

To the Graduate Council:

I am submitting herewith a dissertation written by Bernardo Heisler Motta entitled "The Right to Know and the Fight Against Toxic Environments: The Emergency Planning and Community Right-To-Know Act Of 1986." I have examined the final electronic copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Communication and Information.

Mark Littmann, Major Professor

We have read this dissertation
and recommend its acceptance:

Dwight L. Teeter

Michael J. Palenchar

Sherry Cable

Accepted for the Council:

Carolyn R. Hodges
Vice Provost and Dean of the
Graduate School

(Original signatures are on file with official student records.)

**The Right to Know and the Fight Against Toxic Environments:
The Emergency Planning and Community Right-To-Know Act Of 1986**

A Dissertation
Presented for the
Doctor of Philosophy
Degree
The University of Tennessee, Knoxville

Bernardo Heisler Motta
December 2009

Copyright © 2009 by Bernardo Heisler Motta
All rights reserved.

ACKNOWLEDGEMENTS

I would like to thank my committee's chair and advisor, Dr. Mark Littmann, for all his patience, support, and insightful advice during my four years in the doctoral program and during the difficult times of the preparation of this dissertation. I would also like to thank Dr. Dwight L. Teeter who would not let me fail or lose focus when my own mind had deserted me. I am also grateful to Dr. Sherry Cable and Dr. Michael Palenchar for their help in building the knowledge and understanding that inspired me to pursue this very convoluted topic. Finally, I would like to thank all my friends in the University of Tennessee's Ph.D. Program in Communication and Information. From staff and faculty members to my fellow students, I have never met a better and more helpful group of people.

ABSTRACT

This dissertation investigates the historical development of the right-to-know concept in the Emergency Planning and Community Right-to-know Act (EPCRA) of 1986. It starts with the use of words during the American Revolution, words capacious or general enough to later include the modern right-to-know idea. It also traces the real emergence of the right-to-know concept during the Cold War years of the 1950s and 1960s, including the enactment of the Freedom of Information Act (FOIA) in 1966. Some of the limitations of the FOIA are discussed here, limited as it was and is by nine broad “exemptions” to the release of information by the federal Executive Branch. This study deals with an important legislative response to environmental disasters and near-disasters, with the aid of the Anti-Toxic and Environmental Justice movements of the late 20th century and ending with the enactment of EPCRA in 1986 and its effects in subsequent decades. This historical account also provides a brief analysis on how the legislation based on the right-to-know principle opened opportunities for the field of communication, especially environmental risk communication. EPCRA was the first federal law in the United States to fully embrace the right-to-know approach to public policy, also known as regulation through revelation. The right-to-know approach is based on the ideas of self-governance and public participation in the decision-making process. EPCRA has served as a model for more than 80 countries, which adopted laws based on the right-to-know principle in different levels since EPCRA’s enactment.

TABLE OF CONTENTS

INTRODUCTION	6
CHAPTER 1: MATERIALS AND METHODS.....	15
CHAPTER 2: THE IDEOLOGICAL DEVELOPMENT OF A “RIGHT” TO KNOW.....	32
CHAPTER 3: LITERATURE REVIEW	57
CHAPTER 4: THE EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT OF 1986—THE RIGHT TO KNOW AS APPROACH TO PUBLIC POLICY	91
CHAPTER 5: ENVIRONMENTAL RISK COMMUNICATION IN EPCRA	129
BIBLIOGRAPHY	152
APPENDIX	175
VITA.....	184

INTRODUCTION

I know of no safe depository of the ultimate powers of society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion.

Thomas Jefferson¹

“For knowledge itself is a power,” Sir Francis Bacon wrote in 1597 in his *Meditationes Sacrae*.² In an open democratic state, power comes from the people and therefore people should have the necessary knowledge to partake in the decision-making process of their own government. In the United States of America, seen sometimes as an example of democracy for the rest of the world, the political system is actually “a republic,” as Benjamin Franklin asserted after the Constitutional Convention on September 18, 1787, adding, “if you can keep it.”

The word republic comes from the Latin *Res Publica*, meaning “public thing/affair” or “belonging to the public.” The concept of a republic, like the concepts of democracy and open government, implies that the government has a mandate to represent the interests of the true power-holders, the people. That system differs greatly from the earlier monarchic systems, where kings and queens claimed a right, even divine right, to rule over the people. This differentiation was in the core of the American Revolution and can be said to be the spirit of the Declaration of Independence, as can be seen in its second

¹ Epigraph: Thomas Jefferson, letter to Williams Charles Jarvis, September 28, 1820.

² Francis Bacon. *Meditations Sacrae and Human Philosophy* (Kessinger Publishing, 1996; original work published in 1597), 71.

paragraph: “That to secure these Rights, Governments are instituted among men, deriving their just Powers from the Consent of the Governed.”³ The Founding Fathers of the republic wanted, above all, independence, both economic and political.⁴

Many of them believed that a well-informed public makes for better decision making than an elite of chosen patricians or nobles. That idea, born in the ideological war against King George III of England during the American Revolution, resurged during the later part of the 20th century as the core of a new perspective (and some say new paradigm) in public policy.⁵ The right-to-know approach to public policy—also known as regulation through revelation—is based on the ideas of self-governance and public participation in the decision-making process⁶ and was finally made into a federal law in the Emergency Planning and Community Right-to-know Act (EPCRA) of 1986.⁷

This dissertation investigates the historical development of the right-to-know concept in EPCRA, starting in the American Revolution, passing through the Anti-toxic and Environmental Justice Movements from the second half of the

³ *The Declaration of Independence of the United States of America*, § 2. See Appendix.

⁴ Uhm, Kiul. 2008. “The Founders and the Revolutionary Underpinning of the Concept of the Right to Know.” *J&MC Quarterly* 85, no. 2: 393-416.

⁵ Karkkainen, Bradley C. 2000. “Information as Environmental Regulation: TRI and Performance Benchmarking, Precursor to a New Paradigm,” *Georgetown Law Journal* 89: 257-370; K.M. Shrivastava's book, *The Right to Information: A Global Perspective* (New York: Lancer, 2009), refers to more than 80 countries have adopted laws using the right to know principle.

⁶ James T. Hamilton. *Regulation through revelation: The origins, politics, and impacts of the Toxic Release Inventory Program*. (New York: Cambridge University Press, 2005); Robert V. Percival, Christopher H. Schroeder, Allan S. Miller, and James P. Leape. *Environmental Regulation: Law, science, and policy*. 5th ed. (New York: Aspen Publishers, 2006); Ann Florini. ed. *The right to know: transparency for an open world*. (New York: Columbia University Press, 2007).

⁷ EPCRA, 1986. 42 U.S.C. 11001 et seq., partially codified at 42 U.S.C. §§ 9601-9675 (1988). EPCRA was initially written as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986, but it was enacted as a free-standing law.

20th century and ending with the effects of EPCRA in the late 20th century early 21st century, analytically observing how the legislation based on the right-to-know principle opened opportunities for the field of communication, especially environmental risk communication.⁸

In the last decades of the 20th century, authors including Anthony Giddens and Ulrich Beck started to see how the rapidly growing complexity of modern social organizations made it virtually impossible for any governmental institution to deal with social problems relying solely on governmental apparatuses.⁹ At the same time, more and more authors in the social sciences and humanities have pointed out the failure of exclusively market-based policies in providing just and desirable conditions to society as a whole. The context in which the 21st century society begun became known as what Beck called “the risk society.”¹⁰

In the United States, realizations about the failure of governmental institutions, both “command-and-control,” where the government set and enforced the rules through penalties, and “market-based,” where government

⁸ Marc D. Shapiro found strong scientific support that, among the causes for environmental injustices in issues involving toxic chemicals, “changes in emission patterns are affected by a community’s ability to process complex information and its capacity for collective action.” Also, Rebecca S. Weeks found that the most effective communities in preparing for toxic emergencies were making use of creative communications approaches to EPCRA, including the Internet, phone books, calendars, mouse pads, grocery bags, refrigerator magnets, brochures, newspaper articles, videos for the local government channels, and even utility bills inserts to identify elderly members who might need special help. Weeks also found that community members will only act proactively towards emergency planning after receiving messages relating to emergency planning almost two dozen times. Shapiro, Marc. D. “Equity and Information: Information Regulation, Environmental Justice, and Risks from Toxic Chemicals.” *Journal of Policy Analysis and Management*, 24, no. 2 (2005): 373-398; Weeks, Rebecca S. “The Bumpy Road to Community Preparedness: The Emergency Planning and Community Right-to-know Act.” *Environmental Law* 4, no. 827 (1997-1998): 827-889.

⁹ Anthony Giddens, *Modernity and Self-identity*. (Palo Alto; Chicago: Stanford University Press, 1991). Ulrich Beck, *Risk Society: Towards a New Modernity* (London: Sage Publications, 1992; original work published in Germany in 1986).

¹⁰ More on the contextualization of the risk society is provided in chapter III.

offers incentives like tax reductions for compliance, policies gave birth to a series of social movements. Among them, two became especially significant in promoting new ways to deal with the complexities of the new state of public affairs: the Anti-toxic Movement, later transformed into the Environmental Health Movement, and the Environmental Justice Movement.¹¹ By the end of the 1970s, entire communities were living in and suffering from the aftermath of environmental disasters (toxic spills from factories, placement of hazardous materials waste sites closer to ethnic and poor communities, double standards for sanitation of richer and poorer communities, etc.). These communities started to fight back, using information and community organization as their weapons of choice. Far from isolated situations, these problems were widespread¹² and became part not only of mainstream news media reports, but also part of the cultural identity of the late 20th century through a series of prize-winning, bestseller books and blockbuster movies.¹³

Love Canal became one of the most cited toxic-chemical-related incidents both in the academic and non-academic literature, but it was small compared to the thousands of accidents and criminal acts involving dumping and spilling of hazardous and toxic materials that followed in the years after the Love Canal

¹¹ The capitalization of the movements' names follow the majority of studies used in this dissertation.

¹² More than 7,000 accidents involving spills of toxic and hazardous materials were registered between 1980 and 1985 in the U.S. Falkenberry, E. M. 1995. "The Emergency planning and Community Right-to-Know Act: A tool for toxic release reduction in the 90's." *Buffalo Environmental Law Journal* 3, no. 1: 1-36.

¹³ *Erin Brockovich*, a blockbuster movie written by Susannah Grant, directed by Steven Soderbergh and with Julia Roberts in an Oscar-winning role, won 26 awards and was nominated for another 42. Jonathan Harr's book *A Civil Action* is still acclaimed as one of the most influential non-fiction bestsellers and was followed by a movie version of the same name with John Travolta in the lead role. Both stories were based on real cases of towns that were contaminated by toxic spills from nearby plants.

incident.¹⁴ All the attention from the media and popular outrage resulted in laws like the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund. Even so, it was an international incident in Bhopal, India that caught the attention of a few members of the American Congress to another aspect of those tragedies: the absolute incapacity of the government to deal with the matter by itself.

An accident in a U.S.-owned Union Carbide's pesticide plant in 1984 caused the release of a cloud of the lethal gas methyl isocyanate (MIC) into the air over Bhopal, a city located in the state of Madhya Pradesh in central India. Amnesty International counted 7,000 deaths immediately after the release and another 15,000 due to associated illnesses in the following years. In 2004, Amnesty International asserted that more than 100,000 people still suffered from diseases associated with the toxic gases and many more fell ill from breathing them. Although Union Carbide Corporation still denied any responsibility for the disaster,¹⁵ more than a 145 law suits¹⁶ followed the disaster in the American courts. In 1985, an accident in another Union Carbide plant involving a less lethal gas than MIC caused the 135 people to be hospitalized in Institute, West Virginia, after the plant passed two safety examinations.

¹⁴ See footnote 12.

¹⁵ "A Bitter Wind in Bhopal," 2004. Amnesty International, <http://web.amnesty.org/wire/December2004/Bhopal> (accessed June 28, 2007). The numbers of deaths directly related to the incident varies from source to source. Amnesty International's numbers are on the high average. Other reports vary from 2,000 immediate deaths to 10,000 and from 60,000 to 150,000 associated illnesses.

¹⁶ Most of the lawsuits were settled, some were still waiting for a decision in November, 2008.

Finally understanding the impossibility of a sufficiently rapid response to such disasters and fearing a large-scale catastrophe on American soil, federal policymakers proposed a new law based on the right-to-know idea. The objective was to approach the problem with a preventive mindset or, at least, provide a much faster locally-based response. In 1986, Congress enacted EPCRA, a legislative rarity¹⁷ in the United States,¹⁸ which has become a precursor and model for many similar openness policies in more than 80 other nations.¹⁹

This study traces briefly the origins of the ideological concept of the public's right to know in the writings of Thomas Paine, George Mason, James Madison, and Thomas Jefferson as a fundamental part of the new republican system of 1787. It will then follow the developments of the right-to-know concept in the 20th century with the birth of the Anti-toxic Movement that had the right to know about the existence and effects of toxic materials in the environment and in communities as one of its main claims. After this background, this study looks into how the idea of the public's right to know evolved into a new public policy approach with the enactment of EPCRA. Lastly, as the community-right-to-know

¹⁷ EPCRA was the first law to use the right-to-know approach to public policy in the country, instead of a "command-and-control" or a "market-based" approach.

¹⁸ Uhm, "The Founders." Uhm's argument that the right to know should be a constitutional right, although historically accurate in its presentation, still is more of an academic discussion and has no official constitutional standing. As Uhm admits, the Supreme Court of the United States has found a First Amendment right of access to government information only in the setting of coverage of criminal trials. See also Dwight L. Teeter, Jr. and Bill Loving, *Law of Mass Communications*, 12th ed. (New York: Thomson Reuters/Foundation Press), 492, citing *Richmond Newspapers v. Virginia*, 448 U.S. 555, 100 S.Ct. 2814 (1980). According to both Uhm and to Teeter and Loving, the Supreme Court's understanding of the topic can be summarized by Justice Potter Stewart's speech about the Pentagon Papers at Yale in 1974 as the justice said that the press is free to fight secrecy, but has no constitutional guarantee that it will succeed.

¹⁹ Kshitindra Mohan Shrivastava. *The Right to Information: A Global Perspective*. (New Delhi: Lancer Publishers, 2009).

idea at the core of EPCRA created communication opportunities for different groups in society, this dissertation provides a critical discussion on how these opportunities came to be and what they mean for the practice and research of communication.

Content organization

This dissertation consists of a mix of historical narrative, historiographic analysis, and critical investigations of academic literature and of relevant government records and other primary sources.²⁰ It explores the historical contexts in which the right-to-know concept was created, developed, and transformed into what it is today in EPCRA, what it means for society, and its impacts on the study of communication and public policy in environmental issues. With those objectives in mind, Chapter 1 defines the methodological approach used in this dissertation and provides a road map of the analytical tools used to write the history of EPCRA and discuss its importance in today's society.

Chapter 2 presents an historiographic analysis²¹ of the origins of the ideological concept of right to know as an instrumental principle of open governments as presented in the writings of a few Founding Fathers of the United States, especially Thomas Jefferson. It then jumps to the resurgence of the debate on the right to know in the 1950s as consequence of the end of World War II. The narrative culminates with the enactment of EPCRA in 1986.

²⁰ A complete description of the methodology and use of primary and secondary sources can be found in the next chapter. Also, see Appendix for a list of primary sources.

²¹ In Chapter 2, a mix of primary sources and secondary sources was used to verify the origins of the writings, as explained in Chapter 1.

Chapter 3 tells the story of the resurgence of the right-to-know concept through an analysis of the academic literature on the development of the Anti-toxic Movement and, later, the Environmental Justice Movement. Starting from an analytical framework based on a description of the late 20th century society by Ulrich Beck, the chapter provides justification and context for the development of the movement. It also introduces the theoretical and pragmatic tools used by the movements, and used by researchers to study the movements' activities, as related to the field of communication.

The first part of the chapter refers to the developments and consequences of what Beck called the “risk society” and its contextualization as a fertile ground for community organization, risk management, and self-governance as they are directly related to the right-to-know principle and the idea of toxic risks. The second part of the Chapter 3 presents a narrative of the development of the social movements that guided the resurgence of the right to know, starting in the Conservation Movement of the late 1800s and early 1900s, passing through the Civil Rights and Environmental movements of the 1960s and 1970s, but mainly focusing on the movements of the 1970s, like the Anti-toxic Movement, and their evolution into the beginning of the 21st century. The third part of Chapter 3 defines the communication tools that have been mainly used by those movements and as a reaction to them: environmental and risk communication.

Chapter 4 presents EPCRA's history. In this chapter, the discussions and struggles within society and Congress—especially the role of James J. Florio, main author of both CERCLA and SARA/EPCRA—about the conceptualization of

the law are presented in historical narrative based on official records, newspaper stories, and a variety of other historical documents and secondary sources. The main objective is to expose the nuances, assumptions, understandings, and turbulences involved in the enactment of the legislation and its right-to-know approach. The chapter goes on to show the reactions to and developments of EPCRA as the ripples of its enactment changed the way certain groups relate to public policy and general behavior about toxic waste issues in society.

Lastly, through a critical summary of the previous chapters, Chapter 5 presents a discussion on how the right to know has become more and more accepted as an approach to public policy. It focuses on how the right to know affects the study of communication, putting the field in the forefront of public life. As the famous British sociologist Anthony Giddens wrote, “such information or knowledge is not incidental to modern institutions, but constitutive of them.”²² Likewise, EPCRA forced the compilation and distribution of information about release and storage of toxic chemicals, which became constitutive of the organizations, public and private, that dealt with it.

²² Anthony Giddens, *Modernity and Self-identity*, 20.

CHAPTER 1: MATERIALS AND METHODS

History and Historiography

The will is free, but who can account for his own acts and opinions without invoking influences and accidents? Would I have devoted my life to reading and teaching history, would I feel so keenly the passion of an era – five hundred years of high creation going down in confusion; would I, instead of repining, cultivate and recommend a spirited pessimism if I had not had, at a particular time and place, a vivid sight of an earlier world, soon followed by its collapse in wretchedness and folly?

Jacques Barzun²³

As Calvin once said in Bill Waterson's iconic comic strip *Calvin and Hobbes*, “History is the fiction we invent to persuade ourselves that events are knowable and that life has order and direction.” In a way, Waterson revealed some of the most intrinsic problems of History as a methodological approach to research. Historical events cannot be captured in any other way but through partial or trace evidence, including surviving documents and public and personal accounts, although circumstantial evidence can point us in certain directions. Details, intentions, and emotions are filtered through the perceptions of witnesses and/or first-person accounts (i.e. letters, journals, newspapers, official records, etc.) that might be misleading, either purposely or accidentally. The context, if misinterpreted, can lead to false assumptions and inaccurate conclusions.

²³ Jacques Barzun. “Toward a Fateful Serenity,” in *A Jacques Barzun Reader: Selections from His Works*, ed. Michael Murray (New York: Perennial Classics, 2002), 3.

The historical narrative provides a first impression about specific events, but it also fills the blanks left by the lack of surviving evidence with interpretations from archaeologists, historians and other scholars. But such accounts can also be contaminated with ontological and axiological understandings that do not fit ones that existed at the moment of the event. Even the very perception of time as a linear phenomenon is accepted almost only by modern Western civilization.²⁴ Joseph Strayer, renowned historian of the 20th century, once explained how difficult it was to justify historical research to scientists because historical methods are “more of an art than a science.”²⁵

However, in defense of history and historiography as a valid social scientific methodology, more arguments favor the approach than undermine it. Stephen Bahn²⁶ concluded, based on Frank Kermode's differentiating of history²⁷ and fiction and John Cannon's²⁸ critique on the use of present-day bias to analyze past historical events, that historians and other history practitioners should work even harder on what distinguishes history from fiction:

If the difference between history and fiction is indeed not a cognitive one, but an institutional or more precisely a cultural one, then it is none the less a difference of extreme importance. And its recognition should lead not indeed to skepticism about the “philosophic base” of historiography, but to a renewed investigation of the discursive form of that “history” to which we rightly give such

²⁴ Most ancient oriental cultures and even powerful civilizations of the West like the Maya, Incas and Aztecs believed in cyclical time.

²⁵ Joseph R. Strayer, introduction to *The Interpretation of History*, ed. Joseph R. Strayer (New York: Peter Smith, 1950), 3-26, 3.

²⁶ Bahn, Stephen. “Towards a Critical Historiography: Recent Work in Philosophy of History.” *Philosophy* 56, no. 217 (1981): 365-385.

²⁷ Frank Kermode. *The Genesis of Secrecy: On the Interpretation of Narrative* (Cambridge, MA, and London: Harvard University Press, 1979).

²⁸ John Cannon, ed.. *The Historian at Work* (London, George Allen & Unwin, 1980).

a privileged position. In other words, the awareness that historical narrative has no cognitive privilege over fictional narrative should not result in a mere recrudescence of the conventional barrier between the two. It should result in the employment of all the diverse and sophisticated methods of literary analysis to tell us more about what remains, none the less, the unique province of history.²⁹

All research methodologies have limitations and a good part of those limitations can be attributed to a poor understanding of methodological processes in first place. History is no different. David Hackett Fischer³⁰ wrote: “The vital purpose of refining and extending a logic of historical thought is not merely some pristine goal of scholarly perfection. It involves the issue of survival.”

Loren Eiseley³¹ once wrote about the need for history and a methodological understanding of the past:

Their world, therefore, becomes increasingly the violent, unpredictable world of the first men simply because, in losing faith in the past, one is inevitably forsaking all that enables man to be a planning animal. For man's story, in brief, is essentially that of a creature who has abandoned instinct and replaced it with cultural tradition and the hard-won increments of contemplative thought. The lessons of the past have been found to be a reasonably secure instruction for proceeding against the unknown future. To hurl oneself recklessly, without method, upon a future that we ourselves have complicated is a sheer nihilistic rejection of all that history, including the classical world, can teach us.

According to this view, history is a method of survival, an intellectual arsenal to understand what has been in order to inform what will come. The loss

²⁹ Bahn, “Towards a Critical Historiography,” 368.

³⁰ David Hackett Fischer, *Historians' Fallacies: Toward a Logic of Historical Thought*. (New York: Harper Perennial, 1970), 317.

³¹ Eiseley, Loren. “Activism and the Rejection of History.” *Science*, New Series, 165, no. 3889 (Jul. 11, 1969), 129.

of history can do great damage to society, as seen in the Middle Ages, which threw human civilization into shambles for more than a thousand years. In that time, people lived short lives, virtually imprisoned by localism and suffocated by ignorance and superstition. Devastating diseases such as the black plague and constant wars were the lot of that brutish time.³² Most of the knowledge lost during the Dark Ages (especially in medicine, mechanics and engineering) are finally beginning to be recovered through archaeology and history after being completely submerged for centuries. More than that, history is, according to Michel Foucault, “the first and as it were the mother of all the sciences of man, and is perhaps as old as human memory.”³³

History, as a methodological approach, is a powerful tool to reveal what no other scientific methodology can: a contextually rich understanding of how phenomena and events are born and developed and, most importantly, how they relate to other phenomena and events. Fischer³⁴ argued that history, when properly done, can be useful in “several substantive ways.”³⁵ According to him, history clarifies and contextualizes contemporary problems by exposing empirical evidence of the causality of events; it provides content for scientific forecasting³⁶ by establishing historical trends. It helps refine theoretical knowledge by shedding light on the historical conditions in which an event or phenomenon

³² William Manchester. *A World Lit Only by Fire: The Medieval Mind and the Renaissance: Portrait of an Age* (Boston; London: Little, Brown and Company, 1993)

³³ Michel Foucault. *The Order of Things* (London and New York: Routledge Classics, 2008).

³⁴ Fischer, *Historians' Fallacies*, 315-318.

³⁵ Ibid. 315.

³⁶ Although it can be argued that scientific forecasting constitutes nothing but informed guesses, it is thanks to historical knowledge that they are, at least, “informed.”

happened. It aids in the quest for self understanding and the acceptance of others by showing that all societies are results of historical choices and processes. Once aware of those processes, people can make better choices in the future. Finally, history can help people to become better and more conscious thinkers by providing an understanding of cause and consequence of any given action. Fischer suggested that such understanding of history may help instill a feeling of responsibility for people's actions as they can understand their consequences based on past similar events. However, Fischer argued that, in order for history to be useful, historians need to refine their practices and understandings of the historiographic process.³⁷

According to Jacques Barzun, the criteria by which history may be known are four: Narrative, Chronology, Concreteness, and Memorability. History is, before all things, a story (Narrative) that gives particulars of change within time and place (Chronology) based on what actually happened (Concreteness)—and not on ideas and philosophical conjectures – about an event that is both worth remembering and capable of being remembered (Memorability).³⁸

After an avalanche of healthy cultural criticism against positivism and positivistic history, Fischer argued that the result, instead of the betterment of historiography was the abandonment of methodological rigor in the field.

According to Fischer, in the place of looking to improve the intrinsic

³⁷ Fischer, preface to *Historians' Fallacies*, xix.

³⁸ Barzun. "History as Counter-method and Anti-abstraction," in *A Jacques Barzun Reader: Selections From His Works*, ed. Michael Murray (New York: Perennial Classics, 2002), 22-23.

methodological logic, historians embraced a “hate” for it, or as Fischer called it, historians embraced “misology.”³⁹

To correct misology without repeating the mistakes of early positivistic historians,⁴⁰ Fischer described a list of common mistakes, or “fallacies,” historians in general commit. Fischer’s work provided a useful introduction to “committing” good historiography, but certainly not enough. Logic is important in historical cultural criticism as cultural criticism is essential in the interpretation of history. Historical methodology emphasizing the use of artifacts and primary sources not only improves accuracy, but also the contextualization of the historical moment through a diverse and comprehensive use of primary sources. As importantly, the interpretation of history should always expose the cultural contextualization of the time of the event and not reflect present-day bias.

Bahn also showed how the sophistication process can be advanced by drawing on the French *Annales* school and on Michel Foucault’s writings in developing a truly critical historiography. Although Bahn upheld Foucault’s method as the ultimate example of sophistication, he also observed that Foucault worked from an advantage because his analyses came later; they are an analytical history of the historical method itself.

³⁹ Fischer defines misology as the prejudice against logic or, in his own words, “logic-hating.” Fischer, preface to *Historians’ Fallacies*, xi.

⁴⁰ Cultural historians usually point out that early positivistic historians tended to make assumptions about history based on their own cultural values and reject revisionism.

“To say that now we all more or less take cultural history for granted does not, of course, mean that we all understand it in the same way,” wrote Barzun⁴¹ in 1956. My approach for this dissertation draws on cultural and critical history following specific understandings from specific scholars and historians. The historical method I follow in this work originated from Walter Benjamin’s concept of cultural history, which built on and improved the original definition provided by Jacob Burckhardt in the mid 1800s.⁴² Benjamin⁴³ started his conceptualization of history by appropriating some of Friedrich Engels’s interpretations, especially Engels’s idea that the understanding of the history of ideas as a logical progression represented a new dogma. Benjamin transformed that argument into a harsh critique of the assumption of continuous historical development as an *eternal image of the past*. For Benjamin, historical materialism exposed the historical narrative as a unique experience of the past that is “directed toward a consciousness of the present which explodes the continuum of history.”⁴⁴ In his concept, “To bring about the consolidation of experience with history, which is original for every present, is the task of historical materialism.”⁴⁵

⁴¹ Barzun. “Cultural History: A Synthesis,” in *A Jacques Barzun reader: Selections From His Works*, ed. Michael Murray (New York: Perennial Classics, 2002), 27.

⁴² Some of Burckhardt’s most famous works were: Constantine the Great (1853), *Die Kultur der Renaissance in Italien* [1869] (Stuttgart: Alfred Kroner, 1978), and *Weltgeschichtliche Betrachtungen* (1905) (Stuttgart: Alfred Kroner, 1988). In those, Burckhardt follows a divergent path of historical analysis from the mainstream Hegelian analysis by contradicting Hegel’s subordination of historical events to an ideological scheme. Burckhardt believed that those schemes should be coordinated with the historical events. Walter Benjamin improves Burckhardt’s concept by exposing that the decisions made about the coordination of events are located in the interests of the present, revealing the bias of historic narrative.

⁴³ Howard Caygill. “Walter Benjamin’s Concept of Cultural History,” in *The Cambridge Companion to Walter Benjamin*, ed. David S. Ferris (Cambridge: Cambridge University Press, 2004).

⁴⁴ Benjamin, Walter and Knut Tarnowski. “Eduard Fuchs: Collector and Historian.” *New German Critique*, No. 5 (Spring, 1975), 27-58, 29.

⁴⁵ Ibid.

After Benjamin, many historians, philosophers, social scientists, and humanists tried to define the role of history and historiography in light of the new self awareness of history practitioners and philosophers. “In modern thought, historicism and the analytic of finitude confront one another,” Foucault wrote. “Historicism is a means to validating for itself the perpetual critical relation at play between History and the human sciences,”⁴⁶ he continued. In Foucault’s view, we can never fully dismiss historicism, but, at the same time, we need to put historicism in check by providing a full critique which exposes the reasons behind the justifications provided by historicism:

This is why the analysis of finitude never ceases to use, as a weapon against historicism, the part of itself that historicism has neglected: its aim is to reveal, at the foundation of all the positivities and before them, the finitude that makes them possible; where historicism sought for the possibility and justification of concrete relations between limited totalities, whose mode of being was predetermined by life, or by social forms, or by the significations of language, the analytic of finitude tries to question this relation of human being to the being which, by designating finitude, renders the positivities possible in their concrete mode of being.⁴⁷

It is important to notice that Foucault’s understood historicism as the historians’ common practice of providing a justification for past events and actions. According to him, the problem with this practice is that the reasons behind any event or action may not be knowable or, worse, not even have existed. In that way, this practice can be used to manufacture historical justifications for present actions, which Foucault opposed. Fischer, another

⁴⁶ Foucault, *The Order of Things*, 406.

⁴⁷ Foucault, *The Order of Things*, 407.

antagonist of historicism, calls it a pernicious error, converting a temporal sequence into an ethical system or “history into morality.”⁴⁸

Mark Jarzombek called historiography “the dialectical equivalent in history of the modernist notion of self-consciousness,”⁴⁹ thus, he continued a few paragraphs later, “a Critical Historiography ... functions on the principle that history ... [is] only as strong as the historiography that simultaneously critiques [it].”⁵⁰ The work of historiography is to reveal the holes, viewpoints, interests, and discontinuities in history in order to provide a fair closure to the historical narrative, which usually tends to be absolutist.

As Fischer proposed, logic must be found in historical methodology and historians must denounce fallacies wherever they find them. But the historical logic cannot be the mathematical logic of a simple sum, but a more complex logic of an equation where variables substitute for known numbers. The methodology also must allow room for the fact that some variables may never be known. Fundamentally important is the idea that the one who tells the story reveals her/himself as the mathematician who will determine value to those variables. As Jacques Barzun wrote:

History is concrete and complex; everything in it is individual and entangled. Reading it, mulling it over does not weaken concern with the present, but it brings detachment from the immediate and thus cures “the jumps” – seeing every untoward event as menacing,

⁴⁸ Fischer, *Historians' Fallacies*, 155.

⁴⁹ Mark Jarzombek. *The Ppsychologizing of Modernity: Art, Architecture, and History*, (Cambridge: Cambridge University Press, 2000), 8. Also see: Barzun. “History as Counter-method and Anti-abstraction.”

⁵⁰ Jarzombek, *The Ppsychologizing of Modernity*, 11.

every success or defeat as permanent, every opponent as a monster of error.⁵¹

If successful in this self critique, Critical Historiography provides History with the sophistication Fischer and Bahn requested through the questioning of the process of acquiring, interpreting, narrating, and finally questioning and rethinking the interpretations of historical facts and artifacts. It also questions the position of the one who questions—meaning that it has an inherent self critique. In this system, History becomes much more powerful as an approach to academic research as it reveals not only the context in which the past event occurred, but also the context in which that past event is being analyzed in the present.

This trajectory of History and Historiography as critical methods of research showed that, although debates about the worthiness of the methodology will go on, most of the arguments against the historical method are arguments against the errors of practitioners and not against the method itself. Good historians, as Barzun, Benjamin, Fischer, Bahn, Foucault and others have explained, write history based on known facts, accepting the possibility that the interpretation of those facts may change with the discovery of new facts. Also, that such interpretation cannot and should not provide justifications for past events based on present morality. And finally, good historians know that History, as Science, is a living process, and even the best evidence of a period can be

⁵¹ Jacques Barzun, "Toward a fateful serenity," 6.

proven wrong or different with new findings. That awareness, instead of weakening the method, constitutes its strongest characteristic.

Research purpose and justification

The purpose of this research is to explore the historical development and importance of the ideological concept of right to know in EPCRA as an example of the “legislation for revelation” approach to public policy. Such an approach is important to the study of Communication because the enforcement and success of the right-to-know policies depend almost solely in the ability of the public to receive, understand, process, use, and distribute information.

To achieve this purpose, this dissertation presents an historical analysis based on primary sources of how the right-to-know principle was discussed and included in the legislation as its main characteristic. This dissertation also includes both legal and academic literature with the goal of revealing the opportunities such laws as EPCRA present to communicators, especially in the intersection of environmental and risk communication.

Therefore, this research aims to offer: 1) an accurate account of the historical implementation of EPCRA focusing on the right-to-know principle it bears; 2) a contextualization of the social-political environment surrounding EPCRA’s proposition and implementation; and 3) a critical insight into what EPCRA represents to an open and democratic political process through the perspective of environmental risk communication.

The focus of this dissertation is the concept of the right to know in EPCRA, a federal law with a well-defined scope of regulating information about environmental risks involving the release of toxic and hazardous materials. The appearance or mention of any other concept, event, movement, or law in this dissertation has the sole purpose of providing context on the dissertation's topic. To dwell on any other subject, concept, or law would be an enterprise worthy of many tomes, some of which have already been written and are cited in this dissertation.

