ENVIRONMENTAL HEALTH AND SAFETY—INTERNATIONAL STANDARDIZATION OF RIGHT-TO-KNOW LEGISLATION IN RESPONSE TO REFUSAL OF UNITED STATES MULTINATIONALS TO PUBLISH TOXIC EMISSIONS DATA FOR THEIR UNITED KINGDOM FACILITIES

I. FACTS

The publication of industrial toxic emissions data is essential to ensuring that multinational corporations uphold international environmental excellence.[1] On July 29, 1992, however, reports by two environmental groups concluded that many international industrial corporations, including United States manufacturers of chemical products in the United Kingdom, appear unwilling to release such data unless legally required to do so.[2] Twelve of the fifteen United States based companies declining to release emissions data belong to the Chemical Manufacturers Association and, as a consequence of their refusal, fail to conform to the Association's required chemical management program.[3] Their unwillingness handicaps United States reg-

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[1] Fred Millar, the Friends of the Earth environmental group and United States toxic projects director, indicated at a July news conference that emissions data is necessary to ensure multinationals are not dumping "obsolete, polluting equipment in the developing world." *Industry Appears Unwilling to Release Toxics Data Unless Required, Studies Say*, Int'l Env't Daily (BNA) para. 12 (July 31, 1992), *available in* LEXIS, Nexis Library, BNAIED file [hereinafter *Industry Appears Unwilling*].

[2] Environmental groups Friends of the Earth and Public Data Project conducted studies to determine, respectively, which United States based multinationals would release emissions information and which facilities discharge pollutants into European waterways exceeding levels reported in the United States. Of the forty-three companies surveyed by Friends of the Earth, the following provided or promised to supply data from their plants in the United Kingdom: Albright and Wilson, American Cyanamid, British Petroleum, Dow Chemical, FMC, Imperial Chemical Industries, Lubrizol, Monsanto, 3M, Union Carbide, and UOP. Fifteen corporations refused the request of Friends of the Earth, five did not respond, and six were still considering the possibility of supplying the data. The Public Data Project study determined that emissions into European waterways appeared to exceed those reported in the United States, while the release of other toxic wastes were about the same. *Id.* paras. 1, 6, 23.

[3] The Chemical Manufacturers Association requires members to subscribe to its Responsible Care Program, a collection of guides to chemical management, including recognition and response to public concerns about chemical plant operations. *See id.* para. 8.

ulation of United States based companies operating in the United Kingdom and deprives the public of notice of toxic emissions.[4]

The refusal of United States multinational corporations to supply emissions data is a consequence of the different public risk communication approaches utilized by the United States and the United Kingdom. The United States follows a "right-to-know" approach while the United Kingdom pursues a "need-to-know" approach.[5] Due to the difference in emission disclosure requirements, concerns have arisen that United States multinationals are operating facilities in the United Kingdom in an effort to take advantage of lower regulatory standards there.[6]

In response to these concerns, Agenda 21,[7] adopted at the United Nations Conference on Environment and Development (UNCED) in Brazil in June, 1992,[8] endorses right-to-know legislation. UNCED

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[4] Effective regulation of emissions requires toxicity data compilation for the protection of public health, as well as the making of well informed individual decisions regarding the effects of emissions. Specifically, the failure to compile and release emissions data hinders the study of environmental and health effects of the release of industrial chemicals. Because the relative invisibility of chemicals impairs adequate screening of toxicity levels, emissions data aids the study of chemical effects. Mary L. Lyndon, *Information Economics and Chemical Toxicity: Designing Laws To Produce and Use Data*, 87 MICH L. REV. 1795, 1796, 1808-09 (1989).

[5] The United States chooses to require disclosure of full risk information regarding emissions in accord with its strategy of encouraging individual corporate efforts to improve safety. The United Kingdom, however, requires only selective disclosure of information and contends that publication of emissions data is unnecessary under its detailed regulatory strategy. Eckard Rehbinder, *Book Review*, 86 AM. J. INT'L L. 219 (1992) (reviewing Michael S. Baran and Daniel J. Partan, *Corporate Disclosure of Environmental Risks: US and European Law*).

[6] Multinationals may take advantage of differing governmental regulatory standards to identify dangerous or polluting activities in countries where environment, health and safety regulations are weak. *See* Ann Rappaport and Margaret Flaherty, *Multinational Corporations and the Environment: Context and Challenges*, 14 Int'l Envtl Rep. (BNA) No. 9, at 261, 263 (May 8, 1991).

[7] Agenda 21, a recommendation proposed at the United Nations 1992 Conference on Environment and Development for United Nations (UNCED), suggests that comparable inventories of toxic chemical emissions be developed among countries and that international agencies such as the United Nations Environment Program and the World Health Organization establish requirements for the compilation of this data. *Preparations for the United Nations Conference on Environment and Development on the Basis of General Assembly Resolution 44/228 and Taking Into Account Other Relevant General Assembly Resolutions: Cross-Sectoral Issues*, U.N. GAOR Prepatory Committee for the United Nations Conference on Environment and Development, U.N. Doc. A/CONF.151/PC/100 (1992) [hereinafter *U.N.C.E.D. Conference Report*]; *see also Toxic Wastes: Poisoning the Planet*, U.N. CHRON., June 1992, at 61 [hereinafter *Toxic Wastes*]; *Industry Appears Unwilling*, *supra* note 1, para. 15.

