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EPA'S RISK MANAGEMENT PLAN (RMP) PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON
CLEAN AIR, WETLANDS, PRIVATE PROPERTY AND
NUCLEAR SAFETY

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

MARCH 16, 1999

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EPA'S RISK MANAGEMENT PLAN (RMP) PROGRAM

TUESDAY, MARCH 16, 1999

UNITED STATES SENATE,
SUBCOMMITTEE ON CLEAN AIR, WETLANDS, PRIVATE PROPERTY AND NUCLEAR SAFETY,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:31 a.m. in room 406, Dirksen Senate Building, Hon. James M. Inhofe (chairman of the subcommittee) presiding.

Present: Senators Inhofe, Lautenberg, Bennett and Graham.

OPENING STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator INHOFE. The meeting will come to order.

We would ask the first panel to come up to the table, please, Mr. Fields, Mr. Burnham. I will give an opening statement. Other members are on their way. We will try to keep on schedule for this hearing because I have another meeting coinciding at the Senate Armed Services Committee, and I am supposed to be in two places at the same time. So we will move right along.

Today's hearing will examine the EPA's risk management plan program as required under the Clean Air Act. While I agree with the program's intentions, the need to make emergency information available to local emergency response personnel, I have serious concerns about the manner in which the EPA is implementing the program. I believe the EPA is flat out wrong in including substances on the list for flammable reasons alone. I can understand if you have one that is flammable and toxic, but just here we would be referring to those substances that are only flammable.

First, regarding flammable substances, the purpose of the provision in the Clean Air Act is to safeguard local communities against accidents involving toxic chemicals. The Act provided OSHA with the authority to issue regulations to protect workers against chemical accidents and to provide EPA with the authority to protect the citizens who live around the plant from escaping toxic fumes.

The EPA regulating propane under this provision is regulatory overreach in the area that I don't believe they should be. I'm concerned that through this regulation, the Federal Government is picking favorites between fuels which is clearly outside the intent of Congress and the Clean Air Act. The result of including propane on the list will be fuel switching, potentially driving propane dealers out of business.

We have already seen a case where fuel switching is being encouraged by local governments. We have a letter here that I think is self explanatory, a copy of the letter by the Orange County, California regulating agency where they recommend that propane users either reduce the amount of propane on hand or switch to a nonregulated substance in order to avoid the EPA rule. When a local government agency sends out letters like this because of an EPA rule, then there is a problem with the rule. This is unacceptable. The EPA has no business deciding which fuels should be used and which should be encouraged.

I'm interested in hearing from Mr. Bertelsmeyer with the Propane Gas Association about this fuel switching issue. I believe that will be on the second panel.

I'm also concerned that as far as fuels are concerned, this RMP rule duplicates other regulations by OSHA and by the National Fire Protection Association and by various State regulations. I have a chart which shows the duplication between this rule and others. The chart is over here and I'd like to have some of the witnesses address that. I'd like to have Mr. Fields explain exactly what is different in the EPA rule compared to the other regulations and during the second panel, I'd like to hear Mr. Bertelsmeyer respond to those statements.

A second major concern with this rule is the potential use of this information by terrorists. If they have access to the worst-case scenario data, they can use this information to target potential bombing sites. You can already find information on the Internet on how to make a bomb. The last thing we need now is to have information on the Internet which will show terrorists where they can be most effective. I have a particular concern and interest in this since I'm from Oklahoma and having gone through the Federal office bombing.

Last spring, we asked the FBI to take a look at the worst-case scenario data and the EPA's plans to disseminate the information on the Internet. I'm pleased that the FBI convinced the EPA that it would be foolhardy to release the information. However, that is not the end of the problem. Anyone can request and receive the data from EPA through the Freedom of Information Act and the EPA would have to comply, I would assume. That being the case, someone could make that request and then they in turn could put it on the Internet and it would get there anyway.

We need to make sure the local emergency personnel have access to the information and not provide a forum for terrorists around the world to target and blow up facilities in our neighborhoods.

[The referenced letter follows:]

ORANGE COUNTY, CALIFORNIA, CERTIFIED UNIFIED PROGRAM AGENCY,
January 14, 1999.

Mr. DAN LOWER,
All Star Gas,
12600 Western Avenue,
Garden Grove, CA 92841.

DEAR MR. LOWER: Your business has been identified as subject to the requirements of the California Accidental Release Prevention (Cal-ARP) program found in Chapter 6.95, Article 2 Health and Safety Code. The Orange County Certified Unified Program Agency is authorized to implement this program for the State of Cali-

fornia. In addition, your business is also subject to the Federal program, found in section 112(r) of the Clean Air Act implemented by U.S. EPA.

Your business is requited to develop and implement a risk management program to prevent accidental releases of regulated substances that can cause serious harm to the public and the environment. You are also required to develop and submit a Risk Management Plan (RMP), which includes a summary of your risk management program. The RMP must be submitted to this agency and an electronic version submitted to U.S. EPA by June 21, 1999.

We are requesting that your business contact this agency to schedule RMP compliance meeting during the month of January 1999. These meetings are required pursuant to California regulatory requirements and to ensure that your business meets the federally mandated timeline.

Should your business so choose, you may implement one of the following options in lieu of developing an RMP:

1. Eliminate or replace the Regulated Substance with a non-regulated substance.
2. Reduce the amount onsite to below the Federal threshold quantity. Note: This option may still require the development of an RMP pursuant to California law, but will delay the submittal process to a date beyond the June 21, 1999 deadline.

If one of the above options is chosen you will be required to verify compliance prior to the June 21, 1999 deadline.

This agency is dedicated to assisting your business in meeting these new regulatory requirements. In the near future we will be providing technical/regulatory assistance as well as RMP guidance documents. However, failure to develop and submit an RMP as required will subject your business to penalties of up to $10,000 per day. In addition, failure to contact and work with this Agency during development of your RMP could cause costly revisions to be made during the agency review and evaluation period.

Please contact James Hendron at (714) 667–3708 to schedule your meeting time and date for questions related to this letter or your responsibilities under the Cal-ARP program.

Sincerely,

PEARL HOFTIEZER, *Supervising Hazardous Waste Specialist,*
Orange County Certified Unified Program Agency.

Senator INHOFE. We are joined by Senator Lautenberg. I'd ask Senator Lautenberg if he has an opening statement to make at this time?

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thank you, Mr. Chairman.

I do and I thank you for holding a hearing on this important topic. We face, in the issue of public access to chemical accident scenarios, one of the fundamental tensions of an open, democratic society—how accessible to make information whose disclosure may prevent harm, but some may use it to cause harm. We often refer to the 1984 tragedy in Bhopal, India when a chemical leak took 2,000 lives, as a wakeup call on the issue of chemical accidents. In the wake of that tragedy, I originated the amendment to the 1986 Superfund bill that established the toxics release inventory through which companies disclose routine chemical releases and emissions.

In the 1990 Clean Air Act, Congress took the right-to-know concept a step further by creating the risk management program under which companies will disclose worse chemical accident scenarios and it is the risk management program that we are discussing today. Every year, there are dozens of chemical incidents in my State of New Jersey, many requiring evacuations of the surrounding communities, many causing injury and tragically, death. Nationwide, the Chemical Safety and Hazard Investigation Board reports an average of 60,000 chemical incidents each year and it results in hundreds of evacuations and injuries and an average annual death toll of about 250 people.

Our goal must be, especially in a State with as strong a chemical industry as New Jersey, to make the industry safer, to make the environment safer, even as it becomes more productive. Toward that end, we have regulatory programs specifying the minimum safety practices that should be in place at each firm. We have a Chemical Safety Board identifying the root causes of most serious accidents and thanks to risk management programs created under the Clean Air Act of 1990, we will soon have a right-to-know program that applies to chemical accidents just as the 1986 right-to-know program applies to routine chemical releases. Strong regulatory and enforcement programs will always be an essential component of protecting safety, health and the environment in this country.

However, Mr. Chairman, the right-to-know programs have promoted risk reduction far beyond what the regulatory programs could achieve on their own. The premiere example of this is the toxic release inventory which, through public disclosure, has encouraged, has led industry to cut toxic chemical releases in half in 10 years. This is without the big hand of government overlaying it. People responded to the requests, many companies actually turned the recaptured emissions into valuable assets, part of their inventory, part of the material from which they make product.

The power of public scrutiny manifests itself in several ways. Newspapers run articles naming a specific company or plant, the top chemical releasor in a town, State or in the country. Environmental agency heads publicly call upon the biggest firms to voluntarily reduce their releases. Vendors and consultants market pollution prevention technologies to facilities that are high on the list. All of this is made possible by the right to know and it all contributes to an atmosphere in which industry, through non-regulatory means, is given an incentive to use safer products and processes.

I take very seriously the FBI's concerns that disclosure of some of this information might increase risks due to terrorism. All of us agree on the need to take all reasonable measures to protect our citizens from terrorists. At the same time, it is important to have programs such as right-to-know that help reduce public risks from very real and dangerous chemical accidents. If there are steps that we can take to reduce threats from terrorism at chemical facilities, we should certainly try to do that without eliminating the public safety benefits that flow from disclosure of information about chemical facilities. We might want to propose measures to improve site security at these chemical plants or to even ban the most hazardous chemical operations from residential areas and schools.

I am going to be very interested to hear, Mr. Chairman, what advice our expert witnesses are going to give us to help retain the benefits of the right-to-know program, while at the same time safeguarding ourselves from the threats of terrorism.

I thank you very much.

Senator INHOFE. Thank you, Senator Lautenberg, and I think when you said the information is there to prevent harm and could be used to inflict harm, I think that is what this is really all about.

We will have three panels. The first panel will be Federal Government people and the second will be those with an interest in

propane and the third on the security issues. All told, we have nine witnesses who will be testifying today.

I would mention to you that while we will have members who will be coming and going, we do have their staff here. You will be receiving requests for answers to questions asked for the record. You each will be given 5 minutes to make an opening statement. However, your entire statement will be made a part of the record. We're going to use the lights, and after that we will ask for questions from the members of the subcommittee.

We will start off with Mr. Timothy Fields, Acting Assistant Administrator, Office of Solid Waste and Emergency Response, U.S. EPA, and Robert Burnham, Chief, Domestic Terrorism Sector, National Security Division, Federal Bureau of Investigations.

Mr. Fields, I understand this committee has received your nomination and I'll be anxious to hear your responses so that we can move ahead with your confirmation.

Mr. Fields, why don't you begin?

STATEMENT OF TIMOTHY FIELDS, ACTING ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. FIELDS. Thank you very much, Mr. Chairman.

I thank the members of the committee for being here today to hear the testimony, on a very important topic, risk management planning. My office has the EPA's primary responsibility for the risk management program as well as the agency's anti-terrorism program in terms of coordinating with other Federal agencies on how we protect ourselves against terrorism at the Federal, State and local levels. I'm pleased to have the opportunity to present information about the importance of chemical safety, community right-to-know and our plan to balance the benefits of community right-to-know with legitimate concerns about protection against terrorist threat.

We did make a decision not to put the off-site consequence analysis data on the Internet on November 6, 1998, at the advice of the Federal Bureau of Investigation and other national security interests in this country. All other RMP, risk management information except for confidential business information, would be available and disseminated on the Internet.

Since November, we've had concerns about how others might post offsite consequence analysis data on the Internet. We've been working together with the National Security Council, the Federal Bureau of Investigation, the Department of Justice, the Office of Management and Budget and the National Institute of Standards and Technology to explore ways in which we can prevent others from posting OCA data on the Internet as well. We will continue to keep this subcommittee and this committee informed of those discussions as we go along. Our goal is not to post OCA data on the Internet and we don't want others to post the data. The National OCA data base should not be posted on the Internet and we will take efforts to make sure that does not occur.

We will handle FOIA or Freedom of Information Act requests in a way that minimizes the amount of information we have to give out but at the same time satisfies the requests of requestors. We

are working with NIST on technology, for example, that would deter copying or posting of OCA data on the Internet as well as other mechanisms by which we can minimize the amount of information that has to be given out in response to FOIA requests.

Second, we do believe that propane does need to be regulated. I'd like to address some of the concerns we have there. While we made a decision to list flammable substances, including propane, on the list of substances, 140 altogether are to be regulated under the risk management program. We applied the statutory criteria and as a result of applying those criteria, we developed a list of 77 highly toxic and 63 highly flammable substances that based on their intrinsic hazardous characteristics and regardless of their use, they pose the greatest risk of harm to the public and the environment if they are accidentally released.

The accident history shows us that accidental releases of propane can cause significant public health and environmental threats. After the Bhopal, India incident that we all know about, the second largest industrial chemical accident in history occurred at a propane gas terminal in 1984 in Mexico City where 650 people were killed, 6,400 were injured. In this country over the last 10 years, we've had 1,000 incidents involving propane accidents, 8 major accidents occurred in the last year alone, including one on New Year's Eve. We had four deaths, 22 injuries that occurred and thousands of people evacuated in 1998 alone due to propane accidents in this country.

However, we recognize even though we have significant release potential—we have more than 2 million propane facilities in this country—only 33,000 are estimated to be covered by this risk management program that we're implementing. We've labored to lessen the regulatory burden by only including a small segment, by giving a reasonable threshold of 10,000 pounds, 2,380 gallons that would be covered. We've developed model plans for propane users to use in preparing risk management plans to minimize the burden. We've provided guidance on how those facilities can determine the amounts of facilities that could be exempted by putting out guidance a couple of weeks ago on distances. If people's tanks are separated by certain distances, they may not be covered at all.

At the same time, the agency is working to explore whether a higher threshold would appropriately safeguard the public and the environment. Should a higher threshold be warranted for propane facilities? We will make that decision in the next 30–60 days and be able to set another threshold prior to June 21. The EPA will also work with the National Fire Protection Association's Standard Committee on Standard 58 to address how that standard might be modified to meet the requirements of the risk management plan regulations.

If we can reach an agreement over time on how NFPA-58 (National Fire Protection Association Standard) could be modified to meet our requirements, we will work with the industry to defer to that standard for risk management planning.

In conclusion, I wanted to say that we have tried to implement the risk management plan rule in a way that achieves the mandate to provide for a community right-to-know but at the same time, we're deferring and working with our security agencies to make

sure that we protect ourselves from terrorist threats and at the same time, we also are looking at how we regulate propane facilities, particularly in making sure that we're only covering those propane facilities that pose the greatest threat to personal injury and harm in this country.

Thank you very much, Mr. Chairman.

Senator INHOFE. Thank you, Mr. Fields.

Before Mr. Burnham makes his opening statement, we've been joined by Senator Bennett from Utah. Senator Bennett, do you have an opening statement you would like to make?

Senator BENNETT. No.

Senator INHOFE. Mr. Burnham?

STATEMENT OF ROBERT M. BURNHAM, CHIEF, DOMESTIC TERRORISM SECTOR, NATIONAL SECURITY DIVISION, FEDERAL BUREAU OF INVESTIGATIONS

Mr. BURNHAM. Thank you, Mr. Chairman.

I do have a prepared statement.

My name is Robert Burnham, the current Chief of the Domestic Terrorism Section of the FBI. My current responsibilities include the national oversight management of the domestic terrorism operations, weapons of mass destruction and special events management programs for the FBI. I'm pleased to have this opportunity to discuss the potential effects of electronic dissemination of chemical worst-case scenario data as detailed in section 112(r) of the Clean Air Act of 1990.

As the committee is aware, the Clean Air Act mandates that chemical facilities provide to EPA a risk management plan detailing their risk prevention and mitigation plans. It encompasses offsite consequence analysis data which includes the worst-case scenario data for both toxic and flammable materials. The data requires distance to end point and population affected calculations which detail the size of a plume from release and the potential population affected by the plume.

The FBI is aware of the need to aggressively pursue environmental climes and fully supports the Clean Air Act and the spirit of the community right-to-know legislation. We understand the competing issues at stake here between providing the necessary information to the community which allows them to make informed decisions on local planning and preparedness issues and limiting the risk associated with the distribution of information that can be used against those same communities in a criminal manner.

The FBI has worked with EPA to identify those sections of the risk management plans that we believe can be directly utilized as a targeting mechanism in a terrorist or criminal incident. By way of background, on December 14, 1997, representatives of the FBI were invited to a meeting at EPA. It was at this time that the FBI first became aware of a plan by EPA to post the risk management plans, including the worst-case scenarios on the Internet. The FBI contacted other Federal law enforcement intelligence agencies as well as the Environmental Crimes and Terrorist Violent Crime Sections of the Department of Justice to discuss the issues raised by the EPA's Internet distribution plans.

Of great concern to the FBI at that time was the 1977 case that highlighted the potential danger associated with the criminal attack on a chemical facility. The FBI case, code named "Sour Gas," involved four KKK members who plotted to place an improvised explosive device on a hydrogen sulfide tank at a refinery near Dallas, Texas. The FBI was able to infiltrate the group prior to the attack. The surveillance tape shows two of the subjects discussing the potential death of hundreds of area residents. At one point when the discussion turned to the children who might become victims, one subject turned to her husband and said, "If it has to be, it has to be." This cold-blooded killing was to take place merely as a diversion for an armored car robbery the group intended to commit on the other side of town.

Although these individuals did not use the Internet to attack this facility, it illustrates a growing concern that individuals and groups are willing to utilize unconventional methods to achieve their goals and in the process, cause large numbers of casualties. This real life incident highlights better than any scenario we could create how worldwide, unfettered electronic access to this information could be used to facilitate a criminal or terrorist attack in the United States.

The FBI applauds the gains made in accident prevention since the inception of the Clean Air Act and encourages cooperation between industry and the communities that has brought about this reduction. We believe that providing this information to the communities in the appropriate manner contributes to an increase in safety in those neighborhoods. Through our discussions over the past year with EPA, other Federal agencies and affected parties, the FBI has arrived at initial recommendations which we believe balance these concerns and give the communities, State and local agencies and academic and research communities appropriate access to this information. Those recommendations were provided to Congress in a report submitted by the FBI in October of last year.

However, the FBI continues to work with EPA and other interested Federal agencies as part of an interagency working group on how to achieve the appropriate balance between protecting the public from terrorist attacks and making risk management plan information available to the public. For example, representatives of the National Infrastructure Protection Center have met with EPA representatives and discussed options for secure transmission of the risk management plans to State and local government agencies. There is concern, however, that certain groups of individuals will acquire this information through lawful means and post it in its entirety on private Internet sites. The FBI, as part of the interagency group, has met to discuss this particular issue.

Although this issue is currently under discussion by the interagency group, the FBI is concerned that under the FOIA laws, the RMP information to include the worst-case scenario information would have to be provided in electronic format if available. If that is the case, groups of individuals could acquire the information in this manner and reproduce it on the Internet. The net effect would be that these groups would undermine all the efforts of the many agencies who have worked to bring a responsible approach to dissemination of this information.

The Internet provides fast and extensive methods for disseminating educational information and has the potential to be a tremendously positive force in the future. However, from a terrorist threat analysis, providing unfettered electronic access to this type of information on the Internet could have disastrous consequences. The worst-case scenario data alone does not contain all the information necessary to carry out a terrorist attack. However, in conjunction with the numerous sites already available on the Internet containing how-to literature on bombmaking, surveillance, counter-surveillance and terrorist tactics and devices, it adds to the arsenal of potential criminals.

Mr. Chairman, thank you for the opportunity to appear before you today and I'd be happy to answer any questions you may have.

Senator INHOFE. Thank you, Mr. Burnham.

We've been joined by our Ranking Minority of this committee, Senator Graham. Did you have an opening statement to present?

OPENING STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM THE STATE OF FLORIDA

Senator GRAHAM. Mr. Chairman, thank you. I do have an opening statement but in deference to the panelists that we have, I will ask it be submitted.

Senator INHOFE. Without objection, we will do that.

[The prepared statement of Senator Graham follows:]

STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM THE STATE OF FLORIDA

Mr. Chairman, members of the subcommittee, panelists for today—thank you for the opportunity to address the subcommittee this morning on the topic of risk management. As I will be unable to stay for the duration of today's hearing, I will outline several of my key issues of concern and ask that the witnesses address these items during your testimony.

Let me begin by stating that the issues we will be addressing today are of critical importance to the citizens of Florida. In the last several months I have heard from the Florida Propane Gas Association, the Florida Farm Bureau, Florida Citrus Mutual, and the Florida Tobacco and Candy Association, as well as over 100 farmers, restaurant owners, and other small business owners in Florida regarding the adverse impact to their businesses that is anticipated as a result of the EPA's application of section 112(r) of the Clean Air Act to the propane industry.

I have also heard from many Floridians who are concerned about the presence of flammable materials in their local communities. These individuals have a right to this information so they can participate in developing emergency response strategies.

The two main questions we will be discussing today mirror the concerns raised to me by these Floridians. First, we will be hearing differing views on whether Congress intended for section 112(r) to include propane as a substance for which an EPA Risk Management Plan is required. Of particular interest to me is the process by which the EPA decided to list propane as one of those substances requiring a Risk Management Plan. There are three factors listed in section 112 of the Clean Air Act which the EPA is required to use in listing substances. I am interested in learning from the EPA what type of analyses were completed with relation to propane and its performance against each of these criteria.

Second, we will be discussing whether or not the publication and widespread dissemination of Risk Management Plans and worst case scenario data would provide potential terrorists with targets for domestic terrorism. As many of you know, Florida has a long-standing tradition of full access to information. Our entire State government operates under a "Sunshine Law" requiring that government actions be open to the public.

It is with this tradition in mind that I offer my support for rational, well-organized community-right-to-know policies which provide incentives for good management of hazardous materials and ensure that local communities can develop adequate risk management strategies.

Today we will be hearing from several witnesses who will provide their views on the potential dangers associated with dissemination of risk management data to the general public. I look forward to hearing the results of this testimony and working with the members of this subcommittee to identify any action that may be necessary.

Senator INHOFE.

Mr. Burnham, your testimony did not arrive at the committee in the timely fashion that we do have as a policy of this committee and of all committees. I was going to ask you why we didn't get your testimony?

Mr. BURNHAM. I apologize for that, Senator. I will ensure that every effort is made in the future to have it on time. My statement is part of an interagency approval process. It had to be approved by OMB prior to coming down. I was working with OMB and the delay was primarily due to that.

Senator INHOFE. Was it only OMB that caused that delay or did you send it to any other agency such as EPA?

Mr. BURNHAM. EPA was also involved in that interagency approval process.

Senator INHOFE. So you had your statement ready in the appropriate time but because of the approval of those agencies, we didn't receive it in time?

Mr. BURNHAM. Correct, Senator.

Senator INHOFE. Mr. Fields, first of all, let me ask you is it a policy of the EPA to approve this testimony before it reaches this committee or do you know?

Mr. FIELDS. The Administration has a process similar to what Mr. Burnham just described. All testimony is submitted to the White House Office of Management and Budget for review and they coordinate that testimony with other appropriate Federal agencies. So our testimony is shared with other agencies, but the testimony was drafted by me, submitted to OMB, reviewed by FBI, DOJ and others to make sure we're all coordinating our efforts across the Administration.

Senator INHOFE. Mr. Fields, when you were testifying before the House Commerce Committee, you stated that the EPA was opposed to anyone placing the worst-case scenario data on the Internet. I think you said you were definitely opposed. Are you still opposed to that?

Mr. FIELDS. We're still opposed to that, sir, yes.

Senator INHOFE. Since that hearing, a letter was sent to Chairman Tom Bliley from the ACLU and maybe some other public access advocates, challenging the policy stating that the read-only CD-Rom and other Freedom of Information Act safeguards are not legal. They say that as requestors, they can choose and demand the format in which they receive the information that the Freedom of Information Act does not allow, does not provide for.

It sounds to me like they may have a case there. What options do we have?

Mr. FIELDS. We obviously still face the position that we do not want to post the OCA data on the Internet; we do not want others to post it either. However, the interagency work group that I mentioned earlier composed of EPA, FBI, DOJ, National Institute for Standards and Technology, and the National Security Council are working on that very issue, looking at legal authority, what can we

do to provide for protection and ensure that OCA data does not get posted on the Internet and get into the hands of terrorists.

That work group that is composed of all those Federal agencies, including representatives of me and Mr. Burnham, will be making a decision on that issue by May 15, 60 days from now, as to what our legal authorities are to provide for protection of data and whether or not we can assure it can be posted on the Internet.

We will get back to you, Mr. Chairman, as to our final judgment.

Senator INHOFE. I know you're concerned about that, Mr. Fields. Would you put a hold on it until the 15th of May so the information would not get on the Internet?

Mr. FIELDS. We do not believe we should put a hold on it. The facilities have had 3 years to develop risk management planning requirements. We will make a decision in plenty of time to make adjustments if we need to. We will inform this committee as to whether or not any legislative relief is needed as well.

We are not there yet. We think it is premature to make that judgment. We're committed to try to make sure we protect legitimate national security interests and we will inform this committee if we cannot provide such safeguards in implementing the risk management plan program.

Senator INHOFE. Of course this could take legislation and obviously that takes time. I think maybe we should ask for your response to this, Mr. Burnham, as to how significant you think this is in terms of a threat and what options you see that we could have to minimize that?

Mr. BURNHAM. As I already mentioned in my opening statement, the OCA case data, worst-case scenario data, should not go out in any format, electronic or otherwise. In the report that was furnished last fall to Congress, we highlighted that one of our concerns was that the information could potentially go out in electronic format pursuant to an FOIA request.

Again, from a threat analysis, we would be opposed to that information going out.

Senator INHOFE. But it could appear on the Internet as the result of a third party. It wouldn't necessarily have to be from the reports, isn't that correct? Anyone can put it on the Internet that had access to the information?

Mr. BURNHAM. Yes, anyone could put it on the Internet. We would be opposed to the information going out pursuant to an FOIA request in electronic format.

Senator INHOFE. We do want to pursue that and I'm sure some of the other members have questions along that line.

Mr. Fields, you've seen this letter from Orange County. I guess have to ask you if it's your understanding that fuel switching is an appropriate action to take by the EPA and if you switch as a result of letters like this to say natural gas, couldn't they also switch from propane to other types of heating oil and things that would be more onerous?

Mr. FIELDS. We believe that there would be limited amounts of fuel switching as a result of this program. In implementing EPCRA in 1986, we saw that facilities, for example, that had a 10,000 pound threshold, there was a limited amount of fuel switching that did occur, but we must keep in mind that if people decide to go to

diesel fuel or fuel oil, for example, those sources of fuel are regulated by other EPA regulations. For example, they have to prepare a spill, prevention and control counter measures plan under section 311 of the Clean Water Act. There are other regulatory requirements that also apply if you decide not to utilize propane gas as a fuel.

Based on the last 10 year history with implementing EPCRA, we've seen that very limited amounts of fuel switching will occur. We think that will be the same situation to prevail here as well.

Senator INHOFE. Thank you, Mr. Fields.

I do want to get into more detail in the second round of questioning as to the number of facilities that would have to be reporting on propane so that we can get responses from the second panel.

With that, we will go to our early bird rule and ask Senator Lautenberg for his questions.

Senator LAUTENBERG. Thank you very much, Mr. Chairman.

Mr. Burnham, in your testimony, you note that we understand the competing issues at stake here between providing necessary information to a community which allows them to make informed decisions on local planning preparedness issues. So we are talking about the need to have some prevention from accidents, from injury, death that could result.

You noted that my comments about balance are important. Can you think of any data that's on the Internet that might present the same dilemma, that is, good for the community or good law on one hand, but potentially could be used as a target for terrorist activity? I can think of lots of them—locations of facilities, all kinds of things—and I think in a democratic society like ours it's important to make sure we do what we can do to protect our citizens.

I was once an Albania where they have 800,000 bomb shelters, these little things that look like a half circle all over the country in case there was ever an invasion from the outside. It reduced the quality of life substantially in the country because all they were focused on was protecting themselves from an imagined enemy.

I ask you this. Can you think here, and if this question is a little unfair, about a situation where data that is on the Internet that might be considered by the FBI as potentially an invitation to take advantage of our system, bridges, things of that nature, blow them up?

Mr. BURNHAM. Senator, I'm sure there probably is a lot. I haven't really thought about other information that's on the Internet. I'm sure there probably is information on there that would fit into the category that you're describing.

With respect to this information, I think part of what we imparted to the EPA was the fact that this particular information, we would basically have the Government vouching for the accuracy of that particular information as opposed to just general information on the Internet.

The 66,000 chemical companies are required to give the worst-case scenario data that would potentially go on the Internet. In effect, the Government would be vouching these are the chemicals there, and this is the population affected. I think that would be the difference between a lot of the general stuff that's just out on the Internet. In effect, you would have the Government vouching for it.

Senator LAUTENBERG. Again, I'm not sure it is fair to ask you so I'll ask Mr. Fields. Should we be doing what we can to protect our people from the ordinary course of life activities that could result in substantial damage, injury, death as a Government responsibility?

Mr. FIELDS. I agree with you, Senator, I think it is a clear Government responsibility. For example, the offsite consequence analysis data has to be provided to the local populace who live around that facility. We owe it to the American people who live around chemical facilities to make sure they know about the chemical risk that exists from facilities in their communities.

Even the industry agrees that they would be willing to share information with the persons who live around their facilities, we will make sure the information is made available to the State Emergency Response Commissions, the local emergency planning committees. We owe it to the American people to make sure they are protected and information about chemical risk is a critical part of that equation.

Senator LAUTENBERG. So, Mr. Burnham, what is there that would be on the Internet that might be an aid to a terrorist who planned to do some damage? What could be there? We're identifying now our right to know, we identify chemicals stored in facilities, chemicals manufactured in facilities. What would be particularly significant to someone who had that kind of program in mind that would destroy a facility and the neighborhood around there?

Mr. BURNHAM. With respect to this type of information?

Senator LAUTENBERG. Yes.

Mr. BURNHAM. You would have potential terrorists looking at a target for maximum impact, you would have the population affected, you would have where it is, the plume, just the whole worst-case scenario. Sections 2, 3 and 4 of the RMP plans are toxic, alternate, toxic and flammable and you would have a blueprint for the best potential targets for a terrorist as far as maximum impact and population affected.

Senator LAUTENBERG. You're talking about something that can be activated by a terrorist attack that would cause ancillary damage as a result of an attack on that particular site?

Mr. BURNHAM. From a threat analysis standpoint, yes.

Senator LAUTENBERG. Do you routinely, and you may have said this and I missed it as I was reading here, pass data to other agencies if they have an expertise in a particular area as you pursue a review or an investigation?

Mr. BURNHAM. Absolutely. We would do that here too. That was recommendation No. 2, that we would ensure this information gets to State and local agencies in a secure fashion. We've been working with EPA on that.

Senator LAUTENBERG. Thank you very much, Mr. Chairman.

Senator INHOFE. Thank you, Senator Lautenberg.

Senator Bennett, I understand you're going to be presiding over the Senate at 10:30 a.m., so if you need to take a little bit longer, go ahead and get all your questions in.

Senator BENNETT. Thank you, Mr. Chairman.

Just a quick comment. If anyone thinks this information is going to be disseminated in any form, electronic or read-only disks, what-

ever, and then have it not get on the Internet, he or she is tremendously naive. There are groups that are determined just to show their defiance of regulations that will put it on the Internet if they have to enter it by hand. Yes, I've seen samples of that.

I come from a State where mink ranching is one of the industries and those who feel strongly about what they call animal rights have put on the Internet the way to build a bomb to destroy a mink farm. Mink farms in my State have been destroyed, people have attacked them, they've released the minks, supposedly into the wild. The wild where the minks end up is the freeways and they all get killed, but somehow the animal rights people think they're doing the minks a favor by having them run over by automobiles instead of having them stay in the pens where they're being raised.

Let's ask the question, Mr. Fields, how vital is this information to the people in the neighborhood? Is there any example of someone who has suffered a worst-case scenario that might have escaped it if the information had been made available or is this entire conversation hypothetical?

Mr. FIELDS. Senator, this conversation is definitely not hypothetical. We think it's critical that risk management planning be available to the public and to the communities particularly who live around those facilities.

Senator BENNETT. You're not answering my question. I agree absolutely that risk management planning should be available to the local communities. We are talking about a worst-case scenario where someone is sitting down and thinking of every possible that could go wrong and putting that down on paper. Is there an example of that kind of information being helpful or is that just an exercise that somebody wants to go through?

Mr. FIELDS. It is very helpful. The local fire departments, the local response organizations who have to respond need to know if an accident occurred at that facility from the largest tank or container at that facility, how big an impact could occur, how many people could get injured or killed if an accident did occur.

The response agencies who have to respond, the first responders who come on the scene need to know what kind of chemicals are there, what the impact of those chemicals could be.

Senator BENNETT. I don't argue with you that those people need to know. I'm talking about the community as a whole, average citizens. Do they need to know the absolute worst-case scenario if their fire department is properly informed, if their police department is properly informed? Does the suburban household need to know the worst-case scenario that could occur or can't you take care of public safety by saying, you have a plant here that has problems? That's obvious information to everybody and detailing how many people could be killed and what the exact amount of the thing is to somebody other than the emergency people?

Mr. FIELDS. I believe that the American people who live near a chemical facility or any chemical complex ought to be aware of the chemical risks they are buying into when they live in that community, when they move into that community, so I believe it is appropriate to inform the people there as to what risk they're buying into when they move into a community.

They don't have to have as detailed knowledge as the responders who have to respond to a release event, but I believe we owe it to the public to let them know what risk they are living with and inheriting when they move into a community near a chemical plant.

Senator BENNETT. I agree with you that they need to know there is a risk and I'm perfectly willing to give them the risk but you just said in your comment, they don't need the detail and it's the detail that we're talking about.

I won't beat this one further. Let me get on to another subject and that's your decision to list propane as one of the items. You said when the chairman asked you about switching to alternative fuel, well, the alternative fuels are all regulated as well. Do you think propane is not regulated? It's one of the most heavily regulated substances we have. It's just not regulated by the EPA, so the question arises, is this a turf battle? Is EPA trying to reach out and take over regulation that is currently being conducted by other agencies?

Mr. FIELDS. Definitely not. We only want to make sure that propane that should be regulated—we've exempted a lot of propane sources, more than 2 million propane sources in this country and we're only capturing maybe 33,000 of those. We have provided a lot of relief for the small people that are there. Distance requirements we put out a couple of weeks ago are going to exempt even more of these farmers and small facilities from the regulatory requirements.

We only believe that those propane sources that are the most significant that could really cause a big event and really injure and kill people, as they've proven over the years, ought to be the ones to be regulated under the risk management program. We want to make sure we don't impose any new regulatory requirements for propane sources above those that are absolutely necessary to make sure the American people are protected.

Senator BENNETT. You're imposing requirements that will hit rural farmers in my State. Rural farmers who have a record of safety, a record of compliance with the regulations that are currently there, to my knowledge—I'd be happy to be contradicted if you could give me some information—there has not been a rash of accidents. Indeed, there has not been any noticeable series of accidents in my State among farmers who have propane tanks.

You've gone down to a level that would involve a farmer, and indeed some residents, and these people are already complying with heavy regulations for safety, they already have a sterling record of safety, and you're coming along saying, no, we've got to do something in addition.

I want to know why in addition? I want you to show me a record of failure of the present regulatory scheme that justifies putting in an additional regulatory scheme? If you can show me that, then I'll be with you because I don't want to endanger anybody else.

Mr. FIELDS. I think, Senator, that most farmers in your State are going to be exempted. We've exempted all the tanks that are less than 10,000 pounds or 2,380 gallons. Most farmers have a 500 or 1,000 gallon tank. We've told people that if you separate those tanks by certain distances, they are not covered by the RMP regulation.

Senator BENNETT. You're not answering my question.

Mr. FIELDS. I'm going to get there. The two points I made before you came in were this. We are going to work with the National Fire Protection Association, we're going to work with industry and make sure that we try to modify NFPA–58 because NFPA–58 right now does not include any requirement for hazard evaluation, for example, or offsite consequence analysis and make sure that those requirements that are in NFPA–58 would then apply. We would defer to NFPA–58 if we can get NFPA–58 to be consistent with RMP.

Further, I think I said this before you came in, we're exploring, because of the concerns that have been raised, whether or not we want to give a high threshold for the propane sources like small farms, small businesses that goes above the 10,000 pound threshold that is there now.

If we conclude that, we intend to make that decision within the next 30–60 days and we would immediately implement a stay of the regulation as it applies to those propane sources that would be covered by that new threshold. Then we would propose an amendment to the RMP rule that would be applicable specifically to those propane sources that we decide to further exclude from regulation under the RMP rule.

So we're carefully looking at only capturing those propane sources that could cause a significant impact to people offsite, off the property where that facility is located. We are reevaluating the universe of people currently captured and looking at whether we can provide further regulatory relief for propane facilities.

Senator BENNETT. I'm delighted to know that you're reevaluating but you still haven't answered my question.

Mr. FIELDS. All right. Go ahead. I'm sorry.

Senator BENNETT. Do you have evidence of failure of the current regulations that would require additional regulations to be put on?

Mr. FIELDS. We believe that the accident history that we have, Senator, more than 1,000 accidents in the last 10 years involving propane sources, 43 major accidents in the last 9 years, 8 major accidents in 1998, an accident that occurred 2 weeks ago where two people were killed involving propane. We have an accident history and characteristics of high flammability, NFPA–58 standard of 4. Propane is one of the most flammable hazardous substances around. So yes, we believe we have a basis for regulating propane. We want to make sure we only regulate those propane sources that are the most appropriate and that pose the greatest danger to the American public.

Senator LAUTENBERG. Don't we have a point of order here? The clock has been running for some time.

Senator BENNETT. I apologize. I'll pursue this with you.

Senator INHOFE. I would inform the Senator from New Jersey that since Senator Bennett has to preside over the Senate, I was allowing him to have two rounds at once, but if you object to that, we'll excuse him at this time.

I would say, Senator Bennett, that I plan to pursue this in the second round of questioning because we have on the second panel the President of the American Farm Bureau and I'm going to ask Mr. Fields to stay here during his presentation because I think we

need to more thoroughly evaluate the effect on the American farmer. That's what we intend to do.

Mr. FIELDS. I will definitely do that, Senator.

Senator INHOFE. Senator Graham?

Senator GRAHAM. Mr. Chairman, I'm going to pick up this same line of questioning, so maybe we'll carry it a bit further.

The statute states that "In listing substances, the Administrator shall consider each of the following three criteria: (a) the severity of any acute adverse health effects associated with the accidental release of a substance; (b) the likelihood of accidental releases of a substance; and (c) the potential magnitude of human exposure to accidental releases of the substance." I assume that analysis was done as it relates to propane?

Mr. FIELDS. Yes, Senator, we did. Let me briefly summarize how we addressed each of those criteria in developing a basis for regulating propane.

We evaluated the criteria. First of all, we looked at the acute adverse health effects the propane may cause. The accident history is what proved to us that criteria was satisfied with the major accidents that have occurred in this country involving propane. We believe it is very clear it has acute, adverse health effects that need to be looked at as well as accidents that have occurred in other countries as well.

Second, in looking at the likelihood of accident releases, we evaluated propane and saw that it is one of the most flammable of all substances, meeting the NFPA rating of 4. So it is something that definitely has the likelihood of an accidental release.

Last, the potential magnitude of human exposure, we noted that propane is among the most ubiquitous of all chemicals on the list of chemicals we're regulating.

So in making a judgment as to whether or not propane satisfied the statutory criteria, we did and we looked at this irrespective of fuel use, of how that chemical was utilized. We believe strongly the statutory criteria are satisfied for propane.

Senator GRAHAM. On this first criteria, which is the severity of any acute, adverse health effects associated with the accidental release, what were the acute, adverse health effects that you found associated with the accidental release of propane?

Mr. FIELDS. We found that propane, looking at the 1,000 accidents that have occurred, numerous instances where people died, we found situations where people were injured by propane releases, other situations where we had to evacuate nearby communities from around propane facilities that had exploded, caught on fire. That body of data is what we looked at in making a judgment that there was the possibility of severe, acute, adverse health effects caused by propane.

We looked primarily at the accident history over the last 10 years involving propane. Even there, we think there is underreporting. Propane is not required to be reported under the 1980 Superfund law or the 1986 Emergency Planning Community Right-to-Know Act. This data we have is just provided to us anecdotally, not because anyone is required to report it to the Federal Government. We became aware of it through State and local government sources, newspaper reports, et cetera.

We believe there are probably more releases of propane than we are even aware of in this country.

Senator GRAHAM. I think the purpose of this statute, as I read it, was to deal with public health type issues as opposed to events that would be associated with fires and those types of consequences, and accidental release which are normally the responsibility of State and local agencies to regulate, monitor and contain. Do you define acute, adverse health effects as subjecting persons to the possibility of fires?

Mr. FIELDS. The possibility of injury or death due to sudden explosion, fire, flammable situations, yes, we believe that is included. We believe, for example, in Congress' direction to us in 112(r), Congress succinctly said they wanted vinyl chloride to be included, which is a flammable substances; Congress specifically said they wanted ethylene oxide to be included, which is a flammable substance on the initial list. So congressional direction alone made clear that Congress intended for flammable substances to be included on the list of substances we regulated under our risk management plan rule.

We looked at congressional direction on this as well. Congress directed us to include certain things that were definitely flammable substances on the initial list of hazardous substances regulated pursuant to the risk management plan rule.

Senator GRAHAM. I'm looking at the Federal Register of June 20, 1996, page 31669 where there is a statement to the effect that "The Environmental Protection Agency has proposed to delist explosives from Section 68.130," which I assume is the section that contains substances under this hazardous substance legislation. "Consequently, explosives are not addressed in this rule." Is that the current policy, not to list explosives?

Mr. FIELDS. Explosives are not includes at the current time in the list. We included, when we developed this regulation, the most flammable substances by the National Fire Protection Association, those that have the greatest accident potential, and there are 77 acutely toxic substances and 63 flammable substances on the list of 140 we regulated.

This is David Spites on my staff and I'll let him talk about the explosives.

Mr. SPITES. Senator, we originally listed the high explosives. They were included in the original list. We subsequently delisted them for various reasons, which I think we explained in the Federal Register you're referring to or a subsequent one. One of those was that another Federal agency basically did cover high explosives in detail except for a couple of things. Some of those were notifying the community and making a public report of what chemicals they and satisfying the right-to-know requirements.

As part of a lawsuit, we settled the case by delisting high explosives with the proviso that the Bureau of Alcohol, Tobacco and Firearms regulations covered all the other aspects that were necessary under RMP except for public disclosure. The explosives industry voluntarily agreed to make that public disclosure that would make it equivalent to the RMP.

We don't have quite the same thing with the flammable substances, with another comparable Federal agency requirement and indeed State requirements.

Senator GRAHAM. So it's your statement that the reason that propane is listed is because you do not consider it to be adequately regulated by other agencies at the Federal, State or local level?

Mr. FIELDS. We don't believe that the propane requirements that apply at the Federal, State and local level as well as the industry standard contain all the statutory requirements that Congress mandated be included in the regulation of substances regulated by the RMP rule. For example, the risk management plan requires that there be a hazard evaluation in the statute which includes an offsite consequence analysis and accident history. That is required by statute. These other Federal requirements do not include such an animal, for example.

Adding to the situation on explosives, as we said at the beginning, if we can work with the industry, for example, and get NFPA–58 modified to include those elements like all the requirements Congress mandated in the risk management plan rule, we'd be willing to defer in the future to NFPA–58, for example, and say we will defer to that standard in regulating propane or regulating these sources rather than our regulation, but we've got to make sure the NFPA standard satisfies the statutory requirements for what a risk management plan requirement should contain. We're willing to work with industry on that point.

Senator INHOFE. Thank you, Mr. Fields.

We'll have another round of questions in just a moment.

I want to pursue this a little bit, what was brought up by Senator Bennett and then also by Senator Graham. You said a minute ago that you're estimating that 33,000 facilities would be reporting on propane, is that your estimate now? That's grown by 5,000 in the last 2 days, so your trend line is starting to work in that direction.

How do you account for the fact that you're saying 33,000 when the study that the industry had—and I know the American Farm Bureau, which is on the next panel, will want to comment about that—said that it would affect 330,000 farmers, 350,000 industrial sites and over 300 commercial facilities. That's over a 1 million reports. How do you respond to that?

Before you respond, let me tell you why because I'm going to get into the cost of it too. I can remember when this subcommittee was dealing with the proposed rule change on ambient air on particulate matter and on ozone. The cost that the EPA at that time said to comply with it would be $6 billion. The President's Economic Council then said it was going to be $30 billion. Then the Reason Foundation in California said it would be $120 billion. I think we're kind of starting that same trend here.

My concern is for the American farmer, particularly in my State of Oklahoma, where it's a crisis out there. One more regulation is just what they don't need, so I'd like to have you respond as to how you come up with only 33,000 facilities having to report when it's estimated some 330,000 farmers alone would have to report?

Mr. FIELDS. We agree with the overall estimate of 350,000 industrial sites being out there, hundreds of thousands of farms, 1,000

commercial facilities that have propane. I have no issue with that type of data. The fact is I think there is a lack of communication. People don't fully understand that we've exempted the overwhelming majority of those facilities from our requirements. The threshold level, a lot of farms have 500 gallon tanks. The threshold alone is exempting most of those tanks.

We then have gone forward and put forward a distance requirement that further exempts many more tanks. So we believe that 33,000 is a good number.

The reason it's grown by 5,000 very briefly is that we have discovered information over the last couple of years after we put out the rule where we identified those people we believe are legitimately covered and we came up with 33,000, 33,000 of the 69,000 facilities now that are regulated under RMP.

We believe the average small farmer can fill out an RMP, a five page form.

Senator INHOFE. I don't want to interrupt, Mr. Fields, but we're using up the clock and we're not getting anywhere. It's my understanding that when the industry had its estimate or its committee going into this, they took into consideration all these things you're talking about and they still said it would be 330,000 farmers involved in this.

You're saying you're exempting and it's kind of like the EPA during the ambient air debate which kept saying we're exempting this group, we're exempting the farmers, we're exempting others, and they weren't. Aren't we kind of following that same line here?

Mr. FIELDS. All I can tell you, Senator, is we don't agree with those data. There are 350,000 industrial sites, that's correct. The overwhelming majority of those industrial sites are not covered by regulations.

Senator INHOFE. I think I already asked that you will stay here for the second panel when we hear from the president of the American Farm Bureau.

Mr. FIELDS. Yes, sir.

Senator INHOFE. I think it might be interesting because I would rather stop this train here than wait until we got into the mess that we got into on ambient air.

On the cost thing, what is the cost you're anticipating or have you done an analysis of that, the cost for the compliance and the reporting?

Mr. FIELDS. We've developed an estimate for what the cost of the RMP overall would be. We're estimating that the cost of the RMP for the last 3 years is $118 million per year. Now the regulations will become effective in June. We estimate the cost will be $75 million per year for the next 30 years as compared with the benefits of $174 million per year for the next 30 years, which makes this a net benefit regulation. Those are our latest estimates of the cost of the RMP rule.

Senator INHOFE. What about the cost to each farmer or are you going to say they are exempt?

Mr. FIELDS. For a farmer who is covered, for a few thousand of the 33,000 sources out there that we believe are regulated, we're talking a few hundred dollars per RMP up to $2,000. That would

be the cost for an average farmer filling out and complying with an RMP rule.

Senator INHOFE. The cost of 11 of the 13 engineering firms that went through this said the cost would be somewhere between $2,000 and $20,000.

Mr. FIELDS. We totally disagree. We see on the low end, the cost being a few hundred up to $2,000 max in terms of what the cost would be.

Senator INHOFE. Mr. Fields, can you look at this chart over here and can you tell me what parts of risk management plan regulation are not covered under other laws on the chart?

By the way, I want to make a comment. In justifying the propane, you talked about vinyl chloride. It's true that is an explosive, but that's also toxic, isn't it?

Mr. FIELDS. Also toxic, that's correct.

Senator INHOFE. Is propane toxic?

Mr. FIELDS. Is not toxic.

Senator INHOFE. Will you look at this chart over here and tell us what is not covered by other laws on this chart?

Mr. FIELDS. Looking at that chart, the NFPA–58 column, for example, is not correct. I think I said in my testimony, the NFPA–58 does not have requirements that cover hazard assessment which is not correct. It does not include a requirement for worst-case analysis or a 5-year accident history, which is required by the statute that Congress gave us to implement. So that's not correct.

The NFPA–58 does not satisfy all the risk management planning requirements for training.

Senator INHOFE. I think the bottom line, before I'm reminded by Senator Lautenberg that my time has expired, I would just say the bottom line is that you think we need more regulation then?

Mr. FIELDS. We think we need to regulations that are out there now, the risk management planning regulations. We believe those are appropriate and necessary regulations for the facilities being regulated by those regs, yes.

Senator INHOFE. Mr. Burnham, I didn't mean to leave you out. I'm going to go to Senator Lautenberg, but I have one last question I'd like to ask you about the security.

Senator LAUTENBERG. Mr. Chairman, I promise you I'll not take the fully allotted time but I did have a couple of questions that arose as I listened to some of the questioning that was taking place.

One of the questions put out by our colleague from Utah, and I'm sorry he's not here and I hope staff will be here because I think it's important, Mr. Fields, that we establish the fact that EPA doesn't take its staff, assemble them and say now, let's see how we can harass people. Let's see how we can screw up the works for those who work for a living, farmers, et cetera. Let's see how much of a nuisance we can be. We want to talk about things that are successful, that have helped protect our air, helped protect our water, helped protect our people, then that I think is a legitimate exercise.

I urge you, don't be bullied into anything else. You're now sitting as an acting and I hope what I say will not in any way deteriorate from your outstanding credentials for this job or your right to have it.

I don't approve of any case, aspersions aside, that say big farms have been destroyed, or that people burned down buildings in a ski area because they are pro environment, that's horrible, it's criminal and I wouldn't tolerate it no matter what, and I love a clean environment. That's my legacy to my children and my grandchildren. That's why I'm on this committee.

But we don't have many farms in New Jersey. We have people, we have the most densely populated State in the country. When the question is asked, why do they have a right to know, why should they be asking these questions, why should they be told the answers? I'll tell you why, because places like the Exxon refinery in New Jersey have put out warnings that if there is this kind of an event or that kind of an event, take your children down the cellar, open your windows, don't open your windows, close your doors, cover their faces with wet clothes. Why shouldn't they know? Why should they be prevented from protecting a child or an elderly parent in a household?

It's outrageous the insinuation that, well, let minks go out on the highway and get killed. I don't like that activity a bit. I'm in Utah a lot and I happen to love the State and I love the environment out there.

But I would tell you this, if you ask someone whether or not a mother or father working in a mill, like we had in New Jersey a few years ago, when the plant exploded and the people who ran the plant didn't know what to do and the people in the neighborhood didn't know what to do, as flames consumed building after building and chased people from their homes or the Edison Gas explosion that just took place and was recently resolved.

The one thing I think is critical to have here is an understanding that you, your colleagues, and I don't care what department of Government, is not out there to harass the citizens. If we disagree, let us disagree but the insinuation or the aspersion that all you're doing is sitting there twiddling your thumbs while you think of ways to make life difficult.

I want my children and my grandchildren protected as much as I can. I don't want them to go to the water tap and possibly injure their health as insinuated in Tom's River, New Jersey, and if one read the book, "A Civil Action"—I just had a meeting with the attorney on that case up in Woburn, where a child we had at this very table, Mr. Chairman, before your membership, a man who talked about the poisoning of his child and the boy died and the father said, but the other child in the house, the other brother said, why is it that in our house we never laugh. In our house all we do is cry. What's the matter with us?

Jimmy, the boy who was sick, was dying and that's why the family couldn't gin up some grins and smiles and be happy. He pulled out a stack of bills, the man was making $35,000 a year and he had $150,000 worth of doctor's bills.

I'm sorry but I just had to respond, Mr. Chairman. I know you too well and I know that you're a serious man and I know that you don't think that mischief is being made and I respect your willingness and desire to challenge anything that's put out there that you don't agree with.

Senator INHOFE. That's what this is all about and that's what we intend to do.

Senator LAUTENBERG. Thank you very much.

Senator INHOFE. I would have to say also that I have a whole bunch of kids and grandkids and I'm concerned about them and their future of living under overburdensome regulations and bureaucracies and I plan to conduct myself accordingly, Senator Lautenberg.

Senator INHOFE. I'll submit my question to you, Mr. Burnham, for the record since we're running a bit late on this panel.

At this time, we'd ask the second panel come forth. It consists of Mr. James Bertelsmeyer, President, National Propane Gas Association, and Mr. Dean Kleckner, President, American Farm Bureau.

Thank you, gentlemen, for being here. I guess we'll start with Mr. Kleckner from the Farm Bureau standpoint. We want your whole statement. We're going to try to comply with our time requirement, so in the event your statement is too long, the entire statement will be made a part of the record. The same with you, Mr. Bertelsmeyer.

If you will go ahead with your opening statement, we will proceed with the questions.

STATEMENT OF DEAN KLECKNER, PRESIDENT, AMERICAN FARM BUREAU

Mr. KLECKNER. Thank you, Mr. Chairman.

I'm Dean Kleckner. I'm a corn, soy bean, hog farmer from northern Iowa. I'm the elected President of the Farm Bureau Federation which is the Nation's largest farm organization.

As you know, propane is an important commodity in rural America, found on 660,000 farms, widely used in various ag applications, including crop drying, feeding livestock facilities, heating homes, and that's on my farm. I'm a 350 acre farmer and I use it for those three things on my farm.

Approximately 1.5 billion gallons of propane are used for ag purposes. We strongly oppose the inclusion of propane as a covered substance subject to the Environmental Protection Agency's Risk Management Program. We believe EPA failed to consider the significant adverse effects which these regulations will have on hundreds of thousands of farmers nationwide.

Going back just a bit, by adopting section 112 of the Clean Air Act amendments of 1990, Congress specifically sought to reduce the risks associated with accidental and catastrophic release of toxic chemicals. Commendable. We're for that.

It is our firm belief that the original intent of Congress was to address substances used in manufacturing or other chemical applications rather than those used as a fuel source. Unfortunately, EPA's decision to include propane coupled with its decision not to grant a fuel use exemption has the effect of extending these regulations to consumers who use small amounts.

The RMP rules require farmers and other propane users of more than 2,358 gallons—that's the 10,000 pound area—2,359 gallons of propane storage to complete and file risk management plans by June 21, 3 months from now. A typical installation on a small farm

will likely consist of anywhere from 2,000 to 5,000 gallon propane tanks, often hooked together, piped together for corn drying, for example, as on my farm.

Having only three such tanks would bring the farmer under the requirements of the RMP program. It's understandable that a significant percentage of users will try to lawfully avoid the burden of compliance by limiting the volume of onsite storage. I'm going to look at it on my farm if this thing goes through. This will result in an increase in the number of propane deliveries and shift the emphasis from low risk, stationary storage, to the higher risk transportation.

We believe the agency has failed to consider the vast extent to which propane is already regulated. That was brought out in the testimony. It failed to take into account the fact that propane installations are designed, constructed, maintained in accordance with the standard for the safe storage and handling of propane established by the National Fire Protection Association.

It just appears to me that EPA thinks the industry is unregulated unless they are regulating it. Congress understood the importance of avoiding duplication and ensuring cross-agency conformity when it passed the Clean Air Act amendments in 1990 by instructing EPA to coordinate requirements with OSHA and DOT.

