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NOTE

THE TOXIC TIME BOMB IN THE BORDERLAND: CAN THE "EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT" HELP?

INTRODUCTION

The growth of *maquiladoras*, factories jointly owned by Mexican and United States corporations, on the Mexican side of the U.S.-Mexico border, presents a uniquely important economic opportunity as well as a grave environmental threat to both Mexico and the United States. Arguably, the growth of the *maquiladoras* is unparalleled in the history of Mexican economic development, but the threat to the environment may also be unparalleled. Evidence of unregulated use and disposal of toxic chemicals in the *maquiladoras* is well substantiated.¹ To diminish this threat, both countries must be accountable for the toxic chemicals used in the *maquiladoras*.

To adequately address the toxic threat of the *maquiladoras*, the Congress should amend the Superfund legislation or write new legislation making U.S. corporations accountable for the toxics they use in their *maquiladoras*. The U.S. Congress enacted the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), otherwise known as the Superfund Act, to control toxic chemical disposal in the United States and any of the environmental damage from toxics.² The "Emergency Planning and Community Right-To-Know Act" (EPCRA),³ part of the "Superfund Amendments and Reauthorization Act" (SARA)⁴ which amended the original Superfund Act, establishes reporting and planning requirements for businesses in the United States that use or produce toxic chemicals. The Superfund Act, however, pertains only to businesses within the United States. In contrast, other U.S. legislation addresses the extraterritorial handling of toxics or pollutants,⁵ controlling activities such as offshore drilling or movements of foreign ships. There

1. See generally, Sanchez, *Health and Environmental Risks of the Maquiladora in Mexicali*, 30 Nat. Res. J. 163 (1990).

2. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767 (Codified as amended in scattered sections of 26 U.S.C. and 42 U.S.C.).

3. 42 U.S.C. §§ 11001-11050 (1982 & Supp. V 1987).

4. Pub. L. No. 99-499, 100 Stat. 1613 (Codified as amended in scattered sections of 42 U.S.C.).

5. Outer Continental Shelf Act, Pub. L. No. 95-372, 92 Stat. 632 (Codified as amended in scattered sections of 43 U.S.C.); Clean Water Act, Pub. L. No. 95-217, 91 Stat. 1566 (Codified as amended in scattered sections of 33 U.S.C.); National Environmental Protection Act, Pub. L. No. 91-190, 83 Stat. 852 (Codified as amended in scattered sections of 42 U.S.C.).

is precedent for legislation controlling extraterritorial activities by U.S. corporations.

This note will briefly examine the phenomenon of the *maquiladoras*. It will then summarize and analyze the pertinent sections of EPCRA with respect to the *maquiladoras* and will briefly examine other U.S. legislation controlling extraterritorial use of toxics. Finally, this note proposes possible Superfund amendments which could address the problem of toxic chemical use in the *maquiladoras*.

MAQUILADORAS: THEIR GROWTH AND STRUCTURE

Maquiladoras are a response to two different needs: the need in Mexico for growth industries to create jobs and attract foreign capital, and the need of U.S. industry to obtain cheap labor. Generally, both Mexico and the United States consider the *maquiladora* experiment an economic success.⁶ Currently, almost every major city in northern Mexico has an industrial park composed of *maquiladoras*. Ciudad Juarez, located across the border from El Paso, has at least eighteen industrial parks manufacturing automobile wire harnesses to computer chips.⁷ Under Mexican law, Mexicans must own 51 percent of a *maquiladora*; the remaining 49 percent can be financed by foreigners.⁸

One of the benefits for the U.S. corporations includes a favorable tariff status for goods manufactured in the *maquiladoras*. These corporations pay only a "value added" tax on goods that are manufactured in the *maquiladoras* and imported into the United States.⁹ Additionally, the *maquiladoras'* proximity to the United States enhances the U.S. corporations' connection to Latin American markets.¹⁰

Although both countries have focused on the overall economic success of the *maquiladoras*,¹¹ "attention has shifted recently to hazardous waste emissions from the *maquiladora*."¹² The relaxed environmental controls on the *maquiladoras* has lured U.S. companies to the borderland. "The relocation of 'dirty' industries to avoid strict environmental controls in the industrialized countries is a pattern followed by international capi-

6. Sanchez, *supra* note 1 at 164; See generally Hartsfield, *Maquilas and the Border: Becoming a Way of Life*, 12 N.M. Bus. J. 12 (1988); Hartsfeld, *Maquilas Are Here to Stay*, 12 N.M. Bus. J. 74 (1988).

