



December 3, 2009

Lisa Jackson
Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

The undersigned 106 labor, environmental, health, and other organizations ask the Obama Administration and EPA to **enforce an existing law** to protect communities and the public by encouraging worker and union participation during EPA inspections of facilities using extremely hazardous substances. Today, the only state enforcing this law is New Jersey, where you helped issue a worker and union participation policy in 2005 as Assistant Commissioner of the state Department of Environmental Protection.

In your first memo to Environmental Protection Agency staff, you stated, "EPA can meet the nation's environmental challenges only if our employees are fully engaged partners..." We agree with that approach. Workers understand chemical hazards and facility dangers better than anyone and can thus prove important partners for environmental protection.

In 1990, the elected representatives of the American people enacted a specific provision in *Clean Air Act* Section 112(r) for Prevention of Accidental Releases. That provision explicitly allows worker and union participation in EPA inspections. It is based on the premise that encouraging workers' input helps protect our nation's workforce, communities, and environment.

Yet, for nearly 20 years, EPA has generally not included workers and their union representatives during CAA 112(r) inspections of chemical operations, oil refineries, paper mills, semiconductors, meatpacking, dairies, explosives, and other manufacturers, fertilizer plants, drinking and waste water treatment plants, refrigerated warehouses, and electric utilities.

Compliance with this law will help your agency reduce toxic releases to our air, water, and land; more accurately assess facility vulnerabilities, including those that could be targeted by a terrorist attack; and better prepare and respond to potential chemical catastrophes.

Clean Air Act (CAA) Section 112(r) for Prevention of Accidental Releases provides for worker participation. This law requires that, "Whenever the [EPA] **Administrator** [our emphasis] or the [Chemical Safety and Hazard Investigation] Board conducts an inspection of a facility pursuant to this subsection, employees and their representatives **shall** have the same rights to participate in such inspections as provided in the *Occupational Safety and Health Act*" [29 U.S.C. 651 et seq.].¹

Section 8(e) of the *Occupational Safety and Health Act* specifies that: "...a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace."²

This statutory language *requires* EPA's Administrator (and state agencies which enforce this law) to offer workers and union representatives the opportunity to participate during CAA 112(r) inspections and audits, including rights to accompany EPA inspectors and to participate in pre- and post-inspection meetings.

President George H.W. Bush signed the CAA amendments, including Section 112(r), on November 15, 1990. However, EPA has never implemented this employee participation requirement. EPA does not mention this provision in its detailed guidance document for conducting on-site audits, yet directs agency inspectors to meet with management personnel for an "opening meeting" and "exit briefing" to discuss findings.³ No information about this requirement appears on EPA's web site. Nor do we know of any state that has accepted delegated authority that implements this part of the law, except New Jersey, where this policy was issued with your support in 2005.⁴

This right applies during inspections that can occur at more than 13,000 facilities in over 200 industries that use above-threshold quantities of 140 toxic and/or flammable "extremely hazardous substances" (EHS) designated by EPA's Risk Management Program (RMP), including anhydrous ammonia, chlorine, and flammable mixtures. Opportunities to participate in EPA

inspections must engage employees and union representatives from the facility owners' workforce and contractors, and at public sector facilities.^{5,6}

According to a 2009 report by EPA's Office of Inspector General for the period June 1994 – May 2007, RMP facilities reported 1,490 accidents to EPA and "these accidents resulted in over 40 worker deaths, nearly 1,500 worker injuries, over 300,000 people being sheltered in place, and over \$1 billion in on-site and off-site damages."⁷ These dangers can also pose risks to those facing disproportionate burdens, with a study finding increased risk of chemical accidents in heavily African-American US counties.⁸

One hundred thousand people or more could be potentially at risk if any of the 550 plants in the United States using EHSs had a worst-case chemical release.⁹ More than 80 million people live, work, and attend school within range of a potential catastrophic release from at least one of the nation's 101 most hazardous chemical facilities.¹⁰

As you know from your experience in New Jersey, employee and union participation helps protect both workers and communities.¹¹ For example, because employees and union representatives are involved in New Jersey CAA 112(r) inspections, during the last two years:¹²

- Management installed an alarm outside the control room at a chemical facility after an inspection showed that an operator had to leave the control room to collect samples. During that time, the operator was unable to hear the control room's toxic leak alarm. The change was made at the recommendation of the union representative.
- A strobe light alarm was added at another chemical plant after the union expressed concern about inaudible leak alarms.
- Management improved release maintenance and monitoring at an oil refinery because of a union recommendation offered during the inspection.

