

**Transparency after 9/11: Balancing the “Right-to-Know” with the Need for Security**

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## ABSTRACT

Mandatory and voluntary environmental information disclosure has grown dramatically over the past decade. The prevailing view had become that the public has a “right-to-know” the risks they face and that more information would ultimately lead to better societal decision-making. This all changed on September 11, 2001. The concern for homeland security has led to thousands of web pages and documents at public reading rooms being withdrawn. This article reports on a panel discussion with leading environmental information disclosure experts on the change in the transparency landscape post 9-11. Among the questions addressed: Have companies begun to rethink this trend post 9/11? What is the public’s “right-to-know”? Does reducing the amount of information available to the public increase or decrease the risk to communities or emergency responders? Will the heightened threat of terrorist use of chemicals put pressure on companies to find alternative chemicals and processes?

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### **Background**

Governments around the world have embraced a new form of environmental regulation – mandatory disclosure of information. Information disclosure programs have been characterized as the third wave of environmental regulation – following the original regulatory approach and the subsequent introduction of market-based incentives.<sup>1</sup> Perhaps the best-known example of the third wave is the Toxic Release Inventory (TRI) program in the U.S., whereby firms are required to disclose legally emitted chemical releases. TRI has brought about significant reductions in chemical emissions. For example, total on-site and off-site releases of toxic emissions are reportedly down by 45.5% between 1988 and 1999.<sup>2</sup> The effect of TRI disclosure on both firm behavior and firm value has been empirically demonstrated.<sup>3</sup> Other disclosure programs have focused on drinking water safety and risk management plans for chemical releases.<sup>4</sup> In addition to government dissemination of this information, environmental organizations have utilized this information to provide user-friendly, community-based information sources.<sup>5</sup> Similar programs have been instituted in other countries and contexts, including India, Indonesia, Philippines, Colombia, Mexico and Brazil.<sup>6</sup>

Information disclosure programs have been widely touted by policymakers for numerous reasons. One obvious benefit is the fact that information disclosure has been found to result in significant improvements in environmental quality and emergency preparedness. While the mechanisms by which these environmental improvements are still being studied, there is both theoretical and empirical evidence demonstrating the environmental quality improvements.<sup>7</sup> In addition, however, information disclosure

programs satisfy the democratic belief that the public has a ‘right to know’ how they might be affected by third party pollution. On a more practical level, information disclosure programs are generally thought to cost the government far less than drafting and implementing industry wide regulations. As a result of these presumed benefits, information disclosure programs might also be politically more feasible than new coercive regulations.

Voluntary environmental information disclosure is also growing, as the number of corporate environmental reports suggests.<sup>8</sup> For example, a study of 1,000 of the largest global companies found that 24% had issued reports in 1999, up from 17% in 1996.<sup>9</sup> The Global Reporting Initiative, a voluntary framework for environmental and sustainability reporting, recently reported that over 100 companies worldwide have adopted their new reporting standards.<sup>10</sup> Business performance can be aided by the transparency of information disclosure, since stakeholders are more able to build relationships with firms.<sup>11</sup> One of the growing trends in voluntary information disclosure is Internet reporting. As usability of the web site increases, so does the potential for stakeholder involvement and interaction. Some companies are even creating different reports for different types of stakeholders, as AT&T experimented with in 1997, by customizing productions for employees, shareholders, communities, government, and non-governmental organizations. Other sites are beginning to include plant-specific environmental information (e.g., [www.gmability.com](http://www.gmability.com)). While there are as yet no definitive empirical studies demonstrating the business case for reporting, growing anecdotal evidence points in that direction. Of course, it might simply be that the companies that **do** voluntarily report are the “good actors” that are most likely to benefit

from the positive reputation effect that reporting might have. This is not necessarily an indictment of voluntary reporting, as much as a potential explanation for why some companies do and others do not report.

