

February 28, 2013

The Honorable Mike Pompeo
4th Congressional District, Kansas
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Jim Matheson
4th Congressional District, Utah
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Billy Long
7th Congressional District, Missouri
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Bob Latta
5th Congressional District, Ohio
U.S. House of Representatives
Washington, D.C. 20515

Dear Representatives Pompeo, Matheson, Long and Latta:

The undersigned organizations are writing in support of H.R. 888, the General Duty Clause Clarification Act of 2013, which would require the Environmental Protection Agency (EPA) to institute a transparent rulemaking process to clearly define facility obligations under the General Duty Clause of the Clean Air Act, and to ensure proper future application of the clause, based on Congressional intent. We have concerns about EPA's arbitrary application of the General Duty Clause as well as the potential for future expansion of the General Duty Clause to regulate the security of chemical facilities.

In 1990, Congress passed the Clean Air Act amendments, which codified section 112(r)(1), commonly known as the General Duty Clause. The General Duty Clause requires owners and operators of stationary sources to work to identify and prevent accidental releases of hazardous substances. EPA has yet to issue any proposed rule detailing enforcement or compliance requirements. Regardless of these ambiguities and lack of guidance, in recent years, EPA has increasingly used the General Duty Clause to impose substantial penalties on facilities. This situation has created uncertainty for industry, leaving questions about how compliance is measured and when compliance has been achieved.

In addition to the uncertainty created by EPA's recent enforcement of the General Duty Clause, certain interest groups are now calling on EPA to expand its use to regulate chemical facility security, notwithstanding the fact that the clause is clear in its limited application to accidental releases. Furthermore, in the Homeland Security Appropriations Act of 2007, Congress explicitly assigned jurisdiction over security to the Department of Homeland Security (DHS).

We welcome the bipartisan introduction of H.R. 888, the General Duty Clarification Act of 2013, and urge your colleagues to cosponsor this critically important measure. This legislation will provide much-needed regulatory certainty and clarity by requiring EPA to complete a transparent rulemaking on the General Duty Clause before finding any facility in violation of the provision, and allowing owners and operators to make the final decision regarding the implementation of inherently safer approaches or technologies. Finally, the bill would also ensure proper application of the clause by affirming that jurisdiction of chemical facility security remains with the Department of Homeland Security, as Congress intended.

Agricultural Retailers Association
American Chemistry Council
American Coatings Association
American Forest and Paper Association
American Fuel & Petrochemical Manufacturers
American Petroleum Institute
American Trucking Association
Association of Oil Pipe Lines
Compressed Gas Association, Inc.
The Fertilizer Institute
Institute of Makers of Explosives
International Association of Refrigerated Warehouses
International Institute of Ammonia Refrigeration

International Liquid Terminals Association
International Warehouse Logistics Association
National Agricultural Aviation Association
National Association of Chemical Distributors
National Association of Manufacturers
National Mining Association
National Oilseed Processors Association
National Pest Management Association
Petroleum Equipment Suppliers Association
Petroleum Marketers Association of America
Society of Chemical Manufacturers & Affiliates
U.S. Chamber of Commerce

cc: The Honorable Fred Upton
The Honorable Ed Whitfield