

**Senate Counsel, Research,
and Fiscal Analysis**

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Senate

State of Minnesota

S.F. No. 2607 -Internet Crimes Against Children Task Force

Author: Senator Mady Reiter

Prepared by: Chris Turner, Senate Research (651/296-4350) CT

Date: March 16, 2006

Section 1, subdivision 1, defines the following terms for the purposes of the bill:

- "ICAC" means Internet Crimes Against Children; and
- "OJJDP" means the federal Office of Juvenile Justice and Delinquency Prevention.

Subdivision 2 expands the existing St. Paul Police Department's ICAC Task Force, funded by the OJJDP, to a statewide, multiagency, multijurisdictional task force to respond to technology-facilitated crimes against children.

Subdivision 3 provides that the task force shall investigate individuals who commit crimes involving the possession or distribution of child pornography and child prostitution.

Subdivision 4 requires participating local units of government to sign a memorandum of understanding that addresses task force membership, command, policies, procedures, funding, and dispute resolution.

Subdivision 5 requires the commander of the task force to be provided by the agency receiving ICAC Task Force funding from OJJDP. The commander shall report annually to the Bureau of Criminal Apprehension as required in subdivision 11.

Subdivision 6 provides that the task force may include state and federal law enforcement officers, investigators, and prosecutors. Members remain employees of the same entity that employed them before joining the task force.

Subdivision 7 provides that task force officers have statewide investigation jurisdiction and power of arrest.

Subdivision 8 requires, to the greatest extent possible, task force cooperation and collaboration with existing prosecutorial offices and law enforcement agencies.

Subdivision 9 authorizes grants for reimbursement of up to 75 percent of local prosecutorial costs for task force related duties.

Subdivision 10 allows judicial forfeiture of property seized by the task force under Minnesota Statutes, sections 609.531, 609.5312, and 609.5313, and federal guidelines established by the ICAC program.

Subdivision 11 requires the commander to submit an annual report to the Commissioner of Public Safety outlining task force activities and the use of state grants under subdivision 9. The commander shall also provide copies to the commissioner of all reports provided to the Department of Justice relating to the ICAC grant. The commissioner shall report to the Legislature by January 15, 2008, on the activities of the task force and the use of state grants.

Subdivision 12 exempts the task force from the mandatory expiration provisions in Minnesota Statutes, section 15.059, relating to advisory councils and task forces.

Section 2 appropriates \$250,000 from the general fund to the Commissioner of Public Safety to fund the task force.

CT:vs:rer

Senators Reiter and McGinn introduced—

S.F. No. 2607: Referred to the Committee on Crime Prevention and Public Safety.

A bill for an act relating to public safety; establishing an Internet Crimes Against Children (ICAC) Task Force; specifying the task force's duties and membership; providing for grants; appropriating money; proposing coding for new law in Minnesota Statutes, chapter 299A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [299A.79] INTERNET CRIMES AGAINST CHILDREN TASK FORCE; MEMBERSHIP; DUTIES; GRANTS; REPORTS.

Subdivision 1. Definitions. (a) For purposes of this section, the following terms have the meanings given them.

(b) "ICAC" means Internet Crimes Against Children.

(c) "OJJDP" means the federal Office of Juvenile Justice and Delinquency Prevention.

Subd. 2. ICAC established. The existing Internet Crimes Against Children (ICAC) Task Force established by the St. Paul Police Department through funding provided by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) is established as a statewide task force. The ICAC Task Force is a multijurisdictional, multiagency task force that is constituted to respond to technology-facilitated crimes against children. The ICAC Task Force may enter into agreements with local governments to continue and expand the ICAC Task Force through the effective participation of local law enforcement agencies.

Subd. 3. ICAC Task Force duties. The ICAC Task Force shall serve as a statewide source of prevention, education, and investigative expertise to provide assistance to parents, teachers, law enforcement, and other professionals working on child victimization issues. In particular, the task force shall investigate individuals, based on their criminal activity, who:

2.1 (1) commit crimes involving the possession or distribution of child pornography as
2.2 defined in section 617.246, through the use of computers or the Internet; or

2.3 (2) commit crimes involving the exploitation or solicitation of a minor for sexual
2.4 purposes.