As such, any investigation of the history of state legislations and other federal laws was avoided except as they were pertinent to the development of the concept of right to know and/or an essential part of EPCRA's history. Furthermore, it is not the purpose of this study to provide an in-depth legal analysis of EPCRA as such analysis has been provided elsewhere extensively.⁵²

The methodological choice for this study was based on two core problems linked to the research question: first, the need to fill the gap created by the absence of a thorough historical account of this particular law and, second, the importance of context in this analysis. History, as explained above, is the only methodological approach that can both reveal the intrinsic details of a past event

⁵² Besides the various manuals and legal sources for the application of EPCRA, see: June C. Bolstridge. *EPCRA Data: A guide to the information on industrial facilities and chemical available under the Emergency Planning and Community Right-to-know Act* (New York: Van Nostrand Reinhold, 1992); Shapiro, "Equity and Information"; Durham-Hammer, Kathryn E., 2004, "Left to Wonder: Reevaluating, Reforming, and Implementing the Emergency Planning and Community Right-to-know Act of 1986," *Columbia Journal of Environmental Law* 29: 323-357; Weeks, "The Bumpy Road to Community Preparedness;" Green, Krista. "An Analysis of the Supreme Court's Resolution of the Emergency Planning and Community Right-to-know Act Citizen Suit Debate." *Boston College Environmental Affairs Law Review* 26, no. 387 (Winter, 1999); Dudley, Susan E. 2004. "It is Time to Reevaluate the Toxic Release Inventory." *Missouri Environmental Law & Policy Review* 12, no. 1.

and expose the context in which it occurred based on documents, registries and other primary sources produced at the time of the event.

Research question

What are the origins of the right-to-know principle in EPCRA and how was it developed and discussed in the process of writing and implementing the law?

Methodological application and analysis

In order to answer the research question, a review of the academic, scientific, and legal literature was conducted on EPCRA, right to know, environmental justice, environmental communication, risk communication, risk society, accidents involving the spill of toxic and hazardous materials, lawsuits (especially the ones that reached the Supreme Court), community participation in decision and policy making, environmental history, environmental sociology, and environmental policy and law.

The second step was to look into official documents⁵³ on EPCRA's implementation, the first writings about EPCRA during the process of its proposal and after its adoption, and the legal and academic literature addressing EPCRA since then. It is important to highlight that, during this process, the amount of disagreement in the literature forced the researcher to take a deeper look into the original writings of authors whose ideas were instrumental to the development of a concept of right to know. The process resulted in so many findings that the

⁵³ See Appendix for a list of primary sources and where they were found.

researcher chose to make the origins of the right to know concept a separate chapter from the literature review. A historiographic approach was applied to both chapters 2 and 4. The historiographic work consisted of:

1) Identifying primary sources: First, the researcher used the citations in the literature as a starting point. Also, the researcher made several searches in Lexis Nexis (Academic, Congressional, and Environmental) in order to find news and opinion articles, legal reviews, official records, and other documents. The searches all used the “all dates” parameters and used a combination of Boolean term searches, like *Emergency Planning and Community Right-to-know Act*; *EPCRA*; *right to know*; *right-to-know*; *toxic**;⁵⁴ *hazardous**; *community**; *Toxic Release Inventory*; *TRI*; *Florio*; *Superfund*; *SARA*; *Comprehensive Environmental Resource, Compensation, and Liability Act*; and *CERCLA*.

Second, once a document was located in a specific archive, the researcher searched for a digital photographic copy or a reliable transcription of that document. Reliability was determined by a triangulation of the text of the document in different digital collections, especially if a copy was found in the websites of the Library of Congress, the National Archives, or the original newspaper of publication. Third, once a document was deemed reliable, it was used to locate other documents on the same topic. A personal letter from Thomas Jefferson to James Madison usually indicates if it was a response to a query or if it requested a response from the other party, for example. Sometimes,

⁵⁴ In Boolean terms, the asterisks results in a search for all variation of a specific word. For example, the search term *environment** would result in a search for *environment*, *environmental*, *environmentalism*, etc.

a letter or document cited another letter or document. This process also added a new layer to the reliability check as it confirmed the temporality of a document by its mention in another document of the time. Finally, the last check was a thorough reading of the documents in search for any idiosyncrasies in the content of the documents with their related historical contexts. All documents and letters cited in this dissertation passed all stages of this first step.

2) Contextualizing: The literature was conflicting about certain generalizations, mostly due to different interpretations based on the authors' diverse backgrounds (a lawyer would pay more attention to legal implications and a sociologist to social ones) or different methodological approaches and viewpoints. In order to recreate the historical context, the researcher went back to the primary sources and tried to identify the events that were happening as the authors of the original documents were writing to avoid temporal biases. Then, the researcher followed the line of the discussion (letters and speeches usually prompted responses) in order to establish not only the topic of discussion, but also to understand the original authors' positions in relation to the topic. Finally, by studying the biographies and expressed opinions of specific authors and tracing them through time, the researcher could define a general idea of the authors' views on specific topics related to this research.

3) Interpreting: Each document offered a clue to both its causality and its intentionality, especially the transcriptions of the Congressional meetings about the first Constitution of the United States, the deliberative open sessions about the enactment of EPCRA to inform the letter of the law before its constituency,

and the writings of the Founding Fathers of the United States. During the deliberative sessions about EPCRA, for example, different parties had the chance to express their opinions on what and how they believed the legislation should regulate. Those documents were essential in the appreciation of the importance or irrelevance of interpretations offered after EPCRA's implementation. They also made it possible to make comparisons with its applications and effects based on the legal and scientific literature.

Based on the process of contextualization, the resulting interpretation of the events and concepts were then contrasted with the interpretations of different authors in the literature. Some of these contrasts were added to the text of the dissertation in order to give the reader a fair comparison between two or more interpretations.

4) Narrating: In chapter 2, the researcher opted for a historical narrative style that allowed for revisionism as required by the conflicting literature. The objective was to produce a logical sequence of facts and concepts that also exposed the different views of other researchers about the same topic. In chapter 4, the historical narrative is less permissive as there are very few sources for comparison. As this is an original attempt to provide a complete documental history of the right to know principle in EPCRA, the scarcity of interpretations about most of the facts and events forced the narrative into a more authoritative tone. A list of documentation was added as an Appendix for ease of reference rather than being mixed with the body of the dissertation where it would have created pauses in the flow of the narrative.

5) Limitations: For lack of travel funding, the search for primary sources was limited to resources available online and at libraries in Knoxville, Tennessee. However, thanks to digitization efforts of dozens of governmental and non-governmental organizations,⁵⁵ pictures and transcriptions of almost all historical documents and letters analyzed in this dissertation could be found.⁵⁶ However, the fact that the documents used here were found does not account for documents that might exist and could only be found by a physical examination of private archives. That search will be the next step of this research, including oral history interviews with people who have participated in the history of EPCRA who are still alive. That step should add a better understanding of the intentions of those participants and might result in revealing new sources of documents that may shed light on more intimate and less public discussions about EPCRA and the right to know. More than 5,000 letters, newspaper articles, official records, and other documents⁵⁷ were reviewed for this study. Some details may have been overlooked or documents missed altogether. If additional documents or details are uncovered, they will be part of this project in the future.

⁵⁵ The Library of Congress, the National Archives, the Online Library of Liberty, and U.S.History.org were instrumental as they have pictures of the original documents and letters available online.

⁵⁶ A list of all primary sources and other resources can be found in the Appendix.

⁵⁷ A list of the letters and documents can be found in the Appendix.

CHAPTER 2: THE IDEOLOGICAL DEVELOPMENT OF A “RIGHT” TO KNOW

Liberty only flourishes where reason and knowledge are encouraged; and wherever the latter are stifled, the former is extinguished.

The Centinel (Samuel Bryan)⁵⁸

The right to know, as an idea and not a legal right,⁵⁹ evolved in two distinct periods. In its pre-conceptual form, it was a right to be educated about the purposes of government and to be informed about the actions of government as formulated by John Milton, William Bolla, Thomas Jefferson, Thomas Paine, George Mason, John Wilson, and James Madison. In its contemporary understanding, especially following Susan Hadden’s definition,⁶⁰ the people’s right to know is a mechanism to empower people through education and knowledge so they can watch over their governments and industries and improve their lives. In this chapter, the ideological concept of a right to know will be presented in a historiographic narrative of the academic literature and original documentation of two distinct periods. The first part focuses on the conceptualizations of a right to know from the period before the War for Independence to the enactment of the Bill of Rights. The second presents the evolution of the right to know in the American legislation from the publishing of Harold Cross’s *The People’s Right to Know* in 1953 to the implementation of EPCRA.

⁵⁸ “Centinel III, To the people of Pennsylvania.” *The Independent Gazette or The Chronicle of Freedom*, Thursday Nov. 8, 1787, Volume VII, Number 596. See Appendix.

⁵⁹ In this chapter, the “right to know” will be used as an ideological concept and not as a legal right, except when expressly identified otherwise.

⁶⁰ Susan G. Hadden, *A Citizen’s Right to Know: Risk Communication and Public Policy* (Boulder, Colo.: Westview Press, 1989).

An instrumental right

Since the earliest debates on American independence and during the period from the *Articles of the Confederation* to the enactment of the *Bill of Rights*, the ideas of freedom and self-governance were in the forefront of the revolutionary discussions.⁶¹ Thomas Jefferson, drafter of the Declaration of Independence, made part of the Declaration a list of accusations against King George III of England. His accusations⁶² negatively revealed the values that the founders of the United States⁶³ considered to be moral inalienable rights of any free American. Before listing what he believed were unacceptable crimes against the American people, Jefferson laid out the basic characteristics of a free and more democratic government system.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments

⁶¹ Rabban, David M., "The Ahistorical Historian: Leonard Levy on Freedom of Expression in Early American History," *Stanford Law Review* 37, no. 3 (Feb., 1985), 795-856.

⁶² See *Declaration* in Appendix.

⁶³ In his autobiography, Jefferson wrote that he did not consult any sources or any books to write the Declaration. Even if that was true, scholars and historians agree that the Declaration was largely inspired by, if not copied from, Mason's Virginia Declaration of Rights. I would argue here that Jefferson might also have been inspired by Thomas Paine's *Common Sense*. A good piece of evidence can be found in a phrase of the Declaration "that all men are created equal" is nothing but a paraphrase from Paine's "MANKIND being originally equals in the order of creation." Another is the fact that Jefferson almost followed to the letter the four points Paine traced in *Common Sense* as reasoning for a declaration of independence. The excerpt can be found in the Appendix as the text of the Declaration for comparisons. Also, Paine's *Common Sense* was the first open attack against the King of England, which is matched by Jefferson's draft of the Declaration. However, Paine himself was a follower of Milton, Locke and the "English country Whigs," as was Jefferson. That fact could explain some of the many coincidences. David M. Rabban, "The Ahistorical Historian: Leonard Levy on Freedom of Expression in Early American History," 37 *Stanford L.Rev.* 795 (1985); Thomas Paine. 1776. *Common Sense*. Philadelphia. <http://www.ushistory.org/PAINE/commonsense/index.htm> (accessed January 29, 2009).

are instituted among Men, deriving their just powers from the consent of the governed⁶⁴

The ideas that the power of a government comes from the people and that the role of government is to serve the people in their pursuit of freedom and happiness were revolutionary in the times of monarchies. Especially insulting to a monarch was the submission of government to the rule of the people. Many of the rights Jefferson accused King George III of restricting were a direct reflection on the belief this group of revolutionaries had on self-governance and economic independence.⁶⁵ Among those rights, Kiul Uhm argued that the right to know can be found in the text of the Declaration⁶⁶ in which Jefferson accused King George III of England of making it virtually impossible for the American people to find out information about the British government's actions:

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.⁶⁷

Jefferson's words in the text of the Declaration may be interpreted by later generations as reflecting the need for knowledge of the purposes of government and accessible information about the acts of government for society to function. It became a common theme in the colonies for people to be fined for not following a new law that they never knew existed. Jefferson knew that, if a real democracy

⁶⁴ The Declaration of Independence of the United States of America. See Appendix.

⁶⁵ Uhm, Kiul, 2008, "The founders and the revolutionary underpinning of the concept of the right to know. *Journalism & Mass Communication Quarterly* 85, no. 2, 393-416.

⁶⁶ Ibid.

⁶⁷ The Declaration of Independence. See Appendix A.

were to prevail in the newly formed United States of America,⁶⁸ the only way people could retain such power was if society was informed about their choices and took active part in the political process.⁶⁹

For Jefferson, the concept of a right to know was more than a simple right to access information, but it included the right to be educated about the functions of the government, so people (through the works of the press) could watch and control the actions of government. In a letter to Edward Carrington in January, 1787, which became famous for Jefferson's remark that he would rather have newspapers without government than the contrary, the underlying circumstances of that choice are generally left out.⁷⁰ "But I should mean that every man should receive those papers, and be capable of reading them," Jefferson wrote right after the famous passage. In the letter, Jefferson explains his views:

I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves. The people are the only censors of their governors: and even their errors will tend to keep these to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people is to give them full information of their affairs thro' the channel of the public papers, & to contrive that those papers should

⁶⁸ Jefferson, differently from the majority of his peers, believed in a liberal democratic system, which, later on, became the basis for his Jeffersonian Democrat Party. Most of the others defended the creation of a republic, but thought democracy as being the same as anarchy, as George Washington mentioned once (Uhm, "The Founders," 396). It is also important to point out that the interpretation presented here is an analysis of the writings and discourses of these individuals and their beliefs, not their practices. Jefferson, for example, was very emphatically against slavery in his discourse, but being a rich man, he had scores of slaves himself even after he became president.

⁶⁹ Historians tend to agree that Jefferson was mostly against government secrecy as he made evident in his writings. For more on this topic see: Willard Sterne Randall, *Thomas Jefferson: A life* (New York: Henry Holt and Company, 1993). A rebuttal to that theory can be found in Leonard W. Levy's *Jefferson on Civil Liberties: The Darker Side* (Cambridge, Mass.: Belknap Press, 1963).

⁷⁰ Garrett Epps, *The First Amendment: Freedom of the press: Its constitutional history and the contemporary debate* (Amherst, NY: Prometheus Books, 2008).

penetrate the whole mass of the people. The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.⁷¹

From the quote above, it seems that Jefferson believed at that time in unrestricted disclosure as a form to keep the whole of the people informed about public affairs. That mix of education and information was, according to Jefferson, fundamental to protect the right he considered the most important of all, freedom of opinion. Therefore, Jefferson believed that the right to a thoroughly informed opinion was the very basis of a fair system and the only protection people have against their governments. Almost in a prophetic passage,⁷² Jefferson wrote:

Cherish therefore the spirit of our people, and keep alive their attention. Do not be too severe upon their errors, but reclaim them by enlightening them. If once they become inattentive to the public affairs, you & I, & Congress & Assemblies, judges & governors shall all become wolves. It seems to be the law of our general nature, in spite of individual exceptions; and experience declares that man is the only animal which devours his own kind, for I can apply no milder term to the governments of Europe, and to the general prey of the rich on the poor.⁷³

Jefferson was not the first one to come up with such complex notion about a right to knowledge and information. The idea that the decision-making process should be carried out by informed citizens can be traced back to the ancient

⁷¹ Ibid, p. 74.

⁷² Ibid. p. 74. As president, Jefferson became tired of being a target of partisan press and declared that the doctrine of seditious libel, which he accused of being a very harsh encroachment on the freedom of the press at the time of its enactment by John Adams, was too hastily rejected. See also Randall, *Thomas Jefferson*.

⁷³ Ibid, p. 75.

Greeks. Plato declared in *The Republic* that philosophers would be the best to govern a republic as they were the most knowledgeable. Although, seemingly an elitist remark, Plato like his mentor, Socrates, and his pupil, Aristotle, believed that education should be for all.⁷⁴ Euripides, the famed Athenian tragedian and admirer of Socrates, wrote the verses that became inspirational to John Milton's *Areopagitica*, enunciating the importance of the freedom of opinion in a republican government:

This is true Liberty when free born men
Having to advise the public may speak free,
Which he who can, and will, deserves high praise,
Who neither can nor will, may hold his peace
What can be juster in a State than this?⁷⁵

Euripides's words reflect his times as he denoted "free born men" as not including slaves and women. Milton himself is heralded as one of the first defenders of a free press⁷⁶ in Western Europe, more than a thousand years after Euripides, as Jefferey Smith wrote:

The idea of employing toleration and active participation in the pursuit of truth was given no more lasting or deeply humanistic expression in the seventeenth century than in *Areopagitica*, *A Speech of Mr. John Milton for the Liberty of Unlicensed Printing, To the Parliament of England*.⁷⁷

⁷⁴ Both in his dialogues and in *The Republic*, Plato takes his time to teach anyone who seems curious enough. However, Plato admitted that, although anyone could become a philosopher, most preferred to engage in less worthy practices like war and arts.

⁷⁵ John Milton. 1644/1918/1969. *Areopagitica*, with a commentary by Sir Richard C. Jebb. Folcroft, PA: The Folcroft Press, Inc., 1.

⁷⁶ Chafee Jr., Zachariah, "Freedom of Speech in War Time," *Harvard Law Review* 32 (1918-1919); Smith, Jeffery A., 1981, "Freedom of Expression and the Marketplace of Ideas Concept From Milton to Jefferson," *Journal of Communication Inquiry* 7, 47-63. Milton was actually very conservative and became a censor for the government later on, but his defense of a free press created ripples that crossed the centuries.

⁷⁷ Smith, "Freedom of Expression," 48.

In *Areopagitica*, Milton wrote: "Give me liberty to know, to utter, and to argue freely according to conscience, above all liberties."⁷⁸ More than the freedom of speech defended by Euripides, Milton expressly included the "liberty to know" in its defense of a free press;⁷⁹ words that would reverberate in the minds of the authors behind the American Revolution more than two centuries later. Smith lists a dozen of other authors that, in some level, linked freedom of expression to the idea of educated citizenry between the 17th and 18th centuries.⁸⁰

In the period of the American and French revolutions, political activist, pamphleteer, and inventor Thomas Paine⁸¹ actively participated in both revolutions and constantly wrote against the King of England and the monarchic system. His pamphlet *Common Sense*, which he signed "an Englishman," sold more than 100,000 copies, becoming the biggest bestseller in the 2 million-free-citizen colony. He saw little or no revenue from it. Paine's *Common Sense* was the first direct attack on the King of England published during the run-up to the

⁷⁸ Milton, *Areopagitica*, 57.

⁷⁹ Although the topic of this dissertation is not freedom of the press, it is relevant to point out that Milton clarified in *Areopagitica* that freedom of the press meant freedom against prior restraint. He equated freedom of the press to the freedom of speech as both are freedoms of expression. He believed that people should not be stopped from saying anything either verbally or in print, but that they could be held accountable for what they said after the fact. That thought was reflected by most of the American Founding Fathers and expressly in Benjamin Franklin and Thomas Paine writings. Jefferson, on the other hand, said that people should not be punished too harshly for uttering their opinions (which means that he believed some level of punishing was acceptable) under the penalty of making them afraid to do so. See Appendix for a copy of Paine's explanation of what he believed freedom of the press meant with a remark on Jefferson's view.

⁸⁰ Smith, "Freedom of Expression," 50-53. See also, Richard D. Brown, *The Strength of a People: The Idea of Informed Citizenry in America, 1650-1870* (Chapel Hill: University of North Carolina Press, 1996).

⁸¹ Among many of Thomas Paine's writings *Common Sense* and *Rights of Man* were instrumental in the preparation of three of the most important documents in American history: the Declaration of Independence, the Constitution of the United States of America, and the Bill of Rights, not to mention that his fundamental principles, greatly inspired by John Milton and Thomas Locke, were in the center of the Federalists and Anti-Federalists debates.

Declaration of Independence. However, more than a direct attack against the English king, *Common Sense* was a reflection of Paine's democratic and liberal thinking.⁸² Even its style was accessible to the general public revealing Paine's absolute distaste for elites and hierarchies, as historian Merrill Jensen⁸³ wrote:

Some newspaper writers had argued for independence at least as early as 1773, but it was the publication of *Common Sense* on 9 January 1776 that set a "terrible wordy war waging on the subject of independence."⁸⁴

Jensen continued:

The ideas in *Common Sense* were not new, for most of them had appeared in dozens of newspapers and pamphlets. What was different about *Common Sense* was its stirring prose, so unlike most of the ponderous political writings of the times.⁸⁵

Paine's work was instrumental to the right to know concept as it fostered the ideas of self-government and of republic (as "thing belonging to the people"). Paine, like Jefferson, believed that society's power lay in the hands of the people and therefore the public, and not a king, should be responsible for the decision making. In such way, the public should be enlightened enough to do so.⁸⁶

A mix of antagonism against the tyrannical ways of the King of England and all monarchies and praise for the virtues of a democratic republic based

⁸² Paine was a radical thinker even among revolutionaries and was known for his explosive temper and passion for the cause of independence and hatred for the king of England. *The Age of Reason* (1794-96), written in a French prison because Paine was arrested for supporting the French Revolution but not the execution of King Louis XVI, caused Paine to be derided and isolated as his views on religion did not sit well with conservative Americans. He died alone in ostracism at the age of 72 in New York.

⁸³ Merrill Jensen, *The Founding of a Nation: A History of the American Revolution, 1763-1776* (New York: Oxford University Press, 1968).

⁸⁴ Ibid., 667-669. Jensen quoting a letter from Joseph Reed to Charles Pettit, 30 March 1776.

⁸⁵ Ibid.

⁸⁶ *The Writings of Thomas Paine*, Collected and Edited by Moncure Daniel Conway (New York: G.P. Putnam's Sons, 1894).

mostly on the writings of Milton and Locke, *Common Sense* quickly became a bible for any American discontent with the British ruling. *Common Sense* is above all a praise for self-governance and people's empowerment against governments in general.

Society in every state is a blessing, but Government, even in its best state, is but a necessary evil; in its worst state an intolerable one: for when we suffer, or are exposed to the same miseries BY A GOVERNMENT, which we might expect in a country WITHOUT GOVERNMENT, our calamity is heightened by reflecting that we furnish the means by which we suffer.⁸⁷

Like Milton before him, Paine believed that an informed citizenry was the best defense against an abusive government. In the "Applying Principle to Practice Preface" of the second edition of *The Rights of Men*, he wrote:

The defects of every government and constitution both as to principle and form, must, on a parity of reasoning, be as open to discussion as the defects of a law, and it is a duty which every man owes to society to point them out. When those defects, and the means of remedying them, are generally seen by a nation, that nation will reform its government or its constitution in the one case, as the government repealed or reformed the law in the other. The operation of government is restricted to the making and the administering of laws; but it is to a nation that the right of forming or reforming, generating or regenerating constitutions and governments belong; and consequently those subjects, as subjects of investigation, are always before a country as a matter of right, and cannot, without invading the general rights of that country, be made subjects for prosecution.⁸⁸

In this passage, Paine not only exalted the importance of openness in government, he laid the foundation of the ideas of both freedom of speech as a

⁸⁷ Thomas Paine. 1776. *Common Sense*. 3rd ed. Philadelphia. Retrieved 01/29/2009 from <http://www.ushistory.org/PAINE/commonsense/index.htm>

⁸⁸ Thomas Paine. 1791-92. *The Rights of Man*. 2nd ed. Philadelphia. Retrieved 01/29/2009 from <http://www.ushistory.org/PAINE/rights/singlehtml.htm>

“duty to point [the defects of government] out” and a right to form and reform the acts of government, including the constitution of that government, without fearing prosecution. These ideas, that the people will fix the problems of a nation through the debate of ideas are also reflected in Jefferson’s declarations as shown earlier.

The right to know only appears in Paine’s writings later in his life with *The Rights of Man* as he participated actively in the preparation of the Declaration of the Rights of Man and of Citizens by The National Assembly of France. In *The Rights of Man*, he included the text of the Declaration of the Rights of Man, which brought a version of the right to know in one of its seventeen items: “Fifteen: Every community has a right to demand of all its agents an account of their conduct.” For Paine, likewise for Jefferson, the right to know was an instrumental right to secure all other rights. Both of them might have followed William Bolla’s idea of an instrumental right to free examination of public measures.

[T]he free examination of public measures, with a proper representation by speech or writing of the sense resulting from that examination, is the right of the members of a free state, and requisite for the preservation of their other rights.⁸⁹

Referring to the right to know, Uhm said that “eighteen-century Americans clearly understood its conceptual implications for democratic republicanism.”⁹⁰

Although, Uhm’s remark might be exaggerated, the letters from Jefferson,

⁸⁹ William Bolla, *the Freedom of Speech and Writings Uppon Public Affairs, Considered, with a Historical View* (London: S. Baker, 1766), 3.

⁹⁰ Uhm, “The founders and the revolutionary underpinning of the concept of the right to know,” 397. See also Joel D. Meyers, “The Private Revolution of William Bolla,” *The New England Quarterly* 41, no. 4 (Dec., 1968), 536-550.

Madison, Mason, and Paine, are evidence that at least, some (very few probably) knew in different levels the instrumental importance of a right to know. Other historians have also identified the common belief among educated Americans of the period of the American Revolution that an informed and educated citizenry was necessary to support a legitimate government.⁹¹

Paine shared with Jefferson the idea that a legitimate government draws its power from the people. Only by consent of people properly educated on the purposes of government and duly informed about government's actions could a government avoid tyranny and amend errors.⁹² Jefferson's concept of right to know might not have been directly influenced by Paine, but the fact that their friendship, mutual respect, common literary influences, and resonance of ideas may indicate that, at least, some indirect inspiration might have taken place.⁹³

A more accepted influence for Jefferson's draft of the *Declaration of Independence* came from *Virginia Declaration of Rights*, written by George Mason.⁹⁴ The similarities between Jefferson's and Mason's documents seem evident from the first paragraph:

That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means

⁹¹ See also, Smith, Jeffery A., 1981, "Freedom of Expression and the Marketplace of Ideas Concept From Milton to Jefferson," *Journal of Communication Inquiry* 7, 47-63.

⁹² *The Writings of Thomas Paine*, Collected and Edited by Moncure Daniel Conway (New York: G.P. Putnam's Sons, 1894).

⁹³ Besides exchanging letters and sharing a liberal and democratic political view, as president, Jefferson invited Paine back from France to help him even after Paine's publication of *The Age of Reason*, which made him *persona non grata* among the American people. See footnote 81.

⁹⁴ Garrett Epps. *The First Amendment*; See also: Leonard W. Levy, *Emergence of a Free Press* (New York : Oxford University Press, 1985).

of acquiring and possessing property, and pursuing and obtaining happiness and safety.⁹⁵

The core idea of Mason's document is summarized in the second paragraph: "That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants and at all times amenable to them."⁹⁶ Mason's text would later become an obvious source for the Bill of Rights, added to the Constitution on December 15, 1791, by ratification by the states.⁹⁷

Mason, a participant in the Convention in Philadelphia refused to sign the 1787 Constitution because it lacked a Bill of Rights. His second major complaint against the Constitutional Assembly was the lack of public access to its activities:

In the House of Representatives there is not the substance, but the shadow only of representation; which can never produce proper information in the legislature, or inspire confidence in the people.— The laws will, therefore, be generally made by men little concerned in, and unacquainted with their effects and consequences.⁹⁸

Finally, Mason accused the Assembly of not protecting the freedom of press, among other fundamental rights.⁹⁹ For Mason, without the Bill of Rights

⁹⁵ Virginia *Declaration of Rights adopted by the Virginia Constitutional Convention on June 12, 1776*. National Archives, http://www.archives.gov/exhibits/charters/virginia_declaration_of_rights.html (accessed February 06, 2009).

⁹⁶ Ibid.

⁹⁷ Garrett Epps. *The First Amendment*; Leonard W. Levy, *Constitutional Opinions: Aspects of the Bill of Rights* (New York: Oxford University Press, 1986).

⁹⁸ *The Objections of the Hon. George Mason to the proposed Federal Constitution addressed to the Citizens of Virginia*. Printed by Thomas Nicholas. Paul Leicester Ford, Pamphlets on the Constitution of the United States, published during its Discussion by the People, 1787-1788 [1787]. The Online Library of Liberty. http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1670&chapter=1988&layout=html&Itemid=27#c_lf1338_footnote_nt066 (accessed February 06, 2009).

⁹⁹ Ibid.

and the formation of a formal constitutional council to inform and protect the president from misinformation and alienation, the Constitution did nothing but created a “moderate aristocracy,” which he believed would end up becoming “a monarchy, or a corrupt oppressive aristocracy; it will most probably vibrate some years between the two, and then terminate in the one or the other.”¹⁰⁰

This view was reflected by Jefferson’s close friend and neighboring planter, James Madison, who was to be the major force in proposing and drafting the Bill of Rights urged in letters from Jefferson:¹⁰¹

A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.¹⁰²

¹⁰⁰ Ibid.

¹⁰¹ *To James Madison*, Monticello, June 17, 1783 - Thomas Jefferson, *The Works*, vol. 4 (Notes on Virginia II, Correspondence 1782-1786) [1905] http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php&title=756&search=%22to+James+Madison%22&chapter=86273&layout=html#a_1988567; *To James Madison*, Annapolis, Dec. 11, 1783 - Thomas Jefferson, *The Works*, vol. 4 (Notes on Virginia II, Correspondence 1782-1786) [1905] http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php&title=756&search=%22to+James+Madison%22&chapter=86280&layout=html#a_1988607. Madison and Jefferson constantly exchanged letters both personal and official. Paine also had a cordial relationship with Madison and a close friendship with Jefferson. When in France, Paine constantly wrote to Jefferson, reporting on the state of affairs of the French Revolution, but also on mundane subjects as the newest books on different subjects, which he mentioned he bought for them. In the letters he called him “My dear Friend.” Madison, Jefferson, and Paine took on George Washington himself when Washington refused to give information to the House of Representatives about a treaty with England. A few years earlier, Madison tried to pass bills rewarding Paine for his services during the Revolution (Paine never received any compensation for his two best-sellers *Common Sense* and *The American Crisis*, which were instrumental for the war against England). None of them was approved as Madison reported to George Washington in a letter on August 12, 1784. See Appendix for the list of Jefferson’s, Madison’s, and Paine’s letters. Also see, *The Writings of Thomas Paine*, Collected and Edited by Moncure Daniel Conway (New York: G.P. Putnam’s Sons, 1894); Edward J. Larson, *A Magnificent Catastrophe: The Tumultuous Election of 1800, America’s First Presidential Campaign* (New York: Free Press, 2007).

¹⁰² James Madison. 1822. Letter to W. T. Barry. *The Writings of James Madison, comprising his Public Papers and his Private Correspondence, including his numerous letters and documents now for the first time printed*, ed. Gaillard Hunt (New York: G.P. Putnam’s Sons, 1900). 9 vols. The Online Library of Liberty. http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1940&chapter=119269&layout=html&Itemid=27 (accessed February 06, 2009).

Although Madison and Mason were foes during the preparation of the Constitution,¹⁰³ both shared the idea that the public had a right to know about the acts of government. During the Constitutional Convention, a few representatives shared the idea that most of the rights later included in the Bill of Rights were obvious assumptions of the new nation and there was no need to expressly write them into the text of law as the power to constrain those rights was not given to Congress or to the President.¹⁰⁴

The main concern for Madison was to get a Constitution ready and approved as speedily as possible as he feared that any delays might completely stop the creation of the new republic. The object of the Constitutional Convention was a counter-revolution to create a national government. The Anti-Federalists argued strenuously about the dangers of creating a Leviathan that would crush liberties. The Federalists, with Madison in the lead, worked out a compromise to promise a Bill of Rights so the states of Virginia and New York would ratify the Constitution. Without those two states, the new Constitution would not have worked. The government started in 1789 after the Constitution was ratified, but the Federalist-ruled Congress only submitted the Bill of Rights to the states. On

¹⁰³ While Mason refused to sign the Constitution without a Bill of Rights, Madison believed that, because of the urgency of the situation, it was better to have a Constitution immediately and try to fix it later. That created some warm debates between them. However, they were not personal enemies and actually shared the belief of the importance of the Bill of Rights. Richard Labunski. *James Madison and the struggle for the Bill of Rights* (Oxford: Oxford University Press, 2006).

¹⁰⁴ Oliver Ellsworth, Roger Sherman, and others explicitly argued that the Legislature could be trusted to publish their proceedings and that the people would call for it if improperly omitted. Uhm. "The Founders." 398; Parks, Wallace, "The Open Government Principle: Applying the Right to Know Under the Constitution," *The George Washington Law Review* 26, no. 1 (October, 1957), 1-22.

December 15, 1791, sufficient states had ratified to put the Bill of Rights into effect.

Madison was not blind to the people's right to know. Together with John Rutledge, Madison tried to require that each House would keep a journal of its proceedings, which should be published from time to time.¹⁰⁵ The rejection of Madison and Rutledge's motion ended up becoming the spark that caused James Wilson to expressly defend the right to know: "The people have a right to know what their Agents are doing or have done, and it should not be in the opinion of the Legislature to conceal their proceedings."¹⁰⁶ Mason added that an explicitly written requirement would give the people "a just alarm" of the abuse and a basis to "make a conclave of their Legislature."¹⁰⁷

Although the right to know was expressly included neither in the Constitution nor in the Bill of Rights, it became a pillar in the defense of openness in government and of democratic processes in the American society.¹⁰⁸ Uhm declared that the idea of the right to know was not only present, but was part of the daily discussions among the Founding Fathers of the United States and the

¹⁰⁵ Although this was a minor move by Madison, it reflected his understanding of keeping the public informed about the actions of government in a small level. He later expanded his defense of the right to know, see note 101.

¹⁰⁶ James Wilson. "Remarks of James Wilson in the Federal Convention, 1787" In *Collected Works of James Wilson*, edited by Kermit L. Hall and Mark David Hall, with an Introduction by Kermit L. Hall, and a Bibliographical Essay by Mark David Hall, collected by Maynard Garrison (Indianapolis: Liberty Fund, 2007). Vol. 1. The Online Library of Liberty. http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=2072&chapter=156340&layout=html&Itemid=27 (accessed February 6, 2009).

¹⁰⁷ Uhm. "The Founders," 398.

