 11023(b) (2006) (defining "manufacture" as producing, preparing, importing or compounding a toxic chemical; and "produce" as "preparation of a toxic chemical, after its manufacture, for distribution in commerce . . ." in the same or different physical state or merely containing the toxic chemical); *see also* 42 U.S.C. § 11023(c) (2006) (explaining where a list of the covered "toxic chemicals" may be found).

90. 42 U.S.C. § 11023(a) (2006).

91. 42 U.S.C. § 11023(d)(3) (2006).

92. 42 U.S.C. § 11023(d)(2) (2006).

93. 42 U.S.C. § 11023(d)(3).

94. 42 U.S.C. § 11023(d)(2).

95. 42 U.S.C. § 11023(e) (2006).

96. 42 U.S.C. § 11023(f)(1)(A) (2006).

97. 42 U.S.C. § 11023(f)(1)(B)(iii) (2006).

thresholds.⁹⁸

Once a facility has met a threshold amount of chemical releases, the facility must file a form for each chemical that meets the threshold.⁹⁹ The purpose of these forms is to inform any interested person about the toxic chemical released into the environment.¹⁰⁰ As with many sections of the TRI, the Administrator may change the reporting frequency for many reasons.¹⁰¹ However, a reporting change may be limited to a specific geographic area.¹⁰²

Once every covered facility has filed its report, the EPA must maintain a computer database of the TRI information.¹⁰³ The database must be made "accessible by computer telecommunication and any other means to any person."¹⁰⁴ 42 U.S.C. Section 11044 reinforces the EPA's posting requirement.¹⁰⁵ This statute provides that toxic chemical release forms must be made available to the public.¹⁰⁶ In addition, local emergency planning committees must publish notice in local newspapers that the toxic chemical release forms have been completed.¹⁰⁷

3. *Envirofacts*

Following the passage of the EPCRA and its TRI provisions, the EPA, by its own initiative, created a database called *Envirofacts*.¹⁰⁸ *Envirofacts* provides TRI with information that allows it to improve the quality and utility of environmental information available to the public.¹⁰⁹ Originally, *Envirofacts* was not publicly available, but used only by the EPA to organize a wide variety of environmental databases.¹¹⁰ However, due to the prevalence of the Internet, in 1995 the Clinton Ad-

98. 42 U.S.C. § 11023(f)(2) (2006).

99. 42 U.S.C. § 11023(g)(1) (2006) (explaining the required information on an annual form includes: (1) the name, location and principle activity of facility; (2) a signature verifying the accuracy of the report and the use of the chemical; (3) an estimate of the amount of chemical present at the facility, at any time; and (4) the waste treatment or disposal method; and an estimate of efficiency of the treatment, as well as the annual quantity of the chemical entering the land, water, and air).

100. 42 U.S.C. § 11023(h) (2006).

101. 42 U.S.C. § 11023(i) (2006).

102. See 42 U.S.C. § 11023(i)(1) (2006) (suggesting the recently proposed reporting change may be directed more to geographic areas which experience the heaviest reporting burden).

103. 42 U.S.C. § 11023(j) (2006).

104. *Id.*

105. See 42 U.S.C. § 11044(a) (2006).

106. *Id.*

107. 42 U.S.C. § 11044(b) (2006).

108. Reeder, *supra* note 14, at 161.

109. See U.S. EPA, *Envirofacts Data Warehouse* (Oct. 20, 2006), available at <http://www.epa.gov/enviro/> (displaying the *Envirofacts* database).

110. Reeder, *supra* note 14, at 161.

ministration declared that ensuring public access to environmental information was crucial.¹¹¹ The EPA describes the *Envirofacts* database as a “multi-system data warehouse” that provides “powerful query capability” to utilize TRI data.¹¹² Indeed, *Envirofacts* does contain a wide variety of EPA data, including TRI information.¹¹³

C. TRI UNDER THE BUSH ADMINISTRATION

Following the events of September 11, 2001, the Bush Administration emphasized the importance of homeland security issues and began to reexamine existing statutes related to those issues, including TRI requirements.¹¹⁴ Since September 11, 2001 and in light of increased homeland security concerns, Congress has considered the relevance and importance of TRI and other environmental disclosure statutes.

Within days of the September 11th attacks, government agencies began removing data from their Web sites fearing terrorists’ misuse of the information.¹¹⁵ The EPA participated in this removal effort by shutting down the *Envirofacts* database on September 20, 2001.¹¹⁶ Five days later, on September 25, 2001, access was restored to *Envirofacts*.¹¹⁷ However, the American Chemistry Council wrote the EPA urging it to revisit policies concerning public availability of industrial data.¹¹⁸ These actions prompted the EPA to again limit access to *Envirofacts*.¹¹⁹ Specifically, on April 1, 2002, the EPA limited *Envirofacts*’ “Direct Connect Access to U.S. EPA employees, U.S. EPA Contractors, the Military, Federal Government, and State Agency employees.”¹²⁰ “Direct Connect Access” enables a user access to the entire database and the ability to build the

111. *Id.* at 171.

112. U.S. Environmental Protection Agency, Toxic Release Inventory (TRI) Program, (June 16, 2006), available at <http://www.epa.gov/tri/tridata/index.htm>.

113. Reeder, *supra* note 14, at 163.

114. Michael Meuser, *The Ruse of Terrorism and our Right-To-Know, Part I*, (Jan. 16, 2002), available at MapCruzin.com, <http://www.mapcruzin.com/news/terspeak011603b.htm>.

115. 9 WIDENER L. SYMP. J. 339 (disclosing that the U.S. Department of Transportation, The Centers for Disease Control and Prevention, and the Nuclear Regulatory Commission all withdrew mapping information as well as other pertinent information that terrorists may find useful. In addition, the Nuclear Regulatory Commission disabled its entire Web site on October 11, 2001).

116. OMB Watch, *Information Removed and Later Reposted to EPA’s Web Site Post 9/11*, (May 15, 2002), available at <http://www.ombwatch.org/article/articleview/735>.

117. *Id.*

118. John Echeverria & Julie Kaplan, *Poisonous Procedural “Reform”: In Defense of Environmental Right-To-Know*, 12 KAN. J.L. & PUB. POLY 579, 597 (2003).

119. See OMB Watch, *Access to Government Information Post 9/11*, available at <http://www.ombwatch.org/article/articleview/213/1/1#policy>.