2.5 Subd. 4. Role of participating local governmental units. The local governmental
2.6 units that agree to participate in the ICAC program established by grant funds awarded
2.7 by the OJJDP will become a single, centralized task force investigating crimes against
2.8 children involving the Internet. The agreement must be addressed in a memorandum
2.9 of understanding and signed by the person in charge of each participating local unit of
2.10 government. The memorandum of understanding shall address the following:

2.11 (1) the command structure of the ICAC Task Force;

2.12 (2) acceptance of the ICAC standards as outlined by the ICAC program overseen by
2.13 OJJDP and the ICAC program board of directors;

2.14 (3) acquisition and liquidation of equipment, office space, and transportation;

2.15 (4) procedures for contracting necessary administrative support;

2.16 (5) selection and assignment of members;

2.17 (6) transfers of ICAC Task Force members;

2.18 (7) resolution of disputes between participating local governmental units;

2.19 (8) requirements and procedures for all workers' compensation and other liability to
2.20 remain the responsibility of each member's employing agency; and

2.21 (9) all other issues deemed pertinent by the participating local governmental units.

2.22 Subd. 5. Commander. The commander of the statewide task force will be provided
2.23 by the agency receiving the ICAC Task Force funding from OJJDP. The commander shall
2.24 make tactical decisions regarding the commencement, continuation, and conclusion of
2.25 investigations of crimes within the task force's jurisdiction. The commander shall also
2.26 report annually to the Bureau of Criminal Apprehension as required in subdivision 11.

2.27 Subd. 6. Members; employment status. (a) The investigation task force may
2.28 include law enforcement officers, investigators, prosecutors, federal law enforcement
2.29 officers, and investigators from local governmental units who are selected by their
2.30 supervisors to participate in the ICAC Task Force.

2.31 (b) All law enforcement officers selected to join the ICAC Task Force must be
2.32 licensed peace officers under section 626.84, subdivision 1, or qualified federal law
2.33 enforcement officers as defined in section 626.8453.

2.34 (c) Members shall remain employees of the same entity that employed them before
2.35 joining the ICAC Task Force.

3.1 (d) Compensation, personnel evaluations, grievances, merit increases, and liability
3.2 insurance coverage, such as general, personal, vehicle, and professional liability insurance,
3.3 shall be covered by each member's employing agency. Members of the ICAC Task Force
3.4 are not employees of the state.

3.5 Subd. 7. Jurisdiction and powers. (a) Law enforcement officers who are
3.6 members of the ICAC Task Force shall have statewide jurisdiction to conduct criminal
3.7 investigations into Internet crimes against children as described in subdivision 3, and
3.8 possess the same powers of arrest as those of a sheriff.

3.9 (b) Officers assigned to the ICAC Task Force shall follow their county arrest
3.10 procedures, booking processes, reporting processes, county attorney charging
3.11 requirements, and appropriate notification protocols to local and county sheriff agencies
3.12 where arrests are made and search warrants executed.

3.13 (c) The commander of the ICAC Task Force is responsible for ensuring compliance
3.14 with applicable local practices and procedures.

3.15 Subd. 8. Collaboration with other prosecutorial and law enforcement offices.
3.16 To the greatest degree possible, the ICAC Task Force shall cooperate and collaborate with
3.17 existing prosecutorial offices and law enforcement agencies.

3.18 Subd. 9. Prosecutor. A participating local governmental unit may seek a grant for
3.19 reimbursement for the time and resources that a prosecutor and prosecutor's staff dedicate
3.20 to the ICAC Task Force. In order to receive a grant under this subdivision, a participating
3.21 local governmental unit must provide a 25 percent match in nonstate funds or in-kind
3.22 contributions either directly from its budget or from businesses directly donating support.
3.23 A participating prosecutor shall remain an employee of the contributing county.

3.24 Subd. 10. Forfeiture. Property seized by the ICAC Task Force is subject to
3.25 forfeiture pursuant to guidelines established by the Department of Justice ICAC program
3.26 and sections 609.531, 609.5312, and 609.5313, if ownership cannot be established. The
3.27 ICAC Task Force shall receive the proceeds from the sale of all property that it properly
3.28 seizes and that is forfeited.

