

does happen, it is our obligation as legislators to remove that backlog and to make sure we have enough judges in place to handle any volume of cases that may be filed in respective jurisdictions. We have always done that. We will continue to do that.

I ask my colleagues to review this bill very carefully and to allow us to move forward today by voting in favor of the cloture motion, which will allow us to get the bill on the floor and have the debate, talk about the issues of fairness, and talk about the issues necessary to ensure that plaintiffs do get justice in cases where justice is deserved; but, by the same token, that there is some stability on the part of the business community where unjust cases are being filed against them.

I ask my colleagues to vote in favor of the cloture motion. Let's move forward, have the debate. I will be one who agrees with a lot that is in the act and will probably have some questions about the act. I look forward to the debate and look forward to moving forward and to coming out with a good, fair, and just class action reform bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. Mr. President, how much time is available?

The PRESIDING OFFICER. The Senator is recognized for 9 minutes.

Mr. CORZINE. If the Chair would notify me when I have used 8 minutes please.

The PRESIDING OFFICER. Yes, sir.

CHEMICAL PLANT SECURITY

Mr. CORZINE. Mr. President, the primary topic I will talk about today is the markup tomorrow with regard to chemical plant security. The Environmental and Public Works Committee will take up legislation dealing with one of the most serious security threats to our Nation. According to statistics by EPA, there are 123 facilities in 24 States where a chemical release could expose more than a million people to a toxic chemical, and nearly 3,000 facilities spread across 49 States where 10,000 people could be exposed.

This is a serious issue that can create real health and safety hazards to our community, particularly in a time when we know we are under potential terrorist attack at home.

This is an issue that has been identified by the Department of Homeland Security and by almost every security expert as one of the most serious exposures we have in our infrastructure. When we go from code yellow to code orange, chemical plants are identified as part of the infrastructure that needs to be hardened in those events.

It seems to me we need to be addressing this matter. I am pleased Chairman INHOFE, EPW, and others are taking up this challenge to address this issue. I have been pushing on this for the last 2 years, actually got a vote in EPW on a bill that had 100-percent support of

everyone in the committee a year and a half ago. Until the lobbyists went to work, we thought we had a real response that would work on a bipartisan basis. We have adjusted that bill, made changes, offered economic incentives to the industry to move forward. We have a roadblock to dealing with one of the most important risks we have in our infrastructure.

I commend Senator INHOFE and other members of the committee for addressing the issue. Unfortunately, I do not think the bill meets the needs of what we are trying to accomplish. Constructively, the committee has moved to require chemical plants to develop security plans and submit them to the Department of Homeland Security. The administration had not asked them to submit the plans. Unfortunately, DHS will not have to review them according to the bill, as I understand it. They would not have to evaluate them. They would not have to approve them. They would not have to do anything to assure the public is protected. That is a problem. The Department could simply let the plans sit on a back shelf and let dust accumulate.

Furthermore, it would tighten all 15,000 chemical plants without any kind of prioritization in the country, which is also a big mistake. We need to make sure these plans are actually reviewed, that there is real accountability. That is my major concern with the mark that will be coming through tomorrow.

There are other problems also. It is not strong enough on one of the fundamental issues with regard to my original bill, inherently safer technologies. There are alternative approaches. We cannot build fences high enough and put enough guards to make sure that every possible terrorist attack or criminal attack on a chemical plant could actually be accomplished. We need to make sure if there is a successful attack, that it has minimal exposure. We ought to do everything we can to have inherently safer technologies within economic feasibility. That is practical.

While there is a step forward in recognizing this is immediate, and there is necessary evaluation that is being asked for from chemical producers, I don't think we are going far enough in requiring the use of inherently safer approaches if they are economically feasible and practical. That should be a requirement of the law. This is one of the major issues I have.

Finally, there is a gaping loophole in this legislation as I understand it, and I hope others will challenge it tomorrow in the committee mark. I certainly will if it gets to the floor; that is, if the chemical industry or any particular private sector approach has a substantially equivalent standard as opposed to what DHS puts out as a standard, that will be acceptable to the Department of Homeland Security. They have already embraced a private standard that they have suggested is very good.

