

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
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**Statement of Rep. Henry A. Waxman**  
**Ranking Member, Committee on Energy and Commerce**  
**“H.R. 908, a bill to extend the authority of the Secretary of Homeland Security to maintain**  
**the Chemical Facility Anti-Terrorism Standards Program”**  
**Subcommittee on Energy and Economy**  
**March 31, 2011**

After the terrorist attacks of 9/11, federal officials and outside experts warned that the nation’s drinking water utilities and chemical facilities were vulnerable to terrorist attack. The risk that common, useful chemicals could be wielded as weapons by those who would seek to harm us became an alarming possibility and concern.

In 2006, the Appropriations Committee established a program to protect our nation’s chemical facilities from terrorist attack and other intentional acts. The Chemical Facility Anti-Terrorism Standards Act was established by a provision tacked onto an appropriations bill. Today’s hearing examines H.R. 908, legislation to extend the authorization for this 2006 program for another seven years.

The Department of Homeland Security has made tremendous progress in developing its chemical security program. They have done so without a great deal of congressional guidance. Although the provision establishing this program was within the jurisdiction of this Committee, the Committee didn’t mark up or report the provision. The members of this Committee didn’t consider and revise it. Unfortunately it was enacted without our input.

The rationale was that this program was an emergency measure. It would be established quickly, but would also end quickly, giving our Committee the opportunity to develop a comprehensive policy. The Department of Homeland Security was directed to issue regulations in just six months and the program was slated to expire in 2009. But now we have seen that deadline extended with each appropriations bill.

The Department has done well in getting the program off the ground, but it is unable to correct shortcomings in the underlying law authorizing its program. That task falls to us as the Committee of jurisdiction.

And there are serious shortcomings with the law that create dangerous security gaps. For instance, drinking water facilities are not covered at all.

Unfortunately, H.R. 908 simply extends the authorization of the existing program and would not address significant security gaps that put Americans at risk.

It doesn't have to be this way. In the last Congress, Democratic and Republican staff spent hundreds of hours methodically working through the issues surrounding the CFATS program. We worked with the majority and minority of the Committee on Homeland Security. Industry, labor, and other affected stakeholders were consulted throughout the process.

The result was H.R. 2868, the Chemical and Water Security Act of 2009, which this Committee reported and passed the House on a vote of 230-193. That legislation would have closed significant security gaps by establishing a security program for drinking water facilities and wastewater treatment works. The legislation would have harmonized the Chemical Facility Anti-Terrorism Standards Act with the Maritime Transportation Security Act. It also would have removed exemptions for federal facilities.

H.R. 2868 would have strengthened security at covered facilities by requiring assessment, and in some cases adoption, of safer chemicals, processes, or technologies to reduce the consequences of a terrorist attack. That common-sense policy would help facilities reduce the likelihood that they will become attractive terrorist targets.

H.R. 2868 would also have strengthened security nationwide by creating an important mechanism for citizen enforcement. Companies, state attorneys general, and ordinary citizens could have used this provision to hold the Department to deadlines and ensure that the program was implemented.

Unfortunately, in its current state, H.R. 908 would make none of those changes, and would do nothing to close the significant security gaps we face as a nation. I hope that we can have a robust Committee process and find common ground to close these security gaps once and for all and to make our country safer.

Finally, I'd like to note a number of issues with this legislation relating to the legislative protocols announced by the majority leader. For instance, legislation authorizing discretionary appropriations is required to specify the actual amount of funds being authorized. H.R. 908 does not do this. The Republican leadership has also said that they require a new or increased authorization to be offset by the termination of an existing authorization of equal or greater size. H.R. 908 does not terminate any existing authorization. As we move forward in the legislative process, it is important that we understand how H.R. 908 comports with these protocols.

Mr. Chairman, thank you for holding today's hearing. This is an important issue and one that I hope we can work on together.