young man who saved records to help their cause is now being made a victim. It is unfortunate that the chairman of UBS, Robert Studer, has even made remarks questioning the motivation of Christophe for preventing the destruction of these records.

Moreover, while Christophe and his family have been persecuted for his noble deed, it is a disgrace that the bank's archivist who ordered the shredding at UBS, Erwin Haggenmuller, still has his job. I wrote to Peter Cosandey, the district attorney of Zurich who is investigating this case, and I asked him to end his harassment of Christophe. I also asked him why he is not investigating Erwin Hagenmuller for his role in ordering the shredding of the files.

Christophe has been unemployed since January and this hardship is taking its toll on this brave young man and his family. Thankfully, Edgar Bronfman has come to the rescue once again by offering Christophe a job. I am sure that this is a comfort to Christophe and his family.

Christophe Meili's story is one of a man dedicated to seeing that justice is achieved, yet persecuted because he tried to ensure it. His treatment by the security firm that employed him and the bank that wants him prosecuted, is unjust and unfair.

This is a tragedy. Because he did his job, Christophe Meili was fired. Because he showed courage and integrity, Christophe Meili was fired. And now, they are threatening him with prosecution. The people deserve better.

Mr. President, I urge my colleagues to join me in granting this hero, this righteous man, the sanctuary that he has requested and that he and his family deserve.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 768

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress makes the following findings:

(1) The actions of Swiss banks and their relations with Nazi Germany before and during World War II and the banks' actions after the war concerning former Nazi loot and heirless assets placed in the banks before the war have been the subject of an extensive and ongoing inquiry by the Committee on Banking, Housing, and Urban Affairs of the Senate and a study by a United States interagency group.

(2) On January 8, 1997, Michel Christopher Meili, while performing his duties as a security guard at the Union Bank of Switzerland in Zurich, Switzerland, discovered that bank employees were shredding important Holocaust-era documents.

(3) Mr. Meili was able to save some of the documents from destruction and then turned them over to the Jewish community in Zurich and to the Swiss police.

(4) Following Mr. Meili's disclosure of the destruction of the Holocaust-era documents, Mr. Meili was suspended and then terminated from his job. He was also interrogated by the local Swiss authorities who tried to intimidate him by threatening prosecution for his heroic actions.

(5) Since this disclosure, Mr. Meili and his family have been threatened and harassed, and have received many death threats. Mr. Meili also received a hand-delivered note threatening the kidnapping of his children in return for the ''Jewish money'' he would receive for his actions, and urging him to emigrate to the United States or be killed.

(6) Because of his courageous actions, Mr. Meili and his family have suffered economic hardship, mental anguish, and have been forced to live in fear for their lives.

SEC. 2. PERMANENT RESIDENCE.

Notwithstanding any other provision of law, for purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Michel Christopher Meili, Giuseppina Meili, Mirjam Naomi Meili, and Davide Meili shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fees.

SEC. 3. REDUCTION OF NUMBER OF AVAILABLE VISAS.

Upon the granting of permanent residence to Michel Christopher Meili, Giuseppina Meili, Mirjam Naomi Meili, and Davide Meili as provided in this Act, the Secretary of State shall instruct the proper officer to reduce by the appropriate number during the current fiscal year the total number of immigrant visas available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)).

By Mr. LAUTENBERG (for himself, Mr. TORRICELLI, Mr. KERRY, Mrs. BOXER, Mr. GRAHAM, Mr. WELLSTONE, Mr. DEWINE, and Mr. KENNEDY):

S. 769. A bill to amend the provisions of the Emergency Planning and Community Right-To-Know Act of 1986 to expand the public's right to know about toxic chemical use and release, to promote pollution prevention, and for other purposes; to the Committee on Environment and Public Works.

THE RIGHT-TO-KNOW MORE AND POLLUTION PREVENTION ACT OF 1997

Mr. LAUTENBERG. Mr. President, today the Environmental Protection Agency is making public its annual inventory of toxic chemical releases. This information is made available to the public under the Emergency Planning and Community Right-to-Know Act which I authored in 1986.

EPA announced today a 45.6 percent decrease nationwide in the release of toxic chemicals since 1988, when these data were first collected. In my State of New Jersey, which has a large chemical industry, releases were reduced by a stunning 70 percent.

Mr. President, the right-to-know law has been an enormous success. Shedding the light of day on toxic pollution has encouraged industries to find ways to reduce the threat of these cancer causing materials to our communities. We should build on that success.

Today I am introducing with Senators TORRICELLI, BOXER, KERRY, GRAHAM, KENNEDY and WELLSTONE the Right-to-Know More and Pollution Prevention Act of 1997, which will significantly expand the public's right-to-know about toxic chemicals in their homes, workplaces, and communities.

The landmark 1986 Right-to-Know Act requires companies to list the amount of certain chemicals that leave their facilities as pollution and enter our air, water, or soil. It has often been cited as one of the most effective environmental laws on the books. By shining a public spotlight on pollution, the public is better informed, and many companies have taken voluntary steps to reduce pollution.

In fact, without using traditional ''command and control requirements,'' the publication of right-to-know data has led companies to voluntarily reduce their releases of toxic chemicals by almost 46 percent, or 1.6 billion pounds, between 1988 and 1994.

The bill I am introducing today significantly expands the community right-to-know reporting requirements by tracking toxic materials as they move through a facility—to tell us what comes in, what is transformed into product or waste, and what leaves a facility as pollution. This tracking system, known as chemical use or materials accounting, can further decrease the use of toxic chemicals and their release into the environment.

When my own State of New Jersey began collecting information on toxic chemicals used by industries, in addition to recording toxic chemical releases, the results were dramatic. Whereas the national decrease in toxic emissions reported is 45.6 percent since 1988, in New Jersey it has been 70 percent. The discrepancy between New Jersey and the rest of the country, I believe, is due to the State requirement for materials accounting.

The reason that materials accounting data is so valuable is that it provides information to industry and incentives to prevent pollution. With this data, industrial facilities have the information necessary to develop pollution prevention plans.

Pollution prevention is the highest priority in managing waste, and falls at the top of the ladder of steps industry can take to reduce pollution—starting with prevention, then recycling, and then treatment, with disposal or release into the environment the least desirable last step. This so-called hierarchy of waste management has been endorsed by the Environmental Protection Agency as well as many Fortune 500 companies and the armed services.

Materials accounting makes pollution prevention planning possible. You can't reduce toxic use if you don't know the quantity of toxics used and how they're used. That's why materials accounting data is so important. The bill requires companies which collect materials accounting data to prepare pollution prevention plans to decrease their use of toxics to protect those who might be exposed to them and can help companies improve their bottom line.

It represents a strong marriage between environmental concerns and economic efficiency.

A recent New Jersey study found that for every dollar spent on additional reporting, companies actually saved between five and eight dollars in reduced costs. By reducing waste, companies reduce their cost of doing business.

Mr. President, materials accounting provides a framework for identifying opportunities to reduce pollution at the source through changes in production, operation and raw materials use. A random survey of 42 New Jersey facilities showed that 62 percent of the companies questioned anticipated that pollution prevention initiatives, based on information gleaned from materials accounting data, could save them money. Business wins, the public wins, and the public health and environment wins.

Mr. President, my bill directs the EPA to expand right-to-know reporting to include information on toxic chemicals being transported through communities and used by industries in their products and workplaces.

It would fill reporting gaps in the existing law by requiring all companies that have more than the stipulated threshold amounts to file reports, regardless of the industrial classification in which they fall. EPA could exempt categories of industry groups if the benefits and paperwork requirements are disproportionate to any benefit.