[8] *U.N.C.E.D. Conference Report*, *supra* note 7. *See generally The Earth Summit:*

proposes that multinational corporations operating in countries lacking laws that require toxic release reporting be required to produce emissions data.[9] In addition, Agenda 21 suggests that international agencies such as the United Nations Environment Program and the World Health Organization accept responsibility for establishing the appropriate guidelines for the data.[10] The adoption of Agenda 21 represents an attempt at international standardization of right-to-know reporting through increased requirements for information disclosure. Furthermore, the Agenda 21 proposal serves as a mechanism for reducing multinational exploitation of differences in environmental health and safety regulations.[11] Addressing concerns similar to those of Agenda 21, the environmental group findings presented on July 29 regarding the refusal of United States multinationals operating in the United Kingdom to release emissions data[12] has re-opened the issue of international standardization of right-to-know reporting.

II. LAW

A. United States and United Kingdom: Differentiation in Risk Communication and Right-To-Know Legislation

In the United States, the disclosure of industrial environmental information has been an important aspect of regulation since the enactment of the National Environmental Policy Act in 1970.[13] Congress first outlined data assimilation and public information policies in 1986 when Congress passed the Emergency Planning and Community Right to Know Act (EPCRA)[14] as part of Title III of the Superfund Amendments and Reauthorization Act (SARA).[15] EPCRA

An Opportunity We Cannot Afford to Miss, U.N. CHRON., June 1992, at 40 (outlining topics to be discussed at the conference).

[9] *Industry Appears Unwilling*, *supra* note 1, para. 16.

[10] *Id.* para. 15.

[11] *See id.* paras. 12-16.

[12] *See Industry Appears Unwilling*, *supra* note 1.

[13] National Environmental Policy Act of 1969, Pub. L. No 91-190, § 2, 83 Stat. 852 (codified at 42 U.S.C. §§ 4301 to 4370(a)(1970)); *see also* Stephen Jones and Gabrielle Williamson, *Continental Show and Tell: The Revealing New European Enviro-Style*, LEGAL TIMES, Dec. 16, 1991, at 46 (indicating that environmental information regarding development projects and industrial operations has been disclosed to the public since 1970).

[14] Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (codified in part at 42 U.S.C. § 9601-9675 (1988)).

[15] Emergency Planning and Community Right-to-Know Act of 1986, Pub. L. No. 99-499, Title III, § 300-330, 100 Stat. 1613, 1728-1758 (codified at 42 U.S.C. §§

requires that public notice be given regarding the release of toxic industrial emissions.[16] Based upon the doctrines of informed consent, consumer protection regulation, and the public's right-to-know, risk communication legislation like EPCRA has emerged in response to public demands for information.[17] The compilation and distribution of emissions and health effects data under EPCRA legitimizes governmental industrial controls by identifying potentially dangerous chemical toxicity levels.[18] For example, Title III § 303(d) requires corporate facilities to provide local emergency planning committees with information to develop a local emergency response plan in the event of a chemical accident.[19]

Additionally, EPCRA requires corporations to file toxic chemical release forms annually by July 1 to detail chemical emissions of more than 300 toxic chemicals and 20 chemical compounds.[20] This detailed emissions information requirement under EPCRA serves a useful

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11001-11051 (1988)). The Act requires businesses to submit two sets of annual reports to designated state officials: one report is to document all chemicals in a threshhold quantity on the facility premises and the second report is to list all releases that occurred during the preceding twelve months, including legal emissions made pursuant to permits issued by the Enviromental Protection Agency.

[16] The basic requirement outlined in the United States Emergency Planning & Community Right to Know Reporting Requirement states:

> [t]he owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published . . . for each toxic chemical listed . . . that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established . . . during the preceding calendar year . . . .

42 U.S.C. § 11023(a) (1988).

[17] Lyndon, *supra* note 4, at 1797; *see also* Jones and Williamson, *supra* note 13, at 46 (stating that "public support and involvement is key to the implementation and enforcement of environmental laws and that consequently the public must be informed and knowledgeable").

[18] Lyndon, *supra* note 4, at 1797.

[19] Title III § 303(d) broadly requires information "relevant" to the implementation of local emergency response plans. By comparison, § 313 is more specific and suggests the information should track chemicals as they enter, travel through, and exit a facility. Emergency Planning and Community Right-To-Know Act of 1986, Pub. L. No. 99-499, Title III, § 303(d), 100 Stat. 1731 (codified at 42 U.S.C. § 11003 (1988)); *Hazardous Substances: Superfund Law Requires Release of Data Usable in Suits Against Firms, Lawyers Say*, Daily Rep. for Exec. (BNA) A-13 (May 19, 1988) [hereinafter *Superfund Law Requires Release*].