In 1992, OSHA established its onsite program known as the Process Safety Management Program. In doing so, it granted a fuel use exemption. When faced with the same option on its RPM, EPA decided to oppose such an exemption. We believe this action in direct violation of the clear language of the statute.

The risk management program is complicated and highly technical. Risk management plans which must be filed by June 21 are based on complex, chemical release models. The final rule published by the EPA in June 1996 is 62 pages in length. EPA's guidance document for propane users is 24 pages. The general guidance document for risk management plans is two inches thick.

We are aware of EPA's contention that in the final analysis, risk management plans will only be a few pages in length. However, it will take dozens of hours to collect and organize the appropriate data. Farmers are just going to throw up their hands, probably after they finish throwing up when they look at it in the beginning. They won't be able to understand it.

Because of the highly technical nature of the program, we believe that most farmers will find it necessary to contract with an RMP service provider at an average cost of several thousand dollars per site. If only 10 percent of the 660,000 farm users of propane are required to file a plan, and we've already heard it may be 330,000, but if only 10 percent are required to do it, the total cost to the farm economy could exceed $100 million.

Times are tough on the farm. Now is not the time to place another $100 million compliance burden on farmers. While it likely that many rural propane users will fall into the least rigorous compliance category, Program I, the economic impact will remain high since a significant up-front cost will be incurred to determine the appropriate program level.

I heard them say this morning, that we would be exempted. Maybe in the end we will, after we spend $1,000 or $2,000 to find

out we're exempted. I'm not going to risk it. I'll tell you if you ask me what I'm going to do if this thing goes through. EPA estimates 66,000 sites are covered under the RMP nationwide, that 28,000 involve propane. In short contrast to EPA's calculations, North Carolina's Department of Environmental Resources estimates there are 11,000 farm sites in that State alone. So I would agree with EPA their first estimate is wrong.

We understand in recent weeks EPA has recognized its estimate of the number of affected farms was low. We appreciate and welcome their overtures and believe that may suggest a willingness to reduce the burden which RMP will place on farmers but we are concerned that the proposal floated to date does not sufficiently address the issues presented in our testimony.

I would ask your indulgence, Mr. Chairman, to include in the record a letter from eight ag organizations whose views support the testimony given here today.

Senator INHOFE. Without objection, that will be made a part of the record. Also, as a part of the record, without objection, since there is no one here to object, I would want to include the letter from the ACLU to Congressman Bliley.

[The information referred to follows:]

March 5, 1999.

The HONORABLE THOMAS BLILEY,
Chairman, House Commerce Committee,
United States House of Representatives,
Washington, DC 20515,

DEAR CHAIRMAN BLILEY: Thank you for the February 24, 1999 response to our letter outlining our concerns with proposals to limit public access to information concerning accidents at chemical plants (EPA's unclassified Worst Case Scenarios data). We are pleased to learn from your letter that you do not intend to amend the Freedom of Information Act (FOIA) and that you have not "advocated denying public access to" Worst Case Scenario (WCS) data. However, we remain troubled by the possibility of limiting or denying access to publicly available information in certain forms or formats and we urge you to hold public hearings on any specific proposals to do so.

In your letter, you specifically asked us to respond to EPA's suggestion that a CD-ROM that "could not be copied, duplicated, or posted on the Internet" may be a legally and technically feasible way of providing the WCS information to FOIA requesters. Although the technology to create a CD-ROM whose contents cannot be copied is not currently in the commercial marketplace and would need to be investigated in order to make a final judgment, it is our belief that such a CD-ROM would not satisfy all FOIA requests for the following three distinct reasons:

1. FOIA allows the requester to choose the format

The Electronic Freedom of Information Act (EFOIA) amendments, passed overwhelmingly by Congress in 1996, state that when responding to a FOIA request, "an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain records in forms or formats that are reproducible for purposes of this section." 5 U.S.C. 552(a)(3)(B).

The courts have held that the only exception to this clause is when an agency can prove that the existing record could not readily be reproduced. Chamberlain v. U.S. Department of Justice, 957 F.Supp. 292, 296 (D.D.C.) (certain "viscorder charts" could be made available for review at FBI HQ due to exceptional fact that they might be damaged if photocopied), aff'd 124 F.3d 1309 (D.C. Cir. 1997) (unpublished table decisions) (summary affirmance).

The EPA will be receiving the WCS data in an electronic format and store it in a central data base. Therefore, the information will be available in readily reproducible forms and formats other than the CD-ROM and must be made available to FOIA requesters.

2. FOIA does not permit conditioned disclosure

FOIA "speaks in terms of disclosure and nondisclosure. It ordinarily does not recognize degrees of disclosure, such as permitting viewing, but not copying, of documents." Julian v. U.S. Department of Justice, 806 F.2d 1411, 1419 n.7 (9th Cir. 1986), aff'd, 486 U.S. 1 (1988); Berry v. Department of Justice, 733 F.2d 1343, 1355 n. 19 (9th Cir. 1984). Similarly, providing exempt information to a requester while limiting his ability to further disclose it through a protective order is "not authorized by FOIA." Schiffer v. FBI, 78 F.3d 1405, 1410 (9th Cir. 1996) (reversing conditional disclosure order of district court).

Part of the reasoning is that FOIA mandates disclosure to "any person." If records or information are not exempt and must be disclosed, any person is entitled to them. The main exceptions to this principle are for Privacy Act records and confidential business information, neither of which applies in this case.

It should also be noted that copying, duplicating, or posting restrictions on the WCS data would also raise significant copyright issues. Current law does not allow the government to hold copyright or place copyright-like restrictions on public information. Copyright law clearly prohibits protections for "any work of the United States Government" 17 U.S.C. 105. Yet perhaps more applicable to this case, the Paperwork Reduction Act prevents agencies from restricting or regulating "the use, resale, or redissemination of public information by the public" 44 U.S.C. 3506(d)(4)(B). Putting aside the technological questions for the moment, dissemination of WCS information in non-duplicable format such as a secure CD-ROM would be a clear restriction on the public's ability to use and redisseminate this public information. Such restrictions would violate existing law.

3. The national security exemption of FOIA does not apply to this unclassified information

FOIA does allow for exemptions when the data is "in the interest of the national defense or foreign policy" 5 U.S.C. 552(b)(1). By passing the Clean Air Act of 1990, Congress sought to promote the reduction of the risks of deaths and injuries from accidents at chemical plants, determining that the benefits of WCS information would outweigh harm to national security.

Section 112(r)(7)(B)(iii) of the Clean Air Act states that WCS information "shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source and shall be available to the public under section 114(c). Section 114(c) requires "any records, reports or information . . . be available to the public" except for information (other than emissions data) that is considered a trade secret.

Given that the Clean Air Act is clear that WCS information is not classified for national security purposes, a FOIA exemption would not apply. Moreover, there are compelling reasons to make such information available. In the wake of the recent chemical disaster in Allentown, PA, where citizens were killed and communities evacuated, there can be no doubt that such health hazards are posed by the threat of chemical accidents and are more real than the potential threat of terrorist attack. WCS data give communities and workers the ability to plan, compare and push for measures to avert such accidental disasters. In fact, in passing the EFOIA amendments, Congress pointed to FOIA's ability to contribute to efforts to reduce "serious health hazards" like these.

Lastly, there is no data to suggest that disclosure of WCS information might lead to a terrorist attack on a plant. In fact, the only in depth study pointing out potential, but unproven, risks has been called into question a contractor that oversaw the study (see attached) and is under review by the General Accounting Office. Limiting the availability and utility of WCS would be contrary to the intent of FOIA and the Clean Air Act.

As we mentioned in our February 9, 1999 letter, any proposal to limit the forms or formats in which WCS information would be available to the public would set a terrible precedent. Such a precedent could undermine the intent and success of FOIA in ensuring public health an safety, by encouraging Members of Congress to carve out exceptions to the right of the public to use FOIA for vital public information. Therefore, we urge you once again not to put forward any such proposal. If, however, legislation is introduced regarding the availability of WCS information, we ask you to ensure that there is a full hearing with input from all the affected com-

munities, including public interest groups, journalists, and other frequent FOIA requesters.

Sincerely,

ROBERT L. OAKLEY, *Washington Affairs Representative, American Association of Law Libraries.*

LAURA MURPHY, *Director, Washington Office, American Civil Liberties Union.*

JERRY BERMAN, *Executive Director, Center for Democracy and Technology.*

STANTON MCCANDLISH, *Program Director, Electronic Frontier Foundation.*

GARY BASS, *Executive Director, OMB Watch.*

January 27, 1999

Honorable Thomas Bliley
Chairman
Committee on Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In deciding to regulate propane under its Risk Management Program (RMP) rules, the Environmental Protection Agency (EPA) failed to consider the adverse effects which these regulations will have on hundreds of thousands of farmers nationwide.

EPA's Risk Management Program is authorized under Section 112(r) of the Clean Air Act Amendments of 1990. By adopting Section 112(r), Congress specifically sought to reduce the risks associated with the accidental release of *toxic* chemicals. Unfortunately, EPA chose to expand the program to include flammables such as propane, an important *non-toxic* fuel that is used in a variety of agricultural applications. Nearly 1.5 billion gallons are used annually by farmers for crop drying, weed cultivation and animal brooding. Propane is used on 660,000 farms across the country.

The RMP rules require propane consumers with more than 2,381 gallons storage to complete costly risk management plans and to file those plans with EPA by June 21, 1999. Even if many rural users of propane fall into the least rigorous compliance category (Program 1), the economic impact of these rules remains high since a significant up-front investment must be made to determine the appropriate program level. Farmers who ultimately qualify for Program 1 coverage will still be required to undertake a detailed off-site consequence analysis to determine their eligibility for this program level.

Because of the highly technical nature of the program, many farmers will find it necessary to outsource to achieve compliance. If only 10 percent of the 660,000 farm users of propane are forced to comply, the total cost to the farm economy could exceed $100 million. EPA is clearly unaware of these economic consequences. The Agency has estimated that only 66,000 sites nationwide will be regulated under RMP. This estimate includes all 140 chemicals covered by the program. According to the North Carolina Department of Agriculture, there are 11,000 propane farm sites in that state alone.

In addition to the economic impact, we are also deeply concerned about the potential distribution consequences of regulating propane under RMP. It is highly likely that many commercial users will seek to avoid coverage under the rules by limiting their on-site storage to a volume under the threshold level. This will lead to a significant increase in the number of deliveries, thus placing added stress on a delivery infrastructure that already strains to keep up with harvest and winter heating season demand. Distribution bottlenecks are another example of the type of unintended consequence that the Agency failed to consider when it formulated its rules.

Mr. Chairman, we respectfully urge you and the members of the Committee to reverse EPA's decision to include propane as a covered chemical under the Risk Management Program.

Sincerely,

Agricultural Retailers Association
American Corn Growers Association
National Farmers Organization
National Grange

Alabama Farmers Federation
American Farm Bureau Federation
National Farmers Union
Texas Corn Growers Association

cc: Representative John Dingell
Representative Henry Waxman

Senator INHOFE. If you could conclude your remarks as quickly as possibly, Mr. Kleckner, I'd appreciate it.

Mr. KLECKNER. I have two sentences left.

In summary, EPA's risk management program, as it pertains to propane, is unsafe, contrary to the environmental goals established by the Clean Air Act and will adversely affect hundreds of thousands of farmers nationwide.

We urge this committee to act quickly to avoid these consequences before the June 21 deadline. The bottom line is, Mr. Chairman, we're just running out of time.

Thank you.

Senator INHOFE. Thank you, Mr. Kleckner.

I do have a question to ask you at the appropriate time.

Mr. Bertelsmeyer?

STATEMENT OF JAMES E. BERTELSMEYER, PRESIDENT, NATIONAL PROPANE GAS ASSOCIATION

Mr. BERTELSMEYER. Thank you, Mr. Chairman.

Before I get started, I'd like to request permission to submit a number of documents that support my testimony and ask that be included in the record.

Senator INHOFE. Without objection, they will be included, Mr. Bertelsmeyer.

Mr. BERTELSMEYER. My name is Jim Bertelsmeyer and I'm chairman of Heritage Propane, headquartered in Tulsa, Oklahoma. In my real life, I run a propane marketing company but I appear before you today as President of the National Propane Gas Association.

NPGA represents 3,700 companies of all sizes that market gas and equipment in every congressional district. Of those 3,700, less than 100 are multiplant, multistate operators. The balance of 3,600 are mostly small mom and pop operators. These aren't the typical sized companies that come to mind when you think about the oil and gas industry.

As President of NPGA, I've spent the last 7 months traveling this country attending State and local propane meetings and conventions where I've heard about the many calls companies are getting from customers to come pick up our tanks before the RMP ruling deadline. This is the primary issue for my industry and our customers and the reason that I'm here today.

I want to lave you with three thoughts. The RMP rules duplicate and extensive, incredible safety infrastructure that already exists in all 50 States.

Two, the RMP rules will decrease safety in the propane industry because customers will demand more and smaller deliveries as they attempt to downsize their storage to get under the threshold limits of the regulation. This action also hampers our delivery efforts in critical months because of the many more deliveries that will be required.

Third, the RMP rules harm the environment because customers will switch to less environmentally sound alternatives rather than comply with the RMP rules. This will harm the air quality in this Nation and the economic growth of the industry that I represent.

All propane facilities are subject to regulation in all 50 States through building and fire codes. These codes, without exception, adopt or incorporate the substance of the National Fire Protection Association Safety Standard 58, NFPA.

State agencies, code inspectors and fire marshals require propane storage facilities to be designed, constructed and operated safely. The propane industry also complies with numerous other Federal requirements including DOT's hazardous materials regulations, OSHA's workplace safety rules and EPA's community right to know laws.

We take our safety responsibilities very seriously because safety is the major factor in a customer's decision to use our product. From our vantage point, when the rubber meets the road, we believe that EPA's RMP rules will have unintended consequences that reduce safety and actually harm the environment.

Many propane customers will seek to reduce the amount of propane they store at the levels below the threshold for coverage. This will not, however, reduce their demand for timely deliveries. What you will see is trucks making many more small deliveries rather than a safer alternative of making fewer large deliveries.

Complicating this situation would be the bad weather that often accompanies the industry's busiest time with the winter heating season. In fact, when I heard I was going to be given the opportunity to speak before this subcommittee, so as not to relate from an ivory tower perspective, I asked my employees to let me know of the actual instances where customers have already called and asked us to either downsize or remove their tanks as a result of the regulations which are more than 3 months away.

Understand, my company sells only about 1.6 percent of the propane sold in this country. I fully concede that this was not a scientific study but it will give you an order of magnitude feel for the problem I'm trying to relate.

My employees reported 316 customers who have requested their storage be removed or downsized or threaten to switch to another fuel. This represents about 14 million gallons of annual usage or about 10 percent of our annual sales. There are many more who are not even yet aware of the full impact so I feel that number to be very conservative.

Fuel switching makes air quality worse because customers switch to less environmentally desirable fuels. Companies are switching fuels because the RMP rules are very complex and burdensome and because they come with a high public relations price tag because of the worst-case impact zone implications the regs require to be defined. These are the real world impacts of these RMP rules.

Reduction in air quality may be the most ironic aspect of the RMP rules. Propane is a federally approved alternative fuel under both the Clean Air Act and the Energy Policy Act of 1992. My industry actively worked to enact both of these laws. Now it appears that support seems to be coming back to bite us.

The RMP rules are an expensive and duplicative paperwork exercise that will not improve safety. In fact, in our judgment, RMP will actually compromise safety and will drain, we believe, approximately $1 billion out of the pockets of my customers and my indus-

try. Keep in mind we're talking about a $10 billion industry, so 10 percent.

In conclusion, Mr. Chairman, EPA's RMP rules should not cover propane. It is our view that Congress never intended flammable fuels to be covered. This is not an exotic chemical. Everyone who has ever lived in a rural area knows about propane. Most all, even in fact, have a tank in their yard.

These same regulations exempt dynamite. So figure that out.

Thank you for this opportunity to testify and I'd be happy to answer any questions.

Senator INHOFE. Thank you, Mr. Bertelsmeyer. I appreciate your coming in from Tulsa and joining us.

Mr. Kleckner, you made the comment if you want to ask me what I'm going to do if this thing goes through, I'll tell you, well, I'm asking you.

Mr. KLECKNER. I'm going to do just what Mr. Bertelsmeyer said some of his customers have been doing. I'm going to call him up, tell him to come out and get a couple of tanks. I'm going to comply by having fewer tanks.

I'm a small farmer, 350 acres. To some of you that may sound big but that's really a small farm in much of the corn belt in northern Iowa. We do use it for animal heating, for our home and for corn drying. I'm going to take out a couple of tanks, get under the limit and simply call the truck more often for the danger is really in the truck on the road, crossing railroad tracks. The tragedy in Illinois last night was not a propane truck, but it could have been because there have been those. The danger is also in the switching when you transfer.

So we're going to do more of the dangerous stuff because I have less storage and that's how I am going to get around it. If I were a big farmer, I probably couldn't ask to take out enough tanks to comply and then I don't know what I would do.

I think it is ridiculous the way they're suggesting we go. It's going the wrong way completely.

Senator INHOFE. Of course Mr. Bertelsmeyer is very familiar with the crisis facing Oklahoma farmers right now. I think you're probably a bit conservative when you used the figure of $100 million. My math says if you have 330,000 farmers and if it's 2,000, you'd be $600 million or so.

I happen to have been born in Iowa so most of the Inhofes come from around the Cumberland area and that's considered to be the hog capital but with recent corporate farming and that's expanded, and we're really into the hog business big time in Oklahoma. Because of the pricing right now, many of the hog farmers are killing piglets because the price is just too low to justify raising them. That's part of the crisis we're under.

It looks like we're going to have in Oklahoma a pretty good wheat year but our elevators are full. I guess I'm sensitive to this because of the crisis that we're facing in Oklahoma and I'm sure that same thing is happening to other States too.

I would like to have both of you comment on what the farmers can endure in terms of more regulation? Mr. Kleckner, you represent farmers from all over America, so you would be a good one to lead off.

Mr. KLECKNER. Senator, as I go around the country giving speeches, and that's kind of what I do now with my life more than on the farm, that's probably what I hear more than anything else, is regulation, overregulation.

I realize regulations are the price we pay to live in a civilized society, but they ought to make sense at least most of the time; if not all of the time, at least most of the time. Most of us farmers don't think the regulations we live under make sense, not just economic sense but just don't make sense sense.

Here is one. As I said, it appears to me here that EPA thinks unless they're doing the regulating, they are not regulating.

Senator INHOFE. So you would look at this charge and come to the conclusion that the current regulation is probably more than adequate or would you say that?

Mr. KLECKNER. I hadn't looked at the chart. I was sitting in the back, along the side. I didn't see it before I came up.

Senator INHOFE. It just shows the current regulations, what they're addressing. You made the comment that the EPA doesn't think that you're regulated unless they're regulating you. I think there is some justification for a comment like that.

How about you, Mr. Bertelsmeyer, have you had a chance to look at the current regulation and what do you think would be accomplished by further regulation?

Mr. BERTELSMEYER. I think as far as we're concerned, there's nobody that's more interested in safety than our industry because it's our livelihood. If we can't conduct our operations and our customer's operations in a safe manner, then we haven't got an industry. So we have a very, very strong interest in safety.

As I look at all of the things that we're currently being regulated by, I can't think of any meaningful addition and certainly not this paperwork exercise that the EPA is attempting to put us through here as having any beneficial effect whatsoever, as a matter of fact, a detrimental effect on the safety in our industry.

Senator INHOFE. Explain why it's a detrimental effect on safety.

Mr. BERTELSMEYER. Because of just what Mr. Kleckner said. It's going to force people to try to try to get under the limitations and we'll have to make more deliveries. A delivery operation is the highest risk of all of the operations we do in our business. This is going to create more of those deliveries.

Senator INHOFE. If you had a chance through your industry to try to quantify what you just said, that if this regulation were to go through, how would you quantify more deliveries so that we would be able to analyze the additional exposure that resulted from additional deliveries?

Mr. BERTELSMEYER. Again, at the end, it depends on how many people actually do that, so in order to quantify it right now, it would be difficult, although we certainly would be willing to do that as a followup item.

Senator INHOFE. That would be interesting for us to know. It's a little more in-depth as to why this could actually have the effect of increasing risk.

Mr. BERTELSMEYER. Senator, I do know that my own, unscientific study, these are the responses back from my plant. Again, I haven't got a complete breakdown between the ones who want smaller

tanks and ones who have told us to come out and take the tanks out completely, but some number of these 316, just in our company, some percentage of those, are certainly the ones that are going to have their tanks downsized.

Senator INHOFE. On the issue of fuel switching, you were here when Mr. Fields was giving his testimony and responding to questions. I asked the question about fuel switching, wouldn't it be just as logical as switching to natural gas, to switch the other way to something that would be more onerous such as heating oil?

Mr. BERTELSMEYER. Yes, and when you look at what's exempted, the heating oil, diesel fuel, electricity, natural gas and gasoline, all of these are all exempted. I guess we can get into a debate as to which one is or isn't more environmentally friendly but certainly there isn't anything more environmentally friendly than propane. It's been designated by two congressional acts as an alternative fuel.

Senator INHOFE. Mr. Kleckner, you were here when we talked to Mr. Fields and his estimate in the written testimony, I think was 28,000, then he stated 33,000 in terms of estimating the facilities that would be reporting on propane.

Are the two of your or either of you aware of the study done by industry, the accounting firm who came up with the estimates that add up to over a million?

Mr. BERTELSMEYER. Yes, sir. Our association commissioned that study and it's been some number of years ago, I want to say like four or five. I wasn't actively involved in the association at that time, but I want to say four or 5 years ago and we can clarify that for the record.

We commissioned the study and did a survey. It was a market survey just to determine exactly where propane was used throughout this country. That's where we determined the 660,000 farms and the 350,000 industrial sites, and another million or so commercial sites. Then in order to arrive at the number that would be affected by this regulation, we assumed that 100 percent of the industrial sites would be covered, that approximately one-half of the forms would be covered, and approximately 30 percent of the commercial sites. That totals up to the 1 millionsites that would be covered, and we put in a very conservative number of $1,000 on the cost which I know personally from my own company, that is probably just a faction of what our costs are going to be to comply with this thing. That's where we came up with the billion dollar number, sir.

Senator INHOFE. I think you inadvertently said 660,000 farmers and said 330,000.

Mr. BERTELSMEYER. Well, 660,000 but only 50 percent would be covered. That's where the 330,000 came from.

Senator INHOFE. The figures that came from this study, 11 of the 13 engineering firms estimated the compliance to be between $2,000 and $20,000 per facility. Do you have any thoughts about that and the accuracy of that, Mr. Kleckner as it pertains to farms?

Mr. KLECKNER. No. I'm guessing that the 20,000 would be high for a farm that more likely the $2,000 area would be more applicable to farmers. I'm just sitting here listening to Mr. Bertelsmeyer. The 660,000 farmers or close to that, most of us don't know wheth-

er it will apply to us or not, so we have to go through the cost, the time which is cost also, determining in the end maybe it doesn't apply to us but it's been a whole bunch of money and probably even hiring, in many cases, an outside consultant to sort through those 60-some pages or 30-some pages to get to the final two, three or four-page document we have to fill out. Then the cost of complying after that, $1,000, $2,000 or more at that point, the $100 million I said is almost so conservative it is laughable. I would think half a billion to $1 billion, half a billion for farmers if not more, and even more for industry because of what you have.

Senator INHOFE. From your two perspectives here, you heard him talking about the relief that would be provided with connecting tanks. How much help would that be?

Mr. BERTELSMEYER. That absolutely goes in the wrong direction because it takes a manifolded installation that is filled with one delivery to multiple tanks and by separating those tanks, now we've got to go to three or four different locations on the same farm. So again, we're back to the problem that the high risk portion of this business is the delivery operation. This not only doesn't help, it hurts it.

Mr. KLECKNER. Mr. Chairman, also with corn drying, corn bins are grouped together, so you don't put a tank a quarter mile away. I don't know what their distance requirements will be. It's likely to be minimal to begin with and increase with time, the way the regulatory creep usually happens. I'm not saying EPA creeps, but there is a regulatory creep that's out there in this country. It starts way out here and it comes together.

I simply can't put my tanks for my grain drying bins too far away. I put them by the grain bins and they may or may not be connected but still the distance requirements, I can't put it 80 rods away, a quarter mile away.

Senator INHOFE. I appreciate your comments very much and your testimony. You are going to receive questions in writing. I know you are from Senator Bennett and probably other members of this committee also.

I would like to share with you that the majority of the people on this committee are concerned about two major things as we address all regulations that come out, whether they pertain to clean air, endangered species, Superfund, and that is that we depend on sound science and not hysteria, and that we actually have a cost benefit analysis so that people will know what the costs are actually going to be.

I have been critical of the EPA because their estimates of cost have consistently been much lower than I believe. I think in this case they are too.

With that, we'll go on to our third panel because we're getting behind in our schedule right now. I appreciate very much both of you coming.

If the third panel will come to the witness table? The third panel consists of Mr. Robert Blitzer, Former Section Chief, Domestic Terrorism, FBI; Mr. Thomas M. Susman, Ropes & Grapy; Paula Littles, Paper, Allied-Industrial, Chemical and Energy Workers International Union; Thomas E. Natan, Research Director, National Environmental Trust; and Ben Laganga, Emergency Man-

agement Coordinator, Union County Office of Emergency Management.

We will start with Mr. Blitzer, please.

STATEMENT OF ROBERT BLITZER, FORMER SECTION CHIEF, DOMESTIC TERRORISM/COUNTERTERRORISM PLANNING SECTION, FEDERAL BUREAU OF INVESTIGATION

Mr. BLITZER. From January 1996 until I retired from the FBI, I was Bob Burnham's predecessor, so it was during my tenure that a lot of this worst-case scenario discussion arose to the point it is today.

As I was listening to the testimony, most of what Bob discussed and Tim was contained in my statement, so I'm going to just briefly give you a sense of the kind of atmosphere in which we were discussing these kinds of problems. I'm just looking at worst-case scenario types of situations.

At the time this was going on, we had been through a series of major cases, and I had been through those personally, everything from the World Trade Center to Oklahoma City, the Nairobi bombings and other cases. There was great concern in the Administration and I think it remains today about the use of weapons of mass destruction with in the United States including the detonation of a device.

Bob mentioned the sour gas case. We managed that case during my tenure and we were very concerned that thing could occur. We'd had another incident prior to that, a threat, at Texas City, Texas, a big oil refinery situation. So we had had a couple of cases and we had this atmosphere of mass casualty cases. The thought of a terrorist, either domestic or international terrorist, sitting someplace in the world or in the United States with the kind of detailed access to facilities that the worst-case scenario would allow was of concern to us. That is why we at the Bureau opposed it.

I guess the only thing that wasn't discussed this morning was, although I think you touched on it, the discussion of release of information under the Freedom of Information Act. That could occur today. Although I'm out of the FBI at this point, I would say to you I'm worried about that because again, as we were thinking about the possibilities, looking in a crystal ball, I guess threat assessment is certainly not a science, it's an art. In trying to assess future threats, this is what we were thinking about.

I just wanted to paint that picture for you as to some of the behind-the-scenes activities that are going on during those discussions. I thank you for your attention.

Senator INHOFE. Thank you, Mr. Blitzer.

I would admonish all of you that your entire statement will be made a part of the record, so we will try to adhere to our time line here.

Mr. Susman?

STATEMENT OF THOMAS M. SUSMAN, ROPES & GRAY

Mr. SUSMAN. Thank you, Mr. Chairman.

I'm pleased to be here this morning to address application of the Freedom of Information Act to the chemical reporting data that are required to be provided to EPA under the Clean Air Act.

I've personally been involved with Government information law for over 30 years and as my biographical summary reflects, I've been an unwavering advocate of public access throughout that time.

Today, I appear on my own behalf at the request of the subcommittee. Although I have provided the subcommittee with a paper that was prepared in part through support of the Chemical Manufacturers Association, it's analyses and conclusions are my own and I ask permission that the paper be included as part of the record.

Senator INHOFE. Without objection.

Mr. SUSMAN. I'm here today because I have great respect for the FBI and its antiterrorist expertise, and also for the important benefits of open access to government information. So when the FBI says these worst-case scenarios or offsite consequence analyses should not be posted on the Internet because that will significantly increase prospects for terrorist attack, I readily conclude that such posting is a bad idea.

When EPA, local governments and community leaders say access to these data will encourage accident prevention and facilitate community preparation and rapid response to potential chemical accidents, I'm comfortable with the conclusion that public access locally by the community, by firefighters, by emergency preparedness offices, is a good idea. Plainly a balance needs to be struck between these two conflicting interests.

Where I find myself in disagreement is with the Environment Protection Agency's notion that under current law, it, the agency, can strike a balance by collecting those OCAs in electronic format and compiling them in electronic media and then can refuse to release those data in electronic form to the public. That is simply not permitted by the Freedom of Information Act, and the agency doesn't need another 60 days to reach that conclusion.

The Clean Air Act states unequivocally that OCAs must, except for trade secrets, be made available to the public. That Act doesn't impose any requirements regarding the form in which information must be disclosed, but the Freedom of Information Act does. It says if the Government has disclosable information, it has no discretion to withhold or manipulate or create speed bumps to access to that information, unless one of the Freedom of Information Act's exemptions apply. In my paper that is included for the record, I discuss each of the exemptions and demonstrate that they not apply in this instance.

The Freedom of Information Act, by virtue of the electronic amendments enacted in 1996, requires disclosure of requested data in electronic format when that form of the information is requested and without any additional manipulation by the agency if it's reasonably possible for the agency to make that information available.

The conclusion is that EPA must disclose these worst-case scenarios, offsite consequence analyses, in the electronic format in which they're submitted, in a searchable data base if one exists. The EPA has no discretion to act otherwise.

EPA has proposed to reformat the data to make it less accessible, to make searching difficult, to create speed bumps to disclosure, and it seems to me that is not the role of the agency. No agency

should be allowed, much less encouraged, to state publicly that it intends to solve a serious problem identified by the FBI and concurred in by EPA by violating a mandate of the Congress in the Freedom of Information Act. The law doesn't provide for it, the Justice Department shouldn't condone it and Congress shouldn't tolerate it.

For those who agree that unrestricted electronic access to OCA data on the Internet is a threat to security of manufacturing facilities and the communities in which they are located, there's only one legal solution to this problem—new legislation.

I'm not proposing that Congress amend the Freedom of Information Act or for that matter, reduce the reporting requirements under the Clean Air Act. Nor do I propose that OCAs become unavailable to local governments or community residents entirely. It does seem to me that a balanced scheme is needed that will allow community access and even release of paper copies on a request-by-request basis but which will clearly and specifically prohibit their dissemination in electronic format.

The development of that scheme should be up to Congress through legislation and not to EPA through violating the Freedom of Information Act.

I look forward to answering your questions.

Senator INHOFE. Thank you, Mr. Susman.

Ms. Little?

STATEMENT OF PAULA R. LITTLES, PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION

Ms. LITTLES. We very much appreciate the opportunity to appear before you today. Our organization represents 320,000 workers employed nationwide and a number of them are in the chemical and oil refining and nuclear industries.

The question of full disclosure of risk management plans is of vital importance to our organization, our members and the communities in which they live. We feel if we are ever to have effective, ongoing hazard reduction, these plans must be fully disclosed to encourage safer technologies, honor the public's right to know, and to overcome the complacency that has allowed for a no serious plan or timetable to reduce hazards.

The Clean Air requires EPA to implement a program to assist in the prevention of chemical accidents. EPA developed the risk management program rule. This rule requires some 66,000 facilities that manage sufficient amounts of hazardous materials to develop a RMP and file it with EPA. These facilities include chemical manufacturers, refineries, water treatment facilities, ammonia, refrigeration, propane storage and semi-conductor fabrications.

A projected 65 million people live within a five mile radius of an RMP facility. The Clean Air Act also requires that EPA make this information available to the public. Our organization became very concerned in November when we discovered that EPA had made the decision on November 6, 1998 not to allow full access to RMP information.

Our main concern surrounding full disclosure is our members, their families and the communities in which they live. Our mem-

bers are the first respondents to a site of a manufacturing accident, at their work site, they also may work at a site near an incident, next door, across the street or five miles away but near enough to be affected.

Currently, not enough effort has been placed on hazardous reduction for our organization to readily accept limited disclosure on hazardous materials that our members work or live near. There is also the issue of manufacturing security. It is to our advantage as an organization that represents workers in this arena that we can say to workers, their families and the community, these facilities have nothing to hide. We can tell workers that these facilities are working toward reducing hazards, their RMPs are available in any form they need, electronic or other, to provide the information needed to show that they are really working toward hazard reduction.

We believe that it is not the knowledge that is harmful but the lack of knowledge that has at times created mass hysteria and rushed us to judgment. Although numbers vary depending on the source of statistics and period of time examined, there is no doubt about the effects of chemical accidents on human lives. Year after year, large numbers of people are killed or injured. In addition, the numbers of those suffering the long-term consequences of exposure must also be counted.

Currently the Chemical Safety Board is reviewing or investigating 27 incidents in 20 States. In the last 3 months of 1998, the Chemical Safety Board began four incident investigations, 20 workers were killed in the last 3 months of 1998 on the job that the Board is investigating now.

These numbers are clear and the message they send should be even clearer. We need to work harder at reducing hazards and it is our belief that full disclosure is the beginning step. We believe there are many valid and important uses for RMP information by people who live, work and conduct business well beyond the immediate community where a facility is located. RMP information can be used in a number of ways.

One way that we as an organization representing feel this would be beneficial to us is it would help us develop and conduct effective education and training programs, it would help us to link other worker safety and public health data bases. It would also determine which facilities might pose year 2000 risks.

Just as we believe strongly that our members and their families and the communities in which they reside will be made safer by full disclosure, we do not believe that we're placing them in danger of sabotage or terrorism. Communities can only be protected when companies use safer chemicals, reduce dangerous storage, widen buffer zones and provide full information. Chemical accidents have no respect for geographic boundaries; we must have the freedom to communicate concerning chemical hazards if we are to real hazard education.

Only with full information, disclosure and opportunities to act can facilities, employees and communities reduce chemical hazards.

Thank you for allowing me the opportunity to speak.

Senator INHOFE. Thank you, Ms. Littles.

Mr. Natan?

STATEMENT OF THOMAS E. NATAN, JR., RESEARCH DIRECTOR, NATIONAL ENVIRONMENTAL TRUST

Mr. NATAN. Thank you for the opportunity to testify as a member of the environmental community. I'm a chemical engineer and I've visited scores of industrial facilities, examining ways in which they can operate more efficiently and safely, as well as helping to interpret their environmental data for residents and surrounding communities.

As the committee is aware and as Senator Lautenberg mentioned in his opening statement, Congress enacted the Emergency Planning and Community Right to Know Act in 1986. A principal feature of this legislation was the toxic releases inventory program, TRI. TRI has been credited by both environmentalists and industry alike for generating the climate that has resulted in dramatic decreases in toxic chemical emissions without the traditional constraints and costs of the command and control regulatory framework.

The experience with complete and unimpeded public dissemination of TRI data in generating significant reductions in releases of toxic chemicals to the environment is relevant to the issue of public availability of worst-case scenario data.

Like the 112-R program, TRI merely requires reporting of information that companies already generate in the course of doing business. Public awareness, generated both from local citizens and data analysis by environmental groups, has led to a reduction in toxic chemical releases of 50 percent over the past 10 years. No further regulation was necessary to bring about these reductions.

The enduring lesson of public access to information regarding toxic chemical risks facing communities is that real risk reduction can occur without the imposition of new and significant costs to the manufacturing sector. Another important lesson we can glean from TRI is that public access to toxic chemical release information alone can generate enormous risk reduction benefits.

Also, for many workers at industrial facilities, TRI is their first opportunity to learn about chemicals used on the job, another unexpected benefit of complete access to information. All of these benefits can be further enhanced through public access to 112(r) data.

The intelligence community has raised concerns about the availability of worst-case scenario data on the Internet. However, even in the absence of Internet access to data, there are many ways in which EPA, the intelligence community and the chemical industry must work both separately and together to reduce hazards and potential risks to the American public from the use of toxic chemicals in industrial facilities.

The read-only CD ROM that has been proposed is interesting but we've not been provided enough details to determine if this will meet the needs of the diverse public. To name a few, this public includes citizens who want to compare their local facilities to others across the country in the same industry, workers at the facility for whom these data may be the best vehicle to learn about risks and hazards on the job, emergency responders who will want to be sure a particular plant meets the industry standard for safety, educators who will want to teach students about best practices and investors

who will want to track the performance of all the facilities of a particular company.

Whether or not the worst-case scenario data are available on the Internet, EPA should establish many specific public access services to mechanisms. I've included those in my written statement and I won't repeat them here.

EPA also needs to take an active role in providing comparative analyses of data from facilities within particular industries to determine the best practices as they currently exist. EPA should also provide analyses of uses of specific chemicals across industries for some of the most hazardous substances.

From the time the agency receives the first 112(r) data, it should be creating guidance documents for locally impacted citizens and the general public on what the data mean and don't mean as well as list an explanation of supporting documentation that facilities should have on hand. As more years of data become available, the agency can also publicize success stories of facilities that have significantly reduced their vulnerability zones.

To my knowledge, the review of worst-case scenario data by the FBI is the first time the FBI has reviewed chemical accident data reported by industrial facilities to determine the potential threat that onsite use of toxic chemicals pose to local communities. This is true despite more than 10 years of data being widely available.

In my opinion, the most significant finding made by the FBI during its review was that the use of toxic chemicals at facilities poses an inherent risk to workers, neighboring properties and surrounding communities. The FBI found additionally that making the public aware of chemical use risks over the Internet would amplify this inherent preexisting risk.

In light of these findings, it is important to emphasize that the risks emanate from toxic chemical use, not public awareness of those risks.

We believe the FBI can play a tremendous role in furthering society's goal of risk reduction. A comprehensive review by the FBI of security measures at facilities using or producing large volumes of toxic chemicals would be a good start at reducing risks to citizens. Further reviews could include risk generated by transporting chemicals to and from those facilities.

The chemical industry has begun presenting worst-case scenario data for individual facilities to local citizens in Louisiana and Texas. Companies should go further and produce reports on their worst-case scenario data for all facilities they own enabling the public to see that they operate uniformly with regard to risk minimization. These reports should also publicize plans and goals for risk reduction if they exist.

Finally, the chemical industry, EPA, and the intelligence community should collaborate on a voluntary initiative to reduce risks with reasonable targets and dates. Although reducing hazards by using less toxic chemicals would be most desirable as a way to accomplish risk reduction, a voluntary initiative could explore other common sense risk reduction measures as well.

Where reduction in use isn't practical, such common sense measures could include safer transportation, storage and handling of toxic chemicals. The worst-case scenario data provide an ideal vehi-

cle for measuring progress for risk reduction efforts. However, denying or severely limiting public access to worst-case scenario data does not relieve the EPA and the intelligence community or the chemical industry of their shared obligatio to reduce risk.

Thank you for the opportunity to address the committee and I'd be happy to answer any questions.

Senator INHOFE. Thank you, Ms. Littles.

Mr. Laganga?

STATEMENT OF BEN LAGANGA, EMERGENCY MANAGEMENT COORDINATOR, UNION COUNTY OFFICE OF EMERGENCY MANAGEMENT

Mr. LAGANGA. I am the emergency management coordinator for Union County, New Jersey. Union County is an important county in New Jersey. It is highly industrialized, 102 square miles with a population of 494,000. Within the county borders lies Newark International Airport, New Jersey Turnpike and the Garden State Parkway as well as the Elizabeth Seaport. There are many other highly traveled highways. We are also home to several petrochemical and pharmaceutical facilities who are required to file risk management plans in 1999.

As a representative of the county and chairman of the local emergency planning committee, I am pleased that you are hearing testimony on this highly controversial issue today. From the outset of this rules development, it has been my belief that the availability of worst-case and more likely case scenario information on the Internet could lead to an increase in terrorist acts in our State and throughout the country.

In New Jersey today through right to know and New Jersey's Toxic Catastrophe Prevention Act, all companies that use hazardous materials on their site must provide that information to their OEPC and the New Jersey Department of Environmental Protection. The information is available to the public, however, it must be requested and is not available through the Internet.

In my opinion, that is a better way to monitor those individuals requesting the information. If the information is available on the Internet, there is no possible way to know who is accessing that information and quite frankly, how they are using it.

There is another side to this issue, the misunderstanding and the misinterpretation of this information. Without proper explanation, the general public could misinterpret the information they are accessing and could cause undue harm amongst the public at large.

In Union County, we do not want to see companies go out of business, however, we do want to maintain the lines of communication between these facilities and our emergency response teams.

I hope that you recognize the use of this information is valuable to emergency responders. However, if it is put in the wrong hands, it could cause more harm than good.

I know that the regulatory intent for the development of the risk management plans was to put valuable information into the hands of the public, not to jeopardize public safety by placing this information in an accessible format where it can be used by those looking to cause harm. However, I am concerned that is exactly where this valuable information will end up.

Thank you again for this opportunity and I would be happy to answer any questions you may have.

Senator INHOFE. That's interesting, Mr. Laganga. In your testimony, you say you already collect the emergency data and make it available to local citizens and environmentalist groups now?

Mr. LAGANGA. Yes. There are two ways we do that. The New Jersey Department of Environmental Protection passes that information down to the local emergency responders, police, fire and the LEPC. We're very active in Union County through an HMAC Advisory Council who puts on educational programs and any type of training for emergency responders in conjunction with those industries.

Senator INHOFE. Do you do this individually or by what means do you respond to these requests? I'm trying to figure out how many requests you might have to respond to?

Mr. LAGANGA. At the county level, we receive maybe 20 a year. At the local level, they receive more from their community activists. We also promote public education through the facilities. Senator Lautenberg earlier mentioned the Exxon refinery. I sit on that community action panel which enpanels emergency responders, local political people and citizens who get to know about the facility and how emergency response activities take place.

Senator INHOFE. So you not only share the information, but you also interpret it for them. Has interpretation ever been as significant as just having access to the information?

Mr. LAGANGA. We don't interpret it. We leave the interpretation up to the facility. The information they supply us with are the chemicals and how much they have in their inventory. We do encourage dialog between the facility and the citizens.

Senator INHOFE. We were listening to Mr. Susman say that he came to the conclusion there is only one solution and that is through legislation. Are you suggesting another could be that you could do this through the local entities and avoid the EPA and the Freedom of Information Act altogether?

Mr. LAGANGA. Yes. Again, public information that is supplied from the facilities to the DEP, to the towns as well as to the facilities can really promote that.

Senator INHOFE. How would you react to that, Mr. Susman?

Mr. SUSMAN. That's quite interesting because New Jersey has a unique statute enacted just a few years ago that says that when the government maintains information, even if it's maintained in electronic form, a State Freedom of Information Act request can be responded to by providing paper records. So even if the State agencies maintained these data in electronic format in New Jersey and a member of an environmental group desiring to put this on the Internet makes a request under State law, that person can get the record only in paper format under a specific State statute.

I'm not suggesting that is a good idea for all government.

Senator INHOFE. How many other States have a statute?

Mr. SUSMAN. It varies. There are 50 different States with 50 statutes. Unfortunately, the Federal Government sets the stage for what most States do and the Federal Government has established the principle if you have it electronically, you have to release it

electronically. I haven't done a State-by-State review, but I do believe New Jersey may be unique.

Senator INHOFE. Mr. Natan and Ms. Littles, I come from Oklahoma and you're all familiar with the Federal office bombing which was the most devastating terrorist attack on our soil in history, so we're very sensitive to this type of thing happening. I would like to have you both talk about the tradeoff here. We're concerned about peoples' right to know. When you ask the man on the street would you rather have this right to know for yourself and for terrorists or would you rather have no one have the right to know? I think I know what their answer would be. How would you respond to that?

Ms. LITTLES. I came from a place close to Oklahoma. I actually came from Texas and I worked in a petrochemical field. Because of that and because of having been at petrochemical facilities when there have been releases and people were not aware what was being released, when peoples' children were at school, it has instilled in me a feeling that people in the community have a right to know what's going on in these facilities and that we, as an organization, have a responsibility to our members in those facilities as well as in the facilities around the country and facilities with which we have good relationships as well as the ones where we don't. Where we have good relationships, we're given data so that we can actually look and see our members are being in the best possible hands. In places where we don't, we're not given that same information.

We know there are some facilities that will be giving their RMPs that we can compare information and we can actually maybe sit down and talk to people about what we actually view as an in our own world company terrorism because when you have people working in facilities and companies and not providing the proper respect and response to them for their own livelihood and how they are going to leave that job, we have a very large problem with that also.

I'm definitely not trying to play down what happened in Oklahoma because that was very serious but I don't think what happened in Oklahoma—what happened in Oklahoma, that building was not on the Internet.

Senator INHOFE. I'm not suggesting it was. I said I am sensitive to the results of terrorist activity which that was. I recognize that was not information that was on the Internet.

Ms. LITTLES. Also from what I've seen of RMPs and having worked in a petrochemical facility, I have never seen anything on one yet that actually would identify for a terrorist what they could actually bomb.

Senator INHOFE. I'm going to ask you, Mr. Blitzer, to respond to that last comment she made in just a minute but I want to hear from Mr. Natan first.

Mr. NATAN. I've had experience with citizens who have received environmental data from their local facilities that is not equivalent to the same data they've submitted to the Federal Government. For that reason, I think even from a verification standpoint, it would be nice for citizens to be able to verify that what facilities are giving them is indeed the correct thing.

I've also found instances where the data are incomplete and relying even on facilities to provide the interpretation for the communities has posed a problem. I'm also sensitive to the idea that you certainly don't want to foster anymore terrorist activities of any kind.

I do believe that there is a role for disseminating information in ways that it will make sense for people to use it. The problem is that I think the public who needs this information goes well beyond the local level. I am not sure how to resolve that.

Senator INHOFE. It is a problem because you've repeated several times, all of you have, that people have a right to know but terrorists are people.

Mr. NATAN. Terrorists are people, not the right people but they are people. I find it difficult as someone who likes to examine data and who would like to know, for example, which paper plant that uses chlorine or releases chloroform is operating in the safest possible manner so I can go to other paper plants and ask them why they are not doing the same thing. I think this is a legitimate use of this kind of data.

Honestly, without greater access to the data than I've seen proposed, I don't know how I would do that.

Senator INHOFE. Mr. Blitzer, would you like to respond to her last statement?

Mr. BLITZER. Again, I think I would just harken back to some of my initial comments. That focuses more on the worst-case scenario on the Internet with someone either in a foreign country or here being able to zero in on key corporations, key facilities where a lot of stuff is and have a pretty good sense of what's there, what the facility looks like, and being able to target a facility for an operation.

Senator INHOFE. Why don't you give us a hypothetical, specific example?

Mr. BLITZER. I'll try to do that. Let's say you have a foreign terrorist who is active on the Internet, and they are, and he starts searching facilities, chemical facilities, in the United States on the Internet. There's 60,000 and some facilities but let's say he's looking at the State of New Jersey and he can pull up significant data on chemical facilities in the State of New Jersey.

Again, hypothetical, he has a cell in the New York City area that he can activate and he can provide information to them, this is the target, this is what I want you to do. That's the scenario that might occur and could occur. That's the kind of thing we, as we are considering this, are worried about, that kind of accessibility, making it easy for them to target facilities, easier than it is right now.

Senator INHOFE. Have you come to the same conclusion that Mr. Susman has, that probably even though it may not be a good solution, that the only solution would be legislative?

Mr. BLITZER. I personally have and it's troubling and I listened to the other panelists. I must tell you after 27 years in the Bureau, I'm just as concerned about peoples' right to know as anyone else. I think they do have a right to know but I think Mr. Natan is right, where is the balance? I don't know where that balance is. There's a lot of legitimate researchers like Mr. Natan and others that need access to worst-case scenarios and I don't think we were

trying to prevent that. We're trying to prevent worst-case scenarios from being posted on the Internet and being so accessible to so many individuals that may want to do us harm.

Senator INHOFE. Mr. Susman, you've come to this conclusion so I would assume that there are no technologies in your mind that the EPA could use to safeguard this information under current law?

Mr. SUSMAN. Under current law, if the EPA possesses it in a searchable electronic data base, which is the way in which the information will be submitted on June 21, then that's the format that it has to disclose it. EPA does have the facility to provide paper copies. All you need is a photocopy machine. The law just doesn't require that alternative.

I might say, Mr. Chairman, that it does seem that we've talked about the need for balance, and at least 80 percent or more of the valuable uses to which these reports can be put, it seems to me, can be accomplished through paper copies provided locally.

If someone wants to key in 66,000 reports and put them on the Internet, I think that's something we can't guard against legislatively.

Senator INHOFE. A third party could do that.

Mr. SUSMAN. That's correct, but that again is part of the balance, the price we pay. We want the local community, we want the firefighters, the emergency preparedness offices, the police department and workers to have some access to these reports. It's a far cry from saying therefore, it needs to be electronically available whether in a CD-ROM, nonsearchable, non-read only. All that sort of stuff is very problematic at least under present technology.

Senator INHOFE. Mr. Blitzer, a minute ago, I think I heard you say that terrorists are very sophisticated and they do use the Internet?

Mr. BLITZER. Both domestic and international terrorists use the Internet, they communicate by computer. I saw it firsthand.

Senator INHOFE. When did you leave the FBI?

Mr. BLITZER. I left in November of last year. Many of the domestic groups in particular are extremely active on the Internet where they communicate and have their own web sites. They have encrypted web sites, so it's there.

Senator INHOFE. I would assume they are much more sophisticated now than even they were last November.

Mr. BLITZER. As fast as the technology grows, they will take advantage of it.

Senator INHOFE. I've been reminded we have gone 5 minutes over our time but if any one of the five of you has any gnawing need to add something else, this is your chance to do it.

[No response.]

Senator INHOFE. Thank you very much for taking the time to come and that goes to all three panels. I appreciate it very much. You will be receiving questions from members who were not in attendance to answer on the record in the next few days.

Thank you very much.

[Whereupon, at 11:51 a.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM THE STATE OF WYOMING

I am genuinely concerned about the environment, that is not what this is all about. That is why I am so puzzled by the letters I have been receiving from many of my constituents in the propane industry concerning the Environmental Protection Agency's (EPA) risk management regulations. EPA, in compliance with the Clean Air Act is attempting to collect risk management plans (RPMs) from facilities handling substances listed under section 112(r) (3).

I applaud EPA's efforts of wanting to improve the safety of industrial chemical processes but I do not think it is necessary to include fuels when the legislation was aimed specifically at chemical releases. Why would the Administration want to discourage folks from using propane—a fuel the Administration itself deemed a clean fuel.

With respect to propane, the EPA's risk management program is duplicative in nature. The industry already operates under strict regulations on the State, Federal and local level. Propane companies already comply with a comprehensive safety standards set by the National Fire Protection Association and also abide by worker safety standards set by OSHA.

These risk-management regulations cover all facilities with more than 10,000 pounds of propane onsite. This is not a lot of propane, so these rules not only apply to bulk storage facilities but also to many residential and commercial customers as well. As a result, many propane users are thinking of switching to a less environmentally friendly substance such as heating oil, natural gas, or electricity. And I mentioned previously, propane is listed as a clean fuel.

Another negative impact concerning the proposed rule is that it could actually decrease safety. Many commercial customers will attempt to remain under the program threshold and thus avoid the burden of compliance. They will do so by reducing their storage capacity and arranging for more deliveries as a way to reduce onsite storage. This means the propane industry will be forced to make more deliveries, which increase the possibility of vehicular accidents and fuel handling.

For all these reasons, I do not believe that propane should be included on this list of hazardous substances. This is not about the environment. This is about costly, unnecessary and duplicative regulations. Finally, Mr. Chairman, I have several letters from my constituents that I would like to be included in the hearing record.

AMERIGAS,
AMERICA'S PROPANE COMPANY,
February 25, 1999.

The HONORABLE CRAIG THOMAS,
United States Senate,
Washington, DC 20510.

DEAR SENATOR THOMAS: I am a propane industry employee that is concerned about a regulation being placed on my industry by the U.S. Environmental Protection Agency (EPA).

I work as a serviceman for AmeriGas Propane in Laramie, WY. We deliver propane to customers who use it in a variety of ways in their homes, businesses, and farms. I am very concerned about the EPA's rule implementing section 112(r) of the Clean Air Act. This rule requires propane marketers and their customers who have storage tanks containing more than 10,000 pounds (about 2,380 gallons) of propane to prepare detailed facility information, including a hypothetical worst-case scenario. The rules also duplicate safety rules on the State level.

My co-workers and I are taught and trained in the safe handling of hazardous materials and do all we can to protect ourselves, our work place and our community in every aspect of our job. We work under strict regulations at the Federal, State, and local level, such as the NFPA Standard 58, the Liquefied Petroleum Gas Code, published by the National Fire Protection Association and many other regulations by OSHA and DOT.

I do not believe that adding another paperwork requirement will increase the level of safety that I work to provide to our customers and community each and every day. Please support legislation that recognizes compliance with NPGA 58 as an alternative means of complying with EPA's section 112(r) rules.

Thank you for considering my views as an employee that has to help carry out all of the regulations and rules that Washington creates.

Sincerely,

TY BLAKE

V–1 OIL COMPANY,
P.O. BOX 51,
Douglas, WY, 82633, March 2, 1999.

The HONORABLE CRAIG THOMAS,
United States Senate,
Washington, DC 20510.

DEAR SENATOR THOMAS: I am writing you on behalf of over 300 employees of V–1 Oil Company in urgently requesting your help in informing the EPA that to include propane in it's flammable substances on the Risk Management Program is a huge mistake for not only this company, but most all other propane marketers. Our company delivers propane in Wyoming and 5 other western and I can assure you that the EPA's Risk Management Program would not and will not cover any incident which V–1 Oil Company may or could have.

The EPA's deadline of June 21, 1999 for the completion of the Risk Management Plan in its detailed form of a "worst case scenario" is very misguided due to the costly imposition to the industry and it's doubtful benefit. Rather, the EPA's mandate essentially encourages an anti-safety process due to the resultant reduced threshold level while increasing delivery rates and risks.

It is my understanding that the Risk Management Plan will cost the industry in excess of $1 billion. Frankly, this measure could result in numerous customers switching from clean burning propane to other forms of energy, thus costing the industry and customers billions of dollars additionally.

The Risk Management Plan does not have a potential to increase safety, nor does it promote a cleaner environment or promote the use of alternative fuels such as propane. In an industry which is already so heavily regulated, the Risk Management Plan will surely cripple the industry without any notable benefit to safety or communities.

I urge you to please give your support to the removal of the flammable fuels from the list of the Risk Management Plans covered substances and look forward to hearing from your office on any help you can render this important issue.

Sincerely,

THOMAS L. CHRISTY,
Regional Manager.

AMERIGAS,
AMERICA'S PROPANE COMPANY,
February 24, 1999.

The HONORABLE CRAIG THOMAS,
United States Senate,
Washington, DC 20510.

DEAR SENATOR THOMAS: I am a propane industry employee that is concerned about a regulation being placed on my industry by the U.S. Environmental Protection Agency.

