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“We can no longer continue to risk the lives of millions of Americans by using, transporting and storing highly toxic chemicals when there are safer alternatives commercially available. It is time for the nation’s big chemical companies to stop making the dangerous chemicals that can be replaced by safer substitutes or new technologies currently in the marketplace...And if they won’t do it, Congress should do it for them in the Chemical Facility Anti-Terrorism Act of 2008.”

--- Association of American Railroads, February 2008

July 22, 2008

Dear Representative Green,

Congratulations on your Chairmanship of the Environment and Hazardous Materials (EHM) Subcommittee of the Energy and Commerce Committee. We appreciate your taking the time to meet with us in June. We are very concerned about the limited time remaining in the 110th Congress to address chemical plant security. Waiting until 2009 to address the vulnerabilities of thousands of exempted facilities could prove costly to millions of Americans at risk.

As you know, in 2006 Congress enacted a weak 740 word “interim” statute after failing to adopt a comprehensive law for more than six years. The “interim” law does not safeguard at risk communities. It actually **prohibits** the Department of Homeland Security (DHS) from ensuring that high-risk chemical plants use the most ironclad security measures. In particular it bars DHS from use proven technologies that will dramatically **reduce or eliminate the consequences of an attack**. The “interim” law also **exempts thousands of chemical facilities**, including almost 3,000 water treatment facilities, many of which also put major cities at risk.

On March 6th the Homeland Security Committee adopted the “Chemical Facility Anti-Terrorism Act of 2008” (H.R. 5577) in a bi-partisan vote. This bill represents a giant step forward in addressing the fatal flaws in the “interim” law and adding other needed provisions. Most importantly H.R. 5577 allows each high-risk facility to choose the best method suited for their plant to **reduce the consequences of an attack**. Facility owners and operators are not required to implement these methods unless they are feasible, cost effective and do not shift risks to other facilities. In fact, if they adopt safer technologies they may be eligible to be dropped from these regulations altogether.

However, the chemical manufacturers led by the American Chemistry Council (ACC) oppose H.R. 5577. Instead they prefer to wait until next year, let the clock run out again and pressure Congress to make the weak “interim” law permanent.

We understand you are in discussions with the Homeland Security Committee regarding whether the Department of Homeland Security (DHS) or the Environmental Protection Agency (EPA) should regulate drinking water facilities. In the past these facilities have been regulated by the EPA. Under H.R. 5577 they would be regulated by the DHS. As the days remaining in the 110th Congress grow fewer it is critical that the two Committees resolve this in a speedy and agreeable way. As we have said in the past we are neutral on whether the EPA or DHS are the lead regulatory authority as long as an equivalent standard of protection is established for all regulated facilities. Specifically the legislation should achieve the following whether regulated by EPA or DHS:

1. Require collaboration between EPA and DHS so as to avoid regulatory redundancy and inconsistency or gaps in supply chain security.
2. Ensure equal enforcement for chemical facilities, accountability for government, and protection of existing chemical safety programs under other laws.
3. Allow states to set more protective security standards.
4. Ensure that all chemical facilities are required to do the following, regardless of the agency of jurisdiction:

- a. All risk tier facilities (including publicly own water treatment facilities) should be required to identify opportunities to reduce the consequence of an attack through the use of safer and more secure chemicals or operations.
- b. The highest risk tier facilities (including publicly own water treatment facilities) should be required to use safer and more secure chemicals where feasible, cost effective and where catastrophic risk is not shifted to other facilities.
- c. Inclusion of employees and their representatives in assessing vulnerability, developing plant security programs and in inspections should be required.
- d. Employees must be protected against misuse of background checks and the information collected.
- e. Whistleblowers must be protected against retaliation.
- f. Training for all relevant employees must be required.

Since 1999 almost 300 U.S. chemical facilities have converted to safer more secure chemicals that have **reduced the consequence of an attack** to nearly zero. More than 85 percent said they converted for less than \$1 million. But if we rely solely on voluntary conversions it will take more than 70 years to address the 3,400 chemical facilities that the DHS says each put 1,000 or more people at risk.

In Texas you have at least six examples of chemical facilities that converted to safer technologies. Four of these each put more than 1,000 people at risk before switching to safer processes (an Austin pool service, a Plainview farm supplier and two wastewater plants in Seabrook and Sherman). However, 28 other Texas facilities each put 1 million or more people at risk, most of these are in the Houston area.

As you may recall, the first failure the 9/11 Commission Report identified was the failure of imagination. The potential loss of life from an attack on a U.S. chemical plant is staggering. --- The 20,000 who died in the 1984 Bhopal disaster made that horribly clear. In 2004 the Homeland Security Council estimated casualties from an attack on a chlorine facility would kill 17,500 people, seriously injure an additional 10,000, send 100,000 to the hospital and cause an additional 70,000 evacuations due to risks that can extend up to 20 miles from a release. Former Senator Warren Rudman "(R-NH) told CBS's 60 Minutes, ***"the threat is just staring us in the face. I mean, all you'd have to do is to have a major chemical facility in a major metropolitan area go up and there'd be hell to pay politically."***

Only a new security standard that requires high-risk chemical plants to **reduce the consequences of an attack** will protect American communities in a timely manner. Enlightened business leaders agree. In February, 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 of 2008."**

We look forward to working with you to move this critical legislation to the House floor this September.

Sincerely,

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CC:
Speaker Nancy Pelosi