CHEMICAL FACILITY ANTI-TERRORISM ACT OF 2009

The SPEAKER pro tempore. Pursuant to House Resolution 885 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 2868.

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IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2868) to amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes, with Mr. INSLEE in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered the first time.

General debate shall not exceed 90 minutes equally divided and controlled by the Chair and ranking minority member of the Committee on Homeland Security, the Chair and ranking minority member of the Committee on Energy and Commerce, and the Chair and ranking minority member of the Committee on Transportation and Infrastructure.

The gentleman from Mississippi (Mr. THOMPSON), the gentleman from New York (Mr. KING), the gentleman from California (Mr. WAXMAN), the gentleman from Texas (Mr. BARTON), the gentleman from Minnesota (Mr. OBERSTAR), and the gentleman from Florida (Mr. MICA) each will control 15 minutes.

The Chair recognizes the gentleman from Mississippi.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield myself such time as I may consume.

I am pleased to present H.R. 2868, a bill to authorize reasonable, risk-based security standards for chemical facilities.

Faced with the fact that DHS' chemical security program, CFATS, would expire, the President requested and received a 1-year extension to allow this bill to go through the legislative process. Under the CFATS program, DHS placed about 6,000 facilities in four risk tiers. These sites account for just 16 percent of the 36,000 facilities that initially submitted information to DHS.

My committee began working on comprehensive chemical security legislation 4 years ago in response to widespread concern that chemical plants may be ideal terrorist targets. Previous attempts at getting comprehensive chemical security legislation to the floor in the last two Congresses were unsuccessful.

However, this Congress, thanks to the collaborative approach taken by Chairman WAXMAN, as well as by Chairmen OBERSTAR and CONYERS, the House now has an opportunity to consider this homeland security bill. I am proud of the robust stakeholder engagement that went into this bill, and to the extent with which Department and Republican input was sought and included.

H.R. 2868 closes a major security gap identified by both the Bush and Obama administrations. Specifically, titles II and III authorize EPA to establish a security program for drinking water and wastewater facilities. EPA's new program will complement CFATS.

This approach, which is fully supported by the Obama administration, taps into the existing regulatory relationship between EPA and public water facilities.

Additionally, H.R. 2868 requires all tiered facilities to assess ''methods to reduce the consequences of a terrorist attack.'' Plants that voluntarily perform these assessments, which are sometimes called IST assessments, often find that good security equals good business. In fact, this week, Clorox announced, to strengthen its operation and add another layer of security, it would voluntarily replace chlorine gas with a safer alternative at six of its bleach manufacturing facilities.

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H.R. 2868 simply incorporates this best practice into how all tiered facilities integrate security into their operations. Additionally, H.R. 2868 strengthens CFATS by adding enforcement tools, protecting the rights of whistleblowers, and enhancing security training.

Some on the other side are arguing for a 3-year blanket extension of DHS's current authority. Such an approach flies in the face of testimony that we received about gaps in CFATS and would be a rejection of all the carefully tailored security enhancements in the bill.

This legislation demonstrates the progress we can make with a transparent process that is open to diverse viewpoints and addresses the concerns of everyone who wants to be in the process. This is exactly how government should work.

With that, Mr. Chairman, I urge passage of this important legislation and I reserve the balance of my time.

Mr. KING of New York. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the issue of chemical plant security is obviously a very vital one. It's one that has to be addressed. It's an issue which certainly since September 11 is more vital than ever. That is why, in 2006, the Homeland Security Committee, when I was chairman working across the aisle, worked long and hard to enact landmark legislation. There was much negotiation. There was much debate. We covered issues such as preemption and inherently safer technology.

Legislation was put in place, and that is the basis upon which the Department has been acting for the past 3 years. And this legislation that we enacted then is in the process of being implemented by the Department of Homeland Security. In fact, the Department, itself, asked for a 1-year extension. That was voted on in the appropriations bill last month, which I strongly supported. As far as I know, the administration has not asked for this legislation, and I'm not aware of any statement of support that they've sent up in support of it.

But before I get to that, let me just commend the chairman, Mr. THOMPSON, the Chair of the subcommittee, Ms. JACKSON-LEE, and the ranking member of the subcommittee, Mr. DENT, because even though we are going to have differences during this debate today, I want to emphasize the fact that this was done very fairly, very openly, and with a tremendous spirit of cooperation from your side of the aisle and I hope from ours as well. The differences today are very honest ones, but I want to emphasize the level of cooperation that existed throughout this process.

I am, however, opposed to the legislation because I believe it is going to create confusion and undue cost. It is going to cost jobs, and it's going to raise taxes. It gives far too much credibility to IST, or inherently safer technology, which is a concept, yet this concept will have, I believe, a very stifling effect on the private sector. We should keep in mind that we're not just talking about large chemical plant facilities, but we're also talking about institutions such as colleges and hospitals which will have to incur these costs.

The current law is working. And I asked the chairman this during the time of the debate when it was in the committee, what is the rush to move it through? And when I say ''rush,'' obviously, if it had to be done, we should do it immediately, we should do it yesterday. But the fact is that the Department did not ask for this extension, did not ask for these changes. I believe that we took a good concept, an admirable concept of enhancing chemical plant security, and have allowed concepts and ideas regarding the environment, regarding certain pet projects, and allowed that to, I believe, have too large an influence on this bill.

There is another aspect of this bill which has been added, and that's the concept of civil lawsuits against the Department. I know Mr. MCCAUL, in the debate later, is going to offer an amendment on this issue. But any fair reading of the testimony of the Department at the hearing we held on this legislation made it clear that they did not support this language regarding the civil lawsuits.

Quite frankly, with all the work the Department of Homeland Security has to do, with the difficulty there is in bringing all of these thousands of entities into compliance with the law, I believe the last thing they need right now is to be subjected to civil lawsuits

where there would virtually be no limitations on who could bring those lawsuits. My understanding is that the person doesn't even have to be a citizen to bring a lawsuit under this or live in the State where the facility is located.

So, Mr. Chairman, this is a bridge too far. This is a rush to judgment. Rather than work with the carefully crafted and thought-out legislation that we adopted in a bipartisan way 3 years ago, we are now changing it—and changing again—without a request from the Obama administration. We have language in this legislation which was clear the administration opposed at the time of the debate on the bill when it was before the committee. So I strongly urge, reluctantly, that the legislation be voted down.

But in doing that, let me also say, Mr. Chairman, that there are a large number of organizations opposed to this legislation, such as the American Farm Bureau, the Chamber of Commerce, the American Trucking Association. I will place into the RECORD the letter which was sent by a group of these organizations in opposition to the legislation, H.R. 2868.

Mr. Chairman, let me just conclude—and by the way, I will be asking Mr. DENT to manage the balance of the time on our side. I would ask those on the other side to go easy on Mr. DENT; he is suffering from trauma. His team, the Phillies, after being lucky last year, have gone back to their usual ways and they were defeated last night. I give him credit for coming out of his bed, from coming out from underneath the covers to be here today to take part in this debate. So especially I would ask the gentleman from New Jersey (Mr. PASCRELL) who has a talent for going for the jugular, you can do it to me, but please go easy on Mr. DENT today if you would. And I'm sure the chairman concurs in the sympathy we feel for the gentleman from Pennsylvania.

Mr. Chairman, on a serious note, we started work on this legislation in good faith. That good faith continues. But I strongly believe, and others on our side do, that the extreme environmental language in the bill is going to tie the hands of the Homeland Security Secretary with unrelated costly and burdensome provisions.

Congress has granted the President's request for a 1-year extension. We should let the Department of Homeland Security continue its work. I believe that moving this legislation forward will hurt the Department, will hurt small businesses, and will not improve the security of these facilities.

NOVEMBER 4, 2009.

Hon. NANCY PELOSI,
Speaker, House of Representatives, Capitol Building, Washington, DC.

Hon. JOHN BOEHNER,
Republican Leader, House of Representatives, Capitol Building, Washington, DC.

DEAR SPEAKER PELOSI AND REPUBLICAN LEADER BOEHNER: We write to you today to express our opposition to H.R. 2868, the ''Chemical and Water Security Act of 2009.'' Despite the changes made to this legislation in the Energy and Commerce and Homeland Security Committees, we continue to oppose the bill due to the detrimental impact it will have on national security and economic stability.

Specifically, we strongly object to the Inherently Safer Technology (IST) provisions of this legislation that would allow the Department of Homeland Security (DHS) to mandate that businesses employ specific product substitutions and processes. These provisions would be significantly detrimental to the progress of existing chemical facility security regulations (the ''CFATS'' program) and should not be included in this legislation. DHS should not be making engineering or business decisions for chemical facilities around the country. It should be focused instead on making our country more secure and protecting American citizens from terrorist threats. Decisions on chemical substitutions or changes in processes should be made by qualified professionals whose job it is to ensure safety at our facilities.

Furthermore, forced chemical substitutions could simply transfer risk to other points along the supply chain, failing to reduce risk at all. Because chemical facilities are custom-designed and constructed, such mandates would also impose significant financial hardship on facilities struggling during the current economic recession. Some of these forced changes are estimated to cost hundreds of millions of dollars per facility. Ultimately, many facilities would not be able to bear this expense.

Thank you for taking our concerns into account as the House of Representatives continues to consider the ''Chemical Water and Security Act of 2009.'' We stand ready to work with Congress towards the implementation of a responsible chemical facility security program.

Sincerely,

Agricultural Retailers Association American Farm Bureau Federation American Forest & Paper Association; American Petroleum Institute; American Trucking Associations; Chemical Producers and Distributors Association; Consumer Specialty Products Association; The Fertilizer Institute; Institute of Makers of Explosives; International Association of Refrigerated Warehouses; International Liquid Terminals Association; International Warehouse Logistics Association; National Agricultural Aviation Association; National Association of Chemical Distributors; National Association of Manufacturers; National Grange of the Order of Patrons of Husbandry; National Mining Association; National Oilseed Processors Association; National Paint and Coatings Association; National Pest Management Association; National Petrochemical and Refiners Association; National Propane Gas Association; North American Millers' Association; Petroleum Equipment Suppliers Association; Petroleum Marketers Association of America; U.S. Chamber of Commerce; USA Rice Federation.

I reserve the balance of my time.

Mr. THOMPSON of Mississippi. Mr. Chairman, I would like to enter into the RECORD testimony from Under Secretary Rand Beers from an October hearing that reflects that this administration supports this bill and desires for action this year.

STATEMENT FOR THE RECORD BY RAND BEERS, UNDER SECRETARY, NATIONAL PROTECTION AND PROGRAMS DIRECTORATE, DEPARTMENT OF HOMELAND SECURITY, OCTOBER 1, 2009.

Thank you, Chairman MARKEY, Ranking Member UPTON, and distinguished Members of the Committee. It is a pleasure to appear before you today as the Committee considers H.R. 3258, the Drinking Water System Security Act of 2009. This Act is intended to close the security gap at drinking water facilities that possess substances of concern.

We have made significant progress since the implementation of the Chemical Facilities Anti-Terrorism Standards (CFATS). We have reviewed over 36,900 facilities' Top-Screen consequence assessment questionnaires, and in June 2008, we notified 7,010 preliminarily-tiered facilities of the Department's initial high-risk determinations and of the facilities' requirement to submit Security Vulnerability Assessments (SVAs). We received and are reviewing almost 6,300 SVAs. We have recently begun to notify facilities of their final high-risk determinations, tiering assignments, and the requirement to complete and submit Site Security Plans (SSPs) or Alternative Security Programs (ASPs). CFATS currently covers approximately 6,200 high-risk facilities nationwide. The current state of coverage reflects changes related to chemicals of interest that facilities have made since receiving preliminary tiering notifications in June 2008, including security measures implemented and the consolidation or closure of some facilities.

CHEMICAL SECURITY REGULATIONS

Section 550 of the FY 2007 Department of Homeland Security Appropriations Act directed the Department to develop and implement a regulatory framework to address the high level of security risk posed by certain chemical facilities. Specifically, Section 550(a) of the Act authorized the Department to adopt rules requiring high-risk chemical facilities to complete SVAs, develop SSPs, and implement protective measures necessary to meet risk-based performance standards established by the Department. Consequently, the Department published an Interim Final Rule, known as CFATS, on April 9, 2007. Section 550, however, expressly exempts from those rules certain facilities that are regulated under other Federal statutes. For example, Section 550 exempts facilities regulated by the United States Coast Guard pursuant to the Maritime Transportation Security Act (MTSA). Drinking water and wastewater treatment facilities as defined by Section 1401 of the Safe Water Drinking Act and Section 212 of the Federal Water Pollution Control Act, respectively, are similarly exempted. In addition, Section 550 exempts facilities owned or operated by the Departments of Defense and Energy, as well as certain facilities subject to regulation by the Nuclear Regulatory Commission (NRC).

The following core principles guided the development of the CFATS regulatory structure:

(1) Securing high-risk chemical facilities is a comprehensive undertaking that involves a national effort, including all levels of government and the private sector. Integrated and effective participation by all stakeholders—Federal, State, local, and the private sector—is essential to securing our national critical infrastructure, including high-risk chemical facilities. Implementing this program means tackling a sophisticated and complex set of issues related to identifying and mitigating vulnerabilities and setting security goals. This requires a broad spectrum of input, as the regulated facilities bridge multiple industries and critical infrastructure sectors. By working closely with

experts, members of industry, academia, and Federal Government partners, we leveraged vital knowledge and insight to develop the regulation.

(2) Risk-based tiering will ensure that resources are appropriately deployed. Not all facilities present the same level of risk. The greatest level of scrutiny should be focused on those facilities that, if attacked, present the most risk and could endanger the greatest number of lives.

(3) Reasonable, clear, and equitable performance standards will lead to enhanced security. The current CFATS rule includes enforceable risk-based performance standards. High-risk facilities have the flexibility to select among appropriate site-specific security measures that will effectively address risk. The Department will analyze each tiered facility's SSP to see if it meets CFATS performance standards. If necessary, DHS will work with the facility to revise and resubmit an acceptable plan.

(4) Recognition of the progress many companies have already made in improving facility security leverages those advancements. Many responsible companies have made significant capital investments in security since 9/11. Building on that progress in implementing the CFATS program will raise the overall security baseline at high-risk chemical facilities.

Appendix A of CFATS lists 322 chemicals of interest, including common industrial chemicals such as chlorine, propane, and anhydrous ammonia, as well as specialty chemicals, such as arsine and phosphorus trichloride. The Department included chemicals based on the consequences associated with one or more of the following three security issues:

(1) Release—toxic, flammable, or explosive chemicals that have the potential to create significant adverse consequences for human life or health if intentionally released or detonated;

(2) Theft/Diversion—chemicals that have the potential, if stolen or diverted, to be used or converted into weapons that could cause significant adverse consequences for human life or health; and

(3) Sabotage/Contamination—chemicals that, if mixed with other readily available materials, have the potential to create significant adverse consequences for human life or health.

The Department established a Screening Threshold Quantity for each chemical based on its potential to create significant adverse consequences for human life or health in one or more of these ways.

IMPLEMENTATION STATUS

Implementation and execution of the CFATS regulation require the Department to identify which facilities it considers high-risk. The Department developed the Chemical Security Assessment Tool (CSAT) to identify potentially high-risk facilities and to provide methodologies that facilities can use to conduct SVAs and to develop SSPs. CSAT is a suite of online applications designed to facilitate compliance with the program; it includes user registration, the initial consequence-based screening tool (Top-Screen), an SVA tool, and an SSP template. Through the Top-Screen process, the Department initially identifies and sorts facilities based on their associated risks.

If a facility is initially identified during the Top-Screen process as having a level of risk subject to regulation under CFATS, the Department assigns the facility to one of four preliminary risk-based tiers, with Tier 1 indicating the highest level of risk. Those facilities must then complete SVAs and submit them to the Department. Results from the SVA inform the Department's final determinations as to whether a facility is high-risk and, if so, of the facility's final tier assignment. To date, the Department has received over 6,300 SVAs. Each one is carefully reviewed for its physical, cyber, and chemical security content.

Only facilities that receive a final high-risk determination letter under CFATS will be required to complete and submit an SSP or an Alternative Security Program (ASP). DHS's final determinations as to which facilities are high-risk are based on each facility's individual consequentiality and vulnerability as determined by its Top-Screen and SVA.

After approval of their SVAs, the final high-risk facilities are required to develop SSPs or ASPs that address their identified vulnerabilities and security issues. The higher the risk-based tier, the more robust the security measures and the more frequent and rigorous the inspections will be. The purpose of inspections is to validate the adequacy of a facility's SSP and to verify that measures identified in the SSP are being implemented.