3.29 Subd. 11. Required reports. (a) The commander shall provide copies of all reports
3.30 provided to the Department of Justice relating to the ICAC grant to the commissioner of
3.31 public safety, in addition to an annual report that outlines the activities of the ICAC Task
3.32 Force and use of state grant funds awarded under subdivision 9.

3.33 (b) By January 15, 2008, the commissioner of public safety shall report to the chairs
3.34 and ranking minority members of the house of representatives and senate committees and
3.35 divisions having jurisdiction over criminal justice policy and funding on the activities of
3.36 the ICAC Task Force and use of grants under subdivision 9.

4.1 Subd.12. Expiration. Notwithstanding section 15.059, this section does not expire.

4.2 Sec. 2. APPROPRIATION.

4.3 \$250,000 is appropriated from the general fund to the commissioner of public safety
4.4 to fund the Internet Crimes Against Children (ICAC) Task Force. The appropriation is
4.5 available for the biennium ending June 30, 2007.

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**S.F. No. 2539 - Public Safety Peer Counseling and
Debriefing Provisions**

Author: Senator Mike McGinn

Prepared by: Chris Turner, Senate Research (651/296-4350) CT

Date: March 16, 2006

The bill modifies Minnesota Statutes, section 181.973, relating to traumatic event peer counseling of public safety employees. Under current law, "peer counseling debriefing" is the term of art. The bill separates the counseling and debriefing processes and includes both in the procedural safeguards of the statute.

The bill also expands counseling eligibility from public safety employees who have suffered an occupation-related "traumatic event" to employees who have suffered an occupation-related "trauma, illness, or stress."

CT:rer

Senators McGinn, Foley and Ortman introduced—

S.F. No. 2539: Referred to the Committee on Crime Prevention and Public Safety.

A bill for an act
relating to employment; modifying public safety peer counseling and debriefing
provisions; amending Minnesota Statutes 2004, section 181.973.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2004, section 181.973, is amended to read:

**181.973 ~~EMPLOYEE~~ PUBLIC SAFETY PEER COUNSELING AND
DEBRIEFING.**

A person engaged in a public safety peer counseling or a public safety peer debriefing shall not, without the permission of the person being debriefed or counseled, be allowed to disclose any information or opinion which the peer group member or peer counselor has acquired during the ~~debriefing process~~. However, this does not prohibit a peer counselor from disclosing information the peer counselor reasonably believes indicates that the person may be a danger to self or others, if the information is used only for the purpose of eliminating the danger to the person or others. Any information or opinion disclosed in violation of this paragraph is not admissible as evidence in any personnel or occupational licensing matter involving the person being debriefed or counseled.

For purposes of this paragraph, "public safety peer counseling or debriefing" means a group process oriented debriefing session, or one-to-one contact with a peer counselor, held for peace officers, firefighters, medical emergency persons, dispatchers, or other persons involved with public safety emergency services, that is established by any agency providing public safety emergency services and is designed to help a person who has suffered an occupation-related ~~traumatic event~~ trauma, illness, or stress begin the process of healing and effectively dealing with ~~posttraumatic stress~~ the person's problems or the use of the peer counselor for direction with referrals to better service

- 2.1 these occupation-related issues. A "peer counselor" means someone so designated by
- 2.2 that agency.

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S.F. No. 2757 - Extraordinary Hazardous Substances Unauthorized Release Provisions

Author: Senator Jane B. Ranum

Prepared by: Chris Turner, Senate Research (651/296-4350) *CT*

Date: March 16, 2006

Section 1 defines, for the purpose of the bill, the following terms: extraordinarily hazardous substance; extraordinarily hazardous substance list; facility; security measure; unauthorized release; and use of inherently safer technology.

Section 2, subdivision 1, creates an initial extraordinarily hazardous substance list.

Subdivision 2 requires the Commissioner of Public Safety to develop and issue a registration form to be completed by the owner or operator of each facility that generates, stores, or handles any of the substances listed in subdivision 1 in the quantities listed. The registration form must require the following information.