Research on use of the *Pollution Prevention Act of 1990* found that manufacturers using employee participation practices had triple the toxic emissions reduction of manufacturers not using employee participation.¹³

Since 1970, thousands of employees and union representatives have pointed out preventable hazards while accompanying OSHA inspectors. From FY 2003 through FY 2007, more than 94,000 OSHA inspections included worker and/or union representation.^{14, 15}

Responding to the February 2009 EPA Inspector General's Evaluation Report on the Risk Management Program, which found that many high risk facilities had never been inspected, EPA appears committed to improving its inspection

efforts and to training more inspectors. Thus, now is the time to engage workers and their unions in this process.¹⁶

In addition, we request that EPA establish a task force composed of your staff and labor and environmental stakeholders to assess how greater worker and union participation could benefit other EPA inspection programs.^{17,18} This initiative would build upon EPA's longstanding policy for public involvement.¹⁹ There is no active role for workers and their unions in most federal environmental statutes (except through whistleblower protections). However, EPA's *current* regulatory and administrative authority may allow workers and unions to participate during inspections, audits, and monitoring, helping to protect our air and water from pollution and reducing greenhouse gases that cause climate change.

We appreciate your past leadership for a precedent-setting policy in New Jersey. We look forward to working with you on this proposal for worker, public, and environmental protection.

Please respond to Rick Engler, Director, New Jersey Work Environment Council, 142 West State Street, 3rd Floor, Trenton, NJ 08608

Sincerely,

David Foster, Executive Director, Blue Green Alliance

John Pajak, President, New Jersey Work Environment Council

LABOR AND LABOR-RELATED ORGANIZATIONS

Leo W. Gerard, International President, United Steelworkers, AFL-CIO

Larry Cohen, President, Communications Workers of America, AFL-CIO

Terence M. O'Sullivan, General President, Laborers International Union of North America

Randi Weingarten, President, American Federation of Teachers, AFL-CIO

Mike Langford, President, Utility Workers Union of America, AFL-CIO

James P. Hoffa, General President, International Brotherhood of Teamsters

Joe Hansen, International President, United Food and Commercial Workers International Union

Andrew L. Stern, International President, Service Employees International Union

Ron Gettelfinger, President, International Union, United Auto Workers, AFL-CIO

Dennis Van Roekel, President, National Education Association

Harold A. Schaitberger, General President, International Association of Fire Fighters, AFL-CIO

Edwin D. Hill, International President, International Brotherhood of Electrical Workers, AFL-CIO

Vincent J. Giblin, General President, International Union of Operating Engineers, AFL-CIO

Joseph Hunt, General President, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO

Patrick D. Finley, General President, Operative Plasterers' and Cement Masons' International Association of the US and Canada, AFL-CIO

Frank Cyphers, President, International Chemical Workers Union Council (UFCW)

Gerald W. McEntee, International President, American Federation of State, County and Municipal Employees, AFL-CIO

Ann Converso, President, United American Nurses, AFL-CIO

John H. Hovis, President, United Electrical, Radio, and Machine Workers

John J. Flynn, President, International Union of Bricklayers and Allied Craftworkers, AFL-CIO

Warren S. George, International President, Amalgamated Transit Union, AFL-CIO

Mary Jean Schumann, Chief Programs Officer, American Nurses Association

Brenda M. Afzal, Steering Committee, Alliance of Nurses for Healthy Environments

Mark H. Ayers, President, Building and Construction Trades Department, AFL-CIO

Peg Seminario, Director, Occupational Safety and Health, AFL-CIO

Eric Frumin, Safety and Health Coordinator, Change to Win

William Lucy, President, Coalition of Black Trade Unionists

Milton Rosado, National President, Labor Council for Latin American Advancement

Sarita Gupta, Executive Director, Jobs with Justice

Tammy Miser, Founder and Executive Director, United in Support and Memorial of Workplace Fatalities

Les Leopold, Executive Director, The Labor Institute

Joe Uehlein, Executive Director, Labor Network for Sustainability

Roger Toussaint, President, Transport Workers Union Local 100

Doc Doherty, President, International Brotherhood of Teamsters Local 877

David Campbell, Secretary-Treasurer, United Steelworkers Local 675

Jerry T. Jordan, President, Philadelphia Federation of Teachers

Kenneth Brynien, President, New York State Public Employees Federation

Carole Bergeron, Executive Director, CT Nurses' Association & CT Nurses' Foundation

**NATIONAL ENVIRONMENTAL, ENVIRONMENTAL JUSTICE, HEALTH,
AND PUBLIC INTEREST ORGANIZATIONS**

Carl Pope, Executive Director, Sierra Club

Francis Beinecke, President, Natural Resources Defense Council

Philip D. Radford, Executive Director, Greenpeace USA

John DeCock, President, Clean Water Action

Richard Denison, Senior Scientist, Environmental Defense Fund

Elizabeth Hitchcock, Public Health Advocate, US Public Interest Research Group

Betsy Loyless, Senior Vice President for Policy, National Audubon Society

Wenonah Hauter, Executive Director, Food and Water Watch

Kristen Welker-Hood, Director, Environment and Health Programs, Physicians for Social Responsibility