In May, the Department issued approximately 140 final tiering determination letters to the highest risk (Tier 1) facilities, confirming their high-risk status and initiating their 120-day timeframe for submitting an SSP. In June and July, we notified approximately 826 facilities of their status as final Tier 2 facilities and the associated due dates for their SSPs. Most recently, on August 31, 2009, we notified approximately 137 facilities of their status as either a final Tier 1, 2, or 3 facility and the associated due dates for their respective SSPs. Following preliminary authorization of the SSPs, the Department expects to begin performing inspections in the first quarter of FY 2010, starting with the Tier 1-designated facilities.

Along with issuing the final tiering determination notifications for Tier 1 facilities in May, the Department launched two additional measures to support CFATS. The first is the SSP tool, which was developed by DHS with input from an industry working group. A critical element of the Department's efforts to identify and secure the Nation's high-risk chemical facilities, the SSP enables final high-risk facilities to document their individual security strategies for meeting the Risk-Based Performance Standards (RBPS) established under CFATS.

Each final high-risk facility's security strategy will be unique, as it depends on its risk level, security issues, characteristics, and other factors. Therefore, the SSP tool collects information on each of the 18 RBPS for each facility. The RBPS cover the fundamentals of security, such as restricting the area perimeter, securing site assets, screening and controlling access, cybersecurity, training, and response. The SSP tool is designed to take into account the complicated nature of chemical facility security and allows facilities to describe both facility-wide and asset-specific security measures, as the Department understands that the private sector in general, and CFATS-affected industries in particular, are dynamic. The SSP tool also allows facilities to involve their subject-matter experts from across the facility, company and corporation, as appropriate, in completing the SSP and submitting a combination of existing and planned security measures to satisfy the RBPS. The Department expects that most approved SSPs will consist of a combination of existing and planned security measures. Through a review of the SSP, in conjunction with an on-site inspection, DHS will determine whether a facility has met the requisite level of performance given its risk profile and thus whether its SSP should be approved.

Also issued with the final Tier 1 notifications and the SSP tool was the Risk-Based Performance Standards Guidance document. The Department developed this guidance to assist high-risk chemical facilities subject to CFATS in determining appropriate protective measures and practices to satisfy the RBPS. It is designed to help facilities comply with CFATS by providing detailed descriptions of the 18 RBPS as well as examples of various security measures and practices that would enable facilities to achieve the appropriate level of performance for the RBPS at each tier level. The Guidance also reflects public and private sector dialogue on the RBPS and industrial security, including public comments on the draft guidance document. High-risk facilities are free to make use of whichever security programs or processes they choose, provided that they achieve the requisite level of performance under the CFATS RBPS. The Guidance will help high-risk facilities gain a sense of what types and combination of security measures may satisfy the RBPS.

To provide a concrete example: in the case of a Tier 1 facility with a release hazard security issue, the facility is required to appropriately restrict the area perimeter, which may include preventing breach by a wheeled vehicle. To meet this standard, the facility is able to consider numerous security measures, such as cable anchored in concrete block along with movable bollards at all active gates or perimeter landscaping (e.g., large boulders, steep berms, streams, or other obstacles) that would thwart vehicle entry. As long as the measures in the SSP are sufficient to address the performance standards, the Department does not mandate specific measures to approve the plan.

OUTREACH EFFORTS AND PROGRAM IMPLEMENTATION

Since the release of CFATS in April 2007, the Department has taken significant steps to publicize the rule and ensure that our security partners are aware of its requirements. As part of this dedicated outreach program, the Department has regularly updated the Sector and Government Coordinating Councils of industries most impacted by CFATS, including the Chemical, Oil and Natural Gas and Food and Agriculture Sectors. We have also made it a point to solicit feedback from our public and private sector partners and, where appropriate, to reflect that feedback in our implementation activities, such as adjustments made to the SSP template.

We have presented at numerous security and chemical industry conferences; participated in a variety of other meetings of relevant security partners; established a Help Desk for CFATS questions; and developed and regularly updated a highly-regarded Chemical Security Web site. These efforts are having a positive impact: approximately 36,900 facilities have submitted Top-Screens to the Department via CSAT.

Additionally, the Department continues to focus on fostering solid working relationships with State and local officials as well as first responders in jurisdictions with high-risk facilities. To meet the risk-based performance standards under CFATS, facilities need to cultivate and maintain effective working relationships—including a clear understanding of roles and responsibilities—with local officials who would aid in preventing, mitigating and responding to potential attacks. To facilitate these relationships, our inspectors have been actively working with facilities and officials in their areas of operation, and they have participated in almost 100 Local Emergency Planning Committee meetings to provide a better understanding of CFATS' requirements.

We are also working with the private sector as well as all levels of government in

order to identify facilities that may meet the threshold for CFATS regulation but that have not yet registered with CSAT or filed a Top-Screen. We have recently completed pilot efforts at the State level with New York and New Jersey to identify such facilities in those jurisdictions. We will use these pilots to design an approach that all States can use to identify facilities for our follow up. Further, we are in the process of commencing targeted outreach efforts to certain segments of industry where we believe compliance may need improvement.

Internally, we are continuing to build the Infrastructure Security Compliance Division that is responsible for implementing CFATS. We have hired, or are in the process of onboarding, over 125 people, and we will continue to hire throughout this fiscal year to meet our goals. The FY 2010 budget request contains an increase to allow the hiring, training, equipping, and housing of additional inspectors to support the CFATS program as well as to continue deployment and maintenance of compliance tools for covered facilities.

NEW LEGISLATION

We have enjoyed a constructive dialogue with Congress, including this Committee, as it works on new authorizing legislation. The Department recognizes the significant work that this Committee and others, particularly the House Committee on Homeland Security, have devoted to drafting legislation to reauthorize the CFATS program and to address chemical security at the Nation's water systems. We appreciate this effort and look forward to continuing the constructive engagement with Congress on these important matters. CFATS is enhancing security today by helping to ensure high-risk chemical facilities throughout the country have security postures commensurate with their levels of risk.

The Department supports a permanent authorization of the program. Given the complexity of chemical facility regulation, the Department is committed to fully exploring all issues before the program is made permanent. To that end, the President's FY 2010 budget includes a request for a one-year extension of the statutory authority for CFATS, which will allow the time needed to craft a robust permanent program while avoiding the sunset of the Department's regulatory authority on October 4, 2009. Further, as this one year extension is considered, we urge Congress to provide adequate time and resources to implement any new requirements under the prospective legislation and to ensure that new requirements would not necessitate the Department to extensively revisit aspects of the program that are either currently in place or will be implemented in the near future. Throughout our discussions with congressional committees, the Department has communicated a series of issues for consideration as part of any CFATS legislative proposal.

It is important to note that the Administration has developed a set of guiding principles for the reauthorization of CFATS and for addressing the security of our Nation's waste water and drinking water treatment facilities. These principles are:

(1) The Administration supports permanent chemical facility security authorities and a detailed and deliberate process in so doing, hence our preference for that process to be completed in FY10.

(2) Nonetheless, CFATS single year reauthorization in this session presents an opportunity to promote the consideration and adoption of inherently safer technologies (IST) among high-risk chemical facilities. We look forward to working with this Committee and others on this important matter.

(3) CFATS reauthorization also presents an opportunity to close the existing security gap for waste water and drinking water treatment facilities by addressing the statutory exemption of these facilities from CFATS. The Administration supports closing this gap.

As DHS and EPA have stated before, we believe that there is a critical gap in the U.S. chemical security regulatory framework—namely, the exemption of drinking water and wastewater treatment facilities. We need to work with Congress to close this gap in order to secure substances of concern at these facilities and to protect the communities they serve; drinking water and wastewater treatment facilities that meet CFATS thresholds for chemicals of interest should be regulated. We do, however, recognize the unique public health and environmental requirements and responsibilities of such facilities. For example, we understand that a ''cease operations'' order that might be appropriate for another facility under CFATS would have significant public health and environmental consequences when applied to a water facility. The Administration has established the following policy principles in regards to regulating security at water sector facilities:

The Administration believes that EPA should be the lead agency for chemical security for both drinking water and wastewater systems, with DHS supporting EPA's efforts. Many of these systems are owned or operated by a single entity and face related issues regarding chemicals of concern. Establishing a single lead agency for both will promote consistent and efficient implementation of chemical facility security requirements across the water sector.

To address chemical security in the water sector, EPA would utilize, with modifications as necessary to address the uniqueness of the sector, DHS' existing risk assessment tools and performance standards for chemical facilities. To ensure consistency of tiering determinations across high-risk chemical facilities, EPA would apply DHS' tiering methodology, with modifications as necessary to reflect any differences in statutory requirements. DHS would in turn run its Chemical Security Assessment Tool and provide both preliminary and proposed final tiering determinations for water sector facilities to EPA. EPA and DHS would strive for consensus in this tiering process with EPA in its final determination, attaching significant weight to DHS' expertise.

EPA would be responsible for reviewing and approving vulnerability assessments and site security plans as well as enforcing high-risk chemical facility security requirements. Further, EPA would be responsible for inspecting water sector facilities and would be able to authorize states to conduct inspections and work with water systems to implement site security plans. It is important to note that any decisions on IST methods for the water sector would need to engage the states given their primary enforcement responsibility for drinking water and wastewater regulations.

DHS would be responsible for ensuring consistency of high-risk chemical facility security across all 18 critical infrastructure sectors.

CFATS currently allows, but does not require, high-risk facilities to evaluate transferring to safer and more secure chemicals and processes. Many facilities have already made voluntary changes to, among other things, their chemical holdings and distribution practices (for example, completely eliminating use of certain chemicals of interest). The Administration supports, where possible, using safer technology, such as less toxic chemicals, to enhance the security of the nation's high-risk chemical facilities. However, we must recognize that risk management requires balancing threat, vulnerabilities, and consequences with the cost to mitigate risk. Similarly, the potential public health and environmental consequences of alternative chemicals must be considered with respect to the use of safer technology. In this context, the Administration has established the following policy principles in regards to IST at high-risk chemical facilities:

The Administration supports consistency of IST approaches for facilities regardless of sector.

The Administration believes that all high-risk chemical facilities, Tiers 1–4, should assess IST methods and report the assessment in the facilities' site security plans. Further, the appropriate regulatory entity should have the authority to require facilities posing the highest degree of risk (Tiers 1 and 2) to implement IST method(s) if such methods enhance overall security, are feasible, and, in the case of water sector facilities, consider public health and environmental requirements.

For Tier 3 and 4 facilities, the appropriate regulatory entity should review the IST assessment contained in the site security plan. The entity should be authorized to provide recommendations on implementing IST, but it would not require facilities to implement the IST methods.

The Administration believes that flexibility and staggered implementation would be required in implementing this new IST policy. DHS, in coordination with EPA, would develop an IST implementation plan for timing and phase-in at water facilities designated as high-risk chemical facilities. DHS would develop an IST implementation plan for high-risk chemical facilities in all other applicable sectors.

Because CFATS and MTSA both address chemical facility security, there certainly should be harmonization, where applicable, between these programs. We of course continue to work closely within the Department with the Coast Guard to review the processes and procedures of both programs. We also support further clarification in the statute concerning the type of NRC-regulated facilities exempt from CFATS.

In the area of enforcement, we have expressed in our testimony on H.R. 2868 the Department's support for eliminating the requirement that an Order Assessing Civil Penalty may only be issued following an Administrative Order for compliance. This change would greatly streamline the civil enforcement process, enhancing the Department's ability to promote compliance from facilities. We also support language that would authorize the Department to enforce compliance by initiating a civil penalty action in district court or commencing a civil action to obtain appropriate relief, including temporary or permanent injunction. We note, however, that the enforcement provisions this Committee has proposed in H.R. 3258 would subject drinking water facilities to a lower maximum penalty as compared to chemical facilities regulated under H.R. 2868 if enforcement is pursued through a civil penalty action in district court. This could result in inconsistent enforcement between facilities.

The Department notes that the Drinking Water System Security Act of 2009 would give the Administrator discretion in divulging information about the reasons for placing a facility in a given tier. This provision is preferable to the provision in Title I of HR 2868 which mandates that the Department disclose specific information to tiered facilities that could include classified information.

The Department also notes that HR 3258 and HR 2868 contain provisions that require

covered facilities and government agencies to comply with all applicable state and Federal laws and exclude from protection ''information that is required to be made publicly available under any law.'' While the Department supports current requirements for facilities to report certain information to Federal and state agencies under other statutes, DHS is concerned that this language as written could increase the likelihood that sensitive information could be inappropriately disclosed to the general public. The Department would like to work with the Committee to explore what other Federal statutes and information might be affected by this language in order to ensure that there are no inconsistencies that could undermine the important goal of protecting sensitive information from unwarranted disclosure, while still protecting the public right-to-know about information that may affect public health and the environment, as embodied in these other statutes. We will also consult with our partner agencies that administer the affected Federal statutes.

CONCLUSION

The Department is collaborating extensively with the public, including members of the chemical sector and other interested groups, to work toward achieving our collective goals under the CFATS regulatory framework. In many cases, industry has voluntarily done a tremendous amount to ensure the security and resiliency of its facilities and systems. As we implement the chemical facility security regulations, we will continue to work with industry, our other Federal partners, States, and localities to get the job done.

The Administration recognizes that further technical work to clarify policy positions regarding IST and water treatment facility security is required. The policy positions discussed above represent starting points in renewed dialogue in these important areas. DHS and EPA staff are ready to engage in technical discussions with Committee staff, affected stakeholders, and others to work out the remaining technical details. We must focus our efforts on implementing a risk-and performance-based approach to regulation and, in parallel fashion, continue to pursue the voluntary programs that have already resulted in considerable success. We look forward to collaborating with the Committee to ensure that the chemical security regulatory effort achieves success in reducing risk in the chemical sector. In addition to our Federal Government partners, success is dependent upon continued cooperation with our industry and State and local government partners as we move toward a more secure future.

Thank you for holding this important hearing. I would be happy to respond to any questions you may have.

Mr. THOMPSON of Mississippi. Mr. Chairman, I now recognize a member of the committee, the gentleman from New Jersey (Mr. PASCRELL), for 2 minutes.

Mr. PASCRELL. Mr. Chairman, I rise in strong support as an original cosponsor of the Chemical Facility Anti-Terrorism Act of 2009. We must take extraordinary measures to defend America. This is common sense.

I want to thank the chairman of Homeland Security for all of his work on the bill, as well as commending Chairman OBERSTAR and Chairman WAXMAN for coming together with one voice on this critical piece of legislation.

It has to be clear to all of us that this bill is long overdue and that chemical security is one of the greatest vulnerabilities to our homeland security infrastructure. Both sides admit to that point.

This bill reauthorizes the Department of Homeland Security's authority to implement and enforce the Chemical Facility Anti-Terrorism Standards which are currently set to expire in October of 2010. In fact, the bill strengthens these standards in a number of significant ways.

Now, let's get to the meat and potatoes of what we will be debating this afternoon—and getting the amendments whenever the heck that happens.

The State of New Jersey is home to the most dangerous 2 miles in America—the FBI has pointed this out many times—along the Jersey Turnpike. Because it is the most densely populated State, with a very large chemical industry presence, I am proud to say that the State has adopted some of the strongest chemical security standards in the Nation, and it's time the Federal Government caught up. That is why I am surprised and deeply disappointed that there are Members of this body who actually hope to strip the State preexemption language out of this bill. We need to raise Federal standards, as we do in this bill, and not force States to lower their standards.

The Acting CHAIR (Mr. SERRANO). The time of the gentleman has expired.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield the gentleman 1 additional minute.

Mr. PASCRELL. I am also very disappointed that the chemical industry and Members of this body continue to raise unnecessary fears about the inherently safer technology assessments. We have gone over this in testimony since 2006.

The State of New Jersey has rightfully required chemical facilities to assess for safer technology assessments, and believe it or not, our State is not only safer for it, but the sky hasn't fallen on the chemical companies in New Jersey. The truth is that this bill is not only the best thing for our homeland security, but also the best thing for the chemical industry, because assuring safety and greater efficiencies is a tremendous cost saver in the long run.

Mr. Chairman, this should be a bipartisan issue. We say that protecting the American people is our number one priority. Now is the moment to prove it.

I urge bipartisan passage of this bill.