7. See generally 1988 Directory of In-Bond Plants (*Maquiladoras*) in Mexico (Mexico Communications 1988) (This directory contains an exhaustive listing of *maquiladoras*, their locations, products produced, and names of Mexican and U.S. owners).

8. A *Maquiladora* Conference: The Legal and Practical Issues. Snell and Wilmer Law Firm, Phoenix, Arizona (Nov. 10, 1988) (Comments, p. 3, by Jaime Alvarez Soberanis, Esq., Gen. Dir. of Foreign Investment, Repub. of Mexico).

9. Sanchez, *supra* note 1 at 164.

10. *Id.* at 164.

11. *Supra*, note 7.

12. Sanchez, *supra* note 1 at 163.

tal."¹³ Corporate investment in South Africa, Brazil, India, and Mexico are examples of this process.¹⁴ Bhopal, India is perhaps the most horrifying example of what can happen when toxic controls are not in place. In Bhopal, in 1984, a chemical factory exploded releasing large amounts of chemicals into the environment killing and injuring thousands of people. The less dramatic but more probable scenario in the borderland is the gradual contamination of the groundwater which occurred in Love Canal in 1978.¹⁵ Uncontrolled toxic dumping can silently poison the water source for the entire borderland region.

One of the most disturbing facts is the uncertainty of what toxic chemicals are being used in the *maquiladoras*.¹⁶ Presently, Mexico and the United States have concluded treaties regulating toxic chemical use and its disposal. However, these are insufficient to meet any emergency situations regarding the *maquiladoras*¹⁷ because they do not require an inventory of toxics used by *maquiladoras*. Consequently, lists of toxics used in the *maquiladoras* are almost nonexistent.¹⁸ Without accurate lists, the Mexican and U.S. authorities are virtually unprepared to effectively respond to a toxic tragedy.

Although no comprehensive lists exist, it is known that three general types of hazardous materials are used in *maquiladoras*: solvents, acids and alkalines, and heavy metals.¹⁹ Evidence indicates that management at the *maquiladoras* is dumping these toxics in areas near the factories.²⁰ The contamination of the environment caused by this dumping presents a serious problem for Mexico and the United States. Water source contamination could hamper existing and future economic development, especially in the arid Southwest where water availability can determine the success or failure of any development plan. Amending the Superfund Act may be an answer to this potential problem.

OVERVIEW OF THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)

In enacting EPCRA, one of Congress' purposes was to prepare states and local areas within the United States for chemical disasters similar to

13. *Id.* at 163.

14. *Id.* at 163.

15. See N.Y. Times, Dec. 4, 1984, at A1; Washington Post, Dec. 6, 1984, at A22; N.Y. Times, Aug. 5, 1988, at B1 (Summary of the Love Canal disaster).

16. Sanchez, *supra* note 1 at 168.

17. See generally Note, Transboundary Waste Dumping: The United States and Mexico Take a Stand, 27 Nat. Res. J. 941 (1987) (D. Maes).

18. Sanchez, *supra* note 1 at 171.

19. *Id.* at 172-173; see generally *supra* note 7.

20. Note, *supra* note 17 at 94.

Bhopal. Sections 11001-11005 outline the process of establishing state and local commissions, the development of emergency response plans, and qualitative reporting requirements in the event of a toxic chemical disaster or release. Sections 11021-11023 list the reporting requirements for industries that use toxic chemicals.

This note will focus on sections 11002 (Substances and facilities covered and notification), 11003 (Comprehensive emergency response plans), 11004 (Emergency notification) and sections 11021-11023 (Reporting requirements).

Sec. 11002

Section 11002 establishes the types of substances and facilities that are controlled by EPCRA which require emergency planning notification. Under this section, the Environmental Protection Agency (EPA) Administrator compiles a list of "hazardous substances" that are subject to the EPCRA reporting regulations.²¹ The EPA then determines dangerous "threshold" quantities for these substances.²² Any facility using a substance on the list that surpasses the threshold quantity is subject to the EPCRA regulations and must make a report to the state commission.²³ Local governments may designate other facilities which will be subject to the requirements of Section 11002, if there is sufficient public notice and an opportunity for comment.²⁴ Upon notification from a facility, the state commission must make a report to the EPA.²⁵

Sec. 11003

Each state local committee must prepare an emergency response plan to react to a possible toxic tragedy.²⁶ The plan must identify: the facilities using the toxics subject to EPCRA; the procedures for handling a toxic emergency; the notification procedures; the available emergency equipment; and any other useful measures to aid in the event of an emergency.²⁷ The section also covers the relationship between the commission and the facility, and emergency plan review procedures.