Finally, the bill requires businesses to prepare pollution prevention plans based on the materials accounting data they collect.

Mr. President, EPA has proposed requiring materials accounting data under existing authorities of the Emergency Planning and Community Right-To-Know Law [EPCRA] and other statutes.

I believe the law gives them that authority. However, some industry groups have challenged literally every action by the office that implements the Right-to-Know Law. To avoid continuing court fights and avoid needless delays, this law would clarify congressional intent.

Mr. President, this bill will help ensure a healthier environment for all of us, and can save industry money, making our economy and chemical industry more cost competitive. It makes good environmental sense and good business sense. And it's legislation that the public wants. I hope we will move to enact it in this Congress.

Mr. President, I ask unanimous consent that the text of the bill be inserted in the RECORD, along with letters from EPA Administrator Browner and USPIRG and the Environmental Information Center supporting the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 769

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Right-To-Know-More and Pollution Prevention Act of 1997''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PUBLIC RIGHT TO KNOW ABOUT TOXIC CHEMICAL USE

Sec. 101. Reporting requirements.
Sec. 102. Disclosure of toxic chemical use.
Sec. 103. Environmental reporting and public access to information.
Sec. 104. Trade secret protection.
Sec. 105. Civil actions.

TITLE II—COMMUNITY RIGHT TO KNOW AND POLLUTION PREVENTION PLANNING

Sec. 201. Toxic chemical release forms.
Sec. 202. Pollution prevention planning.
Sec. 203. Information gathering and access.
Sec. 204. Public availability.
Sec. 205. Federal facilities.
Sec. 206. Enforcement.

TITLE I—PUBLIC RIGHT TO KNOW ABOUT TOXIC CHEMICAL USE

SEC. 101. REPORTING REQUIREMENTS.

(a) THRESHOLDS FOR TOXIC CHEMICALS WITH CERTAIN SIGNIFICANT RISKS.—Section 313(f) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023(f)) is amended—

(1) in paragraph (1), by adding at the end the following:

''(C) With respect to each of the toxic chemicals described in paragraph (3) that are released from a facility, the amount of the threshold for the toxic chemical under that paragraph.''; and

(2) by adding at the end the following:

''(3) THRESHOLDS FOR TOXIC CHEMICALS WITH CERTAIN SIGNIFICANT RISKS.—

''(A) ESTABLISHMENT OF THRESHOLDS.—Not later than 2 years after the date of enactment of this paragraph, the Administrator shall establish a threshold for each toxic chemical that the Administrator determines may present a significant risk to children's health or the environment because of—

''(i) the tendency of the toxic chemical to persist or to bioaccumulate or disrupt endocrine systems; or

''(ii) other characteristics of the toxic chemical.

''(B) CHEMICALS TO BE INCLUDED.—Among the toxic chemicals for which the Administrator shall establish thresholds under subparagraph (A) shall be lead, mercury, dioxin, cadmium, chromium, and the substances listed as bioaccumulative chemicals of concern in the notice published by the Administrator at 60 Fed. Reg. 15393.''.

(b) ADDITIONAL CHEMICALS.—Section 313(c) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023(c)) is amended—

(1) by striking ''are those'' and inserting the following: ''are—

''(1) the'';

(2) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(2) dioxin and substances listed as bioaccumulative chemicals of concern in the notice published by the Administrator at 60 Federal Register 15393.''.

(c) RELEASES.—Subsections (a) and (b)(1) of section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023) are amended by striking ''or otherwise used'' and inserting ''otherwise used, or released''.

(d) CIVIL ACTIONS.—Section 326(a)(1)(B) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11046(a)(1)(B)) is amended—

(1) by redesignating clauses (iii) through (vi) as clauses (iv) through (vii), respectively, and

(2) by inserting after clause (ii) the following:

''(iii) Establish a reporting threshold for a toxic chemical described in section 313(f)(3).''.

(e) REVISED THRESHOLDS.—Section 313(f)(2) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023(f)(2)) is amended in the first sentence by striking ''paragraph (1)'' and inserting ''subparagraph (A) or (B) of paragraph (1)''.

SEC. 102. DISCLOSURE OF TOXIC CHEMICAL USE.

(a) TOXIC CHEMICAL RELEASE FORM.—

(1) IN GENERAL.—Section 313(g) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023(g)) is amended—

(A) in paragraph (1)(C)—

(i) by inserting ''for the preceding calendar year'' after ''items of information'';

(ii) in clause (i) by striking ''is'' and inserting ''was'';

(iii) in clause (ii) by striking ''preceding'';

(iv) in clause (iv) by striking ''annual quantity of the toxic chemical entering'' and inserting ''quantity of the toxic chemical that entered''; and

(v) by adding at the end the following:

''(v) The number of employees (including contractors) at the reporting facility, the number of employees (including contractors) at the reporting facility who were potentially exposed to the toxic chemical;

''(vi) The following materials accounting information:

''(I) A description of the uses of the toxic chemical at the facility.

''(II) The starting (as of January 1) inventory of the toxic chemical at the facility.

''(III) The quantity of the toxic chemical produced at the facility.

''(IV) The quantity of the toxic chemical that was transported to the facility and the mode of transportation used.

''(V) The quantity of the toxic chemical consumed at the facility.

''(VI) The quantity of the toxic chemical that was shipped out of the facility as a product or in a product and the quantities intended for industrial use, commercial use, consumer use, and any additional categories of use that the Administrator may designate by regulation.

''(VII) The quantity of the toxic chemical that entered any waste stream (or that was otherwise released into the environment) prior to recycling, treatment, or disposal (as required to be reported under section 6607(b)(1) of the Pollution Prevention Act of 1990 (42 U.S.C. 13107(b)(1))).

''(VIII) The amount of toxic chemical at the facility as of December 31.

''(IX) The amount of the toxic chemical recycled at the facility that was used during the calendar year at the facility.

''(X) The toxic chemical use of the chemical that is calculated by adding the quantities reported under subclauses (II), (III), (IV), and (IX) and subtracting the quantity reported under subclause (VIII).

''(XI) If the sum of the quantities reported under subclauses (II), (III), (IV), and (IX) does not equal the sum of the quantities reported under subclauses (V), (VI), (VII), and (VIII), a statement of the cause of the discrepancy.

''(vii) The reduction (from the calendar year preceding the calendar year for which the form is submitted) in the quantity of the toxic chemical that is reported under clause (vi)(VII), as a result of the following: equipment or technology modifications; process or procedure modifications; reformulation or

redesign of products; substitution of raw materials; and improvements in housekeeping, maintenance, training, or inventory control.

''(viii) The reduction (from the calendar year preceding the calendar year for which the form is submitted) in the quantity of toxic chemical use as defined in subclause (X) as a result of the following: equipment or technology modifications; process or procedure modifications; reformulation or redesign of products; substitution of raw materials; and improvements in housekeeping, maintenance, training, or inventory control.''; and

(B) by adding at the end the following:

''(3) COMPUTATIONS.—Quantities reported under this subsection shall be complete and verifiable by computations under generally accepted principles of materials accounting.''.

(2) DEFINITION OF MATERIALS ACCOUNTING INFORMATION.—

(A) IN GENERAL.—Section 329 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11049) is amended—

(i) by redesignating paragraphs (7), (8), (9), and (10) as paragraphs (8), (9), (10), and (11), respectively; and

(ii) by inserting after paragraph (6) the following:

''(7) MATERIALS ACCOUNTING INFORMATION.—The term 'materials accounting information' means the information described in section 313(g)(1)(vi).''.

