

Communications Workers of America -- International Union, UAW -- United Steelworkers
BlueGreen Alliance -- Sierra Club -- Clean Water Action -- Friends of the Earth
U.S. Public Interest Research Group -- Environmental Working Group
Los Jardines Institute (The Gardens Institute) -- Environmental Justice Health Alliance
Citizens of Wagon Mound and Mora County, NM -- League of Conservation Voters
Coming Clean -- NJ Work Environment Council -- Center for Health, Environment & Justice
Louisiana Bucket Brigade -- Advocates for Environmental Human Rights -- Greenpeace
Community Change -- Texas Campaign for the Environment -- Citizens' Environmental Coalition
Green Science Policy Institute -- Global Community Monitor -- Clean and Healthy New York
Center for Effective Government -- Healthy Building Network -- Center for Media and Democracy
Northwest Atlantic Marine Alliance -- Kentucky Environmental Foundation -- Beyond Toxics
Healthy Schools Network -- Safe Minds -- Breast Cancer Fund -- MEAN
International Campaign for Responsible Technology -- The Endocrine Disruption Exchange
Physicians for Social Responsibility -- Service Employees International Union (SEIU)
Environment America -- California Public Interest Research Group (CalPIRG)
Texas Public Interest Research Group (TexPIRG) -- As You Sow
New Jersey Public Interest Research Group (NJPIRG) -- Alaska Community Action on Toxics
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Delaware Concerned Residents for Environmental Justice, Wilmington, DE
Texas Environmental Justice Advisory Services (TEJAS) -- Just Transition Alliance
Black Women for Wellness -- Physicians for Social Responsibility-Los Angeles
WE ACT for Environmental Justice -- Connecticut Coalition for Environmental Justice

February 24, 2014

Dear Senator Boxer;

Following the West, Texas disaster last April, President Obama issued a broad Executive Order (EO), "Improving Chemical Facility Safety and Security" (#13650). On January 3rd, the multi-agency Working Group implementing this EO issued a "Solicitation of Public Input on Options for Policy, Regulation, and Standards Modernization." Our organizations were impressed by the EO and were especially encouraged to see the Working Group include **inherently safer technologies, safer alternatives and best practices** among the policy options they are considering. Because you have been a leader on disaster prevention in general and have championed these specific policies we are writing to you for your support of those policies during the current 90 day comment period which ends March 31st.

The usual industry lobby groups oppose new federal requirements, especially those that could actually **prevent** disasters, insisting on the same voluntary measures that have failed us for the past twenty years. Still, fence-line communities, unions representing facility workers, first responders, public health professionals, national security leaders, and a majority of likely voters surveyed in a national poll support the need for these requirements, especially given the availability of effective and affordable safer alternatives.

As you know, section 112(r)(7)(A) of the Clean Air Act (CAA) provides the Environmental Protection Agency (EPA) with rule making authority to prevent future tragedies such as West, Texas by requiring chemical facility owners and operators to use safer processes that will reduce or eliminate the consequences of a catastrophic chemical release where feasible. Safer processes are the only fool proof way to eliminate or dramatically reduce the loss of human life in a catastrophic chemical facility event whether it is triggered by an accident, natural disaster or terrorism. Section 112(r)(1) also creates a general duty that obligates facilities to prevent a release but this provision is most often applied **after** an accident has already occurred and the guidance document is fourteen years old.

It is clearly time for executive action and the President's Executive Order is the best opportunity in a generation to prevent future tragedies. A letter from you before the current comment period ends on

March 31st to the EPA supporting new requirements to use safer processes (where feasible) would show the EPA that there is support in Congress for disaster prevention. It would also counter efforts by others in Congress who have proposed (S. 1781 & H.R. 888)

crippling the Clean Air Act's authority to prevent these disasters.

Since the first reporting of EPA's Risk Management Program (RMP) data in 1999, the Agency, industry and the public have become aware of the large number and magnitude of chemical facilities that pose catastrophic risks to workers, first responders and communities. According to a 2012 Congressional Research Service (CRS) analysis of RMP data, 473 of these facilities each put 100,000 or more people at risk of a catastrophic disaster. Thanks to Freedom of Information Act requests we also became aware of hundreds of facilities that have switched to safer, cost-effective chemical processes that have eliminated these hazards. However, CRS analyses show that the number of RMP facilities has grown since 2009 and reports by the Center for American Progress show that most of the facilities that have switched to safer processes are not in the highest risk categories.

These vulnerabilities and catastrophic hazards were heightened following the 9/11 attacks. In 2002, the EPA proposed using the Clean Air Act's disaster prevention authority to make chemical facilities ***"inherently safer by reducing quantities of hazardous chemicals handled or stored, substituting less hazardous chemicals for extremely hazardous ones, or otherwise modifying the design of processes to reduce or eliminate chemical hazards."*** Tragically, the Bush administration scuttled this proposal.

As legislation was considered in 2006, then Senator Obama said, ***"by employing safer technologies, we can reduce the attractiveness of chemical plants as a target...Each one of these methods reduces the danger that chemical plants pose to our communities and makes them less appealing targets for terrorists."***

At a December 7, 2011 hearing of the House Energy and Commerce Committee, former DHS Undersecretary Rand Beers said, ***"the Administration has established the following policy principles in regard to inherently safer technologies (IST) at high-risk chemical facilities: The Administration supports consistency of IST approaches for facilities regardless of sector...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 demonstrably enhance overall security, are determined to be feasible, and, in the case of water sector facilities, consider public health and environmental requirements."***

In a March 14, 2012 letter to EPA Administrator Lisa Jackson, the National Environmental Justice Advisory Council (NEJAC) urged the EPA to adopt such a proposal saying, ***"the Clean Air Act's prevention authority will not only eliminate accidental hazards but will also address fatal flaws in the current chemical security law..."***

On April 3, 2012, former EPA Administrator Gov. Christine Todd Whitman also wrote Administrator Jackson saying, ***"I therefore fully support the implementation of the NEJAC recommendations and any other authorities you can apply to reduce these hazards before a tragedy of historic proportions occurs."*** And following the West, Texas disaster, former EPA Administrator Lisa Jackson told MSNB, ***"We need to use the authority we have now."***

Businesses are also negatively impacted. Due to the billions of dollars of potential liability for hauling poison gases, the Association of American Railroads issued a statement in 2008 saying, ***"It's time for the big chemical companies to do their part to help protect America. They should stop manufacturing dangerous chemicals when safer substitutes are available..."***

Most recently, the Chemical Safety Board (CSB) recommended that the EPA issue new rules under the EPA's CAA authority in their January 29, 2014 draft report on the Tesoro refinery disaster. CSB Chair

Rafael Moure-Eraso said, ***“We need a national mandate for state and federal regulators to require chemical facilities [to] utilize inherently safer technology to the greatest extent practicable”***

Thank you for all you have done on this issue in the past. We look forward to working with you again on this critical phase of this work.

Sincerely,

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