Sec. 11004

Section 11004 outlines the emergency notification procedures, detailing which types of releases require what kind of notification.²⁸ There are three

21. 42 U.S.C. § 11002(a) (1982 & Supp. V 1987).

22. *Id.*

23. *Id.* at § 11002(c).

24. *Id.* at § 11002(b)(2).

25. *Id.* at § 11002(d).

26. 42 U.S.C. § 11003(a) (1982 & Supp. V 1987).

27. *Id.* at § 11003(c).

28. 42 U.S.C. § 11004(a) (1982 & Supp. V 1987).

types of releases: (1) release of toxics on the EPA list that requires CERCLA notice under 42 U.S.C. section 9603(a) (1982 & Supp. V 1987); (2) release of toxics on the EPA list that requires no CERCLA notice; and (3) release of toxics not on the EPA list that requires CERCLA notice.²⁹ If a substance is listed under section 11002(a) and listed under 9603(a) of CERCLA, and the release is more than one pound, then the facility must report the release. If the released substance is listed under section 11002(a) but requires no CERCLA notice, then the facility must report the release if the release is not federally permitted, is an amount which the EPA has determined must be reported, and is released in a manner requiring notification under section 9603(a) of CERCLA.³⁰

Upon such a release, the facility must immediately report to the commission: the name of the substance; whether the substance was on the list; an estimate of the quantity released; the time and duration of release; into what media the release occurred; the risks posed by a substance; the proper precautions to take; and whom to contact for more information.³¹

Sec. 11021

If the facility is regulated by the Occupational Safety and Health Act (OSHA), the owner or operator must submit either a list or a Material Safety Data Sheet (MSDS)³² of the toxic chemicals used on the facility premises to the local planning committee, the state commission, and the local fire department. The facility's toxic chemicals must be listed under the scheme set up by OSHA and must be further divided into categories of health and physical hazards.³³

The EPA may set the threshold quantities of chemicals requiring reports.³⁴ The list must be submitted to the local planning committee and the general public on demand subject to trade secret considerations.³⁵ Finally, this section defines hazardous chemicals according to the Code of Federal Regulations.³⁶

Sec. 11022

Section 11022 outlines the requirements for the filing of a separate form known as an "Emergency and hazardous chemical inventory form."

29. Pub. L. No. 95-510, 94 Stat. 2767 (Codified as amended in scattered sections of 26 U.S.C. and 42 U.S.C.).

30. 42 U.S.C. § 11004(a) (1982 & Supp. V 1987).

31. *Id.* at § 11004(b).

32. The MSDS is a data sheet required under the Occupational Safety and Health Act of 1970. Pub. L. No. 91-596, 84 Stat. 1590 (Codified as amended in scattered sections of 15 U.S.C.); 42 U.S.C. § 11021(a)(1) (1982 & Supp. V 1987).

33. 42 U.S.C. § 11021(a)(1) and (2).

34. *Id.* at § 11021(b).

35. *Id.* at § 11021(c); 42 U.S.C. § 11042(d) (1982 & Supp. V 1987).

36. 29 C.F.R. § 1910.1200(c) (1989).

If a facility is required to file an MSDS under OSHA, then the facility must file this additional form. The form must be submitted to the same groups as the MSDS.³⁷ Additionally, the EPA may establish threshold quantities for hazardous chemicals which require an MSDS³⁸ subject to this section's reporting requirements.³⁹

This section provides for two tiers of information: Tier I and Tier II. Tier I lists general information concerning the chemicals according to health and physical hazards.⁴⁰ The required information is an estimate of the maximum amount of hazardous chemicals in each category at the facility, an estimate of the average daily amount of hazardous chemicals, and an estimate of the daily amounts for the preceding year.⁴¹

Tier II information is more specific and is available only upon request. It includes the name of the chemical, an estimate of the maximum amount of the hazardous chemical present during the prior year, a brief description of the storage technique, the location of the chemical at the facility, and an indication of whether the owner chooses to withhold location information of a specific hazardous chemical.⁴²

Availability of Tier II information is determined according to the status of the requestor.⁴³ State commissions, local committees, and fire departments shall have availability to all Tier II information; state and local officials, in their official capacity, can obtain Tier II information upon request; the public must show a need for certain Tier II information.⁴⁴

Sec. 11023

This portion of the statute requires facilities to report releases on a standardized form. This form is used to notify the public of releases of toxic chemicals and also to assist in research and the development of regulations and controls.⁴⁵ This section applies to facilities: which employ 10 or more persons; are listed in the Standard Industrial Classification Codes 20 through 39; and use or manufacture chemicals in excess of a certain quantity⁴⁶ listed in Committee Print Number 99-169 of the Senate Committee on Environment and Public Works entitled "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986."⁴⁷ The EPA can revise this list within certain

37. 42 U.S.C. § 11022(a) (1982 & Supp. V 1987).