(B) CONFORMING AMENDMENT.—Section 6603(4) of the Pollution Prevention Act of 1990 (42 U.S.C. 13102(4)) is amended by striking ''329(8)'' and inserting ''329''.

(3) REGULATION.—Not later than 2 years after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall promulgate a regulation regarding the information to be provided under clauses (v), (vi), (vii), and (viii) of section 313(g)(1)(C) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023(g)(1)(C)), as added by paragraph (1).

(b) OTHER REQUIREMENTS.—The Administrator of the Environmental Protection Agency shall by regulation integrate the reporting requirements under the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.) and the Pollution Prevention Act of 1990 (42 U.S.C. 12101 et seq.).

SEC. 103. ENVIRONMENTAL REPORTING AND PUBLIC ACCESS TO INFORMATION.

(a) STREAMLINED DATA COLLECTION AND DISSEMINATION.—Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023) is amended by adding at the end the following:

''(m) STREAMLINED DATA COLLECTION AND DISSEMINATION.—

''(1) IN GENERAL.—To enhance public access and use of information resources, to facilitate compliance with reporting requirements, and to promote multimedia permitting, reporting, and pollution prevention, not later than 3 years after the date of enactment of this subsection, the Administrator shall—

''(A) create standard data formats for information management;

''(B) integrate information resources, using common company, facility, industry, geographic, and chemical identifiers and any other identifiers that the Administrator considers appropriate;

''(C) establish a system for indexing, locating, and obtaining agency-held information about parent companies, facilities, industries, chemicals, geographic locations, ecological indicators, and the regulatory status of toxic chemicals and entities subject to agency regulation;

''(D) consolidate all annual reporting requirements under this title and other Federal environmental laws for small businesses, including by permitting reporting to a single point of contact using a single form or electronic reporting system; and

''(E) provide the public a single point of contact for access to all the publicly available information gathered by the Administrator for any regulated entity.

''(2) CONSOLIDATION.—Not later than 5 years after the date of enactment of this subsection, the Administrator shall consolidate all annual reporting under this title and other Federal environmental laws administered by the Administrator for each entity required to report, including by permitting reporting to a single point of contact using a single form or electronic reporting system.

''(3) EASE OF COMPLIANCE.—In improving the means by which the Administrator provides information to the public and requires information be reported by regulated entities, as required by paragraphs (1) and (2), the Administrator, building on the experiences of the States, shall use technology to facilitate reporting by regulated entities and improve access to the data by the public.''.

(b) DISCLOSURE OF USES OF TOXIC CHEMICALS.—

(1) BASIC REQUIREMENT.—Section 313(a) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023(a)) is amended in the second sentence by inserting ''toxic chemical uses and'' before ''releases''.

(2) USE OF RELEASE FORM.—Section 313(h) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023(h)) is amended in the second sentence by inserting ''the uses of toxic chemicals at covered facilities and'' before ''releases of toxic chemicals to the environment''.

SEC. 104. TRADE SECRET PROTECTION.

Section 322 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11042) is amended—

(1) in subsection (a)(1) by adding the following at the end:

''(C) WITHHOLDING OF MATERIALS ACCOUNTING INFORMATION.—A person that is required to submit materials accounting information under section 313(g)(1)(C)(vi) may withhold an element or portion (as defined by a regulation promulgated by the Administrator under subsection (c)) of the information if the person complies with paragraph (2) with respect to the information to be withheld.'';

(2) in subsection (b)(4) by inserting ''or other information withheld'' after ''The chemical identity'';

(3) in subsection (d)—

(A) in paragraph (1), in the first sentence, by striking ''toxic chemical which'' and inserting ''toxic chemical or other information that'';

(B) in paragraph (2), by inserting ''or other information withheld'' after ''specific chemical identity'';

(C) in paragraph (3)—

(i) in subparagraph (A), by inserting ''or other information withheld'' after ''specific chemical identity'';

(ii) in subparagraph (B), by inserting ''or other information withheld'' after ''chemical identity''; and

(iii) in subparagraph (C), in the first sentence, by inserting ''or other information withheld'' after ''chemical identity'' each place it appears; and

(D) in paragraph (4)(A), by inserting ''or other information withheld'' after ''chemical identity'';

(4) in subsection (f), by inserting ''or other information withheld under subsection (a)(1)'' after ''specific chemical identity''; and

(5) in subsection (h)—

(A) in paragraph (1), by inserting ''or other information withheld'' before ''is claimed as a''; and

(B) in paragraph (2), by inserting ''or other information withheld'' after ''identity of a toxic chemical''.

SEC. 105. CIVIL ACTIONS.

(a) PAST AND ONGOING VIOLATIONS.—Section 326(a)(1)(A) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11046(a)(1)(A)) is amended by inserting ''any past or ongoing'' after ''An owner or operator of a facility for''.

(b) VENUE.—Section 326 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11046(b)) is amended—

(1) in subsection (b), by striking paragraph (2) and inserting the following:

''(2) ACTIONS AGAINST THE ADMINISTRATOR.—

''(A) PETITIONS IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.—

''(i) IN GENERAL.—Review of an action of the Administrator described in clause (ii) shall be sought by filing a petition for review in the United States Court of Appeals for the District of Columbia.

''(ii) ACTIONS OF THE ADMINISTRATOR.—The actions of the Administrator described in this clause are—

''(I) a final agency action in response to a petition filed under section 313(e);

''(II) a final agency action to revise a threshold under section 313(f)(2);

''(III) a final rule to modify nationally the reporting frequency under section 313(i);

''(IV) any other rulemaking of general applicability under this title; and

''(V) any other action that is based on a determination of nationwide scope or effect if, in taking the action, the Administrator publishes a finding that the action is based on such a determination.

''(B) PETITIONS FOR REVIEW IN OTHER CIRCUITS.—

''(i) IN GENERAL.—Review of an action of the Administrator described in clause (ii) shall be sought by filing a petition for review in the United States Court of Appeals for the circuit in which the geographic region to which the action relates is situated.

''(ii) ACTIONS OF THE ADMINISTRATOR.—The actions of the Administrator described in this clause are—

''(I) a final rule to modify the reporting frequency under section 313(i) for a particular geographic region; and

''(II) any other rulemaking specific to a particular geographic region.

''(C) CIVIL ACTIONS IN UNITED STATES DISTRICT COURT.—An action of the Administrator under subsection (a) other than an action described in subparagraph (A) or (B) shall be brought in the United States District Court for the District of Columbia.''; and

(2) by adding at the end the following:

''(i) TIME FOR FILING PETITION FOR REVIEW OF ACTION BY THE ADMINISTRATOR; EXCLUSIVE MEANS OF REVIEW.—

''(1) TIME FOR FILING PETITION.—A petition for review of an action of the Administrator under subparagraph (A) or (B) of subsection (b)(2) shall be filed not later than 60 days after the date on which notice of the action is published in the Federal Register.

''(2) EXCLUSIVE MEANS OF REVIEW.—An action of the Administrator with respect to which review can be or could have been obtained under subparagraph (A) or (B) of subsection (b)(2) shall not be subject to judicial review in a civil or criminal enforcement proceeding.''.

TITLE II—COMMUNITY RIGHT TO KNOW AND POLLUTION PREVENTION PLANNING

SEC. 201. TOXIC CHEMICAL RELEASE FORMS.

Section 313(b) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023(b)) is amended—

(1) by striking paragraph (2); and

(2) in paragraph (1)—

(A) by striking ''(A) The requirements'' and inserting ''The requirements'';

(B) by striking ''and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985)'';

(C) by striking subparagraph (B) and inserting the following:

''(2) DELETION OF FACILITIES.—

''(A) IN GENERAL.—The Administrator, at the instance of the Administrator or in response to a petition, may delete by rule a particular facility or category of facilities from the requirements of this section based on a determination that reporting by the owner or operator of the facility or category of facilities is inconsistent with the efficient operation of this title.