120. *Id.*

users own query.¹²¹ One month later, an executive order gave the EPA Administrator authority to classify any information as secret.¹²²

Next, the EPA issued a proposed amendment to TRI reporting requirements in October 2004.¹²³ The proposed rule change would have increased the reporting threshold and changed from annual to biennial reporting.¹²⁴ The higher thresholds for reporting would have allowed increased use of TRI short forms, decreasing the detail of reported information.¹²⁵ The proposed rule would have allowed a threshold of 5,000 pounds as opposed to the current 500 pounds of toxic release and transfer to be eligible for short form use.¹²⁶ In addition, the EPA planned to reduce reporting frequency to biennially in order to save money and reinvest in a data quality program.¹²⁷ The EPA proposed this change under the pretext of "burden reduction."¹²⁸

Following the introduction of the proposed rule changes, there was overwhelming public opposition to the EPA's burden reduction plan.¹²⁹ This action prompted the House to vote to suspend funding for the proposed rule change,¹³⁰ and in September 2006, the House voted to strike the proposed reporting frequency.¹³¹

Some feared that the votes might not stop the EPA from implementing the TRI reporting changes.¹³² This was especially apparent, with

121. OMB Watch, *supra* note 118, available at <http://www.ombwatch.org/article/articleview/735>; see also U.S. Environmental Protection Agency, *Envirofacts Data Warehouse* (Oct. 20, 2006), available at <http://www.epa.gov/enviro/html/qmr.html> (listing Envirofact query option); U.S. Environmental Protection Agency, *Envirofacts Data Warehouse* (Mar. 13, 2006), available at <http://www.epa.gov/enviro/html/technical.html#lrt> (explaining how "Direct Connect Access" enables the user to access and manipulate Envirofacts data through the "back door," as well as a mapping feature).

122. Classified National Security Information, 67 Fed. Reg. 31,109 (May 6, 2002) (to be codified at 40 C.F.R. pt. 261) (granting the EPA Administrator authority to label any information as secret under the authority of E.O. 12958 of April 17, 1995, entitled "Classified National Security Information").

123. See OMB Watch, *Dismantling The Public's Right To Know: The Environmental Protection Agency's Systematic Weakening of the Toxic Release Inventory* (2005), available at http://www.ombwatch.org/pdfs/TRI_Report.pdf.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. See Proposed Data Collection Submitted for Public Comment and Recommendations, 70 Fed. Reg. 57,871 (Oct. 4, 2005) (titling the proposed TRI rule change as "Burden Reduction").

129. OMB Watch, *House Passes Right To Know Amendment to Save TRI* (May 31, 2006) available at <http://www.ombwatch.org/article/articleview/3452/1/9/97?TopicID=1>.

130. 152 Cong. Rec. H2759 (daily ed. May 17, 2006).

131. Toxic Right-To-Know Protection Act, H.R.6219, 109th Cong. (2006).

132. Alex Fidis, *House Protects Public's Right to Know About Toxic Pollution* (May 19, 2006), available at <http://www.commondreams.org/news2006/0519-10.htm>.

respect to reporting frequency, considering that the EPA only needed to notify Congress of a proposed rule change.¹³³ Pursuant to TRI, the EPA Administrator had sole discretion in implementing a reporting frequency change.¹³⁴ As a result, Representative Frank Pallone, Jr., Democrat, NJ, introduced the "Toxic Right-to-Know Protection Act" to strike TRI provisions dealing with modifications in reporting frequency.¹³⁵

Nevertheless, on December 22, 2006, the EPA published the TRI burden reduction rule.¹³⁶ The EPA estimated that the increased threshold for reporting is likely to eliminate effective reporting for approximately sixteen chemicals.¹³⁷ However, an independent estimate calculated the elimination of effective reporting for thirty-nine chemicals.¹³⁸ In response to the new TRI requirements, California passed the California Toxic Release Inventory Act of 2007 (Assembly Bill 833) in order to restore the weakened TRI to its original thresholds.¹³⁹ Additionally, twelve states are suing the U.S. EPA.¹⁴⁰ The complaint challenges the EPA's authority and justification under EPCRA to make substantial changes to the TRI and alleges that the EPA failed to follow its own rulemaking procedures.¹⁴¹

133. 42 U.S.C. § 11023(i)(5) (2006).

134. *Id.*

135. See H.R. 6219 (showing that on September 27, 2006 the bill was referred to the House Committee on Energy and Commerce); see also Toxic Right-To-Know Protection Act, H.R. 1055, 110th Cong. (2007); S. 595, 110th Cong. (2007) (indicating that the "Toxic Right-to-Know Protection Act" was introduced to the House and Senate and made it at least to the subcommittee stage of the House and was placed on the Senate Legislative Calendar).

136. See generally Toxic Chemical Release Reporting: Community Right to Know, 40 C.F.R. § 372 (displaying the TRI burden reduction final rule as increasing the reporting threshold for most TRI chemicals from 500 lbs. to 5,000 lbs. so long as only a maximum of 2,000 lbs. of the chemical is released directly into the environment. The EPA is also allowing a reduced reporting for persistent bioaccumulative toxins).

137. OMB Watch, *EPA Finalizes Rules for Toxics Release Inventory* (Jan. 9, 2007), available at <http://www.ombwatch.org/article/articleview/3670/1/241?TopicID=1>.

138. *Id.*

139. See OMB Watch, *California Restores TRI Reporting for the State* (Oct. 23, 2007), available at <http://www.ombwatch.org/article/articleview/4059/1/241?TopicID=1> (stating that California is the only state which has restored the TRI to its previous standards).

140. OMB Watch, *States Sue EPA for Reduced Reporting on Toxics* (Dec. 4, 2007), available at <http://www.ombwatch.org/article/articleview/4105/1/241?TopicID=1> (providing a link to the complaint and listing the 12 states joining to sue the EPA as New York, Arizona, California, Connecticut, Illinois, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, Pennsylvania, and Vermont).

141. See *id.* (stating the complaint alleges nineteen total claims which may be categorized into four topics: (1) The change violates EPCRA because EPA did not apply the substantial majority standard on a chemical-by-chemical basis, (2) EPA's analysis in justifying the rule change was flawed, (3) EPA's "burden reduction" justification is flawed and not in keeping with original legislative intent, and (4) EPA's response to comments was inadequate and failed to meet the standards for the rule change process).