[20] 42 U.S.C. § 11023, (1988); *see also Magnetic Media Toxic Release Inventory Reporting Package Nears Completion*, Daily Rep. for Exec. (BNA) 112d14 (June 10, 1992). Currently, the Environmental Protection Agency seeks to add 68 chemicals to the EPCRA reporting list, while Congress considers increasing reporting requirements through Right-To-Know-More legislation. *Environment: Business Potential Under EPCRA Great for Defense Attorneys, EPA Official Says*, Daily Rep. for Exec. (BNA) 181d8 (September 17, 1992).

community purpose by educating people through right-to-know reporting. The requirement also prevents corporations from waiting for a crisis to occur before communicating with the public about hazardous substances.[21] An Environmental Protection Agency (EPA) computer database compiles the information, updates it annually and makes it available to the public through the Toxic Release Inventory (TRI).[22]

In contrast, the European Community makes emissions data available only on a "need to know" basis.[23] The United Kingdom's Official Secrets Act, for example, forbids disclosures of emissions information to other countries without the consent of an authorized government official.[24] Although some European countries have made information available to the public, most have maintained a tradition of secrecy and non-disclosure.[25] This high level of secrecy is consistent with the non-adversarial approach most European countries utilize in environmental regulation.[26] Differences between environmental regulators and industry are resolved through private negotiations and settlements where the public plays no role and, thus, is considered to have no need for such information.[27]

Although risk disclosure information is limited, there is a European corollary to EPCRA known as the Seveso Directive[28], or the Directive on Major Accident Hazards of Certain Industrial Activities, and, like EPCRA, its theme is the duty to inform.[29] In 1982, the European

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[21] *Superfund Law Requires Release*, *supra* note 19, paras. 23, 27. The December 1984 release of methyl isocyanate in Bhopal, India from the Indian affiliate of the United States based multinational Union Carbide is an example of technological risk due to a lack of commensurate standards and corporate interaction with a host community. Rappaport and Flaherty, *supra* note 6, paras. 9-10.

[22] The information reports are filed primarily by manufacturers and must indicate the level of toxic chemicals released into the environment during the previous year. *Other Countries Consider Adoption of Programs Similar to TRI, Official Says*, 15 Int'l Env't Rep. (BNA) No. 13, para. 3 (July 1, 1992).

[23] Rehbinder, *supra* note 5, at 219. The approach of the European Community regarding the extent of risk communication is one of selective information based on a "need to know" rationale.

[24] Official Secrets Act 1989, Ch. 6, § 7 (Eng.), *reprinted in* 12 HALSBURY'S STATUTES OF ENGLAND AND WHALES 1346, 1354 (4th ed. 1989).

[25] Unlike the majority of European countries, France and the Netherlands have historically made information available to the public. Jones and Williamson, *supra* note 13, at 46.

[26] *Id.*

[27] *Id.*

[28] Council Directive 82/501, arts. 1-21, 1982 O.J. (L 230) 1.

[29] Article 8 of the Seveso Directive requires that member states of the European

Community Commission implemented the original Seveso Directive to prevent or minimize the environmental risks of major industrial accidents.[30] The Directive called for the passive provision of risk information but has since been amended to provide for active distribution of information and public participation in the management of hazardous substances.[31] In general, the Directive requires European Community Member States to enact laws reducing chemical accident risks at industrial plants.[32] In 1988, added requirements instructed Member States on publication procedures to be followed when a chemical accident occurs.[33] Furthermore, in accord with the Seveso Directive, the European Council adopted the Directive on the Freedom of Access to Information on the Environment in June 1990 to provide for access to and public distribution of environmental information held by public authorities.[34]

Community ensure that persons likely to be affected by a major accident in an industrial activity are informed of the correct safety measures to be adopted. The provision specifically provides:

> Member States shall ensure that persons liable to be affected by a major accident originating in a notified industrial activity within the meaning of Article 5 are informed in an appropriate manner of the safety measures and of the correct behaviour to adopt in the event of an accident.

Id; *see also* Jones and Williamson, *supra* note 13, para. 26.

[30] Amended after the 1984 disaster in Bhopal, India and again after a 1986 Switzerland warehouse fire, the Seveso Directive proposes procedures including production of a safety report and an on-site emergency plan to be followed by industrial plants utilizing certain specified substances. *ECC Drafts Significant Changes To Directive On Industrial Accidents*, Daily Rep. for Exec. (BNA) at A-3 (July 16, 1991).

[31] *Panel of Risk Specialists Reviews Issues Involved In Communicating Risk Information*, 11 Int'l Env't Rep. (BNA) No. 4, 222 (April 13, 1988) [hereafter *Panel of Risk Specialists*].