''(B) CONSIDERATIONS.—In making a determination under subparagraph (A), the Administrator may consider the toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of toxic chemicals at the facility or category of facilities, and such other factors as the Administrator considers appropriate.'';

(D) in subparagraph (C) —

(i) by striking ''(C) For purposes'' and inserting ''(3) DEFINITIONS.—For purposes'';

(ii) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B); and

(iii) in subparagraph (B) (as redesignated by clause (ii)), by redesignating subclauses (I) and (II) as clauses (i) and (ii).

SEC. 202. POLLUTION PREVENTION PLANNING.

(a) IN GENERAL.—Title III of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.) is amended—

(1) by redesignating subtitle C as subtitle D; and

(2) by inserting after subtitle B the following:

''Subtitle C—Pollution Prevention Planning

''SEC. 316. POLLUTION PREVENTION PLANS.

''(a) DEFINITIONS.—In this section:

''(1) AUTHORIZED STATE.—The term 'authorized State' means a State authorized under subsection (m) to carry out the Administrator's authorities and responsibilities under this section.

''(2) BYPRODUCT.—The term 'byproduct' means a toxic chemical that—

''(A) is generated prior to storage, recycling (except in-process recycling), treatment, control, disposal, or release;

''(B) is not intended for use as a product; and

''(C) is required to be reported under section 6607 of the Pollution Prevention Act of 1990 (42 U.S.C. 13107).

''(3) FACILITY.—The term 'facility' means a facility for which a toxic chemical release form is required to be submitted under section 313.

''(4) IN-PROCESS RECYCLING.—The term 'in-process recycling' means the practice of returning a recycled toxic chemical to a production process using dedicated equipment that is directly connected to and physically integrated with a production process.

''(5) PILOT FACILITY.—The term 'pilot facility' means a facility, or designated area of a facility, used for pilot-scale development of a product or process not primarily involved in the production of a good for commercial sale.

''(6) POLLUTION PREVENTION.—The term 'pollution prevention' means—

''(A) toxic use reduction; or

''(B) source reduction.

''(7) PRODUCTION PROCESS.—The term 'production process' means a process, line, method, activity, or technique used to produce a product or to reach a planned result.

''(8) RECOVERY.—

''(A) IN GENERAL.—The term 'recovery' means the act of extracting or removing the toxic chemical from a waste stream that includes—

''(i) the reclamation of the toxic chemical from a stream that entered a waste treatment or pollution control device or process (including an air pollution control device or process, wastewater treatment or control device or process, Federal or State permitted treatment or control device or process, and any other type of treatment or control device or process) where destruction of the stream or destruction or removal of certain constituents of the steam occurs; and

''(ii) the reclamation for reuse of an otherwise used toxic chemical that is spent or contaminated and that must be recovered for further use in the original operation or any other operation.

''(9) RECYCLING.—The term 'recycling' means—

''(A) the recovery for reuse of a toxic chemical from a gaseous, aerosol, aqueous, liquid, or solid stream; or

''(B) the reuse or the recovery for reuse of a toxic chemical that is a hazardous waste or is a constituent of a hazardous waste under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), as determined by the Administrator.

''(10) RESEARCH AND DEVELOPMENT LABORATORY.—The term 'research and development laboratory' means a facility or a designated area of a facility used for research, development, and testing activity, and not primarily involved in the production of a good for commercial sale, in which a toxic chemical is used by or under the direct supervision of a technically qualified person.

''(11) SOURCE REDUCTION.—The term 'source reduction' has the meaning given the term in section 6603 of the Pollution Prevention Act of 1990 (42 U.S.C. 13103).

''(12) TARGETED PRODUCTION PROCESS.—The term 'targeted production process' means a production process or a group of production processes (identified by the owner or operator of a facility) that accounts for 90 percent or more of—

''(A) the total toxic chemical use calculated in accordance with section 313(g)(1)(C)(vi)(X); or

''(B) the total quantity of byproducts generated at the facility.

''(13) TOXIC USE REDUCTION.—The term 'toxic use reduction' means the reduction in the quantity of toxic chemical use reported under section 313(g)(1)(C)(viii) that is reduced so as to reduce potential exposure to the public, workers, consumers, and the environment.

''(b) POLLUTION PREVENTION PLANNING.—

''(1) IN GENERAL.—To promote the assessment and implementation of pollution prevention alternatives, the owner or operator of a facility shall periodically complete a pollution prevention plan.

''(2) INITIAL PLAN AND UPDATES.—The owner or operator of a facility shall—

''(A) complete a pollution prevention plan on or before July 1 of the second calendar year that begins after the date of enactment of this section; and

''(B) review and update the pollution prevention plan biennially thereafter.

''(3) CONTENTS OF POLLUTION PREVENTION PLANS.—

''(A) ITEMS TO BE INCLUDED.—Except as provided in section 317, a pollution prevention plan shall include—

''(i) a statement of management policy regarding pollution prevention;

''(ii) a written certification by the owner or operator of the facility regarding the accuracy and completeness of the plan;

''(iii) 2- and 5-year pollution prevention goals for targeted production processes, including a numerical statement regarding the intended reduction in the quantity of each toxic chemical manufactured, processed, or otherwise used;

''(iv) a statement of progress achieved toward previously submitted pollution prevention goals;

''(v) an analysis of each targeted production process, including—

''(I) an assessment of materials accounting information of toxic chemicals with respect to the targeted production process; and

''(II) a full cost accounting of the direct and indirect costs (including liabilities) of toxic chemical purchase, use, and waste management;

''(vi) an evaluation of the options for reducing the use of toxic chemicals or the generation of byproducts in the targeted production unit process by means of the substitution of raw materials, reformulation or redesign of products, production unit modifications, and improvement in operation and maintenance, including—

''(I) identification of options that minimize potential exposure to workers, consumers, the public, and the environment; and

''(II) an assessment of the technical and economic feasibility of the options identified under subclause (I);

''(vii) an identification of options identified under clause (vi)(I) that are technically feasible and have a payback period of less than 2 years;

''(viii) a schedule for implementing the options identified under clause (vii) that the owner or operator of the facility intends to implement; and

''(ix) if there is an option identified under clause (vii) that is not included in the schedule developed under clause (viii), a statement of the reason why the option is not included.

''(B) ITEMS NOT TO BE INCLUDED.—A pollution prevention plan shall not include a waste management or control activity.

''(4) POLLUTION PREVENTION PLAN SUMMARIES.—

''(A) IN GENERAL.—For each pollution prevention plan, the owner or operator of a facility shall prepare a pollution plan summary.

''(B) CONTENTS.—A pollution plan summary shall include the information reported under—

''(i) clauses (i), (ii), (iii), and (iv) of paragraph (3)(A); or

''(ii) if applicable, subparagraphs (A), (B), (C), and (D) of section 317(c)(2).

''(c) POLLUTION PREVENTION PLAN PROGRESS REPORTS.—

''(1) IN GENERAL.—Beginning with the second full calendar year after a pollution prevention plan has been prepared under subsection (b), the owner or operator of a facility shall prepare a pollution prevention plan progress report annually for the facility in accordance with the schedule for the submission of toxic release forms under section 313.

''(2) CONTENTS.—A pollution prevention progress report shall include—

''(A) a description of the facility and identification of each targeted production process;

''(B) a numerical statement demonstrating the progress of the facility towards achieving each of its 5-year goals for pollution prevention; and

''(C) if the annual progress of the facility does not achieve the level of progress anticipated in the pollution prevention plan schedule for implementation, an explanation of the reasons why that level of progress was not achieved.