¹⁰⁸ Uhm cites both Federalists and Anti-Federalists writings in the defense of the public's right to know and against government secrecy, which was only tolerated in case of sensitive military information about the movement of troops or in the negotiation of international treaties that might endanger the standing of the nation with other countries. Uhm. "The Founders."

framers of the American Constitution. Again, this might be an overstatement, but both personal letters and journal articles seem to show that the topic was present at the time, just neither on a daily basis nor widespread.¹⁰⁹

Authors, activists, and/or politicians like Paine, Jefferson, Wilson, Madison, and even Anti-Federalists like Mason, “The Centinel” (Samuel Bryan), “Cato,” (probably Governor George Clinton) and the “Federal Farmer” (Richard Henry Lee) all shared an understanding of a concept of right to know not only as a right to access information from the government, but as a right to be educated about the purposes of government and its activities in order to make educated and informed judgments about their own lives and their futures. They might not have understood a right to know in anything like a 21st century sense.¹¹⁰ Yet words can take on a life of their own.

It was the slaveholder Jefferson who wrote “all men are created equal” in the *Declaration of Independence*. From the advocacy of people building a revolution, an imperative for citizens to know more fully about the meetings and decisions of government bodies surfaced. The language sometimes used was not inconsistent with a more modern concept of “right to know.” Perhaps a broad theory of a right to know may have been emerging as long ago as the War for Independence and the adoption of the Constitution and, two years later, of the Bill of Rights.

¹⁰⁹ See Appendix.

¹¹⁰ That interpretation of the right to know, however, would only become a reality in the United States with the passing of the Emergency Planning and Community Right-to-know Act (EPCRA) in 1986; a little more than 200 years after the *Declaration of Independence* and the Constitutional Convention.

Unfortunately, there isn't much evidence of any formal discussions about the right to know between the period after the death of James Madison and the end of World War II. It is possible that after losing the battle for its inclusion in the Bill and the death of the most prominent defenders of the right to know, the debate simply turned to other issues. The modern right-to-know movement came as a backlash against the growth of the American security state after World War II, during the Cold War with the Soviet Union.

The Right to Know and American Freedom of Information: Agitation and Legislation of the 1950s and 1960s

Before EPCRA, the first attempts to establish a right to know came from a few legal scholars and from journalists, notably from Sigma Delta Chi (precursor of the Society of Professional Journalists) during the 1950s. Harold Cross, a retired attorney for a newspaper, made the term "right to know" popular with the publication of *The Public's Right to Know*, in which he wrote his findings in a study of access to government information, focusing especially on the Administrative Procedure Act (APA) of 1946 for the American Society of Newspapers Editors. Section 3 of APA made some matters of official record available to "persons properly and directly concerned."¹¹¹ However, Cross found that the vague text of the law and the poorly defined exemptions were used by agencies to deny access to information and not to make it available.¹¹² Cross's findings prompted a series of analyses and essays on the right to know,

¹¹¹ Administrative Procedure Act of 1946, 3, 5 U.S.C. 1002.

¹¹² Harold Cross, *The Public's Right to Know* (New York, Basic Books, 1953).

especially on the 11 years of hearings for the Freedom of Information Act of 1966 (FOIA), an amendment to APA signed by President Lyndon Johnson. Wallace Parks described the political climate on the access to governmental information during that decade:

The withholding of government information is currently a subject of general interest and considerable controversy in the United States. In spite of the vast volume of government publications and releases of various types, many skilled observers of American governmental processes have become concerned, since the end of World War II, because of suppression, withholding, or delayed availability of information at its source. Both major parties in recent platforms have promised to free government information pertaining to the national government.¹¹³

Parks also listed the main complaints of journalists and difficulties faced by the public, even legislators, while trying to get access to governmental activities:

Among the conditions which have been alleged and criticized are the following: (1) records, background reports, and proceedings frequently are not available or open to the press, interested parties, specialists, or to the Members and Committees of the Congress; (2) many officials are not responsive when questions are put to them even by legislators; (3) a growing trend to release information only through high agency officials; (4) many releases and publications are inadequate, tardy, slanted, politically motivated, or paternalistic - including reports required by law to be submitted to the Congress; (5) much vital information has been classified or refused release under security regulations which is readily available to potential enemies or of little if any security importance; (6) indirect restrictions are applied to scientific, press, and other communications outside the government.¹¹⁴

¹¹³ Parks, "The Open Government Principle."

¹¹⁴ Ibid., 2-3.

Under protests from journalists and the general public, the House Committee on Government Operations created a subcommittee on government information under the direction of John Moss in 1955. Robert Blanchard argued that the 173 hearings under the Moss established the foundations for a new information policy, although the amendments to APA recommended by Moss's subcommittee were repeatedly thwarted by a lack of interest by the Judiciary Committee that oversaw Moss's subcommittee.¹¹⁵

During that period authors generally argued for the right to access governmental information, but a few were more specific. Leon R. Yankwich argued for an ethical approach to the democratic system based on the idea of responsibility.¹¹⁶ After arguing for a "qualified privilege" for reporters of governmental activities, Yankwich justified the right to know as instrumental for the watchdog function of the press. He wrote:

In brief, if public officials and the organs of information act with full awareness of their moral obligation and responsibility to a democratic society, they will perform truly their essential function as instruments of free government.¹¹⁷

Parks followed Yankwich, adding that secrecy should only be applied to very special cases and that openness should be the rule:

From the standpoint of the principles of good government under accepted American political ideas, there can be little question but that open government and information availability should be the general rule from which exceptions should be made only where

¹¹⁵ Blanchard, Robert O. "A History of the Federal Records Law," *Freedom of Information Center Report* 25 (November, 1967): 3-22.

¹¹⁶ Yankwich, Leon R., "Legal Implications of, and Barriers to, the Right to Know," *Marquette Law Review* 40 (1956-1957): 3-37.

¹¹⁷ *Ibid.*, 36.

there are substantial rights, interests, and considerations requiring secrecy or confidentiality and these are held by competent authority to overbalance the general public interest in openness and availability.¹¹⁸

Parks also argued that the right to know had constitutional standing¹¹⁹ as the Ninth Amendment protected other rights not expressly protected in the Constitution and that those rights could have equal standing as the enumerated rights. Moreover, he argued that an interpretation of the First Amendment through the words of James Madison and some Supreme Court rulings gave the right to know a very important constitutional standing as it was fundamental to secure other rights:

It is clear that the primary purpose of the freedom-of-speech and press clause of the First Amendment was to prevent the government from interfering with the communication of facts and views about governmental affairs, in order that all could properly exercise the rights and responsibilities of citizenship in a free society. This clause was intended as one of the guarantees of the people's right to know. Its pivotal importance to other freedoms was recognized clearly. In Madison's words, "... the right of freely examining public characters and measures, and of free communication thereon, is the only effective guardian of every other right." The Supreme Court has recognized this connection repeatedly.¹²⁰

¹¹⁸ Parks, "The Open Government Principle," 4.

¹¹⁹ Ibid.; The Supreme Court had not yet had the chance to directly analyze the constitutional standing of the right to know at the time.

¹²⁰ Ibid., 9. It is important to point out, though, that Parks's list of the Justices opinions focused on freedom of the press and not freedom to acquire information or the right to know. "It was not of accident or coincidence that the rights to freedom in speech and press were coupled in a single guarantee with the rights of the people peaceably to assemble and to petition for redress of grievances." *Thomas v. Collins*, 323 U.S. 516, 530 (1944); "Without a free press there can be no free society. Freedom of the press is not an end in itself. . . ." Mr. Justice Frankfurter (concurring) in *Pennkamp v. Florida*, 328 U.S. 331, 354 (1946). Note the words of Mr. Justice Black, dissenting in *Milk Wagon Drivers Union v. Meadow Moor Dairies*, 312 U.S. 287, 301, 302 (1941):

" . . I view the guarantees of the First Amendment as the foundation upon which our governmental structure rests and without which it could not continue to endure as conceived and planned. Freedom to speak and write about public questions is as important to the life of our government as is the heart to the human body.

Thomas C. Hennings, Jr., a U.S. Senator from Missouri at the time, became more successful in the Senate than Moss had been in the House. Heading the Subcommittee on Constitutional Rights, Hennings proposed amendments to APA that were finally approved and signed by President Dwight D. Eisenhower. Nonetheless, Hennings was surprised by the president's discourse, safeguarding his own right to withhold information at the moment of signing of the bill that would become the Freedom of Information Act seven years later. Hennings wrote a cautionary article¹²¹ making a case that the Executive Privilege to withhold information only applies in cases of "clear and present danger" to national security.¹²²

The Freedom of Information Act was the first statutory regulation that included a right-to-know instrument. However, as legal scholar Joseph D. Jacobson noted, the FOIA was "a broader effort to establish a statutory right to access government information"¹²³ and did not include any provisions for the government (or corporations) to proactively inform the public about its activities.

Although the FOIA was modified and amended several times throughout the years, the right in the FOIA is only for the public to be able to gain access to

In fact, this privilege is the heart of our government. If that heart be weakened, the result is debilitation; if it be stilled, the result is death."

¹²¹ Hennings, Thomas C. Jr., "The People's Right to Know," *American Bar Association Journal* 45 (1959), 667-770.

¹²² Ibid. See also Blanchard, "A History of the Federal Records Law."

¹²³ Jacobson, Joseph D. "Safeguarding National Security through public release of environmental information: moving the debate to the next level." *Environmental Law* 9 (2003), 327-397, 344.

information upon request.¹²⁴ In the FOIA, concerned citizens needed first to know what information they were looking for and what government agency held that information. That arrangement, although of crucial importance, served only for a reactive/retrospective process and did not fit the notion of right to know as a right to be informed and knowledgeable about the purposes and actions of government, as contended by Jefferson and Madison. The right to know, as they envisioned and was much later defined by Susan Hadden,¹²⁵ should help inform and educate the public about the activities of government so the public can choose among options or even inform the decision makers about new options.

Three years after of the enactment of FOIA, another statute carrying a different version of the right to know was enacted as a direct consequence of the efforts of the Environmental Movement: the National Environmental Policy Act (NEPA) of 1969. However, the right to know in NEPA, like in FOIA, was still not fully developed.

[W]hile NEPA was certainly a groundbreaking statute in the broad public “right-to-participate” sense, it does not clearly fit into the narrower “right-to-know” category which is more often thought of as a scheme in which polluters are required to disclose their processes and other information. The first true right-to-know provision in a substantive environmental statute would not become law until 1986.¹²⁶

¹²⁴ Ibid., 345.

¹²⁵ Hadden, *A Citizen's Right to Know*.

¹²⁶ Jacobson, “Safeguarding National Security, 348.

However, in 1977 David Michael Ivester recharged the discussion on the right to know in his article “The Constitutional Right to Know.”¹²⁷ Ivester started out with a powerful claim of the indispensability of a right to know:

Indispensable to the continued success of our two hundred year old experiment in self-government is a free flow of information upon which individuals can make reasoned judgments. In any political system, those who make the decisions must have access to information upon which to base their decisions. Although pure democracy and an absolutely free flow of information are difficult, if not impossible, to achieve, the practical relationship between the two nevertheless remains unchanged. To the extent that a system shares responsibility for decisionmaking, information must also be shared.¹²⁸

Ivester proceeded to argue for the constitutionality of the right to know. According to Ivester, it was, at least in part, the intent of the framers of the Constitution and the Bill of Rights to secure the right to know, especially through the First Amendment.

Although the quest for the intent of the framers is fraught with perils, it can reasonably be said that some recognition and protection of the right to know was contemplated or presumed by many of those who participated in the process of producing the Constitution and the Bill of Rights. Indeed there is some evidence suggesting that the Founding Fathers intended to guarantee the right to know per se, that is, that the First Amendment was specifically intended to extend to the people a directly enforceable right to know about governmental affairs.¹²⁹

Ivester then argued about the instrumentality of the right to know in the framers' intent:

¹²⁷ Ivester, “The Constitutional Right to Know,” *Hastings Constitutional Law Quarterly* 4 (1977): 109-164.

¹²⁸ *Ibid.*, 109.

¹²⁹ *Ibid.*, 119.

If, perhaps, this specific intent did not enter the minds of most of the framers, there is persuasive evidence, in light of the widespread awareness of the basic need for “popular information, or the means of acquiring it,” that the freedom of speech and press clauses were intended at least as instrumental means of securing and protecting the right to know. In other words, assuming the framers had no intent to create a directly enforceable right to know, they expected that the guarantee of freedom of speech and press would effectively secure the right of the people to know about their government.¹³⁰

Ivester’s article can be seen as another attempt to prevent the idea of a right to know from succumbing to government secrecy, but it also reflected the struggles of the late 1970s on government secrecy, especially after Jim Carter became president with a more liberal platform than his predecessor Gerald Ford, as chapter 4 reveals. The idea of a right to know before EPCRA was no more than an ideological concept despite the repeated claims of some scholars as Eugenia Zerbinos argued: “The claims by Parks, Emerson and Ivester of a right to know do not withstand analysis within the rights schema.”¹³¹ The right to know had no recognized legal or constitutional support.

As Jacobson pointed out, it was only with EPCRA, that the right to know—the right of people to be informed on issues pertaining to their lives, livelihood, and public policy in order to fully participate in the decision-making process—was finally expressly written into the text of law.¹³² As seen in this chapter, the right to know carried a series of assumptions and ideas throughout its history. The main

¹³⁰ Ibid.

¹³¹ Eugenia. Zerbinos, “The Right to Know: Whose Right and Whose Duty?” In *Censorship, Secrecy, Access, and Obscenity*. Theodore R. Kupferman, ed.. (Westport, CT: Meckler, 1990, 209-258, 215).

¹³² Jacobson, “Safeguarding National Security,” 333-337. See also Hadden, *A Citizen’s Right to Know*, 24-28.

characteristics found in the literature of the different periods defines the right to know as an instrumental right of citizens to know about their government and their government's actions in order to secure all other rights. This concept was derived from the principles of self-governance, sovereignty of the people, and freedom of expression.

The ideological concept of the right to know, although defended by different people at different times, has never been fully recognized by the Supreme Court or clearly stated in a federal law until EPCRA. It's important to highlight both the *preventive* and *participatory* characteristics of the right to know in EPCRA as they represent a true step to empower citizens to act directly in the policymaking process and take part in the decision making. Thus they differentiate EPCRA from previous laws, like the Freedom of Information Act, that brought a right to petition the government for information, but not a right to know with the preventive and participatory characteristics.

Furthermore, EPCRA also included private corporations into the mix of entities that needed to make the information available, recognizing them as part of the group of institutions that directly affected the public interest and, therefore, needed to provide checks and balances on the activities that put public health at risk.

The next chapter will take a look into the history of the social movements that helped make EPCRA become a reality.

CHAPTER 3: LITERATURE REVIEW

The principles of the public's right to know, self-governance, and community involvement may constitute the core of EPCRA, but EPCRA's adoption was firmly grounded in actual historic events as much as in ideological principles. In order to contextualize the events that led to EPCRA's proposal and signing into law, this chapter will present a literature review of some of the ideas, theories, academic discussions, and historical antecedents focusing on the environment, the movements and events that preceded EPCRA.

The main point of this chapter is to clarify some of the underlying contexts that allowed EPCRA to become a different kind of approach to policy making by creating communication opportunities based on the right to know. The chapter starts with a brief description of the theoretical interpretation of the events seen in the 20th century through Ulrich Beck's *Risk Society*. The concept put forward by Beck is important to this analysis mainly because it became a highly mentioned theoretical framework among environmental justice scholars. It provided a justification that addressed much of the needs of the Environmental Justice Movement. Beck was not the first to work with the idea of risk, but for scholars like Robert Bullard, Robert Brulle, and David Golblatt, he was the first one to use the idea of environmental risk as the central characteristic to create an analytical framework of the late 20th century and early 21st century society, replacing other vastly used concepts like "production" and "consumption."

Beck's work also provided a justification for community participation as he wrote that self-governance and community-based decision making would be the

best way to deal with the sheer amount of risks produced in the late 20th and early 21st century society. Beck's theory focused on the transformation of the production society created by Modernity after the industrial revolutions into a "risk" society because of the consequences of large-scale production finally accumulated to a point in which the generated risks could not be ignored or hidden any longer. The main problem, according to Beck, is that the governmental apparatuses are insufficient to regulate, oversee, investigate, and enforce the enormous amount of risks generated by the production society. In consequence, citizens needed to get organized and empowered to do what the State could not.¹³³

For some environmental justice and environmental sociology scholars, the births of the anti-toxic and the Environmental Justice Movements, as well as the resurgence of a reconfigured environmental movement in the second half of the 20th century, are reflections and evidence of what Beck described. In chapter 4 and 5 of this dissertation, EPCRA's history seems to exemplify what Anthony Giddens called "reflexive society."¹³⁴ As society is forced to deal with the consequences of the "industrial society," it creates new institutions to oversee the workings of the failing governmental institutions. For Beck, these new institutions are grassroots groups, citizens' organizations, and communities' associations.¹³⁵

As such, Beck's analysis of society fits well with the intent of environmental and environmental justice groups. These, in turn, will constitute

¹³³ Beck, *Risk Society*.

¹³⁴ Anthony Giddens, *Modernity and Self-identity*.

¹³⁵ Beck, *Risk Society*.

the main source of pressure on governmental agencies and private corporations to diminish the indiscriminate use and release of toxic and hazardous substances into the environment as shown both in his chapter and in chapter 4. After a series of accidents and the discovery that even common industrial practices might have been contaminating entire communities, common citizens started to organize against corporate practice.¹³⁶ However, the first step—and what became a seminal characteristic of these movements—was to find out what kind of materials industrial facilities were using and releasing into the environment and what kind of risk they represented. These movements claimed, above all, that communities had a right to know what chemicals and materials were being released into their water, air, and soil.¹³⁷

On the theoretical side, the struggle for the right to know also found a home in two approaches to communication: environmental communication and risk communication. Historically, environmental communication began evolving from nature writing and later from the needs of the conservation and environmental movements to understand the role of media and corporate messages and to create their own. Academically, the field of environmental communication as a legitimate academic field started with Christine Oravec's

¹³⁶ Marc Mowrey and Tim Redmond, *Not in Our Backyard: The People and Events that Shaped America's Modern Environmental Movement* (New York: William Morrow and Company, 1993); Brulle, Robert. "Environmental Discourse and Social Movement Organizations: A Historical and Rhetorical Perspective on the Development of U.S. Environmental Organizations," *Sociological Inquiry* 66, no. 1(1996): 59-83.

¹³⁷ Durham-Hammer, "Left to Wonder"; Weeks, "The Bumpy Road to Community Preparedness"; Lewis, Browne C., "What You Don't Know Can Hurt You: The Importance of Information in the Battle Against Environmental Class and Racial Discrimination," *William and Mary Environmental Law and Policy Review* 29 (Winter, 2005): 327-373.

work on John Muir's rhetoric,¹³⁸ although some other sociological and literary approaches to environmental writing and communication practice have been tried before.¹³⁹

Although the practice of risk communication can be traced to ancient times, the study of risk communication as an academic field, especially on environmental issues as pertained to the topic of this dissertation, came with the necessity of corporations to prepare for the impact of environmental disasters caused by their industrial plants. Although risk communication encompasses an extremely large field of research, as does environmental communication, this research will focus on the writings and understandings that are more directly related to the study of environmental risks involving toxic and hazardous materials and community empowerment and participation.

The risk society

Humans differ from brute action, too, in its influence upon the material world, because it is not controlled by natural compensations and balances. Natural arrangements, once disturbed by man, are not restored until he retires from the field, and leaves free scope to spontaneous recuperative energies; the wounds he inflicts upon the material creation are not healed until he withdraws the arm that gave the blow.

George Perkins Marsh¹⁴⁰

¹³⁸ Oravec, Christine L. "Conservationism vs. Preservationism: The Public Interest in The Hetch-Hetchy Controversy," *Quarterly Journal of Speech* 70 (1984): 444-458.

¹³⁹ Tema Milstein. (in press for 2010). "'Environmental Communication Theories,'" in *Encyclopedia of Communication Theory*, eds. Stephen Littlejohn and Karen Foss (Thousand Oaks: Sage).

¹⁴⁰ George Perkins Marsh. 1864. *Man and Nature*, in *American Earth: Environmental writing since Thoreau*, ed. Bill McKibben (New York: The Library of America, 2008), 74.

In the sociological tradition, the idea of risk as the center of human society (as opposed to production or consumption, for example) comes mostly after Beck's work about a change of societal structures, evolving from the notion of industrial society to risk society. In 1986 Beck published *Risikogesellschaft - Auf dem Weg in eine andere Moderne*, translated to English six years later as *Risk Society*. In it, Beck¹⁴¹ portrayed a constantly changing world in its process of modernization and free of the traditional gridlocks of the industrial society. Beck's thesis was that society was "witnessing not the end but the *beginning* of modernity – that is, of modernity *beyond* its classical industrial design."¹⁴² For Beck, that new stage of modernity will be what Beck called *reflexive modernization*, one of his central theories: "The argument is that, while in classical industrial society the "logic" of wealth production dominates the "logic" of risk production, in the risk society this relationship is reversed."¹⁴³

Beck contended that the risks and consequences of modernization were "irreversible threats to the life of plants, animals, and human beings."¹⁴⁴ Although many other authors, like Rachel Carson¹⁴⁵ for example, identified environmental problems as a serious threat to society, Beck's work created a new lens for the

¹⁴¹ Beck, *Risk Society*.

¹⁴² Ibid., 10. Although Beck did not subscribe to positivistic thinking, his thesis went against most European authors before him who defended that society was coming into a new era; a post-modern era. These authors became known as post-modernists and they believed that the new era brought the complete failure of the industrial/capitalist/illuminist/positivist model. Famous post-modernists, like the French Jean Baudrillard, declared the death of major concepts championed by the positivists, like the end of history, the end of meaning, and even the end of reality. For more information on post-modern thinking and authors see: Joe Doherty, Elspeth Graham, and Mo Malek, eds., *Postmodernism and the Social Sciences* (New York: St. Martin's Press, 1992); Pauline Marie Rosenau, *Postmodernism and the Social Sciences* (Princeton, N.J.: Princeton University Press, 1992).

¹⁴³ Ibid., 12.

¹⁴⁴ Ibid. 13.

¹⁴⁵ Rachel Carson, *Silent Spring*. Fortieth Anniversary ed. (Boston; New York: Mariner Books, 1962/2002).

social sciences to study the concept of environmental risk as the central focus of analysis, replacing the role of social institutions. Beck also proposed that, with the failure of social institutions to deal with the broad concept of risk, society would need to turn more and more to civic participation and self-governance in all stages of government and society. For Beck, only through the inclusion of the public in the decision-making process would governments be able to prevent and ameliorate environmental problems. He also defended the concept that well-informed local communities would be more able to monitor and react to local risks.¹⁴⁶

For David Goldblatt¹⁴⁷ the distinguishing feature of Beck's work was to place the origins and consequences of environmental degradation right at the heart of a theory of modern society, rather than seeing it as a peripheral element or theoretical afterthought. Beck's sociology and the societies it describes are dominated by the existence of environmental threats and the ways we understand and respond to them.¹⁴⁸

Goldblatt¹⁴⁹ wrote that the ideas of risks and hazards in Beck's work were most closely examined in the equation with environmental degradation and, citing Anthony Giddens, differentiated risk from danger explaining that what transforms dangers and hazards into risks is that they are known, predictable and whose likelihood that can be calculated.

To be in danger is one thing. To know that one is in danger is quite another. To know that one is in danger and to feel essentially powerless to alter the course of events which generate that danger

¹⁴⁶ Beck, *Risk Society*. See also: Ulrich Beck, *World Risk Society* (Cambridge: Polity Press, 1999).

¹⁴⁷ David Goldblatt, *Social Theory and Environment* (Boulder, Col.: Westview Press, 1996.).

¹⁴⁸ Ibid. 155.

¹⁴⁹ Ibid. 157/58.

is another again. Alongside the shift from danger to risk, contemporary environmental problems possess further distinctive characteristics which elicit and demand very particular patterns of political and psychological response. These demands and responses are of such magnitude that their emergence can be said to herald the emergence of a distinctive form of modernity.¹⁵⁰

In that way, Beck presented three arguments explaining different features of modern environmental risks. First, differently from the past, contemporary hazards are not limited in their effects by spatial or social limitations. The second argument describes the catastrophic and even total annihilating effects of large-scale nuclear and chemical accidents and of the genetic manipulation of the planet's fauna and flora. Finally, the last argument explained that the point of impact of modern environmental risks "is not obviously tied to their point of origin and that their transmission and movements are often invisible and untrackable to everyday perception."¹⁵¹

According to Beck, the critique of the scientific development in a reflexive examination belongs in the public sphere,¹⁵² putting the lay public and the scientists at the same level of importance in the political process.¹⁵³

Environmental sociologist Eugene A. Rosa¹⁵⁴ wrote that Anthony Giddens's and Ulrich Beck's theories on modernization and risk society should be considered "theories of society and environment" because of the present

¹⁵⁰ Ibid.

¹⁵¹ Ibid. 159.

¹⁵² Beck, *Risk Society*, 235.

¹⁵³ Beck is not dismissing scientists, but affirming that people's experiences become more valuable when scientists cannot determine risk because of the amount of uncertain and unknown variables.

¹⁵⁴ Eugene A. Rosa, "Modern theories of society and the environment: the Risk Society," in *Environment and global modernity*, eds. G. Spaargaren, A. P. J. Mol, and F. H. Buttel (London; Thousand Oaks; New Delhi: Sage Publications, 2000.).

concern for hazards in the contemporary world and over the vulnerability of the environment. For Rosa, risk is a “valuable analytic lens for evaluating past and future impacts of humans on the environment.”¹⁵⁵

The Environmental Justice Movement and the road to EPCRA

Then a strange blight crept over the area and everything began to change. Some evil spell had settled on the community: mysterious maladies swept the flocks of chickens; the cattle and sheep sickened and died. Everywhere was a shadow of death. The farmers spoke of much illness among their families. In the town the doctors had become more and more puzzled by new kinds of sickness appearing among their patients. There had been several sudden and unexplained deaths, not only among adults but even among children, who would be stricken suddenly while at play and die within hours.

Rachel Carson¹⁵⁶

The origins of the U. S. environmental movement as a political action can be tracked back to September 30, 1847, when U.S. Congressman George Perkins Marsh stood up before the Agricultural Society of Rutland County, Vermont to deliver a speech that would become seminal for the Conservation Movement on the necessity of protecting American wildlife and vegetation.¹⁵⁷

Such ideas gained strength prior to World War I with the formation of John Muir’s Sierra Club and the National Audubon Society, but primarily with the adoption of conservation ideals by the General Federation of Women’s Clubs, which worked as the main engine of information dissemination. The GFWC

¹⁵⁵ Ibid. 96.

¹⁵⁶ Carson, *Silent Spring*, Fortieth Anniversary ed. (Boston; New York: Mariner Books, 1962/2002, 2).

¹⁵⁷ George Perkins Marsh. 1848. Address Delivered Before the Agricultural Society of Rutland County, Sept. 30, 1847. Rutland, VT: Herald Office.

counted with more than one million members in 1900 and created a communication network never seen before at that time. A good part of Muir's success, for example, depended on the efficiency of the GFWC in passing along sensitive information and exerting influence in key political figures.¹⁵⁸

Jack E. Davis, in an article about Marjory Stoneman Douglas, a most influential woman environmentalist, wrote:

Many women's organizations, particularly the more influential white, middle- to upper-class groups, integrated social concerns—child welfare, school reform, and pure-food regulations—with conservation agendas. The national General Federation of Women's Clubs (GFWC) maintained a conservation department, and among its lobbying accomplishments were state and national laws to protect forests, waters, and wildlife. Gifford Pinchot, whose mother chaired the conservation committee of the Daughters of American Revolution, observed in 1910 that "few people realize what women have already done for conservation."¹⁵⁹

The Conservation Movement became one of the first movements to present characteristics that would only appear in the second half of the 20th century as it linked environmental issues to the fight for civil rights, particularly the inclusion of women and African-descendents into the public life. However, first economic problems of the Great Depression of 1929, and then the all-out defense efforts of World War II submerged the Conservation Movement, with wartime concerns becoming more important than conservation, or for that matter, civil rights, social welfare, and public health.

¹⁵⁸ Carolyn Merchant. *Earthcare: Women and the Environment* (New York: Routledge, 1995); Glenda Riley, *Women and Nature: Saving the "Wild" West* (Lincoln; London: University of Nevada Press, 1999).

¹⁵⁹ Davis, Jack E., "'Conservation is now a Dead Word': Marjory Stoneman Douglas and the Transformation of American Environmentalism." *Environmental History* 8, no. 1 (Jan., 2003): 53-76.

Despite the fact that by 1958 every American state had discovered cases of toxic contamination of ground water,¹⁶⁰ it was only in 1962, with Rachel Carson's book *Silent Spring*, that environment and public health were stirred together once again. Carson's book resuscitated the discussion about environmental degradation by showing how human actions can have a "domino effect" on nature. Carson showed how the use of DDT and other chemicals caused the contamination of U.S. waters. The poison was then absorbed by plankton and spread upward and with increasing concentration through the food chain back to human consumption causing a variety of deadly diseases.¹⁶¹ *Silent Spring* was the seed for the grassroots effort that later included the Anti-toxic Movement, one of the most effective sides of the new and reconfigured environmental movement.¹⁶²

The Anti-toxic Movement helped increase the public outcry for regulations on the use of toxic and hazardous materials by industry and became instrumental (although not alone) in the creation of a series of laws and regulations—among them the Resource Conservation and Recovery Act, the Toxic Substance Control Act, the Clean Air Act, and the National Environmental Policy Act¹⁶³—and even the birth of the Environmental Protection Agency (EPA) in 1970.¹⁶⁴ In the end of

¹⁶⁰ Thomas H. Fletcher. *From Love Canal to Environmental Justice: The politics of hazardous waste on the Canada-U.S. border* (Toronto: Broadview Press, 2003).

¹⁶¹ Carson, *Silent Spring*.

¹⁶² Brulle. "Environmental discourse and social movement organizations"; Mowrey and Tim Redmond. *Not in Our Backyard*.

¹⁶³ RCRA 42 U.S.C. §6901 et seq. (1976), TSCA 15 U.S.C. §2601 et seq. (1976), CAA 42 U.S.C. §7401 et seq. (1970), and NEPA 42 U.S.C. §4321 et seq. (1969).

¹⁶⁴ Luke W. Cole and Sheila R. Foster. *From the Ground Up: Environmental racism and the rise of the environmental movement* (New York: New York University Press, 2001). See also: Lawrence S. Rothemberg. *Environmental choices: Policy responses to green demands*. (Washington, D. C.: CQ Press,

the 1970s and early 1980s, a series of events put together environmental concerns, civil rights and social justice concepts that became known simply as environmental justice.¹⁶⁵

Initially, what is known now as the Environmental Justice Movement was actually a myriad of different smaller movements, like the Anti-toxic Movement, a few Not-In-My-Back-Yard (NIMBY) actions, and the People of Color Environmental Movement. Robert D. Bullard and Glenn S. Johnson referred to a visit by the reverend Martin Luther King, Jr. to Memphis in 1968 “on an environmental and economic justice mission for the striking Black garbage workers,” who were demanding equal pay and better working conditions as a first step for the Environmental Justice Movement.¹⁶⁶

The Environmental Justice Movement began to emerge from geographic areas that were primarily populated by people of color or lower economic status that had been affected by air, water, and soil pollution.¹⁶⁷ The Environmental Justice Movement became an umbrella term to unify hundreds of different local struggles against low environmental standards from companies and local governments. These sometimes organized groups aimed to force corporations

2002); Walter A. Rosenbaum *Environmental politics and policy*. 5th ed. (Washington, D.C.: CQ Press, 2002); Robert V. Percival, Christopher H. Schroeder, Allan S. Miller, and James P. Leape, *Environmental Regulation: Law, science, and policy*. 5th ed. (New York: Aspen Publishers, 2006); Mowrey and Tim Redmond. *Not in Our Backyard*.

¹⁶⁵ Taylor, Dorceta. 1997. “American Environmentalism: The Role of Race, Class, and Gender in Shaping Activism, 1820-1995,” *Race, Gender, and Class* 5: 15-62.

¹⁶⁶ Bullard, Robert D. and Johnson, Glenn S. “Environmental Justice: Grassroots Activism and Its Impact on Public Policy Decision Making,” *Journal of Social Issues* 56, no. 3 (2000): 555-578, 555.

¹⁶⁷ David N. Pellow and Robert J. Brulle, *Power, Justice, and the Environment: The Critical Appraisal Of The Environmental Justice Movement* (Cambridge, MA: MIT Press, 2005); Robert Gottlieb, *Forcing The Spring: The Transformation of the Environmental Justice Movement*. (Washington, DC: Island Press, 1993); Cable and Cable, *Environmental Problems Grassroots Solutions*.

and governments to clean up and compensate local communities for the spill of toxic chemicals in the soil, water, and air, and to impede the allocation of high-risk industrial plants in ethnic or poor neighborhoods among other things. Luke Cole and Sheila Foster wrote about the difficulties of pinpointing a specific origin for the movement:

Pointing to a particular date or event that launched the Environmental Justice Movement is impossible, as the movement grew organically out of dozens, even hundreds, of local struggles and events and out of a variety of other social movements. Nevertheless, certain incidents loom large in the history of the movement as galvanizing events.¹⁶⁸

Sherry Cable and Charles Cable¹⁶⁹ identified three social forces in the 1980s that promoted the perception of race and class injustice among the working class. First, the disasters of Love Canal and Three Mile Island exemplified the failure of governmental institutions by exposing how those institutions served class interests. The second was the environmental deregulation of the Reagan Administration. The third was the trickle-down environmental grievances revealed through the discoveries of more contaminated communities.¹⁷⁰

The community of Love Canal, New York, was poisoned by 248 separate chemicals at the end of the 1970s, including 130 pounds of dioxin, one of the most toxic substances known to science according to an EPA/National Research

¹⁶⁸ Cole and Foster, *From the Ground Up*, 19.

¹⁶⁹ Sherry Cable and Charles Cable. *Environmental Problems, Grassroots Solutions: The Politics of Grassroots Environmental Conflict* (New York: St. Martin's Press, 1995).

¹⁷⁰ Ibid.