[32] In addition to requiring the adoption of such risk reduction legislation, the Seveso Directive requires the formulation of emergency response plans for the communities where these facilities are operating. Jones and Williamson, *supra* note 13, at 46. Such a response plan would provide information relating to possible major-accident situations, including a listing of safety equipment, alarm systems and resources available to deal with those accidents. Council Directive 82/501, art. 5, 1982 O.J. (L 230) 3.

[33] Directive 82/501, art. 8(1) was amended in 1988 as follows:

> Member States shall ensure that information on safety measures and on the correct behaviour to adopt in the case of an accident is supplied in an appropriate manner, and without their having to request it, to persons liable to be affected by a major accident originating in a notified industrial activity within the meaning of Article 5. The information shall be repeated and updated at appropriate intervals. It shall also be made publicly available.

Council Directive 88/610, art. 1, 1988 O.J. (L 336) 14-15.

[34] Article 1 of the Directive on the Freedom of Access to Information on the

European Community Member States have implemented the Seveso Directive's mandate of corporate risk communication inconsistently.[35] While the Seveso Directive establishes corporate duties to disclose safety and emergency response data to national officials,[36] that flow of information generally does not reach the public.[37] As a result, in several Western European countries, corporations provide toxic emissions data to federal governments but it is rarely made public.[38] In addition, the Directive on the Freedom of Access to Information on the Environment allows public authorities of European Community Member States the right to refuse public access on the basis of several broad exceptions, including governmental secrecy, trade secrecy, or national security.[39] Thus, in the European Community, "there has been no broad vesting of a citizen's or a worker's right-to-know."[40]

Environment provides:

> The object of this Directive is to ensure freedom of access to, and dissemination of, information on the environment held by public authorities and to set out the basic terms and conditions on which such information should be made available.

Council Directive 90/313, art. 1, 1990 O.J. (L 158) 56; *see also* Jones and Williamson, *supra* note 13, at 46.

[35] Most Member States have not made information publicly available, although France and the Netherlands are included among those European countries that have done so. *Id.*

[36] Council Directive 82/501, art. 8, 1982 O.J. (L 230) 1.

[37] Jones and Williamson, *supra* note 13, para. 4; *see also Panel of Risk Specialists*, *supra* note 31, at 222 (suggesting that the Seveso Directive mandates definite requirements to provide emissions information to the federal government without specifying a similar duty to local officials and thus the information flow becomes "constricted" as it attempts to pass to the local level).

[38] *Industry Appears Unwilling*, *supra* note 1, para. 4.

[39] The Council Directive on the Freedom of Access to Information on the Environment provides that Member States may refuse a request for environmental information when it affects:

> the confidentiality of the proceedings of public authorities, international relations and national defense; public security; matters which are, or have been, sub judice, or under inquiry (including disciplinary inquiries), or which are the subject of preliminary investigation proceedings; commercial and industrial confidentiality, including intellectual property; the confidentiality of personal data and/or files, material supplied by a third party without that party being under a legal obligation to do so; and material, the disclosure of which would make it more likely that the environment to which such material related would be damaged.

Council Directive 90/313, art. 3, 1990 O.J. (L 158) 57; *see also* Jones and Williamson, *supra* note 13, at 46 (indicating industrial secrecy, privacy concerns or any manifestly unreasonable request are also justifications for denial of access to information).

[40] *Panel of Risk Specialists*, *supra* note 31, at 222.

This policy of non-disclosure is followed in the United Kingdom where the Official Secrets Act prohibits public dissemination of emissions data without the permission of the government.[41] Additionally, the Environmental Protection Act 1990[42] permits exemptions from public disclosure on specified grounds.[43] These measures are in direct contrast to United States right to know policy. Distinguishing between the United States and United Kingdom policies at a news conference on July 29, 1992, Fred Millar, Friends of the Earth-United States toxic projects director, described the United Kingdom's Official Secrets Act as criminalizing the release of emissions data collected by the government without official permission.[44] Furthermore, the United Kingdom's Environmental Protection Act requires publication of plant operational processes but only if the Pollution Inspectorate does not direct disclosure.[45] In addition, the Environmental Protection Act 1990 allows exemptions from public disclosure of emissions on the grounds of national security or commercial confidentiality.[46]

In response to the exemptions and requirements of these acts, an environmental group in the United Kingdom encourages public disclosure of emissions data. Seeking to resolve a "secrecy" dispute involving London industries, Friends of the Earth publicly objected

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[41] Official Secrets Act 1989, Ch. 6, § 7 (Eng.). Disclosures of official information may only be made with the permission of the government.

[42] Environmental Protection Act 1990, Ch. 43, § 13A (Eng.).

[43] Disclosure is required for the grant of operating licenses; however, the Environmental Protection Act 1990 allows exemptions on the grounds of commercial confidentiality or national security. *Environmental Group Urging Minister To Maintain Emission Disclosure Requirement*, 15 Int'l Env't Rep. (BNA) No. 9, 265 (May 6, 1992) [hereinafter *Environmental Group Urging Minister*].

[44] *Industry Appears Unwilling*, *supra* note 1, para. 5.

