Politicians Terrorizing The Industry

On the surface it sounds like a great idea: The Chemical Facility Antiterrorism Act of 2009, designed by Committee on Homeland Security Chairman Bennie G. Thompson and other senior lawmakers, to “help ensure that this vital industry, and the population that lives around these facilities, are safe and secure.”

But the difference between a great idea and a useful piece of legislation is support and involvement from those it affects.

The proposed act is intended to replace the current Chemical Facility Anti-Terrorism Standards (CFATS), which are due to expire in October. Despite assurances from Chairman Thompson that the bill is based on “years of work and discussions with key stakeholders,” some aspects of the proposal are too general for the industry and could have other unintended effects.

On Tuesday, Marty Durbin, Vice President of Federal Affairs for the American Chemistry Council, appeared before the Committee on Homeland Security. He raised some excellent points [1] that highlighted the effectiveness of existing CFATS legislation, and areas within the new bill that are cause for concern, including:

- A provision that would give the Department of Homeland Security (DHS) authority to mandate process changes and close plants that don’t comply, which would be less effective than the risk-based performance standards used by CFATS to drive each facility to consider all possible risk reduction options.
- Proposed use of inherently safer technologies (IST) through chemical substitution, which ignores the “value or benefit of chemicals like chlorine to modern society. For example, there are no chlorine-free processes that produce silicon of the purity required for products such as integrated circuits. Nor is there an economically viable chlorine-free route to the production of titanium.”
- The proposed “Private Right of Action,” which would allow citizens and private groups to demand tougher enforcement of the law through federal courts. “Unlike environmental statutes, CFATS is not a series of prescriptive statutory measures with which compliance is mandatory, therefore it is much more difficult for an outsider to ascertain if a standard is being met or to decide what needs to be done to address an alleged deficiency. Creating a litigious environment will most certainly undermine such an effort.”

The Private Right of Action is another case of good intentions gone wrong — it opens up chemical manufactures to litigation while doing nothing to prevent terrorism.

The Society of Chemical Manufacturers and Affiliates (SOCMA) also voiced its support of the existing CFATS legislation with a testimony submitted to the Committee [2] that strongly urged lawmakers to make the existing standards permanent before they expire.

The group attacked the proposed use of IST, stating that the concept of a chemical being safer if it "may have less off-site impact in the case of a worst-case scenario release … is a very narrow, if not naïve, view of how the hazards in a chemical manufacturing process should be assessed."

"If manufacturers of active pharmaceutical ingredients (API) were required to substitute a "safer" chemical in their processes … the alternative API process would certainly have impacts on the supply and possibly the effectiveness of the consumer drugs for which they are intended, as it takes years before an API is ready for Food and Drug Administration approval and subsequent manufacture."

Regardless of the backlash against IST, it appears that this provision will remain on the bill, forcing some companies to develop alternate technologies or to stop using high-risk chemicals altogether. Expanding R&D budgets that are already strained under the current economic conditions is just not an option for some companies.

In the case of biofuels, the development of new, necessary technologies was not left up to the big oil companies, but was encouraged by the Department of Energy (DOE) through grants and other incentives. If a policy to eliminate the use of certain chemicals is carried out, the policy makers should support companies in their bid for alterative technologies.

Alternatively, an aggressive policy to manage, not eliminate, these chemicals would remove the need for more big government spending, and in my opinion, be effective in reducing the risk of a terrorist attack.

With about 7,000 chemical facilities in the U.S. deemed as "high risk," it's important that this bill is constructed in a way that is practical and flexible, allowing the industry to work with the DHS and not against them. More importantly, it's vital that the bill doesn't cause facilities to halt production that uses high-risk chemicals due to the high cost of compliance.

The fact that this is a piece of antiterrorism legislation doesn't make it un-American or politically incorrect to debate its validity, even if the politicians drafting it have good intentions. It's easy to forget that our lawmakers are representing us, not controlling us, and it's up to us to tell them how their laws affect us. This is especially true when it comes to industrial processes that are as varied as they are complex.

The Committee on Homeland Security appears to be leading the review, but the bill must also be approved by the house Committee on Energy and Commerce before it is voted on. Should you wish to contact members of either group, their contact details are listed here [3] and here [4].

The www.govtrack.com [5] website is great for getting more information about the bill [6], including any revisions and its progress through the House and Senate. I recommend a strong cup of coffee before attempting to read any legislation.

For the Twitter users out there, the ACC has accounts providing sporadic pieces of information about CFATS (twitter.com/CFATS [7]) and chemical security (twitter.com/chemsecurity [8]). SOCMA is also tweeting (twitter.com/socma [9]). Of course, we will be publishing updates on the Chem.Info Twitter account (twitter.com/Chem_Info [10]) and on our website [11].

I am happy to publish your comments on this bill and the implications it may have for the industry — shoot me an e-mail at luke.simpson@advantagemedia.com [12].

Source URL (retrieved on *03/14/2014 - 11:12am*):
http://www.chem.info/blogs/2009/06/politicians-terrorizing-industry?qt-recent_content=0

Links:
[1] http://www.americanchemistry.com/s_acc/sec_mediakits.asp?CID=258&DID=9783
[2] http://www.socma.com/pressroom/index.cfm?subSec=3&sub=71&articleID=1748
[3] http://www.govtrack.us/congress/committee.xpd?id=HSHM
[4] http://www.govtrack.us/congress/committee.xpd?id=HSIF
[5] http://www.govtrack.com
[6] http://www.govtrack.us/congress/billtext.xpd?bill=h111-2868
[7] http://twitter.com/CFATS
[8] http://twitter.com/chemsecurity
[9] http://twitter.com/socma
[10] http://twitter.com/Chem_Info
[11] http://www.chem.info
[12] mailto:luke.simpson@advantagemedia.com