''(d) GUIDELINES FOR PREPARATION OF POLLUTION PREVENTION PLANS.—Not later than 2 years after the date of enactment of this section, the Administrator shall by regulation establish guidelines for the preparation of pollution prevention plans, pollution prevention plan summaries, and pollution prevention plan progress reports.

''(e) AVAILABILITY OF POLLUTION PREVENTION PLANS, SUMMARIES, AND REPORTS.—

''(1) POLLUTION PREVENTION PLANS.—

''(A) IN GENERAL.—The owner or operator of a facility shall—

''(i) retain each pollution prevention plan at the facility; and

''(ii) make each pollution prevention plan available for inspection by the Administrator or authorized State.

''(B) NOT PUBLIC RECORDS.—A document or other record obtained from or reviewed at a facility owned or operated by a private person shall not be considered to be a public record.

''(2) POLLUTION PREVENTION PLAN SUMMARIES AND PROGRESS REPORTS.—

''(A) SUBMISSION.—The owner or operator of a facility shall submit a pollution prevention plan summary for the facility and progress reports, with the toxic release forms required under section 313 for the year in which the summary is required, to the Administrator and to the State in which the facility is located, in a format that is compatible with electronic information storage and retrieval and compatible with the data submitted under section 313 (except in a case in which the Administrator determines that preparation in electronic format would create a significant hardship).

''(B) PUBLIC AVAILABILITY.—The Administrator shall, using electronic and other means, make pollution plan summaries and progress reports available to the public consistent with section 313(j).

''(f) REQUIRED MODIFICATION.—

''(1) IN GENERAL.—The Administrator or an authorized State may require the modification of a pollution prevention plan or pollution prevention plan summary if the Administrator or authorized State determines that the pollution prevention plan does not meet the requirements of subsection (b) or the pollution prevention plan summary does not meet the requirements of subsection (b)(4).

''(2) TIME FOR COMPLETION OF REQUIRED MODIFICATION.—Any modification required by the Administrator or authorized State shall be completed by the owner or operator of the facility not later than 90 days after the date on which the Administrator or the State provides written notice that the modification is required.

''(g) PRODUCT FORMULAS.—Nothing in this subtitle authorizes the Administrator or a State to require that information concerning nontoxic chemicals, or product formulas for mixtures that include only nontoxic chemicals, be included in a pollution prevention plan, summary, or progress report.

''(h) GROUPING OF PROCESSES.—The Administrator may publish rules establishing criteria pursuant to which the Administrator may permit an owner or operator of a facility to consider production processes that use similar ingredients to produce 1 or more similar products as a single production process.

''(i) TRAINING.—The Administrator or an authorized State may require that individuals that prepare pollution prevention plans for facilities in particular industrial categories or subcategories receive training or attend seminars and workshops on the proper preparation of toxic release inventories and pollution prevention plans and on the use of available pollution prevention measures.

''(j) RESEARCH AND DEVELOPMENT LABORATORIES.—The owner or operator of a facility shall not be required to prepare a pollution prevention plan, pollution prevention plan summary, or pollution prevention progress report concerning a research and development laboratory located at the facility.

''(k) PILOT FACILITIES.—The owner or operator of a facility shall not be required to prepare a pollution prevention plan, pollution prevention plan summary, or pollution prevention plan progress report for a pilot facility.

''(l) TECHNICAL ASSISTANCE.—

''(1) IN GENERAL.—At the request of the owner or operator of a facility, the Administrator or an authorized State may provide technical assistance in pollution prevention planning.

''(2) REIMBURSEMENT.—The Administrator may seek full (or in the case of a small business, full or partial) reimbursement for any technical assistance provided to a facility.

''(3) NO REQUIREMENT OF PARTICULAR MEASURES OR STANDARDS.—Nothing in this subsection authorizes the Administrator to require that a particular pollution prevention measure be implemented or that a pollution prevention performance standard be achieved at a facility or targeted production process.

''(m) STATE ADMINISTRATION.—

''(1) REQUEST FOR STATE AUTHORIZATION.—

''(A) GUIDELINES.—Not later than 1 year after the date of enactment of this section, the Administrator shall publish guidance that would be useful to the States in submitting a program for approval under this paragraph.

''(B) SUBMISSION OF PROGRAMS.—A State may submit to the Administrator a program for carrying out this section in the State.

''(C) IMPLEMENTATION OF STATE PROGRAMS.—On and after the date that is 180 days after date on which the Administrator receives a State program under subparagraph (B), the State may carry out the program in the State in place of the Federal program under this section, unless the Administrator notifies the State that the program is not approved.

''(2) CRITERIA FOR STATE AUTHORIZATION.—

''(A) IN GENERAL.—The Administrator shall approve a State program submitted under paragraph (1) if the Administrator determines that the State program requires that—

''(i) each facility develop a pollution prevention plan that includes materials accounting for full cost accounting; and

''(ii) each pollution prevention plan address the reduction of the use and generation as byproduct of toxic chemicals subject to this section so as to reduce overall risks to the public, workers, consumers, and the environment without shifting risks between them.

''(B) DISAPPROVAL.—If the Administrator does not approve a State program, the Administrator shall notify the State in writing of any revisions or modifications that are necessary to obtain approval.

''(3) WITHDRAWAL OF STATE AUTHORIZATION.—

''(A) IN GENERAL.—If the Administrator determines after public hearing that a State program approved under paragraph (1) no longer meets the criteria of paragraph (2), the Administrator shall so notify the State in writing. If appropriate corrective action is not taken within a reasonable time (not to exceed 90 days after notification), the Administrator shall withdraw authorization of the program and establish a Federal program under this section.

''(B) NOTIFICATION.—The Administrator shall not withdraw authorization of a State program unless the Administrator first notifies the State and makes public in writing the reasons for the withdrawal.

''(4) NO PREEMPTION OF STATE PROGRAMS.—Nothing in this subsection affects the authority of a State or political subdivision of a State to establish or continue in effect any regulation or any other measure relating to pollution prevention.

''(n) REPORTS.—

''(1) IN GENERAL.—Not later than 4 years after the date of enactment of this section and not less frequently than every 3 years thereafter, the Administrator shall submit a report to the President and Congress that describes the pollution prevention plans that have been prepared under this section.

''(2) MATTERS TO BE ADDRESSED.—A report under paragraph (1) shall include—

''(A) a detailed analysis that indicates the progress achieved toward any pollution prevention goals established by the Administrator under section 6604 of the Pollution Prevention Act of 1990 (42 U.S.C. 13103); and

''(B) a detailed analysis of the steps that need to be taken to ensure that the goals are achieved, including an identification of the industrial categories or subcategories that should be the highest priority for pollution prevention measures and that need improvement with respect to pollution prevention.

''SEC. 317. SMALL BUSINESS POLLUTION PREVENTION COMPLIANCE AND TECHNICAL ASSISTANCE PROGRAM.

''(a) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a small business pollution prevention compliance and technical assistance program to assist owners and operators of facilities in identifying and applying methods of pollution prevention.

''(b) ELEMENTS OF PROGRAM.—The program under subsection (a) shall—

''(1) provide compliance assistance, technical assistance, and other assistance to small businesses;

''(2) use funds provided under this subsection for matching grants to State and local government agencies for programs to promote the use of pollution prevention techniques by small businesses; and

''(3) allow small businesses to comply with the pollution prevention planning requirements of this by title complying with subsection (c).