[45] Section 13(A)(2) of the Act provides:

> Each local authority shall keep and make available to the public copies of all documents sent to the authority under any provision of this Act unless directed by the chief inspector or, as the case may be, the Minister of Agriculture, Fisheries and Food and the chief inspector, that all or any part of any such document is not to be available for inspection.

Environmental Protection Act 1990, Ch. 43, § 13A (Eng.).

[46] Section 13(A)(1) of the Act states:

> The chief inspector shall keep copies of . . . and he shall make copies of those documents available to the public except to the extent that that would involve the disclosure of information relating to any relevant process or trade secret (within the meaning of subsection (3) of section thirteen of this Act) or would involve the disclosure of applications or certificates as respects which the Secretary of State has directed that knowledge should be restricted on grounds of national security.

Id; *see also Environmental Group Urging Minister*, *supra* note 43, at 265.

on April 27, 1992, to the appeals of two polluting power stations for exemptions from the Environmental Protection Act disclosure requirements.[47] In pursuit of its full disclosure objective, Friends of the Earth encourages multinational corporations to release information in the United Kingdom that they are legally compelled to publish in the United States.[48]

B. Dilemma Faced By Multinational Corporations: Tufts University Study and the Home Versus Host Country Question

Corporate responses to global competitive pressures are changing the way environment, health and safety issues are addressed in the development of effective government environmental policies. Between August and November 1990, a team at the Center for Environmental Management at Tufts University conducted a survey of 98 multinational corporations, entitled "Multinational Corporations and the Environment: A Survey of Global Practices."[49] The study examined the implementation of environment, health and safety [EHS] policies and the differences between United States and non-United States operations in regard to those policies.[50]

The Tufts University study found that the pattern of mergers and acquisitions characterizing United States based multinationals contributes to variations in management approaches and environmental outcomes. These variations in management styles raise questions regarding the effectiveness of internal corporate goals in light of the

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[47] In February, 1992, National Power and PowerGen first appealed to Her Majesty's Inspectorate of Pollution for commercial confidentiality exemptions. When their requests were rejected, the generators filed a further appeal with the Environment Secretary. *Environmental Group Urging Minister*, *supra* note 43, at 265. Friends of the Earth has pursued its objective of public distribution of hazardous and toxic chemical information since March 27, 1991, when it launched its "right-to-know" campaign. The campaign focused upon companies operating in both the United Kingdom and the United States and encouraged them to publish toxic emissions data. *Chemical Industry Signals Willingness To Publish Data On Emissions of Toxics*, 14 Int'l Env't Rep. (BNA) No. 7, 199 (April 10, 1991).

[48] The Friends of the Earth campaign requested BP, Dow, DuPont, ICI, Monsanto and others with United Kingdom facilities producing organic chemicals, plastics and paints, to publish information annually on inventories of toxic emissions from their British production plants. *Id.*

[49] The team examined how a group of multinationals currently address environment, health and safety issues in the hope of establishing improved corporate practices in these areas in response to their findings. Rappaport and Flaherty, *supra* note 6, at 261.

[50] *Id.* para. 6.

suggested development of global standards.[51] Thus, attempting to comply with the EHS programs and publication requirements of the different regulatory regimes in which they operate is an important concern for multinational companies.[52] In addition, fear that competitors might benefit from less stringent environmental regulations may be a compelling factor in the opening of United States based facilities in places like the United Kingdom.[53] A primary concern, also pointed out in the study's analysis, is that "multinationals may take advantage of different standards between home and host government to locate dangerous or polluting activities in areas where EHS regulations are weak."[54] Therefore, determining whose EHS rules apply presents problems for multinationals operating in countries with contrasting regulatory legislation and disclosure requirements.[55]

C. Multinational Corporations and Reporting in the Absence of Right-To-Know Legislation: Public Data Project Survey

In June, 1992, the environmental group Public Data Project, with assistance from Friends of the Earth, conducted a survey to determine whether multinational corporations perceive a societal obligation to publish toxic emissions data, even in the absence of right-to-know legislation.[56] The survey, modeled after the TRI, asked forty of the leading international industrial companies to provide information on their toxic chemical emissions.[57] Only six of those companies provided responses to the survey questions.[58] The others either did not respond to the questionnaire but provided other environmental information, did not respond at all, or indicated that data was unavailable.[59]

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[51] The size, scale, structure and operation of multinationals are complex and varying. Multinationals often are composed of several separate companies in vastly different businesses with substantial internal differences in management styles and environment, health and safety problems. *Id.* para 17.

[52] How multinationals choose to use their resources is important not only to worldwide environment, health and safety but also to the corporations' realistic chances for sustainable economic development and growth. *Id.* para. 16.

[53] *Id.* paras. 42-43.

[54] *Id.* para. 33.

[55] *Id.* para. 46.

[56] David Sarokin, *Public Data Project Report, Toxic Releases From Multinational Corporations: Does The Public Have A Right To Know?*, Public Data Project Report, 1 (1992) [hereinafter *Toxic Releases from Multinational Corporations*].

