

March 31, 2011

Dear Senator,

As we approach the 10th anniversary of the September 11th attacks it is unacceptable that more than 100 million Americans still live in the danger zone of a chemical disaster. To address this, Senator Frank Lautenberg introduced the Secure Chemical Facilities Act (S. 709) and the Secure Water Facilities Act (S. 711). Together, these bills close dangerous gaps in current chemical plant security laws. Our groups urge you to co-sponsor and support enactment of this legislation.

Chemical plants and other chemical facilities remain one of the sectors of America's infrastructure most vulnerable to terrorist attacks. The Department of Homeland Security (DHS) has identified approximately 5,000 "high-risk" U.S. chemical facilities. In 2004, the Homeland Security Council planning scenario projected that an attack on a chemical facility would kill 17,500 people and send an additional 100,000 people to the hospital.

A December 2009 Congressional Research Service review of U.S. Environmental Protection Agency (EPA) data shows that 91 chemical facilities each put 1 million or more people at risk. The current interim statute enacted as a rider to the 2007 Homeland Security appropriations bill temporarily authorized the Chemical Facility Anti-Terrorism Standards (CFATS) to give Congress time to enact comprehensive legislation. Continuing to extend CFATS without establishing a comprehensive program will only continue putting millions of Americans at needless risk.

Examples of inherent flaws in the interim (CFATS) statute include:

- It prohibits the DHS from requiring any specific "security measure" whatsoever.
 - It fails to develop the commonsense use of *smart security* -- safer and more secure chemical processes that can cost-effectively prevent terrorists from triggering chemical disasters.
 - It explicitly exempts thousands of chemical and port facilities, including approximately 2,400 water treatment facilities and 400-600 facilities on navigable waters, including a majority of U.S. oil refineries.
 - It fails to involve knowledgeable employees in the development of vulnerability assessments and security plans, or protect employees from excessive background checks.
 - It denies the public the information needed to ensure an effective, accountable program.
 - It fails to address the current pervasive problem of risk shifting, such as when companies shift chemical hazards to unguarded locations such as rail sidings
- In testimony before Congress on February 11, the DHS and EPA repeated their request for legislation that requires **all** high risk facilities to assess safer chemical processes and conditionally requires the highest risk facilities (tiers 1 and 2) to use safer processes where feasible. In addition, they urged Congress to eliminate the gap in security for water treatment facilities and to modify the exemption for port facilities now regulated under the Maritime Transportation Security Act to ensure consistency with CFATS.

To correct the flaws in the interim law and enact comprehensive legislation, **we urge you to support Senator Lautenberg's comprehensive chemical security legislation.** It represents a compromise that incorporates input from industry and it also *builds seamlessly on the existing DHS regulations.* It also keeps the DHS as the lead agency regulating privately owned chemical plants, harmonizes coverage of port facilities, and authorizes the EPA as the lead agency regulating publicly owned water and wastewater treatment facilities and provides funding for publicly owned water facilities to adopt the most protective security measures.

In addition it will:

- Require high risk facilities to assess safer chemical processes and conditionally require the highest risk plants (approximately 162 facilities) to use safer chemical processes where feasible and commercially available and includes a technical appeals process to challenge DHS decisions;
- Provide up to \$100 million in the first year to assist privately owned plants to use safer and more secure processes, \$125 million for drinking water facilities and an unspecified portion of \$200 million for wastewater facilities to use safer more secure processes;
- Involve plant employees in the development of security plans and provide protections for whistleblowers and limits back ground check abuses;
- Preserve state authority to establish stronger security standards.

Since 1999, more than 500 facilities have used *smart security* to eliminate these risks to more than 40 million Americans. On November 4, 2009, the Clorox Company announced plans to convert all seven of its U.S. facilities to eliminate the bulk use of chlorine gas and inherent risks to nearby communities. While this is encouraging, more than 480 facilities each put 100,000 people at risk and assuming the current voluntary conversions it will take decades before they do.

In addition, the Association of American Railroads issued a statement in 2008 saying, *"It's time for the big chemical companies to do their part to help protect America. They should stop manufacturing dangerous chemicals when safer substitutes are available. And if they won't do it, Congress should do it for them..."*

We look forward to working with you and your staff on this urgently needed legislation.

Sincerely,

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