

March 28, 2016

Honorable Gina McCarthy, Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460
Docket # EPA-HQ-OEM-2015-0725

Dear Administrator McCarthy:

In 2006, U.S. Senator Barack Obama offered the clearest statement of the dangers posed by America's hazardous chemical facilities. "Basically," he said, "these plants are stationary weapons of mass destruction spread all across the country."¹ In that light, the instant rule, proposed a decade later by the EPA under President Barack Obama, evokes a notorious Cold War prescription for a nuclear attack: Duck and Cover.²

Emergency preparedness in the event of a chemical plant disaster, the proposed rule's focus, is indeed critically important for our national security. But even more essential in this context is prevention of a chemical disaster in the first place. And in this regard, the proposed rule falls well short of what is required to protect Americans from catastrophic harm.

As former holders of U.S. national security positions, we believe the EPA should require the use of safer alternatives for all hazardous facilities where they are feasible, and we strongly urge the EPA to modify its final rule to achieve that outcome.

For decades, our country has failed to squarely address the security problem that unsecured chemical facilities present. It is a glaring danger that puts millions of our citizens at risk.

In August 2013, President Obama took an important first step with his Executive Order requiring a government review of safety and security procedures at chemical plants.³

The President initiated this process, in part, because of the April 2013 ammonium nitrate explosion in West, Texas, which killed 15 people and injured 160 more. This tragedy highlighted much of the chemical industry's repeated failure to minimize and safely store toxic materials, and our government's failure to create comprehensive and fair rules to protect against such incidents.

¹ <http://obamaspeeches.com/059-Improving-Chemical-Plant-Security-Obama-Podcast.htm>

² "Duck and Cover" is a 1951 film produced by the American Federal Civil Defense Administration. <https://www.youtube.com/watch?v=gqCxcnhNAeQ>

³ <http://www.whitehouse.gov/the-press-office/2013/08/01/executive-order-improving-chemical-facility-safety-and-security>

Since the West, Texas, disaster, there have been more than 430 chemical incidents and 82 deaths. None of us should ignore the possibility of more accidents, or chemical incidents resulting from natural disasters, with even more violent consequences. Many of us recall the 1984 pesticide plant disaster at Bhopal, India, which caused 20,000 deaths.

Terrorists could trigger a chemical plant attack in our country, with consequences like Bhopal, 9-11, or even worse. In 2003, the government's National Infrastructure Protection Center warned that chemical plants in the United States could be terrorist targets.⁴ Security experts have warned of the relative ease with which a determined team of attackers could thwart conventional plant security. The potential for cyber attacks makes the challenge even more serious.

The EPA has identified 466 chemical facilities in the U.S. that each put 100,000 or more people at risk of a poison gas disaster.⁵ In 2005, the Homeland Security Council projected that a major attack would set off a deadly gas cloud that would kill some 17,500 people and injure tens of thousands more.⁶

This is a national security issue, and the Administration must treat it like one, with the kind of urgency we give to weapons of mass destruction overseas.

If our citizens are to be protected, the new rule must mandate the use of safer chemicals, substances, and processes. The EPA has the authority to issue rules to require chemical plants to move to inherently safer technologies (IST) -- which would make them less attractive to terrorists while protecting workers and families living near these facilities. Former EPA administrators Christine Todd Whitman and Lisa Jackson have each called for the EPA to move ahead with such an approach.⁷

This approach is also consistent with the principles the Obama Administration developed for chemical security legislation (CFATS) in 2009 and which were contained in a November 2009 House-passed bill (H.R. 2868). They also were reiterated in 2011 congressional testimony by Rand Beers, then the Under Secretary, National Protection and Programs Directorate, Department of Homeland Security.⁸

⁴ <http://www.nrdc.org/media/pressreleases/030909.asp>

⁵ <https://preventchemicaldisasters.files.wordpress.com/2015/03/rmp-facilities-in-the-united-states-as-of-december-2014.pdf>

⁶ http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=2a4a3b95-5710-4231-b9f5-82227e8ad904

⁷ [http://www.usatoday.com/story/opinion/2014/02/20/christine-todd-whitman-chemicals/5612695/;](http://www.usatoday.com/story/opinion/2014/02/20/christine-todd-whitman-chemicals/5612695/)
<http://www.nbcnews.com/video/all-in-/51669109#51669109>

⁸ Beers testified on March 30, 2011, to the House Committee on Energy and Commerce:

The Administration supports, where possible, using safer technology, to enhance the security of the nation's high-risk chemical facilities. Similarly, we recognize that risk management requires balancing threat, vulnerabilities, and consequences with the costs and benefits of mitigating risk. In this context, 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.

