

## **Q&A on the Inherently Safer Technology (IST) & Citizen Suits Provisions In "The Chemical and Water Security Act of 2009" (H.R. 2868)**

### **Does H.R. 2868 require ALL chemical facilities to adopt "methods to reduce the consequences (MRC) of a terrorist attack" or inherently safer technology (IST)?**

No. This requirement is conditional and now covers a narrowed universe of approximately 107 facilities in the highest-risk tiers (1&2) that pose a risk of catastrophic "release" to densely populated areas. It will NOT cover facilities in tiers 1&2 that pose a risk only from chemical "theft."

The conditions for implementing safer methods and technologies are:

- \*\*\* They must significantly reduce the risk of death or injury in a terrorist attack
- \*\*\* They must not shift risks to another location
- \*\*\* They must be technically feasible
- \*\*\* They must not impair the plant's ability to do business at that location
- \*\*\* Water treatment systems must also meet state and federal safe drinking water standards

### **Can facilities challenge the requirement to implement safer chemical technologies?**

Yes. The compromise bill adds a second appeals process. If a facility disagrees with the DHS's finding they have 120 days to appeal and the DHS must consult with a wide range of experts and those expert recommendations must be included in any order to implement safer chemical processes.

### **Will H.R. 2868 burden farms and agricultural facilities?**

No. In January of 2008 the Department of Homeland Security (DHS) indefinitely exempted all "end-users" of regulated chemicals used in agriculture, including family farms, ranches and other crop, feed or livestock facilities from Chemical Facility Anti-terrorism Standards (CFATS).<sup>1</sup> The new legislation does nothing to change DHS's regulatory deferral of these facilities. In the agricultural sector, only manufacturers of agricultural chemicals and large wholesalers remain in CFATS and only 7 of these facilities are in risk tiers 1 or 2. The rest are in tiers 3 and 4 and are only responsible for assessing of safer chemical processes. In addition, Representatives Ross (D-AR) and Space (D-OH) added an amendment to H.R. 2868 that requires the DHS to provide assistance to agricultural chemical wholesalers, including technical assistance grants to conduct assessments of safer technologies. It also requires the DHS to assess potential impacts on the agriculture sector for complying with the new statute.

### **Will this requirement hurt jobs or the economy?**

No. Plants that invest in the safety and security of their infrastructure invest in American communities, reduce or eliminate their liability and regulatory costs, and improve workplace safety and long term job security. Major trade unions, such as the United Steelworkers, United Auto Workers, International Chemical Workers/UFCW,

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<sup>1</sup> 73 FR 1640 (January 9, 2008).

International Association of Fire Fighters, Teamsters, SEIU, AFSCME and Communication Workers of America support H.R. 2868.

**Does H.R. 2868 allow citizens to sue private parties to enforce the law?**

No. The compromise bill eliminates citizen enforcement suits against private parties. Only suits against government agencies except the Department of Defense are permitted. The bill does, however, allow for a citizen petition process that can trigger a government investigation into potential violations by a chemical facility.

**Are water treatment facilities treated differently?**

Yes. The EPA, not DHS, will have the lead authority in regulating drinking water AND waste facilities. Drinking water systems that serve more than 3,300 people are covered, smaller systems are exempt. Waste water systems serving approximately 25,000 or more people are covered. The States have the lead authority to require the use of safer chemical processes. Smaller water systems will also be eligible for technical assistance to conduct assessments of safer technologies. The highest risk systems will be eligible for assistance to implement safer technologies based on risk and need. The bill makes available \$125 million a year for three years to assist implementation of safer technologies for drinking water systems and \$200 million a year for waste water systems.

**Can facilities save money by using safer and more secure chemical processes?**

Yes, in some cases, and in other cases costs are manageable. Surveys by the Center for American Progress identified 284 facilities that switched to safer methods since 1999. They found that 87 percent spent less than \$1 million, and one half reported spending less than \$100,000 on the conversion. Additionally, 34% of facilities expected “*cost savings or improved profitability.*” Twenty large city water utilities adopted safer and more secure options at a maximum cost of \$1.50 per customer per year – less than a bag of potato chips – and often much less. Washington, D.C. converted its sewage treatment plant within 90 days after the 9/11 attacks for less than \$0.50 per water customer per year. H.R. 2868 provides up to \$225 million and H.R. 3258 provides up to \$375 million for assistance in implementing safer chemical processes over a three-year period.

**Will requiring the use of safer chemical processes shift risks locally or nationally?**

No. H.R. 2868 specifically prohibits requirements that shift these risks to other facilities in the U.S. or to facilities outside of the United States and prohibits EPA or states from requiring facilities to adopt changes that shift chemicals to interim storage off-site.

**Does H.R. 2868 mandate the use of specific technologies or can facilities choose which safer and more secure technologies to use?**

Each high-risk facility is free to choose the most appropriate “feasible” and cost-effective technology or process identified in the facility’s own assessment.

**Should government require safer design and technologies to be used in the private sector?**

Yes. The Federal Aviation Administration (FAA) has required airplane security and safety standards for decades. The feasibility and cost-effectiveness are balanced against security and safety needs. After 9/11 all commercial airliners were required to harden cockpit doors and X-ray machines for airline baggage were installed at hundreds of airports.

**Are safer design requirements appropriate for security legislation?**

Yes. In 2006 the GAO (GAO-06-150), concluded that “Implementing inherently safer technologies potentially could lessen the consequences of a terrorist attack by reducing the chemical risks present at facilities, thereby making facilities less attractive targets.” And a June 2006 National Academy of Sciences study endorsed safer technologies as “the most desirable solution to preventing chemical releases” from a terrorist attack.

In a February 27, 2008 statement the Association of American Railroads said, “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 in the Chemical Facility Anti-Terrorism Act 2008.”

**Can different types of chemical facilities use safer methods to reduce the consequences of risks at more than 6,000 regulated facilities?**

Yes. Many types of facilities are among the 284 facilities that have already converted since 1999. Most facilities (89%) are “users” of chemicals rather than chemical makers. These plants can often switch to safer methods even faster than chemical makers.

Types of facilities that are *already using* safer and more secure technologies include bleach manufacturers, water utilities, petroleum refineries, paper mills, power plants, and diverse manufacturers of products that include soaps and detergents, fuel additives, and polyurethane foam.

Four substances account for 55 percent of the processes that pose a catastrophic risk to communities according to the EPA. These substances are chlorine, ammonia, hydrogen fluoride and sulfur dioxide. They are also among the hazards eliminated at 284 plants that have converted since 1999.