Mr. DENT. Mr. Chairman, I appreciate this opportunity to address this legislation, and I want to thank Ranking Member KING for rubbing it in on the Phillies. I know you're very pleased about the Yankees, but at least the Phillies beat the Mets. That's all I have to say today about that. So with that, congratulations to the Yankees.

Again, this is a very important piece of legislation, as we all know. I have very serious concerns about it for a number of reasons, but it should be remembered that in 2006, we, Congress, enacted a law that gave the Department of Homeland Security the authority to regulate chemical facilities.

You're hearing a lot of talk today about inherently safer technologies, and I would like to get into that in just a moment and what it means. I should also point out as well that the State of New Jersey does require IST assessments, but not implementation of IST, which is quite different. We are going much further than the State of New Jersey in this legislation.

It's important to point out, too, that I certainly support the Department's efforts to secure chemical facilities, but unfortunately, I think this legislation is riddled with costly provisions that go beyond the underlying security purpose of the bill.

Currently, there are vulnerability assessments that the Department must do under the current regulations. There are about 6,000 vulnerability assessments that must be done. So far, 2,000 have been completed, leaving about 4,000 vulnerability assessments that remain. Adding these IST assessments will be enormously costly.

I should also point out that the Department of Homeland Security has no one on staff who is an expert in these inherently safer technologies, so I wanted to point that out for the record.

We've had a lot of testimony, too, and I want to say something about inherently safer technologies. Testimony was referenced. There was a statement from a Scott Berger, who is a director for the Center for Chemical Process Safety. Mr. Berger is an expert in inherently safer technology and inherently safer design. And as the organization that developed the most widely used reference addressing inherently safer design, inherently safer processes, and lifecycle approach, they are the leaders. That was in his testimony. And he said, What is inherently safer design, from his testimony back in June of 2006. He said, Inherently safer design is a concept related to the design and operation of chemical plants, and the philosophy is generally applicable to any technology. Inherently safer design is not a specific technology or set of tools and activities at this point in its development. It continues to evolve, and specific tools and techniques for application of inherently safer design are in the early stages of development. And he goes on.

But essentially what he's saying is inherently safer technology is a conceptual framework. It's not a technology; it's an engineering process. Unfortunately, it seems that too many in Congress are trying to act as chief engineers. We are essentially trying to tell people how to produce certain types of chemicals and what chemicals to use.

These are very technical issues. It will be very costly to implement. It will affect jobs in this country, and with unemployment rates approaching 10 percent nationally, I am very concerned about the impact on this.

I happen to represent a district, the 15th District of Pennsylvania. I have a company called Air Products and Chemicals. About 4,000 people work there. They spend their time designing and building chemical plants in this country and throughout the world. They know a bit about this. And I am extremely concerned that those types of jobs will be put at risk because these chemical plants will be built, but they will not be built here. They will be built elsewhere to produce the chemicals that we need every day in our lives. So that is something that I just feel we have to talk about.

Mr. PASCRELL. Will the gentleman yield?

Mr. DENT. I will yield briefly.

□ 1545

Mr. PASCRELL. My good friend from the 15th District of Pennsylvania, you're not suggesting that each State should decide for itself as to what the standard for chemical security should be, are you?

Mr. DENT. No

Mr. PASCRELL. You're not. Then what are you suggesting?

Mr. DENT. I am suggesting that we, as a country, maintain the regulations.

Mr. PASCRELL. Which regulations?

Mr. DENT. Reclaiming my time, the ones that are currently in place. The regulations that we just extended for 1 year.

About a month ago, when we passed the Homeland Security Appropriations Act, we extended the current regulations for 1 year. I think we should extend them for another 2 years. Let those regulations take effect. Let's implement them. We have agreement. There was a great deal of opposition to this legislation by farmers, manufacturers and others who are going to be saddled with these costs. I have to point this out:

Inherently safer technology deals with workplace safety issues and how you develop the product or the process. It doesn't deal with securing the plant—you know, hiring more guards or building fortifications to secure a plant. That deals with safety as opposed to security. I want to make that distinction because we all agree—you and I agree—that we need to make sure that these plants are secure, but inherently safer technology is really not about plant security, and I think we have to be clear about that.

I reserve the balance of my time.

Mr. THOMPSON of Mississippi. Mr. Chairman, before I yield to the gentleman from Texas, I would like to say that this is a security bill. A good security bill makes all of us safe. What we're looking at now is an opportunity to go into facilities that don't, in many instances, have security assessments. If we make security assessments, then we will identify those vulnerabilities those facilities have and help them correct them. Bad people would love to get into facilities with vulnerabilities and do harm. What we're trying to do is help those facilities create the capacity to be secure. That's all we're doing.

Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. AL GREEN), who is a member of the committee.

Mr. AL GREEN of Texas. I thank Chairman THOMPSON for yielding me the time.

Mr. Chairman, I rarely use the personal pronoun ''I.'' I don't like using it because rarely do we accomplish things by ourselves; but to thank Chairman THOMPSON, it is appropriate that I use this personal pronoun for he was the person who helped us to put a provision into CFATS which deals with the administration of facilities along ports. In Houston, Texas, we have 25 miles of ports that we have to contend with.

Thank you, Mr. THOMPSON. Thank you, Mr. Chairman.

Let me say this: proactive measures can prevent reactive remediation. This is a proactive measure that we are taking to prevent having to do something that will help us after an event has occurred, and it's important to note that this is not just about chemical facilities.

There are many people who would say, Well, I don't have a chemical facility in my neighborhood. It really doesn't concern me. It doesn't impact me.

You do have drinking water in your neighborhood, however. This legislation deals with drinking water and with wastewater treatment facilities. It is important that wastewater treatment facilities that are in every neighborhood be properly secured, and it is of utmost importance that drinking water be secured. That's what this piece of legislation addresses as well. I don't want it said on my watch that we had an opportunity to take some preventative measures and that we failed to do so such that somebody's child, somebody's husband or wife, that somebody was harmed when we had it within our power to prevent it.

This is good, sound legislation. It is a proactive approach to prevent us from having to take some sort of remediation after the fact.

The Acting CHAIR. The time of the gentleman has expired.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 1 additional minute to the gentleman.

Mr. AL GREEN of Texas. Finally, citizen lawsuits are appropriate because citizens are near the problem. They know what's not going on.

Why can't we put citizens in the loop of protecting their communities?

Yes, people can sue, but there are also means by which persons who sue can be removed from the dockets of courts. Anybody can sue. You can walk into any court and sue right now for anything that you want. You don't prevail just because you file a lawsuit. Citizens can help us to help protect our communities by having this opportunity to sue.

It is a good piece of legislation, and I thank the chairman for his hard work with the other committees of jurisdiction to promulgate this legislation.

Mr. DENT. Mr. Chairman, may I inquire as to how much time I have remaining.

The Acting CHAIR. The gentleman from Pennsylvania has 4 minutes remaining. The gentleman from Mississippi has 5 minutes remaining.

Mr. DENT. Mr. Chairman, I yield 2½ minutes to the ranking member of the Committee on Agriculture, the distinguished gentleman from Oklahoma (Mr. LUCAS).

(Mr. LUCAS asked and was given permission to revise and extend his remarks.)

Mr. LUCAS. Mr. Chairman, I rise in opposition to H.R. 2868, the so-called Chemical and Water Security Act of 2009.

It no longer surprises me that the Democratic leadership is, once again, racing to impose more government mandates on our farmers, ranchers and small businesses without considering the economic impact of their actions. From cap-and-trade to food safety and soon to health care, rushing ill-conceived, ill-timed legislation through Congress has shamefully become the norm around here.

In renaming the bill the Chemical Facility Anti-Terrorism Act to the Chemical and Water Security Act, I appreciate that the authors of the bill at least acknowledge that it has nothing to do with protecting our country from acts of terrorism but, rather, that it has everything to do with pacifying the extreme environmental lobby.

Some have said that agriculture should not be concerned about this legislation. Well, if that were true, then a coalition of agriculture groups, which includes the American Farm Bureau Federation, would not be circulating a letter to all Members of Congress urging them to vote against it.

Let me be clear: this bill will have a deep and negative impact on the agriculture industry.

Under the current regulatory framework, which I would support to reauthorize, farmers would have an extension appropriate to the small risks they impose. Under those regulations, chemical facilities are treated fairly and work with the Department of Homeland Security in a cooperative manner to enhance site security.

This legislation destroys that relationship. This legislation contains absolutely no authority for the Secretary of Homeland Security to grant extensions to farmers for the future. In fact, under this bill, there is no authority for the Secretary to provide for the appropriate risk-based treatment of farmers or any other disproportionately affected groups when it reissues its regulations. That's not all.

Manufacturers and suppliers of agricultural inputs, like fertilizers and pesticides, will also not be exempt from the nonsecurity-related provisions of the bill. Such provisions will jeopardize the availability of those widely used

and lower-cost agricultural inputs that are essential for agriculture production.

In essence, this sets up a scenario where input supplies will be limited, where costs will skyrocket and where U.S. food security and the livelihoods of our farmers will be threatened.

Beyond devastating the agriculture industry, this bill does not provide any additional security against acts of terrorism, which is supposed to be its purpose. National security will actually be compromised since provisions of the bill will allow citizen lawsuits in the national and homeland security arena.

The Acting CHAIR. The time of the gentleman has expired.

Mr. DENT. I yield the gentleman an additional 30 seconds.

Mr. LUCAS. Mr. Chairman, this is an irresponsible and carelessly crafted piece of legislation that will impose mandates on family farms, small businesses, hospitals, and universities. It expands the environmental legal framework under the guise of security; and it fails to preserve, let alone expand and protect, current security protections for our country.

I urge my colleagues to oppose the bill.

Mr. THOMPSON of Mississippi. Before I recognize the gentlewoman from California, let me say that nothing in this bill prevents the Secretary from using her discretion in continuing the exemption for farmers. I will put my credentials from agriculture up against anyone's in this body. I represent a rural district. Nothing I would do in this body would harm agriculture, and I think if you check my voting record, you will absolutely see that.

Also for the record, to the gentleman from Oklahoma, let me say that, before any of these things are done, the Department has to see if it's technically feasible; they have to see if it's cost effective, and if it lowers the risk at the facility.

So all of those concerns you raise are justified, but they are addressed in the bill. So I would say that, between the time for general debate and when we start voting, if you would go back and look at that, I think some of your concerns will be resolved.

I yield 2 minutes to a member of the committee, the gentlewoman from California (Ms. RICHARDSON).

Ms. RICHARDSON. Mr. Chairman, I rise today to express my strong support for the Chemical and Water Security Act of 2009.

I would like to thank Chairman THOMPSON for his hard work in crafting this vital piece of legislation.

I support this legislation because it will enhance the security of our Nation in terms of chemicals, drinking water, and wastewater facilities. This legislation lessens the vulnerability of our most critical sectors, one of which I live in.

More specifically, I rise today to speak to a provision that I offered which protects workers who identify and report violations affecting the safety and security of chemical facilities. When it comes to the security of our facilities, we should not leave our first preventers at the door. We depend upon them to be competent, to be vigilant, and to be proactive. We owe them the assurance that they will not be penalized for doing their jobs properly. That is why I am pleased that the bill also incorporates a provision that requires the facility owners to certify in writing their knowledge of protections for whistleblowers.

So, Mr. Chairman, when we look at H.R. 2868, the answers are really clear. All you have to look back at is the poison gas leak of a Union Carbide plant in 1984 which killed 10,000 people in 72 hours, and that was an accident. Imagine the economic and strategic damage that could be done to our country.

Let's talk about my district, the 37th. I am a proud Representative of the Joint Water Pollution Control Plant in Carson, California. That wastewater treatment plant switched from using chlorine gas to liquid bleach disinfection. We need to do this throughout the country, and this legislation will enable us to do that.

I applaud Chairman THOMPSON for his work and for working with our other colleagues on the other committees.

I urge my colleagues on the other side: we can't wait. We can't wait anymore because our constituents are in danger.

The Acting CHAIR. The Chair will note that the gentleman from Pennsylvania has 1 minute remaining, and the gentleman from Mississippi has 2 minutes remaining.

Mr. DENT. Mr. Chairman, in conclusion to this discussion, I must restate my reasons for opposition to this bill.

There is not one person in the Department of Homeland Security who has any expertise in inherently safer technology. They are not prepared to deal with this mandate. I am concerned that much of this bill is, in fact, not focusing on security at all but is, rather, focusing on Federal mandates that may force our small businesses and farms to shed American jobs, further harming our vulnerable economy.

I have a letter here from 27 different organizations, including the Chamber of Commerce, the Farm Bureau and the Fertilizer Institute, which oppose the underlying legislation. They said: ''We continue to oppose the bill due to the detrimental impact it will have on national security and economic stability.''

A lot has been said about chemical facilities, but this bill is not so much about chemical facilities as it is about facilities with chemicals, and those facilities include hospitals, colleges and universities, and 3,630 employers with fewer than 50 employees. These are the people who are going to be impacted, and jobs will be lost. With unemployment approaching 10 percent, I don't think now is the time to impose this kind of a mandate, which will not have any real security benefit to the American people.

So, with that, I would like to submit this letter for the RECORD from the various organizations in opposition to this legislation. Let's let the current regulations be implemented. Let's extend them for that 1 year and beyond.

NOVEMBER 3, 2009.

Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC.
Hon. JOHN BOEHNER,
Republican Leader, House of Representatives, Washington, DC.

DEAR SPEAKER PELOSI AND REPUBLICAN LEADER BOEHNER: We write to you today to express our opposition to H.R. 2868, the ''Chemical Facility Anti-Terrorism Act of 2009'' (CFATS). Despite the changes made to this legislation in the Energy and Commerce and Homeland Security Committees, we continue to oppose the bill due to the detrimental impact it will have on national security and economic stability.

Specifically, we strongly object to the Inherently Safer Technology (IST) provisions of this legislation that would allow the Department of Homeland Security (DHS) to mandate that businesses employ specific product substitutions and processes. These provisions would be significantly detrimental to the progress of existing chemical facility security regulations (the ''CFATS'' program) and should not be included in this legislation. DHS should not be making engineering or business decisions for chemical facilities around the country when it should be focused instead on making our country more secure and protecting it from terrorist threats. Decisions on chemical substitutions or changes in processes should be made by qualified professionals whose job it is to ensure safety at our facilities.

Furthermore, forced chemical substitutions could simply transfer risk to other points along the supply chain, failing to reduce risk at all. Because chemical facilities are custom-designed and constructed, such mandates would also impose significant financial hardship on facilities struggling during the current economic recession. Some of these forced changes are estimated to cost hundreds of millions of dollars per facility. Ultimately, many facilities would not be able to bear this expense.

Thank you for taking our concerns into account as the Committee continues to consider the ''Chemical Facility Anti-Terrorism Act of 2009.'' We stand ready to work with the Committee and Congress towards the implementation of a responsible chemical facility security program.

Sincerely,

Agricultural Retailers Association;
American Farm Bureau Federation;
American Forest & Paper Association;
American Petroleum Institute;
American Trucking Associations;
Chemical Producers and Distributors Association;
Consumer Specialty Products Association;
The Fertilizer Institute;
Institute of Makers of Explosives;
International Association of Refrigerated Warehouses;
International Liquid Terminals Association;
International Warehouse Logistics Association;
National Agricultural Aviation Association;
National Association of Chemical Distributors;

National Association of Manufacturers;
National Grange of the Order of Patrons of Husbandry;
National Mining Association;
National Oilseed Processors Association;
National Pest Management Association;
National Petrochemical and Refiners Association;
National Propane Gas Association;
North American Millers' Association;
Petroleum Equipment Suppliers Association;
U.S. Chamber of Commerce.

Mr. Chairman, I yield back the balance of my time.

Mr. THOMPSON of Mississippi. Mr. Chairman, I yield 1 minute to a member of the committee, the gentlewoman from Houston, Texas (Ms. JACKSON-LEE).

□ 1600

Ms. JACKSON-LEE of Texas. I thank the chairman of the committee for his leadership.

I'm pleased, as the Chair of the Transportation Security and Critical Infrastructure Protection Subcommittee, to rise to support this legislation and particularly highlight for my colleagues the importance of legislation and language that I put in the bill in our subcommittee. One dealing with whistleblower protections that requires the DHS Secretary to establish and process and to accept information from whistleblowers. We cannot be a secure Nation if people don't feel that they have the ability to tell the truth.