[57] *Id.* at 3.

[58] BP (British Petroleum Company) PLC, Dow Chemical Co., ICI (Imperial Chemical Industries) PLC, Monsanto Co., Union Carbide Corp., and Xerox Corp. were the six multinationals who provided data and completed the survey. *Id.* at 5.

[59] AT&T Corp., CIBA-GEIGY Ltd., E.I. Du Pont Company, Exxon Corp., IBM

The survey compared the emission levels of European plants with levels of the same multinational corporations' United States plants.[60] Of the six companies that produced survey data, the European facilities reported a total of 7.1 million pounds of toxic chemical waste generation.[61] Analysis of the data indicated that the average toxic discharges in Europe exceeded those in the United States by more than 500%.[62]

EPCRA requires publication of information regarding the United States operations of the thirty-four corporations that declined to provide emissions data, but little is known about their operations elsewhere.[63] Emission levels of these corporations may possibly be as substantial as those of the multinationals who did respond to the survey.[64] Without right-to-know legislation mandating disclosure, uncertainty exists regarding the potential severity of toxic release levels.[65]

III. ANALYSIS

A. The Value of Compulsory Publication

The lack of full disclosure right-to-know legislation in the United Kingdom raises concerns that United States based multinationals may take advantage of varying standards among home and host governments.[66] Forty percent of corporate respondents in the Tufts University study agreed that "one reason that U.S. corporations locate in foreign countries is that EHS regulatory systems in those countries are weak."[67]

Corp., Nestle S.A., Procter & Gamble Company, Rockwell International Corp., Royal Dutch/Shell Group of Companies, Solvay & CIE S.A., and Toyota Motor Corporation all acknowledged the receipt of the survey but did not complete it. General Electric Co. and Bayer AG did not complete the survey either but did supply an environmental report. *Id.* at 5.

[60] *Id.* at 3.

[61] The 7.1 million pounds of toxic chemical waste included 5.0 million pounds of air emissions, 1.6 million pounds of surface water discharges, 285,000 pounds of on-site land disposal and 170,000 pounds of off-site shipments of recycled or incinerated wastes. *Id.* at 7.

[62] When comparing large discharges of specific chemicals produced by companies with plants located both in the United States and Europe, 2,965 pounds of surface water discharge was produced in the United States compared with 1.67 million pounds of surface water discharge in England. *Id.* at 16.

[63] *Id.* at 17.

[64] *Id.* at 18.

[65] *Id.*

[66] Multinationals may attempt to locate dangerous or polluting activities in areas where EHS regulations are weak. Rappaport and Flaherty, *supra* note 6, at 262.

[67] Thirty-five percent of the respondents disagreed and the remainder had no opinion on the subject. *Id.* para. 34.

Another likely reason is that problems of competitive fair play emerge when costs of complying with EHS regulations are more stringent on one multinational than on another.[68] The lack of uniform standards may also lead to insecurity that corporate competitors are receiving benefits from lower emission publication requirements.[69]

Requiring uniform publication of emissions data through right-to-know legislation serves four basic purposes.[70] First, emissions publication ensures that data are created and made available. Second, it reduces chemical risks by encouraging voluntary industrial action or governmental intervention in responding to regulatory standards.[71] Third, publication promotes public participation in the decision making process regarding hazardous material levels in the community. And, finally, it alters the balance of power among industry, government and citizens by increasing public awareness of environmental issues.[72]

Furthermore, the United Kingdom Chemical Industries Association acknowledged the value of publishing toxic emissions data in April 1991. The Association indicated that it welcomed the request of Friends of the Earth to annually publish emissions data from British production plants.[73] Subsequently, in an unprecedented move in May 1992, BP Chemicals became the first producer to publish land, air and water emissions data from its ten largest plants worldwide.[74]

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[68] *Id.* para. 47.

[69] *Id.* para. 43.

[70] These purposes are outlined by Susan Hadden in her review of risk communication and public policy. Paulette Stenzel, *A Review of a Citizen's Right To Know: Risk Communication and Public Policy by Susan G. Hadden*, 22 ENVTL. L. 997, 1000 (1992) (book review).

[71] *Id.*

[72] *Id.*

[73] The Chemical Industries Association said Friends of the Earth was 'knocking on an open door' as the association had published a policy modeled on 'responsible care' programs running in Australia, Cananda, France, the Netherlands, the United States. The programs require member companies to gather performance data to be published annually. Roy Granger, director of the industry association, stated the group was "totally committed to a policy of complete openness on environmental information." Granger further suggested that the non-disclosure problem is merely a result of the chemical industry's reluctance to overwhelm the public with too much or unnecessary information. *Chemical Industry Signals Willingness*, Int'l Env't Rep. (BNA) No. 9, at 199 (April 10, 1991).