''(c) USE OF MANUAL AND CHECKLIST IN LIEU OF POLLUTION PREVENTION PLAN.—

''(1) IN GENERAL.—The Administrator may by regulation allow a small business in a commercial sector for which a pollution prevention opportunity assessment manual and checklist have been published under paragraph (2) to comply with the pollution prevention planning requirements of subsections (a) and (b) of section 316 by completing the checklist and retaining on site the manual and checklist in lieu of preparing a pollution prevention plan.

''(2) CONTENTS OF MANUAL AND CHECKLIST.—The Administrator may publish a manual and checklist for any commercial sector by the use of which a small business in the commercial sector would develop—

''(A) a statement of management policy regarding pollution prevention;

''(B) a written certification by the owner or operator of the facility regarding the accuracy and completeness of the plan;

''(C) 2- and 5-year pollution prevention goals for targeted production processes, including a numerical statement regarding the intended reduction in the quantity of each toxic chemical produced or used and each toxic chemical generated as a byproduct;

''(D) a statement of progress achieved toward previously submitted pollution prevention goals;

''(E) an estimate of the costs associated with toxic chemical purchase, use, and waste management;

''(F) an evaluation of production processes and material, storage, and treatment practices;

''(G) an evaluation of toxic use reduction and source reduction opportunities; and

''(H) an economic impact analysis of options for achieving reductions in toxic chemical use and byproduct generation.''.

(b) CIVIL ACTION.—Section 326(a)(1)(A) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11046(a)(1)(A)) is amended by adding at the end the following:

''(v) Complete and submit a pollution plan summary or pollution plan progress report under section 316.''.

(c) TABLE OF CONTENTS.—The table of contents in section 300(b) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. prec. 11001) is amended by striking the item relating to subtitle C and inserting the following:

''Subtitle C—Pollution Prevention Planning

''Sec. 316. Pollution prevention plans.

''Sec. 317. Small business pollution prevention compliance and technical assistance program.

''Subtitle D—General Provisions.''.

SEC. 203. INFORMATION GATHERING AND ACCESS.

Section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11045) is amended by adding at the end the following:

''(g) PROVISION OF INFORMATION AND RECORDS; INSPECTIONS.—

''(1) DEFINITIONS.—In this subsection:

''(A) AUTHORIZED OFFICER.—The term 'authorized officer' means—

''(i) an officer, employee, or representative of the Administrator; or

''(ii) an officer, employee, or representative of an authorized State carrying out that section 316.

''(B) AUTHORIZED STATE.—The term 'authorized state' means a State that is authorized to carry out and enforce section 316 under section 317.

''(2) PROVISION OF INFORMATION AND RECORDS.—At the request of an authorized officer, a person who has or may have information relevant to the identification, nature, or quantity of materials, including hazardous chemicals, extremely hazardous substances, toxic chemicals, or other materials subject to this title that may have been manufactured, processed, or otherwise used, stored, or otherwise managed (including recycling, treating, combusting, releasing, or transferring from a facility subject to the requirements of this title) shall—

''(A) furnish to the authorized officer information pertaining to the identification, nature, and quantity of the materials; and

''(B) at the option and expense of the person—

''(i) afford the authorized officer access at all reasonable times to the facility or location to inspect and copy all documents and records relating to the identification, nature, and quantity of the material; or

''(ii) copy and furnish to the authorized officer all such documents and records.

''(3) INSPECTIONS.—

''(A) IN GENERAL.—At the request of an authorized officer, the owner or operator of a facility subject to the requirements of this title shall permit the authorized officer to enter, at reasonable times—

''(i) the facility; or

''(ii) any other facility, establishment, or other place or property owned or operated by the owner or operator of the facility, if, in the opinion of the authorized officer, entry is needed to determine compliance with and enforce this title with respect to the facility.

''(B) SAMPLES.—An authorized officer may inspect and obtain—

''(i) samples from any facility subject to the requirements of this title or from a facility, establishment, or other place or property described in subparagraph (A)(ii); or

''(ii) samples of any containers of toxic chemicals or other materials maintained at the facility.

''(C) PROMPT COMPLETION.—An inspection under this paragraph shall be completed with reasonable promptness.

''(D) RECEIPT FOR SAMPLES AND COPIES OF ANALYSES.—If an authorized officer obtains a sample under subparagraph (B), the authorized officer shall—

''(i) before leaving the premises, give to the owner or operator of the facility a receipt describing the sample obtained and, if requested, a portion of the sample; and

''(ii) furnish promptly to the owner or operator of the facility a copy of the results of any analysis made of the sample.

''(4) COMPLIANCE ORDERS.—

''(A) ISSUANCE.—If the owner or operator of a facility failed to comply with a request of an authorized officer under this subsection, the Administrator or authorized State may, after such notice and opportunity for consultation as is reasonably appropriate under the circumstances, issue an order directing compliance with the request.

''(B) CIVIL ACTION.—

''(i) IN GENERAL.—The Administrator may request the Attorney General to commence a civil action to compel compliance with a request or order under this subsection.

''(ii) RELIEF.—If the court finds that there is a reasonable basis on which to believe that there may be a violation of this title, unless the court finds that, under the circumstances of the case, the request or order under this subsection was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law, the court—

''(I) shall enter an order directing compliance with the request or order; and

''(II) may assess a civil penalty of not more than $10,000 for each day of noncompliance.

''(5) OTHER AUTHORITY.—Nothing in this subsection precludes the Administrator or an authorized State from securing access or obtaining information in any other lawful manner.''.

SEC. 204. PUBLIC AVAILABILITY.

Section 313(j) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11023(j)) is amended in the second sentence by striking ''on a cost reimbursable basis''.

SEC. 205. FEDERAL FACILITIES.

Section 329(7) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11049(7)) is amended by inserting before the period at the end the following: ''or the United States''.

SEC. 206. ENFORCEMENT.

Section 325(c)(1) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11045(b)(1)) is amended by striking ''or 313'' and inserting '', 313, or 316''.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, May 20, 1997.

Hon. FRANK LAUTENBERG,
U.S. Senate,
Washington, DC.

DEAR SENATOR LAUTENBERG: I am writing to thank you for your leadership on community right to know. As you are aware, expanding the public's right to know about harmful pollutants in our communities is a top priority for this Administration. We understand that your bill, The Right to Know More and Pollution Prevention Act of 1997, seeks to advance community right to know, pollution prevention planning and the information available to the public on chemical use.

This Administration believes that putting environmental and public health information into the hands of the American people is one of the most effective ways to reduce local pollution and prevent it from occurring in the future. In fact, the Agency recently made final a rule to add seven new industry categories to the Toxics Release Inventory (TRI), increasing the number of covered facilities to 31,000—a thirty percent increase. During the coming year, we will be working on ways to further improve TRI, including a stakeholder process to address reporting burdens, an examination of types of data collected, consideration of new thresholds for persistent, bioaccumulating toxic chemicals and developing options regarding chemical use information.

I look forward to working with you in the future to further the public's right to know about environmental health threats in their homes, schools and communities.

Sincerely,

CAROL M. BROWNER.

U.S. PUBLIC INTEREST RESEARCH GROUP,
Washington, DC, May 20, 1997.

DEAR SENATOR LAUTENBERG: We are writing on behalf of U.S. PIRG and the State PIRGs with more than a million members nation wide, to express our support for the Right to Know More and Pollution Prevention Act of 1997. This bill will dramatically improve the amount and quality of information that citizens count on to keep themselves and their children safe. This bill will also encourage pollution prevention. The reduction of toxic chemical use and waste is urgent while waste generation is steadily increasing nationwide, except in New Jersey and Massachusetts where companies are required by state law to collect and report toxic use data. The Right to Know More and Pollution Prevention Act of 1997 will reverse the dangerous trend for the rest of the nation.