I work for the AmeriGas Propane Company in Casper, Wyoming We deliver propane to customers who use it in a variety of ways in their homes, businesses, and farms. I am very concerned about the EPA's rule implementing section 112(r) of the Clean Air Act This rule requires propane marketers and their customers who have storage tanks containing more than 10,000 pounds (about 2,380 gallons) of propane to prepare detailed facility information, including a hypothetical worst-case scenario. The rules also duplicate safety rules on the State level.

My co-workers and I are taught and trained in the safe handling of hazardous materials and do all we can to protect ourselves, our work place and our community in every aspect of our job. We work under strict regulations at the Federal, State, and local level, such as the NFPA Standard 58, the Liquefied Petroleum Gas Code, published by the National Fire Protection Association and many other regulations by OSHA and DOT.

I do not believe that adding another paperwork requirement will increase the level of safety that I work to provide to our customers and community each and every day. Please support legislation that recognizes compliance with NPGA 58 as an alternative means of complying with EPA's section 112(r) rules.

Thank you for considering my view as an employee that has to help carry oul all of the regulations and rules that Washlngton creates,

Sincerely,

PAM BARRETSON.

AMERIGAS,
AMERICA'S PROPANE COMPANY,
February 24, 1999.

The HONORABLE CRAIG THOMAS,
United States Senate,
Washington, DC 20515.

DEAR SENATOR THOMAS: A short while ago I contacted your district office regarding a recent EPA regulation. Since a June 21 compliance deadline is fast approaching, I felt it necessary to contact you again.

I am extremely proud of my company and its employees The EPA is attempting to impose a regulation on me and many of my customers that will may actually decrease safety in and will definitely increase cost.

The UPS's burdensome risk management regulations cover all facilities with more than 10,000 pounds of propane onsite. This is not a whole lot Of propose, So these roles not only apply to my bulk storage facilities but also north of my residential customers as well. I am now starting to get calls from many of my customers who are reconsidering their usage of propane in light of having to comply with these regulations.

I find it ironic that EPA's proposed rules will actually compromise safety. Many commercial customers will attempt to remain under the program threshold and thus avoid the burden on compliance They will do this by arranging; more deliveries as a means to reduce onsite storage. The propane industry as a whole continues to maintain an extremely good safety record and the new regulations will not increase it any more, but ensure that this safety record Will be compromised.

My company is not looking to escape regulations that truly enhance the safety of propane installations. Indeed, that is why States have incorporated NFPA 58 into their safety regulations. I therefore urge you to enact legislation that recognizes compliance with NFPA 58 as an alternative means of compliance with EPA's section 112(r) rules before the pending summer deadline.

Will you please advise me if the Federal Government will exempt themselves from complying to the RMP rules? I have a number of Federal facilities we service which will fall under the specifications of RMP. If the Federal Government does not exempt themselves, this will surely be a large expense to the budget.

My customers and I are relying; on you for help. Thank you for your time and if you have any questions, please feel free to contact me.

Sincerely,

RICHARD F. BELL, SALES/SERVICE MANAGER,
Casper, WY 82604

SENATOR CRAIG THOMAS,
United States Senate,
Washington, DC 20515.

DEAR SENATOR THOMAS: I would like to share with you some of my concerns over the EPA's regulations. As you already know my company has been in the propane business in the State of Wyoming for over 25 years. We have never had an incident that would be covered under the EPA Risk Management Program. We are a small business that delivers propane to customers who use it in a variety of ways, home, business and farms. I'm greatly concerned the EPA's rules require propane user to submit detailed Risk Management Plan will ultimately lead to more accidental releases not fewer.

Flammable substances like propane burn cleanly, so they're good for the environment, and they're handled safely because of industry standards like National Fire Protection Association safety standard 58 and strict State regulation. I should know, because I have to answer to my State regulators enforcing State regulations. My industry works closely with firefighter organizations to ensure the safety of our communities. I also comply with many local, State and Federal laws including SARA title III, which is required by the EPA. Propane regulation and safety practices are so effective that you have only one chance in 33 million of being killed in a propane tank snuck highway accident. By contrast, you have one chance in 15 million of

being struck by lightning, and only one chance in 2500 of being in a car wreck that kills someone. Of course, no one is talking about setting up a Federal risk management program for cars!

I urge you to enact changes to the Clear Air Act that makes EPA accept compliance with National Fires Protection Association standard 58 as an alternative to Risk Management Plan compliance.

Thank you for your attention on the matter.

Sincerely,

LARRY N. GERMANN,
Ron's LP Gas.

STATEMENT OF TIMOTHY FIELDS, JR., ACTING ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman, and members of the subcommittee, I am Tim Fields, Acting Assistant Administrator in the Office of Solid Waste and Emergency Response at the U.S. Environmental Protection Agency. My office has primary responsibility for the Risk Management Program under section 112(r) of the Clean Air Act (CAA) and Federal implementation of several sections of the Emergency Planning and Community Right-to-Know Act (EPCRA). I also am responsible for the Agency's anti-terrorism program and the associated coordination with other Federal partners, State and local governments, and the private sector.

I am pleased to have this opportunity to present information about the importance of chemical safety, community right to know, and our plan to balance these benefits with the continuing challenge of protecting national security.

Following the world's largest chemical accident in Bhopal, India, Congress passed the Emergency Planning and Community Right-To-Know Act in 1986. The law enhanced community planning and provided significant new information on chemical handling and releases to the public. Because of the public availability of chemical information, awareness of the potential danger from chemical use and production has grown. We have seen many facilities take steps to implement safety practices that prevent accidents. But much work remains to be done.

According to EPA's Emergency Response Notification System (ERNS), more than 402,000 accidents involving hazardous chemicals were reported in the United States in the 12 years from 1987 to 1998. These accidents resulted in nearly 4,000 deaths, 25,300 injuries, and 1,400 evacuations affecting 147,000 individuals. Eighty percent of these accidents occurred at industrial and commercial facilities. Propane releases are not required to be reported to our ERNS system; however, we received reports on more than 1,000 propane accidents from 1987 to 1998. The largest amount released was 450,000 pounds and the average amount released was more than 5,000 pounds. These reported accidents resulted in 32 deaths, 259 injuries, and evacuations in 32 communities.

The core elements of process safety management required by the Risk Management Program rule directly address such accidents. Therefore, EPA expects that this regulation will ultimately reduce the number of accidents, injuries, and fatalities.

Risk Management Program

Through passage of section 112(r) of the CAA in 1990, Congress recognized the need for facilities to develop or improve their planning and accident prevention programs to reduce the risk of accidents and allow local communities to enhance emergency preparedness. The law also recognized that citizens should have access to information about the hazards these facilities present.

Under the chemical accident provisions of 112(r), facilities must conduct hazard assessments, establish accident prevention programs, and bolster emergency response planning. These requirements are implemented by EPA's Risk Management Program regulations and are aimed at reducing the likelihood and severity of chemical releases. Facilities that are covered under these regulations must submit a Risk Management Plan or RMP. Under the law, these plans, except for Confidential Business Information, must be available to the public, the Federal Chemical Safety Board, and State and local officials involved in planning for and responding to chemical emergencies.

Under EPA's regulatory requirements, by June 21, 1999, facilities that handle large quantities of very hazardous chemicals will submit Risk Management Plans to EPA for the first time. In these plans, facilities will describe how they will prevent or minimize chemical accidents and how they will promptly respond to accidents that do occur.

Listing Criteria

Congress told EPA to regulate at least 100 substances "which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health or the environment." The law said EPA should use, but was not limited to, the list of extremely hazardous substances regulated under EPCRA. Furthermore, the law said EPA could modify the list of covered substances when the Agency thought it was appropriate to do so.

The law specified the criteria EPA must consider in deciding whether to list a substance under section 112(r). Those criteria are:

The severity of any acute adverse health effects associated with accidental releases of the substance;

The likelihood of accidental releases of the substance; and

The potential magnitude of human exposure to accidental releases of the substance.

Concerns have been raised about EPA's decision to list flammable substances including propane, and other highly flammable substances used as fuel. EPA applied the statutory criteria and developed a list of 77 highly toxic and 63 highly flammable substances, that, based on their intrinsic hazard and regardless of their use, pose the greatest risk of harm to the public and the environment if they were accidentally released. In fact, accident history shows that accidental releases of several of the listed toxic or flammable substances have had a devastating impact on the public and the environment. Further, legislative history suggests that flammable substances, as well as toxic chemicals and other substances, that meet the statutory criteria for listing should be regulated under section 112(r) (see, e.g., report of the Committee on Environment and Public Works, U.S. Senate, accompanying S. 1630, Dec. 20, 1989, p.211, 219–20). Consequently, EPA believes that facilities that handle these highly toxic or flammable substances must take action to prevent accidental releases that could harm the public or the environment.

At the same time this list was published, EPA issued a supplemental notice asking for comment on whether EPA should exempt flammable substances when used as a fuel. In particular, the Agency requested submission of any data showing that flammable substances when used as a fuel are less hazardous than flammable substances when used for other purposes. In response to that notice, no accident data were submitted to support such a finding, and EPA found accident data indicating that fuels were responsible for many accidents including several that resulted in deaths, injuries, and large scale evacuations and property damage. Propane is propane, regardless of whether it is used as a fuel or whether it is a process feedstock. Therefore, in the final Risk Management Program rule issued on June 20, 1996, EPA did not provide a fuel use exemption. That rule was submitted to Congress for review under the Congressional Review Act (subtitle E of the Small Business Regulatory Enforcement Fairness Act), and Congress did not act in response to that submission.

Major Accidents

After Bhopal, the second largest industrial chemical accident in history occurred at a propane gas terminal in 1984 in Mexico City. Ruptures in several propane storage tanks caused an accident that killed 650 individuals and left 6,400 injured. The ruptures produced a fire ball estimated to be 1,200 feet in diameter. The heat from the rupturing tanks and the damage from flying tank debris allowed the release of more propane from other tanks. Some tanks weighing 20 tons skyrocketed, landing nearly 4,000 feet away.

The United States also has experienced devastating accidents related to propane. On New Year's Eve 1998, an accidental propane release and fire at a facility near Des Moines, Iowa, resulted in the evacuation of 10,000 nearby residents and the closure of a major interstate transportation route. At least seven other major accidents occurred at propane facilities in 1998. In total, these accidents involved at least 4 deaths, 22 injuries, many thousands of dollars of property damage, community evacuations, and other offsite impacts.

The hazard associated with propane and other highly flammable substances is not abstract or hypothetical. Accidents at propane facilities happen every year, and they often involve causes that are directly related to poor hazard control. The core elements of process safety management required by the Risk Management Program rule directly address such causes and prevent accidents. Risk Management Programs implemented by facilities, such as the one in Des Moines, will improve chemical safety in two ways. First, they will ensure that such facilities identify and address the hazards posed by their handling of flammable substances. Second, and equally important, they will provide information to the public about the risk of accidental releases and facilities' efforts to prevent and mitigate any releases. The avail-

ability of these plans is expected to stimulate communication among industry, local governments, and the public to improve accident prevention and emergency response practices.

Consistent with the purpose of section 112(r), EPA provides national leadership and assistance to communities so that they will have the tools and expertise they need to receive, assimilate, and analyze all chemical accident prevention data, and to take appropriate measures to reduce chemical accidents.

Compliance Assistance

EPA has labored to lessen the regulatory burden on industry and in particular small businesses. At the same time, EPA has been mindful of the fact that even a small business if it handles more than a threshold quantity of a hazardous chemical can have an accident that harms the public and the environment if the chemical is not used safely.

To ease the regulatory burden on these facilities, EPA has prepared model plans for propane users and other industry sectors, which should make compliance with the Risk Management Program rule relatively easy. That guidance recognizes the safety practices embodied in existing industry standards, such as the National Fire Protection Association Standard 58, and encourages propane facilities to take credit for those practices when implementing their risk management program and preparing their risk management plan. EPA also distributes free software that makes preparation and submission of Risk Management Plans easy. And, EPA Regional offices hold workshops to help facilities answer compliance concerns.

EPA has also provided guidance to help small propane users determine if they are subject to the RMP rule. Facilities with small tanks need to know when the amounts in their tanks must be added together to determine if the facility is subject to the rule. Tanks located close together can cause a domino effect if an accident were to occur. The guidance provides facilities with information about safe distances. According to EPA's information, most small users' tanks are likely to be far enough apart that they will not be subject to the rule. This guidance in combination with the 10,000 pound threshold will result in the exclusion of most of these small users.

Issues Raised

Concern has been expressed that the Agency has reached beyond the intended scope of the Clean Air Act to regulate small businesses such as farms, restaurants, hotels, and other small-quantity commercial propane users that use relatively small amounts of propane. As mentioned previously, EPA believes the majority of these small-quantity users will not be covered.

The principal intent of regulations issued under section 112(r) is to prevent and mitigate accidents at industrial facilities that present the most risk to the public. While accidental releases involving as little as 10,000 pounds of propane can easily affect workers, EPA is reexamining whether such releases generally constitute a serious risk to the public beyond the fence line. However, EPA believes facilities storing large quantities of propane, such as propane distributors and other industrial facilities, should submit Risk Management Plans. Accidents at these types of facilities have ranked among the most severe industrial accidents on record.

And, while EPA encourages use of clean burning fuels such as propane, it is a highly flammable hazardous material and must be handled safely. Additionally, alternative fuels are likely to be regulated under other laws. EPA expects some inventory reduction to take place, but we believe that most businesses are unlikely to switch fuels in response to the relatively modest cost of implementing the RMP rule. We expect a small user to spend approximately $500 to comply with the rule.

Electronic Submission/Access

Next, I want to address concerns about the availability of worst-case chemical accident information on the Internet. To make RMP information more useful, EPA was urged by our stakeholders to collect and distribute that information electronically. Our experience with Emergency Planning and Community Right-To-Know Act implementation taught us that electronic data collection and distribution not only would be more efficient than collecting information on paper, but also that it would improve data quality and allow State and local governments to apply their limited program resources to use the information to reduce chemical risks rather than to manage the data.

On November 6, 1998, following a lengthy debate, EPA announced that on the advice of security experts at the Federal Bureau of Investigation, the Central Intelligence Agency, the Department of Defense, the Department of Justice and others, we would not post the offsite consequence analysis data on the Internet. All other

RMP information, except for confidential business information, will be available on the Web.

Since November, some Members of Congress and others have expressed concern about what is being done to prevent someone other than EPA from posting the OCA data on the Internet. On February 10, I testified before the House of Representatives Committees on Commerce, Subcommittee on Health and Environment, and Subcommittee on Oversight and Investigations about the issue of public disclosure of OCA data. As I testified, the challenge before us is to determine how to provide citizens with the data they need to make informed decisions about reducing risk, while not providing an easy targeting tool. Therefore, the goal is to strike the proper balance between chemical risk reduction and national security.

EPA is now engaged in an interagency process involving the Federal Bureau of Investigation, the National Security Council, the Department of Justice, the Office of Management and Budget and the National Institute of Standards and Technology to explore potential ways of striking that balance. We will keep you informed as those discussions progress.

EPA also continues to work with an advisory committee of stakeholders to identify potential local sources of RMP data. This committee is considering using the facilities themselves, the State Emergency Response Commission, the Local Emergency Planning Committee (LEPC), or other State and local government sources. We also have met with the Library Programs Service of the U.S. Government Printing Office to discuss their providing access to all RMP data at 1,300 Federal Depository Libraries nationwide.

In addition, we are developing procedures for EPA's response to FOIA requests, such as:

Contacting each requestor to inquire whether the individual is seeking the entire data base and describing what information already is publicly available on the Internet, which is all RMP data except OCA;

Asking whether the RMP data base without facility identification information would suffice;

Explaining the rationale behind EPA's decision not to post OCA data on the Internet; and

Asking whether providing the data in a format that would deter copying or posting on the Internet would suffice.

EPA understands that concern over information access and the risk of terrorism is not limited to RMPs. This, and other similar challenges will continue to present themselves as we move further into the Information Age. EPA is positioning itself to meet these challenges, in part, by creating a new, high-level office focused solely on information—information technology, information management and information policy.

Even as we complete the design of this new office, EPA is committing to better understanding the broader issue of balancing the two important goals of encouraging health and environmental protection through public access to information and protecting national security. EPA's new information office will engage a broad range of stakeholders in a dialog on this and other information issues.

Conclusion

EPA is committed to providing citizens with RMP information that will help them work with government and industry to protect themselves, their families, and their communities from chemical accidents and to make other informed decisions about their lives. The Agency also is committed to providing this information in a way that is responsible, and takes into account of the security concerns raised by the FBI and others. We will continue to work with all interested parties to meet this challenge.

Furthermore, EPA continues to examine concerns raised to us about the regulatory burden of this rule. As I described earlier, we have responded to stakeholder concerns by producing tailored and detailed guidance, model plans, and free RMP software. We believe that these efforts will considerably ease the reporting burden and expense associated with the regulation. Our goal remains to protect human health and the environment, but we are ever vigilant that we must accomplish this goal in the most efficient and least burdensome way.

RMP REGULATORY DUPLICATION CHART

EPA'S RMP PROGRAM ELEMENTS	NFPA 58	INDUSTRY SAFETY BULLETINS	FEDERAL OSHA, CSB, DOT, EPA	OTHER STATE REGULATIONS
Information submission			X	X
Hazard assessment (worst case, alt. Case, 5-year accident history)	X	X	X	
Emergency response plan	X	X	X	
Safety info and hazard review	X	X	X	
Written operating procedures		X	X	
Training	X	X	X	
Maintenance	X	X		
Compliance audits			X	X
Incident investigation		X	X	X

Justification for Data in
RMP Regulatory Duplication Chart

A. **Information Submission** – There is no analogous provision which requires the submission of information akin to that required by the RMP. However, EPCRA Tier I and Tier II information provides some of the information required by the RMP. EPA states in its letter to Congressman James Talent that EPCRA "does not call for reporting of offsite consequences, a five-year accident history, or prevention program." As mentioned below, EPA could prominently post on the Internet its look-up tables for propane to inform the public. What benefit does posting the accident history and prevention program serve?

1. Federal (OSHA, CSB, DOT, EPCRA) – EPCRA, 40 C.F.R. §§ 370.40 and .41 (Tier I and II information).

2. Other State Regulations – Vast majority of states require various reporting under their regulations.

B. **Hazard Assessment** – EPA will likely argue that the spacing of tanks/containers mandated by NFPA 58 and OSHA are not as "protective" as the RMP, due to the conservative assumptions required for the worst-case release scenario modeling. Our response should be that OSHA, which adopts the NFPA 58 separation distances, has a statutory mandate to protect employees within the fence line and, thus, their distances should be sufficient for off-site receptors.

EPA may also claim that NFPA 58 and OSHA do not require community outreach of this information, as required by the RMP. However, notice of the off-site consequence analysis could be provided by EPA to the public through the posting of the look-up tables on the Internet. This would remove the RMP compliance burden from propane facilities, while communicating the impact zone for a hypothetical release to the public.

3. NFPA 58 – NFPA 58, 3-2.2 (Standard for the Storage and Handling of Liquefied Petroleum Gases – Location of Containers)

4. Industry Safety Bulletins – NPGA Bulletins 202-93 (After Accident Procedures) and 212-89 (Photographing Accident Scenes). Also, insurance companies investigating accidents and compiling information on same for insurance rates.

5. Federal (OSHA, CSB, DOT, EPCRA) – OSHA, 29 C.F.R. § 1910.110(b)(6) (adopts NFPA 58 spacing of tanks/containers requirements).

C. **Emergency Response Plan** – EPA admits that existing regulations, NFPA 58, and NPGA Safety Bulletins satisfy some of the requirements of this RMP component, however, the Agency states that there is no equivalent to the training requirements if the

facility is going to respond to a release. However, NPGA Safety Bulletin 207-94 (Guidelines for Developing Plant Emergency Procedures) appears to address these requirements.

6. NFPA 58 – Section 3-10 (Standard for the Storage and Handling of Liquefied Petroleum Gases – Fire Protection).

7. Industry Safety Bulletins – We previously identified 12 NPGA Safety Bulletins as applicable, including NPGA Safety Bulletin 207-94 (Guidelines for Developing Plant Emergency Procedures).

8. Federal (OSHA, CSB, DOT, EPCRA) – CSB will frequently respond to chemical accidents.

D. **Safety Information and Hazard Review**[1] -- EPA admits in its letter to Congressman James Talent that NFPA 58 satisfies this element of the RMP Program 2 Prevention component.

9. NFPA 58 – Sections 2, 4 and Appendix B (recognized by EPA to meet this element).

10. Industry Safety Bulletins – We previously identified 81 NPGA safety bulletins and NPGA CETP as meeting the requirements of the safety information and hazard review elements of the RMP Program 2 Prevention Program component. Examples of relevant NPGA safety bulletins include 106-83 (LP-Gas Bulk Storage Safety Inspection Checklist) and 302-92 (Safe Practices at Bulk Plants).

11. Federal (OSHA, CSB, DOT, EPCRA) – OSHA, 29 C.F.R. § 1910.1200(d), (e), and (g) (mandates MSDSs for hazardous chemicals).

E. **Written Operating Procedures** – EPA claims that neither NFPA 58 or OSHA's Propane Standard require written operating procedures. They dismiss NPGA Safety Bulletins and the CTEP program as not being mandatory. In the context of the settlement between IME and EPA in a legal challenge to the "RMP List Rule", however, EPA recognized industry practices. Also, what is the added safety benefit to requiring a propane facility to reinput the NPGA Safety Bulletins?

12. Industry Safety Bulletins – We previously identified 84 NPGA safety bulletins and NPGA CETP as meeting the requirements of the written operating procedure element of the RMP Program 2 Prevention Program component. Examples of

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[1] Items D through I are the elements for a RMP Program 2 process. The most overlap between existing regulations, NFPA 58, and industry bulletins is found in this section. It is likely that EPA will not question our assertions here regarding overlap.

relevant NPGA safety bulletins include 129-89 (Protection of Transfer Areas) and 107-91 (LP-Gas Cargo Tank Truck Inspection Checklist).

13. Federal (OSHA, CSB, DOT, EPCRA) – OSHA, 29 C.F.R. § 1910.110 (specifies procedures for handling propane).

F. **Training** – EPA recognizes the NPGA CETP, but states that it is not a requirement. In the context of the settlement between IME and EPA in a legal challenge to the "RMP List Rule", however, EPA recognized industry practices.

14. NFPA 58 – NFPA 58, 1-5 (Standard for the Storage and Handling of Liquefied Petroleum Gases – Qualification of Personnel).

15. Industry Safety Bulletins – NPGA CETP.

16. Federal (OSHA, CSB, DOT, EPCRA) – DOT, 49 C.F.R. Part 172, Subpart H (HAZMAT Training).

G. **Maintenance** – EPA confirms that NPGA Safety Bulletin 106-83 fulfills this element of the RMP Program 2 Prevention Component.

17. NFPA 58 – NFPA 58, 3-2.4.1(f) (Standard for the Storage and Handling of Liquefied Petroleum Gases – Installation of Containers).

18. Industry Safety Bulletins – We previously identified five NPGA Safety Bulletins, including NPGA Safety Bulletin 148-90 (Internal Valve Operation and Maintenance) and Bulletin 106-83 (LP-Gas Bulk Storage Safety Inspection Checklist).

H. **Compliance Audits** – EPA states that it is impossible for any other regulation, NFPA 58, or industry bulletins to comply with this requirement because "it would be impossible for another code or standard to address RMP compliance unless that code of standard adopted the RMP elements." This simplistic argument overlooks the intent of the RMP – to prevent, or minimize the impact of, accidental releases. The periodic inspections under NFPA 58 and inspections by insurance carriers and local authorities are meant to ensure safety by preventing, or minimizing the impact of, an accident release.

19. Federal (OSHA, CSB, DOT, EPCRA) – OSHA will assess a facility's compliance with 29 C.F.R. §§ 1910.110 and 1910.1200.

20. Other State Regulations – Insurance carriers conduct periodic inspections of facilities and retain records. Also, periodic site inspections are conducted pursuant to state regulations by the authority having jurisdiction.

I. **Incident Investigation** – EPA has indicated that insurance carrier inspections and NPGA Safety Bulletin 202-93 satisfy this element of an RMP Program 2 Prevention Program component.

21. Industry Safety Bulletins – We previously identified three relevant NPGA Safety Bulletins, including NPGA Safety Bulletin 202-93 (After Accident Procedures).

22. Federal (OSHA, CSB, DOT, EPCRA) – CSB investigates certain accidents.

23. Other State Regulations – Insurance carriers conduct periodic inspections of facilities and will frequently visit the site after an accident.

United States
Environmental Protection
Agency

Office of Solid Waste
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RISK MANAGEMENT PROGRAM GUIDANCE FOR PROPANE USERS AND SMALL RETAILERS (40 CFR PART 68)

RMP SERIES

This document provides guidance to owners and operators of stationary sources to determine if their processes are subject to regulation under section 112(r) of the Clean Air Act and 40 CFR part 68 and to comply with regulations. This document does not substitute for EPA's regulations, nor is it a regulation itself. Thus, it cannot impose legally binding requirements on EPA, states, or the regulated community, and may not apply to a particular situation based upon circumstances. This guidance does not represent final agency action, and EPA may change it in the future, as appropriate.

INTRODUCTION

This guidance is intended for propane users and small retailers who have a single small or medium capacity tank of propane or several small tanks stored in the same area. Larger distribution facilities and bulk storage terminals may need to consult a separate document that provides more detail and covers larger capacity tanks.

If you have more than 10,000 pounds of propane stored in a single vessel or in a group of vessels (tanks, cylinders) that are connected or stored close together, you must comply with the Chemical Accident Prevention rule issued by the U.S. Environmental Protection Agency (EPA) under the Clean Air Act. The rule is codified as part 68 of Title 40 of the Code of Federal Regulations (CFR). The goal of this rule is to prevent accidental releases that could affect the public or the environment. If you are subject to part 68, you must be in compliance no later than June 21, 1999, or the date on which you first have more than a threshold quantity of a regulated substance in a process, whichever is later.

For most propane users and distributors, complying with this rule will be easy because most of the requirements are similar to those you already comply with under state or local rules based on the National Fire Protection Association (NFPA) standard number 58 on propane. If you are complying with NFPA-58 and implementing other safe engineering practices for propane, you should have little more to do for this rule besides filing a brief report with EPA.

AM I COVERED?

The capacity of propane tanks is usually given as water capacity (this information should be on the nameplate of the tank). Table 1 translates the water capacity (in gallons) into propane weight (in pounds). Read the tank capacity on the nameplate and check this table. For any tanks whose capacity is above the grey line in Table 1, you will need multiple vessels to meet the threshold.

TABLE 1
TANK CAPACITY IN POUNDS

Tank Capacity (Gallons of water)	Propane (pounds)
500	1,800
1,000	3,700
1,500	5,500
2,000	7,400
2,700	10,000
12,000	44,000
18,000	67,000
30,000	110,000

Table 1 assumes that tanks are filled to 88 percent of capacity, the maximum level allowable under NFPA-58 at 60°F. If you always keep your tanks filled to a lower level, you should adjust these numbers to reflect your lower inventory. Also, add up the amounts of propane in tanks that are connected or close together. If you have six 500-gallon tanks or three 1,000-gallon tanks, you are subject to the rule if the tanks are connected by piping, or if you store the tanks close enough together that they could be involved in a single accident. For example, if a fire could spread to all the tanks, they are considered one "process" and the propane in all the tanks must be counted toward the 10,000-pound threshold. You should also consider whether, if one tank exploded, the other tanks could be affected by the shrapnel or fire.

Most propane users will have a single "process." If you have several groups of propane tanks, widely separated, you may be considered to have multiple processes (see Appendix A for additional guidance on determining whether your propane tanks are separated far enough to be considered multiple processes.) In this case, you should consult the *Risk Management Program Guidance for Propane Storage Facilities* or the *General Guidance for Risk Management Programs*. You can obtain these from the Emergency Planning and Community Right-to-Know Act (EPCRA) hotline at (800) 424-9346 (for DC area (703) 412-9810; T.D. (800) 553-7672) or electronically at http://www.epa.gov/ceppo/.

WHAT DO I HAVE TO DO?

The first step you should take after determining that you are covered by the rule is to decide which Program level you are in. EPA developed the rule with three Program levels to reflect different levels of risk and levels of effort needed to prevent accidents.

- **Program 1** is a minimal set of requirements for processes that have a very low risk of affecting the public in the event of an accident. A process is eligible for Program 1 if it, (a) has no public receptors (e.g., houses, schools, or businesses) within the distance that a 1 psi overpressure will reach as a result of an explosion caused by a worst-case release, and, (b) has not had an accident that caused deaths or injuries offsite or required response or restoration activities at environmental receptors (e.g., national or state parks, federal wilderness areas) within the last five years.
- **Program 2** is a streamlined set of requirements for processes not eligible for Program 1 or subject to Program 3.
- **Program 3** applies to processes that are not eligible for Program 1 and that are either subject to the Process Safety Management (PSM) Standard of the Occupational Safety and Health Administration (OSHA) or in certain industrial sectors (some chemical manufacturers, all refineries, and all pulp mills).

This document does not provide guidance on Program 3. If you are subject to the OSHA PSM standard, you should see EPA's *General Guidance for Risk Management Programs*.

Most propane users will be either eligible for Program 1 or subject to Program 2.

PROGRAM 1

ELIGIBILITY

Many propane users will be eligible for Program 1, particularly those on farms or those that are a considerable distance from any other business or residence. For a process to be eligible for Program 1, it must meet the following criteria:

- The process must not have had an accidental release of propane that led to deaths or injuries of people offsite or response or restoration activities at environmental receptors in the last five years. Environmental receptors are limited to national or state parks, forests, or monuments; officially designated wildlife sanctuaries, preserves, refuges, or areas; and Federal wilderness areas; and,

- There are no public receptors within a distance to a 1 psi overpressure from a worst-case release.

A worst-case release is defined by the rule as the loss of the contents of the single largest vessel (or piping) containing the regulated substance. For propane and other flammable substances, the released substance is assumed to explode and generate a pressure wave that can damage people or structures. The rule requires you to determine the distance to a 1 psi overpressure (at 1 psi, windows will break). This scenario is required by the regulation, and you must adopt this scenario. Table 2 provides the worst-case distance to a 1 psi overpressure for propane tanks.

TABLE 2
DISTANCE TO A 1 PSI OVERPRESSURE

Nominal Water Capacity (gallons)	Distance to 1 psi Overpressure (miles)
500 - 1,750	0.1
1,751 - 7,000	0.2
7,001 - 23,000	0.3
23,001 - 51,000	0.4

Next, you must determine if there are "public receptors" within a circle whose radius is equal to this distance. Public receptors include "offsite residences, institutions (e.g., schools and hospitals), industrial, commercial, and office buildings, parks, or recreational areas inhabited or occupied by the public at any time without restriction by the stationary source where members of the public could be exposed to toxic concentrations, radiant heat, or overpressure, as a result of an accidental release." Offsite means areas beyond your property boundary and "areas within the property boundary to which the public has routine and unrestricted access during or outside business hours." Public roads are not public receptors.

If there are no public receptors within the distance to a 1 psi overpressure for your largest vessel and the process has not had an accidental release that caused any of the listed offsite impacts, your process is eligible for Program 1. If you have questions about whether certain areas are considered public receptors, call the Emergency Planning and Community Right-to-Know Act (EPCRA) hotline at (800) 424-9346 (for DC area (703) 412-9810; T.D. (800) 553-7672) or check EPA's *General Guidance for Risk Management Programs* (available from the hotline or electronically at http://www.epa.gov/ceppo/).

WHAT MUST I DO FOR A PROGRAM 1 PROCESS?

Because your worst-case release would not affect public receptors, you only need to do two things:

- Coordinate emergency response with your local fire department and any other local emergency planning and response agencies; and,
- Complete a brief Risk Management Plan (RMP), as described below.

Coordination with the fire department may consist of a discussion with them or a walk-through of your facility. The purpose is simply to be sure that the fire department is aware of the hazards associated with propane at your facility and ready to respond if an accident occurs. Also, contact your State Emergency Response Commission (SERC) to identify your Local Emergency Planning Committee (LEPC). You can get contact information for your SERC from the EPCRA hotline (noted above).

The RMP will be filed with EPA and made available to state and local agencies and the public. EPA has developed an electronic submission system that will make filing the RMP easy. To submit your RMP electronically, you will need to download free software, called RMP*Submit, from EPA's internet website at http://www.epa.gov/ceppo. RMP*Submit will be available in early 1999. The software will provide you with all the necessary instructions to complete your RMP. You submit the completed electronic RMP to EPA by copying it onto a 3½-inch diskette and mailing the diskette to EPA. If you do not have access to a computer to load the software on to, you may file a paper version. The necessary submission forms for the paper version will be available in early 1999 from the hotline mentioned above or EPA's internet website at http://www.epa.gov/ceppo.

The RMP includes a brief executive summary describing the facility; registration information (basic facility information); the worst-case release scenario; a five-year accident history (covering any accidents that caused deaths, injuries, or significant property damage on site, known offsite deaths or injuries, offsite property or environmental damage, or evacuations or shelterings in place); information on emergency response activities; and a certification statement.

The executive summary should be a brief description of the facility, the worst-case release scenario, steps you take to prevent accidents (for example, complying with state and local laws), emergency response information (for example, your coordination with the fire department), and any steps you are planning to take to improve safety (for example, upgrading equipment to meet newer editions of NFPA-58). The rest of the RMP is filling in names, addresses, and numbers, and checking appropriate boxes. You do not need to submit supporting documentation; you need only keep it onsite for inspection. Most propane users will not have any accidents to report on the five-year accident history. If you do not, you need not complete that section. A sample RMP for a small Program 1 propane user is attached.

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PROGRAM 2

If your process is not eligible for Program 1 and not subject to Program 3, the process is in Program 2. Most propane users that are in commercial or industrial areas or close to residential areas will be subject to Program 2.

WHAT MUST I DO FOR PROGRAM 2?

For Program 2, you must:

- Analyze both a worst-case release scenario and an alternative release scenario;
- Implement a prevention program;
- Implement an emergency response program if your employees will respond to a release; and
- File an RMP.

WHAT ARE THE RELEASE SCENARIOS?

Worst Case Scenario. Part 68 defines the worst-case release scenario you must analyze. It is described in the previous section of this guidance (regarding Program 1). You can simply use Table 2 to define the distance to the 1 psi endpoint for your largest tank.

Alternative Release Scenario. An alternative release scenario is a scenario that is more likely to happen. It must reach an endpoint offsite unless no such scenario exists. One of the following scenarios may be appropriate for you.

- **Pull-Away Explosion.** An alternative scenario may be a hose rupture caused by a pull-away. A pull-away can occur if the driver fails to remove the hoses between the storage tank and the transfer vehicle before moving the vehicle. In this scenario, the failure involves a 25 foot length of unloading hose, 4" in diameter. The active mitigation devices are assumed to work as designed, limiting the release to the contents of the hose. The release leads to a vapor cloud explosion (endpoint 1 psi). The quantity released is 69 pounds. The distance to the endpoint is 175 feet (report as 0.03 miles).

- **Piping Break.** Another alternative scenario you may want to consider is a break in propane piping leading to a 10-minute release and explosion. The distance to the 1 psi endpoint is shown in Table 3.

TABLE 3
DISTANCES TO 1 PSI FOR PIPE RELEASES

Pipe Size (inches)	Quantity Released (pounds)	Distance to 1 psi
0.5	4,738	0.1
1	18,951	0.2
2	75,804	0.3

Other scenarios are described in EPA's *Risk Management Program Guidance for Propane Storage Facilities*.

You must estimate in the RMP residential populations within the circles defined by the endpoints for your worst-case and alternative release scenarios (i.e., the center of the circle is the point of release and the radius is the distance to the endpoint). You may use Census data and round to two significant digits (e.g., 1147 becomes 1100, and 123 becomes 120). You do not need to conduct surveys or correct Census data. In addition, you must report in the RMP whether certain types of public receptors (e.g., schools, hospitals) and environmental receptors are within the circle. You do not need to identify specific receptors; you simply need to check off the category.

WHAT DO I HAVE TO DO FOR THE PREVENTION PROGRAM?

The Program 2 prevention program has seven elements:

- Safety information
- Hazard review
- Operating procedures
- Training
- Maintenance
- Compliance audits
- Incident investigation

If you are complying with NFPA-58 or state or local laws based on it, following the guidelines in the National Propane Gas Association (NPGA) LP Gas Safety Handbook, and implementing NPGA safety bulletins, you are probably already doing almost everything you need to do to comply with these requirements. The following sections provide additional information on how your current practices will help you comply with the EPA rule.

Safety Information. You must have up-to-date information on propane and your propane equipment. You must have a Material Safety Data Sheet (MSDS) on propane. If you do not have one, contact your supplier for a copy. You must also document your maximum intended inventory for your propane equipment. This will generally be the capacity of your tank or tanks; see Table 1.

You need information on safe upper and lower temperatures, pressures, flows, and compositions. The following information should meet this requirement:

- Propane is a gas at normal temperatures and pressures. It is liquefied by storing it in a closed container at pressures higher than its equilibrium vapor pressure. There is a direct relationship between ambient temperature and the pressure inside the storage container. As the ambient temperature increases, the pressure of the container increases proportionately. According to NFPA 58, 1998 Edition, Table B-1.2.1, commercial propane when heated to a temperature of 105°F will produce a pressure of 210 pounds per square inch, gauge (psig). NFPA 58, 1998 Edition, Table 2-2.2.2 sets the current minimum design pressure for an ASME tank at 250 pounds per square inch, absolute (psia). This design allows for a maximum vapor pressure of 215 psia at 100°F. The discharge piping for pumps and compressors is currently designed to 350 psi and vapor piping is designed for 250 psi according to NFPA 58, 1998 Edition, 3-2.10.2. The minimum temperatures are determined by the steel used in the design of the storage tank and the piping. Liquid propane

(if released at atmospheric pressure) can refrigerate steel pipes and tanks down to temperatures of -44°F.

- Another property of propane in its liquid form is its ability to greatly expand when heated. Therefore, NFPA 58, 1998 Edition sets the maximum filling capacity of large tanks in Table 4-4.2.2(b) to avoid overfilling.

You must maintain equipment specifications for all equipment that is part of a covered process, including your bulk storage tank(s), piping, pressure relief valves, hydrostatic relief valves, emergency shutoff valves, temperature, pressure and level gauges, valves, pumps, compressors, and hoses. Specifications for your bulk propane storage tank(s) are provided on the nameplate attached to the tank. If you do not have the information, obtain it from your vendor and keep all such information on file.

You must document the codes and standards you used to design and build your propane facility and that you follow to operate it. These codes will probably include the electrical and building codes that you must comply with under state or local laws. Your equipment vendors will be able to provide you with information on the codes they comply with for their products.

The equipment specifications and lists of standards and codes will probably ensure that your process is designed in compliance with recognized and generally good engineering practices.

Hazard Review. You are required to conduct a hazard review to identify the hazards associated with your equipment and propane, the possible malfunctions of equipment or human errors that could cause a release, the safeguards needed to control hazards or prevent malfunctions or errors, and any steps needed to detect or monitor releases. If you are required to comply with NFPA-58, your review can focus on whether you are in compliance with that standard. You may need to consider external events as well as internal failures. If you are in an area subject to earthquakes, hurricanes, or floods, you should examine whether your system would survive these natural events without releasing propane. You should consider the potential impacts of lightning strikes and power failures. If your equipment could be hit by vehicles, you should examine the consequences of that. If you have anything near the process that could burn, ask yourself what would happen if the fire affected the propane tanks or equipment. EPA's *Risk Management Program Guidance for Propane Storage Facilities* contains a checklist you may use to conduct the review.

When you complete the review, you must document the results and ensure and document that any problems are addressed in a timely manner.

Operating Procedures. Written operating procedures describe the tasks you or your operators must perform, safe process operating parameters that must be maintained, and safety precautions for operations and maintenance activities. These procedures tell you or your employees how to work safely every day. Applicable portions of the National Propane Gas Association (NPGA) Certified Employee Training Program and compliance with certain NPGA Safety Bulletins can be used to meet this requirement. Other programs may be available that will also be acceptable.

Training. You must ensure that any employee presently operating a process and any employee newly assigned to a covered process have been trained or tested competent in the Operating Procedures that pertain to their duties. For those employees already operating a process on June 21, 1999, you may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties

and responsibilities as provided in the operating procedures. You are not required to provide a specific amount or type of training. You should develop a training approach that works for you. You must provide refresher training. You must determine the frequency of refresher training in consultation with any affected employees, but you must provide refresher training at least once every three years.

The NPGA's Certified Employee Training Program and any training you do to meet DOT requirements may satisfy this requirement.

Maintenance. You must prepare and implement procedures to maintain the on-going mechanical integrity of your propane equipment. You may use procedures or instructions provided by equipment vendors or procedures in Federal or state regulations or industry codes as the basis for maintenance procedures. You must also train maintenance workers in these procedures (if a contractor maintains your equipment, the contractor's employees should be trained as well). NPGA's Certified Employee Training Program covers many of the maintenance procedures for your propane equipment.

You must establish a schedule for inspecting and testing equipment associated with your propane storage facility. You may obtain recommendations from manufacturers, vendors, or trade associations. You should, however, use your own experience as a basis for examining any schedules you obtain from others. Many things may affect whether a schedule is appropriate. The manufacturer may assume a constant rate of use. If your actual rate of use (e.g., the amount of propane pumped per hour) varies considerably, the variations may cause additional wear on the equipment. Extreme weather conditions may also increase wear on equipment.

If you have workers that use your propane facility, talk with them as you prepare or adopt these procedures and schedules. If their experience indicates that equipment fails more frequently than the manufacturer expects, you should adjust the inspection schedule to reflect that experience.

EPA's *Risk Management Program Guidance for Propane Storage Facilities* includes a maintenance checklist that you may find useful.

Compliance Audits. At least every three years, you must certify that you have evaluated compliance with EPA's requirements for the prevention program for each covered process. At least one person who conducts the audit must be knowledgeable about the process. You must develop a report of the audit's findings, determine and document an appropriate response to each finding, and document that you have corrected all deficiencies. You must retain compliance audit reports for 5 years.

Incident Investigation. You must investigate each incident that resulted in, or could have resulted in, a "catastrophic" release of propane. A catastrophic release is one that presents an imminent and substantial endangerment to public health and the environment. You must start the investigation no later than 48 hours after the accident. You must create a report on the accident that includes, at least, the date of the accident and the date the investigation began, a description of the accident, the factors that contributed to the accident, and any recommendations that resulted from the investigation. You must address the recommendations and share the findings with any employees whose jobs are affected by the findings. Investigation reports must be retained for five years.

The NPGA "LP-Gas Safety Handbook," and NPGA bulletin #202-93 "After Accident Procedure" may help you comply with this requirement.

Table 4 summarizes the Program 2 prevention program elements and ways that propane facilities can easily comply with these requirements.

TABLE 4
WAYS TO COMPLY WITH PROGRAM 2 PREVENTION ELEMENTS

Program 2 Prevention Element	How a Propane Facility Can Meet This Requirement
Safety Information	- Maintain Material Safety Data Sheets on propane - Use the information provided in this guidance - Document NFPA-58 information - Maintain propane equipment vendor-supplied information - Maintain records on electrical and building codes followed
Hazard Review	- Use checklist in EPA's Risk Management Program Guidance for Propane Storage Facilities - Review compliance with NFPA-58
Operating Procedures	- Implement NPGA Certified Employee Training Program - Comply with NFPA-58 - Comply with NPGA safety bulletins - Use written operating procedures for propane systems
Training	- Implement NPGA Certified Employee Training Program. - Document training done to meet DOT requirements - Document training done to comply with NFPA-58 - Comply with NPGA Safety Bulletins - Provide refresher training at least every three years
Maintenance	- Implement NPGA Certified Employee Training Program - Use checklist in EPA's Risk Management Program Guidance for Propane Storage Facilities - Establish a maintenance and testing schedule - Document inspections and maintenance done by equipment vendors
Compliance Audits	- Conduct and document a compliance audit every three years; respond to each finding, and document that you have corrected any deficiencies.
Incident Investigation	- Implement practices in NPGA's LP-Gas Safety Handbook - Implement NPGA bulletin #202-93 "After Accident Procedure"

WHAT DO I HAVE TO DO FOR THE EMERGENCY RESPONSE PROGRAM?

If you have at least one Program 2 process at your facility, you may be required to implement an emergency response program, consisting of an emergency response plan, emergency response equipment procedures, employee training, and procedures to ensure the program is up-to-date. This requirement applies if your employees will respond to some releases involving propane. The emergency response section of EPA's rule allows you to decide first whether the employees will respond to an accidental release of propane and then what involvement the employees will have in the event of a release of propane. If you choose not to have employees respond, then you must coordinate response actions with the local fire department and have in place appropriate mechanisms to notify emergency responders when there is a need for a response.

Most propane users will probably rely on local responders to handle any accident. If you plan to have your employees respond to a propane release, you should consult EPA's *General Guidance for Risk Management Programs* to determine what you need to do to develop and implement an emergency response program.

WHAT DO I HAVE TO DO FOR MY RMP?

The RMP for a Program 2 process will include the same sections covered in the Program 1 process, plus a report on the alternative release scenario and the report on the prevention program. Except for the executive summary, the RMP consists of names, numbers, and check-off boxes. If you have more than one process, you still file only one RMP. If you have multiple Program 2 processes, but they all contain propane, you report only one worst-case scenario and one alternative scenario to cover all of them. (If you have multiple Program 1 processes, you must report a worst-case scenario for each Program 1 process in order to establish that the process is eligible for Program 1.)

If you have one Program 2 process, your RMP will include:

- The executive summary (covering the alternative release scenario as well as worst-case)
- Registration data
- Worst-case and alternative release data
- Five-year accident history (only if you've had any accidents to report)
- Prevention program data
- Emergency response data
- The certification

A sample RMP and certification statement for a small Program 2 propane user is attached.

SAMPLE RMP for PROGRAM 1 PROPANE USER

(This sample RMP is for a fictitious facility named, "Smith Farms Poultry Company." Any resemblance to any actual facility is accidental).

CERTIFICATION STATEMENT

Based on the criteria in 40 CFR 68.10, the distance to the specified endpoint for the worst-case accidental release scenario for the following processes is less than the distance to the nearest public receptor:

- Hatchery house heating system

Within the past five years, the process has had no accidental release that caused offsite impacts provided in the risk management program rule (40 CFR 68.10(b)(1)). No additional measures are necessary to prevent offsite impacts from accidental releases. In the event of fire, explosion, or a release of a regulated substance from the process, entry within the distance to the specified endpoint may pose a danger to public emergency responders. Therefore, public emergency responders should not enter this area except as arranged with the emergency contact indicated in the RMP. The undersigned certifies that, to the best of my knowledge, information, and belief, formed after reasonable inquiry, the information submitted is true, accurate, and complete.

William R. Smith	William R. Smith
Signature	Print Name
Company Owner	6/21/99
Title	Date

EXECUTIVE SUMMARY

The accidental release prevention and emergency response policies at your facility: This facility complies with NFPA-58 requirements for LP-Gas storage, and it is our policy to adhere to all applicable federal, state, and local laws. If an emergency were to occur, it is our policy to notify the Garvin County Fire Department and request that they respond to the emergency.

A description of your facility and the regulated substances handled. This facility is a poultry farm. We use propane on the farm for winter heating fuel for our hatchery houses. The heating system consists of two 1,500-gallon propane tanks and associated piping, valves, burners, and other miscellaneous equipment.

The worst-case release scenario. Our worst-case scenario is failure of one 1,500-gallon storage tank when filled to the greatest amount allowed (88% at 60F), resulting in a vapor cloud explosion. Since this facility is located in a relatively remote, unoccupied area, the worst-case scenario would not affect anyone beyond our property.

The general accidental release prevention program and chemical-specific prevention steps. This facility complies with EPA's accident prevention rule and all applicable state and local codes and regulations. The propane system is designed, installed, and maintained in accordance with NFPA-58 and state law.

Five-year accident history. We have never had an accident involving propane that caused deaths, injuries, property or environmental damage, evacuations, or shelterings in place.

The emergency response program. In the event of an emergency involving our propane system, it is our policy to notify the Garvin County Fire Department and request that they respond to the emergency. We have discussed this policy with the fire department; members of the fire department have inspected our propane system.

Planned changes to improve safety. None.

1. REGISTRATION

1.1 Source Identification

1.1.a. Facility Name: **Smith Farms Poultry Company**

1.1.b. Parent Company #1 Name: N/A

1.1.c. Parent Company #2 Name:

1.2. RMP Facility Identifier: [EPA will assign]

1.3. EPA Identifier:

1.4. Dun and Bradstreet Numbers (DUNS) N/A

1.4.a. Facility DUNS:

1.4.b. Parent Company #1 DUNS:

1.4.c. Parent Company #2 DUNS:

1.5 Facility Location Address

a. Street **42 Rural Rt 7**

b. Street - Line 2:

c. City: **Plainville** d. State: **OK** e. Zip Code: **12345** f. County: **Garvin**

g. Facility Latitude (degrees, minutes, and seconds): **34 40 20**

h. Facility Longitude (degrees, minutes, and seconds): **-097 21 06**

i. Method for determining Lat/Long : **I1 (interpolation, map)**

j. Description of location identified by Lat/Long : **AB Administrative Building**

1.6 Owner/Operator

a. Name: **William R. Smith**

b. Phone: **(555) 555-5555**

Mailing Address:

c. Street 1: **42 Rural Rt 7**

e. City: **Plainville** f. State: **OK** g. Zip: **12345**

1.7. Name and title of person responsible for RMP (part 68) implementation

a. Name: **William R. Smith**

b. Title: **Company owner**

1.8. Emergency Contact

a. Name: **William R. Smith**

b. Title: **Company owner**

c. Phone: **(555) 555-5555**

d. 24-hour phone: **(555) 555-1111** e. Ext. or PIN:

1.9. Other Points of Contact (Optional)

a. Facility or parent company e-mail address:

b. Facility public contact phone: **(555) 555-5555**

c. Facility or parent company www homepage address:

1.10. LEPC (Optional): **Garvin County LEPC**

1.11. Number of full-time employees (FTEs) On Site: **4**

1.12. Covered by (select all that apply)

a. OSHA PSM:

b. EPCRA section 302:

c. CAA Title V Air Operating Permit ID:

1.13. OSHA Star or Merit Ranking: **No**

1.14. Last Safety Inspection Date: **12/07/97**

1.15. Last Safety Inspection Performed by (select one) **Fire department**

1.16. Will this RMP involve Predictive Filing? **No**

1.17. Process Specific Information. For each covered process fill in the following chart. Use a separate sheet for each process

Process Number: (optional to help you track)	**1**		
Process Description: (optional to help you track)	**Hatchery House Heating System**		
a. Program Level:	**1**		
b. NAICS Code(s):	**11234 Poultry hatcheries**		
c. Chemical	c.1. Name:	c.2. CAS Number:	c.3. Quantity (lbs.):
	Propane	**74-98-6**	**11,000**

4. FLAMMABLES: WORST CASE

4.1. Chemical Name **Propane**

4.2. Results based on (select one)

c. **EPA's** ***RMP Guidance for Propane Storage Facilities*** **Reference Tables or Equations**

4.3. Scenario: **Vapor Cloud Explosion**

4.4. Quantity released (lbs.) **5,500 pounds**

4.5. Endpoint Used: **1 psi**

4.6. Distance to endpoint (miles) **0.10 miles**

4.7. Residential population within distance to endpoint **0**

4.8. Public receptors within distance to endpoint (select all that apply)

a. Schools

b. Residences

c. Hospitals

d. Prisons /Correctional facilities

e. Recreation areas

f. Commercial/industrial areas

4.9. Environmental receptors within distance to endpoint (select all that apply)

a. National or state parks, forests, or monuments

b. Officially designated wildlife sanctuaries, preserves, or refuges

c. Federal wilderness area

4.10. Passive mitigation considered (select all that apply)

a. Dikes

b. Fire walls

c. Blast walls

d. Enclosures

e. Other (specify)

4.11. Graphics file name (Optional)

9. EMERGENCY RESPONSE

9.1. Emergency response (ER) plan

a. Is facility included in the written community emergency response plan? **No**

b. Does facility have its own written emergency response plan? **No**

9.2. Does facility ER plan include specific actions to be taken in response to accidental releases of regulated substance(s)?

9.3. Does facility ER plan include procedures for informing public and local agencies responding to accidental release?

9.4. Does facility ER plan include information on emergency health care?

9.5. Date of most recent review/update of facility ER plan

9.6. Date of most recent emergency response training for facility's employees

9.7. Local agency with which the facility ER plan or response activities are coordinated

a. Name of agency **Garvin County Fire Department**

b. Phone number **(555) 555-1000**

9.8. Subject to (select all that apply)

9.8.a. OSHA 1910.38 ✓

9.8.b. OSHA 1910.120

9.8.c. Clean Water Act/SPCC

9.8.d. RCRA

9.8.e. OPA-90

9.8.f. State EPCRA rules/law

9.8.g. Other (specify)

SAMPLE RMP for PROGRAM 2 PROPANE USER

(This sample RMP is for a fictitious facility named "Jones Nursery." Any resemblance to any actual facility is accidental).

CERTIFICATION STATEMENT

To the best of the undersigned's knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete.

Mary L. Jones	Mary L. Jones
Signature	Print Name
Company Owner	6/21/99
Title	Date

EXECUTIVE SUMMARY

The accidental release prevention and emergency response policies at your facility: This facility complies with NFPA-58 requirements for LP-Gas storage, and it is our policy to adhere to all applicable federal, state, and local laws. If an emergency were to occur, it is our policy to notify the Howard County Fire Department and request that they respond to the emergency.

A description of your facility and the regulated substances handled. This facility is a nursery. We grow trees, flowers, and other products for sale to the public. We use propane for winter heating fuel for our greenhouses. The heating system consists of two 1,500-gallon propane tanks and associated piping, valves, burners, and other miscellaneous equipment.

The worst-case and alternative release scenarios. Our worst-case scenario is failure of one 1,500-gallon storage tank when filled to the greatest amount allowed (88% at 60F), resulting in a vapor cloud explosion. The resulting distance to the endpoint extends offsite, and public receptors are within the distance to the endpoint. Our alternative release scenario is a break in a 0.5-inch diameter pipe, leading to a 10-minute release and explosion. The resulting distance to the endpoint extends offsite, and public receptors are within the distance to the endpoint.

The general accidental release prevention program and chemical-specific prevention steps. This facility complies with EPA's accident prevention rule and all applicable state and local codes and regulations. The propane system is designed, installed, and maintained in accordance with NFPA-58 and state law.

Five-year accident history. We have never had an accident involving propane that caused deaths, injuries, property or environmental damage, evacuations, or shelterings in place.

The emergency response program. In the event of an emergency involving our propane system, it is our policy to notify the Howard County Fire Department and request that they respond to the emergency. We have discussed this policy with the fire department; members of the fire department have inspected our propane system.

Planned changes to improve safety. None.

SAMPLE RMP for PROGRAM 2 PROPANE USER

(This sample RMP is for a fictitious facility named "Jones Nursery." Any resemblance to any actual facility is accidental).

CERTIFICATION STATEMENT

To the best of the undersigned's knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete.

