

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2579

To amend the Clean Air Act to limit access to off-site consequence analysis information in order to reduce the risk of criminal releases from stationary sources, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 5, 2002

Mr. BOND introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Clean Air Act to limit access to off-site consequence analysis information in order to reduce the risk of criminal releases from stationary sources, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Community Protection  
5       from Chemical Terrorism Act”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

1           (1) the nationwide threat of terrorist attacks  
2           has greatly increased since September 11, 2001;

3           (2) government-mandated publicly available in-  
4           formation on worst-case scenario accidents at chem-  
5           ical facilities provides a blueprint that terrorists may  
6           use to plan and carry out terrorist attacks;

7           (3) improved protections are necessary to pre-  
8           vent terrorists from using information described in  
9           paragraph (2) to target and attack local commu-  
10          nities; and

11          (4) while communities have a right to know  
12          about the use of chemicals in their communities,  
13          communities also have the right not to allow terror-  
14          ists to use such information to destroy the commu-  
15          nities.

16 **SEC. 3. SAFE USAGE OF CHEMICAL INFORMATION.**

17          Section 112(r)(7) of the Clean Air Act (42 U.S.C.  
18          7412(r)(7)) is amended by striking subparagraph (H) and  
19          inserting the following:

20                   “(H) ACCESS TO OFF-SITE CONSEQUENCE  
21                   ANALYSIS INFORMATION.—

22                   “(i) DEFINITIONS.—In this subpara-  
23                   graph:

24                                   “(I) CRIMINAL RELEASE.—The  
25                                   term ‘criminal release’ means an emis-

1 sion of a regulated substance into the  
2 ambient air from a stationary source  
3 that is caused, in whole or in part, by  
4 a criminal act.

5 “(II) DISTANCE TO ENDPOINT.—

6 The term ‘distance to endpoint’ means  
7 the radius of the area of an accidental  
8 release or a criminal release.

9 “(III) MEMBER OF THE PUB-

10 LIC.—The term ‘member of the pub-  
11 lic’ means—

12 “(aa) an individual who is  
13 not an official user; and

14 “(bb) an official user who is  
15 not carrying out an official use.

16 “(IV) OFFICIAL USE.—The term

17 ‘official use’ means an action of a  
18 Federal, State, or local government  
19 agency, or an entity referred to in  
20 subclause (V)(ee), that is intended to  
21 carry out a function necessary to pre-  
22 vent, plan for, or respond to an acci-  
23 dental release or a criminal release.

24 “(V) OFFICIAL USER.—The term

25 ‘official user’ means—

1           “(aa) an officer or employee  
2 of the United States;

3           “(bb) an officer or employee  
4 of an agent or contractor of the  
5 United States;

6           “(cc) an officer or employee  
7 of a State or local government;

8           “(dd) an officer or employee  
9 of an agent or contractor of a  
10 State or local government; and

11           “(ee) an officer or employee  
12 or an agent or contractor of an  
13 entity that has been given, by a  
14 State or local government, re-  
15 sponsibility for preventing, plan-  
16 ning for, or responding to acci-  
17 dental releases or criminal re-  
18 leases.

19           “(VI) OFF-SITE CONSEQUENCE  
20 ANALYSIS INFORMATION.—The term  
21 ‘off-site consequence analysis informa-  
22 tion’ means—

23           “(aa) any information in a  
24 risk management plan, including  
25 in the executive summary of the

1 plan, that describes or identifies,  
2 with respect to a worst-case or  
3 alternative release scenario for a  
4 toxic release or flammable  
5 release—

6 “(AA) the name, phys-  
7 ical state, or concentration  
8 of a chemical;

9 “(BB) the quantity re-  
10 leased, release rate, or dura-  
11 tion of the release;

12 “(CC) the topography,  
13 whether urban or rural;

14 “(DD) the distance to  
15 endpoint;

16 “(EE) the estimated  
17 residential population, public  
18 receptors, or environmental  
19 receptors within the distance  
20 to endpoint;

21 “(FF) any map or  
22 other graphic depiction used  
23 to illustrate a scenario; and

1                   “(GG) the prevention  
2                   program designed to prevent  
3                   or mitigate the release; and

4                   “(bb) any information de-  
5                   rived from the information de-  
6                   scribed in item (aa) (including  
7                   any statewide or national ranking  
8                   of stationary sources derived  
9                   from the information described in  
10                  item (aa)) that is not publicly  
11                  available from a source other  
12                  than a risk management plan.

13                  “(VII) READ-ONLY ACCESS.—  
14                  The term ‘read-only access’ means ac-  
15                  cess that—

16                   “(aa) allows the reading of  
17                   information; but

18                   “(bb) does not allow re-  
19                   moval, mechanical reproduction,  
20                   or other duplication (including  
21                   notetaking) of information.

22                  “(VIII) RISK MANAGEMENT  
23                  PLAN.—The term ‘risk management  
24                  plan’ means a risk management plan  
25                  registered with the Administrator by

1 an owner or operator of a stationary  
2 source under subparagraph (B)(iii).