III. ANALYSIS

A. TOXIC RELEASE INVENTORY'S NECESSITY

1. *Community Awareness and Activism*

Environmental disclosure laws like TRI principally benefit individuals and the communities in which they live.¹⁴² TRI provides critical information that holds industry and government accountable, thereby protecting communities from present threats to their safety.

i. TRI Increases Quantity and Quality of Information for Public Use

TRI has evolved from its original mandate to include a broader array of chemicals and facilities,¹⁴³ prompting some to describe TRI as a “panacea of environmental knowledge” and “a ‘watershed’ in environmental disclosure.”¹⁴⁴ The TRI and its related databases, such as *Envirofacts*, work to increase both quantity and quality of information disseminated to the public.¹⁴⁵ When the public accesses TRI, TRI educates the people about the type and quantity of toxic chemicals in their communities.¹⁴⁶ As such, electronic databases, such as *Envirofacts*, enhance TRI data by making the information more useful to the public.¹⁴⁷ Moreover, the increased usefulness of TRI information maximizes the benefits derived from public commentary.¹⁴⁸ As the quantity and quality of information increases, public commentary becomes more specific and allows for improved environmental decision-making by the government.¹⁴⁹ Such developments allow communities to protect themselves from environmental hazards.

ii. TRI Promotes Informed Participation in Community Decision-Making

The disclosure of information promotes individual autonomy because it enhances the ability to participate in democratic decision-mak-

142. Junk Science, *supra* note 16, at 45-45, 51; Johnson, *supra* note 20, at 134-35.

143. Durham-Hammer, *supra* note 6, at 325.

144. *Id.*

145. See Junk Science, *supra* note 16, at 51 (discussing information quantity and quality as increasing the informed electorate).

146. See Echeverria & Kaplan, *supra* note 120, at 589 (explaining that information disclosure helps educate the public).

147. See *id.* (describing how technology is used to give citizens new or more extensive understanding of public issues).

148. See Johnson, *supra* note 20, at 134 (explaining that as quantity and quality of public comment increases, the government's decisions become more rational and more likely to reduce environmental risks).

149. See *id.* (describing “cooperative federalism” as brining “regional and local environmental problems to the attention of regional and local authorities” and getting rid of the need for national response to the problems).

ing.¹⁵⁰ Meaningful participation in the democratic decision-making process requires a well-informed individual.¹⁵¹ Thus, the ability to locate, understand, and use toxic chemical release information is vital to a citizen's participation as an equal with the government and industry.¹⁵²

a. Request Lower Toxic Chemicals in Their Community

TRI is the first law that enables individual citizens to know about the toxic chemicals in their communities and allows each citizen to interact with industry and the government to implement change.¹⁵³ Communities can engage in a variety of activities to persuade polluters to meet community standards.¹⁵⁴ For example, private organizations compile TRI information and publish reports based on TRI data to notify the public and to pressure industry.¹⁵⁵ One such group called Environmental Defense developed a "Scorecard" program.¹⁵⁶ This program allows any citizen to access information on the sources of pollution and subsequent health effects simply by entering in a zip code into the "Scorecard" database.¹⁵⁷ Another group called OMB Watch runs "RTK Net," which allows the public to search EPA databases for chemical accidents by facility, chemical, or geographic area.¹⁵⁸ Thus, when TRI information is publicly available, individuals, private organizations, or even the government are able to pressure the worst polluting facilities to reduce toxic chemical releases.¹⁵⁹ Knowledge is paramount to individuals' ability to protect themselves against dangers that exist in their communities.¹⁶⁰

150. See Junk Science, *supra* note 16, at 51 (stating that an informed electorate is the hallmark of the democratic process).

151. *Id.*

152. See, Terry Greene, EPA, *Chemicals in the Environment, Public Access Information, A Non-Profit Organization's Perspective on TRI* (1997), available at <http://www.epa.gov/oppt/cie/archive/issue06j.htm#M>.

153. See, Geraldine Nowak, EPA, *Chemicals in the Environment, Public Access Information, TRI/Right to Know Conference* (Fall 1997), available at <http://www.epa.gov/oppt/cie/archive/issue06j.htm#G>.

154. Karkkainen, *supra* note 68, at 316.

155. Echeverria & Kaplan, *supra* note 120, at 583; see, e.g., <http://www.rtk.net> (last visited Oct. 20, 2006) (publishing reports of TRI information).

156. E.g., Scorecard Home, *Pollution in Your Community*, <http://www.scorecard.org> (last visited Oct. 20, 2006) (providing facts on pollution in your community).

157. E.g., <http://www.scorecard.org> (Oct. 20, 2006), available at (providing an in-depth pollution report on any "county, covering air, water, chemicals, and more" and shows how a county rates compared to other U.S. counties, who are the top polluters in the country, and what are the top chemicals released in the county, among other information).

158. E.g., <http://www.rtk.net> (last visited Oct. 20, 2006) (providing links to search the EPA databases).

159. Peavey, *supra* note 88.

160. See Terry Greene, EPA, *Chemicals in the Environment, Public Access Information, CA Non-Profit Organization's Perspective on TRI* (Fall 1997), available at <http://www.epa.gov/oppt/cie/archive/issue06j.htm#M>.

With an enhanced ability to identify possible toxic chemical releases, communities can encourage businesses to reduce the levels of toxic releases.¹⁶¹

b. TRI Allows Citizens to Boycott Heavier Polluters

Under TRI, community groups can boycott or picket a chemical facility, thereby tarnishing the facility's reputation.¹⁶² For instance, after community activists discovered that Sheldahal Incorporated was the nation's forty-fifth largest emitter of airborne carcinogens, the activists joined with local textile union members to campaign for emissions reductions.¹⁶³ The campaign resulted in an agreement for Sheldahal Incorporated to reduce emissions of the carcinogens.¹⁶⁴

Negative publicity from TRI data can negatively influence stock prices,¹⁶⁵ and community groups could sell the stock of chemical facilities that release an unacceptable amount of toxins, or buy only stock in chemical facilities that meet community standards.¹⁶⁶ Increased awareness of environmental issues has increased the importance of environmental performance in investment decisions.¹⁶⁷ Socially responsible investment groups, such as Green Century Funds, are committed to promoting environmental responsibility.¹⁶⁸ Using TRI data, Vanderbilt University's Owen Graduate School of Management drew a correlation between stock value and environmental performance.¹⁶⁹ The study showed that facilities are penalized in the stock market for poor pollu-

161. Echeverria & Kaplan, *supra* note 120, at 590.

162. Karkkainen, *supra* note 68, at 316.

163. Archon Fung & Dara O'Rourke, *Reinventing Environmental Regulation from the Grassroots Up: Explaining and Expanding the Success of the Toxic Release Inventory*, 25 ENVTL. MGMT. 2, 115, 121 (2000) (explaining that a 1990 Natural Resource Defense Council report established Sheldahal Incorporated as the nation's forty-fifth largest emitter of airborne carcinogens).

164. *Id.* (explaining that the agreement was for a sixty-four percent reduction of airborne carcinogens over two years and a ninety-percent reduction over three years).