Mary L. Jones	Mary L. Jones
Signature	Print Name
Company Owner	6/21/99
Title	Date

EXECUTIVE SUMMARY

The accidental release prevention and emergency response policies at your facility: This facility complies with NFPA-58 requirements for LP-Gas storage, and it is our policy to adhere to all applicable federal, state, and local laws. If an emergency were to occur, it is our policy to notify the Howard County Fire Department and request that they respond to the emergency.

A description of your facility and the regulated substances handled. This facility is a nursery. We grow trees, flowers, and other products for sale to the public. We use propane for winter heating fuel for our greenhouses. The heating system consists of two 1,500-gallon propane tanks and associated piping, valves, burners, and other miscellaneous equipment.

The worst-case and alternative release scenarios. Our worst-case scenario is failure of one 1,500-gallon storage tank when filled to the greatest amount allowed (88% at 60F), resulting in a vapor cloud explosion. The resulting distance to the endpoint extends offsite, and public receptors are within the distance to the endpoint. Our alternative release scenario is a break in a 0.5-inch diameter pipe, leading to a 10-minute release and explosion. The resulting distance to the endpoint extends offsite, and public receptors are within the distance to the endpoint.

The general accidental release prevention program and chemical-specific prevention steps. This facility complies with EPA's accident prevention rule and all applicable state and local codes and regulations. The propane system is designed, installed, and maintained in accordance with NFPA-58 and state law.

Five-year accident history. We have never had an accident involving propane that caused deaths, injuries, property or environmental damage, evacuations, or shelterings in place.

The emergency response program. In the event of an emergency involving our propane system, it is our policy to notify the Howard County Fire Department and request that they respond to the emergency. We have discussed this policy with the fire department; members of the fire department have inspected our propane system.

Planned changes to improve safety. None.

1. REGISTRATION

1.1 Source Identification

a. Facility Name: **Jones Nursery**

b. Parent Company #1 Name: N/A

c. Parent Company #2 Name:

1.2. RMP Facility Identifier: [EPA will assign]

1.3. EPA Identifier:

1.4. Dun and Bradstreet Numbers (DUNS) N/A

a. Facility DUNS:

b. Parent Company #1 DUNS:

c. Parent Company #2 DUNS:

1.5 Facility Location Address

a. Street **238 Main Street**

b. Street - Line 2:

c. City: **Odenton** d. State: **MD** e. Zip Code: **21873** f. County: **Howard**

g. Facility Latitude (degrees, minutes, and seconds): **39 11 15**

h. Facility Longitude (degrees, minutes, and seconds): **-076 50 10**

i. Method for determining Lat/Long : **I1 (interpolation, map)**

j. Description of location identified by Lat/Long : **AB Administrative Building**

1.6 Owner/Operator

a. Name: **Mary L. Jones**

b. Phone: **(410) 777-1234**

Mailing Address:

c. Street 1: **238 Main St.**

e. City: **Odenton** f. State: **MD** g. Zip: **21873**

1.7. Name and title of person responsible for RMP (part 68) implementation

a. **Mary L. Jones**

b. **Company Owner**

1.8. Emergency Contact

a. Name: **Mary L. Jones**

b. Title: **Company owner**

c. Phone: **(410) 777-1234**

d. 24-hour phone: **(410) 777-4321** e. Ext. or PIN:

1.9. Other Points of Contact (Optional)

a. Facility or parent company e-mail address:

b. Facility public contact phone: **(410) 777-1234**

c. Facility or parent company www homepage address:

1.10. LEPC (Optional): **Howard County LEPC**

1.11. Number of full-time employees (FTEs) On Site: **4**

1.12. Covered by (select all that apply)

a. OSHA PSM:

b. EPCRA section 302:

c. CAA Title V Air Operating Permit ID:

1.13. OSHA Star or Merit Ranking: **No**

1.14. Last Safety Inspection Date: **10/19/98**

1.15. Last Safety Inspection Performed by (select one) **Fire department**

1.16. Will this RMP involve Predictive Filing? **No**

1.17. Process Specific Information. For each covered process fill in the following chart. Use a separate sheet for each process.

Process Number: (optional to help you track)	**1**		
Process Description: (optional to help you track)	**Greenhouse Heating System**		
a. Program Level:	**2**		
b. NAICS Code(s):	**11142 Nursery and floriculture production**		
c. Chemical	c.1. Name:	c.2. CAS Number:	c.3. Quantity (lbs.):
	Propane	**74-98-6**	**11,000**

4. FLAMMABLES: WORST CASE

4.1. Chemical Name **Propane**

4.2. Results based on (select one)

c. **EPA's *RMP Guidance for Propane Storage Facilities* Reference Tables or Equations**

4.3. Scenario: **Vapor Cloud Explosion**

4.4. Quantity released (lbs.) **5,500 pounds**

4.5. Endpoint Used: **1 psi**

4.6. Distance to endpoint (miles) **0.10 miles**

4.7. Residential population within distance to endpoint **14**

4.8. Public receptors within distance to endpoint (select all that apply)

a. Schools

b. Residences ✓

c. Hospitals

d. Prisons /Correctional facilities

e. Recreation areas

f. Commercial/industrial areas

4.9. Environmental receptors within distance to endpoint (select all that apply)

a. National or state parks, forests, or monuments

b. Officially designated wildlife sanctuaries, preserves, or refuges

c. Federal wilderness area

4.10. Passive mitigation considered (select all that apply)

a. Dikes

b. Fire walls

c. Blast walls

d. Enclosures

e. Other (specify)

4.11. Graphics file name (Optional)

5. FLAMMABLES: ALTERNATIVE RELEASES [Program 2 processes only]

5.1. Chemical Name **Propane**

5.2. Results based on: **EPA's *RMP Guidance for Propane Storage Facilities* Reference Tables or Equations**

5.3. Scenario **Vapor cloud explosion**

5.4. Quantity released (lbs.) **4,738**

5.5. Endpoint used (select one) **1 psi**

5.6. Distance to endpoint (miles) **0.10**

5.7. Residential population within distance to endpoint **14**

5.8. Public receptors within distance to endpoint (select all that apply)

a. Schools
b. Residences ✓
c. Hospitals
d. Prisons /Correctional facilities
e. Recreation areas
f. Commercial/industrial areas

5.9. Environmental receptors within distance to endpoint

a. National or state parks, forests, or monuments
b. Officially designated wildlife sanctuaries, preserves, or refuges
c. Federal wilderness area

5.10. Passive mitigation considered (select all that apply)

a. Dikes
b. Fire walls
c. Blast walls
d. Enclosures
e. Other (specify)

5.11. Active mitigation considered (select all that apply)

a. Sprinkler system
b. Deluge system
c. Water curtain
d. Excess flow valve
e. Other (specify)

5.12. Graphics file name (Optional)

8. PREVENTION PROGRAM - PROGRAM 2

For each process or process unit:

8.1. NAICS Code for process: **11142**

8.2. Chemical name(s):	**Propane**

8.3. Safety information

a. Date of most recent review/revision of safety information **02/04/97**

b. Federal/state regulations or industry-specific design codes and standards used to demonstrate compliance with the safety information requirement (select at least one)

NFPA 58 (or state law based on NFPA 58)	✓	ASME Standards	✓
OSHA (29 CFR 1910.111)		None	
ASTM Standards			
ANSI Standards			
Other (specify)			
Comments			

8.4. Hazard review

a. Date of completion of most recent hazard review/update **02/04/98**

b. Expected date of completion of any changes resulting from the hazard review **02/04/98**

c. Major hazards identified (select at least one)

Toxic release		Overpressurization	✓	Earthquake	
Fire	✓	Corrosion		Floods	
Explosion	✓	Overfilling	✓	Tornado	
Runaway reaction		Contamination		Hurricanes	
Polymerization		Equipment Failure	✓	Other	
		Loss of cooling, heating, electricity, instrument air			

8.4.d. Process controls in use (select at least one)

Vents		Emergency air supply	
Relief valves	✓	Emergency power	
Check valves		Backup pump	
Scrubbers		Grounding equipment	

Flares		Inhibitor addition	
Manual shutoffs	✓	Rupture disks	
Automatic shutoffs		Excess flow device	
Interlocks		Quench system	
Alarms and procedures	✓	Purge system	
Keyed bypass		Other	

8.4.e. Mitigation systems (select all that apply)

Sprinkler system	✓	Deluge system	
Dikes		Water curtain	
Fire walls		Enclosure	
Blast walls		Neutralization	
		Other (specify)	

8.4.f. Monitoring/detection systems (select all that apply)

Process area detectors	Other (specify)
Perimeter monitors	

8.4.g. Changes since last PHA update (select all that apply)

Reduction in chemical inventory	Installation of perimeter monitoring systems
Increase in chemical inventory	Installation of mitigation systems
Change in process parameters	None required/recommended
Installation of process controls	Other (specify)
Installation of process detection systems	

8.5. Date of most recent review/revision of operating procedures **03/01/97**

8.6. Training

a. Date of most recent review/revision of training programs **03/01/97**

b. Type of training provided (select at least one)

Classroom	On the job	✓
Other (specify)		

c. Type of competency test used (select at least one)

Written test	Observation	✓

Oral test Other (specify)

Demonstration ✓

8.7. Maintenance

a. Date of most recent review/revision of maintenance procedures **04/01/97**

b. Date of most recent equipment inspection/test **10/19/98**

c. What equipment inspected/tested **Propane tanks, valves, and piping**

8.8. Compliance audits

a. Date of most recent compliance audit

b. Expected date of completion of any changes resulting from the compliance audit

8.9. Incident investigation:

a. Date of most recent incident investigation

b. Expected date of completion of any changes resulting from the investigation

8.10. Date of most recent change that triggered review/revision of safety information, hazard review, operating or maintenance procedures or training

9. EMERGENCY RESPONSE

9.1. Emergency response (ER) plan

a. Is facility included in the written community emergency response plan? **No**

b. Does facility have its own written emergency response plan? **No**

9.2. Does facility ER plan include specific actions to be taken in response to accidental releases of regulated substance(s)?

9.3. Does facility ER plan include procedures for informing public and local agencies responding to accidental release?

9.4. Does facility ER plan include information on emergency health care?

9.5. Date of most recent review/update of facility ER plan

9.6. Date of most recent emergency response training for facility's employees

9.7. Local agency with which the facility ER plan or response activities are coordinated

a. Name of agency **Howard County Fire Department**

b. Phone number **(410) 123-4567**

9.8. Subject to (select all that apply)

9.8.a. OSHA 1910.38 ✓

9.8.b. OSHA 1910.120

9.8.c. Clean Water Act/SPCC

9.8.d. RCRA

9.8.e. OPA-90

9.8.f. State EPCRA rules/law

9.8.g. Other (specify)

APPENDIX A
HOW DO I DETERMINE IF MY SEPARATE (NON-INTERCONNECTED) PROPANE TANKS ARE CO-LOCATED?

APPENDIX A
HOW DO I DETERMINE IF MY SEPARATE (NON-INTERCONNECTED) PROPANE TANKS ARE CO-LOCATED?

For separate, above-ground, non-interconnected propane tanks, one way to determine whether the tanks constitute a single process (i.e., in rule language are "co-located") is to determine whether they are close enough together for a vapor cloud explosion resulting from the release of the total contents of one tank to cause the catastrophic failure of an adjacent tank. Table A-1 indicates estimated separation distances based on this method.

TABLE A-1
ESTIMATED SEPARATION DISTANCES FOR CONSIDERING NON-INTERCONNECTED PROPANE TANKS AS SEPARATE PROCESSES

Tank Capacity (gal)	Tank Confinement	Estimated Separation Distance (ft)
500	Partial - High	61
500	Low	41
1000	Partial - High	76
1000	Low	51
2000	Partial-High	96
2000	Low	64

The estimated separation distances in Table A-1 corresponding to "Partial - High" confinement are based on a TNT-equivalent yield factor of 10%. This is the same yield factor specified in the RMP rule for conducting flammable gas worst-case scenario modeling using TNT-equivalent methods (readers should note that the distances in Table A-1 are not intended as worst-case endpoint distances). This yield factor is appropriate for vapor cloud explosions occurring in areas with numerous obstructions, such as in pipe racks, between stacks of crates or pallets, or near other closely spaced structures[1]. Table A-1 distances corresponding to "Low" confinement may be used if your propane tanks are located outdoors[2] in relatively flat, open terrain with few structures nearby (these separation distances are based on a TNT-equivalent yield factor of 3%). Otherwise, the distances corresponding to "Partial-High" confinement should be used to give reasonably conservative separation distance estimates.

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[1] Vapor cloud explosions occurring in congested or confined spaces are generally stronger due to higher flame speeds resulting from turbulence produced in unburned gases expanding ahead of the propagating flame front.

[2] NFPA-58 generally requires propane tanks to be located outside of buildings.

A-2

To determine whether adjacent, non-interconnected propane tanks constitute a single process, measure the linear distance between the tanks and compare it to the estimated separation distance in Table A-1 for tanks of that size and with that degree of confinement. Tanks that are separated by less than the estimated separation distance in Table A-1 should generally be considered a single process and their quantities added together to determine if the process exceeds the RMP threshold of 10,000 pounds. Individual tanks of propane which are separated by at least the estimated separation distance in Table A-1 for tanks of that size and with that degree of confinement may generally be considered as separate processes and thus not subject to the RMP regulation.

The distances provided in the Table above should be treated as estimates. Other methods of determining separation distances may provide more accurate estimates and you are free to use other reasonable methods if you choose. Also, the separation distances provided here should be considered in relation to any unique circumstances at your site, such as topography, the presence of structures and obstacles, the presence of blast-mitigation features, and other site-specific factors. For example, if engineered blast-barriers are located between tanks, or if your tanks are underground, smaller separation distances may be appropriate[3]. On the other hand, topographical features, such as a depression between two tanks where heavier-than-air propane vapor might collect, may warrant the use of larger separation distances. Additionally, you should evaluate whether there are potential events other than vapor cloud explosions that could reasonably be expected to cause multiple tanks to fail, even at distances larger than those in Table A-1. EPA believes that for most properly designed outdoor propane installations, such events are extremely unlikely, and that separating tanks by at least the appropriate distance in Table A-1 is sufficient to establish separate processes. However, you should evaluate your own circumstances and maintain documentation to support your determination.

Some readers of this guidance may conclude that it will be easier to re-locate one or more of their propane tanks to conform to the distances provided above rather than taking the steps necessary to comply with the regulation. This is certainly permitted, and in some cases may be an appropriate risk-reduction measure. However, when taking such actions, you should be careful to maintain sufficient separation distances between your propane tanks and nearby buildings, roads, and public receptors. EPA recommends consulting NFPA-58 or other applicable codes or standards to identify such distances.

[3] NFPA-58 generally recommends against installing fire walls, fences, earth or concrete barriers, and other similar structures around or over non-refrigerated LP-gas containers. There are some exceptions. For example, the standard permits such structures to partially enclose LP-gas containers, if the structure is designed in accordance with a sound fire protection analysis.

February 24, 1999

RESPONSES OF TIMOTHY FIELDS TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

Question 1. In a letter to 31 members of the House of Representatives Mr. Jim Makris in your Office stated, "A business decision not to use such a chemical or to reduce its inventory to a level below that which poses a risk to the public would be in keeping with the purpose of the regulation itself—to reduce risk to the public." This implies that the EPA has intended all along to promote fuel switching.

Response. EPA's intention in the risk management program is to reduce risk to the public posed by the potential accidental release of hazardous chemicals. EPA does not intend to promote fuel switching. EPA believes that owners and operators of regulated fuel facilities would consider a number of variables before considering the option of fuel switching. These variables should include the costs of replacing their current systems with a new fuel system; the regulatory requirements associated with other fuels; the impact of the other fuel on their business; and the cost and effort associated with compliance with EPA's risk management program.

EPA does not believe that many propane fuel users will switch fuels when they have considered these variables. In order to ease the cost and effort associated with filing of risk management plans, EPA has several products designed to help propane fuel users comply with this regulation. EPA has made available two guidance documents and model risk management plans specifically written for the propane industry to explain the requirements of the RMP. Finally, for those who want to file their risk management plans electronically, EPA has posted free filing software on the EPA website.

EPA also recently announced plans to raise the regulatory reporting threshold for hydrocarbon fuels (including propane) from the current threshold of 10,000 pounds to 67,000 pounds. The Agency believes that this new threshold would remove most propane fuel users from having to file risk management plans. EPA intends to issue a proposed rule raising the threshold by late May of this year.

Question a. Please provide copies of any correspondence between your Of floe and the Of flee of Air and Radiation regarding the air quality effects of fuel switching.

Response. For the reasons explained in response to the previous question, EPA does not believe that significant fuel switching will occur as a result of this rule. There is no correspondence on this issue between the Of lice of Solid Waste and Emergency Response and the Of floe of Air and Radiation.

Question b. Please explain the Agency's position of encouraging fuel switching in reference to the above remarks.

Response. As stated above, EPA neither intends nor believes that the risk management plan rule encourages fuel switching.

Question 2. During the hearing, we had testimony from the President's of the American Farm Bureau and the National Propane Gas Association contradicting the EPA estimates of the number of facilities which will be required to report on propane. Apparently the North Carolina Department of Environmental Resources has estimated that 11,000 farm facilities in North Carolina alone will be required to report. Please provide an updated EPA estimate of the number of propane facilities (all types of facilities) and an explanation for the discrepancies in the estimates.

Response. The American Farm Bureau (AFB) and the National Propane Gas Association (NPGA) estimates not only contradicted EPA's estimates, they contradicted each other. NPGA indicated that 333,000 farms (50 percent of all propane users) were covered by the RMP rule while AFB suggested that 66,000 farms (10 percent of all propane users) were covered. No analytical basis for the percentages used to derive either estimate was provided.

The North Carolina letter did not say that 11,000 farm facilities in NC would be required to report. It said that 11,000 tobacco farms in NC use propane. The letter did not consider EPA's original reporting threshold of 10,000 pounds, and was written before EPA's announced intention to raise the threshold to 67,000 pounds (the approximate storage capacity of an 18,000 gallon propane tank). The letter also acknowledged that most tobacco farms are not inspected by the North Carolina Department of Agriculture because they do not store propane in excess of the amounts which trigger an inspection in North Carolina. The only hard data available on propane use in North Carolina indicates that 155 farms have propane in either single tanks of 2,000 gallons or larger or multiple smaller tanks adding up to 4,000 gallons or more. If NPGA's 11,000 estimate is to be believed, then 10,845 facilities in NC must have multiple propane tanks of less than 2,000 gallons individually, and between 2,380 and 4,000 gallons aggregate capacity. EPA believes that it is extremely unlikely that there are such a large number of facilities in this very narrow range of configurations, and that the 155 farms stated above is probably much closer to the actual number of covered farms in North Carolina.

Furthermore, American Petroleum Institute (API) data on nationwide annual sales of LPG states that North Carolina consumes more propane for farm use than any other State except Iowa. Therefore, North Carolina is not representative of average State propane use by farms.

EPA's estimate is based on various States which represent a greater cross-section of propane use. EPA estimated that the total number of propane users in the U.S. covered by the RMP rule to be approximately 21,400 and the number of distributors to be about 12,500 for a total of 33,900 facilities. These estimates are partly an extrapolation from data obtained from North Carolina, New Jersey and Texas and are consistent with additional information received regarding the number of covered propane facilities in other States, including Delaware, Nevada, and Oklahoma.

RESPONSES BY TIMOTHY FIELDS TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

Question 1. In your testimony you state: "we received reports on more than 1000 propane accidents from 1987 to 1998." How many of the sites of those accidents would be covered in section 112(r) under the Risk Management Program?

Response. Data from EPA's Emergency Response Notification System (ERNS) for the period 1987 to mid-March 1999, contains about 975 reported incidents or accidental releases involving propane. About 50 incidents were associated with transportation activities at a fixed facility while the remainder (925) involved fixed facility operations. The actual number of accidental releases is likely to be higher (>1,000) because propane releases are not currently required to be reported to EPA and the reports received were voluntary. Although the ERNS data does not indicate the amount stored or handled onsite, EPA believes that at least 450 incidents occurred at facilities that would be covered by the Risk Management Program (RMP). These incidents occurred at refineries and chemical companies (about 150) and at companies likely to be distributors of propane (about 300 at facilities like Amerigas, Ferrell Gas and Suburban Propane). These companies are most likely handling quantities greater than 10,000 pounds. Most of the remaining incidents most likely occurred at user sites and there is no way to judge the quantity handled and whether the site would be covered by the RMP.

Question 2. Gasoline is explicitly exempted from the Risk Management Program. According to the ERNS data base, gasoline accidents have outnumbered propane accidents by nearly ten to one. As you know, the purpose of the RMP is risk reduction and accident prevention. EPA made the point that only the most flammable substances have been included in the Risk Management Program. However, flammability is only one component of risk. It is likely that more people are exposed to potential harm by 10,000 gasoline accidents than by 1000 propane accidents. Given this, why should propane be included in the Risk Management Program and gasoline excluded?

Response. EPA listed only those highly flammable substances having a National Fire Protection Association (NFPA) rating of 4 because they have a higher likelihood of generating a vapor cloud explosion that can harm the community surrounding a facility. Substances receiving the NFPA rating of 4 are highly flammable and either exist in gas form or rapidly volatilize into the air. Although gasoline and other nonlisted substances can readily burn and create fireballs or pool fires, they have lower NFPA ratings (3, 2, 1) because they aren't gases or they don't readily volatilize and are not as likely to create a vapor cloud explosion (please see the List Rule FR notices 59 FR 4478 and 61 FR 16598). However, certain listed flammable substances are often mixed with gasoline (e.g. butane) especially to produce certain winter grade gasolines. Consequently, EPA explicitly exempted from threshold quantity determination regulated substances in gasoline to clarify the threshold determination exemption with respect to the NFPA 4 criteria.

EPA's ERNS data base contains more reported gasoline releases because requirements under a number of environmental statutes trigger reporting of gasoline releases that are then subsequently recorded in ERNS; there are few reporting requirements for propane. Furthermore, the ERNS data base contains more reports for gasoline, because of the far greater amount of gasoline stored and transported in the United States. Although EPA's ERNS data contains more reported gasoline releases than propane releases, the sheer number of releases does not equate directly to exposure. Propane releases constitute a greater risk of offsite exposure than do gasoline releases because gasoline does not readily volatilize into the air in a spill; consequently fewer offside gasoline exposures will occur in comparison to propane. In events where fires occurred as a result of a gasoline spill, the effects of the fire were mostly confined to the site where the spill occurred. However, in large scale propane accidents in which explosions or fires occur, the magnitude of damage and exposure (deaths, injuries, evacuations, loss of buildings and businesses) or potential for damage and exposure is greater than for gasoline because of propane's flammability and ability to create a more powerful explosion.

Finally, although gasoline and other less flammable substances are not covered by the RMP rule, owners and operators of facilities handling these substances still have a general duty obligation under the Clean Air Act to understand the hazards, design and operate a safe facility, prevent accidents, and mitigate the consequences of accidents when they do occur (see section 112(r)(1) of the Clean Air Act).

Question 3. The EPA indicated facilities could avoid the need to make submissions under the Risk Management Program rule by separating tanks that are manifolded together and/or by reducing the volume of propane stored onsite at any one time. This could result in a large increase in the number of propane transfers as tanks run low more frequently and newly separated tanks will require multiple transfers.

Since there are likely to be more transfers to comply with the standards what has the EPA done to assess the risks associated with such transfers?

Response. EPA published guidance which indicates that facilities could avoid the need to comply with the RMP rule if smaller tanks were already separated. EPA noted that some facilities may choose to use this guidance to make the decision to separate their tanks, and cautioned that such actions be done in accordance with applicable standards. In regard to reducing the volume stored onsite, EPA simply clarified the existing criteria for applicability under the RMP rule, which is based on actual amount in a process, not maximum storage capacity. If the quantity used in a large storage tank is already less than the capacity of the tank and below the threshold quantity, then the process is not covered. Some propane handlers were misinformed and aggregated the quantities in all propane storage tanks on a site regardless of where they were located and they used the maximum capacity of the vessel rather than actual volume handled to determine whether they were subject to the rule. This clarification was provided to those handling propane who didn't realize their situation is such that they are not covered. Since EPA is promoting risk reduction and prevention of catastrophic accidents through the risk management program and plan, we believe that decisions to modify a facility that ultimately increase the risk of an accidental release primarily to avoid compliance with a rule violate the general duty clause of the CAA. The risks of such a move are the responsibility of the business owner and are neither promoted by EPA nor required by the risk management program rule. However, the risk management program and plan is a way for the business owner, employees, first responders and the community to better understand the risks and the means to reduce those risks so that the right decisions can be made. Many business owners have already successfully demonstrated their ability to manage the risks associated with the use and handling of a wide variety of highly hazardous substances.

Question 4. It's anticipated that, to comply with this rule, many propane users would switch fuels. Many propane users may switch from propane to more polluting substances such as fuel oil. Has the Office Solid Waste and Emergency Response worked with the Office of Air and Radiation to determine the air quality effect of fuel switching?

Response. EPA's intention in the risk management program is to reduce risk to the public posed by the potential accidental release of hazardous chemicals. EPA does not intend to promote fuel switching. EPA believes that owners and operators of regulated fuel facilities would consider a number of variables before considering the option of fuel switching. These variables should include the costs of replacing their current systems with a new fuel system; the regulatory requirements associated with other fuels; the impact of the other fuel on their business; and the cost and effort associated with compliance with EPA's risk management program.

EPA does not believe that many propane fuel users will switch fuels when they have considered these variables. In order to ease the cost and effort associated with filing of risk management plans, EPA has several products designed to help propane fuel users comply with this regulation. EPA has made available two guidance documents and model risk management plans specifically written for the propane industry to explain the requirements of the RMP. Finally, for those who want to file their risk management plans electronically, EPA has posted free filing software on the EPA website.

For these reasons, EPA does not believe that significant fuel switching will occur as a result of this rule. There is no correspondence on this issue between the Office of Solid Waste and Emergency Response and the Of lice of Air and Radiation.

EPA also recently announced plans to raise the regulatory reporting threshold for hydrocarbon fuels (including propane) from the current threshold of 10,000 pounds to 67,000 pounds. The Agency believes that this new threshold would remove most propane fuel users from having to file risk management plans. EPA intends to issue a proposed rule raising the threshold by late May of this year.

RESPONSES BY TIMOTHY FIELDS TO ADDITIONAL QUESTIONS FROM SENATOR GRAHAM

Question 1. How many propane accidents have occurred since 1990?

Response. Data from EPA's Emergency Response Notification System (ERNS) for the period 1990 to mid-March 1999, contains about 790 reported incidents or accidental releases involving propane. About 40 were transport related while the remainder (750) were at fixed facilities. The actual number of accidental releases is likely to be higher because propane releases are not currently required to be reported to EPA.

EPA also collected information on 45 serious accidents (only 5 are included in ERNS) involving propane that occurred during the 1990's, identified from U.S. Newspapers. Accidents that occurred during transportation or involving small quantities that would not be covered by the risk management program rule were not included in this tabulation.

Question 2. What types of damages did those accidents cause?

Response. Some of the incidents resulted in fires and explosions which caused damage ranging from minor to complete loss of the building, business, equipment and vehicles worth millions of dollars. More importantly, 8 workers and first responders (firefighters) lost their lives, 122 were injured and thousands had to be evacuated from their homes and places of business.

Question 3. What percentage of the total number of propane storage sites would you say have accidents on an annual basis?

Response. Since accidental releases of propane are not currently required to be reported to EPA, the number of accidental releases that annually occur as a percentage of the total number of storage sites cannot be determined. As explained in response to question 1, EPA believes that the actual annual number of propane releases is higher than the number EPA has compiled based on reports to EPA's ERNS.

Question 4. I understand that one of the points of contention between EPA and the propane industry is the cost for distributors to comply with this regulation. EPA contends that $50-$250 is an accurate estimate. On what factors are those cost estimates based? The propane industry contends that the true cost is between $1,000 and $8,000 per customer. How do you account for this discrepancy?

Response. EPA does not contend that $50-$250 is an accurate estimate for the average cost for propane distributors to comply with the regulation. EPA's economic analysis for the RMP rule showed that Program 2 non-manufacturing facilities in general (propane distributors fall in this category) would likely spend between $231 to $1679 to prepare an RMP and supporting onsite documentation, assuming the facility was in compliance with existing codes, standards, and industry safety practices. Furthermore, in legal documents submitted to the DC Circuit Court of Appeals, National Propane Gas Association (NPGA) representatives made sworn statements that they estimated the average cost for the propane industry to comply with the RMP rule at $1000 (rather than $1,000 to $8,000). Based on these estimates, there is not a significant discrepancy between the EPA and NPGA numbers.

STATEMENT OF ROBERT M. BURNHAM, CHIEF, DOMESTIC TERRORISM SECTION, FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE

Good morning Mr. Chairmen and members of the committee my name is Robert M. Burnham, and I am the current Chief of the Domestic Terrorism Section at FBI Headquarters. My current responsibilities include national oversight and management of the Domestic Terrorism Operations, Weapons of Mass Destruction and Special Events Management Programs. I previously served as the Assistance Special Agent in Charge (ASAC) of the Memphis Field Office of the FBI. I am pleased to have this opportunity to discuss the potential effects of electronic dissemination of chemical "worst case" scenarios" data as detailed in section 112(r) of the Clean Air Act of 1990 (CAA).

The CAA mandates that chemical facilities provide to EPA a Risk Management Plan (RMP), detailing their risk prevention mitigation plans. It encompasses the Off Site Consequence Analysis data which includes the Worst Case Scenario data for both toxic and flammable materials. The data requires distance to end point and population affected calculations which detail the size of a plume from a release and the potential population affected by the plume.

The FBI is aware of the need to aggressively pursue environmental crimes, and fully supports the Clean Air Act (CAA) and the spirit of the Community Right to Know legislation. We understand the competing issues at stake here, between providing the necessary information to the community, which allows them to make informed decisions on local planning and preparedness issues, and limiting the risk associated with the distribution of information that can be used against those same communities in a criminal manner. The FBI has worked with the EPA to identify those sections of the Risk Management Plans (RMP) that we believe can be directly utilized as a targeting mechanism in a terrorist or criminal incident.

By way of background, on December 14, 1997, representatives of the FBI were invited to a meeting at the EPA. It was at this time that the FBI first became aware of a plan by EPA to post the RMP, including the "Worst Case Scenarios", on the Internet. The FBI contacted other Federal law enforcement and intelligence agen-

cies, as well as the Environmental Crimes and Terrorism Violent Crimes Sections of the Department of Justice, to discuss issues raised by the EPA's Internet distribution plans.

Of great concern to the FBI at the time, was a case in 1997 case that highlighted the potential danger associated with a criminal attack on a chemical facility. The FBI case, code named SOURGAS, involved four KKK members who plotted to place an improvised explosive devise on a hydrogen sulfide tank at a refinery near Dallas, Texas. The FBI was able to infiltrate the group prior to the attack. A surveillance tape shows two of the subjects discussing the potential death of hundreds of area residents. At one point when the discussion turned to the children who may have become victims, one subject turned to her husband and said "if it has to be. . . it has to be". This cold blooded killing was to take place merely as a diversion for an armored car robbery the group intended to commit on the other side of town.

Although these individuals did not use the Internet to attack this facility, it illustrates a growing concern that individuals and groups are willing to utilize unconventional methods to achieve their goals and in the process, cause large numbers of casualties. This real life incident highlights better than any scenario we could create, how worldwide unfettered electronic access to this information could be used to facilitate a criminal or terrorist attack in the United States.

The FBI applauds the gains made in accident prevention since the inception of the CAA and encourages the cooperation between industry and the communities that has brought about this reduction. We believe that providing this information to the communities in the appropriate manner contributes to an increase in safety in those neighborhoods. Through our discussions over the past year with the EPA, other Federal agencies and affected parties, the FBI has arrived at initial recommendations which we believe balance these concerns and give the communities, State and local agencies and the academic and research communities, appropriate access to this information. Those recommendations were provided to Congress in a report submitted by the FBI in October of last year.

However, the FBI continues to work with EPA and other interested Federal agencies as part of an interagency group on how to achieve the appropriate balance between protecting the public from terrorist attacks and making RMP information available to the public. For example, representatives from the National Infrastructure Protection Center (NIPC) have met with EPA representatives and discussed options for secure transmission of the RMPs to State and local government agencies.

There is concern that certain groups and individuals will acquire the information through lawful means and post it in its entirety on private Internet sites. The FBI as part of the interagency group has met to discuss this issue. Although this issue is currently under discussion by the interagency group, the FBI is concerned that under FOIA laws the RMP information, to include the Worst Case Scenario information, would have to be provided in electronic format if available . If that is the case, groups or individuals could acquire the information in this manner and reproduce it on the Internet. The net effect would be that these groups would undermine all of the efforts of the many agencies who have worked to bring a responsible approach to the dissemination of this information.

The Internet provides fast and inexpensive methods for disseminating educational information and has the potential to be a tremendously positive force in the future. However from a terrorist threat analysis, providing unfettered electronic access to this type of information on the Internet could have disastrous consequences. The worst case scenario data alone, does not contain all the information necessary to carry out a terrorist attack, however in conjunction with the numerous sites already available on the Internet containing "how to" literature on bomb making, surveillance/counter surveillance and terrorist tactics and devices , it adds to the arsenal of potential criminals.

Mr. Chairman, thank you for the opportunity to appear before you today. I would be happy to answer any questions you may have.

RESPONSES BY ROBERT M. BURHAM TO ADDITIONAL QUESTIONS FROM SENATOR LAUTENBERG

Question 1. New Jersey has several large chemical plants. If Risk Management Program's Right to Know program did not go forward, could you guarantee that there would be no terrorist attacks on these chemical plants.

Response. The FBI has repeatedly stated that we fully support the Community Right to Know program and are convinced that this program has contributed significantly to the gains made in accident prevention and chemical safety over recent years. The FBI encourages the cooperation between industry and the communities

that have brought about this success. We believe that providing this information to the communities in the appropriate manner contributes to an increase in safety in those neighborhoods. The FBI was asked to give a security assessment of the EPA's plan to disseminate the entire Risk Management Plan (RMP) on the Internet. It was the FBI's suggestion that the sections 2, 3, 4 and 5 of the RMP, which contain the Worst Case Scenario data, not be made available on the Internet. The FBI however has supported the Internet distribution of the majority of the RMP information, and has suggested alternative methods for disseminating the Worst Case Scenario information.

There is no way to predict the future target of a terrorist attack. The FBI attempts to prevent terrorism incidents through ongoing investigations and by vigorously pursuing indications of terrorist and criminal activities in the United States. However there is no way to guarantee the safety of the all of the private facilities in the United States from terrorist or criminal attack.

Question 2. Assume the Right to Know program doesn't exist, but that a terrorist finds a chemical plant by driving by one or looking in the phone book. Do you believe that the average chemical plant in the country is sufficiently protected by terrorist attack?

Response. The FBI has not done any study or research to determine the state of security of chemical facilities within the U.S. FBI Headquarters has instructed the Field Offices to contact major chemical facilities in their area and establish lines of communication with facility operators to encourage reporting of potential criminal activity to the FBI. This is not a formal study and no security assessment has accompanied this liaison.

Question 3. Are there measures we should take, such as increasing site security, "hardening" hazardous operations from bombing attacks, or banning certain chemical operations from being located near residential areas, schools, or major roads.

Response. As stated earlier, the FBI has not conducted any study to determine the current state of security at chemical facilities, and as such the FBI is not in a position to make specific recommendations regarding security at chemical facilities. In general however, the FBI is supportive of any measures which [NOTE: The written response to this question is incomplete in the committee record.]

RESPONSE BY ROBERT BURNHAM TO AN ADDITIONAL QUESTION FROM SENATOR GRAHAM

Question. Are there any alternative distribution mechanisms for risk management information that in any way reduce the likelihood that risk management information would be used to design a terrorist attack?

Response. In previous responses to Congress the FBI has discussed recommendations that we believe would limit the utility of the Risk Management Plans (RMP) as a targeting tool. These recommendations are:

The RMPs, minus the OCA data, would be available on the Internet. This would eliminate the targeting potential. This would however provide individuals with registration information regarding facilities in their area, Five Year Accident History, Prevention Programs, and Emergency Response information. This would be available in an open format.

State and local government agencies would have access to all national RMP data via a closed computer system. This system may have resource implications involved, however, this will allow for up to date immediately available information to first responders and emergency planning agencies while protecting the information from improper dissemination.

A compact disk (CD) of the information could be created for research and environmental organizations with all of the comparison data, without the identifying or contact information. This would allow for national trends to be analyzed and nationwide data to be studied, but would alleviate the potential for targeting of particular facilities based on this information.

By implementing these methods, we believe that the appropriate parties will have access to the information necessary while limiting the potential for criminal use of this information.

STATEMENT OF DEAN KLECKNER, AMERICAN FARM BUREAU FEDERATION

Good morning, Mr. Chairman. I would like to thank you and the other members of the subcommittee for holding his hearing. I am Dean Kleckner, a hog and soybean farmer from Rudd, Iowa, and I serve as the President of the American Farm Bureau Federation, the nation's largest agricultural organization.

As you know, Mr. Chairman, propane is an important commodity in rural America. It can be found on 660,000 farms and is widely used in various agricultural applications. These include crop drying, heating of livestock facilities, operation of crop protection devices (wind machines) and a host of residential uses. Each year, approximately 1.5 billion gallons of propane are used for agricultural purposes.

Demand for propane by farmers is driven by a number of factors. Most farms are located in areas beyond the reach of the gas lines that serve the typical urban consumer. Propane, while indeed a gas, is safely transported and stored as a liquid when subject to a modest amount of pressure. This characteristic is what allows farmers to enjoy the economic and environmental benefits of gaseous fuels.

We strongly oppose the inclusion of propane as a covered substance subject to the Environmental Protection Agency's Risk Management Program (RMP). In deciding to regulate propane under this program, we believe EPA failed to consider the significant adverse effects which these regulations will have on hundreds of thousands of farmers nationwide.

Adverse Safety Consequences

By adopting section 112(r) of the Clean Air Act Amendments of 1990, Congress specifically sought to reduce the risks associated with the accidental and catastrophic release of toxic chemicals. It is our strong belief that the original intent of Congress was to address substances used in manufacturing processes or other chemical applications, rather than those used as a fuel source. Unfortunately, EPA's decision to include propane, coupled with its decision not to grant a fuel-use exemption, has the effect of extending these regulations to consumers who use comparatively small volumes of this covered substance.

The RMP rules require farmers and other propane users with more than 2,358 gallons of propane storage to complete and file risk management plans by June 21, 1999. While larger agribusinesses might have greater storage, a typical installation on a small farm would likely consist of anywhere from two to five 1000-gallon propane tanks or containers piped together. Having only three such cylinders would bring the farmer under the requirements of the RMP program.

It is wrong to confront agriculture with new regulatory burdens and resulting compliance costs that are vague, misleading and fail to achieve the stated purpose of protecting the public safety. It is understandable that a significant percentage of users will try to lawfully avoid the burden of compliance by limiting their volume of onsite storage. This could be accomplished by simply instructing their propane supplier to reduce delivery volumes to an amount below the program's threshold level (2,385gallons). However, this will result in a significant increase in the number of propane deliveries.

Although propane has a proven safety record, there is, in fact, some degree of risk associated with the storage and handling of any flammable fuel. Government agencies that are knowledgeable about flammable fuels understand that the risks associated with the transportation of flammable fuels are considerably higher than those associated with stationary storage. The RMP compromises safety because it shifts the emphasis from low risk stationary storage to the higher risk category of transportation.

EPA's own incident data base of 157 incidents dating back to 1951 confirms this point. Of the 31 incidents listed involving sites over the threshold level, 15 of them were related to transportation. None of the events listed could be confirmed to have involved the release of product from a stationary source located on a farm. It is at best ironic that a rule intended to reduce the risks of accidental releases will, in practice, result in an increase in the number of such incidents.

Distribution Disruptions

A significant increase in the number of deliveries also will lead to serious fuel distribution difficulties, thus placing an additional burden on America's farmers. The propane distribution infrastructure is unique because of its cyclical nature. Demand for propane increases dramatically with the onset of the fall crop-drying season and continues throughout the winter season. At the end of the peak-heating season, demand for the product falls as precipitously as it rose several months prior. Seasonal fluctuations in demand mean that propane's distribution infrastructure is vastly underutilized for several months of the year. In the remaining months, however, the distribution infrastructure strains to meet the needs of seasonal customers.

Subjecting propane to the requirements of RMP will increase the number of winter deliveries, thereby placing added pressure on an already overburdened infrastructure. The availability of this important commodity will be untimely and unnecessarily limited. This situation will be exacerbated by the winter driving conditions that are beyond the control of either the farmer or his propane supplier. This season

alone, 15 States have issued emergency waivers relaxing Federal hours-of-service regulations as a way to prevent interruptions in fuel deliveries brought on by winter driving conditions.

Regulatory Duplication

Too often new Federal regulations are promulgated in a vacuum. They are considered as stand-alone requirements, rather than part of a comprehensive quilt of overlapping safety measures. Unfortunately, this is the case with EPA's Risk Management Program as it applies to propane. EPA appears to take the position that an industry is unregulated unless it is doing the regulating. The agency has failed to consider the vast extent to which propane is already regulated at the Federal, State and local levels. It failed to take into account the fact that propane installations are designed, constructed and maintained in accordance with the standards for the safe storage and handling of propane established by the National Fire Protection Association (NFPA). These standards have, in fact, served consumers well as a safe and effective accident prevention program.

EPA's failure to give credence to existing safety standards violates the Federal standards adoption policy. The National Technology Transfer and Advancement Act of 1995 stipulates that "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments."

Had NFPA and EPA sought to work with stakeholders to improve that standard to achieve its goals, we would not need to be here today.

Non-conformity with Other Clean Air Act Provisions

Congress understood the importance of avoiding duplication and ensuring cross-agency conformity when it passed the Clean Air Act Amendments in 1990. Section 112(r) of the act authorizes the establishment of two companion programs dealing with onsite and offsite consequences. Authority for the workplace program (i.e., onsite consequences) was granted to the Occupational Safety and Health Administration of the U.S. Department of Labor; authority for programs relating to offsite and environmental consequences was granted to EPA.

Mindful of the need for uniformity, Congress specifically instructed EPA "to consult with the Secretary of Labor and the Secretary of Transportation and shall coordinate any requirements under this paragraph with any requirements established for comparable purposes by OSHA or DOT."

In 1992, OSHA established its onsite program known as the Process Safety Management Program (PSM). In doing so, it granted a fuel use exemption. Consumers who use covered substances as fuel sources are not required to comply with PSM requirements. EPA, when faced with the same option on its RPM, decided to oppose such an exemption. We believe it took this action in direct violation of the clear language of the statute.

Furthermore, section 112(r) specifically authorizes an exemption for anhydrous ammonia, a toxic chemical, when used for agricultural purposes. Considering that propane, unlike anhydrous ammonia, is non-toxic, it is baffling that EPA chose to list propane under RMP.

Burden of Compliance

The Risk Management Program is complicated and highly technical. Risk management plans, which must be filed by June 21, 1999, are based on complex chemical release models. The Final Rule published by the EPA in June 1996, is 62 pages in length. EPA's guidance document for propane users is 24 pages. The general guidance document for risk management plans is 2 inches thick. With your permission, Mr. Chairman, I would like to introduce a copy of these documents into the record.

We are aware of EPA's contention that in the final analysis, risk management plans will be only a few pages in length. We believe this is akin to arguing that a Federal income tax filing is only a few pages in length. Their analogy fails to acknowledge that it will take dozens of hours to collect and organize the appropriate data before a relatively brief plan can be completed.

Because of the highly technical nature of the program, we believe that most covered farmers will find it necessary to contract with RMP service providers in order to meet their obligations under the rules. It is our understanding that the propane industry has compiled a list of vendors and the average cost of completing a risk management plan will be several thousand dollars per site. Even if only 10 percent of the 660,000 farm users of propane are required to file a plan, the total cost to the farm economy could exceed $100 million.

While it is likely that many rural propane users will fall into the least rigorous compliance category (Program 1), the economic impact will remain high since a significant up-front cost will be incurred to determine the appropriate program level. Farmers who ultimately qualify for Program 1 coverage will still be required to complete a detailed offsite consequence analysis to determine their eligibility for this program level.

It is quite clear that EPA failed to understand the full implications of its decision to include propane customers. EPA estimates that 66,000 sites are covered under RMP nationwide and that 28,000 (42 percent) of those sites involve propane. In stark contrast to EPA's calculations, the North Carolina Department of Environment and Resources estimates there are 11,000 covered farm sites in that State alone!

State of Farm Economy

Much has been said in recent months about economic conditions affecting the average farmer. Those of us who are involved in agriculture know that times are tough. We farmers and ranchers are willing to tackle those tough times, but now is not the time to place a $100 million compliance burden on farmers.

EPA's Modest Proposals

We understand that in recent weeks EPA has recognized that its estimate of the number of affected farms was severely low. We appreciate and welcome EPA's overtures and believe they suggest a willingness to reduce the burden which the RMP rules place on farmers. We are concerned, however, that the proposals floated to date do not sufficiently address the issues presented in our testimony.

EPA is apparently willing to consider altering the program guidance documents to address distances of non-interconnected tanks for the purpose of making threshold determinations. The relief provided by this action would be negligible since a substantial percentage of farm installations include multiple interconnected cylinders. Furthermore, regulatory guidance is not a substitute for regulatory text. EPA's current guidance document states, "This document does not substitute for EPA's regulations, nor is it a regulation itself. Thus, it cannot impose legally binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon circumstances. This guidance does not represent final agency action, and EPA may change it in the future, as appropriate."

We are troubled by the fact that EPA could indeed change its guidance without the benefit of notice and comment.

Conclusion

I appear before this committee on behalf of the hundreds of thousands of farmers now caught in this regulatory dragnet. In keeping with that responsibility, I would ask your indulgence to include in the record letters from 17 agriculture organizations whose views support the testimony I have given here today.

In summary, Mr. Chairman, EPA's Risk Management Program as it pertains to propane is unsafe, contrary to the environmental goals established by the Clean Air Act, and will adversely affect hundreds of thousands of farmers nationwide. We urge this committee to act quickly to avoid these consequences before the June 21 deadline.

STATEMENT OF JIM BERTELSMEYER, NATIONAL PROPANE GAS ASSOCIATION

My name is Jim Bertelsmeyer and I am chairman of Heritage Propane, headquartered in Tulsa, Oklahoma. In my real life I run a propane marketing company, but I appear before you today as President of the National Propane Gas Association.

NPGA is the national trade association representing the propane gas industry. The association's membership includes around 3,700 companies that market propane gas and equipment in all 50 States and in every congressional district. The single largest group of members are retail marketers of propane gas, but the association also includes propane producers, transporters, manufacturers and distributors of equipment, containers, and appliances. Propane is used in over 18 million installations nationwide for home and commercial heating and cooking, in agriculture, in industrial processing, and as a clean air alternative engine fuel for both over-the-road vehicles and forklifts.

As strong advocates for increased alternative fuel usage in the United States, NPGA supported many of the goals and provisions of the Clean Air Act Amendments of 1990 and the Energy Policy Act of 1992. We continue to support the intent of these laws, but we cannot support the way in which they are being abused by

the EPA. The unintended consequences of implementing the section 112(r) of the Clean Air Act in ways never envisioned by Congress have led us to this situation today.

My statement today focuses on the many concerns the propane industry has with EPA's Risk Management Program (RMP) regulations, issued under authority of section 112(r) of the Clean Air Act Amendments of 1990. Our concerns are that EPA's rules will:

duplicate an extensive and credible safety infrastructure that has existed for decades in all 50 States without exception through State building and fire codes;

reduce safety in the propane industry by causing customers to demand more small deliveries rather than the safer alternative if fewer large deliveries;

degrade air quality by stifling development of propane use as an alternative fuel; cause propane users to switch to less environmentally desirable fuels not similarly covered; and

cost the propane marketers and customers vast sums of money for little or no increase in safety.

The remainder of this statement provides additional information supporting these concerns.

PROPANE FACILITIES ARE ALREADY CLOSELY REGULATED AT THE STATE AND FEDERAL LEVELS

Propane facilities, whether they be bulk storage plants owned by marketers or smaller storage facilities operated by customers, are subject to regulation in all 50 States through building and fire codes. These codes without exception adopt or incorporate Safety Standard 58, Liquefied Petroleum Gas Code, published by the National Fire Protection Association (NFPA).

NFPA 58 is adopted by State agencies either by reference or by direct incorporation. Forty-eight States have adopted NFPA 58 by reference, which means that the State agency's rules simply require propane facilities to be designed, constructed, and operated in accordance with NFPA 58. The remaining two States (Texas and Arkansas) have adopted NFPA 58 by direct incorporation, which means that they have taken the substance of the standard and written it into their own building or fire codes. Both methods allow for code inspectors to determine compliance with NFPA 58, thereby ensuring they are operated as safely as possible.

As a service to its members, NPGA recently published a new edition of the State Laws and Regulations Handbook, which summarizes the status of propane regulation in all 50 States. A copy of that document is attached to this statement for incorporation in the record.

The propane industry also complies with the following Federal regulations:

DOT's hazardous materials regulations, which as of October 1, 1998 apply to both interstate and intrastate operations; OSHA's workplace safety rules, including the Process Safety Management (PSM) rules where applicable; and EPA's rules implementing the Emergency Planning and Community Right-to-Know Act of 1986 which requires facility data to be available to emergency responders and to the public.

PROPANE MARKETERS ACTIVELY PROMOTE SAFETY

The propane industry takes its safety responsibilities very seriously. Indeed, NPGA is now engaged with numerous other stakeholders in a major DOT regulatory proceeding that promises dramatic increases in safety. NPGA is proud to be an active participant in a negotiated rulemaking committee charged with updating delivery truck safety features and operating procedures for the safe unloading of propane at the customer's tank. The results of this reg-neg will be a significant jump in safety taking full advantage of both new technologies and the industry's commitment to safety.

The propane industry voluntarily spends significant time and money training local fire departments all over the nation. Emergency responders need to be as highly trained as possible, and we are putting our money where our mouth is. This industry is spending $652,000 on the national level this year alone to develop a comprehensive training curriculum for emergency response personnel, which should be available for free later this summer. Furthermore, through the national association, we are adopting the safety recommendations of the U.S. Chemical Safety Board to upgrade the training materials available to the emergency response community.

HISTORY OF SECTION 112(R) AND EPA'S RISK MANAGEMENT PROGRAM RULES

On November 15, 1990, President Bush signed the Clean Air Act Amendments of 1990 into law. Section 112(r) of the Act requires EPA to publish regulations to prevent and minimize the consequences of accidental releases of hazardous substances. EPA was to publish a list of at least 100 hazardous substances and implement a program whereby facilities using listed substances would make detailed risk management plans available to EPA and the public. EPA finalized its list of substances, which included propane, on January 31, 1994, and its Risk Management Program (RMP) regulations applicable to listed substances on June 20, 1996. Since NPGA comments were largely ignored by the Agency in both rulemakings, NPGA sued on August 18, 1996 seeking relief from the regulations.

The RMP regulations establish three increasingly rigorous compliance paths for facilities having listed hazardous materials onsite in greater than threshold quantities. For propane facilities, the threshold quantity is 10,000 pounds or 2381 gallons at 60 degrees Farenheit. EPA's RMP rules cover all facilities, whether they be industrial, commercial, agricultural, or residential, having more than the threshold quantity of 10,000 pounds of propane onsite. The propane need not be in a single tank, or even in interconnected tanks. 2381 gallons of propane is typically the amount that a small commercial facility would have, although there are many residences that have this amount.

Program 1 participants must develop a worst-case scenario and analyze all releases over the past 5 years, and coordinate emergency efforts with local responders. Propane marketers will qualify for Program 1 if their worst-case scenario demonstrates that there are no "public receptors" within range of the worst case scenario and if their 5-year accident history shows no deaths, injuries, or offsite restoration activities. The term "public receptor" means offsite residences, institutions such as schools and hospitals, industrial, commercial and office buildings, parks, or recreational areas inhabited or occupied at any time without restriction where members of the public could be exposed to radiant heat or overpressure as a result of an accidental release.

Program 2 requires more detailed hazard assessments and implementation of prescribed accident prevention steps. Program 2 participants must prepare at least one alternative release scenario that is more likely to occur than a worst case scenario. In addition, Program 2 participants must: (1) ensure that up-to-date safety information is available; (2) conduct a detailed hazard review of each facility; (3) prepare written operating procedures; (4) ensure each employee has been trained in the operating procedures; (5) maintain the mechanical integrity of all equipment; (6) complete compliance audits every 3 years; and (7) investigate each incident.

Program 3 is the most rigorous and will affect those propane marketers who are covered by OSHA's Process Safety Management (PSM) regulations (i.e., do not qualify for the retail exemption). Program 3 facilities must perform the same tasks as Program 2 facilities plus many others that are analogous, but not necessarily identical, to OSHA's PSM requirements.

The Clean Air Act imposes both civil and criminal penalties for violations of EPA rules. For civil violations, EPA may impose monetary penalties of no more than $25,000 per day per violation. For knowing violations of the Act, criminal monetary penalties of up to $25,000 per day per violation and/or up to 5 years in prison may be imposed.

EPA'S RULES WILL DEGRADE SAFETY AT PROPANE FACILITIES

EPA's regulations, despite its "motherhood and apple pie" sounding requirements, will have unintended consequences that actually reduce safety. The unfortunate thing is that these unintended consequences are entirely foreseeable.

It goes without saying that many propane customers will seek to reduce the amount of propane they store to levels below the 10,000 pound threshold for coverage by the RMP rules. This will not, however, reduce customers' demands for timely deliveries of propane from their suppliers. Therefore, one of the major unintended consequences of EPA's RMP rules will be that propane delivery will be made much less safe. And since the industry's busiest time is during the winter heating season, these trucks will also have to deal with winter driving conditions that can be particularly challenging.

Not only will customers decide on their own to keep their storage low or switch fuels, they will be counseled or actually forced to do so by government agencies. Two particular cases have arisen in California. First, the Orange County Certified Unified Program Agency stated in a letter to businesses, "Should your business so choose, you may implement one of the following options in lieu of developing an RMP: (1) Eliminate or replace the Regulated Substance with a non-regulated sub-

stance, or (2) Reduce the amount onsite to below the Federal threshold quantity." Second, California Assembly Bill 172 was introduced by Assembly Member Firebaugh on January 15, 1999. The bill would prohibit after January 1, 2000 any person from commencing any process involving propane or any other regulated substance that is located adjacent to a school. Notwithstanding the fact that the bill lumps propane—a non-toxic substance—in with many other exotic and lethal toxic substances, many schools use propane themselves and will therefore be forced to switch to other fuels.

Fuel switching is a reality. New information from the North Carolina Propane Gas Association shows that propane marketers in the State have already lost 213 customers, which is a demand loss of almost 5 million gallons. Furthermore, 360 customers are expected to downsize their storage capacity to avoid compliance.