38. *Id.* at § 11022(c).

39. *Id.* at § 11022(b).

40. *Id.* at § 11022(d)(1).

41. *Id.* at § 11022(d)(1)(B).

42. *Id.* at § 11022(d)(2).

43. *Id.* at § 11022(e).

44. *Id.* at § 11022(e)(1), (2) and (3).

45. 42 U.S.C. § 11023(h) (1982 & Supp. V 1987).

46. *Id.* at § 11023(b)(1)(a).

47. *Id.* at § 11023(b) and (c).

limits.⁴⁸ The threshold for reporting is determined by the amount of toxic chemicals used or manufactured at a facility.⁴⁹ Among other things, the facility must report for each chemical at the facility: whether the chemical is produced, used, or stored at the site; an estimated range of the maximum amounts of the chemical present during the preceding year; the disposal methods and an estimate of the efficiency of that method; and the annual quantity of the toxic chemical entering the environment.⁵⁰ The rest of the section concerns the requirements for reporting frequencies, EPA management of data, and the use of studies to determine the accuracy of the information on the report.⁵¹

EPCRA places a burden on U.S. corporations to report to local, state, and national bodies the status of toxic chemicals located in their U.S. facilities. To answer the question of whether EPCRA extends to regulate the toxic chemicals used in foreign subsidiaries of U.S. corporations, this note will first examine other environmental legislation that may regulate a similar situation and then compare their intent to the intent of EPCRA.

OTHER LEGISLATION CONTROLLING EXTRATERRITORIAL POLLUTION

Among other statutes that regulate and control the environment, the Outer Continental Shelf Lands Act Amendment of 1978,⁵² the Clean Water Act (CWA),⁵³ the National Environmental Policy Act (NEPA),⁵⁴ and portions of CERCLA contain provisions regulating the use or production of pollutants, usually oil. These statutes regulate situations analogous to the *maquiladoras*, focusing on facilities that are technically outside of U.S. territory or on the liability of foreign polluters damaging U.S. interests.

The Outer Continental Shelf Lands Act Amendment of 1978

The Outer Continental Shelf Lands Act Amendment of 1978 attempted to balance the need to economically exploit the Continental Shelf with the need to protect the shelf environment. Congress realized that affected localities needed access to information concerning activities on the Continental Shelf to be better prepared to react to any environmental mishap, such as an oil spill.⁵⁶

48. *Id.* at § 11023(d).

49. *Id.* at § 11023(f).

50. *Id.* at § 11023(g)(1)(C).

51. *Id.* at § 11023(i), (j), (k), and (l).

52. 43 U.S.C. § 1331 (1982 & Supp. V 1987).

53. 33 U.S.C. § 1321 (1988).

54. 42 U.S.C. § 4331 (1982 & Supp. V 1987).

55. 43 U.S.C. §§ 1811 *et seq.* (1982 & Supp. V 1987).

56. H.R. Rep. No. 95-590, 95th Cong., 2d Sess. 3, *reprinted in* 1978 U.S. Code Cong. & Admin. News 1450, 1527.

Under the act, when an accident occurs, the person in charge of a vessel or offshore facility must report the incident to the Secretary of the Interior.⁵⁷ The Outer Continental Shelf Lands Act mandates that owners of vessels spilling oil are jointly, severally, and strictly liable for any damage.⁵⁸ This is indicative of Congress' deep concern for remedying damage caused by offshore exploitation of the Shelf.

Analogously, the borderland in Mexico could be considered as an "industrial continental shelf" that is being exploited by U.S. corporations. Regulations similar to those protecting U.S. residents from oil spills and their aftermath could be enacted against these U.S. corporations in Mexico. "Toxic chemical spills" from *maquiladoras* are as dangerous as oil spills, and similar controls are needed.