- ◆ an inventory of the substances, whether they are end products, intermediate products, byproducts, or waste products;
- ◆ a general description of the processes and equipment used in the management of the substances;
- ◆ a profile of the area where the facility is located;
- ◆ the extent to which risks and hazards have been identified, evaluated, abated, and the expertise and affiliation of the evaluator, including any direct or indirect relationship between the evaluator and the owner or operator; and

- ◆ all relevant insurance information from all insurance carriers underwriting policies for the facility.

Subdivisions 3 and 4 require the Commissioners of the Pollution Control Agency and Health to develop and adopt as a rule the extraordinarily hazardous substance list within 18 months, and all covered substance handlers to register under the rules promulgated within 90 days.

Section 3, subdivision 1, requires all owners and operators of facilities covered under the rules to conduct an assessment of the facility's vulnerability to terrorist attack or unauthorized release; assess hazards that may result from an unauthorized release; and assess the use of inherently safer technology.

Subdivisions 2 and 3 require all owners and operators of facilities covered under the rules to submit to the Commissioner of Public Safety a prevention, preparedness, and response plan. The plan shall include facility actions and procedures, potential use of safer design, maintenance or technology, and all appropriate security measures.

Subdivision 4 requires risks assessments and prevention reports to be completed in consultation with local law enforcement, first responders, and employees of the facility.

Subdivision 5 provides that assessments and plans required under this section are not public data and are not subject to any state or federal freedom of information law, including Minnesota Statutes, chapter 13.

CT:rer

Senators Ranum, Anderson and Lourey introduced-

S.F. No. 2757: Referred to the Committee on Crime Prevention and Public Safety.

A bill for an act
relating to public safety; providing for prevention, preparedness, and response to
unauthorized releases of extraordinarily hazardous substances; proposing coding
for new law in Minnesota Statutes, chapter 115E.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [115E.20] DEFINITIONS.

Subdivision 1. Scope. The definitions in this section apply to sections 115E.20 to 115E.22.

Subd. 2. Extraordinarily hazardous substance. "Extraordinarily hazardous substance" means any substance or chemical compound used, manufactured, stored, or capable of being produced from on-site components in this state in sufficient quantities at a single site such that its release into the environment would produce a significant likelihood that persons exposed will suffer acute health effects resulting in death or permanent disability.

Subd. 3. Extraordinarily hazardous substance list. "Extraordinarily hazardous substance list" means the substances or chemical compounds identified in section 115E.21, subdivision 1, and identified by rule according to section 115E.21, subdivision 3.

Subd. 4. Facility. "Facility" means a building, equipment, and contiguous area. Facility includes a research and development laboratory, which means a specially designated area used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which extraordinarily hazardous substances are used by or under the supervision of a technically qualified person.

2.1 Subd. 5. Security measure. "Security measure" means an action carried out to
2.2 increase the security of a facility, including employee training and background checks,
2.3 limitation and prevention of access to controls of the facility, protection of the perimeter
2.4 of the facility, installation and operation of an intrusion detection sensor, or a measure to
2.5 increase computer or computer network security.

2.6 Subd. 6. Unauthorized release. "Unauthorized release" means a release from a
2.7 facility into the environment of an extraordinarily hazardous substance that is caused, in
2.8 whole or in part, by a criminal act, a release into the environment of an extraordinarily
2.9 hazardous substance that has been removed from a facility, in whole or in part, by a
2.10 criminal act, or a release or removal from a facility of an extraordinarily hazardous
2.11 substance that is unauthorized by the owner or operator of the facility.

2.12 Subd. 7. Use of inherently safer technology. "Use of inherently safer technology"
2.13 means the use of a technology, product, raw material, or practice that, as compared
2.14 with the technologies, products, raw materials, or practices currently in use, reduces or
2.15 eliminates the possibility of a release of an extraordinarily hazardous substance prior to
2.16 secondary containment, control, or mitigation and reduces or eliminates the threats to
2.17 public health and the environment associated with an unauthorized release or potential
2.18 unauthorized release of an extraordinarily hazardous substance.

