

**Extract from the Testimony of Paul Orum**, Working Group on Community Right-to-Know Before the Subcommittee on Superfund, Toxics, Risk, and Waste Management of the Senate Environment and Public Works Committee, November 14, 2001

Thank you for the opportunity to testify today. I am Paul Orum, director of the Working Group on Community Right-to-Know. Since 1989 I have worked with many non-governmental organizations in all 50 states that are concerned with efforts to reduce chemical hazards and toxic pollution. We are here about one fundamental question: will there be a federal program to reduce chemical industry hazards that endanger communities - whether from criminal activity or accidents - or will there not? The terrorist attacks of September 11 show plainly that chemical plants and refineries could suffer a worst-case fire or toxic gas release. No longer can the chemical industry claim that a worst-case release is too improbable to occur. No longer can the U.S. Environmental Protection Agency claim that hazard reduction is a local matter with no need for a national hazard reduction program. No longer can the U.S. Department of Justice neglect its duty to review chemical security practices and to recommend ways of reducing vulnerabilities. No longer can the federal government impede public information about dangerous industry practices while taking no obvious steps to eliminate and reduce those dangers. No longer can anyone seriously propose that voluntary local programs are sufficient to fix the problem. Congress has an opportunity and a duty to fill a big hole in our laws by requiring chemical-using facilities to evaluate safer alternatives and use them wherever practicable. The Chemical Security Act of 2001 (S.1602) proposes constructive steps toward a national prevention and chemical security program, and gives government the tools it needs to protect communities in the new era of terrorism. There is a big hole in our chemical safety laws. People might think that the right programs are already in place, but they are not. Currently, no federal law actively regulates the vulnerability zones that hazardous chemical facilities impose on surrounding communities (in terms of size, intensity, or population at risk). Nor does any federal law require firms to even examine safer alternatives. Nor is terrorism a specific planning element in the Risk Management Program established by the Clean Air Act. Nor were regulatory thresholds under this act and other laws established with potential terrorism in mind.<sup>1</sup> No federal law systematically encourages inherently safer alternatives at facilities that could suddenly release dangerous chemical plumes into surrounding communities. As a result, thousands of communities across the country have chemical hazards that may be wholly unnecessary. Current laws, generally speaking, are limited to cleanup, planning, response, and risk management:

- In the early 1980s, U.S. chemical safety laws addressed cleaning up emergencies (i.e., CERCLA).

- By the mid-1980s, U.S. chemical safety laws addressed preparing for emergencies (i.e., EPCRA).
- From 1990, U.S. chemical safety laws addressed managing the risks of emergencies (i.e., EPA's Risk Management Plans and the Department of Labor's Process Safety Management of Highly Hazardous Chemicals).
- The proposed Chemical Security Act, S.1602, will address eliminating and reducing chemical hazards in communities wherever practicable as the option of first resort.

Chemical site security is often poor. Both government reports and other incidents show serious security problems at chemical facilities. In addition, Congress should by now have in hand an interim report from the Department of Justice (DOJ) on site security for chemical facilities and transportation. Congress mandated this review in 1999 in the Chemical Safety Information, Site Security, and Fuels Regulatory Relief Act, with an interim report and recommendations due by August 2000. DOJ is apparently ignoring this requirement. Congress should make sure that DOJ produces this review and recommendations.<sup>2</sup> DOJ is preparing a voluntary self-assessment tool for use by industrial facilities. This effort lacks a public docket. It uses an "acceptable risk" methodology that does not consult people at risk in surrounding communities. DOJ has not fulfilled a Freedom of Information Act request of July 30, 2001 on this project. The Department has also not directly addressed detailed concerns raised by a dozen environmental and labor groups in a letter first sent in August 2000, despite repeated attempts (see attached letters).