I'm very pleased that language is in the bill that reduces the consequence of a terrorist attack by requiring the use of inherently safer technologies, which is crucial as we begin to look at chemical facilities and wastewater facilities. In addition, the aspect of the citizen enforcement that allows a citizen to file suit against the DHS, not against a private company, that speaks to the issue of making sure that the Department of Homeland Security is in compliance.

Then, of course, I think it is important to note, as we look at background checks, that we also are reminded of people's right to work. Title I requires the Department of Homeland Security Secretary to issue regulations to require tiered facilities to undertake background checks for the safety of the American people.

This is a legislative initiative that is overdue. I ask my colleagues to support this legislation.

Mr. THOMPSON of Mississippi. Mr. Chair, I yield myself the balance of my time.

As you've heard, Mr. Chair, this legislation before us today is critical to the security of our Nation and is deserving of the full support of this House.

With that, Mr. Chair, I yield back the balance of my time.

The Acting CHAIR. The gentleman from Massachusetts (Mr. MARKEY) and the gentleman from Texas (Mr. BARTON) each are recognized for 15 minutes.

The Chair recognizes the gentleman from Massachusetts.

Mr. MARKEY of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

I rise in support of the Chemical and Water Security Act, legislation that is a product of about 9 months of effort by the House Energy and Commerce, Homeland Security, and Transportation and Infrastructure Committees. We've worked as partners towards the final construction of this legislation.

Now, I come from a district that was home to some of the 9/11 terrorists before they launched their attacks, before they walked in our streets, scoped out our airports, rehearsed their mission. The September 11th attacks demonstrated that America's very strengths, its technology, could be turned into weapons of mass destruction to be used against us.

Mohammed Atta and the other nine terrorists that hijacked those two planes at Logan Airport on September 11th were roaming around my district for about a year trying to determine how they could exploit deficiencies in technology. And when they found it, they struck. And more than 150 people were on those planes flying from Logan towards New York City. It is something that is etched forever in my mind, and I am committed to ensuring that it is not repeated.

Since 9/11, as a result of what happened on that day, we have enacted legislation to secure aviation, to secure maritime, rail, mass transit, nuclear energy, and other sectors. But what we have yet to do is act on comprehensive legislation to secure the facilities that make or store dangerous chemicals. Instead, we have relied on an incomplete and an adequate legislative rider that was inserted into an appropriations bill in 2006 that amounted to little more than a long run-on sentence.

The chemical sector represents the best of American technological might. Its products help to purify our water; make the microchips used in our computers, cell phones, and military technologies; refine our oil; grow our food. But these same chemicals could also be turned into a weapon of mass destruction, something we are reminded of just recently when we learned of a disrupted terrorist plot to use hydrogen peroxide purchased in Colorado for a bomb planned to be detonated in New York.

While the Department of Homeland Security has done an admirable job of implementing the rather hastily crafted legislative rider from 2006, the bill before us today closes the loopholes left open by that provision that could be exploited by terrorists.

The bill contains provisions that represent more than 5 years of work on my part to ensure that facilities containing toxic chemicals switch to safer processes or substances only when it is technologically and economically feasible to do so. Terrorists cannot blow up what is no longer there. The language in this bill represents a true compromise that the Energy and Commerce Committee developed in close consultation with and using considerable input from the American Chemistry Council. Only the riskiest facilities would be subject to this provision. The Department of Homeland Security puts the number at between 100 and 200 out of a total of more than 6,000 regulated facilities.

Under 3 percent of the chemical facilities in our country would be covered under this legislation, the most dangerous, the most vulnerable, the most likely targets by al Qaeda in our country. And we know that al Qaeda has metastasized around the world. They are still trying to find the most vulnerable way that our country can be exploited, and it is our job to make sure that we pass the legislation that closes those vulnerabilities.

The American Chemistry Council and the Society of Chemical Manufacturers and Affiliates have endorsed the citizen enforcement provisions which were added in the Energy and Environment Subcommittee markup. These provisions remove all lawsuits against private companies, a change that the Chamber of Commerce has also deemed positive. The bill retains the ability for citizens to bring suit only against the Department of Homeland Security for failure to perform nondiscretionary duties and against Federal facilities for failure to comply with orders. It also establishes a citizen petition process to give citizens an official forum to report alleged security problems at private facilities to the Department of Homeland Security.

The legislation closes what both the Bush and Obama administrations have called a ''critical security gap'' for drinking water and wastewater facilities that were exempted from the 2006 law and the powers given to the Department of Homeland Security to close homeland security gaps that can be exploited by al Qaeda. In this bill, we grant the Environmental Protection Agency authority to establish a parallel security program for the water sector, consistent with the Bush and Obama administrations' views that EPA should be the lead regulator for these facilities.

Like the chemical facility language, drinking and wastewater facilities that use and store chemicals in amounts that could cause injury in the event of a release must assess whether they can switch to safer chemicals or processes and that these processes may be required by State regulators only if, and I repeat, only if they are economically and technologically feasible and if their adoption will not impair water quality. The Blue-Green coalition of environmental and labor organizations, the Association of Metropolitan Water Agencies, whose member utilities provide safe drinking to more than 125 million Americans, and the Association of California Water Agencies have all endorsed the drinking water title of this bill.

This legislation is a compromise. We engaged with all of the stakeholders and crafted language that addresses all of the concerns. And it is notable that even the Chamber of Commerce has said that it ''recognizes that several provisions have been reworked and modified to address concerns raised by the business community.''

This, ladies and gentlemen of the House, is still a glaring regulatory black hole that we must ensure is closed. We cannot allow al Qaeda to exploit this weakness that exists in the security that we place around the chemical facilities in our country. We know that it is at or near the very top of the al Qaeda target terrorist list. This legislation closes that loophole. It ensures that we are going to provide the protection for the American public from that attack, which we know somewhere in the world al Qaeda is planning if they can only find the way to exploit a weakness in our defense.

Mr. Speaker, I reserve the balance of my time.

Mr. BARTON of Texas. Mr. Speaker, first, let me express my heartfelt condolences to my friend from Massachusetts on the Yankees' ascendancy last night. I am one of many, many, many people in this country who, while I'm not a Red Sox fan, do not put me down in the Yankee Blue column. So maybe my Rangers one of these days will come up and at least tussle with the Red Sox and the Yankees for the American League pennant.

Mr. Speaker, I rise in opposition to this bill. Before I go into my prepared remarks, I think it's educational to explain to the body what we're actually marking up.

We had two bills that came out of the Energy and Commerce Committee, and I would assume out of the Homeland Security Committee that were marked up and subject to debate. We had a bill in the Transportation Committee that, from what I can tell, was never marked up, and we now have merged the two work products from Homeland Security, the two work products from Energy and Commerce, and a work product from the Transportation Committee that was never publicly marked up and changed them in this bill and then it's going to be yet changed again in the manager's amendment in the nature of a substitute tomorrow so that the bill that we will actually be voting on is a bill that has never seen the light of day as a single bill.

Now, on the surface all these bills, or this bill, this merged bill, should pass 435–0. The Chemical and Water Security Act sounds like something that's a suspension calendar bill. The problem is, Mr. Speaker, that the bill before us has almost nothing to do with security in the sense of protection against terrorism. It has everything to do with what I consider to be radical environmentalism under the guise of homeland security. Let me elaborate on that in the written remarks.

The approach in this legislation is deeply flawed. The overreaching problem is simply this: Protecting chemical facilities and drinking water systems from terrorist attacks should not be done under the umbrella of environmental law. If it's about stopping terrorism, we ought to be talking about computer security and fiscal security and prevention and terrorism tracking and all of the things that really make these facilities safer against terrorism. Instead, we're debating something called IST, inherently safer technology, which is a chemical process, a manufacturing process, so that you process the water, you process the chemicals in a fashion that is safer from an environmental standpoint or perhaps from a safety standpoint for the workers in the surrounding community.

□ 1615

Mr. Chair, that has nothing to do with protecting against terrorism. H.R. 2868 goes beyond the reasonable requirements that have been the core of many Homeland Security programs for several sectors. Vulnerability assessments, site security plans, emergency response plans, these are real things that should be done and are being done to protect our chemical and water facilities against terrorism, but we're substituting in this bill for this IST and these environmental requirements that really have nothing to do with security.

We have an existing security regime in place for chemical facilities and water systems, including a chemical security program that the Congress passed 3 years ago, which is still in the process of being implemented by the Department of Homeland Security. My good friend from Massachusetts talked about how that was put into law back in 2006 and seemed to intimate that it was not thoughtfully done. I would assure my friend that it was very thoughtfully done.

The Energy and Commerce Committee at that time had primary jurisdiction, and my concern, as chairman of the committee at that time, was that we really shouldn't do something on an appropriations bill. We should do it through the regular process. But because it came late in the year, we did yield to the appropriators and put it in the omnibus bill. But even doing that, we spent weeks debating and working with the Homeland Security Committee and the stakeholders to come up with what, today, I think is a better process than what is in this bill.

It is considered that the existing chemical plant security program that we already have is going to cost $18.5 billion in public and private investment right now. The reasonable thing to do, in my opinion, is to let that program be implemented before we scrap it with a totally new concept from this Congress. We need to know what the deficiencies, if any, are in the existing program before we move to a brand new program and a brand new concept.

This legislation refuses to honor common sense when simplistic ideology seems to offer a quick return on a political investment. More to the point about this being an environmental bill is the fact that I am struck by some of the key words used in the entire legislation to address terror prevention. For example, page 10, line 20 of the amendment in the nature of a substitute—and I want to be very clear about this—defines a ''chemical facility terrorist incident'' as a ''release of a substance of concern.'' If you look up the definition of ''release,'' starting on page 12, line 19, that mirrors the exact language of the toxic waste cleanup law, which we call Superfund, right down to making its covered universe of ''hazardous substances, pollutants, or contaminants.''

Mr. Chair, this means that the Department of Homeland Security is now going to treat an environmental accident or an environmental cleanup as a terrorist incident. Now, I don't want to imply that an environmental accident is not a serious issue that needs to be dealt with seriously, but it's not a terrorist attack if you have a spill of a toxic chemical at a chemical facility. It's an accident. It's a problem. It needs to be dealt with. There are environmental issues. But it is not a terrorist incident. It is not a terrorist attack. But if this bill becomes law and you have that type of an accident, it is going to be a terrorist incident, and it has to be considered by the Department of Homeland Security. I think that is ludicrous. I think it's wrong. I think it is shortsighted, and I think it is unnecessary.

I'm an industrial engineer. I understand, to some extent, plant processes and chemical processes and things like that. I think we're very blessed in this country to have a robust chemical industry, much of which is located in the States of Texas and Louisiana on the Texas and Louisiana gulf coast. If this bill becomes law, my projection is that within 10 years or so, many of those facilities are going to be closed down and inoperable, and tens of thousands of jobs are going to be lost because our chemical industry is simply going to move offshore. They're not going to stay under a legislative proposal that, on the surface of it, is almost impossible to be implemented.

I am not convinced that there is a single, true, security-enhancing thing about the specific requirements in this bill, and I know for certain that we're already making these facilities do types of things under the EPA's risk assessment program and OSHA's process safety management program that this bill then doubles down on.

We have existing laws and existing processes to handle the issues these bills really do handle. The concept is an engineering process philosophy. Congress has repeatedly heard expert testimony that the provisions in section 2111 of this bill are expensive, hard to define because of significant technical challenges, and very tough, if not impossible, to enforce.

Further, even if these problems did not exist, the Department of Homeland Security does not even have the professionals it needs to make informed decisions on how to operate the program or give guidance to those who have to implement the program. Let me repeat. This legislation is not directed at preventing terrorist attacks. It is, instead, directed at setting up a regulatory regime under which the Department of Homeland Security and EPA employees, who really don't know much about production processes at the Nation's chemical and drinking water facilities, are going to force and have to make key technical decisions—not security decisions—technical, manufacturing, process decisions about those processes.

As if this were not enough, the legislation weakens the protections traditionally given to high-risk security information by treating need-to-know information like environmental right-to-know data. I am for transparency in government, but why should we give the terrorists that we're trying to prevent from attacking these facilities almost an open book to go in and, under those open meeting requirements and open record requirements, get information that could allow them to concoct schemes to destroy those various facilities?

These provisions are not just troubling to me because this legislation will allow for more information, ironically, to be made publicly through litigation but, more so, because it's going to be very hard to penalize people that reveal this information to the public. As one of my Democrat friends said in the committee markup in the Energy and Commerce Committee, ''Loose lips sink ships,'' and there are few repercussions under this bill for somebody with loose lips.

I could go on and on, Mr. Chairman, but let me simply say, this is a bad bill at the wrong time. It's unnecessary. I hope that we can have a bipartisan vote against it, and I hope that we can defeat it.

I do want to say one good thing about the process. Mr. WAXMAN and Mr. MARKEY did have a subcommittee markup. They did have a full committee markup, and a number of amendments have been made in order by the Rules Committee for the minority to try to improve the bill, and for that, I am thankful.

Mr. Chair, I ask unanimous consent to yield the balance of my time to my good friend from Florida (Mr. STEARNS) to control.

The Acting CHAIR (Mr. TIERNEY). The gentleman from Florida will be recognized in that event.

Mr. MARKEY of Massachusetts. Mr. Chair, will you inform us as to how much time is remaining on either side.

The Acting CHAIR. The gentleman from Massachusetts (Mr. MARKEY) has 7 minutes remaining, and the gentleman from Texas (Mr. BARTON) has 3 minutes remaining.

Mr. MARKEY of Massachusetts. Mr. Chair, I yield 5 minutes to the chairman of the full committee, the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Chairman, I rise in strong support of H.R. 2868, the Chemical and Water Security Act of 2009. This legislation resolves some important unfinished business from 9/11. We learned on that terrible day how determined terrorists can turn our critical assets into weapons of mass destruction. Despite that wake-up call, we've been slow and inconsistent in securing our Nation's chemical facilities and water systems from terrorist attack. Passing this legislation will enhance our Homeland Security, improve the safety of our workforce, and help protect our public health.

First, the bill strengthens security at America's chemical plants by providing permanent authority for the Department of Homeland Security's chemical facility antiterrorism standard program. This legislation would establish a number of security enhancements, including requiring, for the very first time, that covered chemical facilities assess whether there are any safer chemical processes or technologies that they can adopt that would reduce the consequences of a terrorist attack against that facility. This bill would also authorize the Secretary of Homeland Security, under certain circumstances, to require that the riskiest chemical facilities adopt the safer chemical processes or technologies when necessary to reduce the likelihood that the facility will be attacked.

The bill also provides chemical facilities with an appeals process if they disagree with the DHS Secretary's determination. We crafted this provision in close consultation with considerable input from the largest chemical industry association, the American Chemistry Council.

Second, the bill establishes minimum security standards at drinking water and wastewater facilities, closing what the Bush and Obama administrations agree is a critical security gap. Under this bill, for the first time, covered water systems that use a certain amount of dangerous chemicals will have to assess whether they can switch to safer chemicals or processes to protect their employees, their neighbors, and the communities they serve.

We worked closely with the water sector to craft a bill that meets several important policy goals—clean and safe water and homeland security. I am pleased that the associations representing drinking water and wastewater utilities have endorsed the bill. These endorsing associations include the Association of Metropolitan Water Agencies, the American Public Works Association, the National Association of Clean Water Agencies, and the Association of California Water Agencies.

Third, this bill gives chemical facility workers much-needed protection by ensuring that chemical facilities and water systems involve their workers in developing plans to address any vulnerability to terrorist attack. Not only are workers the first line of defense against any attack, they would also be the first injured in the event of a chemical release. That's why this legislation is strongly supported by labor organizations, including the United Steelworkers, United Auto Workers, Communications Workers of America, and the International Chemical Workers Union Council.

And finally, this bill improves current law by creating a citizen enforcement tool that citizens can use to protect their communities when DHS fails to perform its nondiscretionary duties. It also allows States to take additional action to protect their communities from terrorists if they find it to be necessary.

This bill is the product of careful compromise, and it was drafted in close consultation with key stakeholders from government, the chemical industry, the water utilities, labor and other groups. That's why it has been endorsed by a broad coalition of labor and environmental organizations in addition to many water industry associations. I am proud of the balance we have struck.

I urge all Members to support H.R. 2868 to close these critical security gaps once and for all.

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Finally, I'd like to highlight two aspects of the bill.

INFORMATION PROTECTION

Each title of H.R. 2868 contains a section related to the protection of sensitive security information that could be detrimental to facility security if disclosed. The bill requires the Secretary of Homeland Security and the EPA Administrator to develop rules for the appropriate sharing of protected information with those who have a need to know it. The bill also establishes criminal penalties for any person who discloses this protected information in knowing violation of the rules.

