

Ranking Member Yvette Clarke (D-NY)
Subcommittee on Cybersecurity, Infrastructure Protection and
Security Technologies

Markup of H.R. 901
***The Chemical Facility Anti-Terrorism Security Authorization
Act of 2011***

April 14, 2011

Opening Statement

I must admit that I am a bit disappointed with the development of this bill to date.

As you know, this Committee has a long history of working in a bipartisan manner when it comes to developing chemical security legislation.

Last Congress, staff negotiated, on a bipartisan basis, with the Energy and Commerce Committee for over a year before H.R. 2868—a bill that ultimately passed the House—was even introduced.

This year, we only saw the bill after it was introduced.

I understand that competing legislation will soon be considered by the Energy and Commerce Committee.

In light of our jurisdictional challenges, I wonder what the prospects are for action on H.R. 901 by the House.

The Department paid a high price to get interim authority back in 2007.

Committee Chairmen demanded carve outs and as a result DHS was barred from regulating security at whole categories of facilities—most notably drinking water facilities and wastewater treatment works.

Since that time, Presidents Bush and Obama, Secretaries Chertoff and Napolitano, and security have all looked to the Congress to authorize a comprehensive program that closes the regulatory loopholes created in 2007.

This bill shirks this critical responsibility in a big way.

In an effort to repair the bill, we will be offering three substantive, common-sense amendments.

We believe that these amendments are consistent with Chairman Lungren's goals and would enhance the bill significantly.

For example, I am offering an amendment that would remove the exemptions for certain classes of facilities, including drinking water and wastewater treatment works.

Mr. Chairman, during our hearing in February, you said that you were “agnostic” regarding whether these exemptions should be closed. I was caught by surprise by that statement, given that H.R. 5695, the bill you introduced in the 109th Congress, was comprehensive.

It had no exemptions.

Ms. Richardson will offer an amendment to require facilities to conduct a “process safety review” to help them identify processes or activities that could be improved to reduce consequences and lower risk.

Again, I would remind the Chairman that back in the 109th Congress, in his first chemical security bill, process assessments were required.

In so many ways, that 2006 bill is superior to what we are considering today.

Mr. Richmond has an amendment that allows chemical facility workers, the men and women who actually are on the ground running these facilities, to participate in efforts to identify and address vulnerabilities in their facilities.

Every member of this Committee, indeed every Member of Congress, talks about the need to listen to those “on the ground” and not just take the official line or the bureaucratic answer.

I think when we talk about what is actually happening at a chemical plants and how best to secure them, we can learn as much from the guys working on the line as we can from the CEO.

As I work with you on this bill, the image of the collection of refineries and chemical facilities just outside of my district, on the Hudson between Newark Airport and Port Elisabeth, is in the front of my mind.

It has been referred to by terrorism experts as “the most dangerous two miles in America” because a major release of toxic chemicals from any of those facilities could injure or kill tens or hundreds of thousands of people, and possibly impact millions.

So it is important to me not just as the Ranking Member of this subcommittee, but also as the representative for New York’s 11th district, that we do our best to make those chemical facilities as secure as possible.

By all accounts, the Chemical Facility Anti-Terrorism Standards program – CFATS – has been successful to date, even though its final implementation is not yet complete.

Like you, Mr. Chairman, I have a keen interest in making CFATS permanent but merely passing a blanket extension that offers scant more than the original appropriations language is not the way to do it. We need to close the security gaps in this program. We need to authorize a comprehensive program.

My hope is that this day will mark a turning-point for this bill and we will get back on track, working in a bipartisan way to make the homeland more secure.