While the industry prides itself on its excellent safety record, accidents do occasionally happen. But more often than not accidents are caused by or occur during transportation activities, which are not covered by the RMP rules. EPA's own data demonstrate that many more accidents occur during transportation than when propane is held for storage at a stationary site covered by the RMP rules. Conversely, EPA's data shows that (1) only a small minority of incidents occur at facilities targeted by the RMP rules, and (2) the majority of incidents are related to transportation activities not covered by the RMP rules.

NPGA reviewed the data that EPA placed in the RMP rule docket to justify its decision to cover propane. The EPA data obtained by NPGA is an undated printout of 112 incidents logged by the Major Hazard Incident Data Service (MHIDAS) and 52 pages of reprinted news articles covering propane incidents. EPA's data includes incidents going all the way back to 1951, and even includes an incident from Japan. Of the 157 incidents reviewed:

Only 31 incidents (19 percent) could be confirmed to have occurred at what would have been an RMP-covered facility. Of the remaining incidents, 89 incidents (57 percent) could be confirmed to have occurred at a facility not covered by the RMP rules. The record was too incomplete to make a judgment on 37 incidents.

Of the 31 incidents that occurred at RMP-covered facilities, only 16 incidents could be confirmed to have not been caused by or during transportation activities. Of the 16 non-transportation related incidents at RMP-covered facilities, only 11 incidents (7 percent) could be confirmed to have had offsite consequences. This is a critical figure because prevention of offsite consequences is the fundamental reason for the entire RMP regulation. Moreover, offsite consequences included such purely precautionary measures as evacuations, so actual damage did not occur in all cases. Finally, EPA's record justifying the RMP rules includes 8 incidents (5 percent) where propane was either not involved or was found not to have leaked.

EPA'S RMP RULES WILL DEGRADE AIR QUALITY BY BURDENING A CLEAN ALTERNATIVE FUEL

EPA has adopted a regulation that will actually make air quality worse. Propane is a federally approved alternative fuel under section 241 of the Clean Air Act and section 301 of the Energy Policy Act of 1992. NPGA strongly supported enactment of these provisions by Congress.

EPA's RMP rules will affect air quality in two ways. The first way is through actual fuel switching by customers to less environmentally desirable fuels that either are specifically not covered by RMP, such as fuel oil and electricity, or that are typically not stored in bulk quantities, like natural gas. Customers switch fuels for a variety of reasons. First, companies are considering switching fuels because the RMP rules are very complex and burdensome. Not only do they require a substantial initial investment to get into compliance, they require continuing allocation of resources to ensure continued compliance in the future. Remember, too, that companies will be urged in no uncertain terms by agencies like Orange County California's that fuel switching is a viable alternative to compliance. Second, companies are considering switching fuels because the RMP rules come with a high public relations price tag. What facility will feel its position in the community has been enhanced by the publication of information showing that an accident could devastate its neighborhood? Such information is a powerful incentive to switch fuels. And such information will be unnecessarily scary because EPA's modeling requirements, according to the National Fire Protection Association, will predict impacts far greater than an actual worst case release could produce.

The second way EPA's rules will degrade air quality is through stigmatizing the use of propane as an alternative engine fuel. Propane is widely used as an engine fuel. Due to the low pollution characteristics of propane, more than 300,000 forklifts and other indoor vehicles use this fuel. In addition, over 80,000 bus, taxi, and deliv-

ery services and fleets are powered by propane. It is common knowledge that the alternative fuel vehicle industry remains in its infancy, and needs all the help it can get, especially in these times of unprecedented low gasoline prices. The RMP rules will erect just one more burden that propane needs to overcome as the industry strives to make widespread acceptance and commercialization a reality.

Congressional interest in removing impediments to usage of alternative fuels has been strong and consistent. For example, on August 5, 1997, President Clinton signed the Taxpayer Relief Act of 1987 into law which included a provision to remove tax-related burdens on propane use as an alternative fuel. Specifically, the Act included a provision providing propane and other alternative motor fuels Federal excise tax parity with gasoline. Under this provision, the effective rate of the Federal excise tax on these fuels should be the same as the rate on gasoline.

EPA VASTLY UNDERESTIMATES THE REACH OF THE RMP PROGRAM

EPA estimated in its final RMP rule that only 66,100 stationary sources would be covered by the entire RMP rule, which applies to 140 different toxic And flammable substances.

Subsequently, EPA estimated that approximately 28,000 facilities will be brought into the RMP program specifically because of propane storage.

NPGA believes EPA's estimates to be spectacularly low. In 1991, NPGA commissioned a statistical survey of the propane industry, and the responses were compiled by the independent accounting firm Baldwin & Brooks. That study shows that 660,000 farms, 350,000 industrial and utility sites, and over 1 million commercial facilities use propane on their sites. Of these use sectors, we believe that 100 percent of the industrial facilities will be RMP-covered, 50 percent of the farms will RMP-covered, and 30 percent of commercial facilities will be RMP-covered. This totals over 1 million RMP sites just for propane alone.

Another indicator of the vast underestimation of the regulated community comes from North Carolina's Department of Environment and Natural Resources. The Department sent a letter to EPA on November 9, 1998 stating that in North Carolina, approximately 11,000 farms use propane to cure tobacco. In other words, a single propane user sector—farmers—of a single propane use—curing tobacco—in a single State totals nearly 33 percent of EPA's entire national estimate for propane. Add in the 12,000 marketer facilities that exist across the nation, and you've already accounted for over 80 percent of EPA's national estimate.

EPA ALSO VASTLY UNDERESTIMATES THE COSTS OF THE RMP PROGRAM

Many propane marketers and customers will need to rely on outside assistance to comply with the RMP rules, and their reasons vary. EPA protestations to the contrary, the RMP rules are complex and take significant amounts of time and effort to comply. A marketer may have numerous bulk storage facilities, or may have numerous customers who ask for help and advice. Most customers will be unprepared to comply from a technical standpoint.

NPGA sought information on the fees being charged by 36 engineering consulting firms. 23 consultants declined to give figures. Of the 13 firms who did provide fee estimates for RMP preparation, only two came in below $2000, while 11 firms were equal to or greater than $2000.

Hourly fees ranged from $25–140, and daily fees ranged from $500–2000. One firm said that RMPs could cost as much as $20,000! Most recently, a consultant stated during his presentation to the New York Propane Gas Association that a Program 2 RMP takes 30–70 hours to complete and costs from $3–5,000, depending on the amount of site-specific preparation that has taken place.

Even if a marketer or user chooses to avail himself of the EPA's free RMP submittal software or other compliance assistance tools, compliance with the RMP rules will drain scarce resources away from other activities that increase safety. For example, one propane marketer in Wisconsin sends its drivers to a special driving track where they learn how to handle their delivery trucks on frozen pavement. This is not a free activity, of course, and may well have to be dropped if the money must be spent complying with the RMP rules.

NPGA has quantified the costs of the RMP program to propane marketers and customers. Our estimate does not include any fees assessed by those States that have taken over RMP enforcement from EPA, which can be hundreds or even thousands of dollars per site. While compliance with EPA's rules does not entail a fee, EPA explicitly recommended that all States adopt fees for administering the program for EPA.

Using a conservative estimate of $1,000 per site in compliance costs, which includes direct costs such as consulting fees or computer software and also indirect costs such as company staff time, the RMP rules will cost:

- $330 million to the farm sector;
- $675 million to all other covered propane customers;
- $12 million to propane bulk storage plants.

The bottom line is that the RMP rules are an expensive and duplicative paperwork exercise that will have little or no discernible impact on safety, but which will drain more than $1 billion away from marketers and their customers.

RECENT DEVELOPMENTS ON NPGA'S LAWSUIT

NPGA has pursued all available avenues to obtain relief from the burdensome RMP rules, including filing a lawsuit on August 19, 1996. Despite industry's good-faith attempts to negotiate a settlement, the Agency has consistently rebuffed the industry. Most recently, EPA extended a 4-part settlement offer to make minor changes to the guidance documents and the rules specifically targeting rural agricultural users. NPGA rejected the offer on February 22, 1999 on both procedural and substantive grounds. Not only would the changes not have had the force of law, they would not have addressed the underlying issues of fuel switching and decreases in safety that have been detailed elsewhere in this testimony.

NPGA is prepared to brief the case, but we are unable to get a court date until October 1999 at the earliest. This is, of course, 4 months after the compliance date for the RMP rules. We have formally requested EPA for at least a 1-year stay in the rules' effective date to allow resolution of the case. We are hopeful that the Agency will respond favorably, of course, but we are not optimistic.

CONCLUSION

Mr. Chairman, EPA's RMP rules should not cover propane. The rules will cause customers to switch to other less environmentally friendly fuels. The rules will decrease safety by increasing the number of small deliveries on America's roads. The rules will erect disincentives to use of a Congressionally approved clean air fuel. The rules will cause confusion in the marketplace by duplicating safety standards that have existed in all 50 States for many years. The rules will drain scarce resources away from real safety initiatives and into a paperwork exercise with few benefits. The rules are an expensive paperwork burden that are clearly not justified.

Thank you for this opportunity to testify.

RESPONSE OF JAMES E. BERTELSMEYER TO ADDITIONAL QUESTION FROM SENATOR GRAHAM

Question. I understand that one of the points of contention between EPA and the propane industry is the cost for distributors to comply with this regulation. EPA contends that $50-$250 is an accurate estimate. You contend that a more accurate figure is $1000-$8000 per customer. On what factors are your cost estimates based? How do you account for the major discrepancy in your numbers?

Response. There are a number of costs to be borne by facilities in complying with the RMP rules, including direct costs such as software purchases or engineering consultant fees, and indirect costs such as staff time. NPGA believes that these compliance costs reach at least $1000 per site and quickly rise to $8000, or more in some cases. The $1000 figures is a conservative average estimate for facilities across the United States; it is by no means a maximum.

NPGA reviewed the various software packages on the market and endorsed the program that best meets the needs and expectations of propane marketers and users. This software, manufactured by Dyadem Inc., costs $595 for NPGA members, which is a substantial discount from the published list price of $1500. Many companies are using this software rather than EPA's software because it is propane-specific; it includes integrated calculation and word processing features; and provides hundreds of help menus to assist users. None of these features is available in comparable form in EPA's RMP Submit software, so buyers report that the price is well worth it. It should also be noted that EPA's software has only become available in recent weeks to those placing orders for diskettes in January.

Computer programs do not run themselves, nor do they collect the data to be input. NPGA estimates that it takes at least 25 hours to read and understand the rules; to collect and verify site information; and input the data into electronic form.

Even if the costs of staff time are merely $20 per hour, the total direct and indirect costs to comply with the RMP rules will exceed $ 1000 if the Dyadem software is used. For those marketers who do not have computers and must therefore comply manually, we believe compliance will take much more time, perhaps even double. Remember, too, that Clean Air Act violations can cost the violator $25,000 per day, so marketers take extra time to ensure the information to be submitted is accurate and complete. Finally, marketers are acutely aware of the citizen suit provisions of the Clean Air Act, which expose them to legal liabilities of non-compliance, so extra care and time is warranted.

For those companies who choose to hire consultants to prepare compliance documents, costs will soar to the high end of our cost range. NPGA published in October 1998 a directory of consulting services that included information from 33 companies who were known to provide RMP compliance services. (A copy was provided to the committee for the hearing record.) Only 11 of the firms provided cost estimates, and of these, only 2 companies quoted costs less than $2000 per facility. The remainder quoted costs greater than $2000, with the top quote coming in at $20,000!

Based upon the foregoing, NPGA believes that EPA's speculative $50-$250 estimate is unrealistically low. Indeed, during an RMP presentation earlier this year in St. Louis, EPA estimated that RMP compliance would likely be hundreds of dollars higher than $250. NPGA's figures, on the other hand, are grounded in real world experiences in the field.

UNITED STATES SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC, November 4, 1998.

The HONORABLE CAROL M. BROWNER, *Administrator,*
Environmental Protection Agency,
Washington, DC 20410.

DEAR ADMINISTRATOR BROWNER: As you may know, the Environmental Protection Agency (EPA) is now pursuing an effort to implement many of the provisions of section 112(r) of the Clean Air Act, including the collection of Risk Management Plans (RMPs) from facilities handling substances listed under section 112(r)(3). This is an important effort to improve the safety of industrial chemical processes and I support EPA's effort. Also, I am encouraged by reports that EPA staff may have resolved the security concerns related to the management of the Offsite Consequence Analysis information related to the RMP's. However, I am concerned about the inclusion of fuels in EPA regulations developed under section 112(r).

In promulgating a list of substances under section 112(r)(3) EPA included several of the most Flammable Fuels. The principal focus of this provision of the Clean Air Act is to reduce risks associated with chemical accidents. The catastrophic accidental release that occurred in Bhopal, India in 1984, together with subsequent accidental releases in this country, gave rise to a general concern about the need to prevent such accidents. The concern was related to chemical releases, not fuel explosions, and section 112(r) was the Congressional response to that concern.

Nothing in 112, nor any other part of the CAA suggests that it should be regarded as a Federal fire safety law. Congress mandated the inclusion of 16 chemicals on the list to be developed under section 112(r)(3). While some of these are flammable, the concern in each case was related to the use of substance in a manufacturing process or other application and not as a fuel source. Unfortunately, a significant number of substances included EPA's 112(r) regulations are highly flammable fuels that are not in widespread use due to their chemical properties. Risks from fuel explosions might more appropriately be regulated by the Occupational Safety and Health Administration, the Department of Transportation or State and local agencies.

I recommend that you reconsider the decision to regulate fuels under section 112(r) and further request that EPA publish a notice in the Federal Register proposing to delay by six months the deadline for submission of RMPs for fuel substances listed under section 112(r) of the Clean Air Act. I believe that such a delay would provide the opportunity to reconsider the appropriateness of including such substances in the RMP process.

Thank you for your kind attention to this request.

Sincerely,

JOHN H. CHAFEE.

CONGRESS OF THE UNITED STATES,
Washington, DC 20515, December 21, 1998.

The HONORABLE CAROL BROWNER, *Administrator,*
U.S. Environmental Protection Agency,
Washington, D.C. 20560.

DEAR ADMINISTRATOR BROWNER: In adopting section 112(r) of the Clean Air Act Amendments of 1990, it was the intent of Congress to reduce the risks associated with chemical accidents. Unfortunately, in implementing this provision, the EPA has chosen to expand the scope of the program to cover entirely different category of flammable substances, such as propane.

Propane is non-toxic, is listed in section 241 of the Clean Air Act as a clean alternative fuel, and is a vital energy source, particularly in rural America. By singling out propane from competing fuels such as electricity, fuel oil and natural gas, EPA is creating powerful economic and public relations incentives for customers to switch fuels to avoid the significant costs associated with the new regulations.

We are further troubled that EPA has failed to consider the potential safety and supply consequences that this program is likely to have on the hundreds of thousands of farmers, consumers, and commercial users who depend on this important fuel. Farmers and small businesses may attempt to avoid coverage under the program by limiting their on-site storage to an amount under the regulatory threshold. This will mean more deliveries resulting in a higher risk of winter distribution bottlenecks. It will also mean a higher risk of transportation related incidents, since winter driving conditions can be particularly challenging.

It is difficult to avoid the ironies of this issue. The Clean Air Act was meant to encourage the use of cleanburning fuels like propane, but EPA's rules discourage the use of this fuel. Furthermore, section 112(r) was intended to reduce the risks of accidental releases, yet EPA's rules may actually increase the number of incidents.

We urge you to reconsider the Agency's coverage of flammable substances such as propane within the RMP rules. Moreover, in light of the June 21, 1999 compliance deadline, we also request your expeditious review of this matter so that this issue can be addressed legislatively if necessary.

Finally, because of the timeliness of this issue, we ask that you respond to us no later than February 1, 1999.

Sincerely, ,

CHARLIE NORWOOD,
RALPH HALL,
MIKE OXLEY,
DENNY HASTERT,
JOHN SHIMKUS,
BOB STUMP,
JIM GREENWOOD,
ED WHITFIELD,
RICHARD BURR,
BOB RILEY,
CLIFF STEARNS,
SPENCER BACCHUS,
BOB BARR,
SANFORD BISHOP,
BRIAN BILBRAY,
BARBARA CUBIN,
JIM TURNER,
GEORGE RADANOVICH,
NICK SMITH,
JOE BARTON,
CHIP PICKERING,
LARRY COMBEST,
JO ANN EMERSON,
PAT DANNER,
ROY BLUNT,
NATHAN DEAL,
RODNEY FRELINGHUYSEN,
JOHN BOEHNER,
TED STRICKLAND,
JOHN SHADEGG,
DOUG BEREUTER.

CONGRESS OF THE UNITED STATES,
Washington, DC 20515, January 7, 1999.

HONORABLE CAROL M. BROWNER, *Administrator,*
U.S. Environmental Protection Agency,
401 M Street SW,
Washington, DC 20460.

DEAR ADMINISTRATOR BROWNER: We write to alert you to a significant concern raised by many retail propane dealers throughout Nebraska. Your Agency is now pursuing an effort to implement provisions of section 112 of the Clean Air Act, including the collection of Risk Management Plans (RMPs) from facilities handling substances listed under section 112(r)(3). We are highly concerned by the inclusion of fuels in EPA regulations developed under section 112(r).

Congress mandated the inclusion of 16 chemicals on the list to be developed under section 112(r)(3). While some of these are flammable, the concern in each case was related to the use of the substances in a manufacturing process or other chemical application and not as a fuel source. A number of substances included under section 112(r) regulations are highly flammable fuels but are not in widespread use due to their chemical properties.

The propane industry already operates under regulations at the Federal, State and local levels. Nebraska operates under the National Fire Protection Association pamphlet 58, the Storage and Handling of LP-Gas. This safety code is an industry standard in 50 States. Most propane retailers also submit facility data to EPA and State/local emergency response agencies under Federal community right-to-know rules.

We recommend that you reconsider the decision to regulate under section 112(r) and we request that EPA delay by six months the deadline for submission of RMPs under section 112(r). We believe this delay would allow appropriate congressional review of including specific fuel substances in the RMP process. We thank you for your attention to this matter.

Sincerely,

CHUCK HAGEL.
ROBERT KERREY.
DOUG BEREUTER.
BILL BARRETT.
LEE TERRY.

Washington, DC 20515–3223, December 12, 1998.

The HONORABLE CAROL BROWNER, *Administrator,*
U.S. Environmental Protection Agency,
401 M. Street, SW Room 1200,
Washington, DC 20460.

Dear ADMINISTRATOR BROWNER: I am writing to urge you to exclude flammable fuels from any rules or guidelines you issue to implement section 112(r) of the Clean Air Act.

The goal was to reduce risk of releases of toxic chemicals and to improve the ability of a community to respond if such releases occurred. The section was a response to the catastrophe in Bhopal, India and to subsequent accidents in the United States. Congress did not intend to regulate flammable fuels under this section, which were not at issue at the time and which raise different, albeit related, health and safety concerns than do toxic substances.

Moreover, the decision to cover even relatively small amounts of propane will place an unnecessary regulatory burden on numerous small businesses and individuals whose tanks pose virtually no threat to the public.

I believe section 112(r) is an important measure that will require significant time and money to implement. It is a waste of both the agency's and the private sector's resources to extend the coverage of section 112(r) to flammable fuels. I urge you to remove flammable fuels from the list of substances covered by section 112(r).

Sincerely,

SHERWOOD BOEHLERT,
Member of Congress.

ORANGE COUNTY CERTIFIED UNIFIED PROGRAM AGENCY,
January 14, 1999.

MR. DAN LOWER,
All Star Gas,
12600 Western Avenue,
Garden Grove, CA 92841.

DEAR MR. LOWER: Your business has been identified as subject to the requirements of the California Accidental Release Prevention (Cal-ARP) program found in Chapter 6.95, Article 2 Health and Safety Code, The Orange County Certified Unified Program Agency is authorized to Implement this program for the State of California. In addition, your business is also subject to the Federal program found in section 112(r) of the, Clean Air Act implemented by U.S. EPA.

Your business is required to develop and implement a risk management program to prevent accidental releases of regulated substances that can cause serious harm to the public and the environment, You are also required to develop and submit a Risk Management Plan (RMP), which includes a summary of your risk management program. The RMP must be submitted to this agency and an electronic version sub-

mitted to U.S. EPA by June 21, 1999. We are requesting that your business contact this agency to schedule an RMP compliance meeting during the month of January 1999. These meetings are required pursuant to California regulatory requirements and to ensure that your business meets the federally mandated timeline.

Should your business so choose, you may implement one of the following options in lieu of developing an 11W: 1. Eliminate or replace the Regulated Substance with a non-regulated substance. 2. Reduce the amount onsite to below the Federal threshold quantity, Note: This option may still require the development of an RMP pursuant to California law, but will delay the submittal process to a date beyond the June 21, 1999 dead line.

If one of the above options is chosen you will be required to verify compliance prior to the June 21, 1999 deadline.

This agency is dedicated to assisting your business in meeting these new regulatory requirements. In the near future we will be providing technical/regulatory assistance as well as RMP guidance' documents. However, failure to develop and submit an RMP as required will subject your business to penalties of up to $10,000 per day. In addition, failure to contact and work with this agency during development of your RMP could cause costly revisions to be made during the agency review and evaluation period.

Please contact James Hendron at (714) 667–3708 to schedule your meeting time and date or for questions related to this letter or your responsibilities under the Cal-ARP program,

Sincerely,

PEARL HOFTIEZER,
Supervising Hazardous Waste Specialist,
Orange County Certified Unified Program Agency.

THE STATE OF CALIFORNIA

1999 CA A.B. 172 CALIFORNIA 1999–00 REGULAR SESSION

ASSEMBLY BILL NO. 172

INTRODUCED BY ASSEMBLY MEMBER FIREBAUGH, JANUARY 15, 1999

(1) Existing law provides that the program for the prevention of accidental releases of regulated substances adopted by the Environmental Protection Agency pursuant to the Clean Air Act is the accidental release prevention program for the State and requires the owner or operator of a stationary source to prepare a risk management plan when required under the Federal regulations or if the administering agency determines there is a significant likelihood of a regulated substance accident risk, except as specified. An RMP is required to give consideration to the proximity of various local land uses, including schools. Administering agencies are required to inspect stationary sources to determine compliance with this accidental release prevention program.

This bill would prohibit any person from commencing any process, on and after January 1, 2000, involving a regulated substance at any facility that is located adjacent to a school. The bill would impose a State-mandated local program by imposing new duties upon the administering agencies that implement the accidental release prevention program.

(2) The California Constitution requires the State to reimburse local agencies and school districts for certain costs mandated by the State. Statutory provisions establish procedures for making that reimbursement.

This bin would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25534.3 is added to the Health and Safety Code, to read:

25534.3. No person shall commence any process on and after January 1, 2000, involving a regulated substance at any facility that is located adjacent to a school, as defined in Section 25534.1.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the pro-

gram or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

1998 PROPOSED RESOLUTION—MISSOURI FARM BUREAU FEDERATION

Adequate safeguards to meet public safety needs currently exist under Federal, State and local regulations

We oppose U.S. Department of Transportation regulations that impose unnecessary and costly now equipment and labor requirements on the delivery of propane,

We are opposed to regulations promulgated -under the Environmental Protection Agency's Risk Management Program that requires the development of comprehensive prevention and emergency response programs for propane storage. We believe the proposed regulations provide no additional safeguards and that existing Federal, State and local regulations adequately meet public safety goals.

THE STATE OF CALIFORNIA

1999 CA A.B. 172

CALIFORNIA 1999-00 REGULAR SESSION

ASSEMBLY BILL NO. 172

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INTRODUCED BY ASSEMBLY MEMBER FIREBAUGH
JANUARY 15, 1999

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VERSION: Introduced

VERSION-DATE: January 15, 1999

SYNOPSIS: An act to add Section 25534.3 to the Health and Safety Code, relating to regulated substances.

AB 172, as introduced, Firebaugh. Regulated substances: schools.

(1) Existing law provides that the program for the prevention of accidental releases of regulated substances adopted by the Environmental Protection Agency pursuant to the Clean Air Act is the accidental release prevention program for the state and requires the owner or operator of a stationary source to prepare a risk management plan (RMP) when required under the federal regulations or if the administering agency determines there is a significant likelihood of a regulated substance accident risk, except as specified. An RMP is required to give consideration to the proximity of various local land uses, including schools. Administering agencies are required to inspect stationary sources to determine compliance with this accidental release prevention program.

This bill would prohibit any person from commencing any process, on and after January 1, 2000, involving a regulated substance at any facility that is located adjacent to a school. The bill would impose a state-mandated local program by imposing new duties upon the administering agencies that implement the accidental release prevention program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

THE WILLMAR POULTRY GROUP.
February 4, 1999.

The HONORABLE DAVID MINGE,
United States House of Representatives,
Washington, DC 20515.

DEAR REPRESENTATIVE MINGE: I would appreciate your attention on a serious issue my company is facing regarding an EPA rule.

My company, Willmar Poultry Co., has served our customers throughout the State for home heating, appliance needs and agricultural needs for many years. We pride ourselves on our safety record.

Beginning June 21, 1999 propane facilities like mine that have tanks with over 2,381 gallons on their premises are required to submit to EPA a Risk Management Plan.

Propane is a clean alternative fuel and is specifically listed as an alternative fuel in the Clean Air Act and the Energy Policy Act of 1992. It is the only alternative fuel readily available throughout the United States. And now EPA wants to discourage its use. Forcing our industry to pay for a billion-dollar paperwork exercise will divert resources away from voluntary safety programs that really do work. EPA admits that most of its Risk Management Program duplicates existing requirements. Therefore, this program is nothing more than an expensive paperwork drill. The RMP rules have been directly responsible for many customers either foregoing a propane standby fuel system altogether or else changing to the use of a standby fuel that is not as efficient of environmentally clean as propane. Of course, propane's competing fuels are not covered by the RMP rules. Propane regulation and safety practices are so effective that you have only one chance in 33 million of being killed in a propane tank truck highway accident. By contrast, you have one chance in 15 million of being struck by lightning and only one chance in 2,500 of being in a car wreck that kills someone. Of course, no one is talking about setting up a Federal risk management program for cars!

I urge you to act before the June 21, 1999 compliance deadline to remove flammable fuels from the list of RMP covered substances.

LOEL LARSON, *WPC Propane Department Manager.*

MRS. PEGGY PARSONS,
55 CHURCH HIGHWAY,
Rogers City, MI 49779, October 5, 1998.

The HONORABLE BART STUPAK,
United States House of Representatives,
Washington, DC 20515.

DEAR REPRESENTATIVE STUPAK: I am writing to you because I am concerned about an EPA regulation being placed on the, propane industry that would also affect the agricultural industry in our district.

I am the Presque Isle county president of the Michigan Farm Bureau. I have been farming for 10 years and a member of the Farm Bureau for 9 years. I have just learned that by June 21, 1999, the propane industry must comply with an EPA regulation referred to as section 112(r) of the Clean Air Act Amendments of 1990.

This will require any facility with 2,381 gallons of propane to produce and submit a worse case scenario to the EPA. This information will then be open to public access by being placed on the Internet. Because this regulation is based on storage capacities, many farms will also be required to comply.

The propane industry and those who store propane already operate under strict regulation at the Federal, State, and local levels (safety standard #58 of the National Fire Protection Association and OSHA). We also submit facility data to the EPA and State/local emergency response agencies under Federal community right-to-know rules. This industry has a great safety record and the new regulation by the EPA will not increase it any more. While propane is already listed as a clean burning fuel, it is the only fuel being subjected to this regulation which could cost the industry up to $1.5 billion to comply. Its direct competitors (natural gas, electricity) are not covered by this regulation.

The propane industry is not attempting to escape from needed safety precautions. The EPA regulations are simply a duplication of regulations already in place. Because of this, I urge you to support the following National Fire Protection Association Standard 58 as compliance with EPA's RMP regulations.

Thank you for your time and consideration of this issue.

Sincerely,

PEGGY PARSONS.

COLORADO FARM BUREAU,
Englewood, CO, October 15, 1998.

The HONORABLE WAYNE ALLARD,
United States Senate,
Washington, DC 20510.

DEAR SENATOR ALLARD: Colorado Farm Bureau requests your help on an EPA issue that will have a negative effect on agriculture.

The unnecessary regulation is going to ultimately result in higher costs of propane to ag producers. Many ag facilities rely on propane as their No. 1 fuel source. The increase in cost will also cause ag producers to examine switching to other fuel

sources not covered by this regulation. This will be very costly and also increase this risk use of higher polluting fuels.

Agriculture is facing a critical time economically and many smaller operations are just barely making ends meet. Further economic hardship caused by a rise in energy costs to them would be devastating . All that is possible must be done to protect our ag industry.

Farmers and ranchers are not looking to reduce safety. They are simply seeking Congressional approval of NFPA 58 as a compliance alternative to the EPA's rules. Your assistance and support in this matter would be appreciated. Thanks you for your time and consideration.

Sincerely,

ROGER BILL MITCHELL, *President.*

CALIFORNIA COTTON GINNERS AND GROWERS ASSOCIATION,
Fresno, CA, August 24, 1998.

DEAR CONGRESSMAN: On behalf of the 100 cotton gins and over 2700 cotton growers in the State of California, we are writing to request your assistance on a critical issue to those members of our Association who utilize propane. Specifically, our concern is over the implementation of section 112 of the Federal Clean Air Act, and its impact on the storage of propane.

As of June 21,1999, facilities that store propane in excess of 10,000 pounds (2,381 gallons) have to comply with the rules EPA has published to implement section 112(r) of the Federal Clean Air Act, and its impact on the storage and use of propane. Those rules will require those facilities to prepare and submit facility information including a conjectural worst-case scenario to the EPA. This includes what might happen if one of their propane tanks spontaneously and totally exploded regardless of whether of not it could actually occur.

EPA's proposed regulations are duplicates of existing State regulations governing propane tanks. Therefore, we urge you to support legislation, which says that. companies in compliance with the National Fire Protection Association (NFPA) Standard #58 by definition, in compliance with EPA's risk management regulations.

This is a critical issue to our industry and anyone who sues or stores propane in excess of 2,381 gallons. We would appreciate your support in aiding those efforts that will lessen the burden of duplicative regulation on the cotton industry.

ROGER A. ISOM, *Director of Technical Services.*

ILLINOIS PORK PRODUCERS ASSOCIATION
Springfield, IL 62707–8642, October 9, 1998.

The HONORABLE JOHN SHIMKUS,
United States House of Representatives,
Washington, DC 20515.

DEAR CONGRESSMAN SHIMKUS: As president of the Illinois Pork Producers Association, I felt it was necessary to contact you regarding a regulation being placed on the propane industry by the Environmental Protection Agency.

Under the Environmental Protection Agency's rules implementing section 112(r) of the Clean Air Acts Amendments of 1990, propane marketers and their customers with tanks greater than 10,000 pounds (2,381 gallons) of propane must prepare and submit by next June detailed facility information including a conjectural worst-case scenario to the EPA and the public, which will be place on Internet.

Pork producers across our State rely on propane extensively in the correspondence of doing business on their farms. This unnecessary regulation will cause unneeded expense to our propane suppliers.

Based on the foregoing, I urge you to act as rapidly as possible to provide an alternative means of complying with EPA's regulations based upon NFPA 58. There must be a better way to achieve the desired results.

Sincerely,

RICK DEAN, *IPPA President.*

OHIO MEAT INDUSTRIES ASSOCIATION,
Columbus, OH 43221, October 8, 1998.

CONGRESSMAN JOHN BOEHNER,
United States House of Representatives,
Washington, DC 20515.

DEAR CONGRESSMAN BOEHNER: Under the EPA rules, propane marketers with tanks greater than 2,381 gallons must prepare and submit detailed facility information including a worst-case scenario. These will be published on the Internet. I do not see the benefit in publishing such sensitive information on the Internet where anyone can access it.

The EPA rules will affect our members because it will affect the farmers and manufacturers who stock the shelves. If propane suppliers and big users are required to spend extra time and money to comply with the EPA rules, their expenses will tickle down to grocers and their customers.

Propane marketers ad users already comply with local, State and Federal regulations. They abide by the National Fire Protection Association Safety Standard 58, with OSHA regulations and EPA regulations. Thus, the EPA Risk Management Plan will be redundant.

Please support regulations that will not require additional reporting requirements and will not expose sensitive information to the public. No one is seeking to get out of safety regulations. It just seems that State propane regulations should suffice for compliance to EPA concerns.

Thank you in advance for your support.

Sincerely,

KRISTIN M. CORSALE, *Executive Director.*

OHIO POULTRY ASSOCIATION,
Columbus, OH 43229, October 7, 1998.

The HONORABLE JOHN BOEHNER,
United States House of Representatives,
Washington, DC 20515.

DEAR CONGRESSMAN BOEHNER: On behalf of the Ohio Poultry Association, I am writing to urge you to express opposition to the EPA Risk Management Plan to be enacted in June 1999. These rules promise to be an unnecessary burden to the propane industry and propane users like poultry farmers.

The Ohio Poultry Association has over 200 members. Members include both poultry farmers and allied industries. Our members depend on the association to represent their interests. Many of our members use propane, and, some have tanks above the 10,000 pound threshhold. Directly or indirectly, the EPA regulations will affect poultry farmers.

The EPA's Risk Management Plan is clearly not in the best interest of farmers.

1. Safety will not be improved. If anything, the regulations will jeopardize the safety of farmers, of propane marketers, and of the general public. The plan required that detailed facility information be submitted and then be published on the Internet. Sensitive information will be available to everyone, including unstable people who might see an opportunity to do harm.

2. Compliance will be costly. Research done by the National Propane Gas Association demonstrates that compliance for each facility will cost approximately $2,000. Although propane tanks on farms may not top the 10,000-pound threshold, propane marketers who supply the propane will be forced to comply. The extra cost of compliance will no doubt be passed on to farmers.

3. The EPA regulations are an unnecessary duplication. Propane marketers and users already comply with National Fire Protection Association Standard 58 and the Emergency Planning and Community Right-to-Know Act of 1986, as well as OSHA and DOT regulations.

Sincerely,

JACK L. HEAVENRIDGE, *Executive Vice President.*

NATIONAL GRANGE,
28 September 1998.

The HONORABLE JOHN H. CHAFEE,
Committee on Environment and Public Works,
United States Senate,
Washington, DC 20510.

DEAR CHAIRMAN CHAFEE: On behalf of the 300,000 members of the National Grange, the nation's oldest general farm organization, I would like to make you aware of a potentially detrimental situation. Under EPA's new Risk Management Plan (RMP) regulations, promulgated under section 112(r) of the Clean Air Act Amendments, a significant economic hardship will be imposed on tens of thousands of farmers across the country. The RMP regulations require users of propane who have more than 2,381 gallons onsite to file detailed risk management plans by June 21, 1999.

Completion of these plans requires analysis based on highly technical chemical release modeling. EPA's compliance assistance document, which is currently underdevelopment, is 164 pages in length. Given the highly technical nature of the program, in most cases agricultural users will find it necessary to contract with outside engineering service providers to assist them with compliance, The cost of these services ranges from $1,000 to $8,000 per site, If 100,000 farmers incur an expense of $ 1,000 per site, the compliance burden placed on the farm economy will exceed $100 million.

Apart from the cost of developing Risk Management Plans, we are also concerned about the duplicative nature of the rules. Propane installations in all 50 States are designed, constructed and maintained in accordance with the standards for the safe storage and handling of propane published by the National Fire Protection Association. These requirements have for decades served as a reliable accident prevention program.

As you know, Mr. Chairman, propane is an important commodity to the rural economy. It is widely used in numerous agricultural applications including cultivation and crop drying. In 1996., nearly 15 billion gallons of propane were used for agricultural.

In view of the serious economic burden posed by the so regulations and mindful of the effectiveness of existing requirements, we urge you to consider legislating an alternative compliance path based on reliable and time-honored safe practices. Specifically, propane sites which are installed and maintained in uniformity with the standards set forth by the National Fire Protection Association, should be deemed in compliance with section 112(r) of the Clean Air Act Amendments.

Thank you for you consideration, and continued support for America's farmers.

Sincerely,

KERMIT W. RICHARDSON, *Master (President)*
National Grange of the Order of Patrons of Husbandry,

January 27, 1999.

HONORABLE THOMAS BLILEY,
Committee on Commerce,
United States House of Representatives,
Washington, D.C. 20515.

DEAR MR. CHAIRMAN: In deciding to regulate propane under its Risk Management Program (RMP) rules, the Environmental Protection Agency (EPA) failed to consider the adverse effects which these regulations will have on hundreds of thousands of farmers nationwide.

EPA's Risk Management Program is authorized under section 112(r) of the Clean Air Act Amendments of 1990. By adopting section 112(r), Congress specifically sought to reduce the risks associated with the accidental release of toxic chemicals. Unfortunately, EPA chose to expand the program to include flammables such as propane, an important non-toxic fuel that is used in a variety of agricultural applications. Nearly 1.5 billion gallons are used annually by farmers for crop drying, weed cultivation and animal breeding.

The RMP rules require propane consumers with more than 2,381 gallons storage to complete costly risk management plans and to file those plans with EPA by June 21, 1999. Even if many rural users of propane fall into the least rigorous compliance category (Program 1), the economic impact of these rules remains high since a significant up-front investment may be made to determine the appropriate program

level. Farmers who ultimately qualify for Program I coverage will still be required to undertake a detailed offsite consequence analysis to determine their eligibility for this program level.

In addition to the economic impact, we are also deeply concerned about the potential distribution consequences of regulating propane under RMP. It is highly likely that many commercial users will seek to avoid coverage under the rules by limiting their onsite storage to a volume under the threshold level. This will lead to a significant increase in the number of deliveries, thus placing added stress on a delivery infrastructure that already strains to keep up with harvest and winter heating season demand. Distribution bottlenecks are another example of the type of unintended consequence that the Agency failed to consider when it formulated its rules.

Mr. Chairman, we respectfully urge you and the members of the committee to reverse EPA's decision to include propane as a covered chemical under the Risk Management Program.

Sincerely,

AGRICULTURAL RETAILERS ASSOCIATION,
NATIONAL FARMERS ORGANIZATION,
NATIONAL GRANGE,
ALABAMA FARMERS FEDERATION,
AMERICAN FARM BUREAU FEDERATION,
NATIONAL FARMERS UNION,
TEXAS CORN GROWERS ASSOCIATION.

IOWA FARM BUREAU FEDERATION,
Des Moines, Iowa 50266–5997, February 2, 1999.

The HONORABLE JAMES LEACH,
United States House of Representatives,
Washington, DC 20515.

DEAR CONGRESSMAN LEACH: Congress and the administration made four promises to agriculture when it passed the 1996 Federal Agriculture Improvement Reform Act (FAIR Act). One of those promises was to provide regulatory relief to farmers. Instead of regulatory relief, farmers are getting a regulatory headache. The latest example is a proposal by the Environmental. Protection Agency to impose more regulations an propane users. The EPM Risk Management Plan is duplicative and will impose a heavy burden on farmers in Iowa and across the nation.

The EPA proposes that any person that has more than 10,000 pounds of propane stored on any onsite must submit a risk management plan. This will affect most of Iowa's crop and livestock farmers. EPA is proposing the new set of requirements even though there are existing regulations to minimize the risk from storing and using propane.

I look forward to working with you on this Issue and appreciate your help.

Late last year, more 30 Republicans and Democrats Congressmen, led by Congressman Boehlert, asked EPA Administrator Carol Browner to remove propane from the Risk Management Plan rules. EPA has not removed. We need congressional action to stop this duplicative and unnecessary regulation on out farmers.

Sincerely,

ED WIEDERSTEIN, PRESIDENT.

FLORIDA FARM BUREAU FOUNDATION,
December 2, 1998.

The HONORABLE BOB GRAHAM,
United States Senate,
Washington, DC 20510.

DEAR SENATOR GRAHAM: Propane is a valuable resource that provides a safe clean and economic energy choice for a variety of consumers. It is used in homes, businesses and farms. As of June 21, 1999, many users of propane will have to comply with rules EPA has published to implement section 112(r) of the Clean Air Act Amendment of 1990. Consumers who have more than 2300 gallons of propane onsite will have to provide a complicated onsite risk management program plan. .

Compliance with this rule will highly complex, and EPA's best efforts to help have been to draft a 165-page instructional manual. Nationally, 660,000 farms use propane onsite for various things like drying crops, powering irrigation, and and heating livestock, nursery and poultry areas. Propane provides a cost efficient energy source on which many facets of Florida agriculture depend.

Florida Farm Bureau would like to see some changes in the Risk Management Program that would allow Florida producers the opportunity to avoid the costly burden of these proposed rules. We also ask your help in limiting regulatory duplication by the implementation of this rule.

Thank you for your attention to this matter.

Sincerely,

CARL B. LOOP, *President,*

KANSAS FARM BUREAU,
Manhattan, KS 66503, November 18, 1998.

HON. JOHN CHAFEE, *Chairman,*
Commitee on Environment and Public Works,
United States Senate,
Washington, DC 20510.

DEAR SENATOR CHAFEE: On behalf of the 130,000 family members of Farm Bureau in the State of Kansas, I write to ask your assistance and that of your committee in addressing a problem with potentially significant economic hardship on farmers and ranchers.

The U.S. EPA has promulgated rules implementing Sec. 112(r) of the Clean Air Act that would require users of propane—any consumer who stores 10,000 pounds or approximately 2,381 gallons of propane, agricultural, commercial, residential users and marketers—to comply with mandated provisions of a most complex nature. There is the requirement for a very detailed Risk Management Plan by next June. Given the very technical nature of the compliance assistance document and the rule in general, agricultural users of propane will likely find it absolutely necessary to contract with outside engineering service providers to assist them with compliance.

We sincerely believe EPA should reexamine this whole issue. In particular, the Risk Management Plan should be reviewed. We look forward to any assistance you and your committee members can provide in this very important matter.

Respectfully,

GARY HALL, *President.*

NEBRASKA FARM BUREAU FEDERATION,
December 28, 1998.

SENATOR CHUCK HAGEL,
Senate Office Building,
Washington, DC 20510.

DEAR SENATOR HAGEL: I am writing to convey agriculture's strong concerns regarding the EPA's proposed regulations on propane users.

As you may know, beginning June 21, 1999, propane facilities and users who have more than 2,300 gallons of propane onsite will be required to submit a Risk Management Plan to the EPA, Many farmers in Nebraska that have drying facilities or livestock facilities could be adversely affected by these requirements. In fact, a recent study done by the Nebraska Propane Gas Association showed that the total cost of compliance for the State of Nebraska would be about $8.75 million.

These facilities are already complying with National Fire Protection Association Rule 58, which governs Nebraska's propane industry. This is a duplication of reporting procedures that are already in effect nationwide and will impose unnecessary expenses oil agriculture, propane marketers and the taxpayers.

Agriculture is facing a critical time economically. With added expenses for compliance, many of the smaller operations will not be able to stay afloat. We must do everything we can to protect the ag industry, not create further economic hardships with duplicate regulations.

Sincerely,

BRYCE P. NEIDIG, *President.*

FARMER'S PRIDE,
BATTLE CREEK FARMERS COOPERATIVE, N/S,
Battle Creek, NE 68715, October 14, 1998.

SENATOR CHUCK HAGEL,
1Russell Office Building,
Washington, DC 20510.

DEAR SENATOR HAGEL: Have reviewed a copy of Mr. Jim Makris's (Director, Chemical Emergency Preparedness and Prevention Office, EPA) letter to Senator Hagel dated 9/28/98. We received a copy of the letter from the Nebraska Propane Gas Association, We appreciate the opportunity to respond to the letter and hope that you will consider our plea for help.

The letter indicated that "for propane marketers, the Emergency Planning and Community Right-To-Know Act of 1988 already requires some reporting to the State, and most importantly, the Local Emergency Planning Committee. However, the CAA requirements Passed by Congress establishes a critical link between prevention and right-to-know through a risk management program."

This statement clearly indicates how far out of touch the EPA is with conditions In the rest of the country, certainly in rural Nebraska. The critical link to Community Right-To-Know is the Local Emergency Response Committees.

We have facilities in Madison, Pierce and Knox Counties in northeast Nebraska. This area was covered by a Wide Area Emergency Response Committee which has been dissolved. In none Of these counties is a Local Emergency Response Committee yet organized. There are no Local Emergency Response Plans In place.

Why is our company required to send a report on a local issue to Washington, when the rest of the system does not exist? EPA has the responsibility to establish these organizations as viable local entities that represent wide constituencies (including local businesses). I'm sorry, they do not exist here. We send right-to-kmow information to mailboxes and they are stored in piles. EPA seems to be pretending that these entities exist as a viable means of communication on local issues. They do not.

For the business constituency of the Community Right-To-Know there will be no communication, except for the information that is put on the Internet by EPA and interpreted by people with no knowledge or experience with the subject or who have an axe to grind for their own purposes. Industry has no one to communicate through. RMP is dangerously premature in rural Nebraska. Premature for the health and growth of the farm supply cooperative industry in Nebraska and premature for our company and our farmer owners and patrons.

First, EPA needs to make sure that PERC's exist and are operating, before they take this very premature step in the evolution of this safety regulation.

Mr. Makris further indicated that:

> "there are no requirements under NFPA Standard 58 for written maintenance programs, procedures to control change, or refresher training for distribution plant operators and mechanics."

We suggest that these shortcomings (which are disputable) would be -much easier to fix versus placing a whole new layer of regulation on the industry.

By what logic does EPA think that they can regulate better than can a Deputy State Fire Marshal. We do not believe that our company has ever seen an EPA inspector at any of our facilities. But we see the Deputy State Fire Marshall several times a year. We talk to him, listen to his Instructions, make changes that he suggests or orders. He is extremely conscientious in regulating our business for the safety of his and our communities. We welcome his input and expertise. EPA is a collector of papers. They do not regulate on a local basis. They just collect papers and reports. They certainly are totally out of touch with our business and I think most businesses in rural Nebraska.

He also indicates if a business is subject to OSHA's PSM (Process Safety Management) it will have completed most of the RMP Prevention Program requirements. Unfortunately, most farm supply cooperatives, including our company, deal with anhydrous ammonia and propane on a retail basis and as such are not covered by OSHA's PSM.

We do not need a better understanding of EPA's RMP. Our problem is that:

- This is a local regulatory issue. It can only effectively be an Issue that needs Washington's help, when Local Emergency Response Committee's are viable and there is a real Community Right-To-Know program in place.
- This regulation is premature, it will hurt our business and will severely hamper our farmer owners and patrons and our growth if it is not stopped by corrective regulation or by legislation.

• We do not need another layer of regulation—if regulations that are enforced locally need fixing, fix them—do not get people from Washington involved with local community preparedness, until they have done their homework.

Mr. Makris' response to the NPGA while appreciated, simply is a statement of how out of touch this Agency is with your constituency. This issue needs corrective legislation. Its time is not yet ready, We hope your office can help us with this very important issue.

Sincerely,

TERRY SAMUELSON, GENERAL MANAGER.

OHIO GROCERS ASSOCIATION,
Columbus, OH 43221, October 9, 1998.

CONGRESSMAN TED STRICKLAND,
United States House of Representatives,
Washington, DC 20515.

DEAR CONGRESSMAN STRICKLAND: On behalf of the Ohio Grocers Association, I am writing to urge you to oppose the EPA Risk Management Plan (RMP) scheduled to be enacted in June 1999.

Under the EPA rules, propane marketers with tanks greater than 2381 gallons must prepare and submit detailed facility information including a worst-case scenario. These will be published on the Internet. I do not see the benefit in publishing such sensitive information on the Internet where anyone can access it.

The EPA rules will affect our members because it will affect the farmers and the manufactures who stock the shelves. If propane suppliers and to spend extra time and money to comply with the EPA rules, tickle down to grocers and their customers.

Propane marketers and users already comply with local, State and Federal regulations. They abide by the National Fire Protection Association Safety Standard 58, with OSHA regulations and other EPA regulations. Thus, the EPA Plan will be redundant.

Please support regulations that will not require additional reporting requirements and will not expose sensitive information to the public. No one is seeking to get out of safety regulations. It just seems that State propane regulations should suffice for compliance to EPA concerns.

Thank you in advance for your support.

Sincerely,

KRISTIN M. CORSALE, *Vice President.*

GENERAL ASSEMBLY OF THE STATE OF MISSOURI

HOUSE CONCURRENT RESOLUTION NO. 16

Relating to the Risk Management Program of the Environmental Protection Agency

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Whereas, as required by section 112(r) of the Federal Clean Air Act, the Environmental Protection Agency has promulgated the Risk Management Program that requires the development of comprehensive prevention and emergency response programs for propane storage; and

Whereas, adequate safeguards to meet public safety needs currently exist under Federal, State and local regulations; and

Whereas, the Environmental Protection Agency's risk management regulations will I dramatically increase costs of doing business without increasing safety by: causing customers to switch away from propane, a federally approved clean fuel; duplicating State regulations based upon existing fire protection standards; duplicating Federal right-to-know regulations; and not providing a fuel use exemption similar to OSHA's; and

Whereas, the EPA's rules cover anyone with mom than 2380 gallons of propane onsite, regardless of whether or not it is a single tank or connected tanks which could easily be exceeded by individual restaurants, farms and some residences; and

Whereas, the costs, which is estimated to exceed one and one-half billion dollars private sector of complying with EPA's regulations will be staggering:

Now, therefore, be it resolved that the members of the Missouri House of Representatives of the Ninetieth General Assembly, First Regular Session, the Senate

concurring therein, hereby urge the Environmental Protection Agency to not include propane in the Risk Management Program; and

Be it further resolved that the Chief Clerk of the Missouri House of Representatives be instructed to prepare properly inscribed copies of this resolution for the Missouri Congressional delegation.

CALIFORNIA COTTON GINNERS AND GROWERS ASSOCIATION,
Fresno, CA 93727, March 12, 1999.

Honorable Barbara Boxer,
United States Senate,
Washington, DC 20510.

DEAR SENATOR BOXER: As I am sure you are well aware, on March 16, the Senate Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety will be conducting a hearing on section 112(r) of the Federal Clean Air Act. This hearing is crucial to our industry, because the impact of this section of the Clean Air Act will be discussed. As this Association and its members have indicated to you in the past, the implementation of these requirements will do little to increase public safety, with regards to propane storage at end use facilities such as cotton gins and farms.

Cotton gins and farms in California had to meet all building and fire codes when the storage tanks were installed, which stipulates compliance with National Fire Protection Association Standard NFPA 58. Furthermore, these facilities also have to submit hazardous materials business plans to the local administering agency, typically a county agency. In addition, these tanks are also required to comply with CalOSHA requirements, and are subject to CalOSHA inspection of the tank, safety program and training records every three years. Last, but not least, each of these facilities also has to have an emergency response plan coordinated through the local emergency responder. These requirements go above and beyond the requirements set forth in section 112(r). The new law would require these facilities to duplicate efforts, and pay additional fees. The additional fees include: (1) a $120 per year State surcharge to the Office of Emergency Services, the State oversight agency; (2) a risk management plan review fee, assessed on an hourly basis; and (3) an annual program fee by the local county to cover additional inspections.

We understand the need to prevent serious accidents and reduce serious risk to the public, but our industry's propane tanks already meet the strictest safety requirements around. It does not make sense to duplicate efforts and pay substantial fees for little or no benefit. We would respectfully ask that you give this issue every consideration during the upcoming hearing. Your support is truly appreciated.

Sincerely,

ROGER A. ISOM, *Director of Technical Services.*

KINGS COUNTY FARM BUREAU,
Hanford, CA 93230, March 16, 1999.

HONORABLE BARBARA BOXER,
United States Senate,
Washington, DC 20510.

DEAR SENATOR BOXER: On behalf of the Kings County Farm Bureau which represents the interests of over 1,000 farmers, ranchers and dairymen in Kings County, I would like to take this opportunity to present our concerns on the Senate Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety hearing.

Today the Senate Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety will be conducting a hearing on section 112(r) of the Federal Clean Air Act. This hearing is crucial to our industry, because of the impact the section of the Clean Air Act to be discussed.

Farmers and the processors of their products in California had to meet all building and fire codes when the storage tanks were installed, in compliance with National Fire Protection Standard NFPA 58. They also had to submit hazardous materials business plans to the local administering agency. Additionally, these propane tanks and wind machines are also required to comply with CalOSHA requirements and inspections along with a safety program and training records every three years. These facilities also must have an emergency response plan coordinated through the local emergency responder. These requirements go beyond the requirements set forth in section 112(r). The new law would require these facilities to duplicate efforts, and pay additional fees. The additional fees include the following:

- $120.00 per year for State surcharge to the Office of Emergency Services, the State oversight agency.
- A risk management plan review fee, assessed on an hourly basis.
- A annual program fee by the local county to cover the additional inspections.

Senator Boxer, we understand the need to prevent serious accidents and reduce serious risk to the public, but our industry's propane tanks and wind machines already meet the strictest safety requirements. It does not make sense to duplicate efforts and pay substantial fees for little or no benefit. We would ask for your consideration of these important issues during this hearing.

Sincerely,

CHARLES DRAXLER, *President.*

NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES,
Raleigh, NC 27611, November 23, 1998.

Mr. JIM MAKRIS, *Director,*
Chemical Emergency Preparedness and Prevention Office,
Environmental Protection Agency,
Washington DC 20460.

DEAR MR. MAKRIS: The North Carolina Department of Agriculture and Consumer Services received a copy of a November 9, 1998, letter to you from Alan W. Klimek, P.E., of the North Carolina Department of Environment and Natural Resources, Division of Air Quality, concerning a request to exempt farmers from the 112(r) program when using propane in agriculture related activities. Although Mr. Klimek's letter addressed propane tanks used in the curing of tobacco, there are many other agricultural uses of propane, such as crop drying and heating of poultry and animal housing, and these uses should fall under the same exemption sought by Mr. Klimek.

The North Carolina Department of Agriculture and Consumer Services is the Authority Having Jurisdiction for National Fire Protection Association Standard 58 (NFPA 58), the LP-Gas Code. This standard carries the weight of State law in North Carolina because it has been adopted by reference by the North Carolina Board of Agriculture. As such, we inspect every bulk propane plant in the State every year. If violations of NFPA 58 are found we issue an inspection report to instruct the operator of the plant to correct the violations within a specified period of time.

Our records indicate that the vast majority of propane installations on farms do not meet the NFPA definition of a bulk plant; yet many of these farms have propane storage in excess of the amount covered under 112(r). In most cases, propane tanks are located in open areas significant distances from populated areas. Due to the general remoteness of these tanks, we believe that having to prepare a Risk Management Program for propane tanks on farms is not necessary.

We support the request from the North Carolina Department of Environment and Natural Resources to exempt farmers from the 112(r) program. When using propane in agriculture related activities and we urge you to render a decision as quickly as possible.

Please feel free to contact us if you have any questions. You should direct your questions to David Smith or Richard Fredenburg at 919–733–3313. Thank you for considering our request.