165. *Id.* at 121-22 (2000) (explaining studies which show that "firms that pollute more suffer greater declines in stock value as TRI information is released," while at the same time "show greater improvements in environmental performance." The average loss to a facility on the day of a poor TRI data release is \$4.1 million in stock value.).

166. Johnson, *supra* note 20, at 135.

167. Toxic Release Inventory Program Div. EPA, *How Are the Toxic Release Inventory Data Used?* (May 2003), available at www.epa.gov/tri/guide_docs/2003_datausepaper.pdf.

168. *Id.* at 15 (explaining that Green Century Funds screens out companies with poor environmental records using TRI data).

169. *Id.* (describing reasons for the correlation between stock value and environmental performance, the Investor Responsibility Research Center suggested that "chemical releases are associated with higher risks of negative publicity, more tort actions, and higher costs for pollution control and waste management.")

tion prevention programs.¹⁷⁰ The Calvert Group, for example, used Tyco's TRI data to identify trends that indicated possible mismanagement, which led the group to sell its shares months before the Tyco scandal.¹⁷¹ These and other community actions could affect chemical facilities' cost of doing business and create a more even playing field when communities campaign for reduced toxic chemical releases.¹⁷² Thus, public access to TRI information keeps communities safe from environmental hazards by holding industry accountable.

2. Industry

i. Comparison With Other Facilities and With Past Performance

TRI allows facilities to continuously improve chemical releases in relation to other facilities and its own past performance.¹⁷³ By comparing toxic releases with a competitor's and its own past performance, each facility can determine a sufficient level of reduction.¹⁷⁴ Comparison creates greater flexibility for each chemical facility to determine whether to reduce its toxic releases and, if so, by how much.¹⁷⁵ For instance, Eastman Chemical Company receives TRI updates through its Community Advisory Panel.¹⁷⁶ The advisory uses TRI data to recommend improvements for waste management.¹⁷⁷ Boeing also uses TRI to track the company's progress in order to invest and create pollution prevention programs.¹⁷⁸ These efforts have resulted in an eighty-two percent reduction of reportable emissions since 1991.¹⁷⁹ One EPA survey estimated that TRI is at least partly responsible for the efforts of seventy percent of reporting facilities in reducing reportable waste.¹⁸⁰ Accordingly, public

170. *Id.*

171. *TRI Success Stories*, <http://www.ombwatch.org/tricenter/TRIsuccess.html> (last visited Nov. 27, 2006) (explaining that the Calvert Group noticed that Tyco's TRI data was drastically different from the previous years and drew an inference that the company was having difficulty).

172. Karkkainen, *supra* note 68, at 316; Johnson, *supra* note 20, at 135.

173. *Id.* (explaining that continuous monitoring are characteristics by the most successful, innovated and sophisticated firms, and that TRI's approach is consistent with the most cutting edge facility innovation).

174. Johnson, *supra* note 20, at 136-37.

175. Junk Science, *supra* note 16, at 51.

176. Toxic Release Inventory Program Div. EPA, *supra* note 169, at 34.

177. *Id.* (stating that the Eastman Chemical Company's Community Advisory Panel also uses TRI data to find favorable ways to present information to the public).

178. *Id.* at 10, 32.

179. *Id.* at 10.

180. Karkkainen, *supra* note 68, at 288; see Dudley, *supra* note 72, at 4 (stating that TRI is given credit for a fifty-four percent reduction on- and off-site release of toxic chemicals, leading to a 1.72 billion pound reduction in toxic chemical releases); see also Maria Doa, *supra* note 81 (stating that between 1988 and 1994 toxic releases decreased by forty-four percent from 3.54 billion pounds to 1.56 billion pounds); Siegel, *supra* note 18, at 346

disclosure of TRI information allows facilities to voluntarily reduce waste, making communities safer.

ii. Decrease Compliance Costs and Increased Profits

The compliance costs of TRI are much lower than traditional environmental regulations.¹⁸¹ A chemical facility typically spends a mere fifty hours per year to produce each required report.¹⁸² While time spent reporting is consistent with traditional regulation, TRI does not require large direct compliance costs, as do other common environmental regulations such as mandatory emissions reductions.¹⁸³ Thus, TRI is a more efficient environmental mechanism.¹⁸⁴

Greater efficiency has led some facilities to discover ways to reduce chemical releases while at the same time increasing profit.¹⁸⁵ For instance, after attending the 1997 Toxic Release Inventory and Right-to-Know Conference, Marathon Oil installed a system to recover 120,000 barrels of oil and Georgia Gulf Corporation recovered 9,300 gallons of methanol after adjusting a purge line.¹⁸⁶ The recovery of previously disposed or released chemicals yield increased profits, as demonstrated by the Haartz Corporation.¹⁸⁷ The Haartz Corporation saves approximately \$200,000 annually by reducing releases of methyl ethyl ketone.¹⁸⁸ In addition, due to TRI and public awareness Florida Power and Light created a recycling center which generates profits of \$1.8 million

(stating that toxic releases continue to fall despite an overall increase in industrial production).

181. See *Junk Science*, *supra* note 16, at 51 (stating that compliance costs are lower under information disclosure laws because the facility maintains the flexibility to determine the most efficient way to make a product and when an environmental controls are economically efficient).

182. Karkkainen, *supra* note 68, at 292.

183. *Id.* at 292.

184. See *Johnson*, *supra* note 20, at 137 (describing information disclosure laws as "a hallmark of reflexive environmental law." Businesses can identify "the risks posed by their activities and determine that the public may view those risks as unacceptable when compared to the activities of their competitors." Consequently, businesses may implement programs voluntarily to reduce risks to communities).

185. See *Toxic Release Inventory Program Div. EPA*, *supra* note 169, at 10 (suggesting that TRI allows facility managers to take a closer look at the quantity of chemicals released and take a proactive approach to decrease waste and increase productivity of raw materials).

186. *Id.* at 9.

187. *Id.* at 10.