2.19 **Sec. 2. [115E.21] EXTRAORDINARILY HAZARDOUS SUBSTANCE LIST;**
2.20 **REGISTRATION.**

2.21 Subdivision 1. Initial list. The following chemicals or chemical compounds, in the
2.22 quantities indicated, constitute the initial extraordinarily hazardous substance list:

2.23 (1) hydrogen chloride (HCl) and allyl chloride in quantities of 2,000 pounds or more;

2.24 (2) hydrogen cyanide (HCN), hydrogen fluoride (HF), chlorine (Cl₂), phosphorus
2.25 trichloride, and hydrogen sulfide (H₂S) in quantities of 500 pounds or more; and

2.26 (3) phosgene, bromine, methyl isocyanate (MIC), and toluene-2, 4-diisocyanate
2.27 (TDS) in quantities of 100 pounds or more.

2.28 Subd. 2. Registration. Within 60 days of the effective date of this act, the
2.29 commissioner of public safety shall develop and issue a registration form to be completed
2.30 within 120 days of the effective date of this act by the owner or operator of each facility in
2.31 the state that at any time generates, stores, or handles any of the extraordinarily hazardous
2.32 substances in the threshold amounts on the initial extraordinarily hazardous substance
2.33 list under subdivision 1. The registration form shall provide, in addition to any other
2.34 information that may be required by the commissioner, the following:

3.1 (1) an inventory of the extraordinarily hazardous substance or substances generated,
3.2 stored, or handled at the facility and the quantity or quantities of the substances. The
3.3 inventory must identify whether the substances are end products, intermediate products,
3.4 byproducts, or waste products;

3.5 (2) a general description of the processes and principal equipment involved in the
3.6 management of the substance or substances;

3.7 (3) a profile of the area in which the facility is situated, including its proximity to
3.8 population and water supplies;

3.9 (4) the extent to which the risks and hazards of the processes, equipment, and
3.10 operations have been identified, evaluated, and abated and the expertise and affiliation
3.11 of the evaluators and any direct or indirect relationship between the evaluators and the
3.12 owner or operator of the facility; and

3.13 (5) the name or names of all insurance carriers underwriting the facility's
3.14 environmental liability and workers' compensation insurance policies and the scope of the
3.15 policies, including any limitations and exclusions.

3.16 Subd. 3. Additions to list by rule. Within 18 months of the effective date of
3.17 this act, the commissioner of the Pollution Control Agency, in consultation with the
3.18 commissioner of health, shall develop and adopt as a rule an extraordinarily hazardous
3.19 substance list. The list shall correlate the substances or compounds with the quantities
3.20 required to produce the potentially catastrophic circumstance. The commissioner may
3.21 amend, by rule, the extraordinarily hazardous substance list to accommodate new chemical
3.22 compounds that may be developed or reflect new information or scientific data that may
3.23 become available to the commissioner.

3.24 Subd. 4. Subsequent registration. Within 90 days of the adoption of an
3.25 extraordinarily hazardous substance list under subdivision 3, the owner or operator of each
3.26 facility in the state that generates, stores, or handles any of the extraordinarily hazardous
3.27 substances in the threshold amounts on the extraordinarily hazardous substance list, not
3.28 registered according to subdivision 2, shall complete the registration form developed
3.29 and issued by the commissioner.

3.30 **Sec. 3. [115E.22] UNAUTHORIZED RELEASES; PREVENTION,**
3.31 **PREPAREDNESS, AND RESPONSE.**

3.32 Subdivision 1. Risk assessment. Within one year of the effective date of this act,
3.33 the owner or operator of each facility in the state that at any time generates, stores, or
3.34 handles any of the extraordinarily hazardous substances in the threshold amounts on the
3.35 extraordinarily hazardous substance list adopted under section 115E.21 must:

4.1 (1) conduct an assessment of the vulnerability of the facility to a terrorist attack or
4.2 other unauthorized release;

4.3 (2) identify and assess hazards, using appropriate hazard assessment techniques, that
4.4 may result from an unauthorized release of any extraordinarily hazardous substance; and

4.5 (3) assess the use of inherently safer technology in reducing or eliminating the
4.6 possibility of an unauthorized release.

4.7 **Subd. 2. Prevention, preparedness, and response plan required.** Within 18
4.8 months of the effective date of this act, the owner or operator of each facility in the state
4.9 that is required to complete the assessments under subdivision 1 must prepare, and submit
4.10 to the commissioner of public safety for review and approval, a prevention, preparedness,
4.11 and response plan that incorporates the results of the vulnerability and hazard assessments
4.12 conducted under subdivision 1.

