Right-to-Know, or Blueprint for Terror?

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ABSTRACT

The terrorist attacks of September 11, 2001, re-ignited the debate over the public's right to know about the use and potential release of chemicals near communities. Public disclosure of information on chemical handling and releases is viewed by many as a key tool to reducing and avoiding hazards. Many in industry have joined law enforcement agencies, such as the Federal Bureau of Investigation, in cautioning against unrestricted disclosure of information that could become a "blueprint" for terror. Notwithstanding law-enforcement concerns, the Freedom of Information Act ("FOIA"), the Emergency Planning and Community Right-to-Know Act (EPCRA), and the Risk Management Plan provisions of the Clean Air Act ("Section 112(r)"") all favor the public disclosure of information regarding chemical hazards and risks.

The September 11, 2001 terrorist attacks have again called in question the policy of public disclosure regarding risk management plan ("RMP") information in the U.S. Indeed, in the wake of September 11, the federal government has moved to restrict access to RMP information previously regarded as in the public domain. At the same time, a devastating chemical explosion and fire in Toulouse, France, on September 21 gave further impetus to the push for disclosure of risk information in Europe. Here, proposals for further restrictions on dissemination of RMP information are pending in the federal government.

This paper highlights the tension created by the policy justifications behind the community's right to know and the government's countervailing need to limit access to sensitive RMP information. First, it examines current law - e.g., FOIA, EPCRA, and Section 112(r) - and the underlying policies favoring disclosure. Second, the paper analyzes proposals within the federal government to restrict access to Section 112(r) and EPCRA information for the sake of national and site security and the policy rationale supporting these proposals. Finally, the paper suggests means to reconcile these two policies so that the appropriate public has access to information for which it has a compelling need and the government controls the dissemination of sensitive information. It also suggests steps that industry should take to protect its own sensitive RMP information, using "lessons learned" from experience with information and facility security in the nuclear power industry.