The bill defines the types of information that is considered ''protected'' as well as the types of information that the bill's sponsors intended to exclude from that definition. The bill states that protected information does not include ''information that is required to be made publicly available under any other provision of law.'' Laws such as the Clean Air Act, the Emergency Planning and Community Right to Know Act or the Occupational Safety and Health Act require disclosure of important safety information to regulators, workers and often the public at large. An individual who discloses information in compliance with one of these other statutes should not face criminal penalties even if that information is also contained in a document such as a security vulnerability assessment that is protected under the rules established by Secretary of Homeland Security and the EPA Administrator.

DRINKING WATER FACILITIES AND SITE SECURITY PLANS

The Committee on Energy and Commerce reported H.R. 3258 favorably on October 21, 2009. H.R. 3258, now Title II of H.R. 2868, requires each covered water system to assess the system's vulnerability to a range of intentional acts. The vulnerability assessment must include a review of vulnerable assets within the fenceline of the system, such as water treatment and pre-treatment facilities and chemical storage units, as well as the off-site water distribution system. Each covered water system also must complete a site security plan that addresses the vulnerabilities identified in the assessment. With regard to the on-site vulnerabilities, the Committee intends for each covered water system to develop a site security plan that addresses those vulnerabilities using layered security measures to meet risk-based performance standards developed by EPA.

With regard to any off-site vulnerabilities identified by the covered water system, the Committee expects EPA to recognize that it would be impractical for the covered water system to guarantee the physical protection of the system's entire network of pipes, conveyances, and other usage points that comprise its distribution system. For example, it would be impracticable for the covered water system to control access to all fire hydrants or residential connections within its distribution system or all pipes that deliver its water. Similarly, the Committee does not expect for the covered water system to describe employees' roles and responsibilities for securing the distribution system beyond the fenceline of the system as part of its site security plan, unless the system has assigned one or more employees such responsibilities. The covered water system, however, may use funds granted by EPA to address off-site vulnerabilities, such as tamper-proofing of manhole covers, fire hydrants, and valve boxes.

Mr. STEARNS. Mr. Chair, may I inquire how much time is left on our side of the aisle?

The Acting CHAIR. The gentleman from Florida has 3 minutes.

PARLIAMENTARY INQUIRIES

Mr. STEARNS. Parliamentary inquiry, Mr. Chairman.

We understand that the Transportation Committee under Mr. DENT has extra time and that could be allotted, if he's not using it, to our side to use it. Is that possible by unanimous consent that we could take his 15 minutes? We have some Members who actually are going to be affected by this bill, and they're going to lose jobs in their districts. They're quite passionate about this bill, and I would like to give them more than the 3 minutes that is available. So I am asking unanimous consent if it's appropriate to do that.

The Acting CHAIR. The Committee of the Whole may not change the scheme of debate established by an order of the House. A member of the Committee on Transportation and Infrastructure would have to manage that debate.

□ 1630

Mr. STEARNS. All right, then, so we are stuck with just 3 minutes.

Is it possible, Mr. Chairman, by unanimous consent that we can extend our time beyond the 3 minutes?

The Acting CHAIR. It is not possible in the Committee of the Whole.

Mr. STEARNS. Parliamentary inquiry, Mr. Chairman. If Mr. DENT shows up on the House floor and he makes a request to give us his 15 minutes, do we need a unanimous consent? Or I will stand in and manage the time for him and then we will have 15 more minutes that we can use for these individuals who are going to be affected by this bill?

The Acting CHAIR. The Committee of the Whole cannot change the scheme of control of debate. The gentleman from Pennsylvania (Mr. DENT) could manage the time.

Mr. STEARNS. If Mr. DENT comes down, he can manage the time.

The Acting CHAIR. A member of the appropriate committee could manage the time.

Mr. STEARNS. Well, just to be careful here, I think what I am going to do is I am going to take a minute, and hopefully Mr. DENT will show up and then we can have that extra time for us.

The Acting CHAIR. As a clarification to the gentleman from Florida, the gentleman from Pennsylvania would have to be on the Transportation and Infrastructure Committee to be recognize to control the time.

Mr. STEARNS. He is coming. In fact, he might be on the floor as I speak.

The Acting CHAIR. The gentleman from Florida is recognized for such time as he may use.

Mr. STEARNS. Mr. Chairman, at a time when the U.S. Bureau of Labor Statistics cites a 16 percent decline in chemical manufacturing jobs, this Chemical Facility Anti-Terrorism Act would force people out of work by imposing needless and harmful regulations on American industries by making the production, use and storage of chemicals more expensive and burdensome with little benefit to public safety or national security.

Absent Federal preemption and a uniform national standard, this legislation will create overlapping and conflicting security requirements that could cause disruption of Federal security standards, increase government red tape, and create more economic instability. This legislation will also impose new mandates on American manufacturers as to which products and processes they use without any regard for practicality, availability or cost.

I, along with undoubtedly every Member of this body, believe that securing chemical facilities against deliberate attacks is crucial to protecting Americans, which is why, since 2006, clear and comprehensive chemical security regulations have been put in place. Removing the sunset date and making the current chemical security

regulations permanent would provide the certainty needed to both protect citizens and support our Nation's economic recovery.

I encourage all my colleagues to join me in strong opposition to this detrimental bill.

With that, Mr. Chairman, I reserve the balance of my time.

Mr. MARKEY of Massachusetts. Mr. Chairman, I yield for the purpose of a unanimous consent request to the gentleman from California (Mr. MILLER).

(Mr. GEORGE MILLER of California asked and was given permission to revise and extend his remarks.)

Mr. GEORGE MILLER of California. Mr. Chairman, I rise in strong support of the Chemical Facility Anti-Terrorism Act.

Mr. Chairman, I would like to thank my friend from California, Chairman WAXMAN, my friend from Minnesota, Chairman OBERSTAR, and my friend from Mississippi, Chairman THOMPSON, for their work in bringing the Chemical Facility Anti-Terrorism Act to the House floor. They deserve great credit for crafting legislation to improve security at facilities around the country.

One particular concern that this legislation can help address is the risk posed by bulk quantities of chlorine—one of the most powerful disinfectants available, but a potentially dangerous chemical when transported by rail through our neighborhoods en route to wastewater and drinking water utilities and the conventional bleach producers that often supply them.

Federal estimates are that a release of chlorine from just one of the 36,000 annual rail car shipments could result in up to 100,000 casualties. Many water utilities are shifting to bleach, which is as effective as a disinfectant but less dangerous to ship, store, and use. However, bleach made using conventional manufacturing process also relies on chlorine shipped by rail.

I am pleased to have learned that there is a safer alternative, the use of which I believe should be greatly expanded. That alternative is bleach made using only salt, water, and electricity, eliminating the need to ship chlorine across the country. This safer bleach is just as effective as conventional bleach and can be produced at costs competitive with the cost of conventional bleach.

This technology is being implemented at locations around the country, including in Florida, Ohio, Virginia, and in my congressional district in Pittsburg, California. Also, Clorox Corporation just this week announced plans to shift all of their bleach plants to use a method that would eliminate the transport of chlorine by railcar to its facilities across the country. The elimination of chlorine transport by rail is welcomed by security advocates and the railroads that bear the liability risk from transporting chlorine.

H.R. 2868 calls for identification of chemicals of concern and the use of inherently safer technology by the highest risk water utilities. Clearly, chlorine is one of these chemicals of concern—perhaps more than any other chemical used by water utilities.

However, simply changing from chlorine to bleach as a disinfectant may not solve the problem.

Chlorine railcars could continue to pass through neighborhoods to the nearby conventional bleach manufacturers, who may argue that the cost for them is too high to shift to a safer process.

For this reason, I believe that we must look at the entire supply chain and the procurement process as we work to eliminate or mitigate the consequences of a terrorist attack. In order to fully achieve Congress' intent in passing this bill, the Environmental Protection Agency and Department of Homeland Security should work together to evaluate this problem and develop a policy that will lead to safer utilities and communities by reducing the hazardous transport of chlorine.

Once again, I appreciate the work of Chairman WAXMAN, Chairman OBERSTAR and Chairman THOMPSON on this bill and I look forward to working with them and the industry as we go forward to help reduce the risks associated with the transportation of chlorine across our country.

Mr. MARKEY of Massachusetts. Mr. Chairman, I yield 1½ minutes to the gentleman from Texas (Mr. GENE GREEN).

Mr. GENE GREEN of Texas. I thank my colleague.

First of all, I rise in strong support of H.R. 2868. I represent the largest petrochemical complex in the country. These chemical facilities contribute much to our economy and way of life and the employ thousands of workers in high-paying, quality jobs.

These chemical facilities have invested $8 billion in security improvements since 2001 and are fully complying with DHS' Chemical Facilities Antiterrorism Standards, or CFATS, that has not been fully implemented. These dedicated chemical employees, as well as the communities around them, deserve the best security standards possible to prevent another unthinkable act of terrorism on U.S. soil.

When this bill was originally introduced, I had some concerns about it. Working with both Chairman WAXMAN and Subcommittee Chairman EDDIE MARKEY along with industry and labor officials, we made a number of changes in here and I would like to summarize some of them.

We worked with the Chair to include new language to clarify that the Coast Guard would be the main entity enforcing the requirements similar to the maritime security facilities; provide an explicit consultative role for the Coast Guard if the DHS Secretary considers IST for a maritime security facility; ensure maritime security facilities would not perform additional background security requirements other than under CFATS; and identify the TWIC credential that is being used to satisfy CFATS would also satisfy this bill. That's what's so important.

Mr. Chair, I rise today in support of H.R. 2868, the Chemical and Water Security Act, a bill to protect chemical facilities and drinking water and wastewater systems across the country.

The Houston Ship Channel I represent is home to the largest petrochemical complex in the country. These chemical facilities contribute much to our economy and way of life and employ thousands of workers in high-paying, quality jobs.

Chemical facilities have already invested nearly $8 billion in security improvements since 2001 and are fully complying with DHS' Chemical Facilities Antiterrorism Standards, or CFATS, which are not yet fully implemented.

These dedicated chemical employees, as well as the communities that surround these facilities, deserve the best security standards possible to prevent another unthinkable act of terrorism on U.S. soil.

As introduced, I had several concerns with H.R. 2868 that were mostly addressed in the final bill by working with Chairman HENRY WAXMAN, Subcommittee Chairman ED MARKEY, and industry and labor representatives.

First, granting the DHS Secretary authority to mandate a facility to perform a "method to reduce a consequence of a terrorist attack"—or IST—raises questions as to whether, or how, to involve government agencies like DHS that have few, if any, process safety experts, chemical engineers and other qualified staff.

We worked to include a fair and transparent technical appeals process in H.R. 2868 that requires DHS to examine such decisions with facility representatives as well as with experts knowledgeable in the fields of process safety, engineering, and chemistry.

In addition, the scope of affected facilities nationwide potentially subject to IST requirements was substantially reduced by focusing exclusively on chemical facilities in populated areas subject to a release threat, and DHS may not mandate IST if it were not feasible or if the facility would no longer be able to continue operations at its location.

Second, H.R. 2868 as introduced created unnecessary duplication with existing regulations for chemical facilities already regulated under the Maritime Transportation Security Act, or MTSA.

We worked with the Chairmen to include new language to clarify that the Coast Guard will be the main entity enforcing the requirements of this act for MTSA facilities; provide an explicit consultative role for the Coast Guard if the DHS Secretary considers mandating IST on a MTSA facility; ensure MTSA facilities would not have to perform additional background security requirements under CFATS; and identify the TWIC credential as being able to satisfy the CFATS requirements in the bill.

Third, workers were not afforded a robust redress process in the case of any adverse decisions made due to the personnel surety requirements in the legislation.

We worked to include a "Reconsideration Process" by which workers could petition DHS to make a determination as to whether the worker poses an actual terrorist security risk, as well as included annual reports to Congress assessing much needed background check and redress process data.

Fourth, the civil suit provisions could have unnecessarily disclosed sensitive security information for facilities.

Revised language was included to permit affected citizens the ability to compel agency action on CFATS and provide an avenue for citizens to report facilities in potential violation of the bill's requirements while safeguarding sensitive information. No private right of action is permitted against private companies.

Finally, the original bill failed to streamline the regulation of both drinking water and wastewater facilities and lacked an appeals process for water systems subjected to IST decisions.

H.R. 2868 now places EPA in charge of regulating both drinking water and wastewater facilities and includes an appeals process for water systems to ensure a fair and open hearing on any IST decisions made by the State or EPA.

H.R. 2868 is far from perfect, but it includes substantial compromises to permanently extend chemical and water security regulations while reducing duplicative regulatory standards, increasing worker protections, and providing important safeguards to chemical facilities and water systems.

I want to again thank Chairman WAXMAN and Subcommittee Chairman MARKEY for working with me and other Members to improve this legislation.

The Acting CHAIR. The gentleman from Florida has 1½ minutes remaining.

Mr. STEARNS. With that, I yield that time to the gentleman from California (Mr. RADANOVICH).

The Acting CHAIR. The gentleman from California is recognized for 1½ minutes.

Mr. RADANOVICH. I realize that my friends in the majority like to trumpet the support of the drinking water title of the bill by the American Municipal Water Association, yet I want to provide my colleagues with the rest of the story.

The AMWA is just a sliver of the regulated universe covered by this bill. There are three other groups that are much larger in terms of the number of facilities and people served.

While the AMWA members claim to serve 125 million Americans, the American Water Works Association serves 180 million customers and 4,700 utilities. The National Association of Water Companies, or the NAWC, represents 22 million customers, and the National Rural Water Association represents 25,000 utilities. None of these associations has proclaimed their support for this entire bill.

In my own State, the town of Modesto, and the Modesto Irrigation District, an AWWA member contacted me to express its concerns about the citizen suit provisions and the weak information protection and penalty provisions in this bill. They were also very concerned about the expense of the mandates that would be placed on them by this legislation.

I want to remind my colleagues that drinking water treatment can be complex and is closely constrained by Safe Water Drinking Act regulations, production demands and customer affordability. Evaluating changes to water treatment must be thoughtful, must be technically transparent and fully consider all the alternatives available to the water system, as set out by the system operators and local officials, not some bureaucrat who is unsure what they are doing.

I would have hoped that a problem-solving rather than politically motivated bill would be before us to address this matter. Because there isn't, I urge defeat of this bill.

The Acting CHAIR. The gentleman from Massachusetts has 30 seconds remaining.

Mr. MARKEY of Massachusetts. I yield myself the balance of my time.

Mr. Chairman, I want to thank Michal Freedhoff from my staff; and Alison Cassady, David Leviss, Jacqueline Cohen, Phil Barnett, Greg Dotson, Kristin Amerling, Peter Ketcham-Caldwill and Melissa Cheatham from Chairman WAXMAN's staff. I would also like to thank Chris Debosier of Mr. MELANCON's staff and Derrick Ramos from Mr. GREEN's staff.

This is not an environmental bill. This is not a bill banning chemicals. This is a bill about national security, to make sure that al Qaeda cannot turn a chemical facility in our country into a weapon of mass destruction in some hometown in our country. That is what this bill is all about.

I urge an ''aye'' vote.

The Acting CHAIR. The gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON) will be recognized for 15 minutes and the gentleman from Pennsylvania (Mr. DENT) will be recognized for 15 minutes.

The Chair recognizes the gentlewoman from Texas.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I yield myself as much time as I may consume.

I rise in support of H.R. 2868, the Chemical and Water Security Act of 2009.

I join my chairman, Mr. OBERSTAR, in thanking the chairman of the Committee on Homeland Security and the chairman of the Committee on Energy and Commerce for including an amended text of my bill, H.R. 2883, the Wastewater Treatment Works Security Act of 2009, as title III in H.R. 2868.

Enactment of the Wastewater Treatment Works Security Act, in concert with the underlying language produced by the Committees on Homeland Security and Energy and Commerce, will preserve the historical relationship between wastewater utility operators and the Environmental Protection Agency in meeting both the security enhancements called for in this measure as well as the goals and purposes of the Clean Water Act.

In the wake of September 11, 2001, our Nation has learned the importance of protection of our critical infrastructure. In the weeks following 9/11, the Committee on Transportation and Infrastructure held several hearings on the overall vulnerability of infrastructure to terrorist attack, including the vulnerability of the Nation's wastewater utilities.