The Community Right to Know Act is the best source of public information about toxic pollution and is lauded by the administration, environmentalists, and often industry leaders as one of the most effective environmental protections. Unfortunately, reporting under this law is woefully inadequate. Less than 5% of pollution information is reported to the public. We need to protect and expand the public's Right to Know. The Right to Know More and Pollution Prevention Act of 1997 will expand the public's Right to Know to include:

1. Toxics use reporting which tells the public about toxic chemicals transported through their neighborhoods; produced, used and stored in the work place and put into consumer products.

2. More complete data on toxic emissions including information from all major industrial sources of toxic pollution and data on extremely hazardous substances like dioxins and mercury which are currently not collected under the law.

3. Pollution Prevention Planning which will direct companies to develop pollution prevention plans by setting their own goals for pollution reduction.

The public has a right to know more than they currently do about toxic chemicals. In addition, preventing pollution must be our

goal in light of the data revealing the steady rise in waste creation throughout the nation. We hope each Senator makes this legislation a top environmental priority.

Sincerely,

CAROLYN HARTMANN,
Environmental Program Director.
ANDREA ASKOWITZ,
Right to Know Campaign Coordinator.

ENVIRONMENTAL INFORMATION CENTER,
Washington, DC, May 19, 1997.

Hon. FRANK LAUTENBERG,
U.S. Senate,
Washington, DC.

DEAR SENATOR LAUTENBERG: I want to express the support and appreciation of the Environmental Information Center for your efforts to expand the Emergency Planning and Community Right to Know Act. Your efforts should provide additional and useful information about toxic chemicals to every community and family in the country.

The last decade has proven how well community right to know laws work. You know well the success of the more comprehensive facility reporting statute in New Jersey, and we commend you for seeking to expand use data to better inform workers and families about toxic chemicals in their communities. In addition, bill language aimed at improving pollution prevention will help to eliminate problems before they occur.

We will support early consideration and passage of this legislation and look forward to working with you on this bill.

Sincerely,

PHILIP E. CLAPP,
Executive Director.

By Mr. NICKLES:

S. 770. A bill to encourage production of oil and gas within the United States by providing tax incentives, and for other purposes; to the Committee on Finance.

THE DOMESTIC OIL AND GAS PRODUCTION AND RECOVERY ACT

Mr. NICKLES. Mr. President, I rise today to introduce the Domestic Oil and Gas Production and Preservation Act. This legislation is an effort to help revive our domestic oil and gas industry which plays such a vital role in our national security. If our domestic industry is to survive, then Congress needs to act now to provide tax incentives to encourage production in America.

Since the early 1980's, oil and gas extraction employment has been cut in half. Employment in the oil and gas industry has declined by 500,000 since 1984. Imports of crude oil products were $68 billion in 1996, up 24 percent over last year and the import dependency ratio now exceeds 50 percent. From 1973 to 1996, crude oil production dropped 44 percent in the lower 48 States. We must take action now to save domestic production not only for the sake of the oil and gas industry but for the sake of the national security of this Nation.

To date, the Clinton administration has done nothing to encourage domestic production. In fact, in 1996, crude oil reserves continued to decline by 788 million barrels. Natural gas reserves fell by 2,600 Bcf to 162,415 Bcf. In the President's budget there is nothing to aid this industry. That is why I am introducing this bill today.

The Domestic Oil and Gas Production and Preservation Act is intended to do just what its name implies—encourage oil and gas production and preserve and revitalize the domestic oil and gas industry. This bill would accomplish these goals through specific tax proposals. Section 2 of the bill would allow current expensing of geological and geophysical costs incurred domestically including the Outer Continental Shelf. These costs are an important and integral part of exploration and production for oil and natural gas, and should be expensed.

In addition to the G&G expensing, this bill provides for the elimination of the net income limit on percentage depletion. Currently, the net income limitation requires percentage depletion to be calculated on a property-by-property basis and disallows depletion to the extent it exceeds the net income from a particular property, thus discouraging producers from investing income from other oil and gas properties to maintain marginal wells.

Furthermore, this bill clarifies that delay rental payments are deductible, at the election of the taxpayer, as ordinary and necessary business expenses. This clarifies an otherwise gray area in Treasury regulations and eliminates costly administrative and compliance burdens on both taxpayers and the IRS. It would also extend the 90-day prepayment period to 180 days for determining when deductions may be taken on certain oil and gas investments. Harsh winter conditions in many States make the current 90-day limitation for commercial drilling impractical.

Lastly, section 6 includes hydro injection as a tertiary recovery method for purposes of the enhanced oil recovery credit. Although the Treasury Department is tasked with continued evaluations and editions to the list of recovery methods covered under the EOR, they have proven notably lax in pursuing this objective. By legislating this outcome, this bill keeps domestic production of our endangered marginal wells on the cutting edge of available technology.

Collectively, the provisions of this bill provide much-needed incentives to an industry that is vital to our national security. The sooner the administration and Congress acknowledge the critical importance of the domestic oil and gas industry and stop burdening this industry with high taxes and regulatory obstacles, the sooner we can take the necessary actions to preserve and revitalize this important sector of our economy.

Mr. President, I ask unanimous consent that a summary of the bill be printed in the RECORD.

SUMMARY OF THE DOMESTIC OIL AND GAS PRODUCTION AND RECOVERY ACT

SECTION 2. ELECTION TO EXPENSE GEOLOGICAL AND GEOPHYSICAL EXPENDITURES

Current law treatment

G&G costs are not deductible as ordinary and necessary business expenses but are treated as capital expenditures recovered through cost depletion over the life of the field. G&G expenditures allocated to abandoned prospects are deducted upon such abandonment.

Reasons for change

These costs are an important and integral part of exploration and production for oil and natural gas. They affect the ability of domestic producers to engage in the exploration and development of our national petroleum reserves. Thus, they are more in the nature of an ordinary and necessary cost of doing business. These costs are similar to research and development costs for other industries. For those industries such costs are not only deductible but a tax credit is available.

Crude oil imports are at an all-time high which makes the U.S. vulnerable to sharp oil price increases or supply disruptions. Domestic exploration and production must be encouraged now to offset this potential threat to national security and our economy. Allowing current deductibility of G&G costs would increase capital available for domestic exploration and production activity.

The technical ''infrastructure'' of the oil services industry, which includes geologists and engineers, has been moving into other industries due to reduced domestic exploration and production. Stimulating exploration and development activities would help rebuild the critical oil services industry.

Encouraging the industry to use the best technology available and to reduce its environmental footprint are important public policy reasons to clarify that these ordinary and necessary business expenses for the oil and gas industry should be expensed.

SECTION 3. ELIMINATION OF NET INCOME LIMITATION ON PERCENTAGE DEPLETION FOR OIL AND GAS

The net income limitation severely restricts the ability of independent producers to use percentage depletion. Depletion is subject to many other limitations. First, it may only be taken by independent producers and royalty owners and not by integrated oil companies. Also, depletion may only be claimed up to specific daily production levels (1,000 barrels of oil or 6,000 mcf of natural gas). The depletion allowance is further limited to 65% of taxable income.

The net income limitation requires percentage depletion to be calculated on a property by property basis and disallows percentage depletion to the extent it exceeds the net income from a particular property. The current requirement creates a nightmarish quagmire of record keeping, paperwork and compliance for taxpayers and the IRS. The typical independent producer can have numerous oil and gas properties, and many of them can be marginal properties (with high operating costs and low production yields). During periods of low prices, the producer may not have net income from a particular property, especially from these marginal properties. In this situation, when domestic production is most susceptible to being plugged and abandoned, the net income limitation discourages producers from investing income from other oil and gas properties to maintain marginal wells.

