

**Michael A.L. Balboni, New York State Senator
Chairman, NYS Senate Standing Committee on Veterans,
Homeland Security and Military Affairs**

*Statement Before the Committee on Homeland Security's Subcommittee
on Economic Security, Infrastructure Protection and Cybersecurity
Regarding the Chemical Facility Anti-terrorism Act of 2006*

Washington, D.C.
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Good morning Chairman Lungren and members of the House Committee on Homeland Security's Subcommittee on Economic Security, Infrastructure Protection and Cybersecurity. I am honored to testify before this body and I am grateful and appreciative of the work that is being performed by the committee to strengthen security of chemical plants.

Identifying the Need for the Legislation:

I came to this issue as a result of the events of September 11, 2001 and the days that followed. I began contemplating what other events could possibly befall us in New York. I started to think of the events in Bhopal, India.

In 1984, the accidental release of 40 tons of the pesticide methyl isocyanate from a Union Carbide plant located in the center of Bhopal had killed thousands of people outright, and injured hundreds of thousands, many of whom later died.

A few years before the events of 9/11, I had sponsored New York's Anti-Weapons of Mass Destruction Act and shortly after 9/11 my bill outlawing chemical and biological weapons in New York State was signed into law.

While researching, authoring and helping to enact these new laws, I became more and more aware of the numerous chemical plants in the state and began to worry about their vulnerabilities. I called a meeting with the major representatives of the chemical industry. They told me security regulations weren't necessary because their industry was already the most highly regulated in the nation.

Battle for the Bill:

I realized, however, that although that industry was heavily regulated from an environmental perspective it was not from a security perspective. And the issue of security has many different aspects that could only be addressed from a vulnerability perspective.

As I began to draft a bill to address this oversight, I realized that the first thing I needed to find out was where all the chemical plants were located. A part of the problem was that although lists of chemical plants had already been developed from the environmental perspective, these plants had not been analyzed from the security and threat perspective. An inventory of the chemicals and the amounts that were stored in the state was also needed. I recognized that our state needed better information regarding the condition of its critical infrastructure.

I also came to the realization that I had to respond to certain constituencies, namely, chemical industry officials, who were worried about having their vulnerabilities and trade secrets revealed and being subjected to micromanagement and possible loss of market share should vulnerabilities be exposed. So I came to the conclusion that in order for chemical plant security to be enhanced, New York needed to develop a partnership with the industry because so much of security is vigilance and motivation. The chemical industry is an essential component of our economy and we had to develop protections without destroying the industry.

I also realized that in order to avoid micromanagement and suspicion, the Legislature needed to be briefed on the state of the industry's security. I drafted a confidential briefing mechanism based on a similar system set up under my Electrical Plant Security Act of 2003. I then went back to the plant owners to address their concerns and incorporated them into the new bill.

Under my legislation, the New York State Office of Homeland Security (OHS) would establish a vulnerability survey and create suggestions for remediation where necessary. Chemical plant owners would report to OHS about their operations. None of the information would be stored with the government, but would rather be kept on-site at the plants, ensuring the information was not subject to the Freedom of Information Law.

Needless to say, the bill met with great opposition, especially from the New York State Assembly, but eventually gained approval. The New York State Chemical Security Act of 2004, a first-of-its kind in the nation, was signed into law by Governor George Pataki on July 23, 2004.

How the Law Was Implemented:

Once the law was on the books, New York State OHS set out to achieve several goals in order to implement the law. Their objectives were to compile a list of hazardous and toxic substances and to assemble a list of chemical storage facilities that must comply with provisions of the law. In addition, the state OHS was to present a preliminary report to New York State Governor George E. Pataki and then a final report detailing the office's findings and recommendations.

The list of hazardous and toxic substances was completed in January 2005 and comprised of four groups of chemicals:

- The Environmental Protection Agency's (EPA) Risk Management Plan listed chemicals,
- The Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) published list of explosives,
- Acutely Toxic Chemicals listed in GNYCRR Part 597 (New York State's hazardous substance list), and
- Chemical Weapons and precursors.

Over 2,500 chemical storage facilities were identified in New York State.

In completing their analysis, the New York State Office of Homeland Security recognized that not all chemical storage facilities present the same level of risk for the population and developed a "consequence driven analysis" to identify a facility as "high risk" utilizing several factors,

including: population, economic value, strategic value and iconic value, with population being weighed the heaviest.

