

Statement on Markup of H.R. 2868, the Chemical Facility Anti-Terrorism Act of 2009
Chairman Joe Lieberman
July 28, 2010

The next bill on our agenda is H.R. 2868, the Chemical Facility Anti-Terrorism Act of 2009, which was passed by the House on November 6 of last year. This is a really important item and I hope welcome the debate on it.

In the weeks and months after we were attacked on 9/11/01 - as we took stock of our nation's many vulnerabilities - security experts warned us that the thousands of facilities that make and use dangerous chemicals posed substantial risks in the age of terrorism. Congress immediately set to work to try to secure these facilities, to deter and prevent terrorists from using them as what one expert called "pre-positioned weapons of mass destruction."

Early legislative attempts to create a federal chemical site security program were unsuccessful. Then, in 2005 and 2006, under the leadership of Senator Collins, this Committee passed a bipartisan chemical site security program. Unfortunately it did not become law, but the bill did help set the stage for legislation that did pass which temporarily authorizing language to pass in the fall of 2006. It ordered the Department of Homeland Security to act by regulation, and it did.

DHS has used its authority to adopt the Chemical Facility Anti-terrorism Standards, known as CFATS. Industry has done its part as well – working I think quite constructively with the Department of Homeland Security. Today, about 5,000 chemical facilities are submitting security documents to DHS, and reviews and inspections are underway.

I am encouraged by the early reviews of the CFATS program and think most of us agree that it has begun to strengthen and make more secure both our chemical sites, and therefore, national security and homeland security. There is a pending one-year reauthorization of CFATS that's included in the homeland security appropriations bill that I am confident by one path or another in this unusual session will be enacted if we're not able to complete a long term reauthorization. But to me that's not the ideal solution. When the Appropriations Committee put together the authorization originally for CFATS in 2006, some important pieces were left on the cutting room floor – and a simple extension of the existing rules, for one year or for three, would leave them there. I want to just mention a few:

First is the exemption of drinking and waste water facilities from CFATS regulation even though we know that some of those facilities pose a high risk to surrounding communities in the event of a terrorist attack. I agree with the Administration that this exemption leaves a troublesome security gap. These facilities would have been covered in our original committee bill back a few years ago and they are covered in the House bill, H.R. 2868.

Second is the exemption from CFATS regulation of chemical facilities in port areas regulated under the Maritime Transportation Security Act. There is no reason these facilities should be held to different security standards than those in CFATS. The House bill accomplishes that without disrupting the relationship these facilities have with the Coast Guard. Again, that's an improvement sought by the Administration and a principle that was incorporated in the chemical security bill that passed out of the committee in the 2005-2006 session.

And finally, the third omitted from CFATS was the most controversial subject in this matter, which is the so-called "inherently safer technology" or IST, which is the practice of encouraging and in some cases, the most dangerous cases, mandating the use of safer chemicals or processes to reduce the risk at a chemical facility. The current authorization does not promote in any way IST options nor does it even include them anyway in CFATS. I believe we've got to take a look at these alternatives as part of a comprehensive chemical security system, since in my way of thinking they are the best way to defeat a terrorist determined to strike a chemical facility in our country. In some limited circumstances, for the most risky facilities, when tens of thousands of lives might be at stake, as we've heard in testimony before the committee, it may be appropriate for DHS to have the power to order a proven and workable IST. In fact, the Administration has called for such authority to strengthen the CFATS program, and the House bill does provide it.

Much of the House bill simply codifies existing rules and practices. But some of the new provisions in the bill do concern me. For instance, the House bill goes too far in dictating the details of certain industry or Administration-required actions. I also share some of the concerns that have been expressed about the proposed legal remedies in the bill from the House.

I want to note that our colleague Senator Lautenberg has recently drafted legislation similar to the House bill and I believe it will this afternoon be heard by the Environment committee.

Here on this committee, as the members know, there is disagreement. Senator Collins, along with Senators Pryor, Voinovich and Landrieu, has filed a reauthorization bill of the current program for a three year period. I know that approach has strong support on the Committee, I believe it has majority support.

My own feeling is that that's not bad, I just think we can and should do better. Particularly by seeing if we can find common ground on the two omissions of drinking water facilities and chemical facilities in port areas, which are very serious vulnerabilities. I'm sorry we couldn't come to a meeting of the minds here in this committee, but I hope that if the bill is reported out with the Collins substitute, which I assume it will be, we will work as the bill goes to the floor and is on the floor to obtain the kind of consensus that will allow us to reauthorize the current CFATS program. Hopefully it will allow us to strengthen it in ways we can all agree on.