Council Report.¹⁷¹ “Quite simply, Love Canal is one of the most appalling environmental tragedies in American history,” wrote Eckardt C. Beck, Administrator of the Environmental Protection Agency during the Love Canal crisis for the EPA Journal at the time.

But this is not really where the story ends. Quite the contrary. We suspect that there are hundreds of such chemical dumpsites across this Nation. Unlike Love Canal, few are situated so close to human settlements. But without a doubt, many of these old dumpsites are time bombs with burning fuses -- their contents slowly leaching out. And the next victim could be a water supply, or a sensitive wetland. The presence of various types of toxic substances in our environment has become increasingly widespread -- a fact that President Carter has called "one of the grimmest discoveries of the modern era." Chemical sales in the United States now exceed a mind-boggling \$112 billion per year, with as many as 70,000 chemical substances in commerce. Love Canal can now be added to a growing list of environmental disasters involving toxics, ranging from industrial workers stricken by nervous disorders and cancers to the discovery of toxic materials in the milk of nursing mothers.¹⁷²

Love Canal was one of the most reported cases of toxic disaster in the U.S., but was small in numbers of victims when compared to previous disasters

¹⁷¹ EPA/NRC. 2006. *Health risks from dioxin and related compounds evaluation of the EPA reassessment*. Washington, D.C.: The National Academies Press. <http://www.ejnet.org/dioxin/nas2006.pdf>. (accessed July 01, 2009). The official definition for dioxin in the text of the document was presented as follows: “2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD), also called dioxin, is among the most toxic anthropogenic substance ever identified. TCDD and a number of similar polychlorinated dioxins, dibenzofurans, and coplanar polychlorinated biphenyls (dioxin-like compounds [DLCs]) have been the subject of intense scientific research and frequently controversial environmental and health policies. Animal studies have demonstrated potent effects of TCDD, other dioxins, and many DLCs on tumor development, birth defects, reproductive abnormalities, immune dysfunction, dermatological disorders, and a plethora of other adverse effects,” Preface, p. xi.

¹⁷² Beck, Eckardt C. “The Love Canal Tragedy.” *EPA Journal*, January 1979. <http://www.epa.gov/history/topics/lovecanal/01.htm> (accessed March, 29, 2009).

like the Donora Smog in Monongahela River Valley in Pennsylvania in 1948¹⁷³ or the Buffalo Creek Hollow disaster in 1972.¹⁷⁴ However, because of the Love Canal Homeowner Association (LCHA) refusal to accept the condescending attitude from the authorities by hiring their own experts to track down health problems associated with the toxic dumping, 800 people ended up being evacuated permanently from the area. The LCHA's battle became a media phenomenon and pressured the federal government to enact the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or Superfund Law.¹⁷⁵

Bullard and Johnson identified a waste dispute in Houston, Texas, which resulted in the landmark lawsuit *Bean vs. Southwestern Waste Management Inc.* of 1979 as the precursor event of the fight against environmental racism.¹⁷⁶ Margaret Bean and other Houston residents sued Southwestern Waste Management to stop the creation of a landfill in an almost exclusively African-American neighborhood. The company won the lawsuit as the plaintiffs failed to prove the company's intent to discriminate. However, a struggle against the construction of a hazardous waste landfill in Warren County, North Carolina in

¹⁷³ From the Pennsylvania Department of Environmental Protection: "Between Oct. 26 and 31, 1948, 20 people were asphyxiated and over 7,000 were hospitalized or became ill as the result of severe air pollution over Donora, Washington County, the Monongahela River town of 14,000. The investigation of this incident by state and federal health officials resulted in the first meaningful federal and state laws to control air pollution and marked the beginning of modern efforts to assess and deal with the health threats from air pollution." <http://www.depweb.state.pa.us/heritage/cwp/view.asp?A=3&Q=533403> (accessed 04/09/2009).

¹⁷⁴ A toxic flood caused by negligent strip mining resulted in 118 deaths and more than 4,000 people left homeless. Gerald M. Stem, *The Buffalo Creek Disaster: How the Survivors of One of the Worst Disasters In Coal-Mining History Brought Suit Against the Coal Company—And Won* (New York: Random House, 1976).

¹⁷⁵ Fletcher. *From Love Canal to Environmental Justice*; CERCLA 42 U.S.C. §9601 et seq. (1980).

¹⁷⁶ Bullard and Johnson. *Environmental Justice*, 556.

1982 is considered the official birth of the Environmental Justice Movement, according to Eileen Maura McGurty, Robert D. Bullard and others.¹⁷⁷ “The protests marked the first time African Americans had mobilized a national broad-based group to oppose what they defined as environmental racism,” Bullard wrote.¹⁷⁸ Nevertheless, despite a six-week protest with the participation of nearly 500 people, the landfill was constructed. For McGurty, the reason the protest in Warren County is still considered the birth of the Environmental Justice Movement despite older events was the presence of the four factors determined by Sidney Tarrow: cultural frames, social networks, disruptive action, and political opportunities.¹⁷⁹

In Warren County all of these requirements were met and the development of a new social movement was possible. First, environmental racism was the collective action frame with its unique diagnosis, attribution of blame, and proposed solutions. Second, informal associations, connected to the civil rights movement, had receded into daily life and were now ready to emerge with this new opportunity. Third, the disruptive action in Warren County followed closely the repertoire established by civil rights activism several decades earlier and was well known by participants, bystanders, and authorities. The organizers were also able to modify it slightly to create significant disorder. Lastly, political opportunities were ripe: Hazardous waste reforms created an atmosphere for extensive environmental reforms; changes in environmental legislation had enabled citizens to influence environmental decision making; shifts in African-American electoral politics also opened the field for action.¹⁸⁰

¹⁷⁷ McGurty, Eileen Maura. “Warren County, NC, and the emergence of the Environmental Justice Movement: Unlikely coalitions and shared meanings in local collective action,” *Society & Natural Resources* 13 (2000): 373-387; Bullard, Robert D., “Environmental Justice for All,” in *Unequal Protection: Environmental Justice and Communities of Color*, ed. Robert D. Bullard (San Francisco: Sierra Club, 1994), 1-22.

¹⁷⁸ Bullard, “Environmental Justice for All,” 5-6.

¹⁷⁹ Sidney Tarrow, *Power in Movement: Social Movements, Collective Action and Politics*, 2nd ed. (New York: Cambridge University Press, 1998).

¹⁸⁰ McGurty, “Warren County,” 375.

As seen before, Cole and Foster explained the foundations for the Environmental Justice Movement as a mix of influences from the Civil Rights Movement, Anti-toxics Movement (now called the Environmental Health Movement), Native American struggles, the Labor Movement, traditional environmentalists, academics, and earlier environmental justice (against racism) activists.¹⁸¹

The Environmental Justice Movement differs from the larger environmental movement that had been active in the United States since the late 1800s.¹⁸² Changing the locus of the environmental struggle from the wilderness to populated areas, the Environmental Justice Movement worked from the grassroots level to include “where people live, work, play, go to school, as well as how these things interact with the physical and natural worlds.”¹⁸³ The Environmental Justice Movement was born as a “political response to the deterioration of the conditions of everyday life as society reinforces social inequalities” and has sought to “redefine environmentalism as much more integrated with social needs of human populations.”¹⁸⁴ The Environmental Justice Movement was a loose alliance of grassroots efforts that emerged as a response to the environmental paradigm in place before the 1970s in order to challenge

¹⁸¹ Cole and Foster, *From the Ground Up*.

¹⁸² Taylor, “American Environmentalism.”

¹⁸³ Bullard Robert D. “Environmental justice in the twenty-first century,” in *The Quest for Environmental Justice: Human rights and the politics of pollution*, ed. Robert D. Bullard (San Francisco: Sierra Club Books, 2005), 19-42.

¹⁸⁴ Pellow and Brulle, *Power, Justice, and the Environment*, 3

perceived practices, policies, and conditions that are felt to be unfair, unjust, or outright illegal.¹⁸⁵

The efforts of all the movements and actions under the umbrella of the Environmental Justice Movement became the main source of political pressure that ended up in the creation of laws related to toxic substances, like CERCLA in 1980, and, in 1986, the Emergency Planning and Community Right to Know Act (EPCRA).¹⁸⁶

Relating environmental justice and environmental risk communication

Beyond EPCRA and the right to know, the concept of environmental justice is also an important part of the environmental risk communication model.¹⁸⁷ Among the most important issues in contemporary environmental and risk communication, environmental justice addresses perceived race and class inequities in the distribution of environmental risks. The Environmental Protection Agency defined environmental justice as

the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. ... It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the

¹⁸⁵ Pezzullo, Phaedra and Sandler, Ronald. "Revisiting the Environmental Justice Challenge to Environmentalism," in *Environmental Justice and Environmentalism: The Social Justice Challenge to the Environmental Movement*, eds. Phaedra Pezzullo and Ronald Sandler (Cambridge, Mass.: MIT Press, 2007), 1-24; Gauna, Eileen, 1998, "The Environmental Justice Misfit: Public Participation and the Paradigm Paradox," *Stanford Environmental Law Journal* 17: 3-72.

¹⁸⁶ Percival, et al., *Environmental Regulation*; EPCRA 42 U.S.C. §11001 et seq. (1986).

¹⁸⁷ The environmental risk communication model will be explained in more detail in the next section, entitled Environmental and Risk Communication. A discussion on how the right to know, environmental justice, and environmental risk communication are linked in EPCRA is presented on chapter 5.

decision-making process to have a healthy environment in which to live, learn, and work.¹⁸⁸

Andy Gouldson¹⁸⁹ examined the relationships between corporate social responsibility and environmental justice. Using data collected from 2003 to 2005 on oil refineries in the European Union and the United States, the study concentrated on three basic areas: 1) a qualitative evaluation of corporate social responsibility policies of nine petroleum-based companies; 2) a quantitative report on site-level practices of environmental performance of refineries in the European Union and the United States; and 3) a quantitative description of variances in environmental performance of refineries in relation to the principles of environmental justice.

The findings in the first area showed that the three largest companies had better corporate social responsibility policies than did the smaller firms in the survey. More importantly, at the local level, there were correlations between refineries with higher levels of emissions and refineries in lower levels of income, employment, and population density. Gouldson's correlation did not show a historical causality; Gouldson could not prove or disprove that refineries were being placed in certain areas *because* they were lower income areas. Over and over, scientific reports¹⁹⁰ showed that there is both a correlation between the

¹⁸⁸ EPA, 2007, introduction, § 1.

¹⁸⁹ Gouldson, Andy. "Do Firms Adopt Lower Standards in Poorer Areas? Corporate Social Responsibility and Environmental Justice in the EU and the US," *Area*, 38 (2006): 402-412.

¹⁹⁰ Centner, Terence J., Kriesel, Warren, & Keeler, Andrew G. 1996. "Environmental Justice and Toxic Releases: Establishing Evidence of Discriminatory Effect Based on Race and Not Income," *Wisconsin Environmental Law Journal* 3, 119-158; Chakraborty, Jayajit, & Armstrong, Marc P. 2001. "Assessing the Impact of Airborne Toxic Releases on Populations with Special Needs," *Professional Geographer* 53, no.

allocation of pollutant facilities in ethnic and/or lower-income areas and the development of ethnic and/or lower-income neighborhoods around such facilities due to lower property prices.

Overall, organized concern about environmental justice not only led to the enactment of EPCRA, as will be demonstrated on chapter 4, it is also a fundamental concept in the discussion about community right to know and effective and informed risk decisions Environmental justice is, in itself, an expected outcome of the law.¹⁹¹

Environmental and risk communication

Community residents who live near or work at manufacturing facilities that produce potentially hazardous and toxic materials are sensitive to the fairness and equity of risk distribution and to the resulting environmental and aesthetic implications of activities of such facilities.¹⁹² The perception of risk or fair allocation of risk is among the numerous motivators people use when deciding whether a problem exists and deserves their attention. Once in the face of a risk

1: 119-131.; Derezinski, Daniel D., Lacy, Michael G., & Stretesky, Paul B. 2003. „Chemical Accidents in the United States, 1990-1996,” *Social Science Quarterly*, 84, no. 1: 122-143; Duncan, Pamela. “Environmental Racism: Recognition, Litigation, and Alleviation,” *Tulane Environmental Law Journal* 6 (1993): 317-368; Grineski, Sara, Bolin, Bob, and Boone, Christopher. “Criteria Air Pollution and Marginalized Populations: Environmental Inequity in Metropolitan Phoenix, Arizona,” *Social Science Quarterly* 88, no. 2 (2007): 535-554.; Sze, Julie, “Race and Power: An Introduction to Environmental Justice Energy Activism,” in *Power, Justice and the Environment: A Critical Appraisal of the Environmental Justice Movement*, David Naguib Pellow and Robert J. Brulle (Cambridge, MA; London: The MIT Press, 2005).

¹⁹¹ EPA, 2007, introduction, § 1.

¹⁹² Bullard, Robert D. “Overcoming racism in environmental decisionmaking,” *Environment* 36, no. 4 (1994): 10-20; Webler, Thomas, and Tuler, Seth. “Four Perspectives on Public Participation Process in Environmental Assessment and Decision Making: Combined Results from 10 Case Studies,” *The Policy Studies Journal* 34, no. 4 (2006): 699–722.

situation, people may opt to make personal responses or to collaboratively seek collective solutions by engaging in public policy struggles.¹⁹³ This carries two core concerns of both environmental and risk communication: the existence of real risk or actual problem and the public perception about them, which may empower or discourage communities to act. Below the concepts and applications of environmental communication and risk communication will be explored under the framework provided by the concepts of risk society and environmental justice.

Environmental communication

Environmental communication encompasses various different practical and theoretical instances and approaches. It can relate to the work of activists and advocates, regulators, journalists, community organizations, and corporations. For each practice, environmental communication may have different specific purposes, like education, persuasion, information, regulation, etc. Moreover, environmental communication can be studied from a variety of perspectives, such as mass communications, rhetoric, advocacy campaigns and lobbying, marketing, advertising, popular culture, literature, social movements, interpersonal communication, organizational communication, etc.¹⁹⁴

¹⁹³ Skanavis, Constantina Tsampoukou, Koumouris, George. A., Petreniti Vassiliki. "Public Participation Mechanisms in Environmental Disasters." *Environmental Management*, 35, no.6 (2005): 821-837.

¹⁹⁴ Julia B. Corbett, *Communicating Nature: How We Create and Understand Environmental Messages* (Washington, D.C.: Island Press, 2006).; Covello, Vincent T., "The Perception of Technological Risks: A Literature Review," *Technological Forecasting and Social Change* 23, no. 4 (1983): 285-297; Robert Cox, *Environmental Communication and the Public Sphere* (Thousand Oaks; London; New Delhi: Sage Publications, 2006.); Robert Wyss, *Covering the Environment: How Journalists Work the Green Beat* (New York: Routledge, 2008).

Environmental communication is a field within the communication discipline, as well as a metafield that cuts across disciplines. Research and theory within the field is united by the topical focus on communication and human relations with the environment. Scholars who study environmental communication are particularly concerned with the ways people communicate about the natural world because they believe that such communication has far reaching effects at a time of largely human-caused environmental crises.¹⁹⁵

The challenge to define environmental communication is certainly as complex as the diversity of topics, objectives, and approaches used in the field.

Robert Cox¹⁹⁶ presented an “informal” and a formal definition for the field.

Informally, Cox saw environmental communication as a

study of the ways in which we communicate about the environment, the effects of this communication on our perceptions of both the environment and ourselves, and therefore on our relationship with the natural world.¹⁹⁷

In his formal definition, Cox approached the subject from both symbolic-interactionist and social-constructivist perspectives and pointed out two main distinct functions of environmental communication: one based on practice and the other as formative of people’s perception and knowledge:

I use environmental communication to mean the pragmatic and constitutive vehicle for our understanding of the environment as well as our relationships to the natural world; it is the symbolic medium that we use in constructing environmental problems and negotiating society’s different responses to them.¹⁹⁸

¹⁹⁵ Milstein. “Environmental Communication Theories.”

¹⁹⁶ Cox, *Environmental Communication and the Public Sphere*.

¹⁹⁷ Ibid., Introduction, xxiii.

¹⁹⁸ Ibid., 12.

In its pragmatic function, environmental communication “educates, alerts, persuades, mobilizes, and helps us to solve environmental problems.”¹⁹⁹ In its constitutive function, Cox wrote, environmental communication helps to build shared meanings and perceptions about environmental problems. The way we communicate may help people see a given situation as a threat or a solution; as a problem or as something desirable.²⁰⁰

Manfred Oepen, looking from a strategic/persuasion viewpoint, wrote that environmental communication is the “planned and strategic use of communication processes and media products to support effective policy-making, public participation and project implementation geared towards environmental sustainability.”²⁰¹ According to Oepen, influencing the policymaking process is a part of environmental communication as much as it is to guarantee the implementation of projects that envision the protection of the natural environment through public participation.

Oepen saw the role of environmental communication as an educative and engaging social interaction process that enables people to “understand key environmental factors and their interdependencies, and to act upon related problems in a competent way.”²⁰² Hence, environmental communication is not only – not even mainly – a tool for disseminating information, but a process that

¹⁹⁹ Ibid, 12.

²⁰⁰ Ibid.

²⁰¹ Oepen, Manfred, “Environmental Communication in a Context,” *Communicating the environment: environmental communication for sustainable development*, eds. Manfred Oepen and Winfried Hamacher (Frankfurt am Main; New York: Peter Lang, 2000), 41 – 61, 41.

²⁰² Ibid.

aims at producing “a shared vision of a sustainable future and at capacity-building in social groups to solve or prevent environmental problems.”²⁰³

Oepen’s understanding obviously excluded the role of journalism and lobbying groups that are against environmental regulation. On the other hand, David Sachsman, James Simon and JoAnn Valenti²⁰⁴ presented the results of a survey of 354 environmental reporters in four different regions of the U.S. showing that almost all of the journalists (352) understood that environmental reporters must be as objective as any other journalists. All of them defended that environmental reporters should be fair to corporations and environmental groups in the same way, and 69.5% believe that environmental journalists should not work with community leaders to solve environmental problems.

Based on Sachsman’s findings, Robert Wyss postulated that good environmental journalists still have to follow the six tenets of journalistic work: accuracy, thoroughness, balance, fairness, transparency, and passion.²⁰⁵

Others believed that environmental journalism, like journalism in general, may be an “engaged” practice, because the role of the journalist is always to defend the public interest under democratic concepts. In the first issue of *Environmental Communication: A Journal of Nature and Culture*, Robert Cox asked if environmental communication could be described as a “crisis discipline,” like conservation biology. His argument was that some disciplines are created

²⁰³ Ibid.

²⁰⁴ Sachsman, Simon, and Valenti, 2006, “Regional Issues, National Norms: A Four-Region Analysis of U.S. Environment Reporters,” *Science Communication* 28: 93-121.

²⁰⁵ Wyss, *Covering the Environment*. According to Wyss, the *passion* tenet, although rarely used by most journalism scholars, means that the journalist should be passionate about doing journalism as a scientist is about doing science and not that the journalist would be biased on a specific topic.

with the sole intent of solving specific problems (or crises).²⁰⁶ Medicine, for example, has the purpose of studying the human body with the intent to cure and prevent ailments and promote health, like conservation biology has the purpose to find ways to protect biodiversity and ecosystems.

Environmental communication encompasses much more than its crisis facet, though. Historically, environmental communication started as nature writing, aesthetic art, and scientific descriptions about the natural world with no intent to stop or prevent a specific problem. Many pictures and depictions of animals, plants, and landscapes had, and still have, the sole purpose of entertainment or aesthetic pleasure, not a politically engaged one.²⁰⁷

The environment—and therefore the communication about the environment and environmental issues—surpasses most physical and academics barriers. The concept of “environment” is, in fact, larger than the concepts of “politics,” “economics,” and “society,” the traditional lenses through which most social scientists and humanists see the world. Brazilian journalist and professor André Trigueiro wrote that it would be much more accurate to describe the environmental variable as “systemic.” As researchers and practitioners define certain facts for their sociological, political, economic, cultural, psychological, anthropological (etc.) aspects and implications, they can also be understood for their environmental aspects and implications.²⁰⁸

²⁰⁶ Cox, Robert. 2007. ““Nature’s ‘Crisis Disciplines’”: Does Environmental Communication Have an Ethical Duty?” *Environmental Communication: A Journal of Nature and Culture* 1: 5-20.

²⁰⁷ Corbett, *Communicating Nature*.

²⁰⁸ André Trigueiro, *Mundo Sustentável: Abrindo Espaço na Mídia Para um Planeta em Transformação* (São Paulo: Globo, 2005). See also: Milstein., “Environmental Communication Theories.”

The systemic view in environmental issues draws on Deep Ecology's philosophical understanding that everything in the universe is interrelated and that we need to ask deeper questions if we are to understand our role within the natural environment.²⁰⁹ Therefore, in Trigueiro's understanding, more than just a beat to be covered in the media, an environmental systemic view would add to the other perspectives (social, political, economic, etc.), reconnecting human society to nature and softening our anthropocentric views. This view was also championed by the EPA's second Administrator and former President of the World Wildlife Fund, U.S., Russell E. Train, and by William Shannon, former U.S. ambassador to Ireland and former *New York Times* correspondent:

"environment" is not simply another problem to be solved or crisis to be surmounted. ... it is the overall and underlying context within which we must weigh and deal with the various economic, energy, and other crises and problems that confront us.²¹⁰

This concept adds a reconstructive aspect to the constitutive function in Cox's formal definition of environmental communication.²¹¹ Environmental communication is then a prism or a lens through which we can understand the universe around us. Such view of environmental communication also coincides with that of James G. Cantrill and Christine Oravec, two of the first scholars to define the field of environmental communication:²¹² "The way we communicate

²⁰⁹ Arne Naess. "The Deep Ecological Movement: Some Philosophical Aspects," *Environmental ethics: An Anthology*, eds. Andrew Light and Holmes Rolston, III (Malden, MA: Blackwell Publishing, 2003), 262 - 274.

²¹⁰ Train. "EPA's task," *EPA Journal* - Nov./Dec. 1980.

²¹¹ André Trigueiro, *Mundo Sustentável*; Cox, *Environmental Communication and the Public Sphere*.

²¹² Oravec's article John Muir, "Yosemite, and the Sublime Response: A Study in the Rhetoric of Preservationism," published in the *Quarterly Journal of Speech* in 1981 is considered the seminal study in

with one another about the environment powerfully affects how we perceive both it and ourselves and, therefore, how we define our relationship with the natural world.”²¹³

Cox also advocated that one of the essential roles of environmental communication is to function as an educational tool to help public audiences and policymakers to understand the nature of environmental contexts.²¹⁴ Cox argued that “individuals and communities have a stronger chance to safeguard the environmental health and quality of their local environments if they understand some of the dynamics of and opportunities for communication about their concerns.”²¹⁵ A well-informed public is fundamental for good governance and environmental communication is the right tool for the job, Cox wrote, for “[i]t educates, alerts, persuades, mobilizes, and helps us to solve environmental problems.”²¹⁶ It also “helps to compose representations of nature and environmental problems as subjects for our understanding.”²¹⁷

Following a complementary approach, Corbett defined environmental communication as a complex and multi-layered phenomenon. For her, not only the information that is made available but also the way in which that information

the field. Her book with Cantrell, written 15 years after her article, was also among the first to analyze the field of environmental communication.

²¹³ James G. Cantrill and Christine L. Oravec. *The symbolic earth: Discourse and our creation of the environment* (Lexington: University of Kentucky Press, 1996), 2.

²¹⁴ Cox, *Environmental Communication and the Public Sphere*.

²¹⁵ Ibid., Introduction, xix.

²¹⁶ Ibid., 12.

²¹⁷ Ibid.

is made available – the communication process – defines how people and communities see their role in society and the role of society itself.²¹⁸

For this study, it is important to understand a critical intersection between environmental communication and the role played by environmental risks in the society of the late 20th century and early 21st century. Cox, for example, credited the importance of risk communication to the way in which it looks at the effectiveness of communication strategies for conveying information about health and environmental risks, the impact of cultural understanding of risk on the public's judgment of the acceptability of a risk, and the ways to develop more democratic methods to involve affected communities in evaluating risk.²¹⁹ Consequently, the role of risk communication about environmental issues is as important as the role of environmental communication about risks in understanding how environmental risks affect society's perceptions and behaviors, especially in how it can drive the policymaking process.

Risk communication

According to the National Research Council (NRC), risk communication is a means to open, responsible, informed, reasonable, scientific and value-laden discussion of risks associated with personal health and safety practices involved in living and working in close proximity to harmful activities and toxic

²¹⁸ Corbett, *Communicating Nature*.

²¹⁹ Cox, *Environmental Communication and the Public Sphere*.

substances²²⁰ —a concept that was early adopted by EPA.²²¹ This view of risk communication typically involves large organizations whose activities can pose a risk to members of a community. According to Michael J. Palenchar, “Risk communication provides the opportunity to understand and appreciate stakeholders’ concerns related to risks generated by organizations, engage in dialogue to address differences and concerns, and carry out appropriate actions that can reduce perceived risks.”²²²

Summarizing a variety of interpretive approaches to risk, Catherine Althaus compared economic perspectives and models that distinguish risk from uncertainty in which risk is a structured application of knowledge to uncertainties. According to Althaus, anthropologists understand risk as a cultural phenomenon; sociologists a societal phenomenon; economists a decisional phenomenon related to securing wealth; legal researchers as a judicable phenomenon; psychologists as a behavioral and/or cognitive phenomenon; linguists as a concept; historians as material for narrations about past resource uses, and so forth.²²³

Having written extensively on the history of modern risk communication, William Leiss described different eras of the field. According to Leiss, the risk communication started as a source-oriented approach based on the locale where

²²⁰ National Research Council. *Improving Risk Communication* (Washington, DC: National Academy Press, 1989).

²²¹ Michael J. Palenchar. “Risk Communication and Community Right to Know.”

²²² Palenchar. “Risk Communication.” in *Encyclopedia of Public Relations*, ed. Robert L. Heath. (Thousand Oaks, CA: Sage, 2005): 752-755, 752.

²²³ Catherine E. Althaus. 2005. “A disciplinary perspective on the epistemological status of risk,” *Risk Analysis* 25, no.3: 567-588. See also: Palenchar, “Risk Communication and Community Right to Know.”

risks are present. It then evolved to its present approach of communication based on shared social relations, focusing on experiences in common and public relations practices.²²⁴ Baruch Fischhoff, Paul Slovic, Sarah Lichtenstein, Stephen Read, and Barbara Combs found that risk ratings by laypersons, unlike those of experts, are not influenced solely by fatality estimates and other statistical measurements.²²⁵ Differences in judgments among laypersons were affected by numerous qualitative factors such as voluntariness, immediacy of effect, personal knowledge about risk, available scientific knowledge about risk, level of control over risk, newness, reach (chronic-catastrophic), fear level (common-dread), and severity of consequences. Palenchar has written:

As such, there is no single psychology or sociology of risks . . . Risks are not necessarily selected and perceived due to their scientific merit or personal benefit, but out of a combination of social and cultural factors, denotative and connotative reasons.²²⁶

Regina Lundgren and Andrea McMakin, for example, listed nothing less than 12 approaches to the study of risk communication: communication process, the NRC's approach, mental models, crisis communication, convergence communication, three-challenge, social constructionist, hazard plus outrage,

²²⁴ Leiss. 1996. "Three phases in the evolution of risk communication practice," *Annals of the American Academy of Political and Social Science* 545: 85-94.

²²⁵ Fischhoff, Baruch, Slovic, Paul, Lichtenstein, Sarah, Read, Stephen, and Combs, Barbara. 1978. "How Safe Is Safe Enough? A Psychometric Study of Attitudes toward Technological Risks and Benefits," *Policy Sciences* 9, no. 3: 127-152. See also Covello, "The Perception of Technological Risks"; and Paul Slovic. 1987. "Perception of risk," *Science* 230: 280-285.

²²⁶ Palenchar, "Risk Communication and Community Right to Know," 3.

mental noise, social network contagion, social amplification of risk, and social trust.²²⁷

In this study, the focus will be Susan Haden's look into the connections between risk communication and the right to know. Hadden²²⁸ wrote that the role of risk communication, very much like environmental communication, is to function as a learning system that provides citizens with an understanding of risks, hazards, and health issues, but that it also works to help people use this knowledge in the political arena, improving public regulation and corporate practices. "If citizens are to take action based on information, they must understand it,"²²⁹ she wrote.

Hadden developed a four-level concept of right to know applied to environmental risks involving toxic and hazardous chemicals. The "basic" level has the purpose of ensuring that citizens can find information about chemicals and holds the government accountable for ensuring that data are created and available.

The "risk reduction" level aims to reduce risks from chemicals, "preferably through voluntary industry action but also by government if necessary."²³⁰ In this case, regulators should use information to create new standards or enforce existing ones if industry fails to police itself.

²²⁷ Lundgren and McMakin, *Risk Communication: A Handbook for Communicating Environmental, Safety, And Health Risks*. 3rd ed. (Columbus, Ohio: Battelle Press, 2004).

²²⁸ Hadden, *A Citizen's Right to Know*.

²²⁹ *Ibid.*, 137.

²³⁰ *Ibid.*, 17.

The “better decision-making” level allows citizens to participate in the decision-making process about the appropriate levels of hazardous materials in their communities. The role of government in this level is to provide citizens not only with analyzed data, but also with methods for manipulating and interpreting data.

Finally, the “alter balance of power” level empowers citizens to participate in the decision-making process in the same or higher standing than government and industry. The role of government in this level is to provide citizens with all the information and tools as the other levels plus the means to participate.

Hadden’s understanding of right to know and risk communication seems to follow the pre-concept of a right to know developed by Thomas Jefferson as not only a right to obtain information about government (and industry) actions, but also to be educated about the purposes and functions of government (and industry). Hadden took a step further by suggesting an actual “means” to include citizens in the decision-making process beyond the educative component.

According to Hadden, risk communication is a democratic tool for participatory citizenship where the right to know is also the right to take part in the process.²³¹

Hadden’s claim that community right to know reaches beyond the letter of the law through the use of communication practices and techniques. Thus, the role played by environmental risk communication is fundamental to understand the development of the right to know in EPCRA as a different approach to policy that

²³¹ Ibid.

goes beyond the previous “command-and-control” and “market-based” approaches.

As seen in the work of Beck²³² and Cox,²³³ environmental risks are at the core of our understanding of society today. Robert L. Heath, Michael J. Palenchar, Stephanie Protheau, and Tatjana M. Hocke reinforced the link between environmental and risk communication:

The role of environmental and risk communication, and the essence of its analysis and pedagogy, should be to increase the quality of enlightened decision-making so that societies can be more fully functional in their identification, assessment, and management of risks. This requires the shaping and application of a functional set of shared principles that have scientific validation and reflect the cultural dimensions of a risk society. It is becoming increasingly clear that the main product of environmental and risk communication is not informed understanding as such, but the quality of the social relationship it supports, becoming a tool for communicating values and identities as much as being about awareness, attitudes, and behaviors related to the risk itself.²³⁴

Therefore, environmental and risk communication are not just ways to inform the public about environmental risks, but processes of using information to form identities, perceptions, and behaviors that will diminish—and even completely change—the practices that produce those environmental risks. Environmental and risk communication are educational and culture-forming processes much in line with the understanding of the role of informed and

²³² Beck, *Risk society*; Beck, *World Risk Society*.

²³³ Cox, *Environmental Communication and the Public Sphere*; Cox, “Nature’s ‘Crisis Disciplines.’”

²³⁴ Heath, Palenchar, Protheau, and Hocke. “Nature, Crisis, Risk, Science, and Society: What is Our Ethical Responsibility?” *Environmental Communication: A Journal of Nature and Culture* 1 (2007): 34-48, 45-46.

educated citizenry of some of the American Founding Fathers and, later on, the right to know as proposed by Susan Hadden.²³⁵

In assessing Hadden's postulate, Palenchar concluded that "strategic risk communication highlights the importance of a dialogic, relationship-building approach to address the concerns and perceptions of community residents and employees, and one of the keys to success is supposed to be community-right-to-know initiatives."²³⁶ As a result of this understanding, the relationship between those who produce risk and those who will suffer the consequences of the actualization of those risks cannot be one of controller and controlled. Instead of having one side controlling all the information about the risky practice, the information generated by scientists should be shared with the neighboring communities, so they can help each other to avoid harm, or, at least, to minimize damages in the moment of crisis.

Heath and Palenchar defended the interrelation of community-relations with risk communication.²³⁷ In accordance with Hadden's defense of community right to know²³⁸ and other authors in environmental law,²³⁹ they found in their longitudinal study that educating and including the community in risk and crisis planning generates higher awareness and more trust in companies' personnel and government officials in the community.

²³⁵ Hadden, *A Citizen's Right to Know*.

²³⁶ Palenchar, "Risk Communication and Community Right to Know," 4.

²³⁷ Heath and Palenchar. "Community Relations and Risk Communication: A Longitudinal Study of the Impact of Emergency Response Messages," *Journal of Public Relations Research* 12, no. 2 (2000): 131–161.

²³⁸ Hadden, *A Citizen's Right to Know*.

²³⁹ Chekouras, "Balancing National Security with a Community's Right to Know"; Jacobson, "Safeguarding National Security."

Following the right-to-know principle in public policy, environmental risk communication has been used to inform, educate, and empower communities facing environmental risks and injustices. Environmental risk communication can become a vehicle for influencing and even controlling the policymaking process. Organized citizens can gain media visibility and pressure politicians. Corporations can educate the public about the reality of the risks their plants pose and/or lobby governments to pass laws that are more favorable for their businesses. As the next chapters demonstrate, the application of such concepts under EPCRA has not only affected the development of EPCRA, but transformed it into a new way to approach public policy.

CHAPTER 4: THE EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT OF 1986—THE RIGHT TO KNOW AS APPROACH TO PUBLIC POLICY

The statute was enacted based upon the fundamental principle that an informed citizenry is essential to the democratic process and that the more the American people know about their government the better they will be governed. Openness in government is essential to accountability and the Act has become an integral part of the process.

