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"You know, the threat is just staring us in the face. I mean, all you'd have to do is to have a major chemical facility in a major metropolitan area go up and there'd be hell to pay politically. People will say, 'Well, didn't we know that this existed?' Of course, we knew."

--- Former Senator Warren Rudman (R-NH) November, 2003

215 Lobbyists Led Chem Industry Effort for Weak Security Law in '06 Federal Chem Security Budget a Fraction of Industry Lobbying

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This report demonstrates why real chemical security standards are languishing. By analyzing the 2006 lobbying records Greenpeace has identified 215 industry lobbyists that spent an estimated \$16.4 million – and possibly as much as \$74.5 million – to defeat strong chemical plant security legislation. That is more than the \$10 million the Department of Homeland Security (DHS) spent on chemical security for the entire fiscal year of 2007 or the \$25 million requested for chemical security by DHS for fiscal 2008.

In a comprehensive survey of the congressional lobbying records of the chemical industry and allied businesses, Greenpeace identified 215 industry lobbyists with an estimated budget of \$16.4 to \$74.5 million to lobby on chemical plant security legislation out of a total lobbying expenditures of \$157.4 million for 2006. These included 13 trade associations such as the American Chemistry Council (ACC), American Petroleum Institute (API), U.S. Chamber of Commerce (including CEO Thomas Donahue), Edison Electric Institute (EEI), 30 member companies such as Dow Chemical, ExxonMobil and Halliburton and 13 lobby firms such as Akin & Gump and Holland & Knight.

In addition to lobbying, many of these companies and trade associations distributed \$8.7 million in political action committee contributions to candidates in 2005-06. Combined with lobbying resources of \$16.4 to \$74.5 million, the industry had as much as \$83.2 million available to influence chemical security legislation in 2006 **[SEE METHODOLOGY ON P. 3]**. In comparison, the 2007 fiscal budget for chemical security at the Department of Homeland Security (DHS) was only \$10 million. DHS is asking for an increase of \$15 million for a total of \$25 million for their 2008 fiscal budget on chemical security, a fraction of chemical industry resources available to lobby for weaker regulations.

This is probably an underestimation of the total number of lobbyists and money available to this industry due to the lax reporting requirements of the Lobbying Disclosure Act (LDA). As a result, the survey excluded lobbyists who did not specifically list chemical security legislation on their lobby reports. A notable example, the National Association of Manufacturers (NAM) was **not** included in the survey even though they

registered to lobby on it in 2005, signed on to industry letters in 2006, and formally commented on DHS proposed regulations in 2007. As a result, their 56 lobbyists and \$15 million budget were not counted as part of this lobbying campaign. It is unclear whether this is a violation of the LDA or the result of a split within the NAM. For example, member companies of the Association of American Railroads (AAR), such as CSX, BNSF & Norfolk Southern, are also members of NAM. Yet the AAR testified in support of the use of safer chemicals as a way to eliminate industry vulnerability and liability to potential terrorist attacks on rail cars carrying hazardous chemicals. The chemical industry strongly opposes the use of safer technologies as a “security measure.”

Of the 215 chemical security lobbyists identified, 90 directly represent the ACC (the trade association of major chemical manufacturers), or its member companies. However, the chemical plants owned and run by ACC members account for only 13 percent of the 15,000 chemical facilities the EPA has identified as posing a risk to communities. Most of the rest are “users” of chemicals such as refineries, water treatment plants, power plants and paper mills. It is in these sectors where more than 200 plants have converted to safer chemicals or processes since 9/11. Unfortunately, at this rate it will take more than 40 years to convert the most dangerous plants to safer and more secure technologies.

This lobbying campaign successfully killed comprehensive chemical security legislation (H.R. 5695 & S. 2145) that was voted out of the authorizing committees in the House and Senate in 2006. Instead, the industry worked closely with Republican leaders to draft a 740 word “rider” to the 2007 DHS Appropriations bill. The only major concession they made was to keep it an “interim” 3 year statute until Congress enacts permanent legislation. In 2007, the industry is urging Congress NOT to change this statute.

The interim chemical security law prohibits DHS from requiring the use of safer more secure chemicals or technologies; it exempts approximately 3,000 water facilities from regulations; prohibits lawsuits to enforce the law and fails to preserve the right of states to set stricter security standards as New Jersey is attempting to do.

