

**April 28, 2014**

President of the United States  
The White House  
1600 Pennsylvania Ave., NW  
Washington, D.C. 20500

Re: Improving Chemical Facility Safety and Security

Dear Mr. President:

We appreciate the serious and important task given to the Interagency Working Group (IWG) to implement Executive Order (EO) 13650, "Improving Chemical Facility Safety and Security." The safety and security of our facilities, our employees, and our communities is paramount to the undersigned, which is why our organizations and their members have actively participated in the listening sessions for the EO across the country and have provided numerous comments and recommendations for the docket.

The following are three specific actions that we urge the Administration to undertake that will significantly improve the safety and security of our communities, while maintaining a robust chemical sector that can continue to provide jobs and financial security for generations of Americans to come.

**1. Work with industry and others to ensure that emergency responders have the information they need to protect communities where chemicals are stored.**

The Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 was intended to improve the availability of chemical information to members of the local community and to aid emergency first responders. Unfortunately, it appears the entities and processes it established a quarter-century ago have withered away in a great many states and localities. Charging the U.S. Environmental Protection Agency (EPA) to revitalize EPCRA presents the most immediate opportunity to improve access to chemical emergency information needed by local emergency responders.

While many active and well-functioning Local Emergency Planning Committees (LEPCs) exist today, too many are poorly resourced or are not well-managed. The Administration should establish a national steering committee to bring together representatives of federal, state, and local governments; the emergency planning and response communities; and industry and other stakeholders. This committee should be charged with identifying best practices and resources to prepare for and respond to chemical emergencies, and with tailoring their dissemination to local emergency responders nationwide.

EPCRA also requires the sharing of chemical information necessary to protect communities in emergencies. Throughout the listening sessions, we heard that this information is not readily retrievable or understandable. To remedy this issue, the Administration should establish an improved internet-based data management system to share chemical information that has been

provided under EPCRA in a readily accessible and usable format for emergency response purposes.<sup>1</sup>

Further, we are pleased to see that EPA's FY 2015 budget request includes funds for the LEPC program. The Administration should also leverage its Federal Emergency Management Agency Assistance to Firefighters Grants, and the Department of Transportation hazmat training grants and emergency responder curriculum development assets to increase and improve its outreach and training at the local level.

## **2. Improve regulatory effectiveness and operational coordination.**

The chemical industry is one of the most regulated industries in the world, and data show that the industry also is one of the safest. This is due in a large part to the numerous chemical safety and security laws, regulations, and voluntary programs that are in place today. However, a common theme throughout the EO is the need for improved regulatory compliance and enforcement of existing laws and regulations.

It is counterproductive to create new laws or regulations if the implementing agencies do not have the resources or expertise to enforce them. Creating additional requirements will only further diminish such entities' overall capacity to ensure compliance and will not improve safety for companies who are meeting the current standards and consistently do so. Increasing regulations also will not improve the safety of workers at outlier facilities that are not in compliance with existing regulations and who will likely not comply with new or expanded authorities, either.

Rather than increasing burdens on the industry across the board, the Administration should focus its time and resources on providing outreach and education to the regulated community, and encouraging agencies to increase targeted enforcement of companies with a history of noncompliance. This effort should encompass the following:

- Better operational management and coordination among federal agencies, facilities, and first responders. Better enforcement of existing laws requires improved cooperation among federal and state agencies.
- Targeted enforcement based on incident data and prioritized inspection schedules. Agencies should coordinate schedules and enforcement policies to better leverage the existing cadre of federal inspectors.
- Additional resources and training for inspectors of all federal agencies having regulatory oversight of the chemical industry.

## **3. Leverage private sector industry programs.**

EO 13650 wisely directs the IWG to explore how private sector initiatives can improve or supplement the federal management of chemical safety and security risks. We agree that

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<sup>1</sup>Our call for improved information sharing should not be interpreted as support for an expansion of the type of information that is already required to be shared. Additionally, we envision that existing protections for security-sensitive information would be retained. We would actively oppose any "reforms" that would limit the scope of Chemical-terrorism Vulnerability Information (CVI) or expand the range of persons authorized to have access to it.

increased recognition and leveraging of industry performance improvement programs should be an essential component of enhancing and updating the current federal approach, and we are eager to discuss how this might be accomplished.

We encourage the IWG to reach out to affected employers and trade associations. Public/private partnerships could help to achieve many of the goals and objectives established by EO 13650. Moreover, interactions with affected groups will allow the IWG and other agencies to obtain a broad perspective on emerging safety trends and industry best practices.

### **Procedural Considerations**

We were pleased that the list of options for implementing Section 6 of EO 13650 is considered a starting point for additional stakeholder discussion and that “this effort does not supersede official or standard processes for agency actions, such as notice and comment rulemaking.”<sup>2</sup> If *any* agency decides to proceed with subsequent rulemaking, we encourage full transparency and sufficient opportunity for stakeholder participation in every step of the rulemaking. Specifically, the agency should issue an Advance Notice of Proposed Rulemaking to provide stakeholders with sufficient time to evaluate the impact of such broad and weighty rule changes.

We also trust that scientific and technical studies and analyses undertaken in support of the EO will be peer-reviewed in accordance with the Office of Management and Budget’s Peer Review Bulletin.<sup>3</sup> The relevant agencies should make draft documents public at the same time that they are supplied to the reviewers and give stakeholders adequate time to provide input to the reviewers.

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We enthusiastically support our common goal of improving chemical facility safety and security as demonstrated through decades of improved chemical industry performance. We remain steadfast in our commitment to safety and security and to the pursuit of all opportunities that will improve the effectiveness of current regulatory programs.

Sincerely,

Agricultural Retailers Association

American Chemistry Council

American Coatings Association

American Forest & Paper Association

Council of Producers & Distributors of Agrotechnology

Compressed Gas Association

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<sup>2</sup> See [http://www.osha.gov/chemicalexecutiveorder/Section\\_6ai\\_Options\\_List.html](http://www.osha.gov/chemicalexecutiveorder/Section_6ai_Options_List.html).

<sup>3</sup> Final Information Quality Bulletin for Peer Review, M-05-03. 12/16/2004.  
[http://www.whitehouse.gov/omb/memoranda\\_fy2005\\_m05-03](http://www.whitehouse.gov/omb/memoranda_fy2005_m05-03).

CropLife America  
The Chlorine Institute  
The Fertilizer Institute  
Institute of Makers of Explosives  
International Institute of Ammonia Refrigeration  
International Liquid Terminals Association  
National Association of Chemical Distributors  
National Association of Manufacturers  
Society of Chemical Manufacturers and Affiliates  
U.S. Chamber of Commerce

cc:

The National Governors Association  
The Honorable Eric H. Holder, Jr., Attorney General  
The Honorable Thomas J. Vilsack, Secretary of Agriculture  
The Honorable Thomas E. Perez, Secretary of Labor  
The Honorable Anthony Foxx, Secretary of Transportation  
The Honorable Jeh C. Johnson, Secretary of Homeland Security  
The Honorable Gina McCarthy, Administrator, Environmental Protection Agency