188. See *id.* (describing methyl ethyl ketone (MKE) as a solvent which causes dizziness, nausea, or unconsciousness when inhaled and indicating that the facility previously used 800,000 pounds of MKE per year).

annually.¹⁸⁹ When facilities voluntarily reduce the quantity of chemical releases communities become safer.

iii. *Promote Accountability to the Public and Environment*
 a. *Prevents Waste and Exploitation*

A “secretive climate” fosters fraud, waste, and exploitation.¹⁹⁰ For some industries, the TRI reporting was the first time company managers and operators realized the quantity of chemicals released from their facilities.¹⁹¹ To avoid corporate waste, some companies vowed to reduce their toxic chemical release which, as discussed previously, may increase profits.¹⁹² Others, faced with squandering of chemicals through releases, establish Environmental Management Systems.¹⁹³ These systems provide proactive environmental protection and may reduce corporate costs.¹⁹⁴

One way industries can be more proactive is to improve internal auditing of TRI misreporting and failed reporting.¹⁹⁵ Additionally, the EPA rewards self-policing by significantly reducing or eliminating potential fines altogether.¹⁹⁶ For instance, a Pennsylvania company, PolyOne Corp, self-reported that it had failed to submit a 2004 TRI form and the EPA waived its \$21,922 fine.¹⁹⁷ Similarly, another Pennsylvania company realized it had not filed a TRI form for 2000-2002 and for 2004 and avoided a \$77,905 penalty.¹⁹⁸ Finally, Novozymes Biologicals, Inc. self-reported several potential violations, including a failure to submit TRI forms for chemicals in 2001 and 2005.¹⁹⁹ The EPA rewarded this disclo-

189. *See id.* at 32 (noting that the public only became aware of the Florida Power and Light’s waste after electric utilities were added to the TRI and that the recycling center recovers and sells a variety of scrap materials to produce its profits).

190. Barkas, *supra* note 19, at 214.

191. Toxic Release Inventory Program Division, EPA, *How are the Toxics Release Inventory Data Used?* (May 2003), available at http://www.epa.gov/tri/guide_docs/2003_datausepaper.pdf.

192. *Id.* at 10.

193. *Id.*

194. *Id.*

195. *Id.* at 9.

196. Press Release, EPA, Companies Come Clean About Environmental Violations (Oct. 2006), available at <http://yosemite.epa.gov/opa/admpress.nsf/31f0470aec334c5c852572a000655938/3902ba81651887908525721200522563!OpenDocument> (describing the qualifications for the EPA’s audit policy as reporting and taking action to correct violations. The EPA policy excludes criminal acts, violations which pose significant harm to the public or environment, or violations that are economically beneficial. The audit policy can cover most EPA regulatory requirements).

197. *Id.*

198. *Id.*

199. *Id.*

sure by waiving the penalty.²⁰⁰ As demonstrated, TRI information allows companies to assess corporate wastes and implement programs to reduce chemical releases, while increasing profits and avoiding EPA penalties. This, in turn, enables communities to be safer by reducing environmental exploitation.

b. Prevents an Industry Monopoly on Information

Without TRI disclosures chemical facilities have a monopoly on information.²⁰¹ Traditionally, TRI and *Envirofacts* provide access to citizens, removing the chemical facilities' monopoly on information.²⁰² The Working Group on Community Right-to-Know explains that TRI transfers information from previously unavailable facility files and places them in the hands of individual citizens.²⁰³ In this manner, TRI aids citizens in acquiring facility specific information.²⁰⁴ Informed and educated communities are in a better position to demand lower chemical releases²⁰⁵ and facility negotiators are less likely to mislead communities and community groups.²⁰⁶ Since TRI information has regulatory approval, facilities are less likely to dismiss the information as fallacious.²⁰⁷ Thus, TRI information keeps communities safe by creating a more level public forum to hold facilities accountable.

3. *Government*

The advantages TRI provides to the government are standardization of information and the ability to compare and track industry data.²⁰⁸

200. *Id.*

201. See Karkkainen, *supra* note 68, at 316 (indicating that, without TRI, only the most visible pollution would be challenged).

202. *Id.* at 316-17 (stating that the removal of the industry monopoly on information through TRI is at no direct cost to citizens).

203. See Fung & O'Rourke, *supra* note 165, at 118 (explaining that the transferring of formerly unavailable facility files to citizens broadens public participation, essentially leveling the playing field with facilities).

204. Karkkainen, *supra* note 68, at 316-17.

205. See Barkas, *supra* note 19, at 214 (discussing freedom of information and community right-to-know laws in the context of terrorism and stating that simply hiding potential vulnerabilities is not sufficient to stop a terrorist attack).

206. See Karkkainen, *supra* note 68, at 317 (indicating that TRI brings pollution to the attention of communities or confirms suspicions that may have otherwise not been validated).

207. *Id.*

208. *Id.* at 294.

i. Standardization

a. Efficiency

TRI's Internet databases and reporting in standard units makes processing and storing information less time consuming for the government.²⁰⁹ TRI and other similar information disclosure programs do not require the government to mandate pollution reduction or eliminate the use of any chemical.²¹⁰ Instead, the government is free to regulate a much larger array of chemicals and facilities in a shorter period of time.²¹¹ Since TRI has a low information threshold, the EPA Administrator is able to respond to changing circumstances and new scientific knowledge quickly.²¹² Instead of the slow rule making process, which requires notice and comment and recording support for the proposed change, the EPA need only create or update databases.²¹³ Updating and creating databases takes a fraction of the time, as compared to the normal rule making process.²¹⁴ Increased efficiency raises the quality of government decision-making by creating more rational environmental policies.²¹⁵ For instance, using TRI data the EPA identified seventeen priority chemicals and initiated the "33/50" program.²¹⁶ Thus, increased government efficiency creates laws and policies which keep communities safe.

b. Reduces Costs

Administrative efficiency translates directly into cost reduction²¹⁷ by eliminating the EPA's need to find appropriate exposure levels or

209. *See id.* at 289 (explaining that storage capacity is practically limitless due to electronic filing and storage and suggesting the expanding role of the EPA in collecting, processing and distributing data); *Junk Science*, *supra* note 16, at 52.

210. *See Junk Science*, *supra* note 16, at 51-52 (indicating that databases can be updated and created in a fraction of the time compared with creating or amending existing laws).

211. *Karkkainen*, *supra* note 68, at 291.

212. *Id.*

213. *Junk Science*, *supra* note 16, at 52.

214. *See id.* (stating that in theory, TRI information can be quickly released and the market can react to reduce pollution years before new standards could have been formed through traditional environmental regulations).

215. *Id.*

216. *See Toxic Release Inventory Program Division., EPA, How Are the Toxic Release Inventory Data Used?* (May 2003) 11, available at www.epa.gov/tri/guide_docs/2003_data_usepaper.pdf (describing the goal of the "33/50" program as reducing the priority chemicals by thirty-three percent by 1992 and by fifty percent by 1995, which the program achieved in just one year).