Besides the sheer numbers of lobbyists and millions of dollars available to them, this survey also reveals activity by chemical front groups and allies such as the Agricultural Retailers Association (ARA), led by Dow and other large firms, and the Farm Bureau. Every lobbyist registered with the ARA and Farm Bureau reported lobbying on chemical security in 2006.

Alternatively, non-chemical corporate members of the U.S. Chamber of Commerce, such as Pepsi, Safeway and Pfizer reported no chemical security lobbying even though eleven Chamber of Commerce lobbyists, including Thomas Donohue (President/CEO) reported lobbying on chemical security. It’s unclear whether these companies are even aware that they are being represented by the Chamber in opposition to more effective chemical security legislation.

Comment on Chemical Lobby:

“The amount of resources devoted by these companies to undermining our nation’s security and the safety of millions of people is truly obscene. The result is a law and regulations that are completely inadequate in protecting Americans who live within 20 miles of a chemical plant. Given the growing number of terrorist attacks in Iraq using chlorine gas and ominous new intelligence estimates of terrorist’s ability to attack the U.S., the threat is clearly real. The Democratic Congress now has an opportunity and an obligation to correct this wrong and enact permanent legislation that will protect communities currently at risk. The bill (H.R. 5695) reported out of the House Homeland Security last July represented a giant step toward that end. Congress should ignore the lobbyists and enact an even stronger bill today,” said Rick Hind of Greenpeace.

METHODOLOGY:

Greenpeace investigators identified chemical security lobbyists using internal documents, public statements, testimony, news releases, industry lobby letters and emails, Freedom of Information Act document requests and website postings by major chemical industry trade associations such as the American Chemistry Council and the American Petroleum Institute.

After identifying a broad universe of possible lobbyists, their 2006 mid-year and year-end lobby reports were examined using the website of the U.S. Senate Office of Public Records. Three layers of lobbyists were researched: trade associations, member companies and lobby firms.

The sampling included an exhaustive review of more than 600 lobbying reports by chemical industry associations, their member companies, allied industries and lobby firms they hire to work on their behalf. This review is only for the 2006 filing year, both the mid-year report, and the year-end report. All lobby reports were gathered from the website <http://sopr.senate.gov>, the official site of the Office of the Secretary of the Senate. The sample included 13 trade associations, 30 corporations and 13 lobbying firms. The individual corporations are drawn from the trade association lists available on their home web pages.

The lobby firms listed in this report are those who worked for any of the three layers of lobbying activities which include a total of 43 associations, corporations and lobby firms. This totaled at least 215 lobbyists who reported lobbying on chemical security legislation in 2006. However, due to the limited requirements of the Lobby Disclosure Act (LDA) of 1995, lobbyists are not required to disclose total expenses or how much they spend on any specific legislation. Therefore it is impossible to tell exactly how many lobbyists work any single issue or what they spend. However, where lobbyists reported spending “less than \$10,000,” Greenpeace counted it as zero dollars and where they reported spending “more than \$10,000,” Greenpeace counted it as \$10,000.

Estimating Chemical Security Lobbying:

Because the LDA does not require lobbyists to disclose how much of their time or expenses are devoted to any specific piece of legislation, there are two ways to estimate their lobbying expenditures by issue or by individual lobbyist. Each lobbyist may lobby on a variety of issues but their reports do not disclose the priority of any issue.

To estimate lobbying expenses by issue we divided the 2006 lobbying expenditures of \$157.4 million by issues. For chemical security this yields \$16.4 million available for all trade associations, member companies and their lobby firms registered to lobby on chemical security legislation. This number is arrived at by taking the total sum of \$157.4 million spent by these entities and multiplying it by the percentage of lobbying on each issue, including chemical security lobbying.

As an example, the National Petrochemical & Refiners Association hired the lobby firm DUTKO Worldwide LLC in 2006. The total sum they reported was \$96,000. DUTKO registered three lobbyists who each reported lobbying on five issues, including chemical security. To prorate their lobbying by issue, we divided \$96,000 by the number of lobbyists and their issues yielding an estimate of \$19,200 for chemical security lobbying.