4.13 **Subd. 3. Plan requirements.** The prevention, preparedness, and response plan
4.14 under this section must include actions and procedures, including safer design and
4.15 maintenance of the facility, use of inherently safer technology, and all appropriate security
4.16 measures, undertaken to eliminate or significantly lessen the potential consequences of an
4.17 unauthorized release of any extraordinarily hazardous substance.

4.18 **Subd. 4. Required consultation.** The requirements of subdivisions 1 to 3 must be
4.19 completed in consultation with local law enforcement, first responders, and employees
4.20 of the facility.

4.21 **Subd. 5. Data privacy.** The assessments and plan required by this section are
4.22 not public data and are not subject to any state or federal freedom of information law,
4.23 including but not limited to, chapter 13.

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N.J. officials tell chemical plants to assess security

Wednesday, November 30, 2005

By **ALEX NUSSBAUM** and **COLLEEN DISKIN**
STAFF WRITERS

New Jersey became the first state in the nation to require security assessments at chemical plants Tuesday and left the door open to tougher requirements to prevent terror attacks or accidents at 140 businesses around the state.

The announcement by acting Governor Codey capped four years of talks and squabbling among activists, the government and the state's \$27 billion chemical industry about how far to go to protect factories that often sit cheek by jowl with crowded residential neighborhoods.

"We must explore any measure ... to better protect us from uncertainty," said Codey, who promised to "ensure that this initiative improves security and emergency response plans at each chemical facility."

The new rules, approved by state officials last week, drew mixed reactions. One environmental and labor group called it a good beginning but said tighter regulations were still needed. Industry, on the other hand, complained that the state had abandoned an agreement to work with businesses on voluntary measures.

"For reasons not clear to us, it seems the cooperative approach between the state and our sector is being abandoned," read a statement from the Chemistry Council of New Jersey, which represents about 100 manufacturers. "The prescriptive order seems to penalize early, responsible actors, while adding requirements that have little to do with security."

The standards largely impose security requirements, or "best practices," proposed by industry groups, however.

Tightening plant security has been a rallying cry for U.S. Sen. Jon Corzine, New Jersey's governor-elect. The Democrat has pushed for tougher federal requirements since the Sept. 11 terror attacks, but the chemical industry and Republican lawmakers have blocked them.

Corzine applauded Codey's move Tuesday, but added that the measure was only a "first step."

"Unguarded chemical facilities are a ticking time bomb and represent a threat to our national security," Corzine said. "I look forward to continuing to work on this critical issue and to strengthening these regulations."

The measure would affect dozens of refineries, pharmaceutical plants, fragrance and flavor manufacturers, water and sewage treatment plants and other facilities that use corrosive or explosive materials, such as chlorine and hydrogen fluoride. New Jersey has seven plants where a chemical accident could threaten more than 1 million people, according to government records, and federal authorities have called one stretch near Newark the most vulnerable two miles in the country because of its lineup of chemical plants and critical infrastructure.

Under the new requirements, plants would have 120 days to do vulnerability assessments, reviewing their readiness to handle a terrorist attack or a major accident. They would also have to adopt industry "best practices" on such issues as security measures and transporting materials.

In addition, 43 plants that use "extraordinarily hazardous" materials will have to study whether they could

adopt "inherently safer technology" - new equipment or procedures, that could reduce their dependence on such chemicals.

Voluntary reviews have already been done, but the quality of those assessments has been "uneven," said Bradley Campbell, the state's commissioner of environmental protection.

The current rules leave it to industry to decide whether to adopt new technologies, but the assessments will help the Corzine administration decide whether more regulation is needed, Campbell added. Two public hearings on chemical safety - the first scheduled for Thursday in Trenton - will also help the state gather information, he said.

"We need a better record in which to make regulatory decisions," Campbell said. "It will be up to the next administration to determine what other steps need to be taken."

The New Jersey Work Environment Council, which represents chemical workers and environmental groups, welcomed the requirements.