Notwithstanding these apparent benefits, information disclosure does come at a cost. Prior to September 11, 2001, some concern had been expressed by industry officials and policy analysts about both divulging proprietary information that might help competitors and about the security risks associated with dissemination of environmental information. Other concerns were voiced about the accuracy and meaningfulness of information disclosure and the high cost of information provision.<sup>12</sup>

Despite these concerns, the prevailing view had become that the public has a “right-to-know” the risks they face and that more information would ultimately lead to better societal decision-making. This all changed on September 11, 2001. The concern for homeland security has led to a wholesale retreat from the transparency trends of the past decade. Thousands of web pages and documents at public reading rooms have been withheld as concerns developed that publicly available information could be used by terrorists to target areas of vulnerability and high impact.<sup>13</sup>

For example, a recent article in ASAP, the Bulletin of the Atomic Scientists, cited a host of information that has been “temporarily removed” from agency websites and/or public information reading rooms.<sup>14</sup> EPA is not alone in removing sensitive information such as risk management plans (RMPs). For example, documents removed from the Yucca Mountain Web site included: the draft environmental impact statement; the site viability assessment; lists of once-available technical documents; online databases; elements of a virtual tour of the Yucca Mountain site and surrounding Nye County; a

video showing a 360-degree view from the top of Yucca Mountain; and maps.” To date, there is little or no guidance on what should be taken out of the public’s view or the review process that should be undertaken to decide what information will be allowed back in the future. There is also no consistency across Federal agencies or Federal nuclear sites. For example, much of the material taken off the Savannah River site is reportedly available at the Hanford site.

While policies are not yet formalized, the White House recently ordered federal agencies to “scrub their Web sites of sensitive information on weapons of mass destruction and other data that might be useful to terrorists.”<sup>15</sup> Agencies are being asked to identify “sensitive but unclassified” information on a case-by-case basis and to weigh the public’s right-to-know against security concerns. Some have called for repeal of right-to-know laws altogether. For example, on October 8, 2001, the Governor of Tennessee wrote to Tom Ridge, Director of the Office of Homeland Security, urging him to ask President Bush to revoke or temporarily suspend the SARA Title III “Community-Right-to-Know Act.” Governor Sundquist cited the fact that under current laws, “a determined individual could ask for access to files which could tell exactly how many pounds or gallons of dangerous chemical or biological ingredients were present at an exact location in any of our states...determine from these files when shipments in and out of facilities could be tracked...(and)...know where to deter and stop emergency response personnel and the entire emergency plans which state and local officials would use to interdict their movements.”<sup>16</sup>

Environmental information programs have become the subject of workshops and summit meetings to assess “best practices.” Just a few years ago, the questions on most

people's minds were how to make these programs more effective by focusing them on environmental priorities, improving the timeliness, accuracy and usefulness of the information, and reducing the reporting burden to companies.<sup>17</sup> The focus of discussion has shifted dramatically, however, since the terrorist attacks on September 11, 2001. At a summit meeting in March 2002, hosted by Vanderbilt Center for Environmental Management Studies (VCEMS), one of the primary research needs identified by participants is to understand the tradeoff between the public's right-to-know and homeland security.<sup>18</sup>

### **BELL Conference Panel Questions**

With this background in mind, this session at the BELL Conference focused on the growing trend towards corporate environmental transparency and the retreat from that trend that has just begun post 9/11. Participants included: (1) William Blackburn, Vice President, Corporate Environmental Affairs, Baxter International, (2) Kenneth Green, Chief Scientist, Reason Foundation, and (3) Daniel Fiorino, Director, Performance Incentives Division, U.S. Environmental Protection Agency.