Bill Clinton²⁴⁰

The Emergency Planning and Community Right-to-know Act of 1986²⁴¹ is such a different approach to law and policy that it has been heralded both as the “most successful piece of environmental legislation” and a “complete waste of time” by different people and, sometimes, by the same analysts. June C. Bolstridge, for example, mentioned that EPCRA has been considered “a model of information development and access in environmental regulatory circles,” and that “legislation similar to EPCRA is being evaluated by several other nations.”²⁴² At the same time, Bolstridge observed that “the law has been criticized for many reasons.”²⁴³

In this chapter, EPCRA will be described in a narrative based on the official transcripts of legislative sections, newspapers’ stories,²⁴⁴ and a variety of

²⁴⁰ Bill Clinton on the Freedom of Information Act, 1993. Quoted in Jacobson, “Safeguarding National Security,” 344/45.

²⁴¹ EPCRA, Pub. L. 99-499, 100 Stat. 1613 (1986), 42 U.S.C. §§ 11001-11050)

²⁴² Bolstridge. *EPCRA Data*, 1.

²⁴³ *Ibid.*, p. 2.

²⁴⁴ All newspaper stories were obtained through a combination of Lexis Nexis searches using the Boolean terms “Emergency Planning and Community Right-to-know Act,” “community,” “right to know,” “toxic,”

complementary documents²⁴⁵ and secondary sources. Although a critical analysis of the events will be part of this chapter, a more in-depth analysis of the meanings and results of EPCRA's history, especially about the opportunities to communication scholars and practitioners, will be presented on chapter 5. This chapter picks up where the previous chapter left off on the history of the Environmental Justice Movement as being a successful source of pressure in implementing a few anti-toxic laws.

Unlike previous chapters, chapter 4 will be punctuated by quotes that reflect the events and context of a specific period followed by the narration of the events of that period. That was done not only to improve the historical narrative and make it more interesting, but to also delineate and systematize the general cultural, social, and political contexts of different moments of EPCRA's history.

“What do you expect? EPA lobbied against RCRA in the first place, and it has no intention of ever aggressively enforcing it.”²⁴⁶

Since 1976, when Gerald Ford signed the Resource Conservation and Recovery Act (RCRA)—the first major piece of legislation that addressed the specific problem of toxic waste management—and throughout Jimmy Carter's

“Florio,” “Superfund,” and “hazardous” conducted between 01/05/2007 and 07/06/2009. Stories were crosschecked for facts and quotes were pulled from the newspapers. Preference for quotes was given to the New York Times as it was the largest and most influential national newspaper at the time, but relevant excerpts from smaller news venues, like the specialized magazine *Chemical Week*, were also added both for context and to fill the gap whenever the NY Times didn't report on a matter of historical importance related to the topic of this dissertation.

²⁴⁵ A list of sources for some historical documents can be found in the Appendix.

²⁴⁶ Hugh Kaufman, EPA's chief toxic investigator at the time, in an interview for the *Philadelphia Inquirer* in 1979. Mowrey and Redmond, *Not in Our Backyard*, p. 211.

presidency, there were many attempts to create a law that successfully controlled the massive amount of toxic and hazardous materials being released into the environment.²⁴⁷ However, as Marc Mowrey and Tim Redmond's investigation of the NIMBY movement showed, the laws were not necessarily the problem, but the 9-year-old EPA.

In 1979, the House Subcommittee on Oversight and Investigations found that three years after the passage of the law, the EPA still hadn't adopted a single RCRA regulation. Some 260 million pounds of life-threatening chemicals were still being dumped every day, without federal oversight.²⁴⁸

Another problem EPA was facing at the time was the scientific uncertainty about the effects of hundreds of chemicals. That included a large number of new synthetics created by the fast evolving industry. Douglas M. Costle, EPA administrator during the Carter Era, explained the situation in his oral history interview for EPA with an example:

Steve Gage and his R&D people wanted to build an activated carbon filtration plant at our Cincinnati laboratory, which was EPA's major drinking water lab. They needed \$40 million. That was a lot of money in those days. When I asked why, they said, "We've been sampling drinking water, using newer technologies of gas chromatography and mass spectrometry. We can detect things now that we couldn't a while back. We have found over 700 synthetic organic chemicals in finished drinking water, of which eleven are either known or suspected carcinogens, based on animal studies. Well over 20 or 30 percent of these chemicals are relatively new inventions." That is, they were substances that hadn't existed 20 years earlier but were just showing up now in sediments. I said, "Are you telling me that water is not safe to drink?" They said, "No. We don't know that. It will take several thousand mice, a team of technicians, and several years to analyze, chemical-by-chemical, and even then we don't have the methodology to determine what

²⁴⁷ Mowrey and Redmond, *Not in Our Backyard*.

²⁴⁸ *Ibid.*, p. 211.

effects two or more of these chemicals interacting might produce, as opposed to each acting individually. By the same token, we are not telling you that the water is safe to drink. What we're telling you is that we don't know, and there is no scientific silver bullet that is going to give us the answer. So we want to build this laboratory to see how effectively it can strip these chemicals out of this water."²⁴⁹

Despite EPA's inefficiency in addressing toxic pollution issues, Carter's administration's still had a last shot in trying to get both EPA and the industry to control the release of toxic and hazardous substances into the environment. A piece of legislation written by Jim J. Florio, a Representative from New Jersey²⁵⁰ with experience in both environmental and commerce issues, was described by some in the Anti-toxic Movement as its last hope to get comprehensive legislation against toxic waste dumping passed before the administration of President Ronald Reagan took power. Differently from Carter's, Reagan's administration was seen in the movement as sided with the chemical industry and other anti-environmental groups.²⁵¹

²⁴⁹ Douglas M. Costle. EPA 202-K-01-002. January 2001. Interview conducted by Dr. Dennis Williams on August 4-5, 1996, at the Ritz-Carlton Hotel, McLean, Virginia, and at Douglas M. Costle's home in Vermont. Retrieved 02/15/2009 from <http://www.epa.gov/history/publications/print/costle.htm>

²⁵⁰ Florio was born in Brooklyn, NY, in 1937, but moved to New Jersey where he attended Trento State College (The College of New Jersey), went to Rutgers School of Law, and became assistant city attorney for Camden City and, later, a solicitor for the New Jersey towns of Runnemede, Woodlyne, and Somerdale from 1969 to 1974. In 1974 he was elected for the U.S. House of Representatives at age 37, where he served until 1990. From 1979 to 1990, Florio chaired the House Commerce and Consumer Protection Competitiveness Subcommittee, which had jurisdiction over environmental matters. Congressional Biographies <http://bioguide.congress.gov/scripts/biodisplay.pl?index=F000215>; See also Florio's website: http://florioperrucci.com/attorneys_james.html; Michael Aron, *Governor's race: A TV reporter's chronicle of the 1993 Florio/Whitman campaign* (New Brunswick, NJ: Rutgers University Press, 1994).

²⁵¹ Mowrey and Redmond, *Not in Our Backyard*.

“This Senate has made the judgement that property is more significant than human beings”²⁵²

Florio’s law, named Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), started out with a dispositive that, besides being more aggressive and specific than RCRA and TSCA, put the burden of paying for control and cleanup of toxic spills on industry and not on government. The law was seen as revolutionary and a welcome solution for the toxic spill problem by some anti-toxic activists, but also as an excessive burden by industry representatives. The most important role CERCLA would play would be to hold industry accountable for the costs of cleaning up the sites of past violations of RCRA and TSCA and to improve on those laws by adding liability provisions that allowed government to criminally prosecute and to fine non-compliant corporations. Retrospectively looking into CERCLA’s role among anti-toxic legislation, Lois J. Schiffer former Assistant Attorney General for the Environment and Natural Resources Division of the U.S. Department of Justice, said:

CERCLA’s liability provisions have caused a virtual revolution in industry’s approach to hazardous waste, providing a strong incentive for pollution prevention and waste minimization efforts that have reduced dramatically the amount of hazardous waste that is generated in this country.²⁵³

²⁵² Reaction of Senator George J. Mitchell (D-Maine) after a weaker version of CERCLA was passed in the Senate. Quoted in Mowrey and Redmond, *Not in Our Backyard*, p. 211-12.

²⁵³ Schiffer. Quoted in Percival et al., *Environmental Regulation*, p. 309.

However, Congress passed CERCLA stripped clean from its liability clauses following the directions from the Chemical Manufacturers Association's lobby. Consequently, CERCLA had most of its power taken away during its enactment in 1980 and almost became moot, provoking Senator George J. Mitchell's ire: "[N]one of us should delude ourselves or the people of this country that we have done anything more dishonorable," Mitchell said.²⁵⁴

With the Reagan Administration in power and especially with Anne Gorsuch, a radical anti-regulation legislator from Colorado with ties to oil, gas, mining, and timber company lobbies at the head of EPA, and the Anti-toxic Movement's hopes dwindled:

Lois Gibbs had a lot of problems with EPA—as far as she could tell, it wasn't doing its job. Gorsuch had problems, too: she thought the agency was doing far too much. President Reagan had vowed that "there are tens of thousands of ... regulations I would like to see eliminated"—and the way Gorsuch saw it, there was no better place to start than the EPA.²⁵⁵

Gorsuch was later accused among of other things of refusing to provide information to the Congressional Public Works Committee investigating Superfund enforcement, lifting the Carter administration's ban on the disposal of a number of liquid chemicals in hazardous-waste landfills, the severe cuts on EPA's enforcement staff, placing Rita Lavelle—a former public relations for Aerojet-General Corporation, a chemical manufacturer and third worst polluter in California—in charge of the Superfund program. Other accusations included

²⁵⁴ George J. Mitchell. Quoted in Mowrey and Redmond, *Not in Our Backyard*, p. 211-12.

²⁵⁵ Mowrey and Redmond, *Not in Our Backyard*, p. 274.

hiring lawyer James W. Sanderson as part-time advisor while he was still representing private clients—including a Chemical Waste Management, Inc.--, and, the most grave of them all, destroying records of a pending legal case in what became known as “Sewergate.” Although Lavelle was arrested and other ten EPA officers lost their jobs in the scandal, Gorsuch, near the end of her term, avoided criminal charges and resigned in March, 1983.²⁵⁶

As the Federal Government seemed to have become a dead end for the Anti-toxic Movement’s goals, they started to move the fight back to the local level. In a later statement for the “Views from the former administrators” section of the *EPA Journal*, Gorsuch confirmed her will to make EPA “lighter” and her intention to put the toxic waste fight back in the state level;

My 22-month tenure as head of EPA was hardly the agency’s most serene hour. By the time I left, the air was filled with so many charges, and the staff and I were so bogged down in the fight with Congress over the doctrine of executive privilege, that the agency itself seemed hardly to be functioning. ...

It should be remembered that I came to office as part of a new Administration that brought a different approach to solving the problems of government. One of the tenets of that approach was what we called New Federalism, or the idea that there were any number of services being provided by Uncle Sam that could be better provided by the states themselves.²⁵⁷

Even before Gorsuch headed EPA, civil groups like Lois Gibbs’s Citizens Clearinghouse for Hazardous Waste started staffing up to do what EPA wouldn’t: provide expert reports and analyses for local and state governments concerned with the proliferation of toxic-waste sites being revealed all around the country.

²⁵⁶ Mowrey and Redmond, *Not in Our Backyard*.

²⁵⁷ Gorsuch. “Views from the former administrators,” *EPA Journal* - November 1985. <http://www.epa.gov/history/topics/epa/15e.htm#Gorsuch> (accessed November 05, 2008).

Again, the enemies were scientific uncertainty and lack of information about the causes and consequences of toxic spills, a situation that would start being reversed by some local struggles for the right to know. Coincidentally or not, one of the earliest cases happened in Philadelphia, Pennsylvania, just across the river from CERCLA's drafter Jim J. Florio's political home: Camden, New Jersey.

“[A] model for the rest of the nation.”²⁵⁸

In 1980, Ralph Nader's Health Research Group and the Philadelphia Area Project on Occupational Safety and Health proposed a toxic-right-to-know bill for Philadelphia. The bill was set to fill an information gap for workers and residents “who still [didn't] have a legal right to know about toxic substances in their workplaces and community” according to its proponents.²⁵⁹

A story published in *Chemical Week*²⁶⁰ showed mixed reactions from industry. Philadelphia was home to more than 25 chemical companies at the time, including Rohm and Haas, SmithKline, Arco, DuPont, Gulf Oil, Armak, Purex and Pearsall. Robert Vogel, at the time chief of regulatory counsel of Rohm and Haas summarized the industry's position saying that his company “believes in the right to know,” but “the bill produces no protection for legitimate industry trade secrets.”²⁶¹

²⁵⁸ Ralph Nader. Quoted in “City's disclosure bill nears a final vote,” *Chemical Week*, October 15, 1980, Top of the News, p. 24.

²⁵⁹ “City's disclosure bill nears a final vote,” *Chemical Week*, October 15, 1980, Top of the News, p. 24.

²⁶⁰ Ibid.

²⁶¹ Ibid.

The bill, a step forward from similar legislation either passed or being discussed in other localities in California, Connecticut, New York, and Wisconsin, passed six months after its proposition.²⁶² Foreseeing a “maze of local rules” following Philadelphia’s legislation on the right to know, the Occupational Safety and Health Administration (OSHA)²⁶³ was compelled to act²⁶⁴ and to provide clearer standards than its previous rules, which permitted workers to examine and copy only their own workplace medical and toxic-exposure records.²⁶⁵ OSHA tried in vain to harmonize the new, more citizen-empowering bill with the concerns of industry. Thorne G. Auchter, then OSHA’s head, told *Chemical Week* in 1982: “We propose to permit employers to include more protective provisions in trade-secret confidentiality agreements with designated representatives, while at the same time enabling access.”²⁶⁶

OSHA’s move was immediately rebuked by the director of the Health Research Group, one of the main proponents of the bill. Sidney M. Wolfe said that he believed OSHA was “back-tracking” the legislation advancements. “OSHA is trying to broaden the definition of a trade secret,” he said adding that OSHA’s proposition was against “the letter and spirit” of earlier regulations.²⁶⁷

²⁶² “Workers’ right-to-know moves into town,” *Chemical Week*, May 26, 1982, Top of the News, p. 13. Philadelphia’s regulation was considered a step up as it included residents, and not only workers, in its right-to-know provisions as part of their disaster management plan.

²⁶³ Congress created OSHA under the Occupational Safety and Health Act, signed by President Richard M. Nixon on December 29, 1970.

²⁶⁴ “OSHA tries to settle workers’ right to know,” *Chemical Week*, August 19, 1981, Top of the News, p. 18.

²⁶⁵ It is important to keep in mind that, before EPCRA, there was no formal standards for measuring toxic chemicals and each facility had their own standards. Sometimes they could be very low, as reactions from the industry revealed after EPCRA’s standards, far from ideal, started to be applied.

²⁶⁶ “OSHA tries to settle workers’ right to know.”

²⁶⁷ Ibid.

By 1983, OSHA's expressions of concern lest a "maze of local [environmental] laws" spring up proved to be well founded. By that year, 12 states and two cities, Cincinnati and Philadelphia, passed right-to-know laws. Others, like Florida, followed the example.²⁶⁸ However, at the same time, some legislatures and courts were not upholding higher environmental standards. Courts in general still held that the absence of a federal standard for right-to-know laws on toxic waste precluded the local and state legislation of creating more rigorous laws on the subject. On the other side, state legislatures and both state and federal agencies were influenced by legislators and company executives with stakes in keeping such laws at bay. *The New York Times* reported on one example in New Jersey:

An ad hoc coalition of environmentalists, trade unionists and firefighters that has been supporting the state's proposed Community and Workers Right to Know Act has filed a conflict of interest charge against Borden R. Putnam, the state's Commissioner of Commerce and Economic Development. ... The group, known as Citizens Action Right to Know Coalition told the state's Executive Commission on Ethical Standards last week that Mr. Putnam, a former senior vice president of the American Cyanamid Company of Bound Brook, still owned \$400,000 worth of stock in the company. Because Mr. Putnam staunchly opposed the measure during State Senate hearings earlier this year, the group asserted, he violated the state's code of ethics for government employees.²⁶⁹

The New York Times also reported that American Cyanamid's Bound Brook plant was on the EPA's superfund list and had been investigated before and charged with polluting the Raritan River.²⁷⁰

²⁶⁸ "Workers' right-to-know moves into town," *Chemical Week*, May 26, 1982, Top of the News, p. 13; "Florida's right-to-know push," *Chemical Week*, May 11, 1983, Top of the News, p. 16.

²⁶⁹ Leo H. Carney, "Putnam accused of a conflict," *The New York Times*, April 24, 1983, Section 11, New Jersey, p. 9.

While local citizen groups were intensifying their fight for the right to know, a large group of New Jersey business owners got fearful and their representatives argued that the Community and Workers Right to Know Act would force business out of state if they had to reveal trade secrets to the competition. James C. Morford, a lobbyist and executive director of the New Jersey Chamber of Commerce at the time, summarized their view for *The New York Times*:

“That’s what makes us nervous,” said Mr. Morford, alluding to the disclosure requirement. “It’s not a matter of the public or environmental groups knowing, but the concern is the competitor.” Mr. Morford said that the inadvertent disclosure of a trade secret by the Federal Environmental Protection Agency last year caused the Monsanto Company to lose a formula and, in the process, several hundred thousand dollars in potential revenue.²⁷¹

In the same story, both Morford and a spokesman for NL Industry—a producer of synthetic materials which had a plant closed in the previous year—recognized that financial problems were the real reason companies in New Jersey were at peril, not environmental regulations, as Leo H. Charney reported:

Mr. Morford acknowledged that no manufacturer had left the state since 1970 because of New Jersey’s strict environmental laws. This last argument has been raised by environmentalists in support of their position. However, Mr. Morford contended that, because of poor economic conditions in general, and the “lack of stability in the tax climate,” the Dalton bill could put New Jersey businesses that were already in a precarious financial situation over the edge.²⁷²

²⁷⁰ Ibid.

²⁷¹ Monford. Quoted in Leo H. Charney, “Right-to-know: Jobs at issue,” *The New York Times*, April 24, 1983, Section 11, New Jersey, p. 8.

²⁷² Ibid.

Another evidence that environmental legislation were not at the core of the problem presented by Charney in his report was that six hundred people who were laid off from NL's plant joined the New Jersey OSHA/Environmental Network in support of the right-to-know bill as a demonstration that environmental and safety regulations were not to be feared.²⁷³

At the federal level, "Sewergate" was at its peak while Lois Gibbs's efforts to professionalize the Citizens Clearinghouse for Hazardous Waste by adding scientists and social scientists to its staff were finally paying off. Barbara Mikulski, a Democrat Congresswoman for Maryland, after unsuccessfully trying to get EPA to look into a toxic-waste problem in her home district, accepted Gibbs's offer to use the Clearinghouse's expertise.

"Ms. Gibbs," Mikulski answered, "I accept your offer. Yet it is really a bitter situation here. I worked all my life to become a member of Congress... Here we are, big wheels, often more self-important than we really are, and I can't get from Anne Gorsuch and her cronies... the help that I need. I have to come to a citizens group, that exists on voluntary contributions and bake sales."²⁷⁴

After Gorsuch and like-minded colleagues left the EPA, the situation didn't change much. The Anti-toxic Movement needed a new push to get the fight back to the federal level once more and end the stalemate. Although thousands of toxic spill sites were being revealed in the U.S. between 1980 and 1985, the push came from elsewhere, in the form of a tragic accident in India.

²⁷³ Ibid.

²⁷⁴ Mikulski. Quoted in Mowrey and Redmond, *Not in Our Backyard*, p. 305.

“We are in the dark. We are at risk. We are playing chemical Russian roulette.”²⁷⁵

On December 3, 1984, an accident in a Union Carbide pesticide plant caused the release of a cloud of toxic gas over Bhopal, a city located in the state of Madhya Pradesh in central India. Thousands died and many more fell ill from breathing the gas.²⁷⁶ The news hit home less than a year later when another Union Carbide plant released a cloud of toxic gas over Institute, in West Virginia, as reported by the *Los Angeles Times*:

The Institute factory had been touted by Union Carbide after the Bhopal accident as a model of chemical-industry safety. But it made headlines last Aug. 11 when an abandoned reactor tank, accidentally filled with toxic methylene chloride and other chemicals, boiled over and spewed 3,800 pounds of gas into a nearby neighborhood.²⁷⁷

Right after the Bhopal disaster, a team of experts and politicians, among them Jim Florio, author of the Superfund law (CERCLA), visited the Institute facility and deemed it safe. Another sign that even experts needed more information. The accident was less tragic than Bhopal only because the gas

²⁷⁵ James J. Florio. “Chemical Russian roulette,” *The New York Times*, June 2, 1985, New Jersey Opinion, p. 26.

²⁷⁶ Amnesty International counted 7,000 deaths immediately after the release and another 15,000 due to associated illnesses in the following years. More than 100,000 still suffer from diseases associated with the toxic gases. “A Bitter Wind in Bhopal.” <http://web.amnesty.org/wire/December2004/Bhopal> (accessed June 28, 2007). The official numbers vary from agency to agency and from country to country. The number of immediate deaths varies from 2,000 to 15,000 and the illness linked to the disaster from 50,000 to 550,000. Amnesty International’s numbers were a conservative average of the official tolls and were cited by a number of publications.

²⁷⁷ Michael Wines, “U.S. Rebukes, Fines Union Carbide Corp. - \$1.4 Million Penalty Cites Safety Violations in W. Virginia Plant,” *The Los Angeles Times*, April 02, 1986. http://articles.latimes.com/1986-04-02/news/mn-2257_1_union-carbide (accessed August 6, 2009).

leaked in an explosion, methylene chloride, in the Institute's plant was not nearly as lethal as the methyl isocyanate (MIC) released in Bhopal. Nonetheless, almost two hundred people were hospitalized, but nobody died. The incident could have been much worse: Institute's facility also stored MIC.

The tragedy in Bhopal and the accident in the West Virginia at Union Carbide plants gave new life to the Anti-toxic Movement. About the same time, the People of Color Environmental Movement was created after the tragedy involving a coal mine in Warren County in 1982. Representative Florio saw an opportunity to reinstall some of the provisions that were stripped from the previous version and to add a few more features based on the right-to-know laws as developed in New Jersey and the city of Philadelphia.

Putting together all he learned from the failures of Superfund since the enactment of CERCLA in 1980 and aiming to provide citizens a weapon to protect them even from EPA if necessary, Florio and his staff worked on the Superfund Amendments and Reauthorization Act (SARA). Among the goals of SARA was to reactivate the liability provisions of CERCLA, and re-empower local toxic-waste and right-to-know laws that were made moot by the lack of federal standards. However, according to Florio and, later, to legal analysts, the most important part of SARA was its Title III, a stand-alone piece of legislation focused on community empowerment based on emergency preparedness and the right to know.²⁷⁸

²⁷⁸ Florio. "Chemical Russian roulette." See also: Bolstridge, *EPCRA Data*; Percival et al, *Environmental Regulation*; Hadden, *A Citizen's Right to Know*; Hamilton, *Regulation through revelation*.

Referring to Bhopal and listing a series of accidents on American soil, including his failed hearing at Union Carbide's Institute plant right after the Bhopal tragedy, Florio wrote an opinion essay for *The New York Times* announcing a two-pronged effort to address the toxic problems: first, a comprehensive national investigation about "the scope and nature of the deliberate venting of toxic chemicals into the environment,"²⁷⁹ and, second, the legislation package later known as SARA. Florio pointed out that a "key provision of the package creates the first comprehensive national community Right to Know program."²⁸⁰

Not two full months after Florio's opinion article, a chemical fire engulfed four blocks of an industrial center in Passaic, New Jersey. A fireman died, 12 people were injured, and 400 people were left homeless. Donald A. Deieso, director of environmental quality for the New Jersey's Department of Environmental Protection, said in an interview for the *New York Times* after the accident in Passaic that the "unavailability of information on what chemicals were used and stored in the factories and warehouses was 'an atrocity.'" ²⁸¹ "The situation itself was glaring testimony for right-to-know legislation," Deieso added.²⁸² At that point, New Jersey had its Community and Worker Right-to-know

²⁷⁹ James J. Florio. "Chemical Russian roulette," *The New York Times*, June 2, 1985, New Jersey Opinion, p. 26.

²⁸⁰ Ibid.

²⁸¹ Deieso. Quoted in Leo H. Carney, "Data on toxics at Passaic fire were skimpy," *The New York Times*, September 8, 1985, Section 11NJ, p. 1.

²⁸² Ibid.

Act incapacitated by a Federal court ruling saying that less-stringent Federal regulations took precedent over specific parts of the state law.²⁸³

The accident in Passaic, among many others, led Florio to take action once again. In the *New Jersey Opinion* section of the *New York Times*, Florio repeated some of his arguments of his previous letter²⁸⁴ (especially the explanation of the how the new amendments he proposed would allow New Jersey to reactivate its Community and Worker Right-to-know Act) adding a vehement reprimand against the Reagan Administration, industry lobbyists, and a number of congressmen:

If we are to eradicate the environmental nightmares that surround us, we need a strong, effective Superfund hazardous-waste cleanup program. But Superfund is in trouble. A coalition comprised of the Reagan Administration, chemical-industry lobbyists and their allies in Congress banded together to push through a House committee legislation that fails to implement desperately needed and fundamental reforms of the Superfund program.²⁸⁵

Later in the in article, Florio readdressed his improvements of the bill, which he explained in the previous article, and attacked EPA for failing to enforce anti-toxic laws. In one specific example, Florio mentioned that EPA failed to include dioxins, PCBs, phosgene or methyl isocyanate (the same of Bhopal's catastrophe) in the list of chemicals that should be evaluated and have their emissions limited. EPA officials told Florio's subcommittee that they "had not determined that the chemical [methyl isocyanate] was life-threatening or needed

²⁸³ Ibid.

²⁸⁴ Florio. "Chemical Russian roulette."

²⁸⁵ James J. Florio, "Superfund must be tough and strictly enforced," *The New York Times*, September 29, 1985, Section 11NJ, p. 28.

to be regulated.” In Florio’s opinion, the U.S. government was regulating “by luck and chance.”²⁸⁶

Florio was not reacting only to the events in New Jersey. Two days earlier, the U.S. Senate voted to provide \$7.5 billion for five more years of Superfund. The massive victory (86 to 13) “reflected the broad public acceptance and political potency that hazardous waste legislation has acquired since it was first enacted,”²⁸⁷ as Philip Shabecoff reported on the front page of *The New York Times*. Florio knew that he had public support and that he had a unique opportunity to add what he called “the much needed amendments” to the bill before the chemical-industry lobby could make it innocuous.²⁸⁸

“Only the tip of the toxic iceberg”²⁸⁹

Florio, as the Chairman of the House of Representatives’ Subcommittee on Commerce, Transportation, and Tourism, found himself in the right position to take the superfund amendments ahead. Florio held a hearing²⁹⁰ in Minnesota on December 20, 1985 where the main provisions of SARA were discussed. With

²⁸⁶ Ibid.

²⁸⁷ Philip Shabecoff, “Senate backs bill for cleaning up hazardous dumps,” *The New York Times*, September 27, 1985, Section A, p. 1.

²⁸⁸ Florio, “Superfund must be tough and strictly enforced.”

²⁸⁹ Hearing before the Subcommittee on Commerce, Transportation, and Tourism of the Committee on Energy and Commerce, House of Representatives, Ninety-ninth Congress, First Session on Superfund provisions: community right-to-know and cleanup of abandoned hazardous wastesites located at federal facilities. December 20, 1985. Serial No. 99-72.

²⁹⁰ Gerry Sirkorski, Congressman for Minnesota. Ibid., p. 2.

the New Jersey's right-to-know regulation preclusion in mind, Florio opened the hearing:

The State should not take the lead in this area, for fear that State's industries might move elsewhere in response to these new requirements. That, it seems to me, is more than a strong argument for the need for national uniformity in our environmental laws so we don't have economics operating at cross purposes with appropriate environmental protection, including the need for a national uniform community right-to-know standard.²⁹¹

The state of Minnesota hadn't passed a right-to-know law and two local congressmen who were at the top of the issue with Florio, Representatives Gerry Sirkorski and Bruce F. Vento, were looking to push the right-to-know law on the federal level. Sirkorski described toxic-waste tragedies like Love Canal, Times Beach,²⁹² and Reilly Tar²⁹³ and pointed out the need for a better legislation:

Love Canal and Times Beach and Reilly Tar are only the tip of the toxic iceberg. At thousands of waste sites across the country, poisonous chemicals are seeping into our land, contaminating our water, and fouling our air. In 1980, due in large measure to your perseverance, Congress enacted the Superfund Program, and you were the chief proponent of it. Its purpose was to clean up the Nation's worst abandoned sites. Five years later the report card is unsatisfactory.²⁹⁴

²⁹¹ James J. Florio, *Ibid.* p. 2.

²⁹² EPA had to demolish the entire town of Times Beach, Missouri and relocate 2,000 inhabitants after the discovery of high levels of dioxin contaminating the area in 1982. Times Beach later became a model cleanup site for EPA. http://www.epa.gov/superfund/programs/recycle_old/success/1-pagers/timesbch.htm

²⁹³ Reilly Tar & Chemical Corp. had dozens of plants that were included in the Superfund list of priority cleanups sites between 1981 and 1986. All of them were responsible for contamination of drinking ground water and other resources. Nonetheless, it is probable that Sirkorski, being from Minnesota, was alluding to the St. Louis Park Plant in Hennepin County, Minnesota. According to EPA, the site "was used for coal tar distillation and wood preserving from 1917 to 1972. The site was sold and converted into recreational and residential areas in 1972. Wastes from site operations were disposed of on the site and in a network of ditches that discharged to an adjacent wetland. The wastes generated at the site were predominantly polynuclear aromatic hydrocarbons (PAHs). Soil and groundwater beneath the site are contaminated. Approximately 43,000 people use the groundwater from the aquifers, contaminated by the site. Portions of the northern end of the site have been developed as a residential complex. From 1978 to 1981, seven municipal wells were closed due to contamination." <http://www.epa.gov/region5superfund/npl/minnesota/MND980609804.htm>

²⁹⁴ Gerry Sirkorski, Congressman for Minnesota. *Ibid.*, p. 2.

Sikorski explained that after five years at least 23,000 waste sites were found to be contaminated with toxic sludge; a number that could reach 300,000. Only 850 were added to the National Priority List and, after the expenditure of \$1.6 billion, not even one site had been “completely and adequately cleaned up.”²⁹⁵ Sikorski also narrated how he introduced and fought together with Florio for a bill aiming to correct the problems with Superfund. He cited “citizens suits and schedules and standards and a cleanup program for leaking underground storage tanks, the LUST program, and strong provisions in Federal sites, and community right to know” as the main provisions he and Florio were able to pass in the House after a “lonely fight in subcommittee and in full Energy and Commerce Committee.”²⁹⁶

Millions of Americans in thousands of neighborhoods exposed to toxic chemicals have a simple, a fundamental right to know about what chemicals, toxic chemicals, are being released into their environment hour after hour, day after day, year after year. The House bill, through our efforts, guarantees that Americans will be provided with this information.²⁹⁷

Equating federally owned and privately owned sites by enforcing the same standards, deadlines, and oversight, Sikorski contended that the bill would address the concerns of the private sector as well as of citizens groups. At the same time, the provision allowing citizens’ suits would prevent EPA internal politics from inaction as federal agencies could also be prosecuted if they refused

²⁹⁵ Ibid., p. 3.

²⁹⁶ Hearing before the Subcommittee, p. 3.

²⁹⁷ Ibid.

or failed to do their jobs. For Sikorski, the only blemish of the new bill was that they (Sikorski, Vento,²⁹⁸ and Florio) failed to convince the Committee to include Bruce Vento's amendment "allowing the fund to reimburse municipalities for new costs in providing or acquiring alternative water supplies where a Federal agency is a responsible party."²⁹⁹

Vento's testimony started with the same recognition of Florio's work and then the specific case of some municipalities in Minnesota having to pay to clean drinking water contaminated by federal facilities. Vento specifically was upset with some dangerously toxic facilities of the Department of Defense (DOD) and wanted the legislation to be clear that DOD would have to work with the same standards and deadlines as everybody else. He identified at least 33 DOD sites that needed to be cleaned up and mentioned that the Department of Energy³⁰⁰ and other federal agencies probably had many more in the same conditions.

Mr. Chairman, how can we expect the EPA to be successful in cleaning up privately owned hazardous waste sites when the Federal Government itself drags its feet in cleaning up its own sites? ... The citizens we represent are just as affected whether the source of toxic pollutants is private or public.³⁰¹

²⁹⁸ Bruce Vento was not a part of the Energy and Commerce Committee, but worked with Sikorski in writing some provisions for the new bill. Vento also introduced a bill to include federal facilities in Superfund in the Senate and in the House.

²⁹⁹ Sikorski. Hearing before the Subcommittee, p. 3.

³⁰⁰ Later on, in 1988, Vento's fears were confirmed. Keith Schneider, "Public plan asked on atomic cleanup," *The New York Times*, December 15, 1988, Section A, p. 31.

³⁰¹ Vento. Hearing before the Subcommittee, p. 6.

“Fundamental bits of information”³⁰²

The hearing proceeded to two panels, one on the right to know and the other addressing jurisdictional issues of governmental facilities included in the new law. The first panel included the testimony of Darby Nelson, Minnesota State Representative, and Peggy Ladner, speaking for the Clean Water Action Project. Nelson started by comparing the environmental risks of the past, like cholera and horse flies,³⁰³ with the new environmental risks posed by toxic chemicals.

In those days, the environmental hazards, once understood, were locatable and identifiable for all to see and for all to respond accordingly. ... [P]eople are simply unable in 1985 to properly make those kinds of decisions about where they want to live, where they want to recreate relative to potential health risks, and I guess the fundamental role of government in my mind, and I would hope in others, must be to do those necessary things for people that they are simply unable to do for themselves.³⁰⁴

In sequence, Nelson summarized not only the need for citizens' right to know about toxic emissions and the location of toxic waste sites, but gave it both an ethical justification and a future:

Certainly relative to community emergency planning it is incredibly important that those locations be known and understood. It is absolutely essential for firefighters, both for their personal safety as well as for the safety of folks living in the immediate neighborhoods where these materials are being stored and released, that those fundamental bits of information be provided.