Similar issue calculations were made for each of the 13 trade associations, 30 member companies, and 13 lobby firms, totaling \$16.4 million or 11.3% of issues lobbied on. This method assumes equal spending on each issue and does not necessarily reflect the priority that an issue may have received in actual spending. **See the totals for Issue Based Spending on the last page of the attached spread sheet.**

Due to incomplete information on several lobby disclosure filings, this method may also underestimate lobbying expenditures. For example, the firm King & Spalding, LLP and the Albermarle Corporation listed lobbyists working on chemical security but listed expenditures of less than \$10,000 which Greenpeace counted as zero.

To assess resources available if lobbyists registered to lobby on multiple issues shifted all their time to priority legislation, we used an alternative method of estimating lobbying resources available by prorating the percentage of lobbyists assigned to chemical security. To calculate this we multiplied the percentage of lobbyists who reported lobbying on chemical security by their company or firm's total reported spending yielding \$74.5 million available for chemical security. **See the totals and corresponding percentages for each the trade associations, companies & lobby firms on the last page of the attached spread sheet.**

Included in the report are the names of other lobbyists who work for the companies and/or were hired out from firms to work for them. This compilation of lobby records indicates that there are more than 430 registered lobbyists employed by the associations, companies and firms who have lobbyists registered to lobby on chemical security in 2006. The reported lobbying expenditures of these 43 entities totaled \$157.4

million. The percentages of each layer of lobbying who registered to lobby on chemical security was calculated by dividing the number of registered chemical security lobbyists by the total number of registered lobbyists which yielded an estimate of \$74.5 million available for chemical security lobbying.

Three Layers of Chemical Lobbying:

- 85 chemical lobbyists or 44.9% of those at 13 trade associations
- 84 chemical lobbyists or 48.8% of those at 30 companies
- 46 chemical lobbyists or 66.6% of those at 13 lobby firms

Also included in this survey is a separate assessment of Political Action Committee (PACs) contributions by companies and trade associations who lobbied on chemical security. For the 2005-2006 election cycle they contributed \$8.7 million for candidates. This data was gathered from FEC data found at www.opensecrets.org. It includes 44 PACs representing 41 companies such as Dow, Dupont and their trade associations, such as the ACC and Chamber of Commerce .

Brief History of Chemical Security Since 9/11:

The chemical industry has been lobbying against strong chemical security legislation and regulations since 2001. In a July 15, 2005 interview on PBS, former EPA Administrator Christine Todd Whitman was asked:

DAVID BRANCACCIO: ***"Do you see this as a real achievement by the lobbyists for the chemical industry and the oil industry?"***

CHRISTINE TODD WHITMAN: ***"Well, it's hard to see how else it could have happened-- in that you had the head of Homeland Security before we had the department even saying that we needed to do this. We said we needed to do this. The president designated EPA as the lead in chemical site security. I don't know why it wouldn't have moved forward except for a lot of pushback from some people."***

Whitman was referring to a promising 2002 EPA proposal that was similar in some respects to last year's House bill H.R. 5695 but was killed by the White House in 2003.

In addition to beefing up security, H.R. 5695 would have required industry to assess the availability of safer proven chemicals or technologies. The EPA proposal also included "substituting less hazardous chemicals for extremely hazardous ones." A good example is the conversion of Washington, DC's main sewage treatment plant from chlorine to safer chemicals just eight weeks after 9/11.

The 2002 EPA proposal was due to be rolled out at the White House on June 11, 2002. The proposal said, **"higher priority chemical facilities should be able to complete a vulnerability assessment and address security vulnerabilities as described in the**

guidance in 12-18 months." In other words the program would have been fully implemented by the summer of 2004.

Internal EPA documents included a Q & A sheet for EPA Administrator Christine Whitman which said, **"Using existing authority under the Clean Air Act, we believe that the guidance and regulation I have announced today are the QUICKEST PATHS to improving chemical facility security...If we later find that there are legislative gaps, then we will consider seeking legislation."**

On July 28, 2006 H.R. 5695 won bipartisan support in the House Homeland Security Committee. After voting for it Republicans led opposition to the bill and instead pursued an industry drafted rider on the DHS Appropriations bill.

The new DHS regulations issued in April, based on the new temporary statute, have been roundly criticized by Congress for being inadequate. Among the regulations shortcomings are the failure to require the use of safer technologies; failure to prioritize greatest security measures for an estimated 4,000 facilities that put 1,000 or more people at risk, failure to allow suits to enforce the law, failure to include plant employees in developing security plans and a failure to ensure the right of states to set more stringent security standards.