The Clean Water Act

The Clean Water Act (CWA),⁵⁹ like the Outer Continental Shelf Act, protects against oil and hazardous substance pollution and other harm in U.S. waters.⁶⁰ The CWA specifically states the congressional policy against any discharge of oil or hazardous substances into U.S. waters,⁶¹ which include the "contiguous zone" of the United States. The "Contiguous zone" comprises the entire zone designated under the Convention on Territorial Sea and the Contiguous Zone.⁶² When oil or a hazardous substance escapes or leaks from an offshore facility, persons in charge of the facility must report the accident to the U.S. Government.⁶³ The statute outlines measures for allocating liability, penalties, and damage awards when a spill occurs.

Much like the Outer Continental Shelf Act, the Clean Water Act addresses extraterritorial discharges of hazardous substances. Similarly, the situation of the *maquiladoras* can be equated to production and transportation of oil on the contiguous seas of the U.S. Both greatly benefit the U.S. and yet both pose similar threats to the U.S. environment and should be controlled.

National Environmental Policy Act (NEPA)

Although NEPA⁶⁴ does not directly address the problem of the *maquiladoras*, it generally outlines the U.S. policy goals for the environ-

57. 43 U.S.C. § 1816(a) (1982 & Supp. V 1987).

58. 43 U.S.C. § 1813 (1982 & Supp. V 1987).

59. 33 U.S.C. § 1321(b) (1988).

60. *Id.* at § 1321(b); *see generally*, Senate Rep. No. 95-370, 95th Cong. 1st Sess. 3, *reprinted in* 1977 U.S. Code Cong. & Admin. News 4326, 4326.

61. *Id.* at § 1321(b).

62. *Id.* at § 1321(a)(9).

63. *Id.* at § 1321(b)(5).

64. 42 U.S.C. § 4331 (1982 & Supp. V 1987).

ment.⁶⁵ The policy calls for responsible use of the environment to benefit all in a healthy manner. Congress enacted NEPA to help control and avoid situations like the uncontrolled use of toxic chemicals in *maquiladoras*. The threat of a hazardous chemical tragedy from the *maquiladoras*, unregulated by any pertinent legislation, violates the spirit of NEPA.

The analogy between the Outer Continental Shelf Lands Act, the Clean Water Act, NEPA, and the *maquiladoras*, however, is weak because the geographical areas controlled by these acts are not sovereign. Mexico is a sovereign nation and would clearly balk at any U.S. legislation that would attempt to control corporations within Mexican boundaries.

Past U.S. legislation, though, has controlled the actions of U.S. corporations acting abroad and foreign corporations affecting U.S. interests. For example, the U.S. Congress in 15 U.S.C. section 78dd (1988), part of the Security and Exchange Act, tried to address a problem similar to the *maquiladoras*. Section 78dd of the act gives jurisdiction to the Federal courts over the actions of U.S. corporations abroad that may affect the interests of U.S. citizens in the securities field.⁶⁶ Section 78dd lends credence to the position that the U.S. government could enact jurisdictional legislation over U.S. corporations investing in *maquiladoras* making the corporations responsible for any ecological problems affecting U.S. citizens.

EPCRA'S LEGISLATIVE HISTORY AND IMPLICATIONS FOR THE MAQUILADORAS

Passing SARA, which includes EPCRA, involved an arduous fight among many competing interests. The key issues leading to the failure of the original CERCLA legislation were the exorbitant cost of implementing the original legislation and the ensuing poor results.⁶⁷ An examination of the available history, however, reveals no evidence that the lawmakers intended EPCRA to apply to a situation like the *maquiladoras*.⁶⁸ Consequently, to determine if EPCRA applies to the U.S. corporations holding interests in *maquiladoras*, rules of statutory interpretation require an analysis of the language of the statute.

EPCRA is an example of Congress' intent to protect the environment.⁶⁹ Other legislation, as discussed, shows Congress' intent to regulate environmentally hazardous activities on the contiguous waters of the United

65. *Id.* at § 4331(a) and (b).

66. See *Zoelsch v. Arthur Andersen & Co.*, 824 F.2d 27 (App. D.C. 1987); see generally Annotation, Subject Matter Jurisdiction of Securities Fraud Action Based on Foreign Transactions Under Securities Exchange Act of 1934, 56 A.L.R. Fed 288 (1982).

67. President Reagan's Statement on Signing SARA, Pub. Papers 1401 (1986).

68. See generally Legislative History of Superfund Amendments and Reauthorization Act of 1986, 1986 U.S. Code Cong. and Admin. News 2835-3441.