Third, we simply must provide people with information that may, in fact, impact their chances of developing cancer, producing children

³⁰² Darby Nelson, MN State Representative. Hearing before the Subcommittee, p. 9.

³⁰³ Horse flies can be transmitters of certain disease-carrying viruses and other microbial life forms including anthrax, and some Trypanosome species. It is important to point out that Nelson is referring to past times, when those diseases were more common.

³⁰⁴ Nelson. Hearing before the Subcommittee, p. 8.

with birth defects and other health problems. The issue, I think, is absolutely fundamental and simple. People want to have maximum direct control over their own lives. A community's right-to-know regarding placement and emission of potentially hazardous materials is a logical and I think important extension of consumer labeling, cigarette health warnings, workers' right-to-know, and the like. A person ought to have the right to intelligent, educated, personal choice about the relative degree of risk he or she finds personally acceptable.

Community right-to-know in addition to that I think can be a source of incredible valuable long-term epidemiological data in environmental risk factors.³⁰⁵

Nelson's testimony embodied most of the intent with which Florio had written the law, but also based the reasoning behind the right to know on the principle of self-governance and the simple principle that, as he described, had been applied to other laws, that it is *the people* and not government or industry who have the right to choose the amount of environmental and health risks with which they are willing to live. However, to be able to exercise such right, people need to be educated about those risks.

Nelson also commented on the need for a federal law, mentioning his 1984 rejected bill in Minnesota as an argument for the need of the federal government's involvement to set the example. Nelson listed the same objections by the opposition for the rejection of the bill that Florio experienced in New Jersey: Minnesota's business owners complained that such bill at the state level would create extra paperwork, secret information would be compromised, and costs of doing business in the state would drive businesses away. Nelson wasn't

³⁰⁵ Ibid, p. 8 and 9.

finished, though. After accusing President Reagan, the Senate, and specifically EPA for their inaction, he mocked the absurdity of the situation:

If the Soviet Union had secretly conspired to deposit these thousands of leaking hazardous waste sites around the country to insidiously damage our groundwater and the health of our citizens, such action would clearly have been labeled the most heinous act of biological warfare. There are times I wish the Russians had done it, because if the Russians had done it, perhaps the cleanup would be considered part of the national defense, would come under the defense budget, and perhaps we would not have had to have waited for 5 years and see so little have been accomplished if that had been the case. Federal inaction has simply dumbfounded me.³⁰⁶

“The opponents said that being responsible for that safety or injury was too expensive. ... [I]t convinced a lot of legislators that safety from toxics was not worth it.”³⁰⁷

Peggy Ladner, Midwest Director for Clean Water Action Project, followed Nelson’s testimony and focused her opening statement on the arguments raised by industry representatives against right-to-know laws. According to Ladner, the threats of deserting the state made by business owners were moot, because the real problem was not the costs associated with the right-to-know laws, but the high prices of liability insurance in case the law held them liable. “We knew they

³⁰⁶ Ibid., p. 10.

³⁰⁷ Peggy Ladner, Midwest Director for Clean Water Action Project. Hearing before the Subcommittee, p. 14.

would not be able to get environmental impairment liability insurance no matter where they went.”³⁰⁸

For Ladner, it didn’t matter where the companies would move, the insurance companies would apply the same standards in Texas or California.³⁰⁹ The problem in her view, wasn’t the argument, but the perception created by it. The fear provoked by the threat was enough to convince legislators to reject right-to-know provisions in Minnesota. “That tactic has been used in North Carolina, in New Jersey, in Pennsylvania, Ohio, and many other States,” Ladner said. “We cannot solve this problem in Minnesota. It has to come from Washington. Congress must put an end to State shopping, or at least the threat of it, by polluters,” she added.³¹⁰

In her written statement, Ladner emphasized several reasons for federal statutory involvement in the matter: lack of uniformity between and among states, similar to a situation that Florio had witnessed between Pennsylvania and New Jersey. Ladner declared:

It’s not OK for people in New Jersey to have the right-to-know while people in Minnesota do not. It’s not OK for our neighbors in Wisconsin to go uncompensated for medical expenses due to toxic exposure while Minnesotans may apply to the victim’s compensation fund.

Ladner also addressed some problems created by the Reagan Administration in the EPA by cutting agency staff and support services for

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ Ibid.

mandated programs³¹¹ and recommended the passage of a strong right-to-know program as “the first step towards long-term solutions.” For Ladner, besides the predictions made by Nelson about the data on toxic chemicals, she added that with better science linking toxic chemicals to health problems, polluters would have two choices: either accept almost certain liability or find ways to reduce hazardous waste. “We believe responsible business people will certainly choose the latter,” she concluded before presenting 100,000 signatures the Clean Water Action collected in Minnesota in support of the law.³¹²

With such arguments collected, Florio felt he had demonstrated that there was a need for a federal law and that the purpose of the law was to put the cost of information-gathering on polluters, the burden of overseeing and storing the information on local and federal governments, and the responsibility of enforcing the law on citizens. Florio then prepared his bill and his arguments knowing that he had enough support to take it to the congressional conference.

In 1986, after the committee and congressional conferences, the Emergency Planning and Community Right-to-know Act was enacted. Finally, the national campaign against toxic waste had won the war for the right to know. However, it had also won the responsibility of proving that informed citizens would do their part. And for that purpose, they needed more than information: they needed education.

³¹¹ Although, Ladner did not mention Anne Gorsuch in her statement, she was probably aware of “Sewergate” as Ladner had worked with the National Toxic Campaign Against Toxic Hazards since 1982.

³¹² Ladner. Hearing before the Subcommittee, p. 15.

Emergency Planning and Community Right-to-know Act was the first federal environmental law requiring that information be made directly available to the general public through a variety of mechanisms. The law has been criticized for many reasons, and one of the most deep rooted criticisms is that the law provides the “right-to-know” but not the “right-to-understand.”³¹³

“It’s what he calls ‘risk communications.’”³¹⁴

The enactment of EPCRA provoked a surprising change of tone from the industry representatives. Many large chemical companies tried to be among the first to voice their support for the law against which they had fought so fiercely. Newspapers reported a series of examples where industry worked with citizens groups to diminish the use of toxic and hazardous materials in the years following the enactment of EPCRA.³¹⁵ The enactment of a federal law nullified the “state shopping” arguments and also provided one simpler standard for all, instead of the “maze” of state and local legislations predicted by OSHA.³¹⁶

The agricultural chemical industry joined in an unusual alliance with environmental and consumer groups today to propose specific legislation to strengthen the law controlling the use of pesticides. The legislation would speed health and safety testing of pesticides already in use and impose a fee on their manufacturers to help pay for the tests.³¹⁷

³¹³ June C. Bolstridge. 1992. *EPCRA Data*.

³¹⁴ James B. Lindheim, executive vice president, director of public affairs of Burston-Marsteller, a subsidiary of Young & Rubicam. Quoted in Philip H. Dougherty, “Environmental specialty is booming,” *The New York Times*, January 14, 1988, p. 23.

³¹⁵ Dennis Melamed, “EPA’s right-to-know net widens,” *Chemical Week*, Top of the News, p. 16.

³¹⁶ “States get back in the act on right to know,” *Chemical Week*, October 22, 1986, Washington Newsletter, p. 86.

³¹⁷ Philip Shabecoff, “Industry and consumer groups join to ask pesticide law changes,” *The New York Times*, March 11, 1986, Section A, p. 23.

Politicians also jumped on the bandwagon declaring how all sides were cooperating for the success of EPCRA. Senator Frank Lautenberg (D-New Jersey), who got the cartoon-character-style nickname “Toxic Avenger” after being appointed to head the Senate Superfund Oversight Subcommittee, told reporters that he fought particularly hard to defend Florio’s “right to know” language in the bill. Ever the politician, Lautenberg also praised the role of industry in the process, saying industry leaders approved the final legislation and helped draft it, but also tried to please right-to-know defenders:

“We don’t want to pester them [chemical companies] to death,” he said, “and we don’t want to make our chemical industry noncompetitive. But we believe our citizens in every community have a right to live without fear of pollution or contamination from a nearby industrial facility.”³¹⁸

One reason behind this friendly environment could have been that, once enacted, EPCRA not only empowered citizens to sue companies and government agencies that were not in compliance or not doing their jobs, but also reactivated stricter state legislation, such as New Jersey’s Community and Worker Right-to-know Act.³¹⁹ In that way, EPCRA created a massive trickle-down effect that put the power of enforcement in the hands of thousands of environmental and environmental justice organizations and citizens’ committees.

³¹⁸ Lautenberg. Quoted in “Lautenberg gets toxic-waste role,” *The New York Times*, January 4, 1987, Section 11NJ, p. 22.

³¹⁹ “States get back in the act on right to know,” *Chemical Week*, October 22, 1986, Washington Newsletter, p. 86.

Even if the lawsuits were not successful,³²⁰ the expenditures with legal costs and scientific investigations could have been monstrous both for private corporations and governmental agencies. The law charged them for the costs of any investigations carried out by citizens. EPCRA had its first success: it scared companies and governmental agencies into collaboration.

Another consequence of EPCRA was the expansion of a whole area of expertise in public relations. Because of the toughening of public attitudes on environmental problems, industry needed to deal with the situation in a different way.³²¹ Crisis management and risk communication became buzzwords as industry executives named liability and corporate responsibility as the forces behind the new approach:

For corporations today, a prime concern is the potential liability they face from the abandoned dumps, according to Lloyd N. Newman, executive vice president of Manning, Selvage & Lee, a subsidiary of D'Arcy Masius Benton & Bowles. He added that a number of companies also feel some moral responsibility.³²²

In the same story, another executive described the generic changes in corporate practice the new approach would entail:

He said that "companies are going to have to put information in perspective so people are not unduly concerned about the data" that are being supplied to the local committees. To that end his staff is prepared to develop brochures, videos and slide presentations to explain a company's compliance with the law. He also has a

³²⁰ Unsuccessful lawsuits are not the same as frivolous lawsuits (without just cause). Lawsuits failed for different reasons; among them the results of research would prove that the contamination came from other sources or that the contaminant was not listed in any of the anti-toxic laws.

³²¹ James O. Cox. Quoted in Philip H. Dougherty, "Environmental specialty is booming," January 14, 1988, Section D, p. 23.

³²² Newman. Ibid.

sensitivity-training program to teach employees to communicate with a plant's neighbors.³²³

For some companies, which believed EPCRA was a beneficial evolution, risk communication was used not only to improve relationships with local communities and government, but also to identify new possibilities for future profits. For the other companies, "risk communication" quickly became a synonym for a practice later known as "green wash."

"The days are over when industry can just dump anything and say, 'Trust us on this'"³²⁴

Two years after the enactment of EPCRA, the deadline for the first Toxic Release Inventory (TRI) was approaching and newspapers reported on the "revolution"³²⁵ created by EPCRA's right-to-know approach. More than 200,000 people distributed in approximately 3,000 committees were set up to handle the flood of information coming from an estimated 30,000 industrial facilities.³²⁶ However, the greatest "revolution" according to Charles Elkins, director of EPA's office of toxic substances at the time, was that data on chemical hazards in communities were going to be in people's home computers.³²⁷

³²³ Matthew Swetnic, senior vice president, scientific, technical and environmental affairs of Hill & Knowlton, a subsidiary of the WPP Group of Britain. Ibid.

³²⁴ Fred Millar, Environmental Policy Institute. Elizabeth Grillo Olson, "When a chemical company is forced to tell all," *The New York Times*, July 3, 1988, p. 8.

³²⁵ Charles Elkins, director of the EPA's office of toxic substances. Ibid.

³²⁶ Ibid. See also Dennis Melamed, "EPA's right-to-know net widens," *Chemical Week*, Top of the News, p. 16.

³²⁷ Charles Elkins, Ibid.

James L. Makris, director of emergency response programs for EPA at the time, expected that TRI would “open a national dialogue around the issue of chemical risk.”³²⁸ Lee M. Thomas, Administrator of EPA at the time, said the whole thing could be something negative as it meant “a lot of paperwork,” but he believed that, in a final analysis, it could be “very significant in shaping the way the public views environmental issues and sets priorities on those issues.”³²⁹

The expectations around the results of the first TRI to be released in July 1988 were very high. The most important concept at stake was Florio’s idea that the right to know would really get people to act and do their part. “The ultimate question is, will we achieve the Jeffersonian ideal of informed citizens who can take a responsible role in making public policy?” Michael S. Baram, professor of law at Boston University’s Center for Law and Technology, summarized.³³⁰

The answer to Baram’s question came swiftly as companies in general were trying to adapt to the new requirements, which demanded almost twice as much work as EPA initially predicted, and were surprised by their own reports and afraid of the public’s reaction:

“The figures would come out as thousands of pounds” of chemicals a year, said Medhat Reiser, Nespera’s environmental affairs director. “When people see big figures like that, they are always immediately scared.”³³¹

³²⁸ Makris, *Ibid.*

³²⁹ Thomas, *Ibid.*

³³⁰ Baram, *Ibid.*

³³¹ Reiser. Quoted in Elizabeth Grillo Olson, “When a chemical company is forced to tell all,” *The New York Times*, July 3, 1988, Section 3, p. 8.

However, industry, government, and citizens noted a difference in how the roles of industry in communities changed as a result of EPCRA. The results of the first TRI showed an amount of toxic chemicals much higher than anyone expected.³³² EPCRA, which required the creation of local emergency committees, forced industry to deal with the consequences of its production face-to-face with local communities for the first time.³³³

Many corporations started immediate changes in their production systems aiming to reduce and, in some cases, to completely stop the use of toxic and hazardous chemicals. In 1988, just two years after EPCRA became law, Garland Ross, a senior engineer at Yale Materials, told Charles L. Elkins, EPA's director of the Office of Toxic Substances, that EPCRA was having a real effect. Ross said that his company already had started to change the chemicals it used for the next year. He added, "I hope we can [then] report that Yale has no toxic chemicals to report."³³⁴

Representatives of Monsanto—one of the largest producers of pesticides and other toxic chemicals—recognized that TRI pushed them to reconsider how effectively they used raw materials. It also transformed what began as an environmental measure into a cost-control program as well.³³⁵

³³² A report showed, among other unexpected results, that even the Capitol and the White House were threatened by poor storage of chlorine in the water treatment plant for the District of Columbia. Philip Shabecoff, "The early returns of a toxic poll," *The New York Times*, November 20, 1988, Section 3, p.10.

³³³ Ibid.; Charles L. Elkins, "Toxic chemicals, the right response," *The New York Times*, November 13, 1988, Business Forum: Corporate Citizenship, Section 3, p. 3.

³³⁴ Garland Ross. Quoted in Elkins, "Toxic chemicals, the right response."

³³⁵ Keith Schneider, "Toxic pollution shows drop in '89," *The New York Times*, May, 17, 1991, Section A, p. 32.

Not long after the first TRI, President George H. W. Bush's administration and Congress passed a new Clean Water Act³³⁶ and the Clean Air Act,³³⁷ and he became known as the "environmental president."³³⁸ After a few years TRI brought the confirmation that EPCRA was, at least in part, a success. "The total releases in 1989 were 1.3 billion pounds less than that reported in 1987, and 723 million pounds less than industries released in 1988," reported *The New York Times*.³³⁹ However, there were still 22,650 industrial plants releasing 5.7 billion pounds of toxic chemicals into the environment, which added to the cumulative effects and the spreading of contaminated sites. The public wanted more and faster remedies, the story asserted: "Today a coalition of 16 national environmental groups and 80 state and community organizations released its own report that said the Toxic Release Inventory does not go far enough in accounting for pollution."³⁴⁰

The coalition pressured EPA to expand the list of chemicals in TRI and to include other measurements that included not only the release and storage of toxic chemicals, but also their use during the manufacturing process. From 1991

³³⁶ Title I of the Great Lakes Critical Programs Act of 1990 modified the CWA, 33 U.S.C. §1251 et seq. (1972) requiring EPA to establish water quality criteria for the Great Lakes addressing 29 toxic pollutants with maximum levels that are safe for humans, wildlife, and aquatic life. It also required EPA to help the States implement the criteria on a specific schedule. EPA, History of the Clean Water Act, <http://www.epa.gov/regulations/laws/cwahistory.html> (accessed, July 18, 2009).

³³⁷ 42 U.S.C. § 7401 et seq. (1970) . "The 1990 Clean Air Act Amendments revised Section 112 to first require issuance of technology-based standards for major sources and certain area sources. 'Major sources' are defined as a stationary source or group of stationary sources that emit or have the potential to emit 10 tons per year or more of a hazardous air pollutant or 25 tons per year or more of a combination of hazardous air pollutants. An "area source" is any stationary source that is not a major source." EPA, Summary of the Clean Air Act, <http://www.epa.gov/regulations/laws/caa.html> (accessed, July 18, 2009).

³³⁸ The nickname didn't last long. After the 1992 Earth Summit in Rio de Janeiro, Brazil, Bush refused to sign an international treatise limiting the amount of pollution produced by developed countries rendering the treatise almost useless and provoking the ire of environmentalists all over the globe.

³³⁹ Ibid.

³⁴⁰ Ibid.

to 1994, most of the news mentioning EPCRA or related topics referred to specific contamination issues and health problems in different localities, including the area that would later be called “Cancer Alley” between the states of Texas and Louisiana.

EPA would respond in part, by doubling the list of chemicals in 1994, during the administration of Bill Clinton, who openly defended EPCRA’s right-to-know provisions against a legislative attempt to weaken EPCRA that failed to pass in the Senate in 1995.³⁴¹ The attempt followed an industry reaction against EPA expansion of the TRI with the Chemical Manufacturers Association (CMA) filing a lawsuit against EPA, which was decided in the agency’s favor in 1996.³⁴²

John H. Cushman Jr. reported for *The New York Times* in June 1995:

Senators attacking Federal regulations have taken aim at what would seem to be one of the least burdensome but most effective of environmental rules: a requirement that manufacturers disclose how much they pollute.

Senators J. Bennet Johnston, Democrat from Louisiana, and Trent Lott, Republican of Mississippi, are trying now to narrow the program that costs little besides paperwork and requires no specific pollution controls but that has spurred industry to reduce emissions of toxic chemicals voluntarily by billions of pounds a year.³⁴³

By 1995, TRI reported total releases of 2.8 billion pounds, a 43% drop in releases since the first TRI in 1988. Carol M. Browner, EPA’s Administrator at the time, representatives of the Environmental Justice Movement and other citizens

³⁴¹ A group of Senators headed by J. Bennet Johnston and Trent Lott wanted to reduce the list of toxic chemicals in TRI and include a list of exceptions to EPCRA.

³⁴² Peter Fairley, “Right-to-know knocks,” *Chemical Week*, August 20, 1997, Cover Story, p. 19; John H. Cushman, “Court backs E.P.A. authority on disclosure of toxic agents,” *The New York Times*, May 2, 1996, Section A, p. 20.

³⁴³ John H. Cushman Jr., “Efficient pollution rule under attack,” *The New York Times*, June 28, 1995, Section A, p. 16.

groups, specialists from environmental groups, and even part of the industry associated with the Chemical Manufacturers Association went out in defense of EPCRA. The attacks from Association and the senators from the top polluter states prompted, among other things, an open defense of EPCRA in President Bill Clinton's State of the Union Address:

I applaud your desire to get rid of costly and unnecessary regulations, but when we deregulate let's remember what national action in the national interest has given us: safer food for our families, safer toys for our children, safer nursing homes for our parents, safer cars and highways and safer workplaces, cleaner air and cleaner water. Do we need common sense and fairness in our regulations? You bet we do. But we can have common sense and still provide for safe drinking water. We can have fairness and still clean up toxic dumps and we ought to do it.³⁴⁴

Clinton later announced that 50 Republicans broke "ranks in the House and said they would put the environment ahead of party," after the bill attacking EPCRA and other environmental laws was rejected on the House floor.³⁴⁵ In the same year, Clinton also signed an executive order to force industry to comply with the expanded list of toxics. Clinton used the force of the federal government's contracts to indicate what industry could lose if they chose not to comply, as Jacobson narrated:

President Clinton was an especially strong advocate of right-to-know legislation, at least publicly. In 1995 he signed Executive Order 12,969 as part of a fierce budget battle between his administration and the Republican-led Congress. The Executive Order was announced at a highly publicized signing ceremony in Baltimore attended by 400 local citizens, politicians, environmental groups, and unions. ... He then explained the Executive Order by

³⁴⁴ State of the Union: The President's address: "We heard America shouting," *The New York Times*, January 25, 1995, Section A, p. 17.

³⁴⁵ "Excerpts from the president's news conference at the White House," *The New York Times*, August 2, 1996, Section A, p. 12.

saying, “I signed an executive order which says any manufacturer who wants to do business with the federal government must tell its neighbors what dangerous chemicals it puts into the air, the earth, and the water.”³⁴⁶

In 1997, EPA finally published the expanded TRI. The new TRI included more analytical tools for its interpretation, making it easier on the general public, especially environmental justice organizations, to understand its reports. Unfortunately, a new law in 1999 stopped the improved TRI information from being published because Congress thought such information might be used by terrorists in planning attacks. OMB Watch,³⁴⁷ a watchdog organization for open government and the right to know in environmental issues, took on the responsibility predicted by Florio and published on their website what EPA was forbidden to publish.³⁴⁸ OMB later created the “Right-to-know Network” based on that report.

Advocates of releasing the information say the compilation of the summaries could show the public that the information was kept off the Internet more to avoid embarrassing chemical companies than to impede terrorists. They say that hundreds of accidents occur at plants each year, although the Federal Bureau of Investigation has acknowledged only a single thwarted act of sabotage, against a chemical plant in 1997.³⁴⁹

From that point on, and over and over again, the “terrorism argument” would come back, made either by industry or government, only to be disproved, especially after the attacks on the World Trade Center and Pentagon in 2001.

³⁴⁶ Jacobson, *Safeguarding National Security*, p. 336-37.

³⁴⁷ The acronym comes from the White House Office of Management and Budget (OMB).

³⁴⁸ Carl Hulse, “Group puts disaster data on Internet,” *The New York Times*, September 12, 1999, Section 1, p. 32.

³⁴⁹ *Ibid.*

However, the work of environmental justice and anti-toxic groups, plus some sectors of the news media and citizens' organizations including OMB Watch would make sure that much environmental awareness information would be available to the public. By the end of President George W. Bush's Administration on January 20, 2009, EPCRA still remained the most comprehensive example of a right-to-know approach in the United States. Environmental justice and anti-toxic groups were still pushing for new laws that include reports of toxic and hazardous materials used in manufactured products using a right-to-know approach.

EPCRA was reasonably successful in its role, but not without obstacles. The most powerful threat to the idea of the public's right to know came in the form of a reaction against the terrorist attack of 2001.

Four airplanes were taken down by terrorists associated with the extremist group *Al-Qaida* on September 11, 2001, causing the destruction of the World Trade Center towers and surrounding buildings in New York and damage to the Pentagon in Washington D.C. resulting in nearly 3,000 deaths. The attacks led to heavy reassessments on whether information about potential targets for terrorists should be disclosed in any way.

The issue has generated fierce debate between environmental activists and industry representatives. The focus of the debate has been on the conflict between dissemination of information to the public and attempting to keep potentially harmful data out of the hands of terrorists.³⁵⁰

³⁵⁰ Jacobson. "Safeguarding National Security."

Soon after the attacks many governmental agencies began to pull sensitive information from their websites and other sources.³⁵¹ The U.S. Geological Survey, for an example, recalled CD-ROMs containing information on bodies of water and asked all recipients to return them to the agency to protect lakes and rivers from terrorist attacks.³⁵² The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (“Patriot Act”), passed by the U.S. Congress in reaction to the terrorist attacks of September 2001, significantly altered a considerable number of laws, including many related to information policy.

With the introduction of the Patriot Act³⁵³ in October 2001 and the Critical Infrastructure Information Act of 2002 (CIIA), many corporations used the excuse of protecting sensitive targets from terrorist attacks to stop providing information about hazardous materials to communities under the EPCRA.³⁵⁴

While the discussion between national security and community’s right to know have become very inflamed,³⁵⁵ the legal literature tends to support the idea that community’s right to know did not hamper efforts to improve national

³⁵¹ Ibid. 372.

³⁵² Associated Press. 2002. Public Records Tougher to View Since Sept. 11. May 9, 2002. Retrieved 07/25/2007 from: <http://www.firstamendmentcenter.org/news.aspx?id=3918>

³⁵³ The Act originated as H.R.2975 (the PATRIOT Act) in the House and S.1510 in the Senate (the USA Act). S.1510 passed the Senate on October 11, 2001, 147 Cong. Rec. S10604 (daily ed.). The Act gave federal officials greater authority to track and intercept communications, both for law enforcement and foreign intelligence gathering purposes. Charles Doyle, “The USA PATRIOT Act: A Sketch,” *CRS Report for Congress* (April 18, 2002).

³⁵⁴ Chekouras, Katherine, “Balancing National Security with a Community’s Right to Know: Maintaining Public Access to Environmental Information through EPCRA’s Non-Preemption Clause.” *Boston College Environmental Affairs Law Review* 34 (2007): 107-142.

³⁵⁵ Ibid. See also Jacobson, “Safeguarding National Security”; Uhl, Kristen Elizabeth. “The Freedom of Information Act Post 9/11: Balancing the Public’s Right to Know, Critical Infrastructure Protection, and Homeland Security.” *The American University Law Review* 53 (2003): 261-312, 295-97; Wells, Christina E. “‘National Security’ Information and the Freedom of Information Act.” *Administrative Law Review* 56, (2004):1195-1222.

security, and it actually improved safety and security awareness in the involved communities.³⁵⁶

Chekouras listed a few ways of how states used legal measures to attend the community's right to know without putting homeland security in harm's way. The use of the Toxic Release Inventory (TRI) predicated in EPCRA³⁵⁷ is one of them:

In this ever-changing atmosphere, states maintain the ability to supplement EPCRA and maintain or enhance the dissemination of information to communities. With TRI being heralded as an effective method of decreasing toxics, state efforts at maintaining tough public disclosure requirements may continue to ensure safer facilities. By requiring information that is beneficial to local communities while respecting legitimate security concerns, states can reduce the hazards present and decrease chemical facilities' attractiveness as terrorist targets.³⁵⁸

This chapter showed the resilience of EPCRA even when it was under attack by industry, Congress, and the Executive power together. Florio's intent to create a law that would resist the lethargy of EPA resulted in a law that, based on the right-to-know principle, kept creating opportunities for citizens to organize and hold both government and industry accountable for pollution and environmental injustices.

³⁵⁶ Jacobson, "Safeguarding National Security," 375-77. On page 338, Jacobson quoted Jeremiah Bauman of the U. S. Public Interest Research Group saying that the number of chemical plants working with hazardous amounts chlorine gas dropped from 575 to 22 between 1988 and 2001 in virtue of EPCRA.

³⁵⁷ EPCRA, 1986.

³⁵⁸ Chekouras, 2007, Balancing National Security with a Community's Right to Know, 142.

CHAPTER 5: ENVIRONMENTAL RISK COMMUNICATION IN EPCRA

“I’ll tell you

What the world’s like: like a stone for no reason falling in the night
from a cliff in the hills, that makes a lonely
Noise and a spark in the hollow darkness, and nobody sees and
nobody cares. There’s nothing good in it
Except the courage in us not to be beaten. It can’t make us
Cringe or say please.”

Robinson Jeffers ³⁵⁹

As Ulrich Beck predicted,³⁶⁰ the risk society of the late 20th and early 21st centuries has shown that exclusive reliance on “command and control” governance is not sufficient. With that approach, government sets and enforces (sometimes half-heartedly) rules (often weak) through penalties, and that has not worked adequately. The proof is in the pollution. Also, “market-based” palliatives such as offering tax reduction incentives to industries have proven not to reduce risks efficiently or sufficiently. Again, the proof is in the pollution.³⁶¹

Beck’s argued presciently that only with community involvement in resolving public policy issues will nations be able to reduce risks by increasing personal and public responsibility on one side, and governmental and corporate accountability on the other.³⁶²

³⁵⁹ Robinson Jeffers, “Thurso’s Landing,” in *Collected Poetry 2*, Stanford, CA: Stanford University Press, 1988, 260-61.

³⁶⁰ Beck, *Risk Society*.

³⁶¹ Rosenbaum, *Environmental Politics and Policy*.

³⁶² Beck, *Risk Society*.

Hadden's called for institutions that "allow and encourage citizens to work with both government and private industry."³⁶³ According to her, that would transform the right to know into a right to participate in the formulation of policies. Hadden's call presented a challenge yet to be met by environmental and risk communicators, governmental agencies and policymakers. EPCRA's history shows the attempts of Representative James J. Florio of making the right to know larger than a law: a new approach to public policy. The ability of environmental justice organizations and the general public of improving EPCRA depends in great part on their ability of understanding information and of using communication to get organized and participate in the decision making, as Shapiro found.³⁶⁴ The role of environmental risk communicators in citizen organizations becomes ever more crucial, then, as they are specialists in understanding and translating scientific and legal information into meaningful and useful information to the lay public.

EPCRA's history also shows that the law pushed, at least partially, industry into creating better practices that reduced the use of dangerous materials and encouraged safer ways to work with them. Far from an ideal situation, EPCRA was created to be a "first step" of a new legislation system to control, and maybe eliminate, the release of toxic and hazardous chemicals into the environment and communities.

³⁶³ Hadden, *A Citizen's Right to Know*.

³⁶⁴ Shapiro "Equity and Information."

This chapter will present first a brief legal analysis of how EPCRA works, and then offers a critical look into how the history of EPCRA contributed to the study of environmental risk communication.

A legal description of EPCRA

EPCRA, passed by the U.S. Congress in 1986, listed 400 out of 60,000 chemicals in commercial use in the United States as extremely hazardous.³⁶⁵ The right to know observed in environmental impact statements obligates risk-generating organizations to provide complete, truthful, and accurate reports about toxic and hazardous materials to the local governments.³⁶⁶ The burden of revelation fell on the risk-generating organization, not on the government, which, according to Hadden, should “ensure that the other parties can exercise their rights and fulfill their responsibilities . . . [by] designing and, if necessary, redesigning public policies.”³⁶⁷

EPCRA also allowed citizens to enforce the law through civil suits³⁶⁸ based on any of the civil, administrative, or criminal penalties listed on section 325, which include the failure to provide complete, truthful, and accurate information. However, to be able to enforce the law, citizens needed first to be able to access, understand, and process the information into action.³⁶⁹ According

³⁶⁵ EPCRA, 1986. 42 U.S.C. 11001 et seq.

³⁶⁶ EPCRA, section 302.

³⁶⁷ Hadden, *A Citizen's Right to Know*, 217.

³⁶⁸ EPCRA, section 326.

³⁶⁹ Bass, Garry. D., and MacLean, A lair. “Enhancing the Public’s Right-to-Know about Environmental Issues.” *Villanova Environmental Law Journal* 4 (1993): 287-310.; O'Rourke, Dara and Gregg P. Macey.

to EPA's own regulation, EPA has an "affirmative responsibility" to collect and disseminate information to further public health and environmental goals:

"Empowering the public with information helps assure [industry] compliance with existing laws and encourages companies to take additional measures to reduce industrial chemical releases." ³⁷⁰

One way EPCRA promotes public participation in the decision-making process is through the requirement of the formation of Local Emergency Planning Committees (LEPC), which are designed to plan for manufacturing emergencies and to serve as monthly community forums where local residents, government officials, industry representatives, health and safety officials, and any concerned individuals and organizations can request information and voice concerns. ³⁷¹

EPCRA and LEPCs have four major provisions: emergency planning, ³⁷² emergency release notification, ³⁷³ hazardous chemical storage reporting requirements, ³⁷⁴ and the Toxic Release Inventory (TRI), ³⁷⁵ which requires a publicly available EPA database that contains information on toxic chemical releases and other waste management activities reported annually by certain covered industry groups as well as federal facilities.

"Community Environmental Policing: Assessing New Strategies of Public Participation in Environmental Regulation," *Journal of Policy Analysis and Management* 22, no. 3 (2003), 383-414; Shapiro "Equity and Information."

³⁷⁰ Environmental Protection Agency. 2007. Environmental Justice, <http://www.epa.gov/compliance/environmentaljustice/index.html>, (accessed October 31, 2007), 3.

³⁷¹ EPCRA, section 303.

³⁷² EPCRA, sections 301-303.

³⁷³ EPCRA, section 304.

³⁷⁴ EPCRA, sections 311 and 312.

³⁷⁵ EPCRA, section 313.

By putting the burden of revelation on risk generators and mandating community-right-to-know practices, EPCRA allowed communicators in non-governmental organizations, governmental agencies, corporations, and media outlets to take the law beyond the boundaries of government enforcement and transform it into a more participatory and democratic tool. At the same time, it costs less for the government to enforce the law—as risk-generating companies pay for the paperwork and communication. Also, revelation increases community awareness of the problems they may have in case of a toxic spill or discharge. Sometimes, this awareness can even bring companies to change the chemicals for less toxic ones and improve security and quality of life for all in the community.³⁷⁶

EPCRA's opportunities for environmental risk communication

The intent behind EPCRA, as seen in chapter 4, was to bring the public into the policy process. Since its adoption, the public has been invited to voice their opinions and to participate in the process, especially in EPCRA's enforcement and reevaluation. The structure of EPCRA, as seen above, differs from the structure of most laws as it follows a tripartite-dialogical approach between public, industry, and government based on information, as Bolstridge wrote:

³⁷⁶ Jacobson, "Safeguarding National Security"; Johnson, Stephen M. "Terrorism, Security, and Environmental Protection" *William & Mary Environmental Law & Policy Review* 29 (2004): 107-158.

Most importantly, EPCRA did not require the EPA to evaluate or interpret the information collected, but only to make the information available in its original form and through some specific types of reports and analyses. The law is based on the premise that it is the responsibility of the public to ask questions and of facilities to address questions as they arise.³⁷⁷

The contribution of EPCRA to the policy process after the failure of previous legislations, in consonance with Beck's description of the failure of governmental institutions in *Risk Society*, was to provide a way for society to achieve a necessary social goal—the reduction of environmental and health risks related to toxic and hazardous materials—despite the inefficiency of government. However, as noted by Bolstridge,³⁷⁸ EPCRA intentionally did not provide some of the tools to transform simple information into a true participatory system.