It does not include inherently safer technologies. It does not require accountability in that other standard being established by the chemical industry.

As a consequence, we are actually moving back to a completely voluntary approach. I don't get it. I don't understand it. I don't think it is the direction we should be taking. It is a loophole that erases all the good things that have been included in the mark if you go to a substantially equivalent standard.

There are serious shortfalls in the mark, at least as I understand them. I hope they will be debated seriously in the committee tomorrow. I want folks to know this is not an issue that will die down. We have eight of these plants in New Jersey. They are located right smack dab in the middle of some of the highest concentrations of population in our country. We have had accidents over the years in my community that have taken lives in the community and evacuated the surrounding citizens. This is a vulnerability that everyone acknowledges is real, it is present, and it needs to be addressed. That is why I feel so strongly about it.

This should be a bipartisan issue. I am glad Senator CHAFEE has been working to push the issue in committee this year. But we need to move it.

By the way, just finally, there is something I have a problem with also in the bill in the sense that if somebody turns loose one of the plants that is filed by an individual plant, that will be subject to criminal penalties. But if a chemical producer does not comply with the standards they set down in the plan, that is a civil liability. It sounds right to me there would be criminal penalties for people who leak information into the public that could be dangerous and used against the public. But it strikes me as unequal treatment; it sort of does not jibe with regard to parity that those people who are actually not complying with the law are going to be treated on a civil basis.

Where is the parity? It seems to me we are listening to industry more than we are listening to the needs of the American people. If September 11 taught us anything, it is that America can no longer avoid thinking about the unthinkable. We have to face up to the Nation's most serious vulnerabilities. We have to focus on them. And we have to confront them head on.

That is why I have long advocated the adoption of legislation to create meaningful and enforceable security standards for chemical facilities. Under my proposal, the Federal Government would identify "high priority" chemical facilities—those that potentially put a larger number of people at risk. It then would require those facilities to assess their vulnerabilities and implement plans to improve security. These plans would have to be submitted for review. And changes could be required if deficiencies are identified.

In the last Congress, my legislation was approved on a unanimous vote by the Environment and Public Works Committee. But after the committee acted, the bill was killed after some in industry lobbied against it.

This year, the committee apparently is planning to take up a different bill. And let me say, first, that I commend the chairman, Senator INHOFE, and the other members of the committee for addressing this matter. Unfortunately, while I no longer serve on the committee and have not been privy to all of its discussions, it appears that the bill currently under discussion has at least one glaring weakness.

The committee is considering requiring chemical plants to develop security plans and submit them to the Department of Homeland Security. But—and here is the problem—the bill doesn't require the Department to do anything with them. DHS wouldn't have to review them. It wouldn't have to evaluate them. It wouldn't have to approve them. It wouldn't have to audit them. It wouldn't have to do a thing to ensure the public is protected. Instead, the Department could simply let these plans sit on a back room shelf, collecting dust.

Some might ask: Would the Bush administration really do that? Would it really just let security plans sit on the shelf, and not even review them? Well, for those who think that is unrealistic, consider this: The administration's own plan didn't require companies to submit their security plans to the Government at all. And that would certainly be the preference of many of their friends in industry. So, yes, there is every reason to be concerned that, unless forced to do so, the administration will take a hands-off approach and simply ignore these security plans. And the end result would be a lax security system with no real teeth.

Beyond the failure of the bill to require review of security plans, the legislation under development in the Environment and Public Works Committee has other problems, as well. First, it fails to require industry to adopt alternative technologies—such as the use of safer chemicals—if those alternative approaches are cost effective. I think that is a mistake. After all, no matter how many security personnel are hired, and no matter how high a security fence, no security scheme is impenetrable. And we need to prepare for the possibility that terrorists will be successful in attacking a chemical plant and releasing toxic materials. That is why it is important for facilities to implement inherently safer technologies, where practicable, to reduce the resulting death and destruction in the event of an attack.

Thanks largely to the involvement of Senator CHAFEE, the Inhofe mark has made real progress in this area. As I understand it, the chairman has agreed to require detailed consideration of safer technologies. And I think that's a step forward. In my view, though, it

still falls short. Given the number of lives that are at stake, I think companies should be required to implement safer technologies if they are cost effective.