"It's really about looking at operations overall, not just relying on guns, gates and guards," said Rick Engler, the group's director. "It means looking at the many ways an operation could be run more safely."

Activists, however, still complained that some of the standards were lifted straight from industry guidelines and could have been stronger. The regulations amounted to mere "public relations," groused Jeff Tittel, executive director of the Sierra Club in New Jersey.

The Chemistry Council, however, said most of its members have upgraded their security since Sept. 11. New Jersey plants have spent more than \$100 million on those upgrades, said Elvin Montero, a council spokesman.

The new rules could increase costs for businesses that store chemicals but aren't terrorism targets, such as paint stores, Montero said. As for adopting "safer" technology, many companies would respond by having more materials stored off-site and then shipped to a plant when needed, he added. That wouldn't necessarily reduce the danger, he said.

"Instead of being stored at facilities where they know how to handle chemical X, this now puts chemical X in trucks and different transportation forms and creates a danger not in chemical facilities but for people driving down the [New Jersey] Turnpike," he said.

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THE REAL PROBLEM

IT'S DO-IT-YOURSELF SECURITY

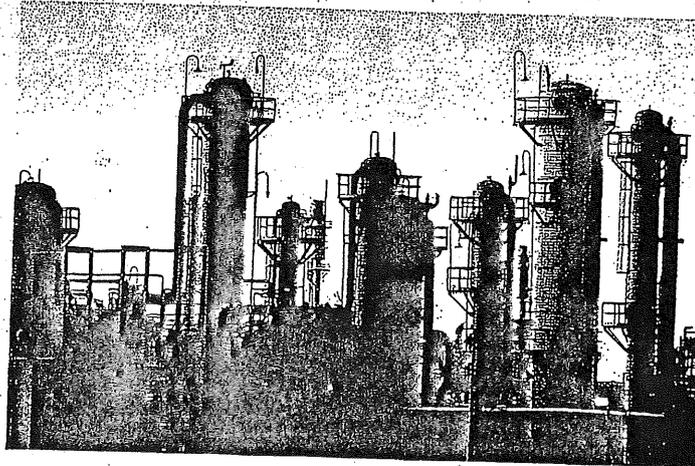
By MARK THOMPSON and DOUGLAS WALLER

The furor over the now delayed deal to allow a United Arab Emirates company to operate six U.S. ports was tailor-made for talk radio. Arabs! At the ports! But the genuinely scary aspect of the deal was warnings from security experts that it doesn't matter who operates America's maritime centers because none of them is totally secure. The problem pointed to most often is a lack of oversight. Customs agents inspect a small percentage of shipping containers, but the Bush Administration asks cargo companies to supervise the bulk of security. It's an arrangement designed to allow the President to be true to two bedrock principles—being tough

on terrorism and resisting federal regulation of private industry. "That leads to a paradox in the security area," says Stephen Flynn, a terrorism expert at the Council on Foreign Relations, "because [security] requires a more assertive federal role." But in areas just as

vulnerable to attack as shipping, the Administration has consistently backed away from—and sometimes simply blocked—federal regulation. A terrorist attack on a chemical facility could kill thousands of people and endanger up to a million, federal experts say, so

in mid-2002, the White House assigned the Environmental Protection Agency (EPA) to secure the nation's chemical plants. The EPA and the fledgling White House Office of Homeland Security spent months developing a legislative package requiring the chemical industry to beef up security. In March 2003 a dozen senior Administration officials met in the Old Executive Office Building next door to the White



PHILIP PERRY—CONRIS

ROBERT GALBRAITH—REUTERS/ANDREW

BLOCKED
Perry said no to putting EPA in charge of securing U.S. chemical plants from terrorist attacks

House to put the finishing touches on what they considered a major initiative.

At that meeting, though, officials were surprised to see a new face—Philip Perry. As the top lawyer for the White House's Office of Management and Budget, Perry helped oversee Administration regulatory initiatives. According to Bob Bostock, then homeland-security adviser at the EPA, Perry, who hadn't attended any of the prior meetings, declared the proposal dead in a matter of minutes. "Perry said that any federal legislation to deal with this issue would be dead on arrival on the Hill," recalls Bostock, "and that the chemical industry was taking voluntary steps that were sufficient." Perry, who is married to Vice President Dick Cheney's daughter Liz, was merely relaying a Justice Department decision that the Department of Homeland Security (DHS), not the EPA, should handle the job, a spokesman says. While Perry declined to discuss the matter

with TIME on the record, his spokesman says Perry doesn't recall the meeting and Bostock's account "is not accurate or fair."

