Congress of the United States
House of Representatives
Washington, D.C. 20515

May 2, 2013

The President
The White House
Washington, DC 20500

Dear Mr. President:

We commend you for the federal response to the tragic explosion in West, Texas. We also thank you for traveling to West to represent the nation at the memorial service.

In light of the tragic events in West, we ask you to consider steps that can be taken in response to the explosion to reduce the security risks of chemical plants, refineries, water treatment facilities, and other facilities holding large stores of industrial chemicals. In particular, we urge you to establish a Blue Ribbon Commission of experts that can take a fresh look at this important issue and determine what should be done to secure these facilities.

The significant security risks associated with these facilities have been understood since the aftermath of the September 11, 2001, terrorist attacks. In response, Congress directed the Department of Homeland Security in 2007 to establish the Chemical Facility Anti-Terrorism Standards (CFATS) program – a risk-based, performance-based regulatory program for high-risk chemical facilities.

As ranking members of the Committees with jurisdiction over the CFATS program, we have watched the distressing lack of progress in securing these facilities since the program was established nearly six years ago. As documented in a December 2011 internal audit, a March 2013 report by the Inspector General (IG) of the Department of Homeland Security, and a Government Accountability Office (GAO) report released this month, the program is failing.

The December 2011 audit found that DHS had failed to approve a single facility security plan, conduct any compliance inspections, or train inspectors to conduct such inspections. The March 2013 IG report concluded that "the CFATS Program has not yet been fully implemented, and concerns remain over whether it can achieve its mission." According to the IG report, 52 security plans were approved since the internal audit, but only after the standards were altered – and apparently lowered – by the Department. And the April 2013 GAO report concluded that the most basic function of the CFATS program – assessing facility risk to assign facilities to risk tiers – is neither reliable nor consistent with the CFATS rule, the National Infrastructure Protection Plan, or the recommendations of the National Research Council. GAO recommended that an independent peer review be conducted to validate and verify the program's risk management approach.

The West, Texas facility was required by regulation to submit preliminary information to DHS to enable the agency to determine whether the facility "presents a high level of security risk" and needed to be regulated under the CFATS program. But the facility never submitted the information. Despite this failure, DHS took no enforcement action. Worse still, it appears that DHS had no knowledge of this facility though it was known by others to have chemicals of concern at levels well above the regulation threshold. Incredibly, senior staff from DHS told us after the explosion that even if DHS had reviewed the facility, no action would have been taken that could have prevented the explosion or reduced its consequences.

We recognize that in 2012, DHS began a concerted effort to address flaws in the CFATS program. We also recognize that those on-going efforts are likely to be adversely affected by the sequester and the failure of the Majority in the House of Representative to enact overdue reforms. Unfortunately, these circumstances converge to permit the continuation of an unacceptable risk to the people who live and work near similar facilities in communities across the nation.

We therefore hope you will consider appointing a Blue Ribbon Commission to undertake a thorough review. We pledge to work with you to on this important issue.

Sincerely,

Henry A. Waxman
Ranking Member
Committee on Energy and Commerce

Bennie G. Thompson
Ranking Member
Committee on Homeland Security