

Q&A on Energy & Environment Subcommittee Compromise on IST & Citizen Suits In "The Chemical Facility Anti-Terrorism Act of 2009" (H.R. 2868) and the "Drinking Water System Security Act of 2009" (H.R. 3258) Agreed to October 14, 2009

Do H.R. 2868 and H.R. 3258 require ALL chemical facilities to adopt "methods to reduce the consequences (MRC) of a terrorist attack"?

No, this requirement is conditional and now covers a narrower 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 of "theft." As of May 2009, the DHS designated approximately 659 facilities in the two highest risk tiers.

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 as defined by SDWA
- *** They must not impair the plant's ability to do business at that location
- *** Drinking water systems must also meet state and federal safe drinking water standards

Can facilities challenge the requirement to implement safer chemical technologies?

Yes. The Subcommittee compromise adds a second appeals process. If a facility disagrees with the DHS's finding they have 120 days to appeal it 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.

Drinking water facilities can also appeal a decision to states or in DC and Wyoming, the EPA .

Are drinking water facilities treated differently in H.R. 3258?

Yes. The EPA, not DHS, has the lead authority in regulating drinking water facilities that serve more than 3,300 people (while smaller systems are exempt). The EPA cannot require the use of safer chemical processes. Instead the States have this authority as they normally do with changes in drinking water treatment. Smaller water systems will also be given technical assistance to assess safer technologies. The highest risk systems will be eligible for assistance to implement safer technologies based on risk and need. The bill makes \$125 million a year for three years available for assisting implementation of safer technologies.

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

Yes, in some cases and others 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. And 34% of facilities expected "*cost savings or improved*

profitability.” Twenty big 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 this requirement result help or hurt economy?

Plants that invest in the safety and security of their infrastructure invest in American communities will reduce or eliminate their liability, 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, International Association of Fire Fighters, Teamsters, SEIU, AFSCME and Communication Workers of America support H.R. 2868 and H.R. 3258.

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

No. H.R. 2868 specifically prohibits the shifting of these risks to other facilities in the U.S. or to facilities outside of the United States. H.R. 3258 prohibits EPA or states from requiring facilities to adopt changes that shift chemicals to interim storage off-site.

Does H.R. 2868 and H.R. 3258 mandate the use of specific technologies or can facilities choose which safer more secure technologies to use?

No, each high-risk facility is free to choose the most appropriate 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.

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.

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 a citizen petition process whereby citizens can trigger a government investigation into potential violations by a chemical facility.

For more information contact: Rick Hind (202) 319-2445/rick.hind@greenpeace.org