[74] BP Chemicals listed 170,000 tons of emissions to land, air and water, from its ten largest plants worldwide, of which 117,300 tons were released from its five British plants. BP made the information public in response to pressure from environmental groups like Greenpeace and Friends of the Earth. The environmental

Although, like BP, proponents of greater openness within the Chemical Industries Association exist, they represent the minority.[75] BP's move, for example, was voluntary and unilateral, while other companies still refuse to disclose any information regarding their emissions.[76] Although compulsory emission publication is the goal of environmental pressure groups in the United Kingdom,[77] most industry association members fear attack from the public upon disclosure of emission level information.[78] A representative of the Chemical Industry Association acknowledged, however, that providing information to the public may appease the environmental groups exerting pressure on chemical industries in the United Kingdom.[79] Thus, the potential for increased public disclosure of toxic emissions data exists in the United Kingdom.

B. International Standardization of Environmental Regulations and Development of International Right-To-Know Legislation As Potential Solutions

In attempting to require United States based multinationals to publish emissions data, the United States should not seek to pattern right to know legislation in the United Kingdom after its own legislation. Instead, the United States should push for international standardization of emission classification and labelling.[80] The estab-

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groups requested site-specific information, which was provided by BP Chemicals' five main sites in Britain, at Baglan Bay, Hythe, Grangemouth, Hull and Barry. Furthermore, BP has indicated it will continue its practice of releasing emissions data on an annual basis in order to give the public full knowledge of whether its targets for pollution reduction are being met. Chris Wheal, *UK: BP Chemicals Promises Less Secrecy And Cut In Air Emissions*, REUTER TEXTLINE ENG'R, paras. 2-4 (May 21, 1992).

[75] *Id.* para. 7.

[76] *Id.* para. 5.

[77] "The public has a right to know not just what BP's levels are but ICI's and specifically those companies that are refusing to give out any information. . ." says Fiona Weir, a representative of Friends of the Earth. *Id.*

[78] Members are concerned about both forced and voluntary publication for fear of public response to the reporting of high emission levels. *Id.* para. 7.

[79] According to a Chemical Industry Association representative, "[w]hile publishing figures and showing improvements will never be enough for the green activists, appealing directly to the public with that information may be enough to steal the thunder of the green lobby." *Id.* para. 8.

[80] Agenda 21 endorses such standardization by recommending that individual countries compile comparable inventories of toxic chemical emissions. Standardization is expected to accelerate international assessment of chemical risks, harmonize classification and labeling, and establish risk reduction programs. *Toxic Wastes*, *supra* note 7, at 61.

lishment of uniform international EHS standards would be of substantial advantage to multinationals, as long as the corporations perceive the guidelines as reasonable and there exists even enforcement of the standards among home and host countries.[81] By "creating a level playing field", the balanced application of uniform standards would enable a corporation to feel secure that exploitation of differences in EHS disclosure requirements does not result in benefits to competitors.[82]

An additional benefit of international standardization is corporate self-improvement of emission requirements as a means of avoiding litigation which might arise from failure to comply.[83] Corporate officials fear that mandatory disclosure laws could lead to increased vulnerability to litigation for failure to publish emergency response plans and toxicity release data.[84] Risk communication laws possibly encourage companies to develop voluntary measures to improve corporate safety with the goal of reducing their exposure to liability.[85]

Any attempt by the United States to push the United Kingdom to require full disclosure of industrial emissions by patterning its right-to-know legislation after that of the United States would be unreasonable.[86] Right-to-know law should not duplicate United States legislation but instead should be developed in response to the demands of the public residing in a particular country.[87] Citizens of other countries may not require or want the same type of information as that collected through the Toxic Release Inventory (TRI) in the United

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[81] Currently enforcement varies among countries, even within the realm of industrialized countries. *See* Rappaport and Flaherty, *supra* note 6, at 263.

[82] *Id.*

[83] Seventy-six percent of the responding countries in the Tufts University survey agreed that international standardization of environment health and safety regulations would lead to improved compliance and practice among corporations. *Id.*

[84] Boston University Law Professor Michael Baram addressed this concern at a conference in 1988 on the Responsibilities of Multinational Corporations to Disclose and Communicate Risk Information. *Panel of Risk Specialists*, *supra* note 31, at 222.

[85] *Id.* para. 8.

[86] Geographical and developmental differences among countries can have an impact on their respective environment, health and safety priorities. Rappaport and Flaherty, *supra* note 6, para. 70.

[87] Jon Holtzman, a Chemical Manufacturers Association vice president, presented this proposition to the Bureau of National Affairs. *Industry Appears Unwilling*, *supra* note 1, at 519.

