

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

May 8, 2012

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator Jackson:

We understand you have received recommendations to initiate regulation of chemical facility security by expanding application of the general duty clause under Clean Air Act section 112(r) addressing prevention of accidental releases. The Committee on Energy and Commerce has jurisdiction over both the Clean Air Act and the Chemical Facility Anti-Terrorism Standards program established in section 550 of P.L. 109-295. We do not support the use of the accidental release prevention provisions of the Clean Air Act to address site security from terrorist attacks at chemical facilities.

Just nine months after the September 11, 2001, terrorist attacks, Members on this Committee wrote to the White House Office of Homeland Security expressing concern about the proposed use of the Clean Air Act to regulate chemical manufacturing, storage and treatment facilities for security purposes.<sup>1</sup> As their letter stated, “the Clean Air Act was not enacted with deliberate terrorist actions in mind, and does not provide either the statutory authority or the appropriate framework for such assessments.” Consistent with this, in a 2003 report that in part discussed proposed chemical security regulation under the Clean Air Act, the then General Accounting Office (GAO) noted that there were practical and legal arguments against the use of section 112(r) of the Clean Air Act to address security against terrorism, and reported that “[the Department of] Justice expressed concerns that the Clean Air Act does not provide sufficient protection against dissemination of sensitive information that could be used by terrorists.”<sup>2</sup>

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<sup>1</sup> Letter to the Honorable Tom Ridge, Director, Office of Homeland Security, June 19, 2002, signed by Representatives W.J. “Billy” Tauzin, Michael Bilirakis, Joe Barton, Fred Upton, Cliff Stearns, Paul Gillmor, James Greenwood, and Richard Burr.

<sup>2</sup> United States General Accounting Office, Report to Congressional Requesters, Homeland Security, “Voluntary Initiatives Are Underway at Chemical Facilities, but the Extent of Security Preparedness is Unknown”, March 2003, p.18.

In 2006, to specifically address site security at chemical facilities and terrorist threats, Congress enacted section 550 of P.L. 109-295 directing the Department of Homeland Security to develop anti-terrorism standards for high risk facilities containing chemicals of interest. Rather than having diverse agencies developing overlapping security programs, section 550 provides for a common set of site-appropriate security standards.

Further, Congress provided that regulations issued under section 550 must “permit each such facility, in developing and implementing site security plans, to select layered security measures that, in combination, appropriately address the vulnerability assessment and the risk-based performance standards for security for the facility.”<sup>3</sup> As such, section 550 embodies a careful balance between rigorous government-crafted security standards and ensuring that regulated facilities will be able to apply the standards with minimum disruption to the flow of commerce.

Congress has already enacted specific legislation to address security and terrorism threats at facilities with chemicals. Proposals to promulgate new, additional EPA regulations under the general duty clause of section 112(r) to address terrorist threats at chemical facilities would result in duplicative and conflicting regulation. This section of the Clean Air Act does not address deliberate terrorist activities, and we urge you to decline proposals for such new regulation.

Sincerely,



Fred Upton  
Chairman



Ed Whitfield  
Chairman  
Subcommittee on Energy and Power



John Shimkus  
Chairman  
Subcommittee on Environment  
and the Economy

<sup>3</sup> See Section 550(a) of P.L. 109-295.

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cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Bobby L. Rush, Ranking Member  
Subcommittee on Energy and Power

The Honorable Gene Green, Ranking Member  
Subcommittee on Environment and the Economy