

Congress of the United States
House of Representatives
Washington, DC 20515-1604

May 28, 2013

The Honorable Bob Perciasepe
Acting Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Acting Administrator Perciasepe:

Thank you for your testimony on May 16th in front of the House Energy and Power and Environment and Economy subcommittees. In light of the West, Texas fertilizer plant explosion, I believe that our nation's chemicals regulatory framework must be clarified, particularly EPA's application of the Clean Air Act's General Duty Clause.

The General Duty Clause states that owner-operators have a general duty to design and maintain a safe facility if they are processing, handling or storing chemicals listed under 40 CFR part 68, "or other extremely hazardous substances." EPA, however, readily admits in its guidance document for enforcement that no definition of "other extremely hazardous substances" exists. In fact, the EPA guidance for enforcement relies on Senate Committee report language from the 1990 Clean Air Act Amendments as justification for its broad enforcement. As of now, the law can be interpreted in such a way that an EPA regional inspector can determine that the General Duty Clause applies to any chemical he or she sees fit. The danger with such a vague law is twofold: It leads to overzealous implementation based on discretionary boundaries for enforcement, and it reduces safety because of the confusion as to what processes and chemicals are actually regulated.

The West, Texas fertilizer plant explosion was a terrible tragedy that cost the lives of 15 people. As a result of the incident, there have been calls from some environmental organizations for increased application of the General Duty Clause despite the already robust chemical management regulations from EPA, the Department of Homeland Security's (DHS) Chemical Facility Anti-Terrorism Standards (CFATS) program, and the Occupational Safety and Health Administration's process safety management regulations.

The West, Texas incident demonstrates the existing confusion surrounding EPA's chemicals regulations. For instance: Although anhydrous ammonia is a regulated substance under the Clean Air Act's Risk Management Program, ammonium nitrate (AN) is not, although it is covered under DHS's chemical security program. However, an alert issued from the Chemical Emergency Preparedness and Prevention Office in 1997 under Administrator Carol Browner stated that "Section 112(r) of the Clean Air Act ...imposes on facilities with regulated substances or other extremely hazardous substances a general duty to prevent and mitigate accidents. This general duty would apply to hazards associated with ammonium nitrate. Accident prevention activities include identifying hazards and operating a safe facility."

I believe that accident prevention, as well as worker and community safety, depend on regulatory certainty. The confusion over the regulation of AN is a sad example of why I, along with other Members of the House Energy and Commerce Committee, introduced H.R 888, the General Duty Clarification Act, and support

its passage. H.R. 888 would require EPA to issue a rule defining the terms of the General Duty Clause, including the complete list of other extremely hazardous substances that are covered. My legislation would also clarify existing law by specifying EPA's role as protecting the environment and DHS's role as protecting chemical plant security, which was the intent of Congress when it passed the CFATS authorization in 2007. The bill would also prevent EPA from interpreting its role to require the use of so-called Inherently Safer Technologies as a one-size-fits-all concept. Such an overly broad mandate would be counterproductive to chemical process safety.

As part of our continued understanding of EPA's role in chemicals management, I ask that you respond to the questions below:

- 1) Will EPA issue a regulation to define the scope of the General Duty Clause, including a complete list of chemicals covered?
- 2) Do you believe EPA has the authority to regulate chemical plant security under the General Duty Clause?
- 3) What steps has EPA taken to assist covered entities in complying with the General Duty Clause?
- 4) What provisions in the Clean Air Act's Risk Management Program do you believe are absent or deficient which would result in your applying the General Duty Clause?
- 5) Does EPA plan to apply the General Duty Clause to regulate chemical plant security?
- 6) Do you believe EPA has the authority to mandate the use and/or consideration of Inherently Safer Technologies under Section 112(r) of the Clean Air Act?
- 7) Does EPA plan on issuing any guidance or proposing any rule mandating the use or consideration of Inherently Safer Technologies?

I appreciate your written response to the questions above. If you have any questions, please do not hesitate to contact my office at (202) 225-6216. Thank you.

Sincerely,



Mike Pompeo
Member of Congress