Since these hearings, the position of our committee, both under Democratic and Republican majorities, has been consistent. We must strive to reduce the vulnerability of wastewater infrastructure and to minimize the potential adverse impact to human health, critical infrastructure and the environment that could occur from an intentional act.

According to EPA, there are over 16,000 publicly owned treatment works in the United States as well as 100,000 major pumping stations, 600,000 miles of sanitary sewers, and another 200,000 miles of storm sewers. Taken together, these systems represent the backbone of the Nation's primary sewage treatment capacity, as well as an extensive network that runs near or beneath key buildings and roads and alongside many critical communication and transportation networks.

Significant damage to the Nation's wastewater treatment facilities or collection systems could result in the loss of life, catastrophic environmental damage to rivers, lakes and wetlands, contamination of drinking water supplies, long-term public health impacts, destruction of fish and shellfish production areas, and disruption to commerce, the economy and the Nation's way of life.

In the same light, certain wastewater treatment works throughout the United States use chemicals in their disinfectant process, such as chlorine gas, that pose a threat to public health if improperly released into the environment.

Title III of this bill, the Wastewater Treatment Works Security Act, ensures that all large- and medium-sized wastewater treatment facilities—those that treat at least 2.5 million gallons of sewage per day—perform a nationally consistent threshold security assessment and take proactive steps to reduce their overall vulnerability.

According to EPA, the provisions of title III of this act should cover approximately 17 percent of the 16,000 publicly owned treatment works in this country, yet addresses an estimated 70 percent of the population served by municipal wastewater treatment.

For those facilities that possess sufficient quantities of potentially dangerous chemicals, such as chlorine gas, this legislation requires an assessment of whether inherently safer technologies can be implemented to reduce the overall risk posed by the facility.

Yet while it is appropriate that we take action to improve the overall safety and security of our Nation's wastewater treatment facilities, we must also be aware of the unique role and public service played by our water and wastewater utilities.

Unlike typical chemical manufacturing facilities, water and wastewater facilities must remain in constant operation and cannot simply be turned off.

Mr. Chairman, a majority of the Nation's wastewater is treated by publicly owned treatment works. Discharges from these facilities, more commonly known as sewage treatment plants, are typically subject to regulation under the National Pollutant Discharge Elimination System program, established under the Clean Water Act.

Today, all but five States have received EPA approval to manage their point-source discharge programs. However, whether it is an approved State or EPA, the appropriate permitting authority is responsible for establishing

designated uses for waters and for establishing water quality criteria sufficient to protect those uses.

The permitting authority then issues Clean Water Act permits for facilities, such as sewage treatment plants, that limit the amount of pollution they may legally discharge in order to meet the established water quality criteria and the uses.

During formulation of the Chemical and Water Security Act of 2009, the Committee on Transportation and Infrastructure worked with the Committees on Homeland Security and Energy and Commerce to ensure that the security-related requirements of this bill not negatively impact the ability of wastewater treatment facilities to meet their clean water obligations.

Equally as important, this bill preserves the historic oversight of EPA and approved States in implementation of the security-related requirements of this legislation.

Mr. Chairman, I have heard that this legislation will place an unnecessary financial burden on local governments or ratepayers, or that the inherently safer technologies called for in this legislation cannot be implemented.

To answer this first concern, title III authorizes $1 billion over 5 years in grants to publicly owned treatment works to carry out the requirements of the title. State and local governments would be eligible for up to 75 percent of the costs to carry out vulnerability assessments, site security and emergency response plans, and to implement measures to improve the overall security of publicly owned wastewater treatment facilities.

□ 1645

This legislation also provides grant funding for emergency response training to first responders and firefighters who may be called upon in the event of a terrorist attack.

In response to the second concern about inherently safer technologies, I would highlight the findings of the 2006 report of the Government Accountability Office which noted that over half, 56 percent, of the largest wastewater facilities use an alternative chlorine gas in their disinfectant process. Of the remaining facilities surveyed by GAO in 2006, an additional 20 percent of the facilities that used chlorine gas have reported plans to switch to another form of disinfectant.

One key example is here in the Nation's Capital, just across the Anacostia River. In 2001, the Blue Plains Wastewater Treatment Plant, which serves the Capitol complex, switched from chlorine gas to a concentrated bleach formula for disinfection of wastewater. While the changes had been planned for some time, heightened security concerns following 9/11, including the potential impact of a terrorist attack on the U.S. Capitol complex, led facility personnel to accelerate the implementation of the inherently safer technology. If the switch from chlorine gas to the other inherently safer product was important enough to protect Members of Congress, it should be equally as important to protect our families throughout the United States.

This legislation has been endorsed by the leading wastewater utility organizations, including the National Association of Clean Water Agencies, the California Department of Sanitation Agencies, and the American Public Works Association.

I support the passage of this legislation.

I reserve the balance of my time.

Mr. DENT. Mr. Chairman, I rise in opposition to this legislation. Our side of the aisle is going to focus on the impact on jobs. This legislation is devastating to jobs in this country, and we will get into that in just a moment.

Mr. Chairman, I yield 4 minutes to the gentleman from Houston, Texas (Mr. CULBERSON).

Mr. CULBERSON. I appreciate the time.

We in the fiscally conservative minority, Mr. Chairman, are focused on jobs. Every day that we are here, we are working to make sure we protect job growth in this Nation, and we have correctly identified this bill as a job-killing bill. And the reason is very straightforward. Just let me walk you through it.

In Texas alone, we have 470,000 jobs either directly or indirectly related to the petrochemical refining industry. In Louisiana next door, they have got about another half million jobs.

Now, the EPA has for many years, they are looking to try to change, for example, a bleaching process in the paper industry that would cost up to $200 million. The EPA has also tried to switch a refining process in the petrochemical industry from hydrochloric acid to sulfuric acid. That can be just as dangerous in a terrorist attack, but requires 250 times more acid to achieve the same result and will cost between $45 million and $150 million per refinery to convert to the sulfuric acid process, with an increase in operating costs between 200 and 400 percent.

I apologize for my voice, but I was participating in the rally outside the Capitol of people who came here today concerned about the job-killing effect of that health care bill that I share their concern and their opposition over, and wore my voice out.

But we in Texas understand the importance of protecting these facilities from terrorist attacks, and that is not our concern. We are concerned about the bureaucracy this bill creates.

But let me very quickly just read from the bill, Mr. Chairman. Let's look at the definitions. If you look at the definition of chemical facility, that is any facility that contains a substance of concern.

When you look at the definition of the environment, you will see right away that means the waters, navigable water or saltwater, contiguous to the United States. And one of our biggest concerns in this legislation, you will find it buried on page 95.

''The Environmental Protection Agency Administrator,'' I am quoting directly from the bill, ''may designate any chemical substance as a substance of concern and shall establish a threshold quantity for the release of the substance, and if that substance has any serious adverse effect on the environment, the EPA administrator can shut it down.''

This is not a safety provision for protecting us against terrorist attacks. This is a straightforward environmentalist piece of legislation designed to give the EPA authority that they do not currently have.

This chart shows the Houston ship channel, which my friend GENE GREEN represents. There are tens of thousands of jobs that are reliant on the petrochemical refining industry along the Houston ship channel.

This map shows southwest Louisiana and southeast Texas between Baton Rouge and Corpus Christi, Texas. Almost half of the Nation's petrochemical refining capacity is concentrated in southwest Louisiana and southeast Texas. They are doing a far better job today in protecting the environment and in protecting against terrorist attacks. We have already got legislation on the books that Mr. BARTON mentioned that is costing about $18 billion to implement to protect against terrorist attacks.

I would ask the majority, it makes no sense for this Congress to pass legislation today that would so clearly kill jobs. According to the National Association of Manufacturing, this bill will kill tens of thousands of jobs in the petrochemical refining industry across this Nation. When we have already got legislation on the books to protect against terrorist attacks, why would this Congress pass legislation which so obviously will kill jobs, which so clearly, here it is on page 95 in clear English, is directed at giving the administrator of the EPA the ability to designate any chemical they want as a threat to the environment.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. DENT. I yield the gentleman an additional 20 seconds.

Mr. CULBERSON. This is an extremely dangerous piece of legislation which will kill jobs in the petrochemical refining industry across the United States, and I urge my colleagues to defeat it. In a time of recession, we have got to protect jobs and build jobs, not pass more regulations that will kill jobs.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I would like to yield 3 minutes to the gentleman from New Jersey (Mr. SIRES).

Mr. SIRES. Mr. Chairman, I rise today as a proud supporter of H.R. 2868, the Chemical and Water Security Act of 2009. I would like to thank Chairman THOMPSON, Chairman OBERSTAR, and

Chairman WAXMAN for their leadership in this crucial piece of legislation.

I know firsthand the challenges and risks that large urban areas face. The district I represent is densely populated and home to critical transportation infrastructure, as well as chemical plants. In fact, the district is considered to have the most dangerous 2-mile stretch in the Nation.

On the morning of September 11, I witnessed the destructive capabilities of terrorism. I believe we must do everything in our power to address the known threats so we can reduce our risk and prevent future catastrophes. I know H.R. 2868 will bring us several steps closer to securing the facilities across the country that we rely on each day. The safety of our communities depends on the security measures taken at these facilities.

Mr. Chairman, increased security measures should not be viewed as a burden, but as an opportunity to reduce threats by promoting best practices. This legislation is skillfully designed to increase our security without jeopardizing facility services, and I urge my colleagues to vote in favor of H.R. 2868.

I also would like to add, we heard concerns today about the potential impact of this bill on the economy and jobs. I want to take this opportunity to share with you the views of those who have the most at stake in this argument, the workers themselves.

The United Steelworkers, the International Chemical Workers Union Council, the International Brotherhood of Teamsters, the Service Employees International Union, the Communication Workers of America, and the United Auto Workers Union Legislative Alliance sent a letter to Congress on October 30 expressing their strong support for this bill. The workers are on the front lines in defending chemical facilities in this country.

Mr. DENT. Mr. Chairman, I would like to yield 4 minutes to the distinguished gentleman from New Orleans, Mr. SCALISE.

Mr. SCALISE. I want to thank the gentleman for yielding.

I rise in opposition to this bill because it has nothing to do with security of our chemical facilities. The chemicals facilities spend millions and millions of dollars to secure their facilities, and I would suggest that those facilities are more secure than most Federal buildings because there is so much at stake, and nobody has challenged or suggested anything other than that they do protect their facilities.

What this is about is radical environmentalists coming in and trying to impose new policies. They call it ''inherently safer technologies.'' And what is that? Well, clearly it is not anything that is going to make the plant more efficient because those companies spend millions of dollars continuing to upgrade and make the most modern facilities that they have so they can continue manufacturing in this country. What it means is there is some people in the Federal Government who want to go in and tell manufacturing companies which products to use in their manufacturing facilities.

Now, one of the problems we have got right now in our economy is that the government is trying to run every business that there is out there. The government is trying to run car companies, and look at how well that has turned out. The government is running banks, and look at how well that has turned out. The government has czars trying to run all of these different aspects of our economy, and it is not working.

In fact, unemployment is now at 9.8 percent, approaching 10 percent, when they said their stimulus bill would cap unemployment at 8 percent. So clearly their approach to fixing this economy is not working and it has led to more job losses.

In fact, if you look at the results of the elections on Tuesday night in Virginia and New Jersey, people turned out in droves and said it is jobs. It is the economy. We want government to stop running jobs out of this country.

So what do they do? They bring us another bill today that runs more jobs out of this country. Because if you look at what is going to happen to these facilities, petrochemical facilities that refine oil, there is talk about, oh, we want to reduce our dependence on foreign oil.

Sure we want to reduce our dependence on foreign oil. You don't do it by running every refinery out of this country to China or India or the Middle East. That is what this bill will do. It will increase our dependence on foreign oil and on companies in the Middle East that refine oil.

It will run millions of jobs out of this country, and these are high-paying jobs. The average cost at some of these chemical facilities is over $70,000 per year per employee. And their bill that they are bringing forward will run thousands, in south Louisiana thousands, of those jobs out of this country.

You wonder why businesses are running around right now feeling like they have a bull's eye on their back by the Federal Government. It is because of policies just like this. Cap-and-trade is still out there. You have the card check bill that has businesses scared to death to hire anybody in America because of what Congress is going to do to them.

That is not the role of government. That is not the role of Congress. We should be trying to spend time here helping create jobs. Instead, we have got a bill on the floor, yet another of a long laundry list of legislation, that will run more jobs out of the economy, out of this country.

Nobody has disputed that. All of the business groups that have looked at this have said this will run jobs out of this country, and it won't do anything to increase security at our facilities, because they are already doing the things they need to do to keep us safe, and nobody has suggested otherwise. We need to defeat this legislation.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I yield 2 minutes to the gentleman from Iowa (Mr. BOSWELL).

(Mr. BOSWELL asked and was given permission to revise and extend his remarks.)

Mr. BOSWELL. I am taking a little bit different tack here. I don't object to what we are trying to do, but as I have thought about this over the last few hours, I have a concern, and this concern has to do with I think there has been very little discussion with those that produce our food and fiber in this country, which I have been involved in most of my life, as well as many others here. I am told that there has not been too much coordination.

So I am not saying don't do this. I am wondering if we could just pause for a minute and take some time to discuss the impact on another area of security, if you will, homeland security and the production of food and fiber.

Our farmers in this country, dairy farmers by the multitudes, are going under. Pork producers are down about $22 per head over the last 24 months. Beef producers can't meet the cost of input. Corn producers in my State are not meeting the cost of input. And I think maybe it would be time well spent if we could just pause and think about the impact of these things on what we are trying to do.

Yes, we need to protect our environment. Yes, we need to protect our water. Nobody is arguing about that. We in agriculture think that very strongly.

□ 1700

But probably who I need to be talking to is not here listening on the floor today to be able to cause this pause to take place. Mr. Chairman, I think this is deserving of some careful consideration because one thing that we haven't done in this country compared to some places around the world, we haven't been hungry. If that should happen, we would certainly, surely have a very, very serious security situation.

I think the intent is good, but I think we need a little pause to talk for a day or two about the possibility, about the impact that this has on food and fiber production in this great country of ours.

Mr. DENT. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Kansas (Mr. MORAN).

Mr. MORAN of Kansas. Mr. Chairman, thank you very much. I appreciate the chance to be on the House floor today to speak in opposition to this bill, and I am particularly delighted to speak after the gentleman from Iowa (Mr. BOSWELL) has just spoken because my message to my colleagues on the Agriculture Committee and others from rural America, whether Republicans or Democrats, is this is

a bad bill for rural America and for our agriculture producers and the small businesses that support agriculture in rural America.

While it is a noble effort and something that I think everyone on the House floor would agree on, we need to move in the direction of greater security in regard to chemicals. Aspects of this bill, as indicated by the gentleman from Texas (Mr. BARTON), really do not relate to security. They are about employee safety, workforce safety, the environment in which we work. It is about environmental rules and regulations. And in some fashion in our legislative process here, the Department of Homeland Security issues have been overcome, the positives that may be there from increasing our security, are overcome by the detrimental costs associated with environmental and labor issues.

So this bill, particularly because of the IST provisions, is a bill that is detrimental. As Mr. BOSWELL indicated, increasing input costs—fertilizers, chemicals, pesticides—those things matter to production agriculture today, especially today when the economic circumstances in which our farmers find themselves is so narrow, so difficult, anything that increases the cost is very damaging.

Finally, the businesses that support them, they make up a huge component of rural communities across my State, across rural America and across our country, and putting those folks out of business has a significant consequence to the future of the people that I represent.

So I urge my colleagues from all across rural America to oppose this legislation for the dramatic and damaging effect it will have upon the people who produce food and fiber in this country and the businesses that support that effort.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I would like to include for the RECORD correspondence from the National Association of Clean Water Agencies and the California Association of Sanitation Agencies.

OCTOBER 29, 2009.

Hon. NANCY PELOSI,
Speaker of the House, House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: The National Association of Clean Water Agencies and the California Association of Sanitation Agencies support incorporating wastewater facility security legislation into the Chemical Facility Anti-Terrorism Act (H.R. 2868) once chemical facility legislation is sent to the House floor. In furtherance of this objective, we support including the Wastewater Treatment Works Security Act (H.R. 2883) as a separate title in comprehensive chemical facility legislation. We have reviewed the manager's amendment to H.R. 2883, and believe this language addresses our primary concern: the prospect of separate regulatory regimes for drinking water and wastewater treatment systems. Numerous local agencies provide both water and wastewater treatment services. The dual regulatory system is counterproductive and entirely without any security benefits.