States.[88] For example, differences in degree of development, geographic location, public concern, security issues and regulatory programs can influence internal decision making with respect to environment, health and safety issues.[89]

Despite these differences, several countries, including the United Kingdom, have noted the success of the Toxic Release Inventory in the United States and have expressed interest in adopting similar programs.[90] The EPA's Office of International Activities has indicated that the adoption of international legislation with emission disclosure requirements similar to the TRI would be beneficial to United States multinationals who already have to comply with domestic reporting laws.[91] Such legislation could enable those corporations to regain a competitive advantage with their foreign competitors.[92]

Directly addressing emission disclosure requirements, the United Nations has established an international strategy for the management of toxic chemicals with its recent adoption of Agenda 21.[93] The strategy identifies five priority areas for such an international environmental program, including international assessment of risks, classification and labelling of chemicals, information exchange on toxic chemicals and chemical risks, establishment of risk reduction programs, and strengthening national capabilities and capacities for chemical management.[94] At UNCED, the need for an intergovernmental forum on chemical risk assessment and management was recognized. Discussion focused on the forum as a means of implementing an intergovernmental mechanism to achieve the goals of Agenda 21,

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[88] *Id.*

[89] Rappaport and Flaherty, *supra* note 6, at 265.

[90] Australia, Canada, the United Kingdom and the European Community Commission have expressed plans to add versions of the United States Toxic Release Inventory to be used as a new public information program or as a supplement to an existing means of data compilation, according to Eileen Fesco of EPA's Office of Pollution Prevention and Toxics. *Other Countries Consider Adoption Of Programs Similar To TRI, Official Says*, 15 Int'l Envtl. Rep. (BNA) No. 13, at 446 (July 1, 1992).

[91] *Id.*

[92] *Id.*

[93] *Recommendations of the Meetings of Experts to Discuss Draft Proposals for an Intergovernmental Mechanism for Chemical Risk Assessment and Management*, U.N. GAOR Prepatory Committee for the United Nations Conference on Environment and Development, U.N. Doc. A/CONF.151/PC/100/Add.23/Annex I (1991), *reprinted in* 1 AGENDA 21 & THE UNCED PROCEEDINGS 581 (Nicholas Robinson ed., 1992).

[94] Agenda Item 6, *id.* at 583.

including emission risk communication.[95] By utilizing the framework and goals of Agenda 21, countries will create emissions inventories that are compatible with other countries on an international level and will adopt right-to-know reporting in principle, even in the absence of country specific disclosure requirements.[96] And although inherent financial problems and lack of resources often hinder the participation of some developing countries in international agreements, special funding incentives have been established by Agenda 21 and industrialized countries.[97]

The recent refusal of United States based multinationals to release toxic emissions data from their facilities in the United Kingdom provides a basis for continuing Agenda 21's push for international standardization of right-to-know reporting. Differences in disclosure requirements existing in the United States and the United Kingdom has arguably enabled United States multinationals to take advantage of the United Kingdom's weaker disclosure requirements at the expense of a public who possesses a right to have access to emissions information.[98] The adoption of an international right-to-know program would assure United States multinationals that competitors in the United Kingdom are not benefitting from lower environmental standards and could alleviate potential abuse of less stringent emission disclosure requirements.

IV. CONCLUSION

The refusal of some United States manufacturers of chemical products to release toxic emissions data from their operations in the United Kingdom is a direct consequence of the different public risk communication approaches followed by the two countries. Contrasted

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[95] Agenda Items 6,9, *id.* at 583-84. The purpose of the forum would be to provide policy guidance, required political and financial support, and to develop strategies to coordinate environmental requirements. Agenda Item 9, *id.* at 584 (1992).

[96] Sarokin, *supra* note 56, at 20.

[97] Special funds, such as the "World Heritage Fund", the "Wetland Conservation Fund" and the "Interim Multilateral Ozone Fund", have been established in response to the imbalances between industrialized and developing countries regarding ability to participate in international programs. *Preparatory Committee for the United Nations Conference on Environment and Development, Survey of Existing and Instruments and Its Follow-Up*, U.N. GAOR Prepatory Committee for the United Nations Conference on Environment and Development, U.N. Doc. A/CONF.151/PC/103 (1991), *reprinted in* 2 AGENDA 21 & THE UNLED PROCEEDINGS 743 (Nicholas Robinson ed., 1992).

[98] Rappaport and Flaherty, *supra* note 6, at 262.

with the United States' "right-to-know" approach, legislation in the United Kingdom forbids unauthorized disclosures without Parliamentary consent, and authorities there can refuse public access on the basis of national security or trade secrecy. The different regulatory requirements have raised concerns that United States multinationals are opening facilities in the United Kingdom in an effort to take advantage of its lower environmental standards and emission disclosure requirements.

Efforts to achieve international standardization of right-to-know reporting and increased requirements for information disclosure, through proposals such as the United Nations' Agenda 21, serve as mechanisms for reducing multinational exploitation of differences in EHS regulations. Several countries, including the United Kingdom, have already expressed interest in adopting disclosure programs like the United States' Toxic Release Inventory. Moreover, the adoption of uniform international standards would be of substantial benefit, as long as they were perceived by the multinationals as reasonable and enforcement was uniform among home and host countries. The public arguably possesses a right to toxic release data, and the adoption of international right-to-know reporting will at least assure United States multinationals that competitors are not receiving an unfair advantage due to lenient emissions publication requirements.

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