After each of the speakers presented some preliminary views on the subject, they discussed the following questions as well as others posed by session attendees:

- 1. What are the benefits of transparency to corporations? Why has this trend developed and is it real? Have companies begun to rethink this trend post 9/11? What other concerns do companies have about transparency (e.g. proprietary data)? Should the move towards reporting facility-based materials accounting (mandated in certain states) go forward?**
- 2. What is the public's "right-to-know"? Does it include the risks they face from both chronic and acute environmental hazards in their communities?**

3. **Does reducing the amount of information available to the public increase or decrease the risk to communities? What about the risk to emergency responders?**
4. **Are there differing “publics”? Should those who live near a facility be given selected access to information upon proper identification and registering with authorities? How could secrecy be maintained?**
5. **Will the heightened threat of terrorist use of chemicals put pressure on companies to find alternative chemicals and processes? Will it lead to further regulation?**
6. **What effect do security concerns have for the Global Reporting Initiative?**

### **Discussion: Seeking Common Ground**

While different opinions among panelist obviously exist, the discussion had a surprising degree of commonality and agreement. Does the public have a “right-to-know” the environmental risks they face? That is not an easy question to answer. While most of us would agree that the public has a right-to-know about significant risks to health and property, it is not obvious where to draw the line between “significant” and other risks. As Kenneth Green noted, “We’d like to know all kinds of things, but gathering data has costs, revealing information has consequences, and the meaningfulness of information that is disclosed can be tricky.” The well-known concern over the difference between raw TRI emissions and actual risks posed to populations is but one example of this concern. He further noted, that “simply ‘liking’ something doesn’t constitute a right to it, nor justify imposing obligations on others to take actions that not only cost them money, but leave them at more risk.”

“Even if we assert that the public does have a right-to-know about certain risks they face, there are still hard questions we need to ask: What form does the knowledge

take? Who pays for gathering and communicating it? What institution (mandates or markets) best serves the purpose?”

Much of the value – and the risk - around reporting appear to be at the facility/community level. People who live and work near a facility are obviously concerned and interested in their chronic exposure and the risks posed from an accidental discharge. Similarly, if a terrorist is interested in locating a vulnerable chemical facility that can do maximum damage, he or she needs access to very detailed information about local facilities. Thus, aggregate chemical usage for a multinational company, for example, will unlikely be of much value to either local community groups or terrorists. Thus, there appears to be less concern for broad Corporate Environmental Reporting and more concern for facility level data.

One potential solution being discussed is to allow limited access to facility-level data that is sensitive. Thus, for example, local community leaders or other carefully screened individuals might be given on-site access to detailed information on a ‘need-to-know’ basis.

Is the concern over security real or perceived? While there is no doubt a real threat of terrorist attacks on chemical, biological, or nuclear facilities, the real question is whether or not any of the environmental information dissemination programs in place add to this threat. Is it too late to put the cat back in the bag as some agencies are trying to do? The answer to this question is not at all obvious. However, it was noted that popular newspapers have recently reported on attempts to breach security at chemical facilities and how lax security is.<sup>19</sup> They have also reported on specific chemical facilities. In a

country with freedom of press, how can we expect restricted flow of government-mandated environmental information to have such an impact?

Member of the audience expressed concern that as researchers, they will lose a valuable source of information that is providing much needed evidence on factors that contribute to improving the environment. While much of the published research focuses on corporate-level environmental performance data, significant information has been gleaned from facility-level data as well. It was noted that there is also some precedent for allowing researchers to have limited access to sensitive business information (e.g. Census Bureau data on facility level production). Thus, if restrictions are ultimately imposed on information dissemination, it might be possible to allow access to researchers under the proper confidentiality and security safeguards.

For many of the larger companies that have embraced voluntary reporting, there is little question that they will continue down the road of disclosure. Information dissemination has provided many benefits – both internally and externally. According to William Blackburn, "More and more companies are beginning to see there is real business value to transparency, that there is much information of interest to the public that can be communicated without running afoul of security concerns. Transparency can help build credibility with consumers and the public, creating an asset of special value when times are tough. But more important, transparency can shine a bright light on issues internally and serve as a powerful agent for change in the direction of good corporate citizenship."

