November 4, 2010

Mr. Rand Beers, Under Secretary
National Protection and Programs Directorate
U.S. Department of Homeland Security
Washington, DC 20528

Dear Under Secretary Beers;

Thank you for your November 2, 2010 response to our August 24, 2010 letter raising concerns about the lack of transparency and balance in the advisory committees that make up the Critical Infrastructure Partnership Advisory Council (CIPAC). We appreciate your offer to meet twice a year with the blue-green coalition on chemical security. We also appreciate your offer to open the CIPAC's annual plenary meeting to public comment as well as written public comments.

We attended the 2010 annual plenary on October 13th this year and noted that those in attendance were overwhelmingly from industry. Under the CIPAC partnership the Department of Homeland Security (DHS) has created 17 sector advisory committees, each representing a different sector of critical infrastructure. According to the DHS these committees are "self-organized, self-run, and self-governed, with a spokesperson designated by the sector membership." The Chemical Sector Committee now has 27 members. Fifteen of these are non-governmental, all of which are chemical industry trade associations. At least half them are specifically registered to lobby on chemical security legislation. Together they spent $21 million on lobbying last year which included efforts to weaken or oppose comprehensive legislation (H.R. 2868) that passed the House of Representatives on November 6, 2009. In particular these groups oppose DHS's request for additional authority to require the highest risk chemical plants to use safer processes where feasible as contained in H.R. 2868.

It is necessary to correct this imbalance by including stakeholders from local communities, labor, academia and other experts not merely for the sake of participation, but also to ensure more diverse thinking in the process. Advisory committees could use executive sessions to shield appropriately sensitive information such as security plans, while also letting taxpayers know the names and affiliations of individuals on each committee and any public policy discussions regarding the quality and effectiveness of security rules, guidelines or legislation.

This administration inherited CIPAC from an administration that was hostile to regulation and transparency but fostered cozy relationships with regulated industries. We urge you to use your discretion under the 2002 Homeland Security Act to terminate CIPAC and implement Federal Advisory Act (FACA) rules that establish more balanced advisory committees with greater transparency, participation and collaboration as described in the DHS’s 2010 Open Government Plan. There is plenty of precedent for this at the DHS which has 27 FACA run committees, eleven of which have the discretion, as CIPAC does, to operate under FACA rules.

As currently run the secrecy surrounding CIPAC undermines the DHS’s ability to definitively put to rest speculation that some of its decisions may have been a result of pressure by CIPAC members and/or affiliated entities. For example:

- During the markup of H.R. 2868, the Continuing Chemical Facilities Anti-Terrorism Act of 2010, Senator Levin noted a lack of communication between DHS and the Homeland Security and Governmental Affairs Committee on the subject of the bill. Due to secrecy, it is impossible to tell to what degree this may have been a result of pressure by CIPAC members and/or affiliated entities.
Fewer than 5% of high risk facilities will be inspected by the end of 2010. Due to secrecy, it is impossible to confirm or to reject the possibility that this may be the result of efforts by CIPAC members and/or affiliated entities to influence the pace of compliance and inspections of chemical facilities.

In 2007 the DHS proposed a "top screen" reporting threshold for propane gas at 7,500 pounds. In the final rule, it was raised to 60,000 pounds. Many other chemical thresholds were also raised. Due to secrecy, it is impossible to know whether or not this was due to pressure from CIPAC members and/or affiliated entities.

The CIPAC charter also formally encourages private sector committee members to make policy recommendations. For example, in the March 24, 2006 Federal Register (FR) Notice that established CIPAC said: "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."

While some of the Chemical Sector Committee representatives are registered lobbyists (we provided a list in our August 24th letter) that have specifically lobbied 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.

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<tr>
<th>Company/Org</th>
<th>Other SCCs</th>
<th>2009 Lobby Expenditures</th>
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<tr>
<td>Agricultural Retailers Association</td>
<td>Food and Ag</td>
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<tr>
<td>American Chemistry Council</td>
<td>Trans</td>
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<td>The Society of the Plastics Industry, Inc</td>
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<td><strong>Total</strong></td>
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<td><strong>$21,059,506</strong></td>
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Given the catastrophic risks that chemical plants together pose to more than 100 million Americans, it is necessary to 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,

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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