

COALITION OF
**JOURNALISTS FOR
OPEN GOVERNMENT**
1101 Wilson Blvd, Suite 1100, Arlington, VA. 22209 703-807-2100

5/22/06

Sen. James M. Inhofe, Chairman
Environment and Public Works Committee
453 Russell Bldg.,
Washington, DC 20510-3603

Sen. James M. Jeffords, Ranking Member
413 Dirksen Bldg.
Washington, DC 20510-4503

and Members of the Committee

The Coalition of Journalists for Open Government and the undersigned member organizations write to express concern with certain provisions of S2781, the “Wastewater Treatment Works Security Act of 2006,” that would create a new B(3) exemption to the Freedom of Information Act and in doing so, release owners and operators dealing with hazardous materials from both public and governmental oversight.

The bill seeks to encourage the owners of the nation’s wastewater treatment facilities, both public and private, to conduct comprehensive “vulnerability assessments” and to make the appropriate infrastructure and operational improvements. It then broadly defines those vulnerabilities to include not just potential terrorist threats but also perils of natural disaster and risks resulting from use of toxic chemicals.

It casts the same shroud of secrecy over these very distinct dangers even though the risk probability is quite different. Was the nearby homeowner asked which of those threats he or she considers the greatest and fears the most? Indeed, the bill takes from that resident any potential for personal, community or local government oversight by including in the owner-operator selected secrets not just the vulnerability assessment but also any “information derived from” those evaluations. The effect is to free the owner-operators from any accountability unless or until something horrible happens.

The bill establishes a B(3) exemption from the Freedom of Information Act that lets the owner-operator decide what information shall be included, and thus kept from public disclosure. It crushes all applicable local and state open records laws that would otherwise make that information available to the community that is potentially endangered. It also strips the responsible federal agency, the Department of Homeland Security, of any real authority; providing that the department may only look at, but not copy, the vulnerability assessment.

The combined effect is to blind the surrounding communities from any information about the dangers they face from accident or natural disaster and it frees the owners from any public accountability until the damage is done.

In introducing the bill, Sen. Inhofe, you noted that almost two thirds of the nation's treatment facilities have already made significant safety improvements by voluntarily switching from use of chlorine. We believe a survey would show that the motivation in virtually every one of those cases was local concern – the attention that resulted from the public learning about the dangers the storage and use of chlorine presented.

Committee members may remember the Blue Plains case. The Washington Post ran a two-part report that exposed rusty, deteriorating equipment and poor handling procedures of the huge quantities of chlorine at that treatment facility. The report noted that a chlorine plume accidentally released into the atmosphere could be lethal for 10 miles – and that the building where you serve was only three miles away. In response, the operators promised maintenance improvements and implemented a switch to chloramines one month after 9/11. Openness, and the resulting public reaction, made it happen, not secrecy.

We urge the committee to strike the proposed FOIA exemption and related language. We believe the safeguarding of genuinely sensitive information related to terrorist threat can be handled within the parameters of existing FOIA exemptions and through local agreements.

Pete Weitzel

For the Coalition of Journalists for Open Government, and
American Society of Newspaper Editors
Associated Press Managing Editors
Association of Alternative Newsweeklies
California First Amendment Coalition
Capitolbeat
National Conference of Editorial Writers
National Freedom of Information Coalition
Radio-Television News Directors Association
Reporters Committee for Freedom of the Press
Society of Environmental Journalists
Society of Professional Journalists
Washington Coalition for Open Government