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To: Interested Parties

From: Rick Hind/Greenpeace (202) 319-2445

Re: Leaked Chemical Security Documents Show Dramatic EPA Policy Reversal

In the 10 months since the September 11<sup>th</sup> attacks, the EPA has done little to neutralize the catastrophic threat posed by possible attacks on U.S. chemical facilities. Three recently leaked EPA documents tell a frightening story of candor and concern about the vulnerability of U.S. chemical facilities to terrorist attacks.

Taken together these documents also show the failure of the EPA to set strong policies and stick with them. In fact, these documents repeatedly describe the need for greater legislative authority and include a promising legislative proposal that was abruptly abandoned in June.

These documents also raise questions about EPA inaction. If the EPA believes they have the authority to act what have they done and why didn't they begin sooner? Given the timing of this policy reversal, was it just a tactic to discourage Congress from giving them needed authority (S.1602) as a favor to industry?

The first document, "**Lessons Learned in the Aftermath of September 11, 2001**" dated February 1, 2002, is a 100 page evaluation of EPA's response to the tragedies of September 11<sup>th</sup> in New York City, the Pentagon and Shanksville, Pennsylvania and how that performance may relate to future attacks. Among the conclusions of the report are:

**\*\* "EPA has much work ahead to systematically identify and reduce national environmental vulnerabilities."**

**\*\* "EPA has some authority for addressing environmental vulnerabilities, but limited authority to require action."**

**\*\* "EPA will develop an Agency-wide plan to follow through on recommendations contained in this report."**

**\*\* "EPA is not fully prepared to handle a large scale NBCR [nuclear, biological, chemical or radiological] attack. Agency information, experience, and equipment is insufficient to respond with confidence."**

**\*\*\* "Two specific incidents where security was a specific concern were identified: (1) railroads did not want to ship chlorine in tankers after attacks, but chlorine is needed to guarantee the safety of water supplies,**

**and (2) EPA received requests reroute chemical tankers and trucks away from the population centers."**

Two additional documents recently leaked came from frustrated EPA officials that show a dramatic reversal by the Administration on the need for new legislation.

**In the EPA's May 16th presentation by Deputy Administrator Linda Fisher called "Proposal for Chemical Facility Security Legislation" the Agency asks the "Fundamental question: Is industry safe?" and answers, there is "No way to answer under current law." [page 2]**

Similar to a Senate bill (S.1602), introduced in October by Senators Jon Corzine (D-NJ), James Jeffords (I-VT), Hillary Clinton (D-NY) and Barbara Boxer (D-CA), the EPA's May 16th proposal addresses approximately 18,000 facilities covered under the Clean Air Act's Risk Management Plans as the initial universe of facilities. Also, like S. 1602 the EPA proposal calls for vulnerability assessments and includes "hazard reduction" or prevention language. Unlike recent industry proposals, both of these proposals are mandatory.

**In stark contrast, the third document, an unreleased June 11th Q & A sheet called "Announcement on Chemical Site Security," says that the "EPA is not seeking legislation on chemical security at this time." Instead the EPA says it will use "existing authority under the Clean Air Act..." [page 5 of May 16<sup>th</sup> proposal]**

A brief chronology of events further illustrates EPA's policy contradictions:

Oct/2001: Senator Corzine (D-NJ) introduces S. 1602

Nov/2001: At Senate EPW Committee hearing industry opposes S. 1602 and EPA admits to consulting only with industry representatives

Dec/2001: EPA disputes their own legal authority under 112 (r) of the CAA in first meeting with NGOs

Jan/2002: Deputy Administrator Linda Fisher meets with NGOs and express openness to working with Senator Corzine on his bill, the EPA reiterates their lack of legal authority

Feb/2002: Administrator Whitman tells National Pest Management Association that she is not convinced new regulations are needed

Apr/2002: Senior EPA official brief NGOs on new legislative proposal and are told Whitman fully supports the proposal and they again repeat their lack of legal authority under the Clean Air Act

June/2002: EPA backs away from their legislative proposal, claiming it now has legal authority

June/2002: Senate EPW Committee postpones mark up of S. 1602 until July 18<sup>th</sup>