3 “(IX) STATE OR LOCAL OFFICIAL  
4 USER.—The term ‘State or local offi-  
5 cial user’ means an official user de-  
6 scribed in any of items (cc) through  
7 (ee) of subclause (V).

8 “(ii) AVAILABILITY UNDER FREEDOM  
9 OF INFORMATION ACT.—

10 “(I) IN GENERAL.—Off-site con-  
11 sequence analysis information shall  
12 not be made available under section  
13 552 of title 5, United States Code.

14 “(II) APPLICABILITY.—Subclause  
15 (I) applies to off-site consequence  
16 analysis information obtained or de-  
17 veloped by the Administrator before,  
18 on, or after the date of enactment of  
19 this subparagraph.

20 “(iii) ACCESS BY MEMBERS OF THE  
21 PUBLIC TO OFF-SITE CONSEQUENCE ANAL-  
22 YSIS INFORMATION.—

23 “(I) IN GENERAL.—Except as  
24 provided in this clause, notwith-  
25 standing any other provision of law

1 (including any regulation), no member  
2 of the public shall have access to off-  
3 site consequence analysis information.

4 “(II) ESTABLISHMENT OF PRO-  
5 CEDURES TO PROVIDE READ-ONLY AC-  
6 CESS TO CERTAIN INFORMATION.—

7 The Administrator, in consultation  
8 with the Attorney General, shall es-  
9 tablish procedures to allow a member  
10 of the public read-only access to a  
11 paper copy of off-site consequence  
12 analysis information that does not dis-  
13 close the identity or location of any  
14 facility or any information from which  
15 the identity or location of any facility  
16 could be deduced.

17 “(III) LOCATIONS OF READ-ONLY  
18 ACCESS.—Read-only access described  
19 in subclause (II) shall be provided to  
20 members of the public at—

21 “(aa) the headquarters of  
22 the Environmental Protection  
23 Agency;

1           “(bb) each regional office of  
2           the Environmental Protection  
3           Agency; and

4           “(cc) such other locations of  
5           the Environmental Protection  
6           Agency as the Administrator de-  
7           termines to be appropriate.

8           “(IV) REQUIRED ELEMENTS OF  
9           PROCEDURES.—The procedures estab-  
10          lished under subclause (II) shall re-  
11          quire that—

12           “(aa) access be provided to  
13           a member of the public only if  
14           the member of the public displays  
15           photo identification issued by a  
16           Federal, State, or local govern-  
17           ment agency and provides a sig-  
18           nature; and

19           “(bb) the employee of the  
20           Environmental Protection Agency  
21           who provides the access described  
22           in item (aa) record the date of  
23           access and the identity of each  
24           stationary source with respect to  
25           which the access is sought.

1                   “(V)        MAINTENANCE        OF  
2                   RECORDS.—The Administrator shall  
3                   maintain records developed under sub-  
4                   clause (IV) for a period of 5 years.

5                   “(iv)     READ-ONLY     INFORMATION  
6                   TECHNOLOGY SYSTEM.—

7                   “(I) IN GENERAL.—In consulta-  
8                   tion with the Attorney General, the  
9                   Administrator shall establish an infor-  
10                  mation technology system described in  
11                  subclause (II) that provides for the  
12                  availability to members of the public  
13                  of off-site consequence analysis infor-  
14                  mation described in clause (iii)(II).

15                  “(II)     INFORMATION     TECH-  
16                  NOLOGY     SYSTEM.—An information  
17                  technology system referred to in sub-  
18                  clause (I) shall consist of a central  
19                  database under the control of the  
20                  Federal Government that provides  
21                  read-only access to information.

22                  “(v) ACCESS BY STATE OR LOCAL OF-  
23                  FICIAL USERS TO OFF-SITE CONSEQUENCE  
24                  ANALYSIS INFORMATION.—

1           “(I) REQUIRED ACCESS.—The  
2 Administrator shall allow access by a  
3 State or local official user, for official  
4 use, to off-site consequence analysis  
5 information relating to stationary  
6 sources located in the State or local  
7 official user’s State or in a contiguous  
8 State.

9           “(II) ADDITIONAL ACCESS.—On  
10 request of a State or local official  
11 user, the Administrator may allow ac-  
12 cess by the State or local official user,  
13 for official use, to off-site consequence  
14 analysis information relating to sta-  
15 tionary sources not located in the  
16 State or local official user’s State or  
17 a contiguous State.

18           “(vi) PROHIBITION ON DISCLOSURE  
19 BY OFFICIAL USERS.—

20           “(I) IN GENERAL.—

21           “(aa) PROHIBITION.—No of-  
22 ficial user shall knowingly dis-  
23 close off-site consequence anal-  
24 ysis information in any form to  
25 any member of the public, except

1 to the extent that such disclosure  
2 is for official use or is otherwise  
3 authorized under this subpara-  
4 graph.