Unfortunately, the requirement that facility owners consider safer technologies could be undermined because of a huge loophole in the bill that may allow industry to sidestep many Federal security requirements. Under this provision, DHS's security standards could be waived for any facility that participates in an industry program that is, "substantially equivalent."

At first, that may sound like a reasonable approach. But the term "substantially equivalent" is so broad that it could well allow the Bush administration to simply rubberstamp an existing chemical industry program that is grossly inadequate. For example, the chemical industry's program has no requirement that industry evaluate safer technologies in any detail. Yet it seems very possible that the Bush administration would exploit the bill's loophole to rubberstamp this industry program, and exempt participating plants even from the bill's limited requirement for consideration of safer alternative approaches.

The last point I want to make about the bill apparently being discussed relates to enforcement. Under the legislation, as I understand it, if a Government employee wrongly discloses a chemical plant's security plan, that employee would be subject to criminal penalties. That sounds right. Yet, if the owner of a chemical plant knowingly violated Federal security standards, the only remedies prescribed in the legislation are civil. That sounds wrong.

That disparate treatment of Government employees and chemical industry officials doesn't seem fair. Nor does it seem appropriate, given the nature of the threats are now confronting. After all, criminal penalties are available for violations of certain anti-pollution laws. Surely violations of a new chemical plant security law—a law designed to save lives—should be punished with an equal degree of severity.

Before I conclude, let me step back for a moment and again remind my colleagues that should terrorists attack one of 123 chemical facilities around the country, at least a million American lives could be at risk. These are real people—mothers, fathers, sisters, and brothers—all innocent Americans who have no choice but to rely on their Government leaders to protect them.

We, in Congress, have an obligation to do everything we can to protect these Americans, and to prevent what really could be a tragedy of catastrophic proportions. We should not be satisfied with a largely toothless plan that leaves industry free to design security plans to their own choosing, with no requirement that those plans even be reviewed. That is just unacceptable.

I hope my colleagues on the Environment and Public Works Committee will

reconsider this approach. And, if not, I intend to pursue this matter aggressively if, and when, the bill ever reaches the Senator floor.

We need to address chemical plant security. But we need to do so in an enforceable way that will really make Americans safer. The lives of many thousands of Americans may well hang in the balance.

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. CORZINE. Thank you, Mr. President.

CLASS ACTION FAIRNESS ACT

Mr. CORZINE. Lastly, Mr. President, I want to say something about the bill that we are going to be debating in the next hour or so, class action fairness.

I am not a lawyer, so I am not as sharp on all of the terminology and all the other issues, but it is very clear to me that we are taking the small "d" democratic processes out of access to our courts with the legislation that is underlying the motion to proceed.

I think it is absolutely essential that we maintain the checks and balances in our present Federal constitutional system. That does not mean there are not abuses, and it does not mean we should not move to correct some of the things with regard to venue shopping, with regard to coupon procedures, which, by the way, are not even dealt with in this bill.

I think this is a radical move. I am very much in favor of Senator BREAUX's proposal, a modified approach, that will deal with some of the flaws. His bill would preserve state class actions while sending truly national class actions to Federal court. At the same time, it addresses the problem of abusive coupon settlements, which is something that the bill before us does not touch.

But instead, at a time when we are fighting a war in Iraq, when we are fighting a war on terrorism worldwide, and we are facing historic budget deficits and job losses, we are debating a radical bill that would legislate away the legal rights of American families. This legislation would dramatically alter the constitutional distribution of judicial power. It would: remove most State law class actions into Federal court; clog the Federal courts with State law cases and make it more difficult to have Federal civil rights cases heard; deter people from bringing class actions; and impose barriers and burdensome settlement of class actions.

I am not a lawyer, but I can appreciate that class actions are critical tools for ordinary citizens who want to hold wrongdoers accountable. For many people who can't afford lawyers, class actions are the only way to vindicate their rights. For consumers victimized by negligence, fraud and reckless misconduct, it is their opportunity to exercise their democratic rights.

Simply put, class actions promote efficiency and level the playing field,