Erich Pica, President, Friends of the Earth

Jeff Blum, Executive Director, USAction

Phaedra Ellis-Lamkins, CEO, Green For All

Lois Gibbs, Executive Director, Center for Health, Environment and Justice

Gary D. Bass, Executive Director, OMB Watch

Daryl Ditz, Senior Policy Advisor, Center for International Environmental Law

Michael Belliveau, Executive Director, Environmental Health Strategy Center

Dan Becker, Director, Safe Climate Campaign

Michael Green, Executive Director, Center for Environmental Health

Andy Igrejas, Federal Policy Director, Environmental Health Fund

José T. Bravo, Executive Director, Just Transition Alliance

Denny Larson, Executive Director, Global Community Monitor

Claire L. Barnett, Executive Director, Healthy Schools Network

Caroline Farrell, Executive Director, Center on Race, Poverty and the Environment

Jeanne Rizzo, President, Breast Cancer Fund

William Snape, Senior Counsel, Center for Biological Diversity

OCCUPATIONAL SAFETY AND HEALTH ORGANIZATIONS

Tolle Graham, President, National Council for Occupational Safety and Health

Celeste Monforton, Chair, Occupational Health and Safety Section, American Public Health Association

Marilyn Baird, Executive Director, North Carolina Occupational Safety and Health Project

Diana C. Dale, President, Houston Council on Occupational Health and Safety

John Martinez, Chair, Southeast Michigan Coalition for Occupational Safety and Health

Roger Cook, Executive Director, Western New York Council on Occupational Safety and Health

Terry Gallagher, Chair, Philadelphia Area Project on Occupational Safety and Health

Joel Shufro, Executive Director, New York Committee for Occupational Safety and Health

Marcy Goldstein-Gelb, Executive Director, Massachusetts Coalition on Occupational Safety and Health

Pete Greyshock, Coordinator, Southern California Coalition for Occupational Safety and Health

Gail Bateson, Executive Director, Worksafe (California)

Mike Fitts, Executive Director, Connecticut Council on Occupational Safety and Health

Peter Crockett, Executive Director, Maine Labor Group on Health

Brian Mitchell, Executive Director, New Hampshire Coalition for Occupational Safety and Health

Linda Smith, Chairman, Midstate Education & Service Foundation (NY)

Meredith Stepp, Coordinator, Arkansas Coalition on Safety and Health

James Celenza, Executive Director, Rhode Island Committee on Occupational Safety and Health

James Schultz, Executive Director, Wisconsin Committee on Occupational Safety and Health

Emmanuel Blackwell, Director, Chicago Area Committee on Occupational Safety and Health

Mike Florio, Executive Director, Western Massachusetts Committee for Occupational Safety and Health

REGIONAL AND STATE ENVIRONMENTAL, ENVIRONMENTAL JUSTICE, HEALTH, PUBLIC INTEREST AND FAITH ORGANIZATIONS

Jane Williams, Executive Director, California Communities Against Toxics

Pamela K. Miller, Executive Director, Alaska Community Action on Toxics

Sarah Uhl, Coordinator, Safe and Healthy Connecticut

Joan Segal, President, Connecticut Public Health Association

Amy Goldsmith, State Director, New Jersey Environmental Federation

Tracy Carluccio, Deputy Director, Delaware Riverkeeper Network

Reverend Fletcher Harper, Executive Director, GreenFaith (NJ)

Kathleen A. Curtis, Policy Director, Clean New York

Diane Takvorian, Executive Director, Environmental Health Coalition (CA)

Reverend Jill Job Saxby, Executive Director, Maine Council of Churches

Matt Prindiville, Project Director, Toxics and Clean Production, Natural Resources Council of Maine

Jim Walsh, New Jersey Director, Food and Water Watch

Jeff Tittel, Executive Director, Sierra Club, New Jersey Chapter

Phyllis Salowe-Kaye, Executive Director, New Jersey Citizen Action

Tracey Easthope, Director, Environmental Health Project, Ecology Center (MI)

Rachel Micah-Jones, Executive Director, Centro de los Derechos del Migrante, Inc. Migrant Rights Center (FL)

Amagda Perez, Executive Director, California Rural Legal Assistance Foundation

Pamela King Palitz, Environmental Health Advocate and Staff Attorney, Environment California

Sheila Davis, Executive Director, Silicon Valley Toxics Coalition (CA)

Judy Braiman, President, Empire State Consumer Project (NY)

Tirso Moreno, General Coordinator, Farmworker Association of Florida

C: Mathy Stanislaus, Assistant Administrator, Office of Solid Waste and Emergency Response, EPA

Cynthia Giles, Assistant Administrator for Office of Enforcement and Compliance, EPA

Gina McCarthy, Assistant Administrator, Office of Air and Radiation, EPA

John S. Bresland, Chairman, U.S. Chemical Safety and Hazard Investigation Board

Jordan Barab, Deputy Assistant Secretary and Acting Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor

David Michaels, Nominee, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor

CWA 38010, AFL-CIO

¹ *Clean Air Act* Title III Hazardous Air Pollutants, Section 112(r) Prevention of Accidental Releases, (6) Chemical Safety Board, (L)(ii).