5 “(bb) EXTENT OF DISCLO-  
6 SURE FOR OFFICIAL USE.—  
7 Under item (aa), an official user  
8 may disclose for official use only  
9 the quantity of off-site con-  
10 sequence analysis information  
11 that is necessary for the purpose  
12 of preventing, planning for, or re-  
13 sponding to accidental releases or  
14 criminal releases.

15 “(II) CRIMINAL PENALTIES.—  
16 Notwithstanding section 113, a viola-  
17 tion of subclause (I) shall be punished  
18 as a Class A misdemeanor under sec-  
19 tion 3559 of title 18, United States  
20 Code.

21 “(III) NOTICE.—The Adminis-  
22 trator shall provide to each official  
23 user who receives off-site consequence  
24 analysis information—

1 “(aa) notice of the definition  
2 of official use and examples of  
3 actions that do and actions that  
4 do not fall within that definition;  
5 and

6 “(bb) notice of the prohibi-  
7 tion established by subclause (I)  
8 and the penalties established by  
9 subclause (II).

10 “(vii) EFFECT ON STATE OR LOCAL  
11 LAW.—

12 “(I) IN GENERAL.—Subject to  
13 subclause (II), this subparagraph su-  
14 persedes any provision of State or  
15 local law that is inconsistent with this  
16 subparagraph.

17 “(II) AVAILABILITY OF INFORMA-  
18 TION UNDER STATE LAW.—Nothing in  
19 this subparagraph precludes a State  
20 from making available data on the off-  
21 site consequences of chemical releases  
22 collected in accordance with State law.

23 “(viii) REPORT.—

24 “(I) IN GENERAL.—The Attorney  
25 General shall prepare a report that

1 describes the extent to which regula-  
2 tions promulgated under this subpara-  
3 graph result in actions, including the  
4 design and maintenance of safe facili-  
5 ties, that are effective in detecting,  
6 preventing, and minimizing the con-  
7 sequences of criminal releases.

8 “(II) REVIEW OF SECURITY.—In  
9 preparing the report under subclause  
10 (I), the Attorney General, using avail-  
11 able data to the maximum extent  
12 practicable, and using a sampling of  
13 stationary sources covered by sub-  
14 paragraph (B)(ii) and selected at the  
15 discretion of the Attorney General,  
16 shall review—

17 “(aa) the vulnerability of  
18 those covered stationary sources  
19 to criminal and terrorist activity;

20 “(bb) current industry prac-  
21 tices concerning site security; and

22 “(cc) the security of trans-  
23 portation of regulated sub-  
24 stances.

1           “(III) CONSULTATION.—The At-  
2           torney General shall carry out sub-  
3           clauses (I) and (II) in consultation  
4           with appropriate Federal, State, and  
5           local government agencies, affected in-  
6           dustry, and members of the public.

7           “(IV) SUBMISSION OF REPORT.—  
8           Not later than 1 year after the date  
9           of enactment of item (aa), the Attor-  
10          ney General shall submit to the Com-  
11          mittee on Energy and Commerce of  
12          the House of Representatives, the  
13          Committee on Environment and Pub-  
14          lic Works of the Senate, and other ap-  
15          propriate committees of Congress—

16                 “(aa) the report under sub-  
17                 clause (I);

18                 “(bb) the results of the re-  
19                 view under subclause (II); and

20                 “(cc) recommendations, if  
21                 any, for reducing the vulner-  
22                 ability of stationary sources cov-  
23                 ered by subparagraph (B)(ii) to  
24                 criminal and terrorist activity.

1                   “(V) AVAILABILITY OF INFORMA-  
2                   TION.—In addition to the matters  
3                   specified in section 552(b) of title 5,  
4                   United States Code, section 552 of  
5                   that title shall not apply to informa-  
6                   tion that is developed by the Attorney  
7                   General, or requested by the Attorney  
8                   General and received from a covered  
9                   stationary source, for the purpose of  
10                  preparing the report or conducting the  
11                  review under this clause, if disclosure  
12                  of that information would pose a  
13                  threat to national security.

14                  “(ix) AUTHORIZATION OF APPROPRIA-  
15                  TIONS.—There are authorized to be appro-  
16                  priated to the Administrator and the At-  
17                  torney General such sums as are necessary  
18                  to carry out this subparagraph, to remain  
19                  available until expended.”.

20 **SEC. 4. ADDITION OF NATIONAL OR LOCAL ENVIRON-**  
21 **MENTAL ORGANIZATIONS TO EMERGENCY**  
22 **PLANNING COMMITTEES.**

23                  Section 301(c) of the Emergency Planning and Com-  
24                  munity Right-To-Know Act of 1986 (42 U.S.C. 11001(c))  
25                  is amended in the second sentence—

1           (1) by striking “and owners” and inserting  
2           “owners”; and

3           (2) by inserting “; and national or local envi-  
4           ronmental organizations” before the period at the  
5           end.

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