According to Florio's own writings,³⁷⁹ EPCRA, as an amendment to CERCLA, was a provision that should be easy for industry to comply with,³⁸⁰ inexpensive for government to administer, and empowering to citizens. The idea was that, once the information was compiled and published, scientists and citizens' groups could use it to make connections and see which facilities were in compliance with the earlier federal environmental legislations and the local and state laws and regulations.

An interesting result of EPCRA was that it also allowed the facilities to keep an inventory of the amount of materials being wasted as seen in both

³⁷⁷ Bolstridge, *EPCRA Data*, 3.

³⁷⁸ *Ibid.*, 2.

³⁷⁹ Florio. "Chemical Russian roulette."

³⁸⁰ Although the initial record keeping and paperwork was discouraging, the resulting savings in efficiency were more than compensatory, according to industry representatives. See chapter 4, subhead "It's what he calls 'risk communications.'"

Monsanto and Yale Industries,³⁸¹ allowing these companies to save money on top of getting better environmental standards. Moreover, provisions that allowed citizens to file lawsuits not only against facilities, but also against governmental agencies, gave “teeth” to the law, as Ladner mentioned during the 1985 hearing on EPCRA.³⁸²

In addition, the most important result of EPCRA was forcing industry representatives and government officials to sit down with community members and talk to them: explain what they were doing, how they were doing it, and why they were doing it. This information allows community members to choose the amount of risk they will accept to bear in exchange for economic and social benefits provided by the presence of the company in their neighborhood. However, as seen in a few cases, these relationships ended up freeing some communities from further exposures to toxic and hazardous materials.

EPCRA was not a law made to regulate toxic chemicals but to compel the enforcement of other laws that were already in place and to foster the creation of new and better ones. Most importantly, EPCRA was designed to get all groups involved to sit together and find solutions. An effort envisioned by Florio in face of the failure of previous approaches to the problem. This may not have worked in a large number of cases because of insufficient community leadership or an apathetic citizenry,³⁸³ but it certainly was an improvement to the state of affairs

³⁸¹ Ibid.

³⁸² Hearing before the Subcommittee, 23-25.

³⁸³ Many communities may still not be used to the idea of a law that asks the community to be their own enforcers and might still be attached to the idea that the government should be doing all the work. As Marc Shapiro found in his study, the abilities to process information and to engage in collective action are two of

existing before the enactment of the law. The premise and promise of EPCRA is a systemic approach to policy based fundamentally on communication to create an informed public. Therefore, right-to-know laws are different from command-and-control and market-based laws, as Alexander Volokh explained:

But what does it all mean? Environmental-information laws are often misunderstood. Because they do not directly regulate production, right-to-know laws are generally considered more benign than traditional command-and-control regulation. Their advocates commonly depict them as “voluntary,” “market-based” programs—and many in the policy community, including those who are often critical of command-and-control regulation, have accepted this characterization. Yet such a description masks several crucial elements of right-to-know programs.³⁸⁴

In order to make this approach work, citizens need to be supplied not only with information, but also with an understanding of their role in the political process. If, as Jefferson said, the people are the “depository of the ultimate powers of society,”³⁸⁵ members of the public need to know how the decision-making process in their society works and how they can exercise their “ultimate powers.”

The first step is then to help people to understand the situation in which they find themselves, to know the risks of living where they live, and even the

the strongest factors in reducing pollution (the third is the industry’s voluntary actions towards changing the production system). Shapiro, “Equity and Information.” LeeAnn Kahlor, Sharon Dunwoody, Robert J. Griffin, and Kurt Neuwirth found that “people who perceive that they know more about an issue are more active seekers and processors [of information] regarding that issue.” LeeAnn Kahlor, Sharon Dunwoody, Robert J. Griffin, and Kurt Neuwirth, 2006, “Seeking and Processing Information about Impersonal Risk,” *Science Communication* 28:163-194, 186; See also, Bass and MacLean, “Enhancing the public’s right-to-know about environmental issues”; Weeks, “The Bumpy Road to Community Preparedness”; Lewis, “What You Don’t Know Can Hurt You.”

³⁸⁴ Alexander Volokh, “The Pitfalls of the Environmental Right to Know,” *Utah Law Review* (2002): 805-842, 806.

³⁸⁵ Jefferson, letter to Williams Charles Jarvis.

concept of risk. People need to know what can be done to reduce or eliminate those risks and to understand the situations driving the polluters who created the risks in the first place. Beyond that, people need to understand what government can and cannot do or will or will not do to deal with risks. People also need to understand and avail themselves of the coping mechanisms put in place to manage the risks, and to know what to do if the risks threaten to become—or actually become – crises. More simply put, people must know the key variables at work and the choices available. Only then can people make real choices.

However, the “languages” of scientists, bureaucrats, and businessmen are not the “language” of the majority of the people who live in the communities where those risk-bearing facilities are located.

It is difficult for communities to understand statistical assessments, biomedical descriptions, detailed environmental analysis, economic estimations, and insurance evaluations, and so forth. The majority of the population in the areas of risks, as research has shown,³⁸⁶ is usually composed of lower income workers who are too busy finding ways to keep their jobs, feed their families, and

³⁸⁶ Centner, Terence J., Kriesel, Warren, & Keeler, Andrew G. 1996. “Environmental Justice and Toxic Releases: Establishing Evidence of Discriminatory Effect Based on Race and Not Income,” *Wisconsin Environmental Law Journal* 3, 119-158; Chakraborty, Jayajit, & Armstrong, Marc P. 2001. “Assessing the Impact of Airborne Toxic Releases on Populations with Special Needs,” *Professional Geographer* 53, no. 1: 119-131.; Derezinski, Daniel D., Lacy, Michael G., & Stretesky, Paul B. 2003. „Chemical Accidents in the United States, 1990-1996,” *Social Science Quarterly*, 84, no. 1: 122-143; Duncan, Pamela. 1993. “Environmental Racism: Recognition, Litigation, and Alleviation,” *Tulane Environmental Law Journal* 6: 317-368; Grineski, Sara, Bolin, Bob, and Boone, Christopher. 2007. “Criteria Air Pollution and Marginalized Populations: Environmental Inequity in Metropolitan Phoenix, Arizona,” *Social Science Quarterly* 88, no. 2: 535-554.; Sze, Julie, “Race and power: An introduction to environmental justice energy activism,” in *Power, Justice and the Environment: A Critical Appraisal of the Environmental Justice Movement*, David Naguib Pellow and Robert J. Brulle (Cambridge, MA; London: The MIT Press, 2005); Taylor, “American Environmentalism”; Brulle. “Environmental discourse and social movement organizations”; Mowrey and Tim Redmond. *Not in Our Backyard*. Gouldson, “Do Firms Adopt Lower Standards in Poorer Areas?”

give an education to their kids. The Toxic Release Inventory (TRI) is said to be too complex even for some specialists. When uninformed people see that chemical “x” is being released in hundreds of thousands of pounds a year and chemical “z” was released in a mere dozen of pounds, they may not be able to tell that an ounce of chemical “z” might be thousands of times more toxic than ten pounds of chemical “x.” Hence, information alone is just not enough.³⁸⁷

Volokh listed some of the most common problems found in EPCRA. Among them, he mentioned that a) TRI data are self-reported and are not checked for accuracy, b) TRI data are highly sensitive to changes in reporting guidance estimation methods and changes in production levels, c) EPCRA does not apply to facilities with under ten full-time employees, and d) many toxic substances are not included in the over 600 TRI reportable chemicals as they are not currently used in large enough quantities, which may be an incentive to replace listed chemicals with non-listed chemicals.³⁸⁸

Nonetheless, Volokh contended that, even with its loopholes, EPCRA has been successful in its objectives:

The TRI requires nothing but reporting, but has had a large effect nevertheless. Stock analysts, house hunters, and environmentalists use its data to evaluate companies and neighborhoods. Journalists and policy analysts use TRI data to inform debates on the effectiveness of environmental policy or to argue for more stringent regulation. State agencies use TRI data to track their own environmental progress. Businesses do too—capital markets seem to care about this new source of information, and the TRI seems to have prompted emissions reductions and increased environmental

³⁸⁷ William M. Bowen, *Environmental Justice Through Research-based Decision-making*, (New York: Garland Publishing, 2001).

³⁸⁸ Volokh, “The Pitfalls of the Environmental Right to Know.”

compliance. Small wonder that environmental officials call TRI one of the most successful federal environmental programs.³⁸⁹

The process Volokh described reveals the importance of the involvement of communication professionals.³⁹⁰ Specialized science, health, environmental, financial, risk, legal, and political communicators, analysts, journalists, and public relations practitioners are able to compile and synthesize the information given by experts in different areas and transform it into something meaningful and relatable to the daily lives of the affected communities.³⁹¹

In this case specifically, environmental risk communicators are prepared to understand all involved variables and put into a narrative form that makes sense to the community members. A risk communicator in a corporation can transform hundreds of pages of numbers, economic projections, and cost-benefit analysis into a simple “if we change this, we will have to increase the product’s price by this much,” or “cut this many jobs,” etc. An environmental communicator in an environmental justice organization can transform a massive amount of political, legal, and scientific data into digestible list of risks and choices.

³⁸⁹ Ibid., 805-806.

³⁹⁰ Shermer, Steven D., “The Efficiency of Private Participation in Regulating and Enforcing the Federal Pollution Control Laws: A Model for Citizen Involvement,” *Journal of Environmental Law and Litigation* 14 (1999): 461-494.; Bass and MacLean, “Enhancing the public’s right-to-know about environmental issues”; Durham-Hammer, “Left to Wonder”; Dudley, “It is Time to Reevaluate the Toxic Release Inventory.”

³⁹¹ Phil Brown. *Toxic Exposures: Contested Illnesses and the Environmental Health Movement* (New York: Columbia University Press, 2007); Hadden, *A Citizen’s Right to Know*; Corbett, *Communicating Nature*; Covello, “The Perception of Technological Risks”; Cox, *Environmental Communication and the Public Sphere*; Wyss, *Covering the Environment*; Heath et al. “Nature, Crisis, Risk, Science, and Society”; Lundgren and McMakin, *Risk communication*; Oepen, “Environmental Communication in a Context”; Bernardette West et al. *The Reporter’s Environmental Handbook*. 3rd ed. (New Brunswick, NJ: Rutgers University Press, 2003).

More importantly, as Hadden³⁹² explained, environmental risk communicators can educate community members to know how to protect themselves through environmentally healthy practices, legal actions, and political negotiations. Understanding how the “system” works, citizens can make use of a number of tools to get their voices heard.

Research has shown that even in relatively minor tragedies, as Love Canal turned out to be, communities that were able to use media and political influence obtained social gains and even elimination of the cause of risks.³⁹³ However, sound scientific research can provide more long-lasting gains at the macro level as it builds on the pool of knowledge and provides better arguments for better laws and better decisions.³⁹⁴

As seen on chapter 3, the roles of environmental risk communicators fit well with Florio’s intent for EPCRA. The academic and legal literature analyses of right-to-know provisions in general have shown that, based on the use of communication tools and techniques to educate the public, such provisions are usually cheaper, more efficient, and more democratic than provisions based on either on “command-and-control” and “market-based” approaches alone,

³⁹² Hadden, *A Citizen’s Right to Know*. See also Heath et al., “Nature, Crisis, Risk, Science, and Society”; Oepen, “Environmental Communication in a Context”.

³⁹³ Bowen, *Environmental Justice through Research-based Decision-making*; William M. Bowen, and Michael V. Wells. “The Politics and Reality of Environmental Justice: A History and Considerations for Public Administrators and Policy Makers,” *Public Administration Review* 62, no. 6 (2002): 688-698; Fletcher, *From Love Canal to Environmental Justice*. Both governmental and community groups assessments on Love Canal have been contested as they were not peer-reviewed although conducted by scientists. However, Love Canal is pointed out as the main reason for the enactment of CERCLA by historians, legislators, and community activists.

³⁹⁴ Bowen, *Environmental Justice through Research-based Decision-making*.

specially on topics involving a complex set of variables.³⁹⁵ The history of EPCRA represented in this dissertation is evidence that a right-to-know provision can be a powerful complement to other types of legislation.

Environmental risk communication, allied to other social, educational, and communication processes also helps to improve the organization and cohesiveness of social groups and movements.³⁹⁶ That characteristic was seen in the history of EPCRA in how the broad Environmental Justice Movement, and specially the Anti-toxic/Environmental Health Movement, was able to organize and become much more influential in order to obtain the results they desired.

Lois Gibbs and historians of environmental health and justice mentioned that Love Canal was not the first and, by far, not the most tragic environmental incident involving toxic contamination, but because of the community organization driven by Gibbs, it became a turning-point in the fight against toxic contamination that led to the enactment of CERCLA.³⁹⁷ Similarly, McGurty demonstrated that the main reason Warren County is considered the birth of Environmental Justice Movement was because of the level of organization it presented, attracting national attention.³⁹⁸

³⁹⁵ Florini, *The right to know*; Jacobson, "Safeguarding National Security"; Chekouras, "Balancing National Security with a Community's Right to Know"; Hadden, *A Citizen's Right to Know*; Hamilton, *Regulation through revelation*; Bolstridge, *EPCRA Data*; Percival et al., *Environmental Regulation*.

³⁹⁶ Cox, *Environmental Communication and the Public Sphere*.

³⁹⁷ Gibbs, Foreword, Phil Brown, *Toxic exposure*; Center for Health, Environment & Justice website <http://www.chej.org/index.htm>; Mowrey and Redmond, *Not in Our Backyard*; Brulle, "Environmental discourse and social movement organizations"; Pellow and Brulle, *Power, Justice, and the Environment*. See also: Cable and Cable, *Environmental Problems Grassroots Solutions*.

³⁹⁸ McGurty, "Warren County". See also Bullard and Johnson. "Environmental Justice: Grassroots Activism"; Bullard, *The Quest for Environmental Justice*.

The right-to-know approach of EPCRA opened a number of opportunities for communication practice and research that entails more analyses to be adequately understood. Consequently, new laws based on the right-to-know principle being enacted in more than 80 countries are opening a vast new market for communication research, but also for professional journalists, public relations practitioners, and communication specialists in health, science, legal, and political communications. The global trend identified by Florini and Shrivastava³⁹⁹ of right-to-know legislation has become a new phenomenon, reflecting Beck's⁴⁰⁰ predictions, but it all started with one piece of legislation, born from the failure of the political process and the claims of citizens in 1986.⁴⁰¹

What does it all mean?

A few conclusions can be made from the history of EPCRA. First, the right to know in EPCRA cannot be traced to one single origin as it was born from the cries of thousands of citizens and the Anti-toxic and Environmental Justice Movements. However, the theoretical and philosophical construct found in the legal and academic literature after EPCRA⁴⁰² could be verifiably related to the ideas of self-governance and the right to know about the purposes of government championed by Thomas Jefferson during the times of the American Revolution.

³⁹⁹ Florini, *The Right to Know*; Shrivastava, *The Right to Information*.

⁴⁰⁰ Beck, *Risk Society*.

⁴⁰¹ Karkkainen, "Information as Environmental Regulation."

⁴⁰² Uhm, "The Founders"; Hadden, *A Citizen's Right to Know*; Jacobson, "Safeguarding National Security"; Hamilton, *Regulation through revelation*; Bolstridge, *EPCRA Data*; Bullard and Johnson, "Environmental justice: Grassroots activism."

Second, EPCRA's unique characteristics—which go beyond the text of the law and allowed for non-governmental organizations, grassroots groups, and a few private organizations to build analytical and educational tools to complement and maximize the force of the law even against Congress and EPA—were not a coincidence or “fluke” of the system. They were, in fact, a conscientious effort of the legislators, like James J. Florio and Gerry Sikorski, to experiment with the right to know as a new approach to policymaking to correct what they saw as fatal flaws in CERCLA. The governmental failure to enforce and the private sector refusal to comply showed them that neither “command-and-control” nor “market-based” approaches were enough to get industry to reduce the use of toxic chemicals.

Florio, who was also the author of CERCLA, specifically mentioned that the intent of EPCRA was to give citizens the power to do what government couldn't. During the hearing of the Energy and Commerce Subcommittee on Commerce, Transportation, and Tourism, Florio discussed with Nelson, Ladner, Sikorski and Vento what would happen if the community-right-to-know provision didn't pass. They all agreed that it would leave EPCRA “toothless.”⁴⁰³ The combination of the right to know with citizens' suits provisions in EPCRA put the enforcement power in the hands of the people who felt they were being victimized either by industry or by governmental agencies.

Third, although full of loopholes and being targeted by opponents throughout the more than 20 years of its existence, EPCRA seems to have

⁴⁰³ Hearing before the Subcommittee, p. 23-25.

achieved its main goals of reactivating and boosting local and state legislations, creating a database on the release of toxic materials, reducing the use of toxic and hazardous materials in general, and allowing citizens, scientists, and private organizations to participate in the decision making on such issues.

Most of the criticisms directed to EPCRA, strangely enough, were part of what EPCRA was supposed to accomplish. As Bolstridge⁴⁰⁴ pointed out, one of the worst criticisms made against EPCRA is that it provides the right to know, but not the right to understand. However, both by following Hadden's analysis⁴⁰⁵ and by reading Florio's intentions for EPCRA,⁴⁰⁶ that burden to educate was built into EPCRA to be part of what citizen organizations would do. These organizations were to work with, and demand participation from if necessary, governments and private corporations to improve understanding of the topic. Florio and others predicted that, once the information was put out there in an organized form, scientists, policymakers, and citizens' organizations would study the database and improve it.⁴⁰⁷ The newspaper stories from the 1990s and early 2000s proved that EPCRA did that.

Other criticisms were that the list of toxic chemicals to be reported in TRI was too small and that it also should include chemicals not only stored and released, but also those used in the manufacturing of products. The idea was to create a system of checks and balances to keep track of toxic chemicals, to measure amounts acquired by a given facility and where those chemicals would

⁴⁰⁴ Bolstridge, *EPCRA Data*.

⁴⁰⁵ Hadden, *A Citizen's Right to Know*.

⁴⁰⁶ Hearing before the Subcommittee; Florio. "Chemical Russian roulette."

⁴⁰⁷ Hearing before the Subcommittee.

go: into storage, into products, or into release of chemicals into the environment. Chapter IV showed that, although very slowly, the EPA was successful in nearly doubling the number of chemicals to be included into the Toxic Release Inventory. That may still not be enough for people who want to be free of toxic chemicals, but it shows a progress that could be repeated.

What Florio couldn't have predicted was that the next step: the expansion and improvement of the law in consequence of the needs discovered through the information gathered in the Toxic Release Inventory, the Local Emergency Planning Committees, and by corporations and citizens organizations. Such improvement has not happen in the United States by the end of this study⁴⁰⁸ because of the change of political focus in the face the threat of terrorism after 1999 and, especially, after the terrorist attacks of September 11, 2001. As Rena Steinzor told the Senate's Subcommittee on Superfund and Environmental Health in 2007, "More than any other environmental program, Superfund is a victim of compassion fatigue and political doublespeak."⁴⁰⁹

However, EPCRA's right-to-know approach became a model for more than 80 other countries (as of 2009), which have enacted laws under the same principle. Some of them, like REACH in the European Union, have already expanded the concept of the right to know in EPCRA to embrace not only the

⁴⁰⁸ Other right-to-know laws have been discussed at the federal level, but none were enacted up to May, 2009.

⁴⁰⁹ Subcommittee on Superfund and Environmental Health of the U.S. Senate Environmental and Public Works Committee Regarding Oversight Hearing on the Federal Superfund Program's Activities to Protect Public Health. October, 2007.

release of toxic materials but also labeling of products that contain any potentially hazardous materials.⁴¹⁰

In the end, EPCRA's history showed that, as a piece of legislation, EPCRA was a step further than previous legislation aiming to control and reduce the release of toxic materials in the environment and communities. However, as an approach to policy making, the right to know in EPCRA became even more successful. It survived a series of direct attacks thanks to the workings of organized citizens who wouldn't give up the window opened by EPCRA.

Limitations of this research

This research presented the application of a historiographic method that, following the discussion raised in chapter 1, sought to carefully and accurately represent a history of EPCRA focusing on its right-to-know principle. In order to achieve that the researcher identified proper primary sources, crosschecked those sources against other primary sources for verification and completeness of information. The researcher also sought the guidance of secondary sources and experts in communication history, journalism, risk communication, and environmental sociology. The main limitation was the lack of funding which prevented the researcher from visiting the archives and collections of primary documents and to search for unknown sources that are not listed in the literature or in other primary sources.

⁴¹⁰ Karkkainen, "Information as Environmental Regulation;" Florini, *The Right to Know*; Shrivastava, *The Right to Information*.

However, thanks to the effort of many libraries, archives, collections, and other groups in charge of preserving historical documents, the great majority of the documents mentioned and cited in this dissertation could be found in digital format. Some of them were copied and added to the Appendix to facilitate verification by peers. Others are listed with hyperlinks in the Appendix with the same purpose.

The very few documents of which the researcher could only find transcriptions but not a digital copy of the original were crosschecked with the secondary sources and the credibility of the facility that made such transcription available. Only the ones that were cited by at least two independent secondary sources and could be found on the website of a reliable database were included in the text of the dissertation. With that process, the researcher hopes to have reduced such limitation to a minimum. Nonetheless, in the historical process, many sources might be unknown or found unexpectedly during interactions with people who either participate in an historical event and their families or work as custodians of personal collections.

Besides, the funding limitations, the general limitations of the historical process also played a role in this study. There is no way to find out what the Founding Fathers or the Framers of the Constitution intended with their writings and/or actions. The failure to find in the literature and in the primary sources any detailed reference to the right to know in the period between 1822 and 1953 also darkens in part the understanding of its evolution.

The search for people who were involved in the enactment of EPCRA, like James J. Florio, and more primary sources will be the next step in this research line.

Future Research

This dissertation is only a necessary first step in developing a body of research that can truly and accurately represent the impact of the right-to-know approach to public policy and its meaning for the study of communication. As seen in chapters 4 and 5, EPCRA opened a series of opportunities for communicators to inform and educate the public (broadly defined to include government officials, industry executives, scientists, and citizens in general) about how to best participate in the public arena and achieve better decisions.

The history of EPCRA allows researchers in the fields of communication, history, sociology, law, political sciences, social service, toxicology, waste management, environmental studies, and any other field related to emergency preparedness and public policy issues to understand how information can be used to improve the social-political process involving the release of toxic and hazardous materials. It also serves as stepping stone for extrapolation and exploration of how right-to-know provisions can affect other areas.

The next step for the researcher will be to look into the discourse and practice of communicators, politicians, government officials, scientists, community organizers, lawyers, and other people directly involved in the process of expanding the scope of EPCRA, from a source of information, to a system of

education about public participation, health, safety, environmental justice, government, and so forth, like the authors of EPCRA intended. Following Professor Baram's question whether informed citizens could take a responsible role in making public policy following the Jeffersonian ideal,⁴¹¹ EPCRA's history seems to indicate that citizens can, at least in part. Perhaps reliance on the people is too often politicians' empty rhetoric, and perhaps reliance on the people is pointless. Such a cynical conclusion, however, flies in the face of the republican foundations and democratic strivings of the experiment known as the United States of America. More detailed research on efforts to use EPCRA, chronicling and analyzing successes and failures, can give a better picture of using the right to know principle to empower communities to protect and to improve themselves.

Concluding remarks

With all justified and unjustified criticisms, EPCRA's right-to-know provisions have been proven to be able to provide openness in government even when government itself was fighting for secrecy. It was an approach created to circumvent the actions of Gorsuch's EPA and ended up circumventing a congressional attempt to shut it down in 1994/1995, an industry lawsuit from 1994 to 1997, a gag order against EPA in 1999, and anti-openness laws—USA Patriot Act in October 2001 and the Critical Infrastructure Information Act of 2002 (CIA)—after the attacks of September 11, 2001.

⁴¹¹ Michael S. Baram. Quoted in Fred Millar, Environmental Policy Institute. Elizabeth Grillo Olson, "When a chemical company is forced to tell all," *The New York Times*, July 3, 1988, p. 8.

Furthermore, EPCRA, in some cases more successfully than others, brought governments, companies, and citizens to sit together to discuss common goals on the use of toxic and hazardous materials in American society. Thanks to it, environmental and civil rights organizations used EPCRA as a starting point to educate and to organize communities. Governmental agencies were able to share the burden of control and enforcement with the civil society. Ethically driven corporations improved their rapport and relations with local communities. The news media used EPCRA to fulfill their historic roles of watchdogs of government.

As corporations increased in power during the 20th century, often having more effects on peoples' lives than government, they were insulated from the watchdog function. Before EPCRA, openness legislation, including the federal Freedom of Information Act, applied only to government executive-branch agencies, excluding legislatures, leaving corporations shrouded in secrecy. EPCRA removed, at least in part, that shroud.

As Gibbs wrote, this discussion changed the focus from how much toxic contamination society could bear to how much toxic contamination can be avoided altogether.⁴¹² EPCRA became focus of both supporting campaigns and attacks in local, state, and federal levels, but put the discussion of toxic pollution in the mainstream of national topics. It may still need revisions and amendments, but the literature on EPCRA reaches a rare consensus: it was the first step for a

⁴¹² Gibbs, foreword to Phil Brown, *Toxic Exposure*.

different kind of policymaking. Even President Bill Clinton attested to the resilience of the right to know against the deeds of Congress:

The message here is clear. The Congress can go right along with its plan to undermine America's anti-pollution laws, but it will go nowhere fast. Community right-to-know is here to stay.

Bill Clinton⁴¹³

⁴¹³ Clinton, during the signing of Executive Order 12,969: Federal Acquisition and Community Right-To-Know in 1995. Quoted in Jacobson, *Safeguarding National Security*, p. 337.

BIBLIOGRAPHY

Administrative Procedure Act of 1946, 3, 5 U.S.C. 1002.

Althaus, Catherine E. "A Disciplinary Perspective on the Epistemological Status of Risk." *Risk Analysis* 25, no. 3 (2005): 567-588.

Amnesty International. 2004. "A Bitter Wind in Bhopal."

<http://web.amnesty.org/wire/December2004/Bhopal> (accessed June 28, 2007).

Andrews, Richard N. L. *Managing the Environment, Managing Ourselves: A History of American Environmental Policy*. 2nd ed. New Haven: Yale University Press, 2006.

Associated Press. 2002. "Public Records Tougher to View Since Sept. 11." May 9, 2002. <http://www.firstamendmentcenter.org/news.aspx?id=3918> (accessed July 25, 2007).

Aug der Heide, E. "Disaster Planning, Part II: Disaster Problems, Issues and Challenges Identified in the Research Literature." *Emergency Medical Clinics of North America* 14, no. 2 (1996.): 453-480.

Babcock, Hope. "National Security and Environmental Laws: A Clear and Present Danger?" *Virginia Environmental Law Journal* 25, (2007): 105-156.

Bacon, Francis. *Meditations Sacrae and Human Philosophy*. Kessinger Publishing, 1597/1996.

Bahn, Stephen. "Towards a Critical Historiography: Recent Work in Philosophy of History." *Philosophy* 56, no. 217 (1981): 365-385.

Barzun, Jacques. *A Jacques Barzun Reader: Selections from His Works*. Edited by Michael Murray. New York: Perennial Classics, 2002.

Bass, Garry. D., and MacLean, Alair. "Enhancing the Public's Right-to-Know about Environmental Issues." *Villanova Environmental Law Journal* 4 (1993): 287-310.

Beck, Eckardt C. "The Love Canal Tragedy." *EPA Journal*, January 1979.
<http://www.epa.gov/history/topics/lovecanal/01.htm> (accessed March, 29, 2009).

Beck, Ulrich. *Risk society: Towards a New Modernity*. Translated by Mark Ritter. London; Newbury Park; New Delhi: Sage Publications, 1992.

_____. "World Risk Society as Cosmopolitan Society? Ecological Questions in a Framework of Manufactured Uncertainties." *Theory Culture Society* 13, no. 4 (1996): 1-32.

_____. *World Risk Society*. Cambridge: Polity Press, 1999.

Belke, James C. *Chemical Accident Risks in U.S. Industry: A Preliminary Analysis of Accident Risk Data from U.S. Hazardous Chemical Facilities*. Washington, D.C.: U. S. Environmental Protection Agency, 2000.

Benford, Robert. "The Half-Life of the Environmental Justice Frame: Innovation, Diffusion, and Stagnation." In *Power, Justice, and the Environment: A Critical Appraisal of the Environmental Justice Movement*. Edited by Pellow, David Naguib, & Brulle, Robert J. Cambridge, MA; London: The MIT Press, 2005.

Benjamin, Walter and Tarnowski, Knut. "Eduard Fuchs: Collector and Historian."

New German Critique 5 (1975): 27-58.

Blanchard, Robert O. "A History of the Federal Records Law," *Freedom of*

Information Center Report 25 (November, 1967): 3-22.

Bollan, William, *The Freedom of Speech and Writings Upon Public Affairs,*

Considered, with a Historical View. London: S. Baker, 1766.

Bolstridge, June C. *EPCRA Data on Chemical Releases, Inventories, and*

Emergency Planning: A Guide to the Information on Industrial Facilities

and Chemical Available Under the Emergency Planning and Community

Right-To-Know Act. New York: Van Nostrand Reinhold, 1992.

Bowen, William M. *Environmental Justice through Research-Based Decision-*

Making. New York: Garland Publishing, 2001.

Bowen, William. M., and Wells, Michael V. "The Politics and Reality of

Environmental Justice: A History and Considerations for Public

Administrators and Policy Makers." *Public Administration Review* 62, no. 6

(2002): 688-698.

Branch, Kristi M., and Bradbury, Judith A. "Comparison of DOE and Army

Advisory Boards: Application of a Conceptual Framework for Evaluating

Public Participation in Environmental Risk Decision Making." *The Policy*

Studies Journal 34, no. 4 (2006): 723-753.

Breisach, Ernst. *Historiography: Ancient, Medieval, and Modern.* Third ed.

Chicago: The University of Chicago Press, 2007.

- Brooke, Heather. *Your Right to Know: How to Use the Freedom of Information Act and Other Access Laws*. London: Pluto Press, 2005.
- Brown, Phil. *Toxic Exposures: Contested Illnesses and the Environmental Health Movement*. New York: Columbia University Press, 2007.
- Brown, Richard D. *The Strength of a People: The Idea of Informed Citizenry in America, 1650-1870*. Chapel Hill: University of North Carolina Press, 1996.
- Brulle, Robert. "Environmental Discourse and Social Movement Organizations: A Historical and Rhetorical Perspective on the Development of U.S. Environmental Organizations," *Sociological Inquiry* 66, no. 1 (1996): 59-83.
- Bullard, Robert D. "Environmental Justice for All." In *Unequal Protection: Environmental Justice and Communities of Color*. San Francisco: Sierra Club, 1994, 1-22.
- _____. "Environmental Justice in the Twenty-First Century." In *The Quest for Environmental Justice: Human Rights and the Politics of Pollution*. San Francisco: Sierra Club Books, 2005, 19-42.
- _____. "Overcoming racism in environmental decisionmaking." *Environment* 36, no. 4 (1994): 10-20
- Bullard, Robert D., and Johnson, Glenn S. "Environmental Justice: Grassroots Activism and Its Impact on Public Policy Decision Making." *Journal of Social Issues* 56, no. 3 (2000): 555-578.

- Bunting, Kathy. "Risk Assessment and Environmental Justice: A Critique of the Current Legal Framework and Suggestions for the Future." *Buffalo Environmental Law Journal* 3, no. 1 (1995): 129-180.
- Cable, Sherry and Cable, Charles. *Environmental Problems Grassroots Solutions: The Politics of Grassroots Environmental Conflict*. New York: St. Martin's Press, 1995.
- Cannon, John, ed. *The Historian at Work*. London, George Allen & Unwin, 1980.
- Cantrill, James G., and Oravec, Christine L. *The Symbolic Earth: Discourse and Our Creation of the Environment*. Lexington: University of Kentucky Press, 1996.
- Carson, Rachel. *Silent Spring*. Fortieth Anniversary ed. Boston; New York: Mariner Books, 1962/2002.
- Caygill, Howard. "Walter Benjamin's Concept of Cultural History," in *The Cambridge Companion to Walter Benjamin*. Edited by David S. Ferris. Cambridge: Cambridge University Press, 2004.
- Centner, Terence J., Kriesel, Warren, & Keeler, Andrew G. "Environmental justice and toxic releases: Establishing evidence of discriminatory effect based on race not income." *Wisconsin Environmental Law Journal* 3, (1996): 119-158.
- Chafee Jr., Zachariah, "Freedom of Speech in War Time," *Harvard Law Review* 32 (1918-1919).

- Chakraborty, Jayajit, and Armstrong, Marc P. "Assessing the Impact of Airborne Toxic Releases on Populations with Special Needs." *Professional Geographer* 53, no. 1 (2001): 119-131.
- Chekouras, Katherine. "Balancing National Security with a Community's Right to Know: Maintaining Public Access to Environmental Information through EPCRA's Non-Preemption Clause." *Boston College Environmental Affairs Law Review* 34 (2007): 107-142.
- Clean Air Act of 1970, 42 U.S.C. §7401 et seq.
- Cole, Luke W., and Foster, Sheila R. *From the ground up: Environmental racism and the rise of the environmental movement*. New York: New York University Press, 2001.
- Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq.
- Corbett, Julia B. *Communicating Nature: How We Create and Understand Environmental Messages*. Washington, D.C.: Island Press, 2006.
- Covello, Vincent T. "The Perception of Technological Risks: A Literature Review." *Technological Forecasting and Social Change* 23, no. 4 (1983): 285-297.
- Cox, Robert. *Environmental Communication and the Public Sphere*. Thousand Oaks; London; New Delhi: Sage Publications, 2006.
- _____. "Nature's "Crisis Disciplines": Does Environmental Communication Have an Ethical Duty?" *Environmental Communication: A Journal of Nature and Culture* 1 (2007): 5-20.
- Cross, Harold. *The Public's Right to Know*. New York, Basic Books, 1953.