217. *Junk Science*, *supra* note 16, at 52.

risks through costly studies.²¹⁸ The EPA Administrator merely needs to make a determination that at some level a chemical is anticipated to cause cancer or other chronic health effect.²¹⁹ In addition, the EPA does not need to engage in an expensive program to monitor compliance because non-reporting is visible from the TRI report itself.²²⁰ However, constant non-reporters that release a reportable quantity of listed chemicals may go undetected because there is no system to identify them.²²¹ Consequently, EPA's Office of Enforcement and Compliance uses TRI data in conjunction with other resources to identify non-reporters, late reporters, and data quality errors.²²²

ii. Allows Comparison Over the Years & Tracks Changes

The electronic nature of TRI reporting enables the EPA to apply the data to show year-by-year trends, compare chemical facilities or industrial sectors, and even rank regional performance²²³ using databases such as *Envirofacts*.²²⁴ All governments, from the federal to the local, use TRI data to comprehend the impact on their environment, engage in debate, and influence the law.²²⁵ Louisiana, for instance, used TRI data to track progress of emissions from various facilities in order to analyze an emissions reduction program.²²⁶ The EPA uses TRI data to cross-check data from other sources and to compare TRI data with facilities owned by the same parent corporation.²²⁷ In addition, the EPA's Office

218. See Karkkainen, *supra* note 68, at 291 (showing the EPA budget as \$7 billion and TRI costs as \$25 million).

219. See *id.* at 291 (explaining that traditional environmental laws require extensive, costly, and time consuming studies to prove significant or unreasonable risks and to set proper exposure levels).

220. See *id.* at 294 (explaining that traditional environmental laws require complex measurements and on-site investigations).

221. See *id.* (explaining that in the early years of TRI nonreporting was frequent because many facilities were unaware of TRI reporting requirements).

222. Toxic Release Inventory Program Div., EPA, *How Are the Toxic Release Inventory Data Used?* (May 2003), 43, available at www.epa.gov/tri/guide_docs/2003_datausepaper.pdf

223. See Karkkainen, *supra* note 68, at 289 (describing how the EPA compiles, assemble, manipulates, analyzes TRI data and makes the data available for use by large groups of interested parties).

224. See *Envirofacts* database, *supra* note 111. .

225. See Dudley, *supra* note 72, at 4 (explaining that the early success of TRI led Congress to enact the Clear Air Act in 1990 in response to the large, but previously unknown, amounts of hazardous air pollution).

226. Toxic Release Inventory Program Div., EPA, *How Are the Toxic Release Inventory Data Used?* (May 2003), 38, available at www.epa.gov/tri/guide_docs/2003_datausepaper.pdf (stating that the Louisiana program used 1992 TRI results as a baseline for the 1997 emission reduction program).

227. See *id.* at 42 (stating that enforcement personnel use the Facility and Company Tracking System in conjunction with TRI data to compare parent and subsidiary data).

of Solid Waste and Emergency Response analyze long-term trends and industry practices using TRI data.²²⁸ Thus, TRI is an important tool for the government to hold the industry accountable.

B. RE-EVALUATING LIMITED PUBLIC ACCESS TO TRI INFORMATION

After the Bush Administration curtailed public access to TRI data for security reasons, some questioned whether there was an appropriate balance between the public's ability to understand their environment and protecting people from security threats. While the environment and homeland security are intimately related,²²⁹ some argue that government has a duty not to improve one at the expense of the other.²³⁰ Environmental right-to-know laws, like the TRI, are assets for increasing public safety.²³¹ Limiting access to TRI information has a greater impact on public safety than simply restricting public access to toxic chemical release information.²³² According to terrorism expert Timothy Ballard, refusing to talk about a terrorist threat does not diminish that threat; only an informed citizenry can forewarn local authorities.²³³ Therefore, a new approach is necessary to better balance public access to environmental information against national security interests.

1. *New Framework for Assessing TRI Information's Effect on Homeland Security*

A new facility and specific chemical framework for assessing the sensitivity of TRI information needs to be devised. This new framework would account for the legitimate security threat publicly available TRI information poses while keeping in mind that public disclosure reduces the security threat.²³⁴ Recently, a RAND Corporation study compared the value of public access to geospatial information with its potential for misuse by terrorists.²³⁵ The report developed a two-pronged approach to balance usefulness, uniqueness, and the costs and benefits of informa-

228. *Id.* at 43.

229. Gidiere & Forrester, *supra* note 2, at 139.

230. Barkas, *supra* note 19, at 234.

231. *See* Johnson, *supra* note 20, at 128 (stating that information disclosure laws play an increasingly vital role in environmental protection; increased disclosure reduces or eliminates environmental hazards created by chemical facilities).

232. *See* Echeverria & Kaplan, *supra* note 120, at 616 (comparing the low security risk of the general category of environmental law with the increased concerns with off-site consequences involving "extremely hazardous material").

233. *See* Durham-Hammer, *supra* note 6, at 351 (explaining that Timothy Ballard is a researcher at the Monterey Institute of International Studies).

234. Nevelow Mart, *supra* note 32, at 18.

235. John Baker et al., RAND: Nat'l Def. Research Inst., *Mapping the Risks: Assessing the Homeland Security Implications of Publicly Available Geospatial Information* at xvii-xviii (2004), available at http://www.rand.org/pubs/monographs/2004/RAND_MG142.pdf.

tion, thereby carefully restricting public access to only the most sensitive data.²³⁶ The first prong consists of an evaluation of the attacker's demand for information.²³⁷ The second prong encompasses the publicly available supply of information, including alternative nonfederal sources.²³⁸ In addition, the EPA has set out a four-prong (type, specificity, connectivity, and availability of information) test for assessing information sensitivity.²³⁹ Combining the EPA's "type"²⁴⁰ prong with the RAND approach is useful for addressing environmental data access and security concerns.

Once merged, the two approaches create a three-prong approach assessing the type²⁴¹, exclusivity, and the utility of TRI information.²⁴² The type of information disclosed describes the quantity of a listed chemical, the location of the facility, and the effects the chemical has on human health.²⁴³ The exclusivity prong assesses the alternative sources of TRI or TRI-like information.²⁴⁴ Utility relates to whether would-be attackers need the information in order to carry out their attack.²⁴⁵

i. Type of Information Available

The type analysis attempts to evaluate reportable information on the quantity of toxic chemicals at a given facility, the disclosed location of the chemical facility, and the possible detrimental effect on community health and safety.²⁴⁶ The type consideration assesses individual chemical facility trends, as well as general industry trends, to determine the possible security and environmental risks posed.²⁴⁷ Chemical facilities that consistently report large quantities of toxic chemicals pose greater national security risks than facilities that consistently report low levels of toxic chemicals.²⁴⁸ However, the analysis also considers the individual facility as well as industry trends.²⁴⁹ For example, if facility A re-

236. *Id.* at xviii-xix.

237. *Id.* at xix.

238. *Id.* at xix.

