

Chemical Facility Anti-Terrorism Act of 2005
Markup Statement- As Prepared for Delivery
Senator Joe Lieberman
June 14, 2006

Thanks, Madam Chairman, and thank you for your usual principled hard work and determination in drafting this legislation and moving it through Committee. I also want to thank my colleagues Senators Coleman, Levin, and Carper for joining with us to produce this bill, the Chemical Facility Anti-Terrorism Act of 2005, which addresses a pressing homeland security gap – the protection of the nation’s at-risk chemical plants and other facilities that use or store dangerous chemicals. This is sound legislation and a good bill that will safeguard our citizens against the untold horrors of a terrorist attack upon a chemical facility.

Since 9/11 opened our eyes to the terrorist threats we face on U.S. soil, we have worked to improve the security of many vulnerable targets – from our transportation systems to our shipping lanes. We still have a lot of work to do and many more sectors to protect. And today, I hope we will start down that path to secure our chemical sector.

Chemicals are necessary to our 21st Century way of life and are used to make products we depend upon every day such as medicines, cleaning fluids, televisions, paints, plastics, rubber, and resins. Industry throughout the world relies on chemical compounds. In short, chemicals help sustain our lives and our national and world economy. That pervasiveness makes the chemical sector – and the thousands of facilities throughout the country that use or store lethal chemicals - vulnerable to terrorism. Obviously, those facilities near large population centers pose the greatest danger.

This is not just fear-mongering. We know that terrorists have their inhumane sights set on targeting chemical plants as a way to create maximum damage and havoc. The CRS reports that during the 1990s, international and domestic terrorists alike tried to use explosives to blow up chemical manufacturing and storage facilities near population centers. In 2002, the Justice Department described the threat posed by terrorists to chemical facilities as – quote - “both real and credible” – end of quote - for the foreseeable future.

Unfortunately, as former White House Homeland Security Advisor Richard Falkenrath told us, the federal government has done almost nothing to secure those facilities in our country. That, I hope, is about to change with this legislation.

Many responsible businesses in the chemical industry have already begun to take security precautions or participate in some voluntary efforts led by the Department of Homeland Security. Some chemical facilities are also subject to security regulations under the Maritime Transportation Security Act or the Bioterrorism Act of 2002. But after a series of hearings on chemical security in this Committee last year, it was clear that existing voluntary laws and precautions fall short of what Senator Collins and I believe needs to be done. In fact, far too many facilities that use extremely hazardous chemicals remain entirely outside the patchwork of laws, regulations and self-protection now in place.

For years, strong chemical security legislation has struggled in Congress, absent true Administration support or Congressional consensus. I am encouraged, however, by a turning of the tide. The Homeland Security Department's National Strategy for Securing the Chemical Sector, published this past April, conceded that the lack of a regulatory framework for chemical plant security was a – quote – “serious impediment” – unquote - to achieving the Department's chemical security goals. The report went on to say that DHS supports – quoting again here “the enactment of legislation that would give DHS responsibility for overseeing implementation of mandatory security requirements at chemical facilities.” End of quote.

Also very encouraging are the words of Secretary Chertoff, spoken earlier this month. I'm quoting him directly now: “The time has come to have a chemical security bill that gives us the tools to have intelligent regulation of the chemical industry, particularly with respect to those high-hazard chemicals. And the approach we've suggested that Congress take, and we are working with Congress on this, is to tier by risk; look at the high risk areas and the high risk chemicals; set performance standards that don't micromanage how one achieves good performance but is very clear about the performance that we're going to insist upon; and then builds in incentives and, frankly, sanctions if those performance standards are not met.” End of quote.

That is a pretty good description of what the Chairman and I are presenting, and so I am hopeful that today will mark a turning point that will culminate in successful and early passage of chemical security legislation that will enhance the safety of the American people from the threat of attack by our terrorist enemies.