New York initially identified 144 Risk Management Plan facilities using factors established under the Clean Air Act. Four risk-based tiers, separated by the size of the population that could be affected, were identified using those factors. New York OHS determined that placing chemical storage facilities into distinct tiers provides a reliable basis for analyzing security across a diverse industry. Similar standards set up in the proposed federal legislation should be equally beneficial.

The 144 facilities were asked to participate in the web-based security survey, Risk Analysis and Management for Critical Assets Protection (RAMCAP), and a Site Security Review (SSR).

Lessons Learned:

Here's what we learned when this new law was implemented in New York.

State OHS found that the facilities that are required to comply with provisions of the Maritime Transportation Safety Act of 2002 had already developed site security plans based upon threat and vulnerability assessments.

OHS also determined that security awareness training for workers helped to enhance the overall security posture of a facility.

Analysis also revealed that there is a critical need to develop better communication between law enforcement and chemical plants. Dialing 911 is not enough. An active, on-going dialogue with local law enforcement was found to provide the mechanism for critical and timely information flow in both directions.

Lastly, OHS found that security based exercises that involve on-site and off-site parties improve deterrence and detection capabilities.

On the downside, additional legislation is needed to put teeth into the New York law. One major shortcoming is our current inability to impose penalties for noncompliance.

To date, 60 of the 144 originally identified high-risk facilities have completed the web-based security survey and OHS has completed on-site visits to all 22 Tier 1 sites, the tier with the largest at-risk populations (over 50,000 people). Visits have also been completed to half of the Tier 2 sites and OHS is on track to realize a high level of participation to this voluntary compliance.

All of this work was completed under the insightful leadership of the New York State Office of Homeland Security Director James McMahon and his staff. Without his diligence and professionalism, these goals could not have been realized in such a timely fashion. It is important to note that Director McMahon's ability to work in partnership with the chemical plant industry on these issues was paramount to his success.

The Federal Legislation:

As I turn my attention now to the legislation proposed by Congress today, I'd like to focus on the many strengths of the bill. Among them is compliance.

The bill provides uniformity and full compliance across the country. As with any form of security, chemical plant security among the fifty states is only as strong as its weakest link. Although New York has led the way in this regard, our state's progress is rendered meaningless if our neighboring states do nothing to assess and strengthen their own chemical facilities. The legislation proposed by Congress will ensure a critical baseline of standards and compliance nationwide.

Another asset of the bill is a penalty structure that delivers a strong bite and should go a long way towards forcing compliance. As noted earlier, this is an area where the federal legislation reaches beyond the law in place in New York.

The fact that the proposed federal legislation strictly prohibits public disclosure of protected information, including vulnerability assessments, security performance and other data is crucial to public safety and another asset of the bill. While the concept of information protection has its detractors, the harsh reality is that some information, if revealed, could be dangerous to the life and safety of the public.

Additional strengths of the federal bill include sound vulnerability assessment and facility security plan standards, protocols, and procedures; third party auditor provisions; and exemptions for facilities that are already federally regulated, e.g. ports under the Maritime Transportation Safety Act of 2002, to avoid the confusion of duplicative regulations.

Members of this committee should be commended for the work done so far to get this bill introduced. I believe, based upon my New York experience, that there are a few areas for where the bill can be strengthened.

An area of great concern in the current bill is the exemption of transportation and incidental storage from review and analysis. A truly comprehensive strategy must include ways to best ensure safety of the supply chain from chemical storage facilities to their destinations.

Even if the chemical plant facilities are secure, the railways that run in and out of them may not be. Data indicates that in New York State alone, more than 1.7 million shipments of hazardous materials were transported last year.

Last Tuesday, I introduced legislation that would allow state OHS to conduct a review and analysis of security measures being utilized by the owners and operators of rail yards, similar to those put in place by New York's Chemical Security Act. The legislation, which gives the Director of OHS the authority to enforce compliance of security recommendations, had already been approved by the State Senate.

To be honest with you, if I had my wish, you would adopt New York's approach or allow New York to continue its good work with our state's industry. But I recognize when it comes to

security, the normal issues as they apply to preemption and states' rights don't necessarily apply. It is essential that we develop a national strategy for the securing of these crucial assets. Once again, we are only as strong as our weakest link and your bill strengthens the chain.

In conclusion, New York State was the first to recognize and act on this vulnerability. We are happy to partner with the federal government to make this a priority nationwide.

I look forward to continue working with the distinguished members of this committee. Thank you.

I would be pleased to respond to any of your questions.