

Christine Todd Whitman

April 3, 2012

The Hon. Lisa Jackson, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C.

Lisa
Dear Administrator Jackson,

I was interested to read the recent media accounts of the recommendation by the National Environmental Justice Advisory Council (NEJAC) regarding the prevention of chemical disasters at U.S. chemical facilities. I know this is an issue about which we both care very deeply.

In their letter the NEJAC recommended that:

EPA use its authority under the 1990 Clean Air Act section 112 (r), to reduce or eliminate these catastrophic risks, where feasible, by issuing new rules and guidance to fully implement the general duty clause. This action would reduce the danger and imminent threat that chemical plants, chemical manufacturing, and the transport and storage of hazardous chemicals pose to environmental justice and all communities.

I thought it might be helpful to you to know that shortly after the terrorist attacks of September 11, 2001, the EPA seriously considered using section 112 (r) to extend the Agency's existing responsibility for the prevention of accidental releases to include releases caused deliberately.

After careful consideration, I decided that our best alternative was to pursue legislative action to achieve this goal. We felt that enacting a specific law to specifically address the use of the general duty clause was the preferable course of action, since it would likely eliminate, or at least reduce, the potential of a challenge in the courts.

After more than a year of effort working with other departments and agencies and various stakeholders to craft a bill, which included language encouraging the use of inherently safer technologies, the White House decided not to submit the legislation we had drafted. I believed that this decision undermined EPA's ability to carry out its assignment as the lead federal agency in protecting the chemical industry and hazardous materials sector, as provided under the National Strategy for Homeland Security issued in July 2002. I subsequently requested that EPA be relieved of that assignment.

Although temporary security legislation was eventually enacted in 2006, it is extremely limited. For example, it actually bars the Department of Homeland Security (DHS) from requiring and particular security measures including chemical hazard reduction. It also exempts thousands of chemical facilities, including all water treatment plants and hundreds of other potentially high-risk facilities, such as refineries located on navigable waters. Since 2009 the EPA and the DHS have asked Congress for authority to implement hazard reduction and eliminate these wholesale exemptions but Congress has failed to act on those requests.

Fortunately, I am advised that the 1990 CAA's authority has not been changed or amended on this subject. The authority we proposed using in our 2002 proposal was the same as the NEJAC is now proposing, section 112(r)(1) of the CAA. It contains an enforceable "general duty" clause that obligates chemical facilities handling the most dangerous chemicals to prevent potentially catastrophic releases to surrounding communities. Facilities with the largest quantities of the most dangerous chemicals (such as poison gases) should assess their operations to identify safer cost-effective processes that will reduce or eliminate hazards in the event of a terrorist attack or accident. This has never been required and today hundreds of these facilities continue to put millions of Americans at risk.

It is well established that safer cost-effective alternatives are widely available. In 2009 the Clorox Company announced plans to convert all of their U.S. facilities. And within 90 days after the 9/11 attacks Washington, D.C.'s wastewater treatment plant converted from chlorine gas to safer liquid bleach. Unfortunately there is still no national program to assess the feasibility or to require the use of safer alternatives at the highest risk facilities.

In 2003 the Government Accountability Office (GAO) concluded that the EPA could *"interpret the Clean Air Act's general duty clause to address chemical facility security from terrorism... According to EPA, it would not have to make any regulatory changes as it currently implements the general duty clause through guidance. Thus, EPA could revise its existing guidance or issue new guidance to include managing the risk of terrorism as within owners and operators' responsibility under the general duty clause."*

Accordingly, I therefore fully support the implementation of the NEJAC recommendations and any other authorities you can apply to reduce these hazards before a tragedy of historic proportions occurs.

Thank you for your commitment to protecting the safety and health of the American people.

Sincerely,