We have worked on a bipartisan basis to build a foundation for this effort. In this Committee, we held four hearings that explored the issues and possible solutions surrounding chemical site security, and through collaboration on this legislation, we have won strong bipartisan support on our Committee. (We have also worked with outside stakeholders –who accept the need for a comprehensive national program to ensure adequate security across the entire chemical sector. I welcome this engagement by industry and am hopeful we can work together with them, the Administration and citizen groups to develop an effective national plan.

As Secretary Chertoff described his ideal legislation, our bill focuses most directly on those facilities that pose the highest risk in terms of potential loss of human life or other catastrophic consequences as a result of a terrorist attack.

We recognize that facilities will need flexibility to achieve security in the manner most fitting for them. We also recognize that responsible chemical companies have begun the process of securing their facilities, and we will not require them to reinvent the wheel. As long as an alternative security program meets the core requirements, facilities can submit these plans. Where assessments and plans do not meet the bill's core requirements, the Secretary will require modifications.

Our legislation also recognizes that sometimes the best security will come not from adding guards and gates, but from reexamining the way chemical operations are conducted to

reduce the amount of hazardous substances on site, improve the way they are stored or processed, or find safer substitutes for the chemicals themselves. These changes serve to make a facility less vulnerable as a target for terrorists, as well as limit the loss of life or other damage if an attack does take place. They also have the added benefit of limiting the harm from an accidental release. The Government Accountability Office has lent its considerable weight to this approach. In a report released this past February, it recommended that DHS consider so-called “safer technologies” to better secure refineries and other chemical plants vulnerable to terrorist attacks. GAO suggested that DHS and the Environmental Protection Agency study the security benefits of “safer technologies,” and it called on Congress to give DHS the authority to require high-risk chemical facilities to take security precautions generally.

Our bill does not make the GAO recommendations a requirement, but includes these process changes on the menu of security measures that DHS and facilities might adopt when designing their security plans.

We know that many facilities, and many security experts, already look to these less dangerous technologies as a potent and cost-effective way to improve security against a possible terror attack. But we also know that some facilities do not. That is why I believe we must go further and include more explicit requirements for chemical facilities to consider less dangerous technologies when they make the security improvements under this bill.

In particular, the riskier facilities – some of which could endanger tens or hundreds of thousands of lives if attacked – should have to demonstrate that they have looked closely at options that would reduce the catastrophic consequences of a possible terrorist attack, and they should implement those options, unless they would not augment security, would be cost-prohibitive, or would otherwise be unfeasible.

We have a powerful example of such an adjustment close by. After 9/11 focused our attention on potential targets in our midst, Washington D.C.’s water treatment facility ended the use of its chlorine. That is not to say that industry must conduct its operations off a government playbook. Senator Lautenberg and I, at the appropriate time, will introduce an amendment that we think puts a stronger version of this so-called Inherently Safer Technology approach, a stronger version, but one that says business in this field will not have to implement such actions unless they augment security, would not be cost prohibitive or would not be otherwise unfeasible.

This bill recognizes that Congress is not the only body that can and should help ensure the safety of the nation’s chemical facilities. States and localities have long regulated these facilities for obvious safety environmental concerns. Since 9/11, some states have already moved to require security improvements at chemical facilities. I believe these state and local protections are critical adjuncts to our effort at the state and federal level, and I am pleased that this bill states clearly that it does not preempt state and local laws or regulations regarding the safety of chemical facilities.

Madam Chairman, we have worked to find common ground on this critical homeland security vulnerability. There will be debate, there will be alternative amendments offered, but I hope we can hold fast to the basic balance of protective consensus, The legislation we present to

you today represents an even-handed, necessary approach to chemical plant security that I believe will address a real and potent threat to our nation's security in the war we sometimes forget we are engaged in because it is so different from wars we have been engaged in before, but we were attacked by radical Islamist terrorists who want to attack us again. This legislation will close a vulnerability gap that exists now for the benefit and safety of the people of our country. I thank the Chair.

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