- The Agency for Toxic Substances and Disease Registry has reported that site security at chemical plants ranges from "fair to very poor" and at chemical transportation assets from "poor to non-existent."<sup>3</sup> The American Chemistry Council has pointedly criticized this work, apparently to get the agency to retract or revise the report. We do not believe that the agency should do so.
- Greenpeace published photographs from inside a Dow Chemical plant in Plaquemine, Louisiana. The photos show the inside of an unoccupied building that controls big pumps that dump 500 million gallons of wastewater into the Mississippi River each day. Greenpeace reports that there were no guards at the perimeter, no security cameras, no alarms, and the door was unlocked. (See the photographs at: [www.greenpeaceusa.org/media/press\\_releases/01\\_03\\_23.htm](http://www.greenpeaceusa.org/media/press_releases/01_03_23.htm)).
- In 1999, a reporter roamed about inside the Washington, DC's Blue Plains sewage treatment facility, which at that time stored tons of chlorine and sulfur dioxide, without being stopped or asked for identification.<sup>4</sup>
- A recent news article cited a professor who had confirmed that he could purchase all the essential ingredients for nerve gas - even after the September terrorist attacks.<sup>5</sup> In addition, some commercial web sites assure

buyers that they will remain anonymous (after simply registering) when buying chemicals.

- The Pacific Northwest National Laboratory found inadequate security at several Department of Energy military facilities that store hazardous chemicals.<sup>6</sup>
- Under existing regulations, a terrorist organization can set up a new trucking company in the U.S. or Canada, and obtain operating authority in the U.S. for an 18-month period without any federal or state safety review or security check simply by paying a fee. After obtaining a hazardous materials endorsement for a commercial driver's license by merely passing a written exam, drivers can legally drive semi-trailers carrying up to 80,000 pounds of placarded hazardous materials on nearly all roads and through all cities in the U.S.<sup>7</sup>

Chemical fires and spills occur frequently. Each year, companies in the United States report more than 25,000 fires, spills, or explosions involving hazardous chemicals to the National Response Center, a broad but incomplete federal record of mishaps involving oil or chemicals. At least 1,000 of these events each year involve deaths, injuries, or evacuations. Combined data from additional federal sources suggest that in 1998 there were over 100 deaths, nearly 5,000 injuries, and when including small spills, almost 50,000 incidents related to ordinary industrial use of chemicals in the United States.<sup>9</sup> Some analysts suggest that for each catastrophic chemical accident that causes a fatality, there are 30 lost-time incidents, 300 recordable incidents, and 30,000 near misses.<sup>10</sup> Serious incidents often cost jobs, and uncounted people suffer long-term consequences from being exposed to the dangerous chemicals. One estimate suggests costs of about \$5 billion for major U.S. chemical accidents each year.<sup>11</sup> Mostly-volunteer Local Emergency Planning Committees are no substitute for an urgent national effort to reduce chemical hazards. A recent study of 32 "active" Local Emergency Planning Committees (LEPC) found that "with a few exceptions, LEPCs do not believe they are positioned to effectively encourage facilities to reduce chemical hazards." Most of these LEPCs believe they "do not have the time, resources or expertise to encourage hazard reduction."<sup>12</sup> Again, these were "active" LEPCs. An earlier national survey found that 21 percent of LEPCs were "inactive," 39 percent were "quasi-active," 16 percent were "compliant," and 24 percent were "proactive."<sup>13</sup> Among many additional barriers, LEPCs lack the authority and mandate for hazard reduction; can be hampered by dependent relations with industry; have no formal role in implementing Risk Management Planning; and can become discouraged by a perceived unwillingness of government and industry to act. Many lack funding. According to one report, "many LEPCs exist only on paper, and many others exist, but have not succeeded in meeting even their basic responsibilities."<sup>14</sup> There is a role for local volunteer efforts, but these efforts are no substitute for a national chemical hazard reduction program, and indeed would

benefit from the leadership provided by an effective national program. Only major policy changes will create a successful national effort. We need a national response to potential terrorism, not just voluntary self-assessment programs. If site security at airports were voluntary, it wouldn't make Americans feel very safe. The following examples help illustrate the problem...

**SOURCE:** <https://www.foreffectivegov.org/node/852>