PROPOSAL: ELIMINATE THE NET INCOME LIMITATION ON PERCENTAGE DEPLETION

Reasons for change

The Interstate Oil and Gas Compact Commission (IOGCC) estimates there are more than 433,000 marginal wells in the U.S. which produced more than 333 million barrels of oil in 1995. This represented more than 18% of all the oil produced in the U.S. (excluding Alaska). The United States is the only country with significant production from marginal wells. They represent the ultimate in

conservation, since once wells are plugged and abandoned access to the remaining resource is often lost forever. Eliminating the net income limitation on percentage depletion will encourage producers to keep marginally economic wells in production and enhance optimum oil and natural gas resource recovery. Relief would be focused to independent producers and royalty owners.

Eliminating the net income limitation on percentage depletion would simplify record keeping and reduce the administrative and compliance burden for taxpayers and the IRS.

SECTION 4. ELECTION TO EXPENSE DELAY RENTAL PAYMENTS

Delay rental payments are made by producers to an oil and gas lessor prior to drilling or production. Unlike bonus payments (made by the producer in consideration for the grant of the lease) which generally is treated as an advance royalty and thus capitalized, producers have historically been allowed to elect to deduct delay rental payments under Treasury Regulations 1.612–3(c). However, in September, 1995, the IRS issued a technical advice (LTR 9602002) stating that such payments are preproduction costs subject to capitalization under Section 263A of the Internal Revenue Code. The legislative history of Section 263A is unclear and subject to varying interpretation.

PROPOSAL: CLARIFY THAT DELAY RENTAL PAYMENTS ARE DEDUCTIBLE, AT THE ELECTION OF THE TAXPAYER, AS ORDINARY AND NECESSARY BUSINESS EXPENSES

Reasons for change

In passing the Section 263A uniform capitalization rules, Congress broadly intended to only affect the ''unwarranted deferral of taxes.'' Congress did not intend to grant the IRS the authority to repeal the well-settled industry practice of deducting ''delay rentals'' as ordinary and necessary business expenses.

Treasury Reg. 1.612–3. states that, ''a delay rental is an amount paid for the privilege of deferring development of the property and which could have been avoided by abandonment of the lease, or by commencement of development operations, or by obtaining production.'' Such payments represent ordinary and necessary business expenses, not an ''unwarranted deferral of taxes.'' Given the clear disagreement over the legislative history and the likelihood of costly and unnecessary litigation to resolve the issue, clarification would eliminate administrative and compliance burdens on taxpayers and the IRS.

SECTION 5. EXTENSION OF SPUDDING RULE

The Internal Revenue Code provides a ''spudding'' exception to the ''economic performance rule'' in determining the year in which deductions may be taken on certain oil and gas investments. The economic performance rule will be satisfied, in certain circumstances, when amounts are paid during the preceding tax year so long as the well is spudded (the initial boring of the hole) within 90 days of the beginning of the following year.

PROPOSAL: EXTEND THE 90 DAY PREPAYMENT PERIOD TO 180 DAYS

Reasons for change

Harsh winter weather conditions in many states and locations make the 90 day limitation for the commencement of drilling impractical. Moreover, the current shortage of skilled drilling rig personnel and the high utilization rate of land-based drilling equipment, make it difficult, and in some parts of the country impossible, to meet the 90-day requirement. This personnel shortage has resulted from skilled workers moving into other industries due to vastly reduced domestic exploration and production activity over the past few years.

Expanding the 90 day prepayment period to 180 days would ease the industry's ability to attract capital.

SECITON 6. INCLUDE HYDRO INJECTION AS A TERTIARY RECOVERY METHOD UNDER THE ENHANCED OIL RECOVERY TAX CREDIT

Marginal wells are our most endangered domestic energy resource. By providing incentives for new methods for enhanced recovery, we ensure domestic production of the marginal wells remains on the cutting edge of available technology.

ADDITIONAL COSPONSORS

S. 127

At the request of Mr. MOYNIHAN, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 127, a bill to amend the Internal Revenue Code of 1986 to make permanent the exclusion for employer-provided educational assistance programs, and for other purposes.

S. 178

At the request of Mr. DEWINE, the names of the Senator from Louisiana [Ms. LANDRIEU] and the Senator from Arkansas [Mr. HUTCHINSON] were added as cosponsors of S. 178, a bill to amend the Social Security Act to clarify that the reasonable efforts requirement includes consideration of the health and safety of the child.

S. 351

At the request of Mrs. MURRAY, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 351, a bill to provide for teacher technology training.

S. 356

At the request of Mr. GRAHAM, the name of the Senator from Minnesota [Mr. WELLSTONE] was added as a cosponsor of S. 356, a bill to amend the Internal Revenue Code of 1986, the Public Health Service Act, the Employee Retirement Income Security Act of 1974, the title XVIII and XIX of the Social Security Act to assure access to emergency medical services under group health plans, health insurance coverage, and the medicare and medicaid programs.

S. 394

At the request of Mr. LEAHY, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 394, a bill to partially restore compensation levels to their past equivalent in terms of real income and establish the procedure for adjusting future compensation of justices and judges of the United States.

S. 397

At the request of Ms. MIKULSKI, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 397, a bill to amend chapters 83 and 84 of title 5, United States Code. to extend the civil service retirement provisions of such chapter which are applicable to law enforcement officers, to inspectors of the Immigration and Naturalization Service, inspectors and canine enforcement officers of the United States Customs Service, and revenue officers of the Internal Revenue Service.

S. 460

At the request of Mr. BOND, the names of the Senator from Ohio [Mr. DEWINE] and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 460, a bill to amend the Internal Revenue Code of 1986 to increase the deduction for health insurance costs of self-employed individuals, to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home, to clarify the standards used for determining that certain individuals are not employees, and for other purposes.

S. 503

At the request of Mr. NICKLES, the names of the Senator from Oklahoma [Mr. INHOFE] and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 503, a bill to prevent the transmission of the human immunodeficiency virus (commonly known as HIV), and for other purposes.

S. 511

At the request of Mr. CHAFEE, the names of the Senator from Louisiana [Mr. BREAUX] and the Senator from New York [Mr. MOYNIHAN] were added as cosponsors of S. 511, a bill to require that the health and safety of a child be considered in any foster care or adoption placement, to eliminate barriers to the termination of parental rights in appropriate cases, to promote the adoption of children with special needs, and for other purposes.

S. 525

At the request of Mr. HATCH, the names of the Senator from Michigan [Mr. LEVIN], the Senator from Georgia [Mr. CLELAND], and the Senator from Louisiana [Ms. LANDRIEU] were added as cosponsors of S. 525, a bill to amend the Public Health Service Act to provide access to health care insurance coverage for children.

S. 526

At the request of Mr. HATCH, the names of the Senator from Michigan [Mr. LEVIN], the Senator from Georgia [Mr. CLELAND], and the Senator from Louisiana [Ms. LANDRIEU] were added as cosponsors of S. 526, a bill to amend the Internal Revenue Code of 1986 to increase the excise taxes on tobacco products for the purpose of offsetting the Federal budgetary costs associated with the Child Health Insurance and Lower Deficit Act.

S. 572

At the request of Mr. ALLARD, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 572, a bill to amend the Internal Revenue Code of 1986 to repeal restrictions on taxpayers having medical savings accounts.

S. 607

At the request of Mr. COATS, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 607, a bill to amend the