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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

September 10, 2008

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, D.C. 205015

Dear Speaker Pelosi,

We sincerely appreciate your support for chemical security legislation that will dramatically **reduce the catastrophic consequences of an attack** on a chemical plant. We are, however, very disappointed in the failure of the 110th Congress thus far to enact such legislation. We also must warn you that waiting until 2009 when the “interim” law expires (October 4, 2009) could prove to be a mistake of historic proportions for the millions of Americans still at risk. Instead we urge you to seek an end to the jurisdictional dispute among Committees that has held up legislation in the House since March.

While the Bush administration and Republican leadership in Congress deserve most of the responsibility for failing to enact truly protective chemical security legislation since 9/11, the 2006 Republican led Congress didn’t let a jurisdictional feud hold up the enactment of a weak chemical-industry-backed “interim” law.

The current “interim” law undermines security by giving at risk communities and the industry a false sense of security. As you know, it was a 740 word “rider” attached to the 2007 Department of Homeland Security (DHS) Appropriations bill in late September 2006. Unbelievably, it actually **prohibits the DHS** from requiring the use of safer chemicals or processes as a security measure to **reduce or even eliminate the consequences of an attack**. It also explicitly **exempts thousands of chemical facilities**, including almost 3,000 water treatment facilities, many of which put our 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 addresses the fatal flaws in the “interim” law and adds desperately needed provisions as well. Most importantly H.R. 5577 strikes a balance by allowing each high-risk facility to choose the safer process best suited for their plant to **reduce the consequences of an attack**. In addition, facility owners and operators are not required to implement safer methods unless they are feasible, cost effective and do not shift risks to other facilities. And when 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 their “interim” law permanent.

Since March the Energy and Commerce Committee and Homeland Security Committee have been paralyzed by a dispute over whether the Department of Homeland Security (DHS) or the Environmental Protection Agency (EPA) should regulate drinking water facilities. As the remaining legislative days in the 110th Congress come to an end it is critical that this dispute be resolved quickly.

In May members of our blue-green coalition notified both Committees that we are neutral on whether the EPA or DHS should have lead authority. We recommended that they adopt an equivalent standard of protection for all regulated facilities regardless of which agency or department has lead responsibility. 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 at least 284 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 entirely on voluntary conversions, at the current rate 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.

As we observe the seventh anniversary of the 9/11 attacks let's not forget that the first failure the 9/11 Commission Report identified was a "failure of imagination." Although unthinkable, it is still easy to imagine the potentially staggering loss of life from an attack on one U.S. chemical plant. 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 more to the hospital. Former Senator Warren Rudman "(R-NH) told CBS's 60 Minutes in 2003, ***"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 all 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 year.

Sincerely,

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