239. See Jacobson, *supra* note 9, at 373 (listing the four prongs as type, specificity, connectivity, and the availability of information).

240. See *id.* (defining type as "information on a facility's or a pollutant's location, chemical identification, volume, acute effects, and plant processes and management").

241. *Id.*

242. Baker, *supra* note 237, at xviii-xix.

243. Jacobson, *supra* note 9, at 373.

244. *Id.*

245. *Id.*

246. *Id.*

247. See *id.* (listing plant processes and management within the type prong).

248. See Baker, *supra* note 237, at xvii-xviii (indicating that facilities should be associated with specific protection levels based on the facility's needs).

249. See Jacobson, *supra* note 9, at 373 (suggesting that plant process and management as well as volume may contribute to the sensitivity of information).

ported a comparatively large volume of toxic chemical Z for ten years, then facility A should be considered a greater threat than facility B, who only once posted comparatively large volume of toxic chemical Z.

Next, an assessment of information regarding a facility's location and stock of chemicals' detrimental effect on human health is necessary.²⁵⁰ Chemical facilities located in rural areas are less of a threat than chemical facilities located in more urban settings.²⁵¹ Most chemical facilities are located in densely populated urban environments.²⁵² Consequently, urban facilities would come under greater scrutiny due to the increased overall danger to the public.²⁵³ However, mitigating circumstances might exist and change the analysis. For example, if a chemical facility used a comparatively low amount of a listed chemical or the chemicals used posed a low health risk, a facility located in a populous area may pose a low risk. Thus, the information regarding the facility would not have to be shielded from public access.

While TRI information empowers communities to reduce the level of toxic releases in their environments and prevent potential disasters, terrorists may also use TRI information to select targets and plan attacks.²⁵⁴ As described earlier, TRI information is a benefit and a risk to American communities.²⁵⁵ However, national security concerns are heightened only when a large quantity of toxic chemicals with a potentially significant effect on community safety are stored in a populous area. In all other situations, mitigating factors exist. With this selection process identified, a common theme emerges. A terrorist is most likely to use information that helps in the selection of a target and planning for an attack.²⁵⁶ Thus, the only real national security threats are chemical facilities located in heavily populated areas that use large amounts of chemicals that have a significant impact on public health and safety. Therefore, access to information should be limited to only those facilities most likely to be attacked.

250. *See id.* (indicating that volume, location, and acute effects on human health are factors for assessing sensitivity of information).

251. *See Johnson, supra* note 20, at 136 (describing one environmental injustice scenario where the largest concentration of chemical facilities are located in densely populated low income communities, that are ill equipped to pressure government or industry).

252. *Id.*

253. *See id.* (explaining that chemical facilities in populous areas are more likely targets for attack, however they are also a greater danger to the general health and welfare of citizens).

254. *See, Jacobson, supra* note 9, at 387-88 (rebutting the argument that posting environmental information on the Internet makes planning an attack easier and suggesting the fallacy of the argument by explaining the complexity of the September 11 four-pronged attack).

255. Nevelow Mart, *supra* note 32, at 18.

256. Baker, *supra* note 237, at xxi.

ii. Exclusivity

Generally, the EPA's Web site is not the exclusive location for TRI information.²⁵⁷ According to the RAND study, TRI information may be nice to have, but it is not an attacker's first choice of information because alternative sources of information exist.²⁵⁸ Consistent with this view, most TRI information is available through industry publications and from the chemical facilities themselves.²⁵⁹ Other sources of TRI information are accessible through non-governmental Internet databases, such as the OMB's RTK Net²⁶⁰ and Environmental Defense's Scorecard program.²⁶¹ The lack of exclusivity shows that the TRI is not necessary to discover the location of potential targets.²⁶² A terrorist could easily find this information in a trade journal, on the Internet, or by direct observation.²⁶³ As demonstrated by the September 11, 2001 attack, terrorists are committed to a long-term planning approach, which is not deterred by spending a little extra time searching the Internet or other sources for their valued information.²⁶⁴

Anecdotal evidence supports the view that spending minimal time on the Internet does not deter terrorists. One author spent a mere two hours researching non-governmental Web sites to discover all the information needed to plan an attack on a chemical facility.²⁶⁵ The author located a plastics facility on the Internet and accessed the company's own Web site.²⁶⁶ From the company's Web site, he determined the type and amount of chemicals used in production.²⁶⁷ The most valuable data came from an industry group, the American Chemistry Council ("ACC").²⁶⁸ From the ACC Web site a user can link to chemical facilities

257. *Id.* at 87.

258. *Id.*

259. Durham-Hammer, *supra* note 6, at 351.

260. See The Right-To-Know Network Home Page, <http://www.rtknet.org> (last visited Mar. 31, 2008) (providing access to numerous environmental databases, including TRI).

261. See Scorecard, The Pollution Information Site, <http://www.scorecard.org> (last visited Mar. 31, 2008) (organizing TRI information by zip code with a searchable database).

262. Siegel, *supra* note 18, at 365 (discussing the location of chemical facilities in the context of Risk Management Plans).

263. *Id.*

264. Jacobson, *supra* note 9, at 387-89.

265. *Id.* at 389.

266. *Id.*; Formosa Plastics Home Page, <http://www.fpcusa.com> (last visited Nov. 2, 2006).

267. Jacobson, *supra* note 9, at 389; see, e.g., <http://www.fpcusa.com> (providing links to showing Formosa's 2.5 billion pound per year polyvinyl chloride operations and claiming 2.2 billion pounds per year chlor-alkali capacity used for a variety of purposes).

268. *Id.* at 390; American Chemistry Home Page, <http://www.americanchemistry.com> (last visited Mar. 31, 2008).

based on location or type of chemical used.²⁶⁹ Most chemical facility Web sites contain information about chemical characteristics, potential harmful effects, the number and size of storage tanks, and chemical transportation methods.²⁷⁰ The relative ease with which a potential terrorist can access TRI and TRI related material from non-governmental Web sites, as well as other sources, indicates the lack of TRI information's exclusivity. Thus, reducing access to TRI information would not frustrate the efforts of terrorists.²⁷¹

iii. Utility

TRI information is not necessary to provide a "roadmap for terrorists."²⁷² Terrorists do not need a "Terrorism for Dummies"²⁷³ handbook in order to choose a target and plan an attack.²⁷⁴ The RAND study emphasizes terrorists' flexibility in obtaining all necessary information to carry out an attack.²⁷⁵ Publicly available information is usually not a terrorist's primary source of information.²⁷⁶ Attackers often need detailed information not available to the public.²⁷⁷ TRI information lacks the currency terrorists demand of their information.²⁷⁸ The usual delay of TRI information to the public is between two and three years.²⁷⁹

Similar to the geospatial information in the RAND study, TRI information is outdated and terrorist will most likely utilize other sources of information for planning and implementing an attack.²⁸⁰ While TRI may be a starting point for terrorists, TRI will not yield better information than industry and chemical facility Web sites or direct infiltration of a chemical facility.²⁸¹ The abundance of alternative sources of information degrades the value of TRI's usefulness in planning and implementing an attack.²⁸² Therefore, TRI's utility to terrorists is low.²⁸³

269. Jacobson, *supra* note 9, at 389-90; *see also* Chemical Guide Search Engine, <http://www.chemicalguide.com> (last visited Mar. 31, 2008) (providing links to a multitude of resources).