Safer cost-effective chemical processes are widely available. Since 2001, hundreds of chemical facilities have switched to safer processes.⁹ Clorox Company, for example, has converted all of its U.S. facilities. Based on the many facilities that have converted, the result is reliable protection for employees and communities against catastrophic disasters at minimal cost. Wherever this can be done it should be a requirement.

The proposed rule takes an important first step by mandating that certain high-risk chemical plants conduct a safer technology and alternatives analysis (STAA) and feasibility assessment on the use of inherently safer technologies.

But the proposed rule needs to be dramatically improved in the area of prevention. A final rule should:

1. Require all RMP facilities -- those that use extremely hazardous substances and thus are required to develop a Risk Management Plan -- to assess safer alternatives to existing chemical processes, alternatives that will eliminate or dramatically reduce the consequences of a catastrophic release of an acutely toxic substance. The proposed rule exempts 87 percent of the some 12,500 Risk Management Plan chemical facilities from requirements to conduct STAAs. The exempted facilities include, for example, water treatment plants, some of which put major cities at risk of a catastrophic release of chlorine gas.
2. Require all these RMP facilities to send their safer alternatives analyses (STAA) to the EPA and readily share the information with nearby communities and other interested parties, such as emergency responders, vendors of safer technologies, facility employees and contractors, and safety researchers.
3. Establish a publicly accessible clearinghouse of safer available alternatives that could encourage and support the adoption of safer alternatives by more facilities as soon as practicable.

-
- The Administration believes that all high-risk chemical facilities, Tiers 1-4, should assess IST methods and report the assessment in the facilities' SSPs.
 - 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.
 - For Tier 3 and 4 facilities, the appropriate regulatory entity should review the IST assessment contained in the SSP. The entity should be authorized to provide recommendations on implementing IST, but it would not have the authority to require facilities to implement the IST methods.
 - The Administration believes that flexibility and staggered implementation would be required in implementing this new IST policy.

<https://www.dhs.gov/news/2011/03/30/written-testimony-nppd-house-committee-energy-and-commerce-hearing-titled-hr-908>

⁹ <http://www.americanprogress.org/issues/security/news/2006/04/24/1924/preventing-toxic-terrorism/>

4. Starting with the highest risk facilities, require chemical facilities to substitute safer alternatives to their processes, wherever feasible, that will eliminate or significantly reduce the consequences of a catastrophic release. The coalition of community, worker, and environmental groups¹⁰ that has engaged the EPA on these issues has recommended that EPA at the very least begin a pilot program to require IST implementation in a subset of RMP facility categories, such as waste water and drinking water treatment plants, bleach plants and hydrogen fluoride refineries, and for those facilities among the 2,000 high-risk facilities cited in the EPA's National Enforcement Initiative (NEI) 2017-19 proposal.

We understand that the technical and organizational challenges of requiring companies to move to safer technologies are complex. But it can, and must, be done. Given the magnitude of chemical facility hazards posed by potential accidents, natural disasters, and terrorist attacks, you should not wait any longer to protect the American people.

Sincerely,

Lieutenant General Russel L Honoré, US Army (Ret)

Former commander, Joint Task Force Katrina

Major General Randy Manner, US Army (Ret)

Former Acting Director and Deputy Director, Defense Threat Reduction Agency

David Halperin

Attorney, former staff member, National Security Council & Senate Intelligence Committee, and adviser to Greenpeace U.S.

Contact:

David Halperin 1530 P St NW 1st Floor, Washington DC 20005

davidhalperindc@gmail.com

¹⁰ <http://preventchemicaldisasters.org/>