- Davis, Jack E., "Conservation is now a Dead Word': Marjory Stoneman Douglas and the Transformation of American Environmentalism." *Environmental History* 8, no. 1 (Jan., 2003): 53-76.
- Derezinski, Daniel D., Lacy, Michael G., & Stretesky, Paul B. "Chemical accidents in the United States, 1990-1996." *Social Science Quarterly* 84, no. 1 (2003): 122-143.
- Doherty, Joe, Graham, Elspeth, and Mo Malek, eds. *Postmodernism and the Social Sciences*. New York: St. Martin's Press, 1992.
- Doyle, Charles. "The USA PATRIOT Act: A Sketch." *CRS Report for Congress* (April 18, 2002).
- Dudley, Susan E. "It is Time to Reevaluate the Toxic Release Inventory." *Missouri Environmental Law & Policy Review* 12, no. 1 (2004).
- Duncan, Pamela. "Environmental Racism: Recognition, Litigation, and Alleviation," *Tulane Environmental Law Journal* 6 (1993): 317-368.
- Durham-Hammer, Kathryn E. "Left to Wonder: Reevaluating, Reforming, and Implementing the Emergency Planning and Community Right-to-know Act of 1986," *Columbia Journal of Environmental Law* 29 (2004): 323-357;
- Eiseley, Loren. "Activism and the Rejection of History." *Science*, New Series, 165, no. 3889, (July 1969): 129.
- Emergency Planning and Community Right-to-know Act of 1986. 42 U.S.C. 11001 et seq., partially codified at 42 U.S.C. §§ 9601-9675 (1988).

- Environmental Protection Agency. 2007. *Environmental Justice*.
<http://www.epa.gov/compliance/environmentaljustice/index.html> (accessed October 31, 2007).
- EPA/NRC. Health Risks from Dioxin and Related Compounds Evaluation of the EPA Reassessment. Washington, D.C.: The National Academies Press, 2006. <http://www.ejnet.org/dioxin/nas2006.pdf> (accessed July 01, 2009).
- Epps, Garrett, ed. *The First Amendment: Freedom of the Press: Its Constitutional History and the Contemporary Debate*. Amherst, NY: Prometheus Books, 2008.
- Falkenberry, Eric M. "The Emergency Planning and Community Right-To-Know Act: A Tool for Toxic Release Reduction in the 90's." *Buffalo Environmental Law Journal* 3, no. 1 (1995): 1-36.
- Fischer, David Hackett. *Historians' Fallacies: Toward a Logic of Historical Thought*. New York: Harper Perennial, 1970.
- Fischhoff, Baruch, Slovic, Paul, Lichtenstein, Sarah, Read, Stephen, and Combs, Barbara. "How Safe Is Safe Enough? A Psychometric Study of Attitudes toward Technological Risks and Benefits," *Policy Sciences* 9, no. 3 (1978): 127-152.
- Fletcher, Thomas H. *From Love Canal to Environmental Justice: The Politics of Hazardous Waste on the Canada-U.S. Border*. Toronto: Broadview Press, 2003.
- Florini, Ann, ed. *The right to know: transparency for an open world*. New York: Columbia University Press, 2007.

- Folkerts, Jean, Teeter, Dwight L., and Caudill, Edward. *Voices of a Nation: A History of Mass Media in the United States*. 5th ed. Boston: Pearson, 2009.
- Foucault, Michel. *The Order of Things*. London and New York: Routledge Classics, 2008.
- Gauna, Eileen. "The Environmental Justice Misfit: Public Participation and the Paradigm Paradox." *Stanford Environmental Law Journal* 17 (1998): 3-72.
- Giddens, Anthony. *Modernity and Self-identity*. Palo Alto; Chicago: Stanford University Press, 1991.
- Goldblatt, David. *Social Theory and Environment*. Boulder, Col.: Westview Press, 1996.
- Gotleib, Robert. *Forcing the Spring: The Transformation of the Environmental Justice Movement*. Washington, DC: Island Press, 1993.
- Gouldson, Andy. "Do Firms Adopt Lower Standards in Poorer Areas? Corporate Social Responsibility and Environmental Justice in the EU and the US," *Area* 38 (2006): 402-412.
- Green, Krista. "An Analysis of the Supreme Court's Resolution of the Emergency Planning and Community Right-to-know Act Citizen Suit Debate." *Boston College Environmental Affairs Law Review* 26, no. 387 (Winter, 1999): 387-434.
- Grineski, Sara, Bolin, Bob, and Boone, Christopher. "Criteria Air Pollution and Marginalized Populations: Environmental Inequity in

- Metropolitan Phoenix, Arizona," *Social Science Quarterly* 88, no. 2 (2007): 535-554.
- Habermas, Jürgen. *The Inclusion of the Other: Studies in Political Theory*. Edited by Ciaran Cronin and Pablo De Greiff. Cambridge, MA: The MIT Press, 1998.
- _____. *On the Pragmatics of Communication*. Edited by Maeve Cooke. Cambridge, MA: The MIT Press, 1998.
- _____. *The Theory of Communicative Action*, 2 vols. Translated by T. McCarthy. Boston: Beacon Press, 1984/1987.
- Hadden, Susan G. *A Citizen's Right to Know: Risk Communication and Public Policy*. Boulder, Col.: Westview Press, 1989.
- Hamilton, James T. *Regulation through Revelation: The Origins, Politics, and Impacts of the Toxic Release Inventory Program*. New York: Cambridge University Press, 2005.
- Hamilton, Jennifer Duffield, and Wills-Toker, Caitlin. "Reconceptualizing Dialogue in Environmental Public Participation." *The Policy Studies Journal* 34, no. 4 (2006): 755-775.
- Hays, Samuel P. *A History of Environmental Politics Since 1945*. Pittsburgh: University of Pittsburgh Press, 2000.
- Heath, Robert L., and Palenchar, Michael J. "Community Relations and Risk Communication: A Longitudinal Study of the Impact of Emergency Response Messages." *Journal of Public Relations Research*, 12, no. 2 (2000): 131-161.

- Heath, Robert L., Palenchar, Michael J., Protheau, Stephanie, and Hocke, Tatjana M. "Nature, Crisis, Risk, Science, and Society: What Is Our Ethical Responsibility?" *Environmental Communication: A Journal of Nature and Culture* 1 (2007): 34-48.
- Helfand, Gloria E., and Peyton, L. James. "A Conceptual Model for Environmental Justice." *Social Science Quarterly* 80, no. 1 (1999): 68-83.
- Hennings, Thomas C. Jr., "The People's Right to Know," *American Bar Association Journal* 45 (1959), 667-770.
- Hitchens, Christopher. *Thomas Paine's Rights of Man: A Biography*. London: Atlantic, 2006.
- Ivester, David Mitchell "The Constitutional Right to Know," *Hastings Constitutional Law Quarterly* 4 (1977): 109-164.
- Jacobson, Joseph. D. "Safeguarding National Security through Public Release of Environmental Information: Moving the Debate to the Next Level." *Environmental Law* 9 (2003), 327-397.
- Jarzombek, Mark. *The Psychologizing of Modernity: Art, Architecture, and History*. Cambridge: Cambridge University Press, 2000.
- Jeffers, Robinson. "Thurso's Landing." In *Collected Poetry 2*, Stanford, CA: Stanford University Press, 1988.
- Jensen, Merrill. *The Founding of a Nation: A History of the American Revolution, 1763-1776*. New York: Oxford University Press, 1968.
- Johnson, Stephen M. "Terrorism, Security, and Environmental Protection." *William & Mary Environmental Law & Policy Review* 29 (2004): 107-158.

- Kahlor, LeeAnn, Dunwoody, Sharon, Griffin, Robert J., and Neuwirth, Kurt.
“Seeking and Processing Information about Impersonal Risk,” *Science Communication* 28 (2006):163-194.
- Karkkainen, Bradley C. “Information as Environmental Regulation: TRI and Performance Benchmarking, Precursor to a New Paradigm.” *Georgetown Law Journal* 89 (2000): 257-370
- Kellogg, Wendy A., and Mathur, Anjali. “Environmental justice and information technologies: Overcoming the information-access paradox in urban communities.” *Public Administration Review* 63, no.5 (2003): 573-585.
- Kermode, Frank. *The Genesis of Secrecy: On the Interpretation of Narrative*. Cambridge, MA, and London: Harvard University Press, 1979.
- King, Leslie, and McCarthy, Deborah, eds. *Environmental Sociology: From Analysis to Action*. Lanham: Rowan & Littlefield Publishers, Inc., 2005.
- Kline, Benjamin. *First Along the River: A Brief History of the U.S. Environmental Movement*. 3rd ed. Plymouth, UK: Rowan & Littlefield Publishers, Inc., 2007.
- Larson, Edward J. *A Magnificent Catastrophe: The Tumultuous Election of 1800, America’s First Presidential Campaign*. New York: Free Press, 2007.
- Leiss, William. “Three phases in the evolution of risk communication practice.” *Annals of the American Academy of Political and Social Science* 545 (1996): 85-94.
- Lerbinger, Otto. *The Crisis Manager: Facing Risk and Responsibility*. Mahwah, NJ: Erlbaum, 1997.

Levy, Leonard W. *Constitutional Opinions: Aspects of the Bill of Rights*. New York: Oxford University Press, 1986.

_____. *Emergence of a Free Press*. New York : Oxford University Press, 1985.

_____. *Jefferson on Civil Liberties: The Darker Side*. Cambridge, Mass.: Belknap Press, 1963.

Lewis, Browne C., "What You Don't Know Can Hurt You: The Importance of Information in the Battle Against Environmental Class and Racial Discrimination," *William and Mary Environmental Law and Policy Review* 29 (Winter, 2005): 327-373.

Lundgren, Regina E. and McMakin, Andrea H. *Risk Communication: A Handbook for Communicating Environmental, Safety, and Health Risks*. 3rd ed. Columbus. Ohio: Battelle Press, 2004.

Manchester, William. *A World Lit Only by Fire: The Medieval Mind and the Renaissance: Portrait of an Age*. Boston; London: Little, Brown and Company, 1993.

Marsh, George Perkins. *Address Delivered Before the Agricultural Society of Rutland County, Sept. 30, 1847*. Rutland, VT: Herald Office, 1848. The Evolution of the Conservation Movement, 1850-1920. Digital Collection of the Library of Congress – Online exhibit.
<http://lcweb2.loc.gov/ammem/amrvhtml/conshome.html> (accessed 07/02/2006).

Mason, George. *The Objections of the Hon. George Mason to the proposed Federal Constitution addressed to the Citizens of Virginia*. Printed by

Thomas Nicholas. *Paul Leicester Ford, Pamphlets on the Constitution of the United States, published during its Discussion by the People, 1787-1788* [1787]. The Online Library of Liberty.

http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1670&chapter=1988&layout=html&Itemid=27#c_lf1338_footnote_nt066

(accessed February 06, 2009).

McGurty, Eileen Maura. "Warren County, NC, and the Emergence of the Environmental Justice Movement: Unlikely Coalitions and Shared Meanings in Local Collective Action," *Society & Natural Resources* 13 (2000): 373-387.

Melanson, Philip H. *Secrecy Wars: National Security, Privacy, and the Public's Right to Know*. Washington, DC: Brassey's Inc., 2001.

Merchant, Carolyn. *Earthcare: Women and the Environment*. New York: Routledge, 1995.

Meyers, Joel D. "The Private Revolution of William Bolla," *The New England Quarterly* 41, no. 4 (Dec., 1968), 536-550.

Milstein, Tema. (in press for 2010). "Environmental Communication Theories." In *Encyclopedia of Communication Theory*. Edited by Stephen Littlejohn and Karen Foss. Thousand Oaks: Sage.

Milton, John. *Areopagitica, with a Commentary by Sir Richard C. Jebb*. Folcroft, PA: The Folcroft Press, Inc., 1644/1918/1969.

Motta, Bernardo H. "From Words to Action: The Origins of Political Trends in American Environmental Communication (1847 – 1892)." Paper presented

at the 30th Annual Research Symposium of the College of
Communication and Information, The University of Tennessee, Knoxville,
TN, 2008.

Mowrey, Marc, and Redmond, Tim. *Not in Our Backyard: The People and Events
that Shaped America's Modern Environmental Movement*. New York:
William Morrow and Company, 1993.

Murray, Michael, ed. 2002. *A Jacques Barzun Reader: Selections from His
Works*. New York: Perennial Classics.

Naess, Arne. "The Deep Ecological Movement: Some Philosophical Aspects." In
Environmental Ethics: An Anthology. Edited by Andrew Light and Holmes
Rolston, III Malden, MA: Blackwell Publishing, 2003.

National Archives. *Charters of Freedom: A New World Is at Hand*, 2007.

[http://www.archives.gov/national-archives-
experience/charters/constitution_founding_fathers_pennsylvania.html](http://www.archives.gov/national-archives-experience/charters/constitution_founding_fathers_pennsylvania.html)

(accessed November 1, 2007).

National Environmental Policy Act of 1969, 42 U.S.C. §4321 et seq.

National Research Council. *Improving risk communication*. Washington, DC:
National Academy Press, 1989.

Nelson, Craig. *Thomas Paine: Enlightenment, Revolution, and the Birth of
Modern Nations*. New York: Viking, 2006.

Nord, David Paul. "The Practice of Historical Research." In *Mass Communication
Research and Theory*. Edited by Guido H. Stempel III, David H. Weaver,
G. Cleveland Wilhoit. Boston: Allyn & Bacon, 2003, 362–385.

- Oepen, Manfred. "Environmental Communication in a Context." In
Communicating the Environment: Environmental Communication for
Sustainable Development. Edited by Manfred Oepen and Winfried
Hamacher Frankfurt am Main; New York: Peter Lang, 2000, 41 – 61.
- Oravec, Christine L. "Conservationism vs. Preservationism: The Public Interest
in The Hetch-Hetchy Controversy," *Quarterly Journal of Speech* 70 (1984):
444-458.
- O'Rourke, Dara and Gregg P. Macey. "Community Environmental Policing:
Assessing New Strategies of Public Participation in Environmental
Regulation," *Journal of Policy Analysis and Management* 22, no. 3 (2003):
383-414.
- Paine, Thomas. *Common Sense*. 3rd ed. Philadelphia, 1776.
<http://www.ushistory.org/PAINE/commonsense/index.htm> (accessed
January 29, 2009).
- _____. *The Rights of Man*. 2nd ed. Philadelphia.
<http://www.ushistory.org/PAINE/rights/singlehtml.htm> (accessed January
29, 2009).
- _____. *The Writings of Thomas Paine*. Collected and edited by Moncure Daniel
Conway. New York: G.P. Putnam's Sons, 1894.
- Palenchar, Michael J. "Risk Communication and Community Right To Know: A
Public Relations Obligation to Inform." *Public Relations Journal* 2, no. 1
(2008), 1-26.

- _____. "Risk communication." in *Encyclopedia of Public Relations*. Edited by Robert L. Heath. Thousand Oaks, CA: Sage, 2005, 752-755
- Palenchar, Michael J., and Heath, Robert L. "Strategic Risk Communication: Adding Value to Society." *Public Relations Review*, 33 (2007), 120-129.
- Palenchar, Michael J., Heath, Robert L., & Dunn, E. "Terrorism and industrial chemical production: A new era of risk communication." *Communication Research Reports* 22, no. 1 (2005), 59-67.
- Parks, Wallace, "The Open Government Principle: Applying the Right to Know Under the Constitution," *The George Washington Law Review* 26, no. 1 (October, 1957), 1-22.
- Pellow, David Naguib. *Resisting Global Toxics: Transnational Movements for Environmental Justice*. Cambridge, MA: The MIT Press, 2007.
- Pellow, David Naguib, and Brulle, Robert J. *Power, Justice, and the Environment: The Critical Appraisal of the Environmental Justice Movement*. Cambridge, MA: MIT Press, 2005.
- Percival, Robert V., Schroeder, Christopher H., Miller, Allan S., and Leape, James P. *Environmental regulation: Law, science, and policy*. 5th ed. New York: Aspen Publishers, 2006.
- Pezzullo, Phaedra and Sandler, Ronald. "Revisiting the Environmental Justice Challenge to Environmentalism." In *Environmental Justice and Environmentalism: The Social Justice Challenge to the Environmental Movement*. Cambridge, Mass.: MIT Press, 2007, 1-24.

- Rabban, David M., "The Ahistorical Historian: Leonard Levy on Freedom of Expression in Early American History," *Stanford Law Review* 37, no. 3 (Feb., 1985): 795-856.
- Randall, Willard Sterne. *Thomas Jefferson: A Life*. New York: Henry Holt and Company, 1993.
- Renn, Ortwin. "Concepts of Risk: A Classification." In *Social theories of risk*. Edited by Sheldon Krimsky and Dominic Golding. Westport, CT: Praeger, 1992, 53-82.
- Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq.
- Riley, Glenda. *Women and Nature: Saving the "Wild" West*. Lincoln; London: University of Nevada Press, 1999.
- Rootes, Christopher, ed. *Environmental Movements: Local, National and Global*. London: Frank Cass, 1999.
- Rosa, Eugene A. "Modern Theories of Society and the Environment: The Risk Society." In *Environment and Global Modernity*. Edited by G. Spaargaren, A. P. J. Mol, and F. H. Buttel. London; Thousand Oaks; New Delhi: Sage Publications, 2000.
- Rosenau, Pauline Marie. *Postmodernism and the Social Sciences*. Princeton, N.J.: Princeton University Press, 1992.
- Rosenbaum, Walter A. *Environmental politics and policy*. 5th ed. Washington, DC: CQ Press, 2002.
- Rothemberg, Lawrence S. *Environmental Choices: Policy Responses to Green Demands*. Washington, D. C.: CQ Press, 2002.

- Rousmaniere, Kate. Historical research. In *Foundations for Research: Methods of Inquiry in Education and Social Sciences*. Edited by Kathleen deMarrais and Stephen D. Lapan. Mahwah, NJ: Lawrence Erlbaum Associates, 2004, 31-50.
- Sachsman, David B., Simon, James, and Valenti, JoAnn M. "Regional Issues, National Norms: A Four-Region Analysis of U.S. Environment Reporters." *Science Communication* 28 (2006); 93-121.
- Sewell Jr., William H. *Logics of History: Social Theory and Social Transformation*. Chicago: The University of Chicago Press, 2005.
- Shapiro, Marc. D. "Equity and Information: Information Regulation, Environmental Justice, and Risks from Toxic Chemicals." *Journal of Policy Analysis and Management*, 24, no. 2 (2005): 373-398.
- Shermer, Steven D. "The Efficiency of Private Participation in Regulating and Enforcing the Federal Pollution Control Laws: A Model for Citizen Involvement." *Journal of Environmental Law and Litigation* 14 (1999): 461-494.
- Shrivastava, Kshitindra Mohan. *The Right to Information: A Global Perspective*. New Delhi: Lancer Publishers, 2009.
- Skanavis, Constantina Tsampoukou, Koumouris, George. A., Petreniti Vassiliki. "Public Participation Mechanisms in Environmental Disasters." *Environmental Management* 35, no.6 (2005): 821-837.
- Slovic, Paul. "Perception of risk," *Science* 230 (1987): 280-285.

- Smith, Jeffery A. "Freedom of Expression and the Marketplace of Ideas Concept from Milton to Jefferson," *Journal of Communication Inquiry* 7 (1981): 47-63.
- Startt, James D., and Sloan, William David. *Historical Methods in Mass Communication*. Hillsdale, NJ: Lawrence Erlbaum Associates, 1989.
- Strayer, Joseph R., ed. *The Interpretation of History*. New York: Peter Smith, 1950.
- Subcommittee on Superfund and Environmental Health of the U.S. Senate Environmental and Public Works Committee Regarding Oversight Hearing on the Federal Superfund Program's Activities to Protect Public Health. October, 2007.
- Sze, Julie, "Race and Power: An Introduction to Environmental Justice Energy Activism." In *Power, Justice and the Environment: A Critical Appraisal of the Environmental Justice Movement*. Edited by David Naguib Pellow and Robert J. Brulle Cambridge, MA; London: The MIT Press, 2005.
- Tarrow, Sidney. *Power in Movement: Social Movements, Collective Action and Politics*. 2nd ed. New York: Cambridge University Press, 1998.
- Taylor, Dorceta. "American Environmentalism: The Role of Race, Class, and Gender in Shaping Activism, 1820-1995," *Race, Gender, and Class* 5 (1997): 15-62.
- Teeter, Jr., Dwight L. "The First Amendment at Its Bicentennial: Necessary But Not Sufficient?" *Journalism Quarterly* 69, no. 1 (Spring 1992): 18-27.

_____. "King Sears, the Mob and Freedom of the Press in New York, 1765-76."
Journalism Quarterly 41 (Autumn 1964): 539-544.

_____. "Press Freedom and the Public Printing: Pennsylvania, 1775-
83." *Journalism Quarterly*, 45 (Autumn 1968): 445-451.

Teeter, Jr., Dwight L. and Loving, Bill. *Law of Mass Communications*, 12th ed.
New York: Thomson Reuters/Foundation Press, 2008.

Toxic Substances Control Act of 1976 15 U.S.C. §2601 et seq.

Train, Russell E. "EPA's task," *EPA Journal* (Nov./Dec. 1980).

Trigueiro, André. *Mundo Sustentável: Abrindo Espaço Na Mídia Para Um
Planeta Em Transformação*. São Paulo: Globo, 2005.

Uhl, Kristen Elizabeth. "The Freedom of Information Act Post 9/11:
Balancing the Public's Right to Know, Critical Infrastructure
Protection, and Homeland Security." *The American University Law
Review* 53 (2003): 261-312.

Uhm, Kiul. "The Founders and the Revolutionary Underpinning of the
Concept of the Right to Know." *Journalism & Mass Communication
Quarterly* 85, no. 2 (2008): 393-416.

Volokh, Alexander. "The Pitfalls of the Environmental Right to Know." *Utah
Law Review* (2002): 805-842.

Webler, Thomas, and Tuler, Seth. "Four Perspectives on Public
Participation Process in Environmental Assessment and Decision
Making: Combined Results from 10 Case Studies," *The Policy
Studies Journal* 34, no. 4 (2006): 699-722.

Weeks, Rebecca S. "The Bumpy Road to Community Preparedness: The
Emergency Planning and Community Right-to-know Act."

Environmental Law 4, no. 827 (1997-1998): 827-889.

Wells, Christina E. "'National Security' Information and the Freedom of
Information Act." *Administrative Law Review* 56, (2004):1195-1222.

West, Bernardette M., Lewis, Mary Jane, Greenberg, Michael R.,
Sachsman, David B., and Rogers, Renée M. *The Reporter's
Environmental Handbook*. 3rd ed. New Brunswick, NJ: Rutgers
University Press, 2003.

Wyss, Robert. *Covering the Environment: How Journalists Work the
Green Beat*. New York: Routledge, 2008.

Yankwich, Leon R., "Legal Implications of, and Barriers to, the Right to
Know," *Marquette Law Review* 40 (1956-1957): 3-37.

Zerbinos, Eugenia. "The Right to Know: Whose Right and Whose Duty?"
In *Censorship, Secrecy, Access, and Obscenity*. Edited by
Theodore R. Kupferman. Westport, CT: Meckler, 1990, 209-258.

APPENDIX

List of primary sources used in Chapter II

From the “Charters of Freedom” Digital Collection of the National Archives

(http://www.archives.gov/exhibits/charters/charters_downloads.html):

- THE DECLARATION OF INDEPENDENCE (1 page, 2 Versions)
- High-Resolution Declaration Image (1.43 MB). Image of the actual Declaration of Independence parchment.
- High-Resolution Declaration Stone Engraving Image (1.88 MB)

- THE CONSTITUTION OF THE UNITED STATES (4 pages)
- High-Resolution Constitution Page 1 Image: Article I (1.60 MB)
- High-Resolution Constitution Page 2 Image: Article II (1.50 MB)
- High-Resolution Constitution Page 3 Image: Articles III-IV (1.65 MB)
- High-Resolution Constitution Page 4 Image: Articles V-VII (1.44 MB)

- THE BILL OF RIGHTS (1 page)
- High-Resolution Bill of Rights Image (1.46 MB)

- VIRGINIA DECLARATION OF RIGHTS adopted by the Virginia Constitutional Convention on June 12, 1776.

From the Constitutional Collections of ConSource (<http://www.consource.org>):

- “Centinel III, To the people of Pennsylvania.” The Independent Gazette or The Chronicle of Freedom, Thursday Nov. 8, 1787, Volume VII, Number 596.

Personal Letters from the Online Library of Liberty

(http://oll.libertyfund.org/index.php?option=com_frontpage&Itemid=149):

- The Works of Thomas Jefferson, Federal Edition (New York and London, G.P. Putnam’s Sons, 1904-5). 12 vols.
http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php&title=1734.
- The Writings of Thomas Paine, Collected and Edited by Moncure Daniel Conway (New York: G.P. Putnam’s Sons, 1894). 4 Vols.
http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php&title=1743
- The Writings of James Madison, comprising his Public Papers and his Private Correspondence, including his numerous letters and documents now for the first time printed, ed. Gaillard Hunt (New York: G.P. Putnam’s Sons, 1900). 9 vols.
http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php&title=1933
- Collected Works of James Wilson, edited by Kermit L. Hall and Mark David Hall, with an Introduction by Kermit L. Hall, and a Bibliographical

Essay by Mark David Hall, collected by Maynard Garrison (Indianapolis: Liberty Fund, 2007). 2 vols.

http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php&title=2073

- Pamphlets on the Constitution of the United States, published during its Discussion by the People, 1787-1788, edited with notes and a bibliography by Paul Leicester Ford (Brooklyn, N.Y., 1888).
http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=1670&Itemid=99999999 List of authors: [Paul Leicester Ford](#), [Elbridge Gerry](#), [Noah Webster](#), [John Jay](#), [Melancthon Smith](#), [Pelatiah Webster](#), [Tench Coxe](#), [James Wilson](#), [John Dickinson](#), [Alexander Contee Hanson](#), [Edmund Randolph](#), [Richard Henry Lee](#), [George Mason](#), [James Iredell](#), [David Ramsay](#)
- Empire and Nation: Letters from a Farmer in Pennsylvania (John Dickinson). Letters from the Federal Farmer (Richard Henry Lee), ed. Forrest McDonald (Indianapolis: Liberty Fund 1999).
http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=690&Itemid=27

Excerpt (footnote 62)

Common Sense by Thomas Paine

<http://www.ushistory.org/PAINE/commonsense/singlehtml.htm>

To CONCLUDE, however strange it may appear to some, or however unwilling they may be to think so, matters not, but many strong and striking reasons may be given to show that nothing can settle our affairs so expeditiously as an open and determined declaration for independence. Some of which are,

First. — It is the custom of Nations, when any two are at war, for some other powers, not engaged in the quarrel, to step in as mediators, and bring about the preliminaries of a peace; But while America calls herself the subject of Great Britain, no power, however well disposed she may be, can offer her mediation. Wherefore, in our present state we may quarrel on for ever.

Secondly. — It is unreasonable to suppose that France or Spain will give us any kind of assistance, if we mean only to make use of that assistance for the purpose of repairing the breach, and strengthening the connection between Britain and America; because, those powers would be sufferers by the consequences.

Thirdly. — While we profess ourselves the subjects of Britain, we must, in the eyes of foreign nations, be considered as Rebels. The precedent is somewhat dangerous to their peace, for men to be in arms under the name of subjects; we, on the spot, can solve the paradox; but to unite resistance and subjection requires an idea much too refined for common understanding.

Fourthly. — Were a manifesto to be published, and despatched to foreign Courts, setting forth the miseries we have endured, and the peaceful methods which we have ineffectually used for redress; declaring at the same time that not being able longer to live happily or safely under the cruel disposition of the British Court, we had been driven to the necessity of breaking off all connections with her; at the same time, assuring all such Courts of our peaceable disposition towards them, and of our desire of entering into trade with them; such a memorial would produce more good effects to this Continent than if a ship were freighted with petitions to Britain.

Under our present denomination of British subjects, we can neither be received nor heard abroad; the custom of all Courts is against us, and will be so, until by an independence we take rank with other nations.

Full text Document:

LIBERTY OF THE PRESS By Thomas Paine .

http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1083&chapter=19329&layout=html&Itemid=27 (accessed February 6, 2009)

LIBERTY OF THE PRESS.¹

The writer of this remembers a remark made to him by Mr. Jefferson concerning the English newspapers, which at that time, 1787, while Mr. Jefferson was Minister at Paris, were most vulgarly abusive. The remark applies with equal force to the Federal papers of America. The remark was, that “the licentiousness of the press produces the same effect as the restraint of the press was intended to do, if the restraint was to prevent things being told, and the licentiousness of the press prevents things being believed when they are told.” We have in this state an evidence of the truth of this remark. The number of Federal papers in the city and state of New-York are more than five to one to the number of Republican papers, yet the majority of the elections go always against the Federal papers; which is demonstrative evidence that the licentiousness of those papers is destitute of credit.

Whoever has made observation on the characters of nations will find it generally true that the manners of a nation, or of a party, can be better ascertained from the character of its press than from any other public circumstance. If its press is licentious, its manners are not good. Nobody believes a common liar, or a common defamer. Nothing is more common with printers, especially of newspapers, than the continual cry of the *Liberty of the Press*, as if because they are printers they are to have more privileges than other people. As the term *Liberty of the Press* is adopted in this country without being understood, I will state the origin of it, and show what it means. The term comes from England, and the case was as follows:

Prior to what is in England called *the Revolution*, which was in 1688, no work could be published in that country without first obtaining the permission of an officer appointed by the government for inspecting works intended for publication. The same was the case in France, except that in France there were forty who were called *Censors*, and in England there was but one, called *Imprimeur*.

At the Revolution, the office of Imprimeur was abolished, and as works could then be published without first obtaining the permission of the government officer, the press was, in consequence of that abolition, said to be free, and it was from this circumstance that the term *Liberty of the Press* arose. The press, which is a tongue to the eye, was then put exactly in the case of the human tongue. A man does not ask liberty before hand to say something he has a mind to say, but he becomes answerable afterwards for the atrocities he may utter. In like manner, if a man makes the press utter atrocious things, he becomes as answerable for them as if he had uttered them by word of mouth. Mr. Jefferson has said in his inaugural speech, that "*error of opinion might be tolerated, when reason was left free to combat it.*" This is sound philosophy in cases of error. But there is a difference between error and licentiousness. Some lawyers in defending their clients, (for the generality of lawyers, like Swiss soldiers, will fight on either side,) have often given their opinion of what they defined the liberty of the press to be. One said it was this, another said it was that, and so on, according to the case they were pleading. Now these men ought to have known that the term *liberty of the press* arose from a fact, the abolition of the office of Imprimeur, and that opinion has nothing to do in the case. The term refers to the fact of printing *free from prior restraint*, and not at all to the matter printed, whether good or bad. The public at large,—or in case of prosecution, a jury of the country—will be judges of the matter.

Thomas Paine.

October 19, 1806.

[1] From the *American Citizen*, October 20, 1806. Paine had witnessed in France (see vol. iii. p. 138) the terrible effects of personal libels shielded under the liberty of press.—*Editor*.

Other Sources:

- Bolla, William, *The Freedom of Speech and Writings Upon Public Affairs, Considered, with a Historical View*. London: S. Baker, 1766.

List of Primary Sources Used in Chapters 4 and 5

- Douglas M. Costle. EPA 202-K-01-002. January 2001. Interview conducted by Dr. Dennis Williams on August 4-5, 1996, at the Ritz-Carlton Hotel, McLean, Virginia, and at Douglas M. Costle's home in Vermont. <http://www.epa.gov/history/publications/print/costle.htm> (accessed February 15, 2009).
- Anne M. Gorsuch. "Views from the former administrators," EPA Journal - November 1985.
<http://www.epa.gov/history/topics/epa/15e.htm#Gorsuch> (accessed November 05, 2008).
- Hearing before the Subcommittee on Commerce, Transportation, and Tourism of the Committee on Energy and Commerce, House of Representatives, Ninety-ninth Congress, First Session on Superfund Provisions: Community Right-To-Know and Cleanup of Abandoned Hazardous Wastesites Located at Federal Facilities. December 20, 1985. Serial No. 99-72.
- Subcommittee on Superfund and Environmental Health of the U.S. Senate Environmental and Public Works Committee Regarding Oversight Hearing on the Federal Superfund Program's Activities to Protect Public Health. October, 2007.

- LEXIS NEXIS results were too extensive to be inserted here. The articles were saved to an electronic file that can be consulted by contacting the researcher. A description of the search can be found in chapter 1.

VITA

Bernardo Heisler Motta is an award-winning researcher interested in the intersection between communication and public policy in issues about environment, media ethics, and international communication for sustainable development. Since the start of the Ph.D. program in Communication and Information at the University of Tennessee, Motta has been recognized with awards for his research on environment and the right to know (2008) and for his teaching practices (2008-2009) among others. Motta also received the Outstanding Doctoral Award in Science Communication in 2007.

An environmental communicator and lawyer from Rio de Janeiro, Brazil, Motta has worked as a writer and consultant in environmental communication, law, and policy for different organizations related to health and environmental issues.

From 2003 to 2005, at the same time he was pursuing a Master in Social Communication, he worked as a communication and law consultant for the Getulio Vargas Foundation, a top research institution in Brazil, at the International Sustainable Development Center (CIDS). During that time, Motta also co-edited the version for Portuguese speaking countries and authored for the English version of the International Center for Trade and Sustainable Development's (ICTSD) publication Bridges: between trade and sustainable development.

In 2005, Motta came to The University of Tennessee's doctoral program in Communication and Information and is currently working on his dissertation on the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 and its interactions with the work of environmental communicators. Motta is also the instructor of record of JEM 201 - Writing for the Mass Media (since the spring of 2006) and of a lab section for JEM 200 - Introduction to News Writing (since the spring of 2008).

Motta will start as Assistant Professor at Bridgewater College, VA in August 2009.