270. *See* Jacobson, *supra* note 9, at 390-91 (concluding that off site consequence analysis is helpful to fully implement any potential attack).

271. *Id.* at 387.

272. *Id.*

273. Barkas, *supra* note 19, at 217.

274. Jacobson *supra* note 9, at 397.

275. Baker, *supra* note 237, at 122.

276. *Id.*

277. *Id.*

278. *Id.*

279. Durham-Hammer, *supra* note 6, at 341; *see also* Karkkainen, *supra* note 68, at 336 (indicating that the TRI time lag is curable by implementing real time monitoring and electronic reporting, however this would increase compliance costs).

280. Baker, *supra* note 237, at 122.

281. *Id.*

282. *Id.* at 87.

Despite the time lag between reporting deadline and public dissemination, TRI information keeps communities better informed than they would be without the TRI.²⁸⁴ This increases the overall social utility and mitigates in favor of greater access to TRI information. Even with delayed information, the public is still able to track year-by-year trends in toxic releases.²⁸⁵ In addition, it is easy to track, compare, and rank a chemical facility across a number of datasets because TRI utilizes a variety of electronic databases, including *Envirofacts*.²⁸⁶ With increased access to TRI information and the ability to analyze TRI information in a number of different ways, communities have the ability to discover what types of chemicals exist in their environment, where they are located, the volume of an individual chemical's presence, and into what environment (land, air, or water) the chemical is released. Armed with this information, communities may exert the maximum influence on federal and local governments, as well as individual chemical facilities, to reduce a facility's environmental impact and any existing national security implications. Since TRI data has little value to terrorist and great value to community safety, classification of only the most sensitive data is the best way to balance security and safety.

2. *The Need for Particularized Interest Groups to Focus on Increased Access to TRI Information*

Very few of the many environmental interest groups devote adequate attention to TRI issues. For example, a search of Greenpeace's Web site produced only one TRI related result.²⁸⁷ Another Web site, Environmental Defense, displays 128 TRI related documents,²⁸⁸ but lacks current information.²⁸⁹ A focused public interest group is necessary because public access acts as a counterweight to industry and government

283. *Id.*

284. Karkkainen, *supra* note 68, at 338.

285. *Id.* at 290.

286. *See id.* (describing how TRI increases informational value by organizing a large array of previously scattered information into a coherent dataset that can be used by government or public officials, public interest organizations, interested members of the community, investors, and chemical facility workers).

287. *See, e.g.,* Greenpeace, *Louisiana: Cancer Starts Here in Polluters Paradise*, <http://www.greenpeace.org/raw/content/usa/press/reports/louisiana-cancer-starts-here.html> (last visited Aug. 8, 2003) (describing the unusually high toxic releases in the state of Louisiana causing increased risk of cancer).

288. *See, e.g.,* Environmental Defense, <http://www.google.com/search?q=toxic+release+inventory&h=en&lr=&ie=UTF-8&start=0&sa=N> (last visited Mar. 31, 2008) (displaying all "Toxic Release Inventory" search results).

289. *See generally* Environmental Defense, *EPA Issues Toxic Release Inventory for 2000*, available at <http://www.environmentaldefense.org/pressrelease.cfm?ContentID=2067> (last visited Mar. 31, 2008) (indicating that as of the access date, November, 3, 2006, Environmental Defense does not contain any current debate concerning the EPA's Burden Reduc-

decision-making and acts to uphold community interests.²⁹⁰ The new interest group should focus primarily on TRI information in order to distribute current information to the public.

The recent attempts to reduce TRI reporting highlight the need for this type of interest group. A public interest group concentrated on TRI issues would be able to properly and more adequately address the government and advocate for improved, not limited access to TRI information. With an interest group in place, communities would have a readily accessible and open forum to address concerns with proposed government rules or the effects of current rules, thereby allowing the individual to subvert the protracted forums designed to address government agencies. The interest group would then shift the burden of directly addressing the government away from the individual, creating a stronger, more united, and vocal community.²⁹¹ Using this vocal community, the interest group would be in a position to employ its experts to more effectively address local chemical facilities and government agencies and officials, evening the bargaining power of each side.²⁹² By providing a forum for discussion, the interest group will enhance public knowledge and discussion, thereby enhancing the overall social utility of TRI information, which keeps communities and America secure.

IV. CONCLUSION

Toxic Release Inventory Information is necessary to communities, industries, and government because such information increases the quality and quantity of information that communities receive. The increase in quality and quantity of information allows communities to know exactly what dangers exist in their environments. Communities can then act on this information to participate in community decision-making processes by requesting a reduction in toxic chemical use, or boycotting heavy polluters. Industries use TRI reporting to compare performance with similar companies. TRI reporting is also less costly than compliance with traditional environmental regulations. Government also benefits from standardization of reporting data, which increases the ability to track and compare TRI data.

tion plan, removal of *Envirofacts*, or the executive order allowing the EPA Administrator to preemptively label any information "secret").

290. See O'Reilly, *supra* note 21, at 616 (explaining that public access is necessary to curb industry and government decision-making, especially when the information is potentially hazardous).

291. See Karkkainen, *supra* note 68, at 298-94 (explaining the benefits of burden shifting from the government to industry).

292. *Id.* at 317 (explaining the benefits of open forums in facilitating discussion between community groups and facilities).

Once the importance of TRI data is established and weighed against national security concerns, a new framework to assess the reduced access to TRI information should be developed. The new framework should take into consideration the type, exclusivity, and utility of TRI information. After the framework is applied, the TRI emerges as a poor candidate for information restriction, because the TRI information is available from a wide variety of sources and is of little use for planning a terrorist attack. To protect the TRI from present and future reductions in access and advocate for increased reporting standards, a public interest group should be formed which focuses exclusively on TRI information.

Using such a framework to evaluate access to environmental data, as well as implementing a particularized interest group, will ensure that the appropriate balance is struck between national security and community safety.