² Regulations implementing OSHA's statutory obligation are at 29 CFR 1903.

³ Guidance for Auditing Risk Management Plans/Programs under *Clean Air Act* Section 112(r), US Environmental Protection Agency, August 1999.

⁴ The nine delegated States, which enforce CAA 112(r), are Delaware, Florida, Georgia, Kentucky, Mississippi, New Jersey, North Carolina, Ohio, and South Carolina. They are also required to implement worker participation provisions.

⁵ Contractors have responsibilities to train their own employees and to advise the owner of any unique hazards presented by contract work or of any hazards found by their work. These requirements are in the RMP rule, Part 68.56 and 68.87.

⁶ OSHA does not cover public sector workplaces in about half the states. However, CAA 112(r) refers to OSHA "rights", not to the scope of workplace coverage. Therefore, employees and union representatives at all CAA 112(r) public sector workplaces in the nation should be afforded these rights, irrespective of whether the state legislature has taken the necessary action to implement those rights for the state's public workers. See also the Chemical Safety Board investigation of the severe 2006 incident at the Daytona Beach, FL, wastewater treatment plant and the March, 2009 request by CSB Chair John Bresland to the Florida Governor and Legislature to adopt public sector OSHA protections for workers in that state. See <http://www.csb.gov/UserFiles/file/news/CSBLtrtoFLGov03232009.pdf>.

⁷ *EPA Can Improve Implementation of the Risk Management Program of Airborne Chemical Releases, Evaluation Report*, US EPA, Office of Inspector General, Report No. 09-P-0092, February 10, 2009, and e-mail communication from Jim Belke, EPA, June 9, 2009.

⁸ *Environmental Justice: Frequency and Severity of US Chemical Industry Accidents and the Socioeconomic Status of Surrounding Communities*, by Michael R. Elliott, et. al., *Journal of Epidemiology and Community Health*, January 2004.

⁹ *EPA Can Improve Implementation of the Risk Management Program of Airborne Chemical Releases*, *Ibid*, page 6.

¹⁰ *Chemical Security 101: What You Don't Have Can't Leak, or Be Blown Up by Terrorists*, report from the Center for American Progress by Paul Orum, page 1.

¹¹ See *Administrative Order No. 2005-05* under the Toxic Catastrophe Prevention Act (this Act's regulations implement CAA 112(r)) and *Administrative Order No. 2007-03* under New Jersey rules for the Discharge of Petroleum and Other Hazardous Substances. Go to http://www.nj.gov/dep/newsrel/2005/05_0115ao.pdf and to http://www.nj.gov/dep/rpp/brp/dp/downloads/AO_2007-03_Employee_Insp.pdf

¹² NJ Department of Environmental Protection, Bureau of Release Prevention, e-mail communications, May 2009.

¹³ *Employee Participation in Pollution Reduction: Preliminary Analysis of the Toxics Release Inventory*, John Bunge, Edward Cohen-Rosenthal, and Antonio Ruiz-Quintanilla, *Journal of Cleaner Production*, Volume 4, Number 1, 1996.

¹⁴ OSHA Enforcement, from http://www.osha.gov/dep/enforcement/enforcement_results_07.html

¹⁵ However, only 52.6% of RMP facilities are also covered by OSHA's Process Safety Management standard. *EPA Can Improve Implementation of the Risk Management Program of Airborne Chemical Releases*, *Ibid*, page 2.

¹⁶ Moreover, greater EPA and state delegated agency engagement with workers and unions should lead to improved enforcement of CAA 112(r) provisions (very similar to part of the OSHA Process Safety Management standard) requiring employers to: 1) develop a written plan of action regarding employee participation; 2) consult with

workers and union representatives on "...the conduct and development of process hazard analysis with risk assessments and on the development of the other elements of process safety management in this rule"; and 3) provide to workers and union representatives "...access to process hazard analyses with risk assessments and to all other information required to be developed under this rule," including the overall Risk Management Plan.

¹⁷ The task force should also include representatives of OSHA, CSB, and the National Institute for Environmental Health Sciences.

¹⁸ As part of its mission, the Task Force could recommend revisions to the Memorandums of Understanding Between EPA and OSHA and EPA and the Chemical Safety Board to more effectively include employee participation during inspections and accident investigations.

¹⁹ This policy is at <http://www.epa.gov/publicinvolvement/policy2003/index.htm>