Sincerely,

JAMES A. GRAHAM, *Commissioner.*

NEVADA BOARD FOR THE REGULATION OF LIQUEFIED PETROLEUM GAS

Whereas, as required by section 112(r) of the Federal Clean Air Act, the Environmental Protection Agency has promulgated the Risk Management Program that requires the development of a comprehensive prevention and emergency response programs for propane storage; and

Whereas, safeguards to meet public safety currently exist under Federal, State, and local regulations; and

Whereas, the Nevada LP Gas Board, established in 1957 by the Nevada Liquefied Petroleum Gas Act, regulates the safe storage, distribution, dispensing, transportation and utilization of propane and the safe manufacture, fabrication, assembly, sale, installation and use of propane systems, containers, apparatus, and appliances in Nevada; and

Whereas, since the establishment of the LP Gas Board, there have been no incidents resulting in loss of life or property related to any entity that would be subject to the EPA's rules; and

Whereas, the EPA's rules cover anyone with more than 2380 gallons of propane on site, which could easily be exceeded by individual mining companies, industrial plants, casinos, schools, restaurants, hotels, farms, ranches, other businesses, and some residences; and

Whereas, the Environmental Protection Agency's risk management regulations would not significantly increase the safety to LP Gas consumers over the present regulation of the LP Gas Board and the existing NFPA standards while increasing the costs of propane to the consumer; and

Whereas, the Environmental Protection Agency's risk management regulations may cause customers to switch away from the clean burning fuel of propane; may duplicate State regulations based upon existing nationally recognized standards; may duplicate Federal right-to-know regulations; may not provide a fuel use exemption similar to OSHA's and may force consumers to use smaller storage volumes, necessitating more frequent transfers and thereby resulting in an increased risk to consumers;

Now, therefore, be it resolved that the members of the Nevada Board for the Regulation of Liquefied Petroleum gas concurring herein, hereby urge the United States Environmental Agency to remove propane from the Risk Management Program; and

Be it further resolved that the staff of the Nevada LPGas Board be instructed to prepare properly inscribed copies of this resolution for the Nevada Congressional Delegation, the United State Senate Committee on the Environment and Public Works, and Director of the Federal Environmental Protection Agency.

Approved unanimously this 4th day of March, 1999.

BERNARD SEASE, *Chairman.*
State of Nevada.

BOARD FOR THE REGULATION OF LIQUEFIED PETROLEUM GAS,
Carson City, Nevada 89702, October 9, 1998.

Congressman TED STRICKLAND,
United States House of Representatives,
Washington, DC 20515.

DEAR CONGRESSMAN STRICKLAND: On behalf of the Ohio Grocers Association, I am writing to urge you to oppose the EPA Risk Management Plan (RMP) scheduled to be enacted in June 1999.

Under the EPA rules, propane marketers with tanks greater than 2,3981 gallons must prepare and submit detailed facility information including a worst-case scenario. These will be published on the Internet. I do not see the benefit in publishing such sensitive information on the Internet where anyone can access it.

The EPA rules will affect our members because it will affect the farmers and manufactures who stock the shelves. If propane suppliers and big users are required to spend extra time and money to comply with the EPA rules, their expenses will trickle down to grocers and their customers.

Propane marketers and users already comply with local, State and Federal regulations. They abide by the National Fire Protection Association Safety Standard 58, with OSHA regulations and other EPA regulations. Thus the EPA Risk Management Plan will be redundant.

Please support regulations that will not require additional reporting requirements and will not expose sensitive information to the public, No one is seeking to get out of safety regulations. It just seems that State propane regulations should suffice for compliance to EPA concerns.

Thank you in advance for your support.

Sincerely.

KRISTIN M. CORSALE, *Vice President.*

HECLA MINING COMPANY,
Coeur d'Alene, Idaho 83815–8788, October 14, 1998.

SENATOR LARRY CRAIG,
United States Senate,
Washington, DC 20510.

DEAR LARRY: This letter seeks your assistance in opposing EPA regulations that are burdensome to the Propane industry and will affect the storage facilities of propane on our mine sites.

EPA's burdensome risk management regulations cover all facilities with more than 10,000 pounds of propane on site.

Basically, the EPA is requiring a long, detailed report that is only adding additional expense to private businesses without any additional safety benefit.

Commodity prices are already depressed, the mining industry does not need to add to its operational cost more unnecessary regulation by government.

We don't mind complying with appropriate safety regulations. However, EPA's rules duplicate existing State regulations, and we believe that an alternative compliance method should be allowed. Therefore, we urge you to support alternative legislation providing that companies in compliance with the National Fire Protection Association Safety Standard 58 are by definition in compliance with EPA's risk management program regulations.

Thank you for your time and consideration of these views.

Sincerely yours,

W. BILL BOOTH, *Vice President—Investor and Public Affairs.*

THIEMAN TAILGATES, INC.,
Celina, OH 45822–1566, September 15, 1998.

CONGRESSMAN JOHN A. BOEHNER,
United States House of Representatives,
Washington, DC 20515.

DEAR CONGRESSMAN BOEHNER: As a member of the National Propane Gas Association, I have been keeping abreast of the ERA risk management regulations scheduled to go into effect in June, 1999. I am writing to ask you to help establish some alternative method of compliance to the EPA regulations.

Thieman Tailgates, Inc. manufactures hydraulic liftgates that are seen on the back of trucks and trailers that deliver propane gas and other equipment for the propane industry and other markets. Our company markets our liftgates to propane marketers nationwide.

The EPA's risk management regulations will pose many problems for our customers, many of whom have tanks greater than the 10,000 pound threshold. Among the problems, as I see it, axe added cost to comply with the regulations and public disclosure of sensitive information on the Internet.

To the best of my knowledge, the propane industry already operates under strict regulations at the Federal, State and local levels. I do not think that the industry needs more regulations imposed by EPA. Additional regulations will be an obstacle to their doing business and keeping their prices reasonable. This will indirectly effect my business with the propane industry.

I know that my customers, many of whom are in your congressional district, are concerned about safety but I urge you to support a mechanism whereby compliance with regulations already in place will suffice for compliance with EPA's risk management regulations.

Thank you for you time and consideration of the concerns of the propane industry and ancillary industries.

Sincerely,

BARTT SUCHLAN, *Marketing Coordinator.*

INTERMOUNTAIN OUTDOOR SPORTS,
Meridian, ID 83642, October 2, 1998.

SENATOR CRAIG,
United States Senate,
Washington, DC 20510.

DEAR SENATOR CRAIG: Our family has been in business for 20 years and we employ 105 people between our two Sporting Good Stores, We are thankful for the op-

portunity to own our business. We are fully aware that the employees that work for us represent families that depend on their income for support.

I am writing to you today on behalf of all small business owners that are desperately trying to stay in business and to provide job opportunities for the community. As you are well aware, government burdensome regulations are The reason small businesses are closing their doors.

I was very upset when I recently found out of one more attempt by government to interfere in private enterprise.

Beginning June 21, 1999 propane facilities that have tanks with over 2,381 gallons on their premises are required to submit to EPA a Risk Management Plan.

I fully expect that cost will be passed onto all of my customers that use propane for recreational purposes.

It is my understanding that these new EPA requirements duplicate existing State safety regulations and that an alternative compliance method should address the safety concerns of the EPA. Therefore, I urge you to support legislation that provides companies with National Fire Protection Association standard 58 which are, by definition, in compliance with the EPA's risk management program regulations.

Please get government off the backs of small business and tax-payers.

Sincerely,

GERRY SWEET, *General Manager/ Owner.*

MOBILE TOOL INTERNATIONAL, INC.
Westminster, CO 80030, October 15, 1998.

SENATOR WAYNE ALLARD,
United States Senate,
Washington, DC 20510.

DEAR SENATOR ALLARD: As an employee-owner of a manufacturing plant I am deeply concerned as to how section 112(r) of the EPA proposed regulations to the 1990 Clean Air Act will affect my company and our customers. Mobile Tool International employs more than 350 individuals, manufacturing aerial lift equipment, and other equipment used In the utility and telecommunications industry.

Although the EPA's proposed regulations would only affect facilities which store more than 2300 gallons of propane, our propane supplier will be affected. With the additional burden placed on them by the EPA In regards to duplicating the reporting which they already do at the State level, they will have no choice but to raise the cost of propane. We are large users of propane in a variety of ways. This will impact our profitability which could also raise the price of our equipment to the end-user.

As employee-owners, we pride our-selves on building one of the finest line of products In the market, and being able to deliver those products to our customers at an affordable price. I believe in fair competition and competing on a level playing field. However, if our propane supplier is forced to comply with these regulations as written, they will be put at a great disadvantage with many of the other fuel sources which are not covered by these regulations.

This regulation affects many people In many ways. I would appreciate your looking into this matter. Thank you.

Sincerely,

PENNY GAGLIARDI, *Sr. Production Control Planner.*

CITY OF WAYNESBORO, GEORGIA,
September 16, 1999.

CONGRESSMAN CHARLIE NORWOOD,
United States House of Representatives,
Washington, DC 20515.

DEAR CONGRESSMAN NORWOOD: This letter seeks your assistance in opposing an EPA regulation.

I have been contacted by local propane dealers in my community about section 112 of the Clean Air Act. Propane dealers are already over-regulated by many government agencies. Of course, regulation is important to the safety of our community. However, when the EPA requires information that is already being provided by the National Fire Protection Association 58, the Community-Right-to-Know-Act of 1996 and other Federal, State and local agencies it appears to be a real duplication of effort. Plus, the EPA providing confidential and sensitive propane facility information on the Internet is ludicrous, just the EPA's Internet requirement of publishing

this type of information to a world of terrorists, criminals, ″kids killing kids″ and mal-adaptive people is more of a hazard than any propane worst-case scenario.

Please do everything you can to stop this over-regulation by the EPA and thank you for the time and consideration of my views on this issue.

Sincerely,

MARTIN DOLIN, *Mayor of Waynesboro.*

CITY OF TALLAHASSEE, FLORIDA,
City Hall, Tallahassee, FL 32301, September 10, 1998.

SENATOR BOB GRAHAM,
Senate Office Building,
Washington, DC 20510.

RE: EPA's proposed new regulations on propane gas

DEAR SENATOR GRAHAM: As someone who uses propane gas, I am concerned about an EPA regulation that is being imposed on propane gas suppliers and large users. I feel this is going to needlessly increase costs without an increase in safety.

All States—including Florida—have adopted safety regulations proposed by the National Fire Protection Association. Now, the EPA wants to impose additional regulations.

One of my biggest concerns is the EPA wants detailed information regarding some users and suppliers facilities. Then the EPA is going to post this information on the Internet. It doesn't take much ″surfing″ of the net to realize there are a lot of people out there who could do great harm if they had access to this type of information. Therefore, instead of increasing safety, I'm fearful the EPA's regulations could potentially do great harm.

In light of these detailed safety regulations that exist in all 50 States today, I urge you to support a mechanism whereby compliance with NFPA 58 suffices for compliance with EPA's RMP regulations.

Should you have any questions, please feel free to call me. Thank you.

Sincerely,

JOHN PAUL BAILEY, *Mayor Pro Tem.*

OFFICE OF THE MAYOR,
Wrens, GA 30833, September 10, 1998.

THE HONORABLE CHARLIE NORWOOD,
House Office Building,
Washington, DC 20515.

DEAR CONGRESSMAN NORWOOD: Recently, I learned from Henry Jones, Town and Country Gas, Inc., about an EPA regulation that is unnecessary and costly.

Safety is important to everyone; however, the propane industry already operates under strict regulations at the Federal, State and local levels. Unnecessary government regulations only leads to increased costs in the private sector and the costs of complying with EPA's regulations will be staggering. Also, under these regulations the EPA will publish detailed facility Information on the Internet which will only give valuable information to terrorist and criminals intent on using this information for illegal and tragic ends.

As a community leader, I urge you to act as rapidly as possible to stop this unnecessary EPA risk management regulation.

Sincerely,

J.J. RABUN, *Mayor.*

FLORIDA PUBLIC UTILITIES COMPANY,
West Palm Beach, FL 33402–3395, December 22, 1998.

HONORABLE BOB GRAHAM,
United States Senate,
Washington, DC 20510.

DEAR SENATOR GRAHAM: Our company, Flo-Gas Corporation, a subsidiary of Florida Public Utilities Company founded in 1–924. employs 300 workers in the State of Florida. Safety is the number one priority when running our company. However, recently the Environmental Protection Agency has unposed an extremely costly and

time-consuming regulation on our business that will not increase: safety for our customers, employees, or the general public.

Beginning June 21, 1999 propane facilities like ours that have tanks with over 2,381 gallons on their premises are required to submit to EPA a Risk Management Plan. The propane industry already operates under strict regulations at the Federal, State, and local levels. For example, all 50 States have adopted in some form, either directly or indirectly, safety standard No. 58 published by the National Fire Protection Association. OSHA regulates our company's workplaces, and we also submit facility data to EPA and State/local emergency response agencies under Federal community right-to-know rules. Our industry has an extremely good safety record and the new regulation will not increase it any more.

Our company is not looking to escape regulations that truly enhance safety of propane installations. Indeed, that is the whole reason why States have incorporated NFPA 58 into their regulations. I, therefore, urge you to support legislation that recognizes compliance with NFPA 58 as an alternative means of complying with EPA's section 112(r) rules.

Thank you for your time and consideration of these views,

Sincerely,

C.L. STEIN, *Senior Vice President,*
Flo-Gas Corporation.

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,
Division of Air Quality, Raleigh, NC 27604, November 9, 1998.

MR. JIM MAKRIS, *Director,*
Chemical Emergency Preparedness and Prevention Office,
Environmental Protection Agency,
Washington, DC 20460.

Subject: Applicability of 112(r) Chemical Accident Prevention requirements for propane to Farms

DEAR MR. MAKRIS: The North Carolina Department of Environment & Natural Resources Division of Air Quality (DAQ) has been made aware that approximately 11,000 farms exist in North Carolina Which use propane to cure tobacco. The threshold for which farm propane is being used is such that the tanks are not inspected by the North Carolina Department of Agriculture (NCDA). The NCDA currently inspects propane users with tank sizes 2,000 gallons (8.400 pounds at 4.2 pounds per gallon) or larger and smaller tanks with an aggregate quantity of 4,000 gallons. (16,800 pounds) or more. Many of the North Carolina farmers use propane in 500 or 1,000 gallon tanks with a total quantity on site greater than the 112(r) threshold of 10,000 pounds but less than the 4,000 gallons inspected by the NCDA.

Farmers were exempted from the 112(r) program when using ammonia as an agricultural nutrient. I believe after discussions with EPA Region IV that EPA never intended to subject farmers to the requirements of this program. Many NC farmers have land large enough that the distance to endpoint for a worst case release would not reach a public receptor. Since the toxicity of ammonia is far more dangerous than propane, the NCDAQ recommends that the EPA exempt farmers from the 112(r) program when using propane in agriculture related activities.

Thank you for your consideration, and advise us of your decision. Please contact Mike Chapman at (919) 715–3467 for any additional information regarding this letter.

Sincerely,

ALAN W. KLIMEK, P.E.

SCANA PROPANE SERVICES,
Darlington, SC 29532, October 9, 1998.

CONGRESSMAN JOHN SPRATT,
United States House of Representatives,
Washington, DC 20515.

DEAR CONGRESSMAN SPRATT: You may not be aware of this fact, but propane gas is used extensively in the processing of tobacco. Many tobacco farmers are big customers of propane. It is my understanding that the EPA wants to impose new regulations that directly affect propane customers. The results of these regulations would be higher prices for propane and a needless duplication of safety rules.

Propane is an extremely safe and efficient fuel. It is cost-efficient as well. States and localities have regulations in place that govern the safe use of this gas. The propane gas industry voluntarily cooperates with governments, businesses and industries to ensure the safest possible use of this product.

I do not have to tell you that with tobacco under assault from other quarters, the last thing we farmers need is another attempt by a government bureaucracy to heap needless regulations on us and raise our costs. I would request that you oppose the EPA's efforts to implement section 112(r) of the Clean Air Act.

Sincerely,

GEORGE W. ABBOTT, *President.*

SCANA PROPANE SERVICES,
York, SC 29745, September 3, 1998.

LISA BONTEMPO,
National Propane Gas Association,
Washington, DC 20036, September 3, 1998.

DEAR MS. BONTEMPO: I am writing to inform you of examples of fuel switching as a direct result of the impending EPA Risk Management Program (RMP) requirements. Our company serves numerous commercial and industrial facilities throughout North and South Carolina and we continue to hear from our larger customers about plans to do away with their propane systems due to RMP regulations.

Bosch Corporation desires to remove the propane back-up systems from all of their plants across the nation due to RMP regulations. These systems are utilized during peak demand periods (primarily on the coldest days in winter) to replace the natural gas supply which is interrupted during these cold snaps so there is enough natural gas to supply the residential heating load. Bosch's intent is to go on a firm natural gas contract so they are not interrupted and therefore will not need to store propane on site.

At Bosch's Charleston, SC plant, where they make antilock braking systems and fuel injectors, switching to firm natural gas service will cost approximately $75,000 per year more than having an interruptible service with propane as a back-up. I expect this cost is fairly representative of the approximately 50 plants Bosch operates across the nation.

Bosch had hoped to consolidate their natural gas purchases among all plants and therefore reduce the cost of gas in this manner to offset the higher cost of firm delivery services. This may lower the cost of purchasing the gas at the wellhead, but having the gas transported to the burner tip on a firm basis is what drives the cost up over an interruptible service. Bosch is concerned about the potential increase in cost but may choose to accept it due to RMP regulations and the potential liability (public perception, lowered property values in the vicinity of their plants, risk of sabotage, etc.) that completing and submitting RMP's will bring upon their plants.

At the Savannah River Site (SRS), which is a DOE-owned weapons grade plutonium site, they have lowered their on site propane storage levels to below the threshold limits (a mere 2358.5 gallons) due to RMP regulations. I don't know what they are utilizing propane for, due to the sensitive nature of their business, but they will likely require more deliveries (which increases the potential for an accident to occur) to maintain their energy supply.

Kimberly-Clark, in Beach Island SC, desires to eliminate their use of propane as a backup supply to natural gas due to RMP regulations. It now appears that due to the substantial increase in the cost of a firm natural gas supply (similar to Bosch's), they are considering having RMP's completed for each plant site. The feedback they have gotten from the RMP consulting industry is to expect to spend $10,000 to $15,000 at each plant.

As you can see, these regulations are having a tremendous impact on not only the propane industry, but on propane consumers as well.

Very truly yours,

PAUL V. NORRIS, P.E.

CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION,
Sacramento, CA 94244–7460, November 18, 1998.

THE HONORABLE HARRY WAXMAN,
United States House of Representatives,
Washington, DC 20515.

DEAR CONGRESSMAN WAXMAN: As Director of the California Department of Forestry and Fire Protection, Office of the State Fire Marshal, I am contacting you regarding the EPA's recent rule implementing section 112(r) of the Clean Air Act. This rule would require facilities using hazardous substances to submit a detailed Risk Management Plan that would include an offsite consequence analysis describing the potential impacts of a worst case accidental release to the EPA. This information would then be made public via the Internet. The substances that must comply include propane gas that is used throughout California.

Propane gas is currently covered under a myriad of regulations including California Building and Fire Regulations, the National Fire Protection Association's LP-Gas Code an the Federal Community Right-to-Know rules. The State Fire Marshal's Office works closely with industry and the fire service to develop training for emergency response personnel and specialized response plans to deal with the unique characteristics of the substances covered by the rule to insure the public's safety.

While my office supports the public's right-to-know, we believe that the widespread dissemination of the data via the Internet would provide a virtual ″roadmap″ to terrorists intent on creating havoc within the communities we safeguard. To that end, I urge you to delay further implementation of the Internet publication of the Risk Management Plan ″offsite consequence analysis″. Information and support legislation that allows compliance with existing rules and regulations.

Sincerely,

RICHARD A. WILSON, *Director.*

OLIVE ROAD FLEA MARKET,
JACKSON ENTERPRISES,
Brookville, OH 45309, September 21, 1998.

SENATOR MIKE DEWINE,
United States Senate,
Washington, DC 20510.

Dear Senator DeWine: I felt it was absolutely necessary to contact you regarding a regulation being placed on the propane industry by the Environmental Protection Agency (EPA).

I own and operate three large cow barns that I converted into a flea market. I heat these buildings with propane gas because the costs to have natural gas lines connected were excessive. Because these are large drafty buildings, I have four one-thousand gallon tanks on my property to provide a large enough storage to enable my propane marketer to keep me supplied in the wintertime without interruption.

My propane supplier has recently informed me about EPA's rules implementing section 112(r) of the Clean Air Act Amendments of 1990. Propane marketers and their customers with total storage of greater than 10,000 pounds (2,381 gallons) of propane must prepare and submit by next June detailed facility information including a conjectural worst-case scenario to the EPA and the public, which will the be placed on the Internet. If I understand this program correctly, propane marketers and commercial customers such as myself will not have to make any changes to our propane systems, but will have to fill out a very lengthy and detailed report for the EPA. Among many other things, this plan must include an estimate of what might happen if one of the propane tanks on my property exploded. I don't understand how knowing this information, yet not taking any action to prevent it, is going to improve safety in any way. From my experience in getting my propane system installed a few years ago, the propane industry is already regulated by Federal, State and local codes. We had to take out permits, have inspections and pressure tests inside and out, and I felt the codes required a pretty thorough and safe process in the initial installation of these tanks.

I am also concerned about getting this report filled out correctly, and who is going to pay for it. I am not in the propane business, and am certainly not in any position to fill out a technical report as detailed as this one appears to be. If my propane supplier is able to do this work, I am concerned about any additional cost, with apparently no increase in safety. I just don't see any purpose to this new regulation.

My company is not looking to escape regulations that truly enhance the safety of propane installations. It just appears that this regulation is a duplication of codes

already in effect, with an increased cost and no safety benefit. I therefore urge you to support legislation that recognizes compliance with the current regulations as an alternative means of complying with EPA's section 112(r) rules.

Thank you for taking time to read my letter. Please give serious consideration to the concerns I've expressed.

Sincerely,

RICHARD JACKSON.

TABOR LUMBER COOPERATIVE,
Tabor, SD 57063, October 5, 1998.

HON. TOM DASCHLE,
United States Senate,
Washington, DC 20510

DEAR SENATOR DASCHLE: EPA's burdensome risk management regulations cover all facilities with more than 10,000 pounds of propane on site. This is not that much propane, so these rules cover not only my bulk storage facilities but also most of my commercial customers as well. I am now starting to get calls from my customers who are reconsidering their usage of propane in light of the costs of complying with EPA's rules.

My company is not looking to escape regulations that truly enhance safety of propane installations. Indeed, that is the whole reason why States have Incorporated NFPA 58 into their regulations. I, therefore, urge you to support legislation that recognizes compliance with NFPA 58 as an alternative means of complying with EPA's section 112(r) rules.

Should you have any questions, please feel free to call me. Thank you.

Sincerely,

ALOIS C. RUMAN, *Manager.*

ROSS RANCH SOUTH,
Tallahassee, FL 34308, October 2, 1998.

THE HONORABLE CONNIE MACK,
United States Senate,
Washington, DC 20510.

DEAR SENATOR: This letter seeks your assistance in opposing an EPA regulation that is so burdensome that it is forcing us to consider switching to other fuels.

We utilize propane on our ranch here.

EPA's burdensome risk management regulations cover all facilities with more than 10,000 pounds of propane on site. This is not that much propane.

I am proud of our safety record. We have never had a problem with propane and have an excellent safety record.

In light of the detailed safety regulations that exist here in Florida as well as all other 50 States, urge you to support a mechanism whereby compliance with NFPA 58 suffices for compliance with EPA's RMP regulations.

I hope we can count on your support on this issue and I look forward to hearing from you.

Sincerely,

CONNOR ROSS, *Owner.*

DEPARTMENT OF HOUSING, BUILDINGS AND CONSTRUCTION,
Frankfort, KY 40601–4322, September 2, 1998.

REPRESENTATIVE EDWARD WHITFIELD,
United States House of Representatives,
Washington DC 20515

DEAR REPRESENTATIVE WHITFIELD: On behalf of the Kentucky State Fire Marshal's Office—Hazardous Materials Section, I am writing with regard to an important domestic safety issue that has recently come to my attention.

EPA has promulgated regulations under the Clean Air Act Amendments of 1990 that require covered facilities to develop risk management plans detailing sensitive facility specific information. These plans must be submitted by next June 21, 1999 and will be available to the public on the Internet. The rules cover many different substances, but this letter specifically addresses the rules as they pertain to propane because it is so highly regulated already.

In my jurisdiction and elsewhere, propane is regulated by State safety and environmental laws. These laws and regulations impose hefty construction and other requirements on propane marketers and users to ensure accidents don't occur. I also know that my State and local emergency planning agencies, created by the Federal Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), collect substantial information from such facilities that is publicly available.

I am supportive of the public's right-to-know about industrial facilities within a given community through laws like EPCRA, but I believe that EPA's rules are an exercise in regulatory overkill. This requirement will add more paperwork layers for all parties involved and will thereby divert attention and resources away from safety activities. There needs to be some balance between public knowledge and public safety, but EPA's rules will provide terrorist and other ″ne'er-do-wells″ with a virtual roadmap to cause damage and havoc in my community. Remember, my organization and staff are the ones on the front lines of emergency response—let's not create more opportunities for them to be harmed. I am not alone in expressing these concerns, intelligence agencies such as the FBI, the International Association of Fire Fighters, the National Fire Protection Association, and the National Propane Gas Association have all raised their voices about this issue.

I understand that Congress is likely to insert language admonishing EPA to work to resolve the domestic terrorism concerns in the bill funding EPA for next year. But my concerns go beyond this, and I believe that a stronger indication of Congressional concern on this important issue is warranted. I frankly can't believe that Congress would want EPA to overlay a completely new regulatory scheme on top of the State regulations that already exist to keep propane facilities safe.

I support safety. I support appropriate regulations. EPA's risk management rules are not necessary, duplicative, and potentially a boon to terrorists. I therefore urge you to go beyond the Congressional report language and enact into law a one-year delay, at a minimum, on EPA's risk management program rules as they apply to the already highly regulated propane industry.

Respectfully,

G. RODNEY RABY, *Assistant State Fire Marshall.*

[From the Alliance for Fair Energy Competition]

THE FLAWS OF INCLUSION OF PROPANE IN THE EPA RMP REGIME

(By William H. Lash III [1])

INTRODUCTION

What do Bhopal, India and your local Burger King restaurant have in common? To most of us the two are as different as night and day. One evokes the painful memory of a deadly, toxic chemical release the other is a symbol of a family outing for burgers and shakes. Yet the Environmental Protection Agency would cavalierly lump these two enterprises together and impose burdensome regulation originally designed for toxic chemical facilities on small family farms, hotels and restaurants. This study will discuss the EPA's expanded "right to know" regime and the threat it poses for the American economy, the propane industry and the environment. The planned EPA risk management program (RMP) will injure consumers, the environment and undermine safety efforts nationally.

EXPANDED RIGHT TO KNOW PROGRAM

The expanded Community Right to Know Program is established under the Clean Air Act Amendments of 1990. Section 112(r) of the amended Clean Air Act established a new Federal mandate to focus on the prevention of and response to accidental releases of toxic chemicals. The objective is to prevent serious chemical accidents that have the potential to affect public health and the environment. Under these requirements, industry must develop and make public risk management plans (RMPs.).

This legislation has its origin in the Bhopal, India disaster where a toxic chemical release killed and injured approximately 2000 people. However, according to Senator

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[1] Professor of Law, George Mason University. Distinguished Senior Fellow, Center for the Study of American Business, Washington University.

John H. Chafee (R-RI) congressional "concern was related to chemical releases, not fuel explosions."[2]

Pursuant to the Clean Air Act Amendments of 1990, "risk management plans" (RMPs) must be written for more than 66,000[3] industrial facilities, including chemical plants, oil and gas refineries, pharmaceutical companies, electric and gas utilities, and waste water treatment works. Military and energy facilities of the Federal government also are required to establish risk management plans. The plans must include evaluations of the risks and hazards at each installation, as well as discuss accident prevention and proposed responses to an accidental release for any of 140 hazardous substances on site. Each firm also must develop an "offsite consequence analysis" (OCA). The OCA for each facility must analyze the dangers to the public and the environment of possible accidental releases. The most controversial part of these requirements is the preparation of "worst case scenarios." A worst case scenario must disclose: (1) the chemical or hazardous material that might cause the worst case scenario if released, (2) its physical state, i.e., gas or liquid, (3) the amount of the material that would need to be released to cause the situation. Unfortunately, in its regulatory zeal, the EPA has swept other unintended industry sectors into this program.

These evaluations also must identify possible aspects of a release leading to the worst case scenario. The topography of the area in which the plant is located and the reach of the effects of the release must be included. The description must estimate the number of people injured, killed, or otherwise "affected" by the release.

Firms also must disclose their addresses and locations by longitude and latitude, the nature and amounts of hazardous materials on site, and the number of full-time employees at the site.

WHAT IS PROPANE?

Propane or liquefied petroleum gas (LP-Gas) is an approved clean fuel under the 1990 Clean Air Act Amendments and the National Energy Policy Act of 1992. It can be in either a liquid or gas state. Propane supplies 3 to 4 percent of U.S. total energy needs. Ninety percent of the United States propane supply is produced domestically.

Propane is employed widely in a variety of fields. Approximately 60 million people in the United States use 16.5 billion gallons of propane annually. In 1994 propane consumption followed this pattern:

8.8million gallons for utility/gas industry usage,
50.7 million gallons for internal combustion engine use,
1.5 billion gallons for agricultural and other uses,
5.4 billion gallons for residential/commercial purposes,
9.0 billion gallons for chemical/industrial usage, and
14.3 million American families use propane, with 5 percent utilizing these fuels as their primary heating source.

Propane is indeed the most widely employed alternative fuel. Nearly 4 million vehicles globally operate on propane. The United States is home to 10,000 public propane refueling stations and a network of licensed propane conversion centers nationwide. Due to the low pollution characteristics of propane, more than 300,000 forklift truck operators and other indoor vehicle operators use this fuel. Over 80,000 bus, taxi and delivery services and fleets are powered by propane.

Propane is probably familiar to most people as a recreational heating and cooking fuel. The Barbecue Institute of America reports that 84 percent of all U.S. households own a barbecue grill. Fifty-five percent of these households own a propane grill.

On 660,000 American farms, propane is at work. Agricultural applications include crop drying, flame cultivation, fruit ripening, space and water heating, refrigeration and powering vehicles. Over 1 million commercial firms including hotels and restaurants use propane as an energy source. Some 350,000 industrial facilities use propane as well.

PROPANE REPORTING REQUIREMENTS UNDER AN EXPANDED RIGHT TO KNOW PROGRAM

Pursuant to the RMP regulations, three increasingly burdensome compliance regimes are established for listed materials present in amounts above a given thresh-

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[2] Senator John H. Chafee, Letter to Honorable Carol M. Browner, Administrator, Environmental Protection Agency, November 4, 1998.

[3] The EPA estimates 66,000 firms will be required to develop RMPs for any of the 140 listed substances. This estimate is inaccurate. Analysis by the National Propane Gas Association demonstrates that over 1 million facilities for propane alone will be included in the RMP regime.

old. For propane facilities, the threshold quantity is 10,000 pounds or 2,381 gallons at 60 degrees F. Program 1 reporting requirements are less burdensome than Programs 2 and 3. Under Program 1, propane facilities must establish a worst case scenario and a 5 year release history. They must also coordinate their emergency response plan with local officials. To be classified as a Program 1 participant, a propane facility must demonstrate that there are no "public receptors" within range of the worst case scenario zone of impact. "Public receptors" are offsite residences, and other institutions such as school, hospitals buildings, parks or recreational areas inhabited or occupied at anytime by the public where the public could be exposed to radiant heat or overpressure from an accidental propane release.

Program 2 involves a more heavily detailed evaluation of hazards and implementation of prescribed accident prevention steps. In Program 2, propane facilities must:

1. ensure that up to date safety information is available;
2. conduct a detailed hazard review;
3. prepare written operating procedures;
4. ensure that each employee has been trained in the operating procedures;
5. maintain the mechanical integrity of all equipment;
6. complete compliance audits every 3 years; and
7. investigate each incident.

Program 2 also requires propane facilities to prepare at least one alternative release scenario that is more likely to occur than a worst case scenario.

Program 3 has the most stringent and rigorous requirements. This program will affect propane facilities that are covered by OSHA's Process Safety Management (PSM) regulations. Under Program 3, covered propane facilities must perform essentially the same tasks as required under Program 1 and 2 plus many others that are analogous to OSHA's PSM requirements.

There are several problems with propane being included in the RMP regime. The regulatory requirements of compliance with this program will unduly burden small businesses. Unlike large chemical facilities, most propane users that would be subject to the EPA regulation are small businesses, farms, hotels, etc. The National Propane Gas Association (NPGA) estimates that 330,000 farms will be covered by the RMP reporting regime. Another 325,000 commercial facilities also are threatened by the burdens of RMP reporting and 350,000 industrial facilities using propane will similarly be subject to RMP.

These firms are not equipped with the bank of lawyers and experts needed to fulfill reporting requirements. In many cases, they will turn to their propane supplier and have them bear the costs of compliance or risk losing them as a customer. This will result in higher fuel costs and a deadweight loss.

The technical expertise required for compliance will not come cheaply. Estimated costs of engineering or other service providers will range from $1,000 to $8,000 per site. Kermit W. Richardson, Master (President) of the 300,000 member National Grange estimates that "if 100,000 farmers incur an expense of $1,000 per site the compliance burden placed on the farm economy will exceed $100 million."[4] Total cost of compliance with the RMP program for the propane industry is estimated at over $1 billion. But this figure doesn't take into account the losses to the industry from fuel switching caused by burdensome reporting requirements. Small and large propane users will shift to other energy sources to avoid needless regulation and paperwork. The costs of compliance will ultimately be passed onto consumers.

ENVIRONMENTAL AND SAFETY IMPLICATIONS OF RMP

Inclusion of propane in the right to know regulation will result in the loss of the benefits of propane, a clean fuel. Many propane users will be daunted and intimidated by the complicated reporting requirements. Right to know plans will unfairly place propane at a competitive disadvantage to other fuels, not burdened by expensive and excessive regulations. These propane users will be shifting to less clean fuels. This will lead to increased air emissions from fuel oil or coal fired generated electricity.

Monitoring the millions of propane users will strain the EPA's capabilities and greatly increase the agency's workload. Identifying, reaching and counseling the thousands of rural propane users is a challenging task that the EPA is not up to. Both the monitoring of the RMPs of the propane industry as well as the increased air emissions from the inevitable regulatory fuel shift will leave the EPA unable to do its job or seeking additional budget increases. The earlier EPA estimates that

[4] Kermit W. Richardson, Master, National Grange, Letter to Senator John Chafee, September 28, 1998.

66,000 firms would be subject to RMP reporting fails to account for the over one million propane customers included in the reporting regime.

Inclusion of propane in the RMP reporting regime also increases the risk of accidents. Propane customers, attempting to avoid the burdens of RMP reporting may shift to smaller tanks, will lower their on-site volumes below the threshold amount of 2,381 gallons. Smaller tanks with no decrease in mand will necessarily result in more propane shipments. Propane is in its safest state when sitting idle in storage. The time of transfer is when accidents are most likely to occur.

Propane is in greatest demand during the fall and winter months. If customers seek to avoid the threshold by keeping their propane volumes below the threshold amounts, more trucks will be driving at the most hazardous time of year on icy rural roads. Such an increase in traffic will lead to a winter distribution bottleneck, increasing the likelihood of transportation and transfer related propane incidents. This is analogous to the regulation in Mexico City limiting the number of days when you could drive a car. The result was an increase in vehicle traffic emissions as people bought used, less environmentally sound cars to drive on alternative days.

Inclusion of propane in the EPA RMP regime will also needlessly terrorize the public. The propane user who discovers that his/her tank is subject to the same requirements as toxic chemicals will be reluctant to maintain the fuel source. This will lead to further fuel shifting and damage to the propane industry. A Burger King on the corner using propane for cooking should not inspire the same sort of concern as a chemical plant next to a school or hospital. If propane is included in the RMP regime, local eateries and quaint hotels will be unjustly viewed by the public as unsafe as the 1998 Morton International, Paterson, New Jersey plant, which exploded in a toxic chemical reaction, blowing the lid off a mixing vat and spewing hazardous substances into its neighborhood. Property values will be unjustly and artificially depressed if propane users are viewed with the same suspicion as chemical plants.

Consumers will also be threatened with delays in delivery during Winter storms. Customers keeping their onsite propane volume below the threshold amounts will run the all too real risks of running out of propane during peak consumption periods. Industry infrastructure will not be able to meet the increased volume of propane delivery demands during snow storms, leaving many consumers out in the cold, literally frozen by regulation.

FURTHER REGULATION OF PROPANE IS REDUNDANT AND BURDENSOME

Inclusion of propane in the right to know regulation also burdens businesses with redundant regulation and will not decrease the potential for accidents to occur. Propane is currently regulated in all 50 States through adoption of National Fire Protection Association (NFPA)[5] standard 58.[6] NFPA 58 is the standard that prescribes design, construction, and site operation requirements for all propane facilities. Forty-eight States adopt NFPA 58 by reference, while the remaining 2 States (Texas and Arkansas) have adopted the substance of NFPA 58 into their own rules.[7] According to Gale Haag, Kansas State Fire Marshal, "the track record with NFPA 58 has been very successful and because of the enforcement and education processes are already established, the regulated community and those effected indirectly appear to be satisfied that their needs are presently met. It ain't broke."[8]

NFPA continuously reviews and updates standard NFPA 58, a process which is open to EPA participation. EPA's zeal in including propane in the RMP scheme is also contrary to Federal standards adoption policy. The National Technology Transfer and Advancement Act of 1995[9] requires that "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments."[10] Congress further requires regulatory agencies "to coordinate Federal, State and local technical standards activities and conformity assessment activities, with private sector technical standards activities and conformity assessment activities, with the goal

[5] The National Fire Protection Association, NFPA, is a non profit, voluntary association devoted to fire prevention and safety.

[6] NFPA 58 Standard for the Storage and Handling of Liquefied Petroleum Gases.

[7] Gale Haag, Office of the Kansas State Fire Marshal Letter to Senator Sam Brownback, September 8, 1998.

[8] Id.

[9] P.L. 104–113 ; 110 Stat. 775 (1996).

[10] Id.

of eliminating unnecessary duplication and complexity in the development and promulgation of conformity assessment requirements and measures."[11]

Congress intended that regulatory agencies use existing national consensus codes or standards rather than develop new regulations to reflect an interest in streamlining regulations to remove redundancies. Congress also recognizes that private industry has superior knowledge and experience regarding standards. The EPA has no experience with developing standards for safe handling and storage of propane. They are not well suited to develop standards based on the accidental release analyses.

NFPA 58 is exactly the type of national consensus based industry standard that Congress had in mind when enacting this legislation. NFPA standard 58 is already referenced by OSHA and the Department of Transportation.

California may very well be the most environmentally conscious State in the country. The State's environmental standards in many cases exceed Federal requirements. California State officials have embraced NFPA 58. "The Legislature finds and declares that NFPA 58 is overseen by a national committee that ensures that the standard incorporates the latest in current and approved technology."[12] The California State Legislature determined that "the State Fire Marshal in conjunction with the Occupational Safety and Health Standards Board shall, after public hearings, adopt by reference the 1992 edition of NFPA 58 Standard for the Storage and Handling of Liquefied Petroleum Gases."[13] The statute establishes that "it is the intent of the Legislature that the NFPA 58 Standard supersede any inconsistent State standards..."[14] Other States have passed similar legislation, adopting NFPA 58 as the State standard.[15]

Most significantly, some critics assert that the EPA is trying to federalize fire safety. Senator John Chafee observes "nothing in Section 112, nor any other part of the Clean Air Act suggests that it should be regarded as a Federal fire safety law."[16] In a letter to EPA Administrator Carol M. Browner, Senator Chafee recognizes that Congress "mandated the inclusion of 16 chemicals on the list to be developed under Section 112(r)(3). The concern in each case was related to the use of the substances in a manufacturing process or other chemical application and not as a fuel source." He astutely concludes, "Risks from fuel explosions might more appropriately be regulated by the Occupational Safety and Health Administration, the Department of Transportation or State and local agencies."[17] Critics are also concerned about wasted resources. Rep. Sherwood Boehlert (R-NY), who has a strong record of supporting environmental initiatives states, "It is a waste of both the agency's and the private sector's resources to extend the coverage of Section 112(r) to flammable fuels."

REGULATORY BURDENS OF RMP

Propane facilities subject to the RMP must be in compliance by June 21, 1999. These marketers and propane consumers face civil enforcement provisions authorizing penalties of up to $25,000 per violation per day for facilities or individuals found to have violated regulations or permits issued under the Clean Air Act. These regulations will needlessly expose many farmers and small businesses to severe financial penalties. The Act also allows members of the public to file their own civil enforcement actions against affected facilities. This provision will expose thousands of smaller propane users to civil penalties and nuisance suits by overzealous plaintiffs lawyers.

The EPA claims that complying with the disclosure plans is simple. The forms are by most Federal standards relatively short. This is only half the story. While the forms may be concise, the instructions are extremely lengthy and complex and beyond the ability of most smaller businesses. The RMP forms are analogous to Federal income tax forms, short forms, yet excruciatingly complex instructions. The regulation is 42 pages long. The EPA's General Guidance for Risk Management Programs[18] is over an inch thick while the EPA's RMP Guidance for Propane Storage Facilities is approximately 100 pages. Obviously compliance with these programs

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[11] Id.
[12] Cal Pub Util Code Section 4451 (1997.)
[13] Cal Health & Safety Code Section 13241 (1997.)
[14] Id.
[15] See Miss. Code Ann. Section 75–57–105 (1997) ". . . regulations shall be in substantial conformity with the published Standards of the National Fire Protection Association for the Storage and Handling of Liquified Petroleum Gases (NFPA 58). . .".
[16] Senator John H. Chafee, Ibid.
[17] Senator John H. Chafee, Ibid.
[18] 40 C.F.R. Part 68.

will be beyond the expertise of most propane users. The cost of complying with these requirements and the loss of productivity is staggering. Many propane consumers will simply avoid the requirements by shifting consumption to other fuels.

PROPANE AND STATE RISK MANAGEMENT PROGRAMS

Some States have already adopted risk management plans on a local basis. But some of these States have recognized that propane need not be included among the substances needing to report under a RMP. In New Jersey, State environmental officials determined that propane did not merit the same stringent regulations as hazardous chemicals and was exempted from the RMP requirement. New Jersey officials properly recognized that under the State Toxic Catastrophe Prevention Act,[19] propane should not be treated the same as chemicals such as methyl isocyanate, the deadly gas that was released in Bhopal. In exempting propane from the reporting requirement of the State RMP Reginald Baldini, of the State Department of Environmental Protection determined that propane is already highly regulated by other laws, including the New Jersey Liquefied Petroleum Gas Act of 1950.

Robert Nixon, a New Jersey propane industry representative stated "We're very happy the DEP agreed with the propane industry that essentially propane is not a toxic substance and there are several other laws and regulations in the State that provide the same level of protection to the public as the Toxic Catastrophe Prevention program." "That ruling just saved the propane industry in the State."[20] The RMP program in New Jersey would have cost the State's propane users approximately $1 million annually in fees alone.

Similarly, in October 1998, the EPA published a direct final rule and a proposed rule that will approve the Florida Department for Community Affairs Division of Emergency Management proposal for RMP implementation. The Florida State plan exempts sources with propane as their only regulated substance from the requirements of the RMP program.[21]

THE INCLUSION OF PROPANE IN RMP REGULATIONS WILL INCREASE THE COST OF PROPANE TO CONSUMERS

The inclusion of propane in RMP regulations will increase the cost of propane to small consumers. Propane is a residential heating source primarily for rural low to moderate income consumers. Medium and large commercial and industrial propane users will shift to other fuels to avoid RMP reporting burdens. These larger commercial and industrial users have a steady, year round demand for propane deliveries. Their demand requirements subsidize the transportation infrastructure of propane in the warmer off season. As they are forced by regulation from the propane market, the transportation costs will shift to the smaller peak demand users, primarily residential and small business consumers.

The cost of compliance with RMP requirements for the propane industry is estimated at over $1 billion. This cost will be borne by the consumer with no visible benefit. Similarly some commercial and industrial consumers will shift from propane to other sources such as natural gas or electricity to avoid the RMP reporting burden. This shift will not be frictionless. The increased cost of energy and the increased transaction costs associated with fuel switching will be borne by the consumer with no visible benefit.

As the cost of complying with RMP regulation decreases demand for propane, many propane marketers will be forced out of business. This will result in a loss of investment and reduced employment in the industry, particularly hard felt in rural areas. The closing of propane marketers ultimately means reduced competition in the fuels market. Fewer fuel choices and a loss of competition will mean higher prices for consumers.

With RMP requirements in place, competition within the propane market will suffer. Consumers electing to stay with propane will be bound to their existing suppliers by the need for assistance in RMP compliance. A consumer wishing to switch propane suppliers will have to pay the cost of completing and filing a new RMP as a condition of service. Rather than face this cost, many consumers will find themselves wedded to an existing propane relationship in an economic marriage of convenience sanctioned by the EPA.

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[19] N.J. Stat 13:1K-19 (1998).

[20] Bruno Tedeschi, "Propane Off Hazardous List; DEP Action Follows Industry Outcry, The Bergen County Record, July 21, 1998, P A-2.

[21] RMP Relief in Florida Moves Forward; Federal Rules Pending, Butane-Propane News, November 9, 1998. Available at http://www.bpnews.com.

As Kristin M. Corsale, Executive Director of the Ohio Meat Industries Association clearly states "The EPA rules will affect our members because it will affect the farmers and manufacturers who stock the shelves. If propane suppliers and big users are required to spend extra time and money to comply with the EPA rules, their expenses will trickle down to grocers and their customers."[22]

INCLUSION OF PROPANE IN THE RMP REGIME IS BASED ON FAULTY ASSUMPTIONS AND FLAWED RESEARCH

The information required under the RMP plans is based upon faulty assumptions and flawed decision making by the EPA. For example, the RMP requires facilities to evaluate the impact of a release of all the propane at a site. According to Anthony R. O' Neill, Vice President of the National Fire Protection Association, "historical data on fires at propane bulk storage plants indicates that the total release basis for EPA's requirement is an unrealistic scenario that will predict potential impacts far greater than a worst case release."[23] Mr. O'Neill observes that propane is stored in ASME pressure vessels that are certified by third parties. "Data shows that these vessel do not fail with total release of material."[24]

The intent of the Act is to give communities information regarding toxic substances. A propane release does not pose the same threat as hazardous chemicals. Propane is flammable but not toxic. The propane industry also has an impressive record of safety. The individual risk of a member of the public being fatally injured in a propane accident is 1 in 37,000,000. As a point of comparison, the odds of being struck by lightning is 1 in 1,375,000. Therefore, risk to the public from propane incidents are 1,000 times less likely than the risk of being struck by lightning!

Given the widespread usage of propane and the safety record of the industry, there is no reason for propane to be included in the list of substances under the right to know program. Inclusion of propane in this list will needlessly terrorize many citizens into thinking that they have a toxic substance in their community or their homes. Jerry Stocker, Vice President of the New Jersey Propane Gas Association explained at a New Jersey public hearing on the State RMP that "propane does not have the chemical foundation to result in a gaseous release that would result in death or permanent disability."[25]

The over $1 billion cost of compliance is particularly high when compared with the low risk of propane accidents from the propane facilities to be included in the RMP regime. In 1997, total combined losses from all propane facilities that would have to submit RMPs was $500,000. This number reflects all building and structural fires, outdoor fires and vehicle fires at propane bulk storage plants.[26]

In a letter to Senator Barbara Boxer (D-Calif) regarding inclusion of propane in the expanded EPA reporting regime, John A. Lemire of the State of California Occupational Safety and Health asks "Finally, what is the gain?"[27] Mr. Lemire states that "The public's right to know is a sacred right but what will be the gain from this activity? Knowledge of such catastrophic situations that have such an infinitesimal likelihood of occurring due to current regulations—what is the point except to panic the general public?"[28]

EPA also used faulty data when it pushed to include propane in the RMP reporting regime. According to the NPGA analysis of EPA data, incidents occur during transportation activities and at facilities not covered by RMP rules far more frequently than at facilities subject to RMP requirements. Only a small minority of incidents occur at facilities targeted by the RMP regime. The majority of incidents occur during transportation not covered by RMP.[29]

The EPA decision to include propane in RMP was also based on weak, flawed and irrelevant data. EPA "research" consisted of 52 pages of news articles reporting propane incidents and 112 incidents recorded by the Major Hazard Incident Data Service (MHIDAS). Some of this questionable data is nearly 50 years old and includes incidents from as far away as Japan. The EPA reviewed and relied upon evidence

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[22] Kristin M. Corsale, Executive Director, Ohio Meat Industries Association, Letter to Rep. Ted Strickland, October 8, 1998.

[23] Anthony R. O'Neill, Vice President National Fire Protection Association, Comments on EPA's Risk Management Rule, July 7, 1998.

[24] Id.

[25] Bruno Tedeschi, "Hazards List Could Hit Burger Stands; State Plan Applies Tougher Standards," The Bergen County Record, May 4, 1998, P A-3.

[26] Anthony O'Neill, Ibid.

[27] John A. Lemire, State of California, Division of Occupational Safety and Health, Letter to Senator Barbara Boxer, November 12, 1998.

[28] John A. Lemire, Ibid.

[29] Philip A. Squair, Director of Regulatory Affairs, NPGA, Letter to Jennifer Woodbury, House Small Business Committee.

of 157 incidents to justify including propane in the RMP reporting regime. Of these 157 incidents, only 31 (19%) could be confirmed to have occurred at a facility which would be subject to RMP.

Of these 31 incidents, 15 incidents were caused by or during transportation activities not subject to RMP. Of the 16 non-transportation related incidents involving propane, only 11 incidents could be confirmed to have had offsite consequences, including purely precautionary activities such as evacuations. In 8 incidents, propane was either found not to have leaked or was not implicated.[30]

CONCLUSION

The Clean Air Act Amendments were designed to prevent the hazard of accidental chemical releases. Current EPA plans would thwart Congressional intent, actually increasing the risk of propane incidents. Inclusion of propane in the RMP regime is bureaucratic decision making at its worst. The plan is based on faulty and misleading assumptions, increases costs to a wide array of consumers, injures a productive domestic industry and threatens the environment, with an increase in the risk of accidents. The proposed RMP reporting regime is redundant and wrong headed and in need of rejection.

STATEMENT OF ROBERT E. BLITZER, FORMER SECTION CHIEF DOMESTIC TCRRORISM/ COUNTERTERRORISM PLANNING SECTION, FEDERAL BUREAU OF INVESTIGATION

Good morning, Mr. Chairman and members of the committee. I am pleased to have this opportunity to discuss the electronic dissemination of chemical "worst case" scenarios by the Environmental Protection Agency (EPA).

From January 1996 until I retired from the Federal Bureau of Investigation (FBI) at the end of November 1998, I served IS Chief of the Domestic Terrorism/ Counterterrorism Planning Section of the National Security Division. In this capacity I was responsible for national oversight and management of several important programs to include Domestic Terrorism Operations, Weapons of Mass Destruction (WMD) Operations, WMD Domestic Preparedness, Special Events Management, and Civil Aviation Security.

In December 1997 the FBI became aware, through the Chemical Emergency Preparedness ant Prevention Office of the EPA that Section 112(r) of the "Clean Air Act of 1990" required the publishing of regulations focusing on the prevention of chemical accidents In an effort to comply with these regulations the EPA proposed to distribute Risk Management Plans (RMP) via the Internet and CD-ROM These plans would include for each facility history of accidental releases, an offsite consequence analysis (OCA); a prevention program inclusive of company operating procedures, employee training, hazard evaluation and emergency response programs to ensure that either facility employees or public responders were prepared to deal with any accidents that might occur and thus minimize the consequences.

A number of meetings with representatives of the law enforcement and intelligence communities were held during 1997 and 1998 to discuss "security concerns" relating to the making available of all RMP data relating to the approximately 66,000 chemical sites within the United States. The proposed EPA electronic distribution plans were discussed with these agencies. The plans would allow users to initiate Internet searches by facility namer area of the country, zip code, city, county, and State. A modified search by chemical type would allow a person using the EPA web site, to choose a portion of a city by zipcode and tailor an attack by searching for certain chemicals. A search of this nature could be accomplished from anywhere in the world. Additionally. no record of such a query would be made. Further searches could be tailored to developing information regarding chemical companies' mitigation and safeguarding capabilities.

Of greatest concern to the law enforcement and intelligence communities was the possible Internet dissemination of Worst Case and Alternate Worst Case Scenarios as set forth in the OCA. Using the Internet a terrorist, criminal or disgruntled employee could identify these scenarios and fine tune an attack by selecting "worst case scenarios" at facilities that were within or adjacent to large civilian or military communities.

Based upon the above meetings a number of interagency recommendations were developed and provided to EPA in a letter dated October 30, 1998. The leper recorded interagency agreement that OCA data not be included in RMP information distributed via the Internet. Other data elements would be accessible to the public on the Internet. EPA agreed to work with stakeholder groups to identify meaningful

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[30] Id.

approaches to make appropriate OCA information available to the local community. To ensure that State and local government agencies have access to all national RMP dam it was recommended that SPA use a "closed system' restricted to State and local government agencies. This system should use secure password protection and sanction technology.

It was believed that the creation of a CD-ROM encompassing EPA's RMP data base could be accomplished. However, the FBI recommended that EPA not include facility identification and contact information on the CD-ROM. This allows legitimate information retrieval for analysis, however removes the ability of criminals and terrorists to use this information for targeting purposes.

Mr. Chairman, at the time the above letter was prepared both the Department of Justice, and the EPA Legal Counsel advised the FBI that the current Freedom of Formation Act requires that EPA provide the complete RMP information including the worst case scenarios to a requester. This is a potential problem. If this information is obtained arid posted on private Internet sites the responsible steps taken by the FBI, EPA and its interagency partners would be negated. This is a concern that I hope you can address in an expeditious fashion.

The FBI and its interagency partners have worked hard to strike a reasoned balance to insure public dissemination of important information. In early February, Attorney General Janet Reno and FBI Director Louis Freeh appeared before the U.S. Senate Subcommittee for the Departments of Commerce, Justice, and Slate, the Judiciary, and Related Agencies of the Committee on Appropriations. Director Freeh gave an excellent overview of both the international and domestic terrorism threats we face at the present time and into the future He also spoke about a number of high profile investigations that have occurred in the last several months. One key point that the Director made was that " Terrorists, both abroad and at home, are using technology to protect their operations from being discovered and thwart the efforts of law enforcement to detect, prevent, and investigate such acts." Computer technology is and will be a terrorist tool. I believe that the actions taken to prevent the widespread Internet dissemination of "worst case" sensitive chemical facility information was both prudent and necessary.

This concludes my remarks. Thank you.

STATEMENT OF THOMAS M. SUSMAN, ROPES AND GRAY

Mr. Chairman and members of the subcommittee, I am pleased to be here this morning to address the application of the Freedom of Information Act to certain chemical accident reporting data that are required to be provided to the Environmental Protection Agency under the Clean Air Act.

I have been involved with government information law for over 30 years, as the attached biographical summary reflects, and have been an unwavering advocate of increasing public access to government information throughout that time. I headed an American Bar Association effort to press for enactment of legislation to adapt the Freedom of Information Act (FOIA) to the electronic era and testified before a Judiciary Subcommittee supporting Senator Leahy's legislation that became the Electronic Freedom of Information Act (EFOIA).

