



ANOTHER PUBLIC PROTECTIONS THREAT

Reasons to Oppose Vitter Amendment to Minimum Wage Bill

January 24, 2007

Industry will seize yet more special breaks at the expense of public health, safety, civil rights, and the environment if the Vitter “small business” amendment to the minimum wage bill passes in the Senate. Under the guise of benefiting “small business,” this measure would create incentives for 90-95 percent of business interests to refuse to provide the information we need to protect the public.

Letting Small Business Deny Us the Information We Need

The amendment, introduced by Sen. David Vitter (R-LA), endangers the public’s right to know by prohibiting federal agencies from fining small businesses for “first-time” violations of paperwork requirements as long as the company complies within six months of *notice of the violation* (with some enumerated exceptions, such as tax collection paperwork). The paperwork requirements not only include reports to the government, but all kinds of regulatory information collection efforts. Currently, agencies almost always waive fines for first-time violations. In fact, the amendment could encourage even more violations, because small businesses would know they could avoid reporting requirements – without fear of fine – until they are caught for the first time.

Businesses could have *many* “first-time” violations under the Vitter amendment. As the “first-time” exemption is defined, an agency can only count violations from *that* agency’s requirements – and cannot look at a small business’s violations of requirements from *other* agencies. A business could fail to comply with a workplace safety requirement for OSHA, a toxic substance report for EPA, and a pension fund report under ERISA – each time getting the “first-time” violator exemption.

The Public Needs This Information

These measures threaten the public’s ability to demand the information we need to keep the public healthy and safe. What’s at stake is not simply mindless government “paperwork” – it is any information collection or reporting that affects ten or more people, which means almost every requirement for reporting, labeling, or collecting the information we need to protect the public.

Gathering and reporting information is the very basis of public protection. For example, when a worker safety protection is issued, businesses often need to report information so that agencies know whether or not businesses are actually complying and whether workers are getting the full benefit of the new protective standard. Businesses might also be required to post information

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1742 Connecticut Ave NW
Washington, DC 20009



tel: 202.234.8494
fax: 202.234.8584



email: ombwatch@ombwatch.org
web: <http://www.ombwatch.org>

so that workers know about their rights or learn about potential hazards and protect themselves on the job. Under the "small business" exemptions amendment, corporate special interests would be allowed to deny us this needed information without consequences.

Delaying Information Can Be Disastrous

The penalty exemption periods for correcting so-called "first time" violations – six months after notification for most violations, and 24 hours for selected public health and safety violations – would allow small businesses to endanger us all with delays in releasing the information that we need. Time is of the essence with many information requirements. For example, in the case of chemical plants, we need information to protect workers and our communities by planning responses to potential accidents. For a plant to correct emergency information violations 24 hours after a chemical explosion may be too little, too late.

The Public Health and Safety Clauses Are Too Weak

The Vitter amendment does set aside some special provisions for a "first-time" information violation that "presents a danger to the public health and safety." As a gesture to the public interest concerns that have been raised against this same language in previous Congresses, the amendment shortens the penalty exemption period from six months to 24 hours for this class of information violations. Keep in mind that the 24-hour clock does not start running when the violation occurs, but only with notice from the agency that the violation must be corrected – which could be months after the violation.

Moreover, it can be difficult for an agency to know whether there is a danger to health or safety if it does not have the appropriate information to draw that conclusion in the first place. Routine collection of information could alert public health or safety agencies to signs of developing problems that need to be addressed.

There is Too Much at Stake

We need information to be able to protect the public. The Vitter amendment could have devastating consequences for public safeguards. For example:

- Firefighters rely on businesses to report on hazardous chemicals so that they can respond safely and effectively to potential chemical fires. The first-time violator immunity could reduce disclosure of chemical hazards and put firefighters at risk.
- Employers maintain injury logs at the workplace and make this list available to employees and OSHA inspectors. This key tool for employees to identify and correct hazards would be affected by the amendment's one free pass to cover up a violation.
- Requirements that relate to the generation of a record would be affected as well. For example, coal mining operators are required to have ventilation and emergency plans and monitor methane and coal dust levels. Under the Vitter amendment, coal mining operators would get a first time pass for failing to have plans or monitoring in place.
- EPA relies on self-monitoring and reporting under the Clean Water Act and the Safe Drinking Water Act to head off potential dangers to the water supply. The information requirement is critical: without reliable reporting, EPA cannot assure water quality. The amendment puts that important safeguard at risk.

Special Favors for Special Interests

Instead of ensuring that the public has the information it needs to strengthen safeguards for public health, safety, civil rights, and environment, the Vitter amendment offers special favors to corporate special interests. It exploits the mom-and-pop romantic fiction of “small business,” which is defined so broadly that 90-95 percent of American businesses fall under the category. It does not matter to the public whether a chemical fire or workplace injury is caused by a “small business” or a large one. Helping small businesses should not mean hurting the public.