

**American Federation of State, County and Municipal Employees (AFSCME)
Communications Workers of America (CWA) – International Brotherhood of Teamsters
International Chemical Workers Union Council/UFCW – NJ Work Environment Council
Service Employees International Union (SEIU) – United Automobile Aerospace and
Agricultural Implement Workers of America (UAW) – United Steelworkers (USW)
Clean Water Action – Earthjustice – Environment America – Friends of the Earth
Greenpeace – League of Conservation Voters – OMB Watch – Physicians for Social
Responsibility – Sierra Club – U.S. Public Interest Research Group
Alaska Community Action on Toxics – Advocates for Environmental Human Rights
Beyond Pesticides – Breast Cancer Fund – Center for Health, Environment and Justice
Center for International Environmental Law – Citizens’ Environmental Coalition – Clean
New York – Connecticut Coalition for Environmental Justice – Connecticut Council on
Occupational Safety and Health – Deep South Center for Environmental Justice – Ecology
Center – Empire State Consumer Project – Environmental Health Strategy Center
Environmental Justice Action Group of WNY – Galveston Houston Association for Smog
Prevention and Mothers for Clean Air (GHASP/MfCA) – Global Community Monitor – Green
Education and Legal Fund, Inc. – Maine People’s Alliance – MDPIRG – Natural Resources
Council of Maine – Northwest Atlantic Marine Alliance – Oregon Toxics Alliance – Science
and Environmental Health Network – Urban Semilas
Kristen Breitweiser, 9/11 Widow**

March 1, 2010

Dear Senator,

On November 6, 2009, the House of Representatives passed the *Chemical and Water Security Act of 2009* (H.R.2868) a comprehensive chemical security bill. The undersigned organizations supported this legislation and would like to work with you to pass even more protective legislation in the U.S. Senate this year before the interim law expires on October 4, 2010.

Chemical plants and other chemical facilities remain one of the most vulnerable sectors of America’s infrastructure to terrorist attacks. The Department of Homeland Security (DHS) has identified approximately 6,023 “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 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. As a security program CFATS was only an interim first step. It fails to protect the millions of Americans at risk by eliminating preventable catastrophic hazards.

The interim statute:

- a. Prohibits the DHS from requiring any specific “security measure” whatsoever.
- b. Fails to develop the commonsense use of safer and more secure chemical processes that can cost-effectively eliminate catastrophic hazards posed by poison gas.
- c. Explicitly exempts thousands of chemical and port facilities, including approximately 2,400 water treatment facilities and 400-600 port facilities.
- d. Fails to involve knowledgeable employees in the development of vulnerability assessments and security plans, or protect employees from excessive background checks.

- e. Denies the public the information needed to ensure an effective, accountable program.

On February 4th Senator Collins (R-ME) introduced a bill (S. 2996) that would do nothing but extend this flawed law for five more years. We strongly oppose this bill and any further delay in comprehensive chemical security legislation. In fact, Senator Collins' own comments to the DHS in 2007 were clear. She said, *"The Department does not have broad discretion to regulate beyond the interim three-year period without a comprehensive authorization from Congress. Any contrary interpretation of the 'sunset' provision is plainly wrong."*

In their October 1st testimony before the House, both the DHS and the EPA called for comprehensive legislation to include water treatment plants and port facilities as well as conditional requirements to use safer available chemical processes where feasible at the highest risk facilities.

To correct the flaws in the interim law and enact comprehensive legislation, we urge you to support companion legislation in the Senate to H.R. 2868. H.R. 2868 is a compromise that *builds seamlessly on CFATS*. It maintains the DHS as the lead agency regulating privately owned chemical plants, including 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.

While H.R. 2868 exempts more than 90 percent of distributors of agricultural fertilizers, it also provides \$3 million each year in compliance assistance grants to the very largest wholesalers. In addition it makes no changes to the indefinite exemption that the DHS has given to agricultural "end users." (e.g. all farms and growers) H.R. 2868 also requires the DHS to assess the regulatory impacts on small businesses.

In addition H.R. 2868:

- Requires high risk facilities to "assess" safer chemical processes and conditionally requires the highest risk plants (approximately 107) to use safer chemical processes where feasible and commercially available and includes a technical appeals process to challenge DHS decisions;
- Provides 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;
- Involves plant employees in the development of security plans and provides protections for whistleblowers and limits back ground check abuses;
- Preserves state's authority to establish stronger security standards;
- Bars citizen suits against private facilities but allows suits against DHS to enforce non-discretionary duties.

Passing comprehensive legislation this year is vital to our national security. Since 1999, more than 500 facilities have used "smart security" to eliminate these risks to more than 40 million Americans. In a March 2006 floor statement, then Senator Obama said, "by employing safer technologies, we can reduce the attractiveness of chemical plants as a target...Each one of these methods reduces the danger that chemical plants pose to our communities and makes them less appealing targets for terrorists." In November 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.

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..."*

To truly protect employees and surrounding communities, a comprehensive law should:

- 1) Use “smart security” to prevent the catastrophic consequences of an attack by implementing cost-effective safer and more secure chemicals and processes at all of the highest risk facilities.
- 2) Include all categories of facilities such as port facilities and water treatment plants.
- 3) Involve plant employees in developing plant security programs, including participation in workplace inspections, and provide employees with both an appeals and a waiver procedure to protect against excessive background checks.
- 4) Allow citizen suits against chemical facilities and government agencies to enforce the law and require reporting measures that strengthen accountability.
- 5) Allow states to set more protective security standards.
- 6) Require collaboration between the DHS, EPA and other agencies to avoid regulatory redundancy or inconsistency.

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

Sincerely,

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