I have litigated FOIA cases pro bono on behalf of public interest groups, serve on the Board of the National Security Archives, am a consultant to the American Library Association on government information dissemination, and am Treasurer of the American Society of Access Professionals. However, I represent none of these organizations this morning.

I appear today on my own behalf, at the request of the subcommittee. I note that the paper attached to my testimony, which I am submitting for inclusion in the record, was prepared in part through the support of the Chemical Manufacturers Association, but its analysis and conclusions are mine.

I am here because I have great respect both for the FBI and its antiterrorist expertise and activities and also for the important benefits of open access to government information. When the FBI says that offsite consequence analyses (OCAs)—required to be submitted to EPA as part of the Clean Air Act (CAA) requirements—should not be posted on the Internet because it will significantly the prospects for terrorist attacks on facilities, I readily conclude that such posting is a bad idea. When EPA and local governments and community leaders say that access to OCA data will encourage accident prevention and facilitate community preparation for and rapid response to chemical accidents, I am comfortable concluding that such access is a good idea. Plainly some way of striking a balance between these conflicting interests must be found.

Where I find myself in disagreement, however, is with EPA's contention that under current law the agency can collect OCAs in electronic format or can compile them in an electronic medium, but not release those data in electronic form to the public.

That is not what those of us who worked for enforcement of an effective FOIA and for enactment of the EFOIA fought for.

That is not what Congress, in enacting the FOIA and EFOIA amendments, intended.

That is not consistent with how courts and the Department of Justice have interpreted the FOIA and EFOIA amendments.

Let me explain.

The CAA states clearly and unequivocally that OCAs, as part of the management plans required to be filed with EPA, must (except for trade secrets) be made available to the public. If the issue were whether, rather than how, access is to be effected to these OCAs, then our inquiry might end right here. That is because section 114(c) of the CAA simply does not address the format issues.

The FOIA, however, does. It says that "any person"—including the group that planned the attack on the chemical facility outside Dallas in 1997 and including members of Bin Laden's terrorist organization—has a judicially reviewable right of access to government agency records.

The FOIA also says that if the government has information, it has no discretion to withhold that information unless it fits into one of the act's exemptions. As my appended paper discusses, the exemptions do not apply here.

And finally, the FOIA, by virtue of its 1996 EFOIA amendments, requires disclosure of the requested data in an electronic format without additional manipulation by the agency if that format is in possession of the agency. And it goes the additional step of saying that data must be disclosed electronically in a different format if it is reasonably feasible for the agency to do so.

The FOIA requires that the EPA fully and completely respond to FOIA requests regarding OCA information. OCA information submitted to the agency in an electronic format must be provided to any person who requests the information in that format. As the ACLU and several other disclosure advocates recently agreed in correspondence with Chairman Bliley, the EPA has no discretion to act otherwise.

There has been some suggestion by EPA that the OCA data may be reformatted to make ready access and manipulation and search in electronic format more difficult—to create "speed bumps" to disclosure. Mr. Chairman, no agency should be allowed, much less encouraged, to state publicly that it intends to solve a problem by disobeying the law and violating a clear mandate of Congress.

The FOIA does not permit it.

The Justice Department, with responsibility to see that the laws, especially the FOlA, are faithfully carried out, should not condone it.

And the Congress should not tolerate it.

For those who agree that unrestricted electronic access to OCA data via the Internet is a threat to the security of manufacturing facilities and the communities in which they are located, there is but one legal solution to this problem: new legislation.

I am not proposing that Congress amend the FOIA or, for that matter, eliminate or reduce the reporting requirements under the CAA. Nor do I propose that OCAs become unavailable to local governments or community residents. There may be other problems with EPA's protection of sensitive information: inadequate security of EPA's computer systems, the dangers of posting chemical inventory data under other provisions of law, or the absence of adequate protection for confidential commercial information. These serious problems, however, are not the focus of this hearing.

A balanced scheme is needed that will allow selective community access to OCAs, and even release of paper copies on a request-by-request basis, but will specifically and clearly prohibit their dissemination to the general public in electronic format. The development of that scheme should, Mr. Chairman, be up to Congress, through legislation, and not EPA, through violating the Freedom of Information Act.

TERRORISTS WITH COMPUTERS: THE NEED FOR LEGISLATION TO RESTRICT DISCLOSURE OF CHEMICAL RELEASE DATA

THOMAS M. SUSMAN

I. Introduction

The Clean Air Act imposes a comprehensive regulatory system to control air pollution. But it does more. The act requires facilities to provide information to the affected public about potential chemical accidents. The central vehicle for informing communities about the possible accidental release of certain chemicals is the "offsite consequence analysis" portion of the "risk management plan," which describes in detail the potential impact on the surrounding population and environment of a worst-case accidental chemical release.

These analyses offer potential terrorists and criminals a literal blueprint on how best to target industrial facilities in the United States. The FBI and CIA have cautioned against widespread distribution of this information over the Internet. Unfortunately, current law does not provide an effective mechanism to prevent this information from falling into the hands of terrorists. This paper reviews the history and nature of the problem, explores why present laws are inadequate to deal with it, and proposes how Congress might most responsibly address that problem.

II. Factual and Procedural Background

Section 112(r), added to the Clean Air Act in 1990, requires EPA to promulgate regulations designed to prevent and minimize the release of certain regulated chemicals into the air.[1] Under this provision, any facility having more than a threshold amount of certain regulated chemicals is required to develop programs to prevent accidental chemical releases and to mitigate the consequences of any releases.[2] Any covered facility must submit a risk management plan ("RMP") detailing the chemical accident prevention and response programs developed pursuant to § 112(r)(7).[3] The RMP must also provide a hazard assessment that

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[1] 42 U.S.C. § 7412(r)(1) ("CAA § 112(r)"), reproduced in Appendix A.

[2] The EPA has adopted a rule listing the substances regulated under § 112(r). 59 Fed. Reg. 4,478 (Jan. 31, 1994), as amended by 63 Fed. Reg. 640 (Jan. 6, 1998). It also issued a rule setting forth the requirements of the accident prevention and response programs. 61 Fed. Reg. 31,668 (June 20, 1996), as amended by 64 Fed. Reg. 964 (Jan. 6, 1999) and 64 Fed. Reg. 9989 (Mar. 1, 1999).

[3] CAA § 112(r)(7)(b)(ii); 61 Fed. Reg. at 31,669.

includes the facility's accidental release history and an offsite consequence analysis ("OCA") that describes the potential impact on the surrounding population and environment of a worst-case accidental chemical release.[4] The statute further requires that all information submitted by covered facilities pursuant to this provision - except for trade secret information - "shall be available to the public."[5] The statute does not, however, specify *how* this information should be made available to the public.

EPA has adopted regulations governing the creation of the accident prevention and response programs required under § 112(r) and the submission of RMPs.[6] The regulations contemplate that RMPs will be electronically submitted - in the absence of a waiver - by June 21, 1999.[7] Electronic filing and posting of the RMPs are intended to permit easy and efficient access to the information by the public and by state and local agencies.[8] To facilitate this process, the Accident Prevention Subcommittee of EPA's Clean Air Act Advisory Committee created an Electronic Submission Workgroup in October 1996 to examine the issues associated with creating a national electronic data base of the RMPs.[9]

Although the Workgroup members unanimously agreed that the bulk of the information contained in the RMPs should be freely available online, concerns were raised regarding the potential threat of terrorism that might be posed by unrestricted Internet access to OCA, or "worst-case scenario," information.[10] In response to a Workgroup recommendation, EPA commissioned a "security study" of any threat posed to national security by permitting Internet access to the OCA information.[11] That Security Study, completed in December 1997,

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[4] CAA § 112(r)(7)(b)(ii)(I); 61 Fed. Reg. at 31,669.

[5] 42 U.S.C § 7414(c) (hereinafter CAA § 114(c)), reproduced in Appendix B.

[6] 61 Fed. Reg. at 31,668 and 64 Fed. Reg. 9989.

[7] 61 Fed. Reg. at 31,673, 31,695; 40 C.F.R. 68.150 (1996); 64 Fed. Reg. at 9989-90.

[8] 61 Fed. Reg. at 31,673, 31,695.

[9] *Final Report of the Electronic Submission Workgroup to the Accident Prevention Subcommittee of the Clean Air Act Advisory Committee* (June 18, 1997) <http://www.epa.gov/swercepp/pubs/rmp-rprt.html>; *Security Study: An Analysis of the Terrorist Risk Associated with the Public Availability of Offsite Consequence Analysis Data under EPA's Risk Management Program Regulations*, EPA 550-R97-003, Dec., 1997, at 1 (hereinafter referred to as "*Security Study*").

[10] *Id.* at 2.

[11] *Id.* at 2.

concluded that unrestricted Internet access would significantly increase the risk of terrorist acts.[12]

The Study noted that the potentially catastrophic consequences of accidental chemical releases that necessitate the regulation of covered facilities also render these facilities attractive targets for terrorists.[13] Full and anonymous Internet access to OCA information would provide terrorists with a simple and low-cost way to determine which facilities would make targets for the most devastating attacks.[14] For instance, a terrorist could search by zip code to discover what facilities are present in a particular community - such as Washington, D.C., or New York City - and then search OCA information to determine at which of those facilities a chemical release would result in the most casualties or environmental damage.[15] Similarly, a

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[12] *Id.* at 10.

[13] *Id.* at 6. *See also Internet Posting of Chemical "Worst Case Scenario" Data, Hearing* before the Subcomm. on Health and Environment and the Subcomm. on Oversight and Investigations, House Comm. on Commerce, 106th Cong. (Feb. 10, 1999) (hereinafter referred to as "*Hearing*") (written statement of Robert M. Burnham, Chief, Domestic Terrorism Section, National Security Division, Federal Bureau of Investigation) (noting the need to balance the goals of accident prevention and minimizing terrorism by releasing OCA information in a controlled manner); *id.* (written statement of Timothy Fields, Jr., Acting Assistant Administrator for Solid Waste Emergency Response, EPA) (same); *id.* (written statement of Jerry Scannell, President of the National Safety Council) (same).

[14] *Security Study* at 10; *id.* at 7 ("[D]atabases, such as those developed by EPA . . . greatly diminish the amount of processing and analysis that must be done to make the information useful."); *Hearing* (written statement of Chief John M. Eversole, Chief Fire Officer and Commander of the Hazardous Materials Division of the City of Chicago Fire Department in his capacity as Chairman of the Hazardous Materials Committee of the International Association of Fire Chiefs); *id.* (written statement of James E. Monihan in his capacity as Delaware State Director of the National Volunteer Fire Council).

[15] *See* Letter from John E. Collingwood, Assistant Director of the Office of Public and Congressional Affairs of the Federal Bureau of Investigation, to Representative Thomas Bliley, Chairman of the Committee on Commerce, 1 (Oct. 9, 1998) (hereinafter referred to as Collingwood Letter, Oct. 9, 1998); *Hearing* (statement of Robert M. Blitzer, Associate Director, Center for Counterterrorism, Technology & Analysis Science Applications International Corporation, formerly Director of the Counterterrorism Planning Section of the National Security Division of the Federal Bureau of Investigation).

terrorist could simply do a nationwide search to create a list of the top ten facilities at which attacks would cause the most damage.[16]

Although some, and perhaps much, of this information could be pieced together by a sophisticated and dedicated terrorist from other publicly available information, including non-OCA RMP data, this possibility is much less threatening than the provision of a user-friendly, government-provided, online targeting system available worldwide to whomever chooses to access it anonymously.[17] That terrorist attacks may well move beyond mere potential into actuality is clearly illustrated not only by the World Trade Center and Oklahoma City bombings, but by two separate terrorist plots -- one of which was actually executed (although unsuccessfully) -- targeting domestic industrial facilities during the past decade.[18] Furthermore, in light of the modern terrorist's apparent willingness to use weapons of mass destruction and the potentially catastrophic consequences (casualties potentially reaching the hundreds of thousands or millions) of such acts, the growing possibility of attacks on chemical facilities cannot be ignored.[19]

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[16] Letter from Representative Thomas Bliley, Chairman of the Committee on Commerce, to Louis Freeh, Director, Federal Bureau of Investigation, 2 (Sept. 17, 1998) (hereinafter referred to as "Bliley Letter, Sept. 17, 1998"); John Fialka, *Fears of Terrorism, Chemicals Clash as EPA Considers Web Site*, Wall Street Journal, Sept. 3, 1998 (stating that the CIA and FBI opposed release of the OCA information "because it would give a foreign-based terrorist group the ability to find the most potentially dangerous industrial sites in any region of the U.S. with a few clicks on a laptop").

[17] *Security Study* at 7.

[18] In 1991, six pipe bombs were discovered attached to chemical tanks near the Norfolk Naval Base. In 1997, law enforcement officials intervened in a plot by a group to destroy a gas refinery in Bridgeport, Texas, with the purpose of releasing lethal hydrogen sulfide gas into the surrounding community. The incident was intended to distract local law enforcement while the conspirators committed a bank robbery, the proceeds of which were to be used for future terrorist activity. *Id.* at 6-7; *Hearing* (written statement of Robert M. Burnham, Chief, Domestic Terrorism Section, National Security Division, Federal Bureau of Investigation) (discussing its investigation, entitled SOURGAS, of the 1997 incident).

[19] David Phinney, *The New 'Terrorist': Willing to Kill for Sake of Killing - Random and Unpredictable*, (Jan. 28, 1999) <http://abcnews.go.com/sections/us/DailyNews/terrorism_face.html> (discussing various terrorist attacks including the sarin gas attack on the Tokyo subway system by the Aum Shinrikyo cult); *The United States, Europe, and the New Security Threats*, Ambassador Robert D. Blackwill and Kristin Archick, Council on Foreign Relations <http://foreignrelations.org/studies/transcripts/rdblackwill.html>; Terence Hunt, *Clinton Seeks Anti-Terrorism Aid* (Jan. 22, 1999)

Despite the EPA Study's conclusion that Internet access to the OCA information would increase the risk of terrorist acts and the concurring opinion of the FBI, EPA indicated in February 1998 that it was still considering making this information electronically available to the public.[20] Following objections by Representative Thomas Bliley (Chairman of the Commerce Committee), Representative Sherwood Boehlert (Member of the House Permanent Select Committee on Intelligence), Representative Charles Stenholm, Senator Trent Lott (Majority Leader), and various intelligence, law enforcement, and emergency response agencies including the Department of Defense, the Department of Justice, the Federal Bureau of Investigation, the Central Intelligence Agency, the EPA reversed itself and concluded that OCA information would not be made publicly available online.[21]

EPA's decision - at least for now - not to post the OCA information electronically, however, does not resolve the conflict between the competing benefits of unrestricted public access to the information and the potentially dire consequences of widespread electronic

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<http://dailynews.yahoo.com/headlin...990122/pl/clinton_terrorism_6.html>

[20] *See* Letter from Representative Thomas Bliley, Chairman of the Commerce Committee, to Carol Browner, Administrator of the Environmental Protection Agency (Oct. 26, 1998) (hereinafter referred to as "Bliley Letter, Oct. 26, 1998").

[21] *Id.*; Letter from Representative Sherwood Boehlert, Member House Permanent Select Committee on Intelligence, to Carol Browner, Administrator of the U.S. Environmental Protection Agency (Feb. 17, 1998); Courtney Macavinta, *Battle Over Worst-Case EPA Data*, (July 10, 1998) <http://www.news.com/News/Item/0,4,24052,00.html>; *EPA Plan to Put Chemical Site Data on Internet Raises Terrorism Concerns* (Oct. 30, 1998) <wysiwyg://92/http://europe.cnn.com...ing/9810/30/internet.terrorism.ap/>; Letter from Jim Makris, Director of the Chemical Emergency Preparedness and Prevention Office, to Congressman Thomas Bliley (Chairman of the Committee on Commerce) (Nov. 6, 1998); Letter from Jim Makris, Director of the Chemical Emergency Preparedness and Prevention Office, to the Clean Air Act FACA - Accident Prevention Committee (Nov. 10, 1998) <http://www.epa.gov/swercepp/pubs/epadeci.html>.

Indeed, Representative Boehlert was so concerned about the threat of terrorism that he asked President Clinton to intervene with EPA to prevent the posting of the OCA information online. John Fialka, *Fears of Terrorism, Chemicals Clash as EPA Considers Web Site*, Wall Street Journal (Sept. 3, 1998). Representative Stenholm, in whose district a terrorist attack on an industrial facility was averted by law enforcement authorities, wrote EPA Administrator Browner in March 1998 "warning that Internet publication would have the effect of drawing a bull-eye on manufacturing facilities all over the United States." *EPA Plan to Put Chemical Site Data on Internet Raises Terrorism Concerns* (Oct. 30, 1998) <wysiwyg://92/http://europe.cnn.com...ing/9810/30/intenet.terrorism.ap/>.

dissemination of OCA information. That is because the public will still have essentially unrestricted access to this information pursuant to the CAA and to the FOIA.[22] Because both the CAA and the FOIA require that the RMPs be available to the public in their entirety and in whatever electronic medium is maintained by the agency, individuals or organizations will be able to obtain copies of that information from the EPA, and easily post it themselves on the Internet.[23]

These individuals or groups may request disclosure of this information under recent amendments to the FOIA that require EPA to provide the information to the requestor in the form requested (if feasible).[24] Since the EPA requires electronic submission of the RMPs, subject only to waiver for small businesses unable to comply, this information will be available to the FOIA requestors in a format easily transferrable to the Internet.[25] Nonprofit organizations are very likely to obtain this information through the FOIA and post it online if the EPA does not do so.[26] Thus, despite the EPA's considered decision not to post that

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[22] *See* Bliley Letter, Oct. 26, 1998, at 2-3; Collingwood Letter, Oct. 9, 1998, at 2.

[23] CAA §§ 112(r)(7)(B)(iii), 114(c). Letter from the American Civil Liberties Union, the American Association of Law Libraries, the Center for Democracy and Technology, the Electronic Frontier Foundation, and OMB Watch to Representative Thomas Bliley, Chairman of the Committee on Commerce (Mar. 5, 1999) (hereinafter referred to as "ACLU Letter, Mar. 5, 1999").

[24] 5 U.S.C. § 552(a)(3)(B) (providing that an "agency shall provide the record in any form or format requested . . . if the record is readily reproducible in that form or format").

[25] 61 Fed. Reg. at 31,673, 31,695; 40 C.F.R. 68.150 (1996); 64 Fed. Reg. 9989-90.

[26] *See* Bliley Letter, Oct. 26, 1998, at 2-3; Collingwood Letter, Oct. 9, 1998, at 2; Seth Borenstein, *Creating Bull's Eye?: Web Site on Toxins Pits Right to Know Against Terrorism* (Sept. 8, 1998) <http://www.sltrib.com/1998/sep/09081998/nation_w/51516.html> (Lois Epstein of the Environmental Defense Fund stated that, if the EPA did not post the OCA information, "it is certainly possible other folks can do it"); John Fialka, *Fears of Terrorism, Chemicals Clash as EPA Considers Web Site*, Wall Street Journal, Sept. 3, 1998 (Paul Orum of the Working Group on Community Right to Know, which is the coordinating committee for approximately 100 environmental groups, stated that it was likely that some environmental groups would use the FOIA to collect the information and put it on the Internet).

Paul Orum of the Working Group on Community Right to Know repeatedly refused to commit not to post OCA information on the Internet during his testimony before a recent congressional hearing. *Hearing*. This refusal is not surprising in light of Mr. Orum's Internet posting of the OCA information for several Dupont facilities.

information electronically, the FOIA may nonetheless require the agency to facilitate the online dissemination of that information by others.[27]

Accordingly, in the absence of legislative action, OCA material is likely to become freely available on the Internet. This result will occur despite the concerns regarding potential terrorism expressed by the EPA, by the primary antiterrorist intelligence and law enforcement agencies, by members of Congress, and by the chemical industry itself.[28] And EPA is powerless, *under existing law*, to frustrate this outcome.

III. The Problem: Balancing Terrorist Potential and Right To Know

The obvious problem presented by the potential widespread availability of OCAs via the Internet is how the EPA may remain faithful to the statutory mandate and important societal goal of allowing local communities to have access to the important information contained in the RMPs (including OCA data), while adequately protecting that very same community from possible terrorism.

A. Public Access

Although the Clean Air Act requires that RMP information be made available to the public, it does not identify a particular format in which that information must be offered.[29] A primary purpose of public access to this information is to provide community members and relevant federal and state government agencies with information regarding the potential effect on their communities of uncontrolled and unexpected environmental chemical releases.[30] This knowledge would not only permit the public to make fully informed decisions about their own lives, but would enhance facilities' prevention of and response to chemical accidents by encouraging debate over these issues and by prompting improved decisionmaking by

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[27] *See* 5 U.S.C. § 552(a)(3)(B).

[28] Collingwood Letter, Oct. 9, 1998, at 2; Remarks of K. Shanahan, EPA, in *Internet Access of 'Worst Case' May Put Chemical Industry at Risk*, Chemical Market Reporter, Oct. 20, 1997, at 27.

[29] CAA § 114(c); Bliley Letter, Sept. 17, 1998, at 1-2.

[30] *Security Study* at 4-5; Letter from the American Civil Liberties Union, the American Association of Law Libraries, the Association of Newspaper Editors, the Center for Democracy and Technology, the Electronic Frontier Foundation, and OMB Watch to Representative Thomas Bliley, Chairman of the Committee on Commerce (Feb. 9, 1999) (hereinafter referred to as "ACLU Letter, Feb. 9, 1999") .

facilities.[31] Additional benefits flowing from public access to OCA information are the facilitation of information-sharing between facilities facing similar problems and of efforts to make nationwide and regional comparisons regarding the dangers posed by covered facilities and the effectiveness of their prevention and response programs.[32]

B. Terrorist Threat

As identified by FBI and others, online access to the OCA information also creates a serious threat to public safety. Those agencies have concluded that the threats to public safety outweigh the benefits of providing OCA information in an online format.[33] Most of the benefits from disclosure could be attained with much less danger by providing this information through more restrictive methods.[34] Under the FBI's recommendations, that information could be made available on a closed computer system to the state and local agencies responsible for preventing and responding to any chemical accidents.[35] Individuals and private organizations, however, would be only allowed to review OCA information under controlled circumstances that would allow them access to vital information affecting their communities without permitting them to reproduce or redisseminate information regarding dangerous sites.[36]

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[31] *Security Study* at 4-5; ACLU Letter, Feb. 9, 1999.

[32] *Id.*

[33] *Hearing* (written statement of Robert M. Burnham, Chief, Domestic Terrorism Section, National Security Division, Federal Bureau of Investigation) (noting the need to balance the goals of accident prevention and minimizing terrorism by releasing OCA information in a controlled manner); *id.* (written statement of Timothy Fields, Jr., Acting Assistant Administrator for Solid Waste Emergency Response, EPA).

[34] The EPA security study concluded that restricting access to OCA information to government Reading Rooms or distributing that information only in paper form would present significantly less danger of increasing terrorism than posting that information online. *Security Study* at 11. (One state has specifically concluded, through amendment of its open records law, that "the right of citizens of this state to inspect and copy public records . . . shall, with respect to the copying of the records maintained by a system of data processing or image processing, be deemed to refer to the right to receive printed copies of such records." Act of Nov. 7, 1994, ch. 140, 1994 N.J. Laws § 8.)

[35] Collingwood Letter, Oct. 9, 1998, at 2.

[36] For instance, the EPA is "exploring the possibility of a 'read-only' CD-ROM that could not be copied, duplicated, or posted on the Internet." *Hearing* (written statement of Timothy Fields, Jr., Acting Assistant Administrator for Solid Waste Emergency Response, EPA).

Concluding that this information cannot be effectively restricted an online format (because any electronic "speed bumps" could be easily evaded), the FBI determined that OCA information should not be available in any publicly accessible online format.[37] Finally, the FBI has proposed that the potential for expert and comparative analyses of OCA information could be accommodated by providing access to OCA information in a compact disk form, from which data identifying the actual facilities have been removed.[38] Unfortunately, even these very narrowly targeted restrictions require changes in applicable laws. Neither EPA nor the courts - nor, for that matter, the President himself - has the ability legally to restrict disclosure or redissemination of OCA information under present law.[39]

IV. Overview on Application of the FOIA

Enacted in 1966, the FOIA[40] established for the first time an enforceable right of public access to government information. It provides that any person - whether or not a resident or citizen of the United States - has a right of access to federal agency records unless they are protected from mandatory disclosure by a specific exemption or exclusion contained in the act.[41] This right of access may be enforced by resort to the federal courts, which may enjoin the agency from withholding records contrary to the law.[42]

Four well-established principles guide FOIA's application to the release of offsite consequence analyses by the EPA:

First, the FOIA is a disclosure, not a confidentiality statute. Thus, even if it contained an exemption applicable to OCA information, that exemption could not override the mandatory disclosure language of the CAA.

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[37] Collingwood Letter, Oct. 9, 1998, at 1.

[38] *See* Bliley Letter, Oct. 26, 1998; Letter from Jim Makris, Director of the Chemical Emergency Preparedness and Prevention Office, to Congressman Thomas Bliley, Chairman of the Committee on Commerce (Nov. 6, 1998); Collingwood Letter at Oct. 9, 1998, at 2.

[39] ACLU Letter, Mar. 5, 1999.

[40] 5 U.S.C. § 552.

[41] *See, e.g., Texas v. ICC*, 935 F.2d 728, 729 (5th Cir. 1991); *Massachusetts by Dep't of Public Welfare v. United States Dep't of Health & Human Servs.*, 727 F. Supp. 35, 35 (D. Mass, 1989). *Freedom of Information Act Guide & Privacy Act Overview*, Dept. of Justice 29 (Sept. 1998 ed.).

[42] 5 U.S.C. § 552(a)(4)(B).

Second, information provided to an agency from parties outside the government is considered government information subject to the mandatory disclosure requirements of the act.[43]

Third, agencies lack the discretion to withhold a record or any reasonably segregable part of that record unless authorized to do so specifically by an exemption or exclusion contained in the act.[44]

Fourth, disclosure to one is disclosure to all; the statute does not contemplate selective or limited release of information that is required to be disclosed.[45]

The FOIA Is Not a Confidentiality Statute. Section 114(c) of the CAA requires that certain environmental data, including OCA information, "be available to the public."[46] This statutory mandate requiring disclosure would override the discretion otherwise granted EPA under FOIA to withhold information falling within the nine exemptions to the FOIA's own general disclosure mandate. Thus, the only impact that the application of a FOIA exemption would have on the disclosure of OCA information would relate to the format in which it would have to be produced by the agency. Although the CAA does not dictate the format in which information must be made available to the public, FOIA would require the EPA to provide any material in any feasible format desired by the requestor, including in an online or electronic format, unless the material was subject to a FOIA exemption.[47]

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[43] *United States Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989) (agency records subject to a proper FOIA request in the absence of an applicable exemption are documents that are (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request).

[44] *See, e.g., Phe, Inc. v. United States Dep't of Justice,* 983 F.2d 248, 252-53 (D.C. Cir. 1993). *See also Freedom of Information Act Guide & Privacy Act Overview*, Dept. of Justice 94-95 (Sept. 1998 ed.).

[45] *See Julian v. United States Dep't of Justice*, 806 F.2d 1411, 1419 n.7 (9th Cir. 1986), *aff'd*, 486 U.S. 1 (1988); *Berry v. Dep't of Justice*, 733 F.2d 1343, 1355 n.19 (9th Cir. 1984). *Freedom of Information Act Guide & Privacy Act Overview*, Dept. of Justice 56-57 (Sept. 1998 ed.) ("It [ ] is well recognized that the FOIA does not provide for limited disclosure; rather, it speaks in terms of disclosure and nondisclosure.") (internal quotation omitted).

[46] The CAA exempts trade secret information from its mandatory disclosure requirement. CAA § 114(c).

[47] 5 U.S.C. § 552(a)(3)(B) ("In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if

The FOIA Applies to Information Submitted by Third Parties. One need look no farther than the text of exemption 4 of the FOIA to conclude with certainty that the act applies to information provided to the government from persons outside the agency. That exemption protects from mandatory disclosure

> trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Once information is provided to a federal agency by a person (or business or foreign government or nonprofit organization), that information becomes "agency records"[48] subject to the mandatory disclosure requirement of the FOIA.[49]

Agencies Have No Discretion to Withhold Information. Grounded on the Supreme Court's observation in the first FOIA case it considered that the nine exemptions are "explicitly made exclusive,"[50] neither courts nor agencies may go beyond those exemptions to justify withholding of requested records. Thus courts have uniformly rejected the argument not only that an agency may withhold information on some basis not specified in the FOIA, but that

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the record is readily reproducible by the agency in that form or format" and the agency shall "make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.").

[48] "Agency records" subject to the FOIA are records that are (1) created or obtained by an agency and (2) under agency control at the time of the FOIA request. *See Tax Analysts*, 492 U.S. at 144-45. It is irrelevant to the issue of disclosure "whether the organization from which the documents originated is itself covered by the FOIA." *Id.* at 146 (internal quotation omitted).

[49] Although the Supreme Court had held in *Forsham v. Harris*, 445 U.S. 169 (1980), that private grantees of a federal agency were not agencies and the records in their possession were not agency records, Congress in the fiscal year 1999 Omnibus Appropriations Act required OMB "to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act . . . ." Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277, 112 Stat. 2681, 2681-495 (codified in various sections of the U.S.C. (1998)).

[50] *EPA v. Mink*, 410 U.S. 73, 79-80 (1973).

courts themselves retain inherent equitable powers to deny an injunction for release in circumstances outside the four corners of the act.[51]

As a consequence, courts have not only rejected the general principle that an agency may deny access where disclosure "would do more harm than good,"[52] but the D.C. Circuit has even stated that, because the identity of the requestor is immaterial to disclosure, there "is no statutory bar to the military attache of the Soviet embassy filing FOIA requests for information from the CIA and the FBI on the same basis as a United States citizen."[63] After 30 years it has become well-established that neither agency discretion nor judicial equity powers can override the directive of the FOIA that access must be accorded in the absence of an applicable exemption.

The FOIA Does Not Allow Selective or Limited Disclosure. The FOIA imposes no requirement that a requester show any special interest in the subject matter of requested information, nor that the request be relevant to anything at all; in fact, requesters do not even have to reveal their identity, much less explain or justify FOIA requests.[54] In addition to granting to one and all - upstanding citizen and incarcerated felon, public interest advocate and terrorist, student and multinational corporation - equal legal rights of access to agency records,[55] the FOIA provides no flexibility for limited or selective disclosure. The act "speaks

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[51] *See, e.g., Wellman Indus., Inc. v. NLRB*, 490 F.2d 427, 429 (4th Cir. 1974) (internal quotation omitted), *cert denied*, 419 U.S. 834 (1974).

[52] *Id.* at 429 (internal quotation omitted).

[53] *Military Audit Project v. Casey*, 656 F.2d 724, 730-31 n.11 (D.C. Cir. 1981).

[54] *See United States Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 771-72 (1989). The identity of the requester and the purpose of a request may, however, bear on issues of expedition of access and imposition of fees. *See* 5 U.S.C. § 552(a)(6)(E); 5 U.S.C. § 552(a)(4)(A)(iii) (permitting a reduction in or waiver of fees where the information sought "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor").

[55] "The Supreme Court in *Reporters Committee* . . . firmly repudiated any analysis based on the identity, circumstances, or intended purpose of the particular FOIA requestor at hand. Rather, it said, the analysis must turn on the nature of the document and its relationship to the basic purpose of the FOIA . . . . [A]gencies may neither distinguish between requestors nor limit the use to which disclosed information is put." *Freedom of Information Act Guide & Privacy Act Overview*, Dept. of Justice 288-89 (Sept. 1998 ed.) (internal footnotes omitted) (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 771 (1989). The basic purpose of the FOIA is spelled out in the first finding of the

in terms of disclosure and nondisclosure."[56] It ordinarily "does not recognize degrees of disclosure, such as permitting viewing, but not copying, of documents."[57] Likewise, restrictions on redissemination by a requestor are "not authorized by FOIA."[58]

Courts have uniformly held that FOIA disclosures cannot be selective, and once disclosure has been made in one context, it must be made subsequently; the identity of the requester and use to which he or she intends to put the information are irrelevant. Thus:

- If requested documents are subject to disclosure under the FOIA they must be made fully available without any restriction to all FOIA requestors.[59]
- Rights to access under the FOIA apply even to those whose requests are "repugnant,"[60] and persons can obtain nonexempt records no matter how bad their motivation.[61]
- In the final analysis, even alleged terrorists may gain access to agency records under the FOIA.[62]

EFOIA: "to establish and enable enforcement of the right of any person to obtain access to the records of [Federal] agencies, subject to statutory exemptions, for any public or private purpose." *Electronic Freedom of Information Act Amendments of 1996*, Pub. L. No. 104-231, 110 Stat. 308 § 2(A)(1) (codified at 5 USC § 552 (1996)).

[56] *Freedom of Information Act Guide & Privacy Act Overview*, Dept. of Justice 56-57 (Sept. 1998 ed.).

[57] *See Julian*, 806 F.2d at 1419 n.7 (quoting *Berry*, 733 F.2d at 1355 n.19 (9th Cir. 1984)).

[58] *Schiffer v. FBI*, 78 F.3d 1405, 1411 (9th Cir. 1996).

[59] *Maricopa Audubon Soc'y v. United States Forest Serv.*, 108 F.3d 1082, 1088 (9th Cir. 1997) (rejecting the use of a protective order in connection with information subject to disclosure under the FOIA); *Swan v. SEC*, 96 F.3d 498, 500 (D.C. Cir. 1996).

[60] *Schwaner v. Dep't of Air Force*, 898 F.2d 793, 798 (D.C. Cir. 1990).

[61] *See News Group Boston, Inc. v. National R. Passenger Corp.*, 799 F. Supp. 1264, 1270 (D. Mass. 1992).

[62] *Cf. Moorefield v. United States Secret Service*, 611 F.2d 1021, 1023 n.2 (5th Cir. 1980) (concluding that a FOIA requestor who had been twice convicted of threatening the life of the President was entitled to the requested information if anyone else could receive it under

It becomes patently clear that, despite the most persuasive argument that might be raised for denying widespread, unrestricted access to OCAs, for releasing them selectively, or for restraining redissemination that might be accessible by terrorists, *neither the EPA nor the federal judiciary has the authority to restrict access to or dissemination of OCAs under existing law*. As noted above, the statutory mandate of the CAA requiring disclosure unequivocally precludes the withholding of OCA information. Thus, even were a FOIA exemption applicable to the OCA information, its only impact would be to release the agency from the requirements that it provide the information in any feasible format, including electronically, desired by the requestor. However, even this limited refuge is unavailable, because - as demonstrated below - none of the FOIA exemptions is applicable.

V. Exemptions and Exceptions from the FOIA[63]

If there is to be protection against unrestricted mandatory disclosure of OCAs in a form that would render them universally accessible, then that protection must be found either within the four corners of the FOIA or in a statute independently prohibiting or limiting their disclosure (and incorporated into the FOIA under the third exemption). We can summarily dismiss the possibility that OCAs could even be arguably covered by exemptions 2 (internal rules and practices of an agency), 5 (internal agency communications), 6 (personal - but not corporate - privacy), 7 (law enforcement), 8 (financial institutions), or 9 (oil or gas wells). So the potential sources for such protection must be found, if at all, in exemptions 1 (national security), 3 (other statutes), or 4 (confidential commercial information). (A separate set of exclusions were engrafted on the FOIA in 1986 to protect from disclosure certain law enforcement records;[64] OCAs are not in the categories covered by these exclusions.)

a. National Security

Exemption 1 of the FOIA protects from disclosure information that is

> (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order.

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the FOIA). The only possible exception to the "any person" standard may be a fugitive from justice. *See Doyle v. United States Dep't of Justice*, 494 F. Supp. 842, 844-45 (D.D.C. 1980).

[63] The full text of the FOIA's exemptions and exclusions is reproduced in Appendix C.

[64] *See* 5 U.S.C. § 552(c) (protecting certain criminal law enforcement records and FBI records).

The Executive order incorporated into this exemption, which was issued April 17, 1995, is E.O. 12,958. Under the order, information may only be classified if "its disclosure reasonably could be expected to result in damage to the national security."[65]

It is theoretically possible that OCAs could be classified in the interest of national security as information "produced . . . for" the government relating to "vulnerabilities or capabilities of systems, installations, projects or plans relating to the national security."[66] However, it is unclear whether the term "installations" refers only to government-owned or affiliated installations, or may include purely private commercial facilities.[67] Thus, OCAs may not be classifiable even though they reveal potentially devastating vulnerabilities of private chemical facilities.

Even if OCAs are determined to be of the type of document that might properly be classified under the Executive order (and even if EPA complies with the procedural requirements for proper classification),[68] there is no procedure in the Executive order or elsewhere contemplating that a record may remain properly classified and at the same time be disclosed in a restricted manner to the members of the general public.[69] Thus, classification of

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[65] *See* Exec. Order No. 12,958 § 1.2 (4), 60 Fed. Reg 19, 825 (1995).

[66] *See id.* § 1.2 (stating that information may only be classified if the information is classified by a proper authority under the Executive order, is "owned by, produced by or for, or is under the control of the United States Government," "falls within one or more of the categories listed in § 1.5" of the order, and "reasonably could be expected to result in damage to the national security [which the classifying authority] is able to identify or describe" if disclosed); *id.* § 1.5(g).

[67] Cases in which this justification for classification is discussed generally deal with government facilities or private contractors performing government contracts. *See, e.g., Goldberg v. United States Dept. of State*, 818 F.2d 71 (D.C. Cir. 1987) (FOIA request was properly denied under FOIA exemption 1 because the classified information requested would have revealed vulnerabilities of American embassies).

[68] Procedural requirements are contained in Exec. Order No. 12,958 § 1.4, 60 Fed. Reg. 19,825 (1995).

[69] *See id.* § 4.2, stating that access to classified materials may be granted only when "(1) a favorable determination of eligibility has been made by an agency head or the agency head's designee; (2) the person has signed an approved nondisclosure agreement; and (3) the person has a need-to-know the information." Section 4.1(c) defines "need-to-know" to mean "a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function." The "need-to-know" requirement may only be

OCAs by EPA might well be an option for maintaining those records free from public access of any kind, but not available for selective disclosure to residents of the community in which a reporting facility is located.

b. Other Federal Statutes

Exemption 3 protects from disclosure under the FOIA matters that are

> specifically exempted from disclosure by statute . . . provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

Both before and after enactment of the FOIA, Congress has determined that certain specific categories of government information should not be disclosed to the public. Examples of statutes that have and have not been held by courts to fall within Exemption 3 have been collected by secondary sources.[70]

Ordinarily, one would look to the statute requiring the submission of the information in issue when assessing whether an independent statutory basis for withholding exists. In this case, the CAA not only provides no such basis, it affirmatively requires disclosure of RMPs and their constituent OCAs.[71] Thus, there is no basis in exemption 3 for withholding OCAs. To the contrary: The statute requiring submission of the information expressly directs that it be publicly disclosed.

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waived under this order for historical researchers and former presidential appointees and only when the following requirements have been met: "the agency head or senior agency official of the originating agency: (1) determines in writing that access is consistent with the interest of national security; (2) takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with this order; and (3) limits the access granted to former Presidential appointees to items that the person originated, reviewed, signed or received while serving as a Presidential appointee." Section 4.5(b).

[70] *See* Alan Adler, Litigation Under The Freedom Of Information And Privacy Acts 64-67 (20th ed. 1997). A partial list of statutes appears in Appendix D.

[71] CAA § 114(c).

c. Confidential Commercial Information

Exemption 4 of the FOIA protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential."[72] In this one area, the CAA itself affords protection from mandatory disclosure of trade secrets. The CAA provides no definition of this term and, under the FOIA, only "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort" constitutes nondisclosable trade secret information.[73] OCA information usually will not present the sort of "direct relationship" to an innovative productive process required to bring it within the exemption for trade secrets.[74] Normally, OCA information would include relatively general information such as the type and approximate amount of a regulated chemical at a general facility. This information is unlikely to be specific or comprehensive enough to reveal any secret or confidential processes or techniques meriting trade secret protection.

Similarly, the OCA information cannot be protected from disclosure under exemption 4 as "commercial or financial information." In order to qualify under this exemption, the information at issue must be (1) commercial or financial, (2) obtained from a person (broadly defined to include corporations), and (3) privileged or confidential.[75] Although the terms "commercial" and "financial" are given their broad common meanings,[76] "the mere fact that an event occurs in connection with a commercial operation does not automatically transform [information] regarding that event into commercial information."[77] OCA information, which simply relates the potential consequences of a chemical release to the community and appears

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[72] 5 U.S.C. § 552(b)(4).

[73] *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983); *Anderson v. United States Dep't of Health & Human Servs.*, 907 F.2d 936, 944 (10th Cir. 1990) (explicitly adopting the *Public Citizen* definition of trade secret information).

[74] *Public Citizen Health Research Group*, 704 F.2d at 1288; *Anderson*, 907 F.2d at 944.

[75] *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 766 (D.C. Cir. 1974); *Comstock Int'l (U.S.A.), Inc. v. Export-Import Bank*, 464 F. Supp. 804, 806 (D.D.C. 1979) (broadly defining "person" to include a corporation).

[76] *See Public Citizen Health Research Group,* 704 F.2d at 1290.

[77] *Chicago Tribune Co. v. FAA*, No. 97C2363, 1998 WL 242611, at *3 (N.D. Ill. May 7, 1998)

to have no obvious commercial or financial aspect, normally would not fall within this exception. Furthermore, this information is subject to no privilege and cannot be reasonably characterized as "confidential" under the governing FOIA standard. Information may be deemed confidential if disclosure would be likely "(1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained."[78] Because the specific content of the information that must be disclosed to the government is prescribed by rule, disclosure pursuant to the FOIA is not likely to have any significant effect on the quality of information in the future if it is determined to be disclosable under the FOIA.[79] Furthermore, as noted above, the relatively general nature of OCA information (as related to the processes or techniques used by the facilities) should generally render it of little utility to competitors and, thus, would not satisfy the "competitive harm" prong of the confidentiality test. Accordingly, OCA information would not normally fall within the protection of the FOIA exemption 4.[80]

VI. Proposed Solution

It is most unfortunate that the FOIA's goal of universal disclosure of government records and the CAA's laudable objective of informing communities of potential toxic releases from facilities find themselves in direct conflict with the nation's security and public-safety interests. Yet it would be a mistake to conclude that the remedy lies in either a broad amendment to the FOIA or a repeal of § 112(r)'s requirements regarding facility planning and assessment.

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[78] *Critical Mass Energy Project v. Nuclear Regulatory Comm'n,* 975 F.2d 871, 878 (D.C. Cir. 1992).

[79] This is how *Critical Mass*, 975 F.2d at 878, interpreted the first prong of this standard in the case of information that is compelled from private parties (rather than submitted voluntarily).

[80] It could be argued on, a case by case, basis that certain OCA information provides data that, while not itself sensitive, would reveal material protectable under exemption 4 when placed in a larger mosaic of available information. *See Guide to the Freedom of Information Act*, U.S. Dept. of Justice, at 182 (Sept. 1998). However, even if some OCA information might ultimately be protected from disclosure under exemption 4 pursuant to the "mosaic" theory, other OCA information would certainly fail to qualify and would thus be subject to FOIA disclosure. Therefore, this – at best – limited application of exemption 4 would not sufficiently protect communities from the threat of terrorism stemming from electronic access to OCA information.

The FBI has suggested: (1) providing full access to OCA information on closed computer systems; (2) providing public Internet access (although selectively requiring requestors to provide certain information) to all RMP information except OCA information; and (3) providing OCA information, absent any data from which specific facilities could be identified, in a CD format.[81] None of these objectives can be attained under the CAA and the FOIA as written; additional legislation is required.

Should Congress wish to implement these proposals, it should enact a so-called b(3) statute, perhaps amending the Clean Air Act, to direct with specificity and precision that OCAs be generally available to the public for inspection but not copying and redissemination (and not electronically in their entirety), as would ordinarily be the case in the absence of such a statutory preclusion.[82] Thus, OCAs would be subject to use within government, to widespread analysis outside government without data allowing identification of specific facilities, and to inspection but not copying by the public.

It has been argued that the concept of allowing selective local but not centralized electronic access is somehow inimical to the basic principles underlying both the FOIA and our wired world.[83] In an analogous situation, however, the Supreme Court expressly recognized

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[81] Letter from John E. Collingwood, Assistant Director of the Office of Public and Congressional Affairs of the Federal Bureau of Investigation, to Representative Thomas Bliley, Chairman of the Committee on Commerce, 1 (Oct. 9, 1998); Letter from Robert N. Blitzer, Chief of the Domestic Terrorism/Counterterrorism Planning Section, National Security Division of the FBI, to Jim Makris, Director of the Chemical Emergency Preparedness and Prevention Office, EPA, (Oct. 30, 1998).

[82] A precedent for this sort of balancing of the national interest in the dissemination of information and of the legitimate concerns regarding the release of sensitive security information can be found in the treatment of historical researchers under Executive Order 12,958. That order permits access to classified information to be granted to researchers when such access is important to the national interest, but only under those restrictions necessary to ensure that the information is adequately safeguarded so that national security is not endangered. Exec. Order 12,958 § 4.5.

[83] *Cf. Hearing* (written statement of Paul Orum) (emphasizing the public's "right to know" and the benefits of unrestricted electronic disclosure and arguing that keeping OCA information off the Internet would not reduce terrorism because the same or similar information can be obtained in other ways such as driving by a facility site, going to trade shows, or reading newspaper articles); *FBI Off-Base on Net Access*, Lois N. Epstein, Environmental Defense Fund Viewpoint (Jan. 28, 1999)

that central electronic access to criminal history information posed a much greater threat to personal privacy than local access to police blotters and rap sheets.[84] The same issues are implicated in the creation of comprehensive electronic databases from public drivers' license records and other publicly available information.[85] As illustrated by the these examples, a potent difference exists between the threats posed by unrestricted access to a searchable electronic database that is universally available and those posed by more traditional forms of records disclosure.

The FBI's proposals tailor disclosure to meet the needs of the affected communities and of researchers while carefully modifying an otherwise entirely unfettered ability to access and

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<http://www.edf.org/speakout/b_fbi.html>.

[84] *Reporters Comm. for Freedom of Press*, 489 U.S. at 764. Considering the application of FOIA exemption 7(c) as related to an individual's privacy interest in a rap sheet compiling publicly available information, the Court recognized the practical effects of a comprehensive computerized database on the effort required to make information usable: "[T]he issue [here] is whether the compilation of otherwise hard-to-obtain [public] information alters the privacy interest implicated by disclosure of that information . . . . [p]lainly there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information." 489 U.S. at 764. Similarly, in *Westbrook v. County of Los Angeles*, 27 Cal. App. 4th 157 (2d Dist. 1994), the court denied access to computer tapes compiling public docket information to a seller of criminal background information. It concluded that state-protected privacy rights would be unduly infringed by the release of this information because "[t]here is a qualitative difference between obtaining information from a specific docket or on a specified individual, and obtaining docket information on every person against whom criminal charges are pending in the municipal court" as would be facilitated by access to the municipal court's computer tapes. *Id.* at 387.

[85] *See* Robert O'Harrow, Jr., *Are Data Firms Getting Too Personal* (visited Mar. 8, 1998.) <http://www.washingtonpost.com/wp-srv/frompost/march98/privacy9.ht>; Rajiv Chandrasekaran, *Doors Fling Open to Public Records*, Wash. Post, (visited Mar. 8, 1998.) <http://www.washingtonpost.com/wp-srv/frompost/march98/privacy9.ht>; *Freedom of Information Acts and Privacy Exemptions*, The Privacy Paradox -- Government Access (visited Mar.9, 1999) <http:/wwww.refp.org.pp_pt2.html>. *Cf.* Robert O'Harrow, *Posing a Privacy Problem? Driver's-License Photos Used in Anti-Fraud Database, Wash. Post*, Jan. 22, 1999, at A1, A22 (noting, among other privacy concerns, the possibility of widespread and flexible access to digital photos contained in even a restricted electronic database due to hackers).

misuse potentially dangerous OCA information. In this way the interests of the CAA, the FOIA, and national security may be kept in balance.

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promulgated, but has not taken effect, before such date shall not be affected by such Amendments unless modified as provided in this section before such date or under such Amendments. Each such standard shall be reviewed and, if appropriate, revised, to comply with the requirements of subsection (d) of this section within 10 years after the date of enactment of the Clean Air Act Amendments of 1990. If a timely petition for review of any such standard under section 7607 of this title is pending on such date of enactment, the standard shall be upheld if it complies with this section as in effect before that date. If any such standard is remanded to the Administrator, the Administrator may in the Administrator's discretion apply either the requirements of this section, or those of this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

(2) Special rule

Notwithstanding paragraph (1), no standard shall be established under this section, as amended by the Clean Air Act Amendments of 1990, for radionuclide emissions from (A) elemental phosphorous plants, (B) grate calcination elemental phosphorous plants, (C) phosphogypsum stacks, or (D) any subcategory of the foregoing. This section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990 (November 15, 1990), shall remain in effect for radionuclide emissions from such plants and stacks.

(3) Other categories

Notwithstanding paragraph (1), this section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990 (November 15, 1990), shall remain in effect for radionuclide emissions from non-Department of Energy Federal facilities that are not licensed by the Nuclear Regulatory Commission, coal-fired utility and industrial boilers, underground uranium mines, surface uranium mines, and disposal of uranium mill tailings piles, unless the Administrator, in the Administrator's discretion, applies the requirements of this section as modified by the Clean Air Act Amendments of 1990 to such sources of radionuclides.

(4) Medical facilities

Notwithstanding paragraph (1), no standard promulgated under this section prior to November 15, 1990, with respect to medical research or treatment facilities shall take effect for two years following November 15, 1990, unless the Administrator makes a determination pursuant to a rulemaking under subsection (d)(9) of this section. If the Administrator determines that the regulatory program established by the Nuclear Regulatory Commission for such facilities does not provide an ample margin of safety to protect public health, the requirements of this section shall fully apply to such facilities. If the Administrator determines that such regulatory program does provide an ample margin of safety to protect the public health, the Administrator is not required to promulgate a standard under this section for such facilities, as provided in subsection (d)(9) of this section.

(r) Prevention of accidental releases

(1) Purpose and general duty

It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as section 654 of title 29 to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. For purposes of this paragraph, the provisions of section 7604 of this title shall not be available to any person or otherwise be construed to be applicable to this paragraph. Nothing in this section shall be interpreted, construed, implied or applied to create any liability or basis for suit for compensation for bodily injury or any other injury or property damages to any person which may result from accidental releases of such substances.

(2) Definitions

(A) The term "accidental release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(B) The term "regulated substance" means a substance listed under paragraph (3).

(C) The term "stationary source" means any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

(3) List of substances

The Administrator shall promulgate not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. For purposes of promulgating such list, the Administrator shall use, but is not limited to, the list of extremely hazardous substances published under the Emergency Planning and Community Right-to-Know Act of 1986 [42 U.S.C. 11001 et seq.], with such modifications as the Administrator deems appropriate. The initial list shall include chlorine, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, methyl isocyanate, hydrogen cyanide, ammonia, hydrogen sulfide, toluene diisocyanate, phosgene, bromine, anhydrous hydrogen chloride, hydrogen fluoride, anhydrous sulfur dioxide, and sulfur trioxide. The initial list shall include at least 100 substances which pose the greatest risk of causing death, injury, or serious adverse effects to human health or the environment from accidental releases. Regulations establishing the list shall include an explanation of the basis for establishing the list. The list may be revised from time to time by the Administrator on the Administrator's own motion or by petition and shall be reviewed at least every 5 years. No air pollutant for which a national primary ambient air quality standard has been established shall be included on any such list. No substance, practice, process, or activity regulated under subchapter VI of this chapter shall be subject to regulations under this subsection. The Administrator shall establish procedures for the addition and deletion of substances from the list established under this paragraph consistent with those applicable to the list in subsection (b) of this section.

(4) Factors to be considered

In listing substances under paragraph (3), the Administrator shall consider each of the following criteria—

(A) the severity of any acute adverse health effects associated with accidental releases of the substance;

(B) the likelihood of accidental releases of the substance; and

(C) the potential magnitude of human exposure to accidental releases of the substance.

(5) Threshold quantity

At the time any substance is listed pursuant to paragraph (3), the Administrator shall establish by rule, a threshold quantity for the substance, taking into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health for which the substance was listed. The Administrator is authorized to establish a greater threshold quantity for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer.

(6) Chemical Safety Board

(A) There is hereby established an independent safety board to be known as the Chemical Safety and Hazard Investigation Board.

(B) The Board shall consist of 5 members, including a Chairperson, who shall be appointed by the President, by and with the advice and consent of the Senate. Members of the Board shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in the fields of accident

reconstruction, safety engineering, human factors, toxicology, or air pollution regulation. The terms of office of members of the Board shall be 5 years. Any member of the Board, including the Chairperson, may be removed for inefficiency, neglect of duty, or malfeasance in office. The Chairperson shall be the Chief Executive Officer of the Board and shall exercise the executive and administrative functions of the Board.

(C) The Board shall—

(i) investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release resulting in a fatality, serious injury or substantial property damages;

(ii) issue periodic reports to the Congress, Federal, State and local agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration, concerned with the safety of chemical production, processing, handling and storage, and other interested persons recommending measures to reduce the likelihood or the consequences of accidental releases and proposing corrective steps to make chemical production, processing, handling and storage as safe and free from risk of injury as is possible and may include in such reports proposed rules or orders which should be issued by the Administrator under the authority of this section or the Secretary of Labor under the Occupational Safety and Health Act [29 U.S.C. 651 et seq.] to prevent or minimize the consequences of any release of substances that may cause death, injury or other serious adverse effects on human health or substantial property damage as the result of an accidental release; and

(iii) establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigatory jurisdiction. Reporting releases to the National Response Center, in lieu of the Board directly, shall satisfy such regulations. The National Response Center shall promptly notify the Board of any releases which are within the Board's jurisdiction.

(D) The Board may utilize the expertise and experience of other agencies.

(E) The Board shall coordinate its activities with investigations and studies conducted by other agencies of the United States having a responsibility to protect public health and safety. The Board shall enter into a memorandum of understanding with the National Transportation Safety Board to assure coordination of functions and to limit duplication of activities which shall designate the National Transportation Safety Board as the lead agency for the investigation of releases which are transportation related. The Board shall not be authorized to investigate marine oil spills, which the National Transportation Safety Board is authorized to investigate. The Board shall enter into a memorandum of understanding with the Occupational Safety and Health Administration so as to limit duplication of activities. In no event shall the Board forego an investigation where an accidental release causes a fatality or serious injury among the general public, or had the potential to cause substantial property damage or a number of deaths or injuries among the general public.

(F) The Board is authorized to conduct research and studies with respect to the potential for accidental releases, whether or not an accidental release has occurred, where there is evidence which indicates the presence of a potential hazard or hazards. To the extent practicable, the Board shall conduct such studies in cooperation with other Federal agencies having emergency response authorities, State and local governmental agencies and associations and organizations from the industrial, commercial, and nonprofit sectors.

(G) No part of the conclusions, findings, or recommendations of the Board relating to any accidental release or the investigation thereof shall be admitted as evidence or used in any action or suit for damages arising out of any matter mentioned in such report.