Our organizations have appreciated the opportunity to work with the Homeland Security, Transportation and Infrastructure, and Energy and Commerce Committees on reaching a resolution to this issue. We look forward to supporting your efforts to bring this legislation to the House floor for floor debate and passage. If you have any questions or wish to discuss this matter further, please contact Patricia Sinicropi, NACWA Legislative Director.

Sincerely,

KEN KIRK,
Executive Director, National Association of Clean Water Agencies (NACWA).

CATHERINE SMITH,
Executive Director, California Association of Sanitation Agencies (CASA).

AMERICAN PUBLIC WORKS ASSOCIATION,
Kansas City, MO, October 29, 2009.

Hon. NANCY PELOSI,
Speaker of the House, Cannon House Office Building, Washington, DC.

DEAR MADAM SPEAKER: I am writing to urge you to move the Chemical Facility Anti-Terrorism Act (HR 2868), which now includes language addressing security at drinking water and wastewater facilities, to the floor for a vote as soon as possible. The committees with an interest in chemical security at facilities across the nation have worked diligently to craft a comprehensive package that provides an appropriate and sensible approach to closing the existing regulatory gap in the current regulatory framework by leaving EPA as the lead regulatory authority over the water sector.

Establishing a single lead agency for security over substances of concern from intentional incidents or natural disasters at drinking water and wastewater facilities will promote consistent and efficient implementation of chemical security across the water sector while simultaneously ensuring continued protection of public health and the environment. Moreover, the Environmental Protection Agency (EPA) has a long established and active water security program that promotes security and resiliency within the water sector. EPA, in close cooperation with the sector, is using a multi-layered approach to ensure the water sector assesses its vulnerabilities, reduces risks, prepares for emergencies and responds to intentional incidents and/or natural disasters. Over the past several years, great progress has been made and the comprehensive approach taken in HR 2868 will ensure that this progress continues.

Working in the public interest, the more than 29,000 members of the American Public Works Association plan, design, build, operate, manage and maintain the water supply, sewage and refuse disposal systems, public buildings, transportation infrastructure and other structures and facilities essential to our nation's economy and way of life.

Again, I urge you to bring the Chemical Facility Anti-Terrorism Act to the floor of the House for a vote. Thank you for your leadership and attention to this matter.

Sincerely,

PETER B. KING,
Executive Director

Mr. Chairman, I yield the balance of my time to the gentleman from Minnesota (Mr. OBERSTAR), the chairman of the full committee.

Mr. OBERSTAR. I thank the gentlewoman for her splendid management of the bill, for her work in the subcommittee and holding the hearings and crafting the legislation.

I want to just point out that our committee's role was to ensure that while the Department of Homeland Security will set the standards, it will be the EPA and publicly owned treatment works, locally owned, operated, and managed will carry them out. It will not be done by Homeland Security.

I heard just a fragment of my good friend and colleague from Iowa raising his concerns about the effect on agriculture. I want to emphasize, and while this is not directly our committee's jurisdiction, we made it very clear that the Department of Homeland Security has definitely, completely, exempted all end users of chemicals in agriculture. That means, farms, ranches, crops, feed and livestock facilities from the chemical security program. It does not add agricultural facilities. We were very clear about that. We wanted to be sure in our discussions with the Committee on Homeland Security that we did not have any spillover of unintended consequences.

Only the largest terminals, manufacturers, wholesale distributors of agricultural chemicals remain in the chemical security program, not farmers, not ranchers, not crop, feed, or livestock facilities. The EPA administrator has authority only to regulate security at wastewater and drinking water facilities, not on farms, not on ranches, not to any of the chemicals that they use. The legislation ensures that EPA will appropriately balance clean water, wastewater treatment with security needs of the Nation as set in standards set by the Department of Homeland Security. It does not give EPA any authority over chemical facilities now regulated under other provisions or by DHS.

Mr. Chair, I rise in strong support of H.R. 2868, the "Chemical and Water Security Act of 2009".

At the outset, let me also thank the gentleman from Mississippi (Mr. THOMPSON), Chairman of the Committee on Homeland Security, and the gentleman from California (Mr. WAXMAN), Chairman of the Committee on Energy and Commerce, for their efforts on this legislation and their willingness to include the text of the "Wastewater Treatment Works Security Act of 2009" as title III of the bill under consideration today.

In June of 2009, I joined with the Chairwoman of the Subcommittee on Water Resources and Environment, EDDIE BERNICE JOHNSON, in introducing H.R. 2883, the "Wastewater Treatment Works Security Act of 2009," to address the security needs of wastewater treatment facilities under the auspices of the Clean Water Act. That legislation, as amended, is incorporated as title III of H.R. 2868.

Enactment of the "Wastewater Treatment Works Security Act," in concert with the underlying language produced by the Committees on Homeland Security and Energy and Commerce, will preserve the historical relationship between wastewater utility operators and the Environmental Protection Agency (EPA) in meeting both the security measures called for in this legislation, as well as the goals and purposes of the Clean Water Act.

Mr. Chair, following the terrorist attacks of September 11, 2001, the identification and protection of critical infrastructure, including the Nation's system of wastewater infrastructure, has become a national priority. EPA has worked with state and local governments to enhance wastewater security since 2001, and the majority of wastewater treatment works have conducted vulnerability assessments and implemented emergency response planning procedures.

However, wastewater treatment works have undertaken these activities, with guidance from EPA, on a voluntary basis, as nothing in current law requires wastewater treatment works to carry out specific security measures. H.R. 2868 closes this significant security gap and enacts mandatory security standards applicable to treatment works. EPA will establish security regulations and oversee their implementation to appropriately balance water quality and security goals.

Our Nation's wastewater treatment capacity consists of approximately 16,000 publicly owned wastewater treatment plants, 100,000 major pumping stations, 600,000 miles of sanitary sewers and another 200,000 miles of storm sewers, with a total value of more than $2 trillion. Taken together, the sanitary and storm sewers form an extensive network that runs near or beneath key buildings and roads, the heart of business and financial districts, and the downtown areas of major cities, and is contiguous to many communication and transportation networks.

Publicly owned treatment works also serve more than 200 million people, or about 70 percent of the Nation's total population, as well as approximately 27,000 commercial or industrial facilities, that rely on the treatment works to treat their wastewater. Significant damage to the Nation's wastewater facilities or collection systems could result in loss of life, catastrophic environmental damage to rivers, lakes, and wetlands, contamination of drinking water supplies, long-term public health impacts, destruction of fish and shellfish production, and disruption to commerce, the economy, and our Nation's normal way of life.

In the same light, certain wastewater treatment works throughout the United States utilize chemicals in their disinfectant processes, such as gaseous chlorine, that may pose a threat to public health or the environment if improperly released into the surrounding environment. While proper storage of and security for such chemicals on-site may reduce the potential risk of improper release, similar security-related issues in the shipment and use of potentially harmful chemicals must also be considered in relation to the overall security of the wastewater treatment works.

The ''Wastewater Treatment Security Works Act'' ensures that all large- and medium-sized wastewater treatment facilities—those that treat at least 2.5 million gallons of sewage per day—perform a nationally-consistent, threshold security assessment, and take proactive steps to reduce their overall vulnerability. For those facilities that possess sufficient quantities of potentially-dangerous chemicals, this legislation requires an assessment of whether ''inherently safer technologies'' can be implemented to reduce the overall risk posed by the facility; while enabling the facility to continue meeting its water quality obligations under the Clean Water Act.

Finally, this legislation authorizes $1 billion over 5 years in grants to publicly owned treatment works to carry out vulnerability assessments, site security and emergency response plans, and to implement measures to improve the overall security of the wastewater treatment facilities, as well as provide emergency response training to first responders and firefighters who may be called upon in the event of a terrorist act.

This legislation has been endorsed by the Nation's leading wastewater utility organizations, including the National Association of Clean Water Agencies, the California Association of Sanitation Agencies, and the American Public Works Association.

Mr. Chair, I would like to discuss certain sections of title III of the bill.

SECTION 301. SHORT TITLE

This section designates this title as the ''Wastewater Treatment Works Security Act of 2009''.

SEC. 302. WASTEWATER TREATMENT WORKS SECURITY

This section amends the Federal Water Pollution Control Act of 1972 to add a new section 222 to address the security of wastewater treatment works (hereinafter ''treatment works'') under the authority of the Administrator of EPA.

SECTION 222(A). ASSESSMENT OF TREATMENT WORKS VULNERABILITY AND IMPLEMENTATION OF SITE SECURITY AND EMERGENCY RESPONSE PLANS

Section 222(a) defines the new security-related obligations for treatment works required under this subsection, as well as the terms ''vulnerability assessment'', and ''site security plan''. Under section 222(a)(1), any treatment works with a treatment capacity of at least 2.5 million gallons per day (estimated by EPA to be a treatment works that serves a population of 25,000 or greater), or in the discretion of the Administrator, presents a security risk, is required to: (1) conduct a vulnerability assessment; (2) develop and implement a site security plan; and (3) develop an emergency response plan for the treatment works.

SECTION 222(B). RULEMAKING AND GUIDANCE DOCUMENTS

Section 222(b) directs the Administrator to conduct a rulemaking, to be completed no later than December 31, 2010, to: (1) establish risk-based performance standards for the security of a treatment works covered by this section; and (2) establish requirements and deadlines for each owner and operator of a treatment works to conduct (and periodically update) a vulnerability assessment, to develop (and periodically update) and implement a site security plan, to develop (and periodically revise) an emergency response plan, and to provide annual training for employees of the treatment works.

Section 222(b)(2) directs the Administrator, in carrying out the rulemaking under section 222(b), to provide for four risk-based tiers for treatment works (with tier one representing the highest degree of security risk), and to establish ''risk-based performance standards for site security plans and emergency response plans'' required under section 222(a). Under subsection (b)(2)(B), the Administrator is directed to assign (and reassign, when appropriate) treatment works into one of the four designated risk-based tiers, based on consideration of the size of the treatment works, the proximity of the treatment works to large population centers, the adverse impacts of an intentional act on the operations of the treatment works, critical infrastructure, public health, safety or the environment, and any other factor determined appropriate by the Administrator. Section 222(b)(2)(B)(iii) provides the Administrator authority to request information from the owner or operator of a treatment works necessary to determine the appropriate risk-based tier, and section 222(b)(2)(B)(iv) directs the Administrator to provide the treatment works with the reasons for the tier assignment.

Section 222(b)(2)(C) requires the Administrator to ensure that risk-based performance standards are consistent with the level of risk associated with the risk-based assignment for the treatment works, and take into account the risk-based performance standards outlined in the Chemical Facility Anti-Terrorism Standards (CFATS) of the DHS, contained in section 27.230 of title 6, Code of Federal Regulations.

Section 222(b)(3) directs the Administrator, in carrying out the rulemaking under section 222(b), to require any treatment works that ''possesses or plans to possess'' a designated amount of a substance of concern (as determined by the Administrator under section 222(c)) to include within its site security plan an assessment of ''methods to reduce the consequences of a chemical release from an intentional act'' at the treatment works. Section 222(b)(3)(A) defines such an assessment as one that reduces or eliminates the potential consequences of a release of a substance of concern from an intentional act, including: (1) the elimination or reduction of such substances through the use of alternate substance, formulations, or processes; (2) the modification of operations at the treatment works; and (3) the reduction or elimination of onsite handling of such substances through improvement of inventory control or chemical use efficiency.

Section 222(b)(3)(B) requires each treatment works that possesses or plans to possess a designated amount of a substance of concern to consider, in carrying out such an assessment, the potential impact of any method to reduce the consequences of a chemical release from an intentional act on the responsibilities of the treatment works to meet its effluent discharge requirements under the Clean Water Act, and to include relevant information on any proposed method, such as how implementation of the method could reduce the risks to human health or the environment, whether the method is feasible (as such term is defined by the Administrator), and the potential costs (both expenditures and savings) from implementation of the method.

Section 222(b)(3)(C) provides for mandatory implementation of a method to reduce the consequences of a chemical release from an intentional act for a treatment works that is assigned to one of the two highest risk-based tiers, and possesses or plans to possess a designated amount of a substance of concern. Section 222(b)(3)(C)(ii) authorizes the Administrator, or a State, in the case of a State with an approved program under section 402 of the Clean Water Act, to require the owner or operator of the treatment works to implement such a method, and includes a series of factors for the Administrator or State to consider in making such a determination. Section 222(b)(3)(D) provides a formal opportunity for the owner or operator of a treatment works to appeal the decision of the Administrator or a State that requires the implementation of such a method.

Section 222(b)(3)(E) authorizes the Administrator to address incomplete or late assessments of methods to reduce the consequences of a chemical release from an intentional act at the treatment works by an owner or operator of a treatment works.

Section 222(b)(3)(F) authorizes the Administrator to take action, in a State with an approved program under section 402 of the Clean Water Act, to determine whether a treatment works should be required to implement a method to reduce the consequences of a chemical release from an intentional act, and to compel the treatment works to implement such methods through an enforcement action, in the absence of State action.

Section 222(b)(4) and (5) directs the Administrator to consult with the States (with approved programs), the Secretary of Homeland Security and, as appropriate, other persons, in developing regulations under this subsection. Section 222(b)(6) requires the Administrator to ensure that regulations developed under this subsection are consistent with the goals and requirements of the Clean Water Act.

SECTION 222(C). SUBSTANCES OF CONCERN

Section 222(c) authorizes the Administrator, in consultation with the Secretary of Homeland Security, to designate any chemical substance as a substance of concern, and to establish, by rulemaking, a threshold quantity of such substance that, as a result of a release, is known to cause death, injury, or serious adverse impacts to human health or the environment. In carrying out this authority, the Administrator is required to take into account the list of ''Chemicals of Interest'', developed by the DHS, and published in appendix A to part 27 of title 6, Code of Federal Regulations.

SECTION 222(D). REVIEW OF VULNERABILITY ASSESSMENT AND SITE SECURITY PLAN

Section 222(d) requires an owner or operator of a treatment works covered by this section to submit a vulnerability assessment and site security plan to the Administrator for review in accordance with deadlines established by the Administrator. Section 222(d)(2) and (3) direct the Administrator to review such assessments and plans, and to either approve or disapprove such assessments and plans. Section 222(d)(3) and (4) establish criteria for the disapproval of a vulnerability assessment or site security plan, and requires the Administrator to provide the owner or operator of a treatment works with a written notification of any deficiency in the vulnerability assessment or site security plan, including guidance for correcting such deficiency and a timeline for resubmission of the assessment or plan.

SECTION 222(E). EMERGENCY RESPONSE PLAN

Section 222(e) establishes the requirements for an owner or operator of a treatment works to develop and, as appropriate, revise an emergency response plan that incorporates the results of the current vulnerability assessment and site security plan for the treatment works. Section 222(e)(2) requires the owner or operator to certify to the Administrator that an emergency response plan meeting the requirements of this section has been completed, and is appropriately updated. Section 222(e)(4) requires the owner or operator of a treatment works to provide appropriate information to any local emergency planning committee, local law enforcement, and local emergency response providers.

SECTION 222(F). ROLE OF EMPLOYEES

Section 222(f)(1) requires that a site security plan and emergency response plan identify the appropriate roles or responsibilities for employees and contractor employees of treatments works in carrying out the plans. Section 222(f)(2) requires the owner or operator of a treatment works to provide sufficient training, as determined by the Administrator, to employees and contractor employees in carrying out site security plans and emergency response plans.

SECTION 222(G). MAINTENANCE OF RECORDS

Section 222(g) requires that an owner or operator of a treatment works maintain an updated copy of its vulnerability assessment, site security plan, and emergency response plan on the premises of the treatment works.

SECTION 222(H). AUDIT; INSPECTION

Section 222(h) directs the Administrator to audit and inspect treatment works, as necessary, to determine compliance with this section, and authorizes access by the Administrator to the owners, operators, employees, contract employees, and, as applicable, employee representatives, to carry out this subsection.

SECTION 222(I). PROTECTION OF INFORMATION

Section 222(i) establishes requirements for the prohibition of public disclosure of protected information, as defined by this subsection, and authorizes the Administrator to prescribe by regulation or issue orders, as necessary, to prohibit the unauthorized disclosure of such information. Section 222(i)(2)(B) provides authority to facilitate the appropriate sharing of protected information with and among Federal, State, local, and tribal authorities, first responders, law enforcement officials, and appropriate treatment works personnel or employee representatives. Section 222(i)(4), (5) and (6) ensure that the requirements of this subsection not affect the implementation of other laws or the oversight authorities of Congressional committees. Section 222(i)(7) defines the term ''protected information''.