Recently, two bills have been introduced in Congress with very different approaches to dealing with this issue. One approach, titled the "Chemical Security Act"

would have EPA and the Justice Department identify the highest-priority facilities and force companies whose processes use the most hazardous chemicals to find safer processes.<sup>20</sup> Not surprisingly, the chemical industry is against this approach, noting that it would change the role of EPA from regulating pollution to regulating manufacturing processes. Supporters of the Chemical Security Act include environmental and right-to-know groups. Another approach, titled the “Community Protection from Chemical Terrorism Act” would eliminate public access to information about nearby chemical risks.<sup>21</sup> If passed, this would be in stark contrast to the pre-9/11 Congressional approach of mandating more access to environmental information.

Regardless of whether or not the Chemical Security Act ever becomes law, one potential outcome of the heightened security concerns will be renewed voluntary attempts by industry to find alternative manufacturing processes that do not require chemicals that are as hazardous. As the risk of security breaches increases, so does the cost of protecting against those breaches, the cost of insurance, etc. Thus, firms might now have an added incentive to find more benign production processes.

One of the questions posed to the panel was whether the post-9/11 era will reverse the growing trend towards *voluntary* reporting mechanisms. Would security concerns roll back these voluntary efforts? Somewhat surprisingly, the consensus seemed to be that on the contrary, voluntary efforts will become more important. As Kenneth Green noted, codes of conduct such as Responsible Care, CERES, GEMI, ISO 14000 and Global Reporting Initiative assure risk management, but preserve privacy. Previously, the biggest threat to private EMS systems was the governmentalization of “right-to-know.” Now, the security steps taken since the September 11 attacks may return the “right-to-

know” focus to voluntary EMS systems.” Of course, this might also result in less detailed information being disclosed than under mandatory governmental approaches.

### **Concluding Remarks**

The general consensus of the panel and attendees was that information is a powerful tool for the public, policy makers and researchers. In spite of the recent curtailment of information availability and concerns over security, there is a legitimate need for environmental information. The key questions, of course, still focus on who should be entitled to what type of information. As one participant noted, we should not underestimate the benefits of a free society where individuals have access to important information about the institutions that affect their daily lives. The one plane that did not hit its intended target on September 11 was the plane in which the passengers had access to information about the intent of the hijackers and their ultimate fate. This is a powerful lesson in the value of information.

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<sup>1</sup> T. Tietenberg, Disclosure Strategies for Pollution Control, *Environmental and Resource Economics*, Vol. 11 (1998) pp. 587-602.

<sup>2</sup> U.S. Environmental Protection Agency, Toxic Release Inventory 1999 - Executive Summary (2001), [www.epa.gov/tri/tri99/press/execsummary\\_final.pdf](http://www.epa.gov/tri/tri99/press/execsummary_final.pdf).

<sup>3</sup> See M. A. Cohen, Information as a Policy Instrument in Protecting the Environment: What Have We Learned?, *Environmental Law Reporter*, Vol. 31, (2001), pp. 10425-31; S. Konar, M.A. Cohen, Does the Market Value Environmental Performance? *Review of Economics and Statistics*, Vol. 83 (2001), pp. 281-9; and S. Konar, M.A. Cohen, Information as Regulation: The Effect of Community Right to Know Laws on Toxic Emissions, *Journal of Environmental Economics and Management*, Vol. 32 (1997), pp. 109-124.

<sup>4</sup> For example, Section 1414(c)(4) of the Safe Drinking Water Act Amendments of 1996 requires community water sources to issue “consumer confidence reports” on the safety of their local water supply. Under §112(r) of the Clean Air Act Amendments of 1990, businesses must publicly disclose “risk management plans” (RPMs) for accidental chemical releases.

<sup>5</sup> For example, see [www.scorecard.org](http://www.scorecard.org).

<sup>6</sup> S. Afsah,, B. Laplante, D. Wheeler, Regulation in the Information Age: Indonesian Public Information Program for Environmental Management, World Bank Policy Research Working Paper (March 1997).