69. *Id.*

States and to hold U.S. and foreign corporations responsible for any damage they cause due to a hazardous substance spill. Joining both intents, it is logical that Congress would also want to regulate or monitor the activities of the *maquiladoras*.

The language of EPCRA applies to U.S. industries within U.S. borders, but is inapplicable to U.S. corporations investing in *maquiladoras*.⁷⁰ A *maquiladora* using toxic chemicals across the border from El Paso is as dangerous as a plant operating in El Paso itself. However, since the *maquiladoras*, as Mexican corporations, are outside of U.S. regulatory jurisdiction, the United States cannot, short of a tariff or regulatory tax, directly control the *maquiladoras'* use and handling of toxic chemicals. The United States could enact legislation similar to section 78dd of the Security and Exchange Act to create jurisdiction over foreign environmental accidents that affect U.S. citizens.⁷¹

EPCRA cannot be construed to control foreign factories presenting a danger to the U.S. environment. Construing EPCRA to apply to a U.S. corporation that uses or produces any of the listed chemicals in any facility it owns or co-owns would be a gigantic leap unsupported by EPCRA's legislative history.

Possible amendments to EPCRA

Although EPCRA does not currently apply to the *maquiladoras*, Congress could amend the statute to make it applicable. The toxic threat is so immediate that changes in sections 11002, 11021, 11022, and 11023 of EPCRA are critical.

Section 11002(b) should be amended to include foreign interests held by U.S. corporations. The current language reads "a facility is subject to the requirements of this subtitle if a substance on the list referred to in subsection (a) is present at the facility in an amount in excess of the threshold planning quantity established for such substance."⁷² A possible amendment would remove the phrase "at the facility," and replace it with "at any facility within 100 miles of a U.S. border that receives at least 25 per cent of its investment from a U.S. corporation." This broad language would bring toxic chemicals used at the *maquiladoras* under the regulation of EPCRA.

Sections 11021-11023 would be more difficult to amend since their requirements are based on OSHA. In these sections, those facilities which are required to file hazardous chemical reports (MSDS forms) are also required to file reports under EPCRA. In order to bring the *maquiladoras* under the regulation of EPCRA, the OSHA legislation would have to be

70. See 42 U.S.C. § 9601 (1982 & Supp. V 1987).

71. See *supra* note 65.

72. 42 U.S.C. § 11002(b) (1982 & Supp. V 1987).

amended to specifically apply to those foreign interests held by U.S. corporations. The OSHA legislation could also be amended to encompass U.S. corporations investing in *maquiladoras*.⁷³

Nevertheless, if OSHA could not be changed, an amendment in section 11002 would greatly increase the accountability of the *maquiladoras* using toxic chemicals. Also, the amendment would be beneficial since it would enable those U.S. communities close to the *maquiladoras* to prepare for any possible future tragedies. The amendment would also help the Mexican authorities in planning for future toxic emergencies.

CONCLUSION

The threat of a toxic disaster affecting U.S. border communities is a distinct possibility. In the case of El Paso which is within walking distance from Ciudad Juarez, any toxic release by a *maquiladora* would immediately affect El Paso. A disaster on the scale of Bhopal would devastate both Ciudad Juarez and El Paso. Any contamination of the groundwater located below the borderland would impede and even stop any meaningful future economic development in the region. The current lack of regulatory legislation addressing this problem creates a void threatening both U.S. and Mexican national resources.

Any regulation of corporations with an interest in foreign industries must be balanced against the benefit received from U.S. investment in that industry. If strict regulation would dampen interest in joint ventures, thereby hurting foreign and U.S. economic interests, then a different approach should be considered. Today, the *maquiladoras* represent a very important opportunity for both the United States and Mexico, and any regulation should consider this fragile economic relationship. However, it is also apparent that environmental concerns may outweigh Mexican-U.S. economic interests, and that strict regulations on *maquiladoras* are justifiable since protection and wise management of the borderland's natural resources will ensure continued economic growth in the region.

Nevertheless, there is a definite need for oversight of the *maquiladoras* and the Congress should take steps to remedy this situation.

ROBERT SCOTT

73. 29 U.S.C. § 653 (Supp. V 1987). This section now reads in part, "(a) This chapter shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Lake Island, Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 *et seq.*], Johnston Island and the Canal Zone." The following language could be added to control U.S. industries investing in *maquiladoras*, "and any overseas factories within 100 miles of a U.S. border that receives 25% or more of its investments from a U.S. corporation." This language could also be applied to § 655 of the act which controls hazardous waste operations.