SECTION 222(J). VIOLATIONS

Section 222(j) provides criminal, civil, and administrative penalties for the violation of any requirement of this section, including any regulations promulgated pursuant to this section, consistent with the criminal, civil, and administrative penalties contained in section 309 of the Clean Water Act.

SECTION 222(K). REPORT TO CONGRESS

Section 222(k) directs the Administrator to report to Congress within three years of the date of enactment of the Wastewater Treatment Works Security Act of 2009, and every three years thereafter, on progress in achieving compliance with this section. Section 222(k)(3) provides that such reports be made publicly available.

SECTION 222(L). GRANTS FOR VULNERABILITY ASSESSMENTS, SECURITY ENHANCEMENTS, AND WORKER TRAINING

Section 222(l) authorizes Federal grants for the conduct of vulnerability assessments and the implementation of security enhancements and publicly-owned treatment works, and for security related training of employees or contractor employees of a treatment works and training of first responders and emergency response providers. Section 222(l)(2)(C) provides that grants made available under this Act not be used for personnel cost or operation or maintenance of facilities, equipment, or systems. Section 222(l)(2)(D) provides for a maximum 75 percent Federal share for grants made available under this Act.

SECTION 222(M). PREEMPTION

Section 222(m) provides that nothing in this section precludes or denies the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance with respect to a treatment works that is more stringent than a regulation, requirement, or standard of performance under this section.

SECTION 222(N). AUTHORIZATION OF APPROPRIATIONS

Section 222(n) authorizes to be appropriated to the Administrator $200 million for each of fiscal years 2010 through 2014 for making grants under section 222(l).

SECTION 222(O). RELATION TO CHEMICAL FACILITY SECURITY REQUIREMENTS

Section 222(o) provides that the requirements of Title XXI of the Homeland Security Act of 2002, section 550 of the Department of Homeland Security Appropriations Act, 2007, and the Chemical and Water Security Act of 2009, (and any regulations promulgated thereunder), do not apply to a treatment works, as such term is defined in section 212 of the Clean Water Act.

LEGISLATIVE HISTORY

In the 107th Congress, on October 10, 2001, the Subcommittee on Water Resources and Environment held a hearing on the security of infrastructure within the Subcommittee's jurisdiction, including issues related to the nation's network of wastewater infrastructure.

On July 22, 2002, then-Chairman DON YOUNG introduced H.R. 5169, the ''Wastewater Treatment Works Security Act of 2002''. On July 24, 2002, the Committee on Transportation and Infrastructure met in open session and ordered the bill reported favorably to the House by voice vote. H. Rept. 107–645. On October 7, 2002, the House passed H.R. 5169 by voice vote. No further action was taken on this legislation.

In the 108th Congress, on February 13, 2003, then-Chairman DON YOUNG introduced H.R. 866, the ''Wastewater Treatment Works Security Act of 2003''. On February 26, 2003, the Committee on Transportation and Infrastructure met in open session and ordered the bill reported favorably to the House by voice vote. H. Rept. 108–33. On May 7, 2003, the House passed H.R. 5169 by a rollcall vote of 413–2. No further action was taken on this legislation.

In the 111th Congress, on June 16, 2009, Water Resources and Environment Subcommittee Chairwoman EDDIE BERNICE JOHNSON introduced H.R. 2883, the ''Wastewater Treatment Works Security Act of 2009''.

Mr. DENT. Mr. Chairman, first, there has been considerable debate here today whether farmers and small agricultural retailers currently exempt from existing regulations will be exempt from the new regulations required by this legislation.

The short answer is: They will not. Section 2120 of this bill requires the Secretary to issue new regulations to replace the existing CFATS regulations. Nowhere in this bill does the Secretary have any authority to exempt certain individuals or classes from those regulations. Nowhere.

If the majority disagrees and would care to point to a particular provision that authorizes the Secretary to grant exemptions from the provisions, including the costly IST assessment and

implementation provisions, I would ask that they point to that provision.

At this time, I would like to yield 2 minutes to the gentleman from Illinois (Mr. SHIMKUS).

(Mr. SHIMKUS asked and was given permission to revise and extend his remarks.)

Mr. SHIMKUS. Mr. Chairman, it is all about jobs today. This bill affects jobs and the economy. We are close to 9.8 percent unemployment in the manufacturing sector, and here we are going to put more, additional burdens on those who create jobs. If you don't have employers, you don't have employees.

I appreciate my agriculture members coming down here because it is not about the end users, it is about the producers of the chemicals. It is about the producers of the anhydrous. Those are the folks whose costs are going to go up.

Now I like to come down here and talk about the hypocrisy of this whole debate, especially on the Safe Drinking Water Act, because if it really was about security, and I talked about this in the Rules Committee, and no one has answered this question, on the health care bill, Mr. Chairman, your bill, page 1785, we say this: ''The financial and technical capability of an Indian Tribe, or Tribal Organization, or Indian community to safely operate, manage, and maintain a sanitation facility shall not be a prerequisite to the provision or construction of sanitation facilities by the Secretary.''

Your health care bill says if the Indian Tribe cannot safely run a plant, we are going to build you one anyway. We are not worried about safety and security.

Page 1785, a financial and technical capability of an Indian Tribe, shall be exempt even if they can't operate safely a water treatment plant. So what you are doing in the health care bill, exempting Indian tribes who don't know how to manage a refinery, you are giving them protections in this health care bill. But in this bill, municipal water plants pay more; private water plants pay more; refineries pay more. Indian tribes under your health care bill——

The Acting CHAIR. The time of the gentleman has expired.

Mr. DENT. I yield the gentleman an additional 30 seconds.

Mr. SHIMKUS. I would just say why would we exempt Indian tribes from the ability to prove that they can actually operate a water purification plant? Why would we do that? If safety and security is important, the whole premise of this bill, why would we exempt Indian tribes? Page 1785 of your bill in the health care reform. Three hundred pages on Indian health, not one page through the committee process. It is an abomination of the process.

Mr. DENT. Mr. Chairman, I think you just heard some very powerful arguments in opposition to this legislation. This issue is all about jobs. I want to say one thing. It is a darn good thing that the House of Representatives just a couple of hours ago passed an extension of unemployment benefits. Because of this legislation, people are going to need them. That said, people around this country are very scared of Washington right now. They are scared of the agenda, and they are scared of the national energy tax called cap-and-trade. They are afraid of the card check bill and the health care bill that will cost more than a trillion dollars. So is it any wonder that unemployment rates are going the way they are going.

But one thing about these IST assessments, and I feel we have to talk about this from a jobs standpoint, but contesting these IST assessments will be costly, too costly for most small businesses to afford.

Experts estimate that a simple, one ingredient substitution would take two persons 2 weeks to complete and cost between $10,000 and $40,000, and that is on the low end. A pharmaceutical pilot plant with about 12 products would take three to six persons up to 10 weeks to complete an assessment at a cost of $100,000 to $500,000.

Larger facilities with particularly hazardous chemicals, already regulated by OSHA, would require 8 to 10 people 6 months or more to complete at a cost of over a million dollars for the assessment. Fifty-nine percent of the facilities regulated under the current CFATS regulations that would be required to conduct these costly assessments employ 50 or fewer people. Mandating IST will be devastating to small businesses across America.

According to a California fertilizer manufacturer, eliminating the use of anhydrous ammonia and substituting it with urea can cost a 1,000 acre farm up to $15,000 per application. This would be a recurring cost passed on to the consumer.

On Friday, the Department of Labor is expected to revise the unemployment figures. Does anyone in this Chamber expect those numbers to go down? We hope they do, but I am afraid we know what the answer may be.

Ms. RICHARDSON. Mr. Chair, I rise today to express my strong support for the Chemical and Water Security Act of 2009. I would also like to thank Chairman OBERSTAR, Chairman WAXMAN, and my distinguished colleague on the Homeland Security Committee, Chairman THOMPSON, for their hard work in crafting this vital legislation.

I support this legislation because it will enhance the security of our nation's chemical, drinking water, and wastewater facilities and it lessens the vulnerability of our most critical sectors to a terrorist attack. Specifically, this legislation:

Protects our nation by making critical infrastructure more secure;

Helps my district by enhancing the security of its chemical, drinking water, and wastewater facilities; and

Helps our economy by providing greater protection to the nation's major job creating sectors and by providing incentives to spur production and technological innovation.

I also support H.R. 2868 because it contains a provision I offered that protects workers who identify and report violations affecting the safety and security of chemical facilities to management or regulatory authorities from retaliation and reprisal. When it comes to the security of our chemical, drinking water, and wastewater facilities, the employees who work in them are the ''First Preventers.'' We depend on them to be competent, vigilante, and proactive. We owe them the assurance that they will not be penalized for doing their jobs properly. That is why I am pleased the bill also incorporates a provision I offered requiring facility owners to certify in writing their knowledge of the protections provided whistleblowers and the Secretary's power to protect them.

Mr. Chair, eight years ago this September 11 terrorists attacked our country and inflicted incalculable damage to our people, economy, and national psyche. We responded to the horror and trauma of that day by resolving to honor the victims and heroes of 9–11 by doing all we can to protect our homeland and our people from any future attack.

There is a simple answer for those who question the timing or need for a comprehensive legislation to safeguard these facilities.

The poison gas leak at Union Carbide's Bhopal plant in 1984 that killed 10,000 people within 72 hours, and more than 25,000 people since, was an accident! Imagine the carnage that could result from an intentional act of terrorism or sabotage.

Mr. Chair, the chemical industry alone employs nearly a million Americans and it accounts for nearly $600 billion of the GDP. More than 70,000 industrial, consumer, and defense-related products—from plastics to fiber optics—are produced by the nation's chemical facilities.

The economic and strategic value of the chemical industry makes it an attractive target to terrorists because many chemicals, either in their base form or when combined with others, can cause significant harm to both humans and the environment if misused.

My congressional district alone abuts one of the nation's largest ports and is home to several major oil refineries, as well as gas treatment and petrochemical facilities. It is, as they say in the military, a ''target rich environment.''

So I am not willing to wait. The time has come for us to approve legislation that puts in place the necessary protections and authorizes the necessary resources to keep our chemical, wastewater, and drinking water facilities secure. This bill does that.

Chemical facilities determined by the Secretary to be at risk are required to conduct a Security Vulnerability Assessment (''SSV''). Based upon that assessment, the facility must then develop and implement a Site Security Plan (''SSP''), which is subject to review, approval, and inspection by the DHS Office of Chemical Facility Security.

The legislation also authorizes the DHS Secretary to require, where appropriate, that chemical facilities in the highest risk tiers implement ''methods to reduce the consequences of a terrorist attack'' by utilizing ''inherently safer technologies'' (IST). And it authorizes the Secretary to award $225 million in grants to provide technical assistance and funding to finance the capital costs incurred in transitioning to inherently safer technologies.

I am also pleased to note that facilities around the country have already begun taking

action to make their chemical processes safer. For example, in the 37th district, of which I am a proud representative, the Joint Water Pollution Control Plant in Carson, California, a wastewater treatment plant, switched from using chlorine gas to liquid bleach disinfection. This legislation is already spurring companies to make important changes that will keep our country and our communities safer.

Mr. Chair, I could go on but it suffices to state that this legislation is a balanced and pragmatic response to a critical security need. And again, I want to thank Chairman OBERSTAR, Chairman THOMPSON, and Chairman WAXMAN for their leadership in crafting this extraordinary bill.

I support the Chemical and Water Security Act and urge all members to do likewise.

The Acting CHAIR (Mr. KRATOVIL). All time for general debate has expired.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, as the designee of the chairman of the Committee on Homeland Security, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. TIERNEY) having assumed the chair, Mr. KRATOVIL, Acting Chair of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2868) to amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes, had come to no resolution thereon.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed.

Votes will be taken in the following order:

H.R. 1849, by the yeas and nays;

H.R. 3276, by the yeas and nays;

H. Res. 878, de novo.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.

WORLD WAR I MEMORIAL AND CENTENNIAL ACT OF 2009

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and pass the bill, H.R. 1849, as amended, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. DAVIS) that the House suspend the rules and pass the bill, H.R. 1849, as amended.

The vote was taken by electronic device, and there were—yeas 418, nays 1, not voting 14, as follows:

[Roll No. 862]

YEAS—418

Abercrombie
Ackerman
Adler (NJ)
Akin
Alexander
Altmire
Andrews
Arcuri
Austria
Baca
Bachmann
Bachus
Baird
Baldwin
Barrett (SC)
Barrow
Bartlett
Barton (TX)
Bean
Becerra
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boccieri
Boehner
Bonner
Bono Mack
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Brady (TX)
Braley (IA)
Bright
Broun (GA)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Capps
Cardoza
Carnahan
Carney
Carson (IN)
Carter
Cassidy
Castle
Castor (FL)
Chaffetz
Chandler
Childers
Chu
Clarke
Clay
Cleaver
Clyburn
Coble
Coffman (CO)
Cohen
Cole
Conaway
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Dreier
Driehaus
Duncan
Edwards (MD)
Edwards (TX)
Ehlers
Ellison
Ellsworth
Emerson
Engel
Eshoo
Etheridge
Fallin
Farr
Fattah
Filner
Flake
Fleming
Fortenberry
Foster
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Fudge
Gallegly
Garamendi
Garrett (NJ)
Gerlach
Giffords
Gingrey (GA)
Gonzalez
Goodlatte
Gordon (TN)
Granger
Graves
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Guthrie
Gutierrez
Hall (NY)
Hall (TX)
Halvorson
Hare
Harman
Harper
Hastings (FL)
Hastings (WA)
Heinrich
Heller
Hensarling
Herger
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Hoekstra
Holden
Holt
Honda
Hoyer
Hunter
Inglis
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jenkins
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Jones
Jordan (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kline (MN)
Kosmas
Kratovil
Kucinich
Lamborn
Lance
Langevin
Larsen (WA)
Larson (CT)
Latham
LaTourette
Latta
Lee (CA)
Lee (NY)
Levin
Lewis (CA)
Lewis (GA)
Linder
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lucas
Luetkemeyer
Luján
Lummis
Lungren, Daniel E.
Lynch
Mack
Maffei
Maloney
Manzullo
Marchant
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul
McClintock
McCollum
McCotter
McDermott
McGovern
McHenry
McIntyre
McKeon
McMahon
McMorris Rodgers
McNerney
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Minnick
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murphy, Tim
Murtha
Myrick
Napolitano
Neal (MA)
Neugebauer
Nye
Oberstar
Obey
Olson
Olver
Ortiz
Pallone
Pascrell
Pastor (AZ)
Paulsen
Payne
Pence
Perlmutter
Perriello
Peters
Peterson
Petri
Pingree (ME)
Pitts
Platts
Poe (TX)
Polis (CO)
Pomeroy
Posey
Price (GA)
Price (NC)
Putnam
Quigley
Radanovich
Rahall
Rangel
Rehberg
Reichert
Reyes
Richardson
Rodriguez
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Ross
Rothman (NJ)
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sanchez, Loretta
Sarbanes
Scalise
Schakowsky
Schauer
Schiff
Schmidt
Schock
Schrader
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Shadegg
Shea-Porter
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Skelton
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Space
Speier
Spratt
Stearns
Sullivan
Sutton
Tanner
Taylor
Teague
Terry
Thompson (CA)
Thompson (MS)
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Tierney
Titus
Tonko
Towns
Tsongas
Turner
Upton
Van Hollen
Velázquez
Visclosky
Walden
Walz
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Westmoreland
Wexler
Whitfield
Wilson (OH)
Wilson (SC)
Wittman
Wolf
Woolsey
Wu
Yarmuth
Young (AK)
Young (FL)

NAYS—1

Paul

NOT VOTING—14

Aderholt
Brady (PA)
Capuano
Deal (GA)
Forbes
Gohmert
Johnson, Sam
Murphy, Patrick
Nadler (NY)
Nunes
Rogers (MI)
Sánchez, Linda T.
Stark
Stupak

□ 1740

Messrs. FLAKE and LOEBSACK changed their vote from ''nay'' to ''yea.''

So (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AMERICAN MEDICAL ISOTOPES PRODUCTION ACT OF 2009

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and pass the bill, H.R. 3276, as amended, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts (Mr. MARKEY) that the House suspend the rules and pass the bill, H.R. 3276, as amended.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 400, nays 17, not voting 16, as follows: