



702 H Street, NW, Suite 300, Washington, DC 20001

Tel: 202-462-1177 • Fax: 202-462-4507

1-800-326-0959 • www.greenpeaceusa.org

August 24, 2010

Secretary Janet Napolitano
Department of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Napolitano;

Thank you for your July 7th statements in support of strong chemical security legislation at the Chemical Sector Security Summit in Baltimore. Today, however, we would like to bring to your attention a program at the Department of Homeland Security (DHS) that undermines the strongest chemical plant security standards and contradicts the DHS's new 2010 Open Government Plan.

In 2006 the Department of Homeland Security (DHS) established the Critical Infrastructure Partnership Advisory Council (CIPAC), creating a partnership between government and the "owners and operators" of critical infrastructure. This partnership provides an exclusive forum for regulated sectors such as the chemical industry to have direct and regular access to simultaneously influence the DHS and other agencies on a wide range of policies including guidance documents, regulations, legislation and enforcement. It is also done in virtual secrecy. Meeting outcomes, recommendations and even the names of individuals representing private sector lobbying groups are not available to the public.

Under the CIPAC the DHS has created 17 advisory committees, each representing different sectors of critical infrastructure (see summary document attached). According to the DHS these committees are "self-organized, self-run, and self-governed, with a spokesperson designated by the sector membership." In particular the Chemical Sector Committee listed below has 21 industry representatives out of 29 committee members. Only four of these members are companies that actually own or operate "high risk" facilities. The rest are trade association lobbying groups. All of these private sector committee members have a well known legislative and regulatory agendas. Thirteen of them were specifically registered to lobby on chemical security legislation. Together they spent \$31 million on lobbying last year which included efforts to weaken or oppose legislation (H.R. 2868) that passed the House of Representatives on November 6, 2009. In particular these groups oppose the administration's request for new authority to require the highest risks plants to use safer chemical processes where feasible which is contained in H.R. 2868.

Conspicuously absent from CIPAC advisory committees, especially the Chemical Sector Committee, are directly impacted stakeholders. These include first responders, local community representatives, employee groups or unions, other potentially affected local and national businesses, academic experts, and other experts from public interest groups or their representatives.

The chemical sector committee also has no representation from businesses that have a different point of view regarding inherently high risk toxic inhalation hazard (TIH) chemicals. For example the railroads no longer wish to ship these cargo due to the catastrophic liability TIH substances pose in comparison to the small percentage (0.3 percent) of freight cargo they represent. Others include companies such as Clorox which is phasing out the bulk use of chlorine gas in all of its U.S. plants to eliminate the catastrophic consequences of a terrorist attack or accident.

The members of the Chemical Sector Committee include:

Government Coordinating Council	Sector Coordinating Council
Executive Office of the President U.S. Department of Commerce U.S. Department of Defense U.S. Department of Energy U.S. Department of Homeland Security U.S. Department of Justice U.S. Department of Transportation U.S. Environmental Protection Agency	Agricultural Retailers Association American Chemistry Council American Forest & Paper Association American Petroleum Institute BASF Chemical Producers & Distributors Association Compressed Gas Association CropLife America Dow Chemical Institute of Makers of Explosives International Institute of Ammonia Refrigeration International Liquid Terminals Association National Association of Chemical Distributors National Paint & Coatings Association National Petrochemical and Refiners Association Rhodia Society of Chemical Manufactures & Affiliates Terra Industries, Inc. The Chlorine Institute The Fertilizer Institute The Society of the Plastics Industry, Inc

http://www.dhs.gov/files/committees/editorial_0848.shtm#0

This kind of access and influence raises serious questions about the wisdom of CIPAC. For example has the imbalance in representation, secrecy and apparent bias contributed to:

- Concessions to industry in the new interim Chemical Facility Anti-Terrorism Standards (CFATS) or the DHS's position on legislation in Congress to authorize permanent CFATS?
- A slower pace of compliance and inspections, e.g., fewer than 5% of high risk facilities will be inspected by the end of 2010?
- Personnel hires, assignments or reassignments within the Department?
- Ambiguity or confusion over whether some facilities are exempt from CFATS because they prefer being regulated under the Maritime Transportation Security Act?
- An extension of CIPAC itself?

Under the 2002 Homeland Security Act, you have the discretion to exempt or not exempt CIPAC from the Federal Advisory Committee Act (FACA) rules. In your renewal of the CIPAC Charter on March 19, 2010 you continued their exemption from the FACA rules for another two years (see link to CRS overview on FACA p. 7 in the attached summary document). This decision was explained as necessary to facilitate a more candid discussion of infrastructure vulnerabilities and security needs. The sharing of legitimately sensitive security information can be done separately from the necessary transparency required to develop fair and effective public policy, including regulations, guidance and legislation.