(H) Not later than 18 months after November 15, 1990, the Board shall publish a report accompanied by recommendations to the Administrator on the use of hazard assessments in preventing the occurrence and minimizing the consequences of accidental releases of extremely hazardous substances. The recommendations shall include a list of extremely hazardous substances which are not regulated substances (including threshold quantities for such substances) and categories of stationary sources for which hazard assessments would be an appropriate measure to aid in the prevention of accidental releases and to minimize the consequences of those releases that do occur. The recommendations shall also include a description of the information and analysis which would be appropriate to include in any hazard assessment. The Board shall also make recommendations with respect to the role of risk management plans as required by paragraph (8)(B)[18] in preventing accidental releases. The Board may from time to time review and revise its recommendations under this subparagraph.

(I) Whenever the Board submits a recommendation with respect to accidental releases to the Administrator, the Administrator shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator shall indicate whether the Administrator will—

(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;

(ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Administrator not to implement a recommendation of the Board or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Administrator setting forth the reasons for such determination.

(J) The Board may make recommendations with respect to accidental releases to the Secretary of Labor. Whenever the Board submits such recommendation, the Secretary shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator shall indicate whether the Secretary will—

(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;

(ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Secretary not to implement a recommendation or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Secretary setting forth the reasons for such determination.

(K) Within 2 years after November 15, 1990, the Board shall issue a report to the Administrator of the Environmental Protection Agency and to the Administrator of the Occupational Safety and Health Administration recommending the adoption of regulations for the preparation of risk management plans and general requirements for the prevention of accidental releases of regulated substances into the ambient air (including recommendations for listing substances under paragraph (3)) and for the mitigation of the potential adverse effect on human health or the environment as a result of accidental releases which should be applicable to any stationary source handling any regulated substance in more than threshold amounts. The Board may include proposed rules or orders which should be issued by the Administrator under authority of this subsection or by the Secretary of Labor under the Occupational Safety and Health Act [29 U.S.C. 651 et seq.]. Any such recommendations shall be specific and shall identify the regulated substance or class of regulated substances (or other substances) to which the recommendations apply. The Administrator shall consider such recommendations before promulgating regulations required by paragraph (7)(B).

18. So in original. Probably should be paragraph "(7)(B)".

(L) The Board, or upon authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Board, may for the purpose of carrying out duties authorized by subparagraph (C)—

(i) hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise attendance and testimony of such witnesses and the production of evidence and may require by order that any person engaged in the production, processing, handling, or storage of extremely hazardous substances submit written reports and responses to requests and questions within such time and in such form as the Board may require; and

(ii) upon presenting appropriate credentials and a written notice of inspection authority, enter any property where an accidental release causing a fatality, serious injury or substantial property damage has occurred and do all things therein necessary for a proper investigation pursuant to subparagraph (C) and inspect at reasonable times records, files, papers, processes, controls, and facilities and take such samples as are relevant to such investigation.

Whenever the Administrator or the Board conducts an inspection of a facility pursuant to this subsection, employees and their representatives shall have the same rights to participate in such inspections as provided in the Occupational Safety and Health Act [29 U.S.C. 651 et seq.].

(M) In addition to that described in subparagraph (L), the Board may use any information gathering authority of the Administrator under this chapter, including the subpoena power provided in section 7607(a)(1) of this title.

(N) The Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties. The Board is authorized without regard to section 5 of title 41 to enter into contracts, leases, cooperative agreements or other transactions as may be necessary in the conduct of the duties and functions of the Board with any other agency, institution, or person.

(O) After the effective date of any reporting requirement promulgated pursuant to subparagraph (C)(iii) it shall be unlawful for any person to fail to report any release of any extremely hazardous substance as required by such subparagraph. The Administrator is authorized to enforce any regulation or requirements established by the Board pursuant to subparagraph (C)(iii) using the authorities of sections 7413 and 7414 of this title. Any request for information from the owner or operator of a stationary source made by the Board or by the Administrator under this section shall be treated, for purposes of sections 7413, 7414, 7416, 7420, 7603, 7604 and 7607 of this title and any other enforcement provisions of this chapter, as a request made by the Administrator under section 7414 of this title and may be enforced by the Chairperson of the Board or by the Administrator as provided in such section.

(P) The Administrator shall provide to the Board such support and facilities as may be necessary for operation of the Board.

(Q) Consistent with subsection[19] (G) and section 7414(c) of this title any records, reports or information obtained by the Board shall be available to the Administrator, the Secretary of Labor, the Congress and the public, except that upon a showing satisfactory to the Board by any person that records, reports, or information, or particular part thereof (other than release or emissions data) to which the Board has access, if made public, is likely to cause substantial harm to the person's competitive position, the Board shall consider such record, report, or information or particular portion thereof confidential in accordance with section 1905 of title 18, except that such record, report, or information may be disclosed to other officers, employees, and authorized representatives of the United States concerned with carrying out this chapter or when relevant under any proceeding under this chapter. This subparagraph does not constitute authority to withhold records, reports, or information from the Congress.

(R) Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget request, or other budget information, legislative recommendation, prepared testimony for congressional hearings, recommendation or study to the President, the Secretary of Labor, the Administrator, or the Director of the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No report of the Board shall be subject to review by the Administrator or any Federal agency or to judicial review in any court. No officer or agency of the United States shall have authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony, comments, recommendations or reports to any officer or agency of the United States for approval or review prior to the submission of such recommendations, testimony, comments or reports to the Congress. In the performance of their functions as established by this chapter, the members, officers and employees of the Board shall not be responsible to or subject to supervision or direction, in carrying out any duties under this subsection, of any officer or employee or agent of the Environmental Protection Agency, the Department of Labor or any other agency of the United States except that the President may remove any member, officer or employee of the Board for inefficiency, neglect of duty or malfeasance in office. Nothing in this section shall affect the application of title 5 to officers or employees of the Board.

(S) The Board shall submit an annual report to the President and to the Congress which shall include, but not be limited to, information on accidental releases which have been investigated by or reported to the Board during the previous year, recommendations for legislative or administrative action which the Board has made, the actions which have been taken by the Administrator or the Secretary of Labor or the heads of other agencies to implement such recommendations, an identification of priorities for study and investigation in the succeeding year, progress in the development of risk-reduction technologies and the response to and implementation of significant research findings on chemical safety in the public and private sector.

(7) Accident prevention

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. Regulations promulgated under this paragraph may make distinctions between various types, classes, and kinds of facilities, devices and systems taking into consideration factors including, but not limited to, the size, location, process, process controls, quantity of substances handled, potency of substances, and response capabilities present at any stationary source. Regulations promulgated pursuant to this subparagraph shall have an effective date, as determined by the Administrator, assuring compliance as expeditiously as practicable.

(B)(i) Within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases. The Administrator shall utilize the expertise of the Secretaries of Transportation and Labor in promulgating such regulations. As appropriate, such regulations shall cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and in the conduct of periodic inspections. The regulations shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the

19. So in original. Probably should be "subparagraph".

environment. The regulations shall cover storage, as well as operations. The regulations shall, as appropriate, recognize differences in size, operations, processes, class and categories of sources and the voluntary actions of such sources to prevent such releases and respond to such releases. The regulations shall be applicable to a stationary source 3 years after the date of promulgation, or 3 years after the date on which a regulated substance present at the source in more than threshold amounts is first listed under paragraph (3), whichever is later.

(ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection and shall also include each of the following:

(I) a hazard assessment to assess the potential effects of an accidental release of any regulated substance. This assessment shall include an estimate of potential release quantities and a determination of downwind effects, including potential exposures to affected populations. Such assessment shall include a previous release history of the past 5 years, including the size, concentration, and duration of releases, and shall include an evaluation of worst case accidental releases;

(II) a program for preventing accidental releases of regulated substances, including safety precautions and maintenance, monitoring and employee training measures to be used at the source; and

(III) a response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing the public and local agencies responsible for responding to accidental releases, emergency health care, and employee training measures.

At the time regulations are promulgated under this subparagraph, the Administrator shall promulgate guidelines to assist stationary sources in the preparation of risk management plans. The guidelines shall, to the extent practicable, include model risk management plans.

(iii) The owner or operator of each stationary source covered by clause (ii) shall register a risk management plan prepared under this subparagraph with the Administrator before the effective date of regulations under clause (i) in such form and manner as the Administrator shall, by rule, require. Plans prepared pursuant to this subparagraph shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source, and shall be available to the public under section 7414(c) of this title. The Administrator shall establish, by rule, an auditing system to regularly review and, if necessary, require revision in risk management plans to assure that the plans comply with this subparagraph. Each such plan shall be updated periodically as required by the Administrator, by rule.

(C) Any regulations promulgated pursuant to this subsection shall to the maximum extent practicable, consistent with this subsection, be consistent with the recommendations and standards established by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) or the American Society of Testing Materials (ASTM). The Administrator shall take into consideration the concerns of small business in promulgating regulations under this subsection.

(D) In carrying out the authority of this paragraph, the Administrator shall consult with the Secretary of Labor and the Secretary of Transportation and shall coordinate any requirements under this paragraph with any requirements established for comparable purposes by the Occupational Safety and Health Administration or the Department of Transportation. Nothing in this subsection shall be interpreted, construed or applied to impose requirements affecting, or to grant the Administrator, the Chemical Safety and Hazard Investigation Board, or any other agency any authority to regulate (including requirements for hazard assessment), the accidental release of radionuclides arising from the construction and operation of facilities licensed by the Nuclear Regulatory Commission.

(E) After the effective date of any regulation or requirement imposed under this subsection, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement. Each regulation or requirement under this subsection shall for purposes of sections 7413, 7414, 7416, 7420, 7604, and 7607 of this title and other enforcement provisions of this chapter, be treated as a standard in effect under subsection (d) of this section.

(F) Notwithstanding the provisions of subchapter V of this chapter or this section, no stationary source shall be required to apply for, or operate pursuant to, a permit issued under such subchapter solely because such source is subject to regulations or requirements under this subsection.

(G) In exercising any authority under this subsection, the Administrator shall not, for purposes of section 653(b)(1) of title 29, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

(8) Research on hazard assessments

The Administrator may collect and publish information on accident scenarios and consequences covering a range of possible events for substances listed under paragraph (3). The Administrator shall establish a program of long-term research to develop and disseminate information on methods and techniques for hazard assessment which may be useful in improving and validating the procedures employed in the preparation of hazard assessments under this subsection.

(9) Order authority

(A) In addition to any other action taken, when the Administrator determines that there may be an imminent and substantial endangerment to the human health or welfare or the environment because of an actual or threatened accidental release of a regulated substance, the Administrator may secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The Administrator may also, after notice to the State in which the stationary source is located, take other action under this paragraph including, but not limited to, issuing such orders as may be necessary to protect human health. The Administrator shall take action under section 7603 of this title rather than this paragraph whenever the authority of such section is adequate to protect human health and the environment.

(B) Orders issued pursuant to this paragraph may be enforced in an action brought in the appropriate United States district court as if the order were issued under section 7603 of this title.

(C) Within 180 days after November 15, 1990, the Administrator shall publish guidance for using the order authorities established by this paragraph. Such guidance shall provide for the coordinated use of the authorities of this paragraph with other emergency powers authorized by section 9606 of this title, sections 311(c), 308, 309 and 504(a) of the Federal Water Pollution Control Act [33 U.S.C. 1321(c), 1318, 1319, 1364(a)], sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act [42 U.S.C. 6927, 6928, 6934, 6973], sections 1445 and 1431 of the Safe Drinking Water Act [42 U.S.C. 300j-4, 300i], sections 5 and 7 of the Toxic Substances Control Act [15 U.S.C. 2604, 2606], and sections 7413, 7414, and 7603 of this title.

(10) Presidential review

The President shall conduct a review of release prevention,

mitigation and response authorities of the various Federal agencies and shall clarify and coordinate agency responsibilities to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources which may exist. The President may utilize the resources and solicit the recommendations of the Chemical Safety and Hazard Investigation Board in conducting such review. At the conclusion of such review, but not later than 24 months after November 15, 1990, the President shall transmit a message to the Congress on the release prevention, mitigation and response activities of the Federal Government making such recommendations for change in law as the President may deem appropriate. Nothing in this paragraph shall be interpreted, construed or applied to authorize the President to modify or reassign release prevention, mitigation or response authorities otherwise established by law.

(11) State authority

Nothing in this subsection shall preclude, deny or limit any right of a State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard (including any procedural requirement) that is more stringent than a regulation, requirement, limitation or standard in effect under this subsection or that applies to a substance not subject to this subsection.

(s) Periodic report

Not later than January 15, 1993 and every 3 years thereafter, the Administrator shall prepare and transmit to the Congress a comprehensive report on the measures taken by the Agency and by the States to implement the provisions of this section. The Administrator shall maintain a database on pollutants and sources subject to the provisions of this section and shall include aggregate information from the database in each annual report. The report shall include, but not be limited to—

(1) a status report on standard-setting under subsections (d) and (f) of this section;

(2) information with respect to compliance with such standards including the costs of compliance experienced by sources in various categories and subcategories;

(3) development and implementation of the national urban air toxics program; and

(4) recommendations of the Chemical Safety and Hazard Investigation Board with respect to the prevention and mitigation of accidental releases.

(July 14, 1955, ch. 360, title I, §112, as added Dec. 31, 1970, Pub. L. 91-604, §4(a), 84 Stat. 1685, and amended Aug. 7, 1977, Pub. L. 95-95, title I, §109(d)(2), 110, title IV, §401(c), 91 Stat. 701, 703, 791; Nov. 9, 1978, Pub. L. 95-623, §13(b), 92 Stat. 3458; Nov. 15, 1990, Pub. L. 101-549, title III, §301, 104 Stat. 2531; Dec. 4, 1991, Pub. L. 102-187, 105 Stat. 1285.)

References In Text

The date of enactment, referred to in subsec. (a)(11), probably means the date of enactment of Pub. L. 101-549, which amended this section generally and was approved Nov. 15, 1990.

The Atomic Energy Act, referred to in subsec. (d)(9), probably means the Atomic Energy Act of 1954, act Aug. 30, 1954, ch. 1073, 68 Stat. 921, as amended, which is classified generally to chapter 23 (Sec. 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Federal Insecticide, Fungicide and Rodenticide Act, referred to in subsec. (k)(3)(C), probably means the Federal Insecticide, Fungicide, and Rodenticide Act, act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (Sec. 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Resource Conservation and Recovery Act, referred to in subsec. (k)(3)(C), probably means the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, Oct. 21, 1976, 90 Stat. 2796, as amended, which is classified generally to chapter 82 (Sec. 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 303 of the Clean Air Act Amendments of 1990, referred to in subsec. (o)(4), probably means section 303 of Pub. L. 101-549, which is set out below.

The Clean Air Act Amendments of 1990, referred to in subsec. (q)(1)-(3), probably means Pub. L. 101-549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Occupational Safety and Health Act, referred to in subsec. (r)(6)(C)(ii), (K), (L), probably means the Occupational Safety and Health Act of 1970, Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (Sec. 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

Codification

Section was formerly classified to section 1857c-7 of this title.

Effective Date Of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

Pending Actions And Proceedings

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 (Aug. 7, 1977), not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification Or Rescission Of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, And Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 (Aug. 7, 1977) to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 (this chapter), see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Risk Assessment And Management Commission

Section 303 of Pub. L. 101-549 provided that:

"**(a) Establishment.**—There is hereby established a Risk Assessment and Management Commission (hereafter referred to in this section as the 'Commission'), which shall commence proceedings not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] and which shall make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human health effects which may result from exposure to hazardous substances.

"**(b) Charge.**—The Commission shall consider—

"(1) the report of the National Academy of Sciences authorized by section 112(o) of the Clean Air Act [42 U.S.C. 7412(o)], the use and limitations of risk assessment in establishing emission or effluent standards, ambient standards, exposure standards, acceptable concentration levels, tolerances or other environmental criteria for hazardous substances that present a risk of carcinogenic effects or other chronic health effects and the suitability of risk assessment for such purposes;

"(2) the most appropriate methods for measuring and describing cancer risks or risks of other chronic health effects from exposure to hazardous substances considering such alternative approaches as the lifetime risk of cancer or other effects to the individual or individuals most exposed to emissions from a source or sources on both an actual and worst case basis, the range of such risks, the total number of health effects avoided by exposure reductions, effluent standards, ambient standards, exposures standards, acceptable concentration levels, tolerances and other environmental criteria, reductions in the number of persons exposed at various levels of risk, the incidence of cancer, and other public health factors;

"(3) methods to reflect uncertainties in measurement and estimation techniques, the existence of synergistic or antagonistic effects among hazardous substances, the accuracy of extrapolating human health risks from animal exposure data, and the existence of unquantified direct or indirect effects on human health in risk assessment studies;

"(4) risk management policy issues including the use of lifetime cancer risks to individuals most exposed, incidence of cancer, the cost and technical feasibility of exposure reduction measures and the use of site-specific actual exposure information in setting emissions standards and other limitations applicable to sources of exposure to hazardous substances; and

"(5) and comment on the degree to which it is possible or desirable to develop a consistent risk assessment methodology, or a consistent standard of acceptable risk, among various Federal programs.

"**(c) Membership.**—Such Commission shall be composed of ten members who shall have knowledge or experience in fields of risk assessment or risk management, including three members to be appointed by the President, two members to be appointed by the Speaker of the House of Representatives, one member to be appointed by the Minority Leader of the House of Representatives, two members to be appointed by the Majority Leader of the Senate, one member to be appointed by the Minority Leader of the Senate, and one member to be appointed by the President of the National Academy of Sciences. Appointments shall be made not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].

"**(d) Assistance from Agencies.**—The Administrator of the Environmental Protection Agency and the heads of all other departments, agencies, and instrumentalities of the executive branch of the Federal Government shall, to the maximum extent practicable, assist the Commission in gathering such information as the Commission deems necessary to carry out this section subject to other provisions of law.

"**(e) Staff and Contracts.**—

economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607(a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.

(2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604(a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) Awards

The Administrator may pay an award, not to exceed $10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV-A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer, or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) Settlements; public participation

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II of this chapter, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

(h) Operator

For purposes of the provisions of this section and section 7420 of this title, the term "operator", as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term "a person" shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term "a person" shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

(July 14, 1955, ch. 360, title I, §113, as added Dec. 31, 1970, Pub. L. 91-604, §4(a), 84 Stat. 1686, and amended Nov. 18, 1971, Pub. L. 92-157, title III, §302(b), (c), 85 Stat. 464; June 22, 1974, Pub. L. 93-319, §6(a)(1)-(3), 88 Stat. 259; Aug. 7, 1977, Pub. L. 95-95, title I, §111, 112(a), 91 Stat. 704, 705; Nov. 16, 1977, Pub. L. 95-190, §14(a)(10)-(21), (b)(1), 91 Stat. 1400, 1404; July 17, 1981, Pub. L. 97-23, §2, 95 Stat. 139; Nov. 15, 1990, Pub. L. 101-549, title VII, §701, 104 Stat. 2672.)

Codification

Section was formerly classified to section 1857c-8 of this title.

Effective Date Of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

Pending Actions And Proceedings

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 (Aug. 7, 1977), not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification Or Rescission Of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, And Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 (Aug. 7, 1977) to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 (this chapter), see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7414. [CAA §114]

Recordkeeping, inspections, monitoring, and entry

(a) Authority of Administrator or authorized representative

For the purpose (i) of developing or assisting in the development of any implementation plan under section 7410 or section 7411(d) of this title, any standard of performance under section 7411 of this title, any emission standard under section 7412 of this title,[22] or any regulation of solid waste combustion under section 7429 of this title, or any regulation under section 7429 of this title (relating to solid waste combustion), (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out any provision of this chapter (except a provision of subchapter II of this chapter with respect to a manufacturer of new motor vehicles or new motor vehicle engines)—

(1) the Administrator may require any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Administrator believes may have information necessary for the purposes set forth in this subsection, or who is subject to any requirement of this chapter (other than a manufacturer subject to the provisions of section 7525(c) or 7542 of this title with respect to a provision of subchapter II of this chapter) on a one-time, periodic or continuous basis to—

(A) establish and maintain such records;

(B) make such reports;

(C) install, use, and maintain such monitoring equipment, and use such audit procedures, or methods;

(D) sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator shall prescribe);

(E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical;

(F) submit compliance certifications in accordance with subsection (a)(3) of this section; and

(G) provide such other information as the Administrator may reasonably require; and

(2) the Administrator or his authorized representative, upon presentation of his credentials—

(A) shall have a right of entry to, upon, or through any premises of such person or in which any records required to be maintained under paragraph (1) of this section are located, and

22. So in original.

(B) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under paragraph (1), and sample any emissions which such person is required to sample under paragraph (1).[23]

(3) The[24] Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require. Compliance certifications and monitoring data shall be subject to subsection (c) of this section. Submission of a compliance certification shall in no way limit the Administrator's authorities to investigate or otherwise implement this chapter. The Administrator shall promulgate rules to provide guidance and to implement this paragraph within 2 years after November 15, 1990.

(b) State enforcement

(1) Each State may develop and submit to the Administrator a procedure for carrying out this section in such State. If the Administrator finds the State procedure is adequate, he may delegate to such State any authority he has to carry out this section.

(2) Nothing in this subsection shall prohibit the Administrator from carrying out this section in a State.

(c) Availability of records, reports, and information to public; disclosure of trade secrets

Any records, reports or information obtained under subsection (a) of this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

(d) Notice of proposed entry, inspection, or monitoring

(1) In the case of any emission standard or limitation or other requirement which is adopted by a State, as part of an applicable implementation plan or as part of an order under section 7413(d)[25] of this title, before carrying out an entry, inspection, or monitoring under paragraph (2) of subsection (a) of this section with respect to such standard, limitation, or other requirement, the Administrator (or his representatives) shall provide the State air pollution control agency with reasonable prior notice of such action, indicating the purpose of such action. No State agency which receives notice under this paragraph of an action proposed to be taken may use the information contained in the notice to inform the person whose property is proposed to be affected of the proposed action. If the Administrator has reasonable basis for believing that a State agency is so using or will so use such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency will no longer so use information contained in a notice under this paragraph. Nothing in this section shall be construed to require notification to any State agency of any action taken by the Administrator with respect to any standard, limitation, or other requirement which is not part of an applicable implementation plan or which was promulgated by the Administrator under section 7410(c) of this title.

(2) Nothing in paragraph (1) shall be construed to provide that any failure of the Administrator to comply with the requirements of such paragraph shall be a defense in any enforcement action brought by the Administrator or shall make inadmissible as evidence in any such action any information or material obtained notwithstanding such failure to comply with such requirements.

(July 14, 1955, ch. 360, title I, §114, as added Dec. 31, 1970, Pub. L. 91-604, §4(a), 84 Stat. 1687, and amended June 22, 1974, Pub. L. 93-319, §6(a)(4), 88 Stat. 259; Aug. 7, 1977, Pub. L. 95-95, title I, §109(d)(3), 113, title III, §305(d), 91 Stat. 701, 709, 776; Nov. 16, 1977, Pub. L. 95-190, §14(a)(22), (23), 91 Stat. 1400; Nov. 15, 1990, Pub. L. 101-549, title III, §302(c), title VII, §702(a), (b), 104 Stat. 2574, 2680, 2681.)

References In Text

Section 7413(d) of this title, referred to in subsec. (d)(1), was amended generally by Pub. L. 101-549, title VII, Sec. 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

Codification

Section was formerly classified to section 1857c-9 of this title.

Effective Date Of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

Pending Actions And Proceedings

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 (Aug. 7, 1977), not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification Or Rescission Of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, And Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 (Aug. 7, 1977) to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 (this chapter), see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7415. [CAA §115]

International air pollution

(a) Endangerment of public health or welfare in foreign countries from pollution emitted in United States

Whenever the Administrator, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any air pollutant or pollutants emitted in the United States cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the Governor of the State in which such emissions originate.

(b) Prevention or elimination of endangerment

The notice of the Administrator shall be deemed to be a finding under section 7410(a)(2)(H)(ii) of this title which requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment referred to in subsection (a) of this section. Any foreign country so affected by such emission of pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.

(c) Reciprocity

This section shall apply only to a foreign country which the Administrator determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this section.

(d) Recommendations

Recommendations issued following any abatement conference conducted prior to August 7, 1977, shall remain in effect with respect to any pollutant for which no national ambient air quality standard has been established under section 7409 of this title unless the Adminis-

23. The period probably should be "; and".

24. So in original. Probably should not be capitalized.

25. See References in Text note below.

- (b) This section does not apply to matters that are -
- (1)
  - (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
- (2) related solely to the internal personnel rules and practices of an agency;
- (3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by

criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

- (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

- (9) geological and geophysical information and data, including maps, concerning wells. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

- (c)
  - (1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and -
    - (A) the investigation or proceeding involves a possible violation of criminal law; and
    - (B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and
      - (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.
  - (2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.
  - (3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

- (d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

- (e)
  - (1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include -
    - (A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;
    - (B)

Partial List of FOIA Exemption 3 Statutes

Census Act, 13 U.S.C. § 8(b) and 9(a)
Federal Rules of Criminal Procedure 6(e), Grand Jury Testimony
Civil Rights Act, 42 U.S.C. § 2000e - 8(e)
National Security Agency, 50 U.S.C. § 402
Consumer Product Safety Act, 15 U.S.C. § 2055(b)(1)
Omnibus Crime Control and Safe Streets Act, 18 U.S.C. § 2510-20
Parole Commission and Reorganization Act, 18, U.S.C. § 4208(b)
Federal Technology Transfer Act, 15 U.S.C. § 3710a(c)(7)
Ethics in Government Act, 5 U.S.C. Supp. 4, § 207(a)
Federal Aviation Act of 1958, 49 U.S.C. § 1504
Tariff Act of 1930, 19 U.S.C. § 1671
Federal Trade Commission Act, 15 U.S.C. § 57b 2(f)
Federal Technology Transfer Act, U.S.C. § 3710(a)
Immigration and Naturalization Act, 8 U.S.C. § 1202(f)
Commodity Exchange Act, 7 U.S.C. § 12
Export Administration Act, 50 U.S.C. § 2411(c)(1)

STATEMENT OF PAULA R. LITTLES, PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION (PACE)

Mr. Chairman, members of the committee, my name is Paula R. Littles. I am the Citizenship-Legislative Director for the Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO (PACE). Our union represents 320,000 workers employed nationwide in the paper, allied-industrial, chemical, oil refining, and nuclear industries.

Our organization is deeply concerned over discussions surrounding the issue of EPA not providing full disclosures of (RMPs) Risk Management Plans. We very much appreciate the opportunity to appear before you today. The question of full disclosure of Risk Management Plans is of vital importance to our organization, our members, and the communities in which they live. We feel that if we are ever to have effective, ongoing hazard reduction. These plans must be fully disclose to encourage safer technologies, honor the public's right to know, and to overcome the complacency of the chemical industry, that has allowed it to produce no serious plan and timetable to reduce hazards.

The Clean Air Act requires the Environmental Protection Agency (EPA) to implement a program to assist in the prevention of chemical accidents. EPA developed the Risk Management Program Rule. This Rule requires some 66,000 facilities that manage sufficient amounts of hazardous materials to develop a RMP and file it with EPA. These facilities include chemical manufacturers, refineries, water treatment facilities, ammonia refrigeration, propane storage, and semiconductor fabrication. A projected 85 million people live within a five-mile radius of a RMP facility.

The Clean Air Act also requires that EPA make this information available to the public. Our organization became very concerned in November when we discovered that EPA had made the decision on November 6, 1998 to not allow full access to RMP information. We have expressed our concern about EPA's ability to effectively deliver full access to Risk Management Plans in joint correspondence with other groups to EPA Administrator Carol Browner.

Our main of concern surrounding full discourse is our members, their families and the communities in which they live. Our members are the first respondents to the site of a manufacturing accident at their worksite. They also may work at a site near an incident, next door, across the street, or five miles away, but near enough to be affected. Currently, not enough effort has been placed on hazard reduction, for our organization to readily accept limited discourse on hazardous materials that our members work, or live near.

There is also the issue of manufacturing security. It is to our advantage as an organization that represents workers in this arena that we can say to workers, their families, and the community, that these facilities have nothing to hide. We can tell workers that these facilities are working toward reducing hazards, their RMPs are available in any form they need "electronic or other" to provide the information needed to show that they are really working toward hazard reduction. We believe

that it is not the knowledge that is harmful, but the lack of knowledge that has at times created mass hysteria and rushes to judgment.

Although numbers vary, depending on the source of statistics and period of time examined, there is no doubt about the effects of chemical accidents on human lives. Year after year, large numbers of people are killed or injured. In addition, the numbers for those suffering the long-term consequences of exposure must also be counted.

Currently, the Chemical Safety Board is reviewing or investigating accidents in Arizona, Arkansas, California, Florida, Georgia, Idaho, Iowa, Louisiana (3), Maryland, Michigan (2), Missouri, New Jersey (2), New York, Ohio (2), Oklahoma, Oregon, Pennsylvania (2), South Dakota, Texas, and Washington State (2), as of February 3, 1999. The last 3 months of 1998 the Chemical Safety Board begin four incident investigations. Of those four:

10–13–98: Five employees injured, local residents advised to shelter in their homes;

10–24–98: Seven workers were killed;

11–25–98: Six workers were killed; and 12–11 –98: Seven workers were killed.

That is a total of 20 workers who were killed on the job in the last 3 months of 1998. These numbers are clear and the message they send should be equally clear, we need to work harder at reducing hazards and it is our belief that full disclosure is the beginning step.

We believe that there are many valid and important uses for RMP information by people who live, work and conduct business well beyond the immediate community where a facility is located. RMP information can be useful in the following ways:

To learn about vulnerability zones and prevention practices in similar facilities in different States;

To verify reported information by comparing data submitted elsewhere; To hold government accountable for reducing hazards nationwide;

To develop studies on chemical hazards;

To develop effective accident prevention programs;

To develop and conduct effective education and training programs; To link other worker safety and public health data base; and To determine which facilities might pose "Year 2000" risks.

Just as we believe strongly that our members, their families, and the communities they reside in will be made safer by these full disclosures, we do not believe that they are being placed in danger of sabotage or terrorism.

In earlier discussions with EPA, the industry and everyone else agreed that a "professional terrorist" would not be deterred by keeping this information off the Internet. (For earlier discussion, see www.epagov/swcrccpp/pubs/rmprpt.html—look under Section 2.B. "Location of RMP. Info [Internet Issues]).

Risk Management Plans do not include any information about how to sabotage an industrial facility, no technical data about how to cause a "worst case" event, no tank locations, no plant security information, and no classified information. Anyone can get readily available information regarding the largest and most dangerous facilities that store chemicals, without using the Internet. Also, keeping worst-case scenarios off the Internet offers no real protection to communities. Communities can only be protected when companies use safer chemicals, reduce dangerous storage, widen buffer zones and provide full information.

Chemical accidents have no respect for geographic boundaries. We must have the freedom to communicate concerning chemical hazards, if we are to have real hazard education. Only with full information disclosure and opportunities to act can facilities, employees, and communities reduce chemical hazards.

In conclusion, I would like to reiterate the following points:

Industry should and must produce a serious quantifiable plan and timeline to reduce hazards; and

Full disclosure of RMPs is the key tool needed to access the impact of hazard reduction programs and activities.

Thank you for allowing me the opportunity to speak on behalf of PACE to explain our position to you today on this important issue.

STATEMENT OF THOMAS NATAN, RESEARCH DIRECTOR, NATIONAL ENVIRONMENTAL TRUST

Mr. Chairman and members of the committee, my name is Thomas Natan, and I am the Research Director of the National Environmental Trust, a non-partisan, non-profit public interest organization that educates the public on environmental is-

sues. I thank you for the opportunity to testify as a member of the environmental community concerning the EPA's Risk Management Plan Program under section 112(r) of the Clean Air Act. I am a chemical engineer by training, and have visited scores of industrial facilities, examining ways in which they can operate more efficiently and safely, as well as helping to interpret their environmental data for residents of surroundings convexities.

As the committee is aware, in 1986, Congress enacted the Emergency Planning and Community Right-to-Know Act. A principal feature of this legislation was the Toxics Release Inventory Program, or TRI. TRI has been credited by both environmentalists and industry alike for generating a climate that has resulted in dramatic decreases in toxic chemical emissions without the traditional constraints and costs of a command-and-control regulatory framework. A principal result of the public right-to-know program has been an incentive for enhanced environmental stewardship without the burdens of the command-and-control regulatory system.

The experience with complete and unimpeded public dissemination of TRI data in generating significant reductions in releases of toxic chemicals to the environment is relevant to the issue of public availability of Worst Case Scenario data. Like the 112(r) program, TRI merely requires reporting of information that companies already generate in the course of doing business. Public awareness—generated from both local citizens and data analyses by environmental groups—has led to a reduction in toxic chemical releases of 50 percent over the last 10 years, No further regulation was necessary to bring about these reductions. The enduring lesson of public access to information regarding toxic chemical risks f.acing communities is that real risk reduction can occur without the imposition of new and significant costs to our manufacturing sector. Another extremely import lesson that we can glean from the TRI processes that public access to toxic chemical release information alone can generate enormous risk reduction benefits. Also, for many workers at industrial facilities, TRI is their first opportunity to learn about chemicals used on the job—another unexpected benefit of complete access to information. All of these benefits can be enhanced further through public access to 112(r) data.

As the committee is aware, the intelligence community has raised concerns about the availability of Worst case scenario 112(r) data on the Internet. Even in the absence of Internet access to data, there are many ways in which the EPA, the intelligence community, and the chemical industry must work, both separately and together, to reduce hazards and potential risks to the American public from use of toxic chemicals at industrial facilities.

While a "read-only" CD-ROM has been proposed by EPA so a means of dissemination, the complete 112(r) data, there have not yet been enough details to determine if the CD-ROM will meet the need of a diverse public. To name just a few, this "public" includes citizens who vent to compare their local facility to others across the county in same industry workers at the facilities, for whom Worst Case Scenario data may be the best vehicle to learn about risks and hazards on the job; emergency responders, who will want to know if a particular plant meets the industry standard for safety; educators, who will want to teach students about best practices; and investors, who want to track the performance of all the facilities of a particular company.

Whether or not the Worse Case Scenario data are available on the Internet, EPA should establish specific public access services and mechanisms including;

- instituting a multilingual public "800" hot-line;
- dedicating liaisons to conduct data analyses, rank hazards, and respond to questions;
- distributing complete 112(r) information through public libraries;
- providing service for information on specific facilities, using maps and mapping tools to clearly communication hazards;
- notifying communities of changes in potential risks from local facilities as shown by changes in 112(r) data or permit information; and
- providing links to other data collected by the Agency that will provide a context to evaluate the use of particular use of particular chemicals at individual facilities.

EPA also needs to take an active role in providing comparative analyses of data from facilities within particular injuries, to determine "best in class" practices as they currently exist. Similarly, EPA should provide analyses of uses of specific chemical across industries for some of the most hazardous substances. From the time the Agency receives the first 112(r) data, it should be creating guidance documents for locally impacted citizens and the general public on what the date mean

and do not mean, as well as lists and explanations of supporting documentation that facilities should have on hand. As more years of data become available, the Agency can also publicize success stories of facilities that have significantly reduced their vulnerability zones.

To my knowledge, the review of Worst Case Scenario data by the FBI is the first time the FBI has reviewed chemical accident data reported by industrial facilities to determine the potential threat that onsite use of toxic chemicals pose to local communities.

This is true despite the fact that more than 10 years of chemical accident data have already been widely available. In my opinion, the most significant finding made by the FBI during its review of Worst Case Scenario data was that use of toxic chemicals at facilities poses an inherent risk to workers, neighboring properties, and surrounding communities. The FBI additionally found that making the public aware of chemical use risks over the Internet would amplify this inherent, pre-existing risk. In light of these findings, it is important to emphasize that the risks emanate from the toxic chemical use at facilities, not public awareness of those risks.

As I stated earlier, one of the benefits of public access of information about chemical use has been risk reduction. However, despite increasing public awareness and reducing risks, accidents still occur. Perhaps an example will help illustrate this point. Workers and neighbors of the Tosco refinery in Lehigh County, Pennsylvania experienced 13 serious chemical use accidents in the past 10 years. The frequency of accidents at the Tosco refinery demonstrates that it is chemical use that poses the risk, not public awareness of the risk. The interest of the environmental community is risk reduction. We believe that FBI can play a tremendous role in furthering society's goal of risk reduction. A comprehensive review by the FBI of security measures at facilitates using or producing large volumes of toxic chemicals would be a good start to reducing risks to citizens.

Further reviews could include risks generated by transporting chemicals to and from such facilities. The chemical industry has begun presenting Worst Case Scenario data for individual facilities to local citizens in Louisiana and Texas. Companies should go further and produce reports on their Worst Case Scenario data for all the facilities they own, enabling the public to see that they operate uniformly with regard to risk minimization. These reports should also publicize plans and goals for risk reduction, if they exist. The Chemical Manufacturer's Association's "Responsible Care" initiative is an example of ongoing efforts that could be augmented to explicitly address risk reduction in the context of Worst Case Scenario data. Finally, the chemical industry, the EPA, and the intelligence community should collaborate on a voluntary initiative to reduce risks with reasonable targets and dates. Although reducing hazards by using less toxic chemicals would be the most desirable way to accomplish risk reduction, a voluntary initiative could explore other common-sense risk reduction measures as well. Where reduction in use is impractical, such common-sense measures could include safer transportation, storage and handling of toxic chemicals. The Worst Case Scenario data provide an ideal vehicle for measuring progress for risk reduction efforts. It is important to emphasize that all of the stakeholders in this process have one common interest: risk reduction.

Whether you are the owner of a chemical plant, a worker, a neighbor, or a host community, everyone wants fewer accidents. I firmly believe that accident reduction and prevention was Congress' true intent in passing 112(r). Public access to 112(r) data will greatly enhance the likelihood that fewer accidents will occur. The question before the committee today is how we can attain risk reduction while also providing public access to this important information. As I stated previously, EPA, the intelligence community, and the chemical industry all have vital roles to play in informing the public about risks and reducing those risks. Denying, or severely limiting, public access to the Worst Case Scenario 112(r) data does not relieve EPA, the intelligence community, or the chemical industry of their shared obligation to reduce risks.

Thank you again for the opportunity to address this committee. I would be happy to answer any questions the committee may have.

STATEMENT OF BEN LAGANGA, UNION COUNTY, NJ EMERGENCY MANAGEMENT COORDINATOR

Good morning and thank you for this distinguished opportunity. My name is Ben Laganga and I am the Emergency Management Coordinator for Union County, New Jersey.

Union County is an important county in New Jersey; it is a highly industrialized 102 square miles with a population of approximately 494,000. Within the county borders lies Newark International Airport, the New Jersey Turnpike and the Garden State Parkway, as well as several other? highly traveled thorofares. We are also home to several petrochemical and pharmaceutical facilities who are required to file risk management plans in 1999.

As a representative of the county and chairman of the Local Emergency Planning Committee (LEPC), I am pleased that you are hearing testimony on this highly controversial issue today.

From the onset of this rule's development, it has been my belief that the availability of worst case and more likely case scenario information on the Internet could lead to an increase in terroristic acts in our State and throughout the country.

In New Jersey today, through Right To Know and the NJ Toxic Catastrophe Prevention Act, all companies that use hazardous materials on their site, must provide that information to their LEPC and the New Jersey Department of Environmental Protection.

The information is available to the public, however it must be requested, and is not available through the Internet. In my opinion that is a better way to monitor those individuals that are requesting the information. If the information is available on the Internet, there is no possible way to know who is accessing that information, and quite frankly, how they are using it.

There is also another side to this issue, the misunderstanding and the misinterpretation of this information. Without proper explanation, the general public could misinterpret the information they are accessing and it could cause undue alarm amongst thie public at large.

In Union County, we don't want to see companies go out of business, however we do want to maintain the lines of communication between these facilities and our emergency response team.

I hope you recognize that the use of this information is valuable to the emergency responders, however if it is put in the wrong hands, it could cause more harm that good.

I know the regulatory intent for the development of Risk Management Plans was to put valuable information into the hands of the public—not to jeopardize public safety by placing this information in an accessible format where it can be used by those looking to cause harm. However, I am concerned that is exactly where this valuable information will end up.

Thank you again for this opportunity, and I would be happy to answer any questions you may have.

NATIONAL MARINE MANUFACTURERS ASSOCIATION,
Washington, DC, March 4, 1999.

The HONORABLE JAMES INHOFE, *Chairman,*
Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety,
United States Senate,
Washington, DC 20510.

DEAR CHAIRMAN INHOFE: On behalf of the National Marine Manufacturers Association (NMMA), I would like to register the marine industry's opposition to the EPA's Risk Management Program Rules as it pertains to the regulation of propane gas. NMMA is the national trade association representing more than 1400 manufacturers of recreational boats, marine engines, boat trailers, and associated equipment in a $17 billion per annum industry. Our members manufacture over 80 percent of these products in the United States. I respectfully request that you enter this letter into the record for the March 16, 1999, hearing on the EPA Risk Management Program.

EPA's Risk Management Program (RMP) is authorized under section 112(r) of the Clean Air Act Amendments of 1990. While Congress intended to reduce the risk associated with the accidental release of toxic chemicals, the EPA chose to expand the program to include flammables such as propane, a non-toxic Mel. The RMP rules require propane consumers with more than 2,381 gallons storage to complete costly risk-management plans with EPA, including approximately 10 percent of our members. The minimal risk of holding this quantity of Mel is far exceeded by the complicated and expensive compliance scheme. The businesses that use propane to heat their plants are small in size and lack both the economic and staff resources to comply with this onerous regulation.

NMMA applauds the leadership you have shown by hosting a hearing on this important issue. The recreational marine industry strongly urges Congress to preserve the original intent of the RMP rules and overturn this regulation.

Sincerely,

BETSY L. OILMAN, DIRECTOR, FEDERAL GOVERNMENT RELATIONS,
National Marine Manufacturers Association.

NATIONAL RESTAURANT ASSOCIATION,
Washington, DC, March 15, 1999.

The HONORABLE JIM INHOFE, *Chairman,*
5Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety,
Senate Environment and Public Works Committee
Washington, DC 20510.

DEAR MR. CHAIRMAN: On behalf of the National Restaurant Association and the 810,000 restaurants nationwide, we are concerned about the EPA's risk management regulations that include propane gas. This clean burning gas is used for cooking and heating by a number of restaurants in outlying areas that are not served by community gas lines.

Implementation of these rules would mean that these restaurant operations would be faced with making a choice of abandoning a safe and useful onsite Mel source, and switching to electricity, with the concomitant costs of replacing equipment and upgrading electrical service, or hiring a consultant to prepare exhaustive studies, prepare a detailed hazard review, operating procedures, compliance audits, and employee training procedures. At a projected cost of unknown thousands of dollars to change to an alternate energy source versus a minimum $1,000 per affected site to comply with the regulatory requirements, the impact will be significant.

Operators of some affected restaurants, whether single unit owner facilities or members of a multi-unit operation, may find that these unexpected additional costs force the decision to delay or abandon plans for enlargement or expansion of the business, or in the worst chase, to cease operation. This would cause economic stress in localities often dependent upon the local restaurant for employment.

The storage of propane gas is already well-regulated, based on National Fire Protection Association (NFPA) standard 58, in all 50 States. In addition, it is also subject to the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), OSHA workplace rules and DOT hazardous materials regulations.

Given the intent of these rules in protecting against the release of harmful chemicals, and given the safety of propane and its record as a useful and economical fuel in the restaurant industry, we ask that NFPA 58 be adopted as a compliance alternative to EPA's rules.

We appreciate the opportunity to share our views. Please feel free to contact me at (202) 331–5911 if you have any questions or need additional information.

Sincerely,

CHRISTINA M. HOWARD, *Senior Legislative Representative.*

July 24, 1998

The Honorable Kit Bond, Chairman
Subcommittee on Veterans Affairs, HUD, and Independent Agenies
S-127 Dirksen Office Building
Washington, D. C. 20510-6032

Dear Sen. Bond:

On behalf of the 225,000 members of the International Association of Fire Fighters, I am contacting you regarding an important domestic safety issue raised by the Committee Report (H Rept 105-610) accompanying HR 4194, the Veterans Affairs, HUD, and Independent Agencies Appropriations Bill for FY99.

The U.S. Environmental Protection Agency has promulgated a rule implementing Section 112(r) of the Clean Air Act requiring covered facilities to make available to the public a hazard assessment that includes an "offsite consequence analysis" (OCA) describing the potential impacts a worst case accidental release could have on the public and the environment surrounding the covered facility. Despite repeated concerns from national security experts, the intelligence community, and law enforcement, USEPA has chosen to disseminate the OCA data to the public via publication on the Internet. Recognizing that Internet publication of this material poses grave national security and safety problems, the Committee Report accompanying HR 4194 requires USEPA to bring ongoing negotiations on this issue to a resolution by the end of this year and to provide the Committee with monthly updates on its efforts to do so.

The IAFF, while supportive of the public's right-to-know about safety concerns within a given community, shares the misgivings expressed by law enforcement and national security representatives over the Internet publication of this OCA data. Specifically, the IAFF believes that the widespread dissemination of this data via the Internet would provide a virtual "road map" to terrorists intent on creating havoc within the communities we safeguard. It is particularly ironic to have such a scenario unfolding when Congress is directing much needed additional resources to emergency responders, like the IAFF, so that we are adequately trained

and equipped to handle the effects of terrorist activities. It is illogical to provide funding for combating terrorism on the one hand (S 2260, the Commerce, Justice, State, Judiciary, and Related Agencies Appropriations Bill for FY99) while making it easier for those same terrorism activities to occur on the other.

While the language found in H Rept 105-610 is helpful in remedying this inconsistent approach, we believe that a stronger indication of Congressional concern on this important issue is called for. To that end, the IAFF urges you to visit this subject during the upcoming conference on HR 4194 and S 2168 with the objective being a delay in further implementation of the regulation until the Internet publication issue is resolved in a manner that protects against potential acts of domestic terrorism.

Sincerely,

Frederick H. Nesbitt
Director, Governmental Affairs

NFPA's COMMENTS ON EPA'S RISK MANAGEMENT RULE (National Fire Protection Association)

EPA's rule requires that facilities using or storing more than 10,000 pounds of propane would have to submit Risk Management Plans (RMPs) requiring facilities to determine the impacts of a release of all of the propane at the site. Historical data on fires at propane bulk storage plants indicates that the total release basis for EPA's requirement is an unrealistic scenario that will predict potential impacts far greater than a worst case release. Propane is stored in ASME pressure vessels that require third party certification and data show that these vessels do not fail with total release of material. Total combined losses in 1997 from all propane facilities that would likely have to submit RMPs was $500,000 dollars. This includes all structure and building fires, as well as vehicle and outdoor fires, (including explosions) at propane bulk storage plants.

Both the existing RMP and any additional rule therefore do not appear necessary based on the following:

- This RMP appears to be a "reporting" procedure that does not require or encourage controls for preventing accidental releases of Propane.

- NFPA has developed a national consensus safety code, namely the *"Liquefied Petroleum Gas Code"* (NFPA 58) for the safe handling and storage of propane that is adopted in 49 states (with the 50th actively considering adoption). The first edition of this Code was published over 65 years ago and the Code has evolved with the expanded use of propane to reflect current technology for the safe storage and handling of propane. Industry, code enforcers, and the fire service have all supported the level of safety prescribed by the NFPA Consensus Code.

- Current Federal government policy (OMB A-119 and P.L. 104-113) requires that regulatory agencies use existing national consensus codes or standards, rather than develop new regulations. NFPA's Liquefied Petroleum Gas Code (NFPA 58) addresses propane safety and obviates both the need for EPA to develop release control regulations for propane and/or accidental release analysis regulations for propane. NFPA's standard is referenced by OSHA and DOT.

- EPA has no experience with developing standards for safe handling and storage of propane and therefore would not be in a position to develop standards based on the accidental release analyses. Additionally, any standards based on total release would be unnecessarily burdensome, based on the accident data. The data also clearly shows that the mechanism of propane fires following tank failure is such that the propane does not detonate and does not create blast overpressure.

- NFPA recommends that facilities required to submit RMP's solely based on propane storage be exempted from submitting RMPs if they meet the requirements of NFPA 58, *Liquefied Petroleum Gas Code*.

NFPA is also concerned over a tangential but very significant matter, namely, the RMP's submitted by regulated sources would be posted on the Internet by EPA and could therefore pose a severe security problem. Individuals with criminal intentions could access this information and use it for terrorist activities.

WILLIAMSON COUNTY
EMERGENCY MANAGEMENT AGENCY
1320 WEST MAIN, SUITE B-30
FRANKLIN, TENNESSEE 37064-3700

September 14, 1998

The Honorable Fred D. Thompson
United States Senate
523 Dirksen Senate Office Building
Washington DC 20510-4203

Dear Senator Thompson:

I am writing you out of concern for a recent rulemaking by the Environmental Protection Agency that may create more safety risks than it prevents. At issue is the EPA's recent rule requiring facilities using hazardous substances to submit a detailed Risk Management Plan to the EPA that will be made public via the Internet. The substances that must comply include propane gas which is used throughout Williamson County by homeowners, farmers and businesses alike.

This flammable substance is already covered under a myriad of regulations including the National Fire Protection Association's LP-Gas Code and the Federal Community Right-to-Know rules. We work with industries and organizations covered by these rules to develop training for emergency response personnel and specialized response plans to respond to the unique characteristics of covered substances to ensure the public's safety. Responder training, education and funding can improve safety, adding redundant layers of requirements and paperwork on covered industries and those who ultimately enforce and respond will not improve safety.

An alert, educated public can be an emergency responders best ally, However, worst case scenarios posted to the public at large can be easily misconstrued and taken out of context. Please do all that you can to support legislation that allows compliance with existing rules and safety codes as an alternative to this redundant regulation.

Sincerely,

Mike Thompson
Director

STATE OF CALIFORNIA PETE WILSON, GOVERNOR

Division of Occupational Safety and Health
Pressure Vessel Unit
30 Van Ness Ave. #3002
San Francisco, California 94102
(415) 557-1009
Fax (415) 557-2523

Date: 12 November, 1998

Senator Barbara Boxer
U.S. Senate
Washington, D.C. 20510

Dear Senator Boxer:

It has come to my attention as Chief Pressure Vessel Inspector of The State of California that the Federal Environmental Protection Agency is implementing Section 112 (r) of the Clean Air Act. It is my understanding that this section will require facilities using hazardous substances (in this case propane storage over 2358 gallons) to submit a detailed risk management plan to the EPA that will be made public via the Internet. It is also my understanding that this plan requires worst case release scenarios to be covered.

I am totally opposed to enforcing this requirement regarding propane even though it is a hazardous substance for the following reasons:

1. Propane is safest when sitting idle in storage and one of my main duties is to be sure of this safe storage by field inspections, every three years, of each storage and delivery tank over 125 gallons. The National Fire Protection Association Pamphlet 58 is used as the basis for this inspection. This Pamphlet has been the National Consensus for safe storage of Propane since 1932. The record shows that these inspections work!
2. The Environmental Protection Agency will, because of the burden of this requirement, drive consumers back to using other sources of energy that are much more of an environmental hazard than clean burning propane.
3. The Environmental Protection Agency will significantly increase its workload with the monitoring these plans which will increase the Agency budget or reduce the Agency's Effectiveness. (Keeping track of inspections is a large part of my agency's workload)
4. It has been pointed out to me that posting this information on the Internet may lead to an enormous terrorist potential.
5. Finally, what is the gain? Hopefully you have asked yourself this question before requiring this burden on the propane industry.. The public's right to know is a sacred right: but what will the gain be from this activity? Knowledge of such catastrophic situations that have such an infinitesimal likelihood of occurring due to current regulations-- what is the point except to panic the general public? With the above in mind I am hopeful that you can support legislation that allows compliance with the public's right to know yet allow the existing rules and safety codes to be used as an alternative to this regulation.

Sincerely,

cc: Western Propane Gas Association.
File

Dear Senator Baucus,

My Name is DAVE Colyer. I am the Fire Chief for the Plains-Paradise Rural Fire District ~~Department~~ located in Plains Montana. I am writing to request your help on an EPA issue that was brought to my attention by a employee of a local Propane company in my District. This issue involves a regulation being placed on the propane industry by the U. S. Environmental Agency (EPA).

I have read that under the Environmental Protection Agency's rules implementing Section 112(r) of the Clean Air Act Amendments of 1990, propane marketers and their customers with inventory capacities greater than 10,000 pounds (2,381 gallons) of propane must prepare and submit by next June detailed facility information including a conjectural worst-case scenario to the EPA and the public, which will be placed in the Internet.

I am extremely concerned that publishing worst-case scenarios and other facility information on the Internet, where any "extremest groups, wacko's " can access it, is extremely dangerous to the propane employee's and to the public. It seems to me that giving potential criminals knowledge about how much damage they could cause would pose significantly greater risks to my community than the risk of an accident spontaneously occuring.

I know the propane industry already operates under strict regulations at the federal, state and local levels. For example, all 50 states have adopted in some form, either directly or indirectly, safety standard #58 published by the National Fire Protection Association. OSHA regulates the propane companys in my community workplaces, and they also submit facility data to EPA and state/local emergency response agencies under federal community right-to-know rules. Our propane industry has an extremely good safety record and the new regulation will not increase it any more.

Our propane company's in my community is not looking to escape regulations that truly enhance the safety of propane installations. However, Existing federal, state, and local regulations governing the industry, incliding NFPA (National Fire Protection Association) codes 58 and 54, ANSI/ASME Standards, SARA Community Right-to-Know Tier I and II Reporting, OSHA Workplace Rules, State Fire Marshal and local fire codes already in place provide a comprehensive set of standards and regulations for public protection.

The State of Montana has adopted NFPA 58 as the overriding authority governing the safe transportation, storage and use of their principal product. .propane. I urge you to support any legislation which says that companies in compliance with National Fire Protection Association Standard 58 are by definition, in compliance with EPA risk management program regulations.

Thank you for your consideration on this important issue.

Sincerely,

Senator Max Baucus
United States Senate
Washington, D. C. 20510

Dear Senator Baucus,

My name is Tom Gingerich. I am the Fire Chief for the Finley Point/Yellow Bay Volunteer Fire Department located just outside Polson, Montana. I am writing to request your help on an EPA issue that was brought to my attention by a employee of a local Propane company in my District. This issue involves a regulation being placed on the propane industry by the U. S. Environmental Agency (EPA).

I have read that under the Environmental Protection Agency's rules implementing Section 112(r) of the Clean Air Act Amendments of 1990, propane marketers and their customers with inventory capacities greater than 10,000 pounds (2,381 gallons) of propane must prepare and submit by next June detailed facility information including a conjectural worst-case scenario to the EPA and the public, which will be placed in the Internet.

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Thank you for your consideration on this important issue.

Dear Representative Hill,

My Name is Mike Tucker. I am the Fire Chief for the Polson Rural and Volunteer Fire Department located in Polson, Montana. I am writing to request your help on an EPA issue that was brought to my attention by a employee of a local Propane company in my district. This issue involves a regulation being placed on the propane industry by the U. S. Environmental Agency (EPA).

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