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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

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### Opening Statement of Rep. Henry A. Waxman Chairman, Committee on Energy and Commerce

### Legislative Hearing on H.R. 3258, the Drinking Water System Security Act of 2009, and H.R. 2868, the Chemical Facility Anti-Terrorism Act of 2009 October 1, 2009

Since 2001, federal officials, the Government Accountability Office, and outside experts have warned that the nation's drinking water utilities and chemical facilities remain vulnerable to terrorist attack. The risk that hazardous, but useful, chemicals can be wielded against us is not theoretical or abstract. Just last week, we read news accounts that the FBI arrested an individual suspected of plotting to blow up a federal building using common chemicals purchased at beauty supply stores. It doesn't take much imagination to be concerned about what a motivated terrorist group could do with access to a facility containing large quantities of lethal substances.

The bills we will learn more about today are unfinished business from 9/11. They are critical not only to homeland security but to the safety of workers at these facilities and overall public health.

First, I'd like to note the process by which this legislation was developed. At the beginning of this Congress, I sat down with Homeland Security Committee Chairman Bennie Thompson. We agreed that our Committees needed to work together to address the vulnerability of chemical facilities to terrorist attack and other intentional acts.

The Chemical Facility Anti-Terrorism Act, H.R. 2868, is the product of these discussions. This legislation will establish a chemical security program to address the threat posed by the nation's vulnerable chemical facilities. Committee staff spent hundreds of hours methodically working through the issues with the minority staff of this Committee as well as the majority and minority staff of the Committee on Homeland Security. Industry, labor and other affected stakeholders were consulted throughout the process.

The second bill we are discussing today, H.R. 3258, the Drinking Water System Security Act, creates a security program for drinking water facilities similar to the chemical security program. While this legislation is exclusively within the jurisdiction of the Energy & Commerce Committee, it also is the product of dozens of discussions with the minority staff of this

Committee as well as extensive input from the water sector, state drinking water agencies, and environmental and labor organizations.

I can't claim that we've achieved consensus on these bills, but they are well-considered and respond to each of the concerns raised. I'd like to highlight what each of these bills will do.

The Chemical Facility Anti-Terrorism Act begins with the recognition that the Department of Homeland Security (DHS) has made tremendous progress in developing a strong chemical security program and gives DHS permanent authority to strengthen security at America's chemical facilities. It then fills in some important gaps in the existing program.

The bill requires all covered chemical facilities to assess whether they can adopt safer chemicals, processes, or technologies to reduce the consequences of a terrorist attack. The bill also gives the Secretary the authority, under certain circumstances, to mandate that the riskiest facilities adopt safer technology. This is a common-sense policy that will help make facilities reduce the likelihood that they will become attractive terrorist targets.

We have also added an important citizen enforcement tool to the chemical facility security program. Citizens can use this provision to hold DHS accountable for failing to perform its mandatory duties or to hold chemical facilities accountable for violating their security requirements.

H.R. 3258, the Drinking Water System Security Act, authorizes the Environmental Protection Agency (EPA) to create a security program for drinking water facilities similar to the chemical security program under DHS. There are a couple of important aspects of H.R. 3258 that deserve to be highlighted.

First, the bill makes permanent EPA's authority under the Safe Drinking Water Act to regulate security at drinking water facilities. Second, just like the chemical facility bill, this bill requires all covered water systems that use a certain amount of dangerous chemicals to assess whether they can switch to safer chemicals or processes. Since states play a unique role in implementing the Safe Drinking Water Act and are most familiar with local drinking water concerns, we give states – not EPA – the authority, under certain circumstances, to require the riskiest facilities to adopt safer technology.

We worked closely with the water sector to balance the needs of safe drinking water with homeland security concerns. I am pleased that the Association of Metropolitan Water Agencies (AMWA) has endorsed H.R. 3258. AMWA is an organization representing the largest publicly owned drinking water systems in the United States, and we will hear from one of its members on the second panel.

We still have some significant issues to work through on these bills, and I hope that we can find common ground to close these security gaps once and for all and to make our country safer.

Thank you.