Unfortunately the CIPAC also openly encourages private sector committee members to make policy recommendations which should not be done in secret and should also include all other stakeholders with more diverse and balanced range of expertise and point of view.

For example, in the March 24, 2006 Federal Register (FR) Notice that established CIPAC and the CIPAC Charter, encourage industry members to make policy suggestions as part of their CIPAC activities:

“CIPAC requires regular, ongoing, and multi-directional communications and coordination between owner/operators and governments. During the course of these **“regular and ongoing**

activities, policy advice and recommendations may emerge and be provided to DHS.” (FR URL on p. 6 attached)

“As appropriate, the CIPAC may develop policy advice and recommendations on critical infrastructure protection and resilience matters to be provided to DHS and other federal departments and agencies that have responsibility for establishing and implementing federal policy and managing federal programs.” (Charter URL p.7 attached)

“The SCCs are encouraged to participate in efforts to develop voluntary consensus standards to ensure that sector perspectives are included in standards that affect critical infrastructure protection.” (DHS SCC URL p. 7 attached)

While some of the Chemical Sector Committee representatives are also registered lobbyists that have lobbied specifically on chemical security issues in Congress and at DHS, others are not registered as lobbyists, but have testified in Congress against enhancing the authority of DHS to regulate dangerous facilities.

Company/Org	Other SCCs	2009 Lobby Expenditures
Agricultural Retailers Association	Food and Ag	\$410,000
American Chemistry Council	Trans	\$7,020,000
American Forest & Paper Association		\$2,847,706
American Petroleum Institute	Energy, trans	\$7,990,000
BASF		\$920,000
Chemical Producers & Distributors Association		NA
Compressed Gas Association		NA
CropLife America	Food and Ag	\$1,884,037
Dow Chemical		\$5,990,000
Institute of Makers of Explosives		\$95,000
Int. Institute of Ammonia Refrigeration		NA
International Liquid Terminals Assoc.		NA
National Association of Chemical Distributors		\$100,000
National Paint & Coatings Association		NA
National Petrochemical & Refiners Association	Energy	\$1,684,003
Rhodia, Inc.		NA
SOCMA		\$330,000
Terra Industries, Inc.		NA
The Chlorine Institute		NA
The Fertilizer Institute		\$1,351,466
The Society of the Plastics Industry, Inc		\$195,000

As you know, within the DHS there are 27 FACA advisory committees. Eleven of these were established under the same discretionary authority that CIPAC was established. The charter of one DHS FACA, the Homeland Security Advisory Council (HSAC), says, “In order for the Secretary to fully leverage broad-ranging experience and education, the HSAC must be professionally, technically, and culturally diverse.

These members shall all be national leaders found within diverse and appropriate professions and communities from around the Nation. The membership shall be drawn from the following fields:

*“Police, fire, emergency medical services and public works;
“Public health and hospital managers;
“State, local, and tribal officials;
“National policy makers;
“Experts in academia and the research community;
“Leaders from the private sector;
“Owners and operators of critical industries, resources, and infrastructure.”*
http://www.dhs.gov/xlibrary/assets/HSAC_Charter.pdf

As you know, the DHS Open Government Plan is based on President Obama’s 2009 Memorandum calling on all departments to increase transparency and openness in government, **“My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.”**

We urge you to use your authority to correct this imbalance, unavoidable bias, unnecessary secrecy and resulting conflicts of interest. We recommend that you terminate CIPAC as soon as possible and implement FACA rules that establishes a truly balanced set of advisory committees with the transparency, participation and collaboration that your Open Government Plan calls for.

Given the catastrophic risks that chemical plants together pose to at least 110 million Americans, it is imperative that we avoid even the appearance of a culture that breeds inappropriate relationships between regulators and the regulated industry. One of the major factors contributing to the BP blowout in the Gulf of Mexico and the scandals at the Minerals Management Service was a lack of accountability. The best way to achieve accountability is to ensure that transparency supersedes secrecy and that ethical guidelines prevent conflicts of interest, bias or favoritism.

Thank you for your immediate attention to this matter. We look forward to your response at your earliest convenience.

Sincerely,

Rick Hind
Legislative Director
Greenpeace
(202) 319-2445
(202) 413-8513 (cell)

John Deans
Policy Analyst
Greenpeace
(202) 319-2454
(207) 319-6850 (cell)

Cc:

The White House
Senator Joseph Lieberman, Chair, Homeland Security and Governmental Affairs Committee
Senator Barbara Boxer, Chair, Environment and Public Works Committee
Representative Bennie Thompson, Chair of the Homeland Security Committee
Representative Sheila Jackson Lee, Chair of the Subcommittee on Transportation Security and Infrastructure Protection
Representative Henry Waxman, Chair of the Energy & Commerce Committee
Representative Edward Markey, Chair of the Subcommittee on Energy and Environment