Today only about 1,100 of the nation's 15,000 biggest plants participate in the voluntary security program. Even Bush loyalists are worried about the vulnerability that remains. "Not all chemical sites are good partners," said Asa Hutchinson, a former top Homeland Security official, at a recent chemical industry gathering. "Some of the top-tier sites will not let Homeland Security inside the fence."

In some instances, White House officials have gone straight to Capitol Hill to squelch regulatory efforts. In June 2003 Edward Markey, a Democrat from Massachusetts, introduced an amendment to mandate 100% inspection of airplane cargo. While airline passengers walk through metal detectors and have all their bags screened, the 6 billion

pounds of cargo traveling beneath them each year is subject only to spot inspections by the feds. The government leaves it up to air carriers and the companies that forward freight to the carriers to screen their regular cargo customers.

The House passed Markey's amendment by a 278-146 vote, but the airline industry, which makes about \$17 billion annually from cargo on passenger planes, claimed that the technology for 100% inspection wasn't available and that even if it did exist, costs would be prohibitive. Senior officials at the DHS agreed, and that fall they persuaded House-Senate conferees to strip Markey's amendment from the appropriations bill. "The Bush Administration bends over backwards for industry while turning its back on needed homeland-security safeguards," Markey complains. "It's commerce over common sense." But Russ Knocke, a DHS spokesman, argues that such public-private

partnerships maximize security without shutting down the systems and industries we depend upon.

Still, nearly five years after 9/11, it's becoming apparent even to some members of the Administration that private industry can't be relied on to protect the nation's infrastructure on its own. "Expecting a trade association to tell a business it needs to spend more money on security isn't sufficient," says Sal DePasquale, a Georgia chemical security expert, who helped draft the industry's current voluntary plan. Congress is looking at making chemical-plant security mandatory, and DHS officials say they're ready to order beefed-up security for chemical facilities as well. But that process could take years, and who knows what will happen when new regulations are finally ready for Administration approval. Especially since the DHS's new general counsel is none other than Philip Perry. ■

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Obama cites poor security at chemical plants

Associated Press

WASHINGTON - Sen. Barack Obama, warning that a terrorist attack on a major chemical plant could cause disastrous results affecting potentially a million or more people, urged Monday that the federal government impose safety standards on the industry.

"Unfortunately, at many of the chemical plants in our nation, the security is light, the facilities are easily entered and the contents are deadly," Obama, D-Ill., said in a statement announcing that he and Sen. Frank Lautenberg, D-N.J., would prepare legislation to address the issue.

Under their proposal, the Environmental Protection Agency and the Department of Homeland Security would identify high-priority chemical threats and write security regulations. Each plant would have to conduct vulnerability studies and develop prevention, preparedness and response plans.

"Safety regulations can be implemented in a way that is flexible enough for the industry yet stringent enough to protect the American people," Obama said. "It is long past time to put the security of our nation ahead of special interests or politics."

According to federal environmental regulators, there are four chemical plants within Chicago that, if attacked under a worst-case scenario, could threaten more than a million people. Altogether, Illinois has at least 10 such facilities, with an additional 20 where a chemical release could threaten more than 100,000 people.

Obama noted that in Chicago a local television station found major security problems at a number of Chicago plants, including unguarded access points that allowed people to walk unchallenged to large chemical tanks.

Marty Durbin, the managing director of federal affairs for the American Chemistry Council and a nephew of Sen. Dick Durbin, D-Ill., said his group has been working to have Congress advance federal legislation.

"As far as the need for federal legislation, we're in complete agreement," he said. "Our view is you need federal standards, national standards, so you have one standard."

Durbin said some 130 companies that are members of his group have made about \$3 billion in security improvements since the terrorist attacks of Sept. 11, 2001.

He declined to comment more specifically until the Obama-Lautenberg legislation has been introduced.

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