<sup>7</sup> See for example, J. W. Maxwell, T. P. Lyon, S.C. Hackett, “Self-Regulation and Social Welfare: The Political Economy of Corporate Environmentalism,” *Journal of Law and Economics*, Vol. 43 (2000), pp. 583-617; S. Konar, M. Cohen, “Why Do Firms Pollute (and Reduce) Toxic Emissions? Vanderbilt University, Working Paper (2000); and M. A. Cohen, V. Santhakumar, “Information Disclosure as Environmental Regulation: A Theoretical Analysis. Vanderbilt University, Working Paper (2002).

<sup>8</sup> A. White, Sustainability and the Accountable Corporation: Society’s Rising Expectations of Business, *Environment*, Vol. 41 (1999), pp. 30-43.

<sup>9</sup> KPMG, International Survey of Environmental Reporting (1999).

<sup>10</sup> See [www.globalreporting.org](http://www.globalreporting.org).

<sup>11</sup> K. Shepherd, M. Abkowitz, M.A. Cohen, Online Corporate Environmental Reporting: Improvements and Innovations to Enhance Stakeholder Value, *Corporate Environmental Strategy*, (2001), Vol. 8, pp. 1-9.

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<sup>12</sup> A. Volokh, K. Green, L. Scarlett, Environmental Information: The Toxic Release Inventory, Stakeholder Participation and the Right to Know, Reason Public Policy Institute, Policy Studies Nos. 246 and 247 (1998) available at <http://www.rppi.org/ps246.html> and <http://www.rppi.org/ps247.html>. They report that EPA has over 300 different reporting rules requiring millions of hours of industry time spent on paperwork alone – resulting in costs that exceed \$3 billion annually. See also D. Case, Legal Considerations in Voluntary Corporate Environmental Reporting, *Environmental Law Reporter* (2000), Vol. 30, pp. 10375 (available at [www.vanderbilt.edu/VCEMS/papers/CERartic.pdf](http://www.vanderbilt.edu/VCEMS/papers/CERartic.pdf)).

<sup>13</sup> For a comprehensive list of information that has been retracted, see <http://www.mapcruzin.com/news/rtkpost911.htm>.

<sup>14</sup> B. Costner, Access Denied, *Bulletin of the Atomic Scientist*, (2002), Vol. 58(2), pp. 58-62.

<sup>15</sup> Memo from White House Chief of Staff Andrew Card, quoted by Bill Sammon, “Web Sites Told to Delete Data,” *The Washington Times*, March 21, 2002.

<sup>16</sup> Letter from Governor Donald Sundquist to Tom Ridge, October 8, 2001.

<sup>17</sup> M. Abkowitz, M.A. Cohen, S. Buck, D. Case, P. Drake, Environmental Information Disclosure and Stakeholder Involvement: Searching for Common Ground, *Corporate Environmental Strategy*, (1999), Vol. 6, pp. 415-424. In addition, see [www.vanderbilt.edu/vcems/cesr2/cesr2.html](http://www.vanderbilt.edu/vcems/cesr2/cesr2.html).

<sup>18</sup> “Environmental Risk Communication: What Is It and How Can It Work? Summit Hosted by Vanderbilt University, March 5-6, 2002, Nashville, TN.

<sup>19</sup> See A. Davis, New Alarms Heat Up Debate On Publicizing Chemical Risks, *Wall Street Journal* (May 30, 2002), p. A1; C. Prine, Lax Security Exposes Lethal Chemical Supplies,” *Pittsburgh Tribune-Review* (April 7, 2002), and C. Prine, Chemicals Pose Risks Nationwide, *Pittsburgh Tribune-Review* (May 5, 2002).

<sup>20</sup> S. 1602, The Chemical Security Act, October 31, 2001.

<sup>21</sup> S. 2569, “Community Protection from Chemical Terrorism Act” June 5, 2002.