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September 24, 2010

To the Chemical Emergencies Workgroup:

Re: Comments on the Chemical Emergencies Workgroup Report

The workgroup has done a thoughtful treatment of many very complex issues, that have suffered for years from severe underfunding and lack of coordinated attention. We applaud this effort. We also fully support the workgroup's vision of a successful system as discussed beginning on p. 13. We note however that this vision is unlikely to be achieved in the absence of adequate funding and the workgroup report is weak on the issue of funding. We call for prevention as a top priority for the nation, the prevention of catastrophic events through a concerted federal inspection program, that is implemented immediately. This is discussed in Items 1 & 2 below.

Sincere appreciation goes to all the working group members for their hard work. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Barbara J. Warren".

Barbara Warren  
Executive Director

## CEC Comments on the Chemical Emergencies Workgroup Report

### 1. Immediate action is needed to prevent catastrophic events at high risk chemical facilities.

We were surprised to not see a thorough discussion of the serious threats posed by high risk facilities ( those capable of resulting in a catastrophic incident with explosions or release of deadly gases) and the need for government to immediately address this situation. This particular issue was my top priority in reviewing this workgroup draft. What did the workgroup recommend regarding inspections and reviews of high risk facilities?

We have been through more than a decade of collective wisdom, espousing the extraordinary benefits of deregulation. In almost all sectors deregulation has occurred, but particularly in relation to private businesses, environmental protection and labor. It is not surprising then that the Gulf Oil Spill was preceded by an earlier disaster at a BP refinery. Despite the fact that hundreds of facilities pose catastrophic risks in and of themselves, they have been exempted from compliance with additional security measures related to terrorism for an additional 3 years. The waiver of these requirements should be mentioned on p. 10. The public should be told that the riskiest terrorism targets have not yet been required to comply with security measures, required of less risky facilities. Terrorism itself has increased the secrecy surrounding these facilities, and reduced the public's access to information. Recently a break in a gas line created an inferno in San Bruno, CA, but this was preceded by lots of warnings to the company. We know that there are woefully few government inspectors working on gas line safety. Deregulation of banking caused a global economic crisis. Ignoring high risk facilities or failing to appreciate the many warning signs could result in thousands of deaths and severe injuries.

**Recommendation:** Concerted government efforts are essential immediately to systematically prioritize and inspect all high risk facilities, identifying safety concerns and requiring timely corrections. This recommendation should be classified as prevention. EPA, OSHA and possibly other agencies should be involved. At minimum, all of the following should be reviewed:

Storage and processes involving extremely hazardous substances,  
Whether scheduled maintenance has been undertaken on a regular basis,  
All Incident reports, including those involving workers & subcontractors in the last five years,  
Whether high volume inventories of EHSs are really necessary,.  
Whether warning signals are working, and  
Management structure for all high hazard processes.

### 2. Immediate action is needed to prevent catastrophic events at nuclear facilities.

While this workgroup is titled Chemical emergencies, we think there must be an appropriate expansion of scope. Nuclear power plants, nuclear waste sites and radioactive contamination is widespread across the country. Radioactive materials are transported through many other communities. Many of these locations pose unique considerations for emergency response and prevention. The separateness of radiological hazards vs. hazardous chemicals has been the result of the regulatory structure, but in our communities both of these hazards are present and emergency responders and health personnel would be required to respond. We have existing unresolved safety issues that affect many nuclear plants and we have other unique problems that affect individual plants. In general the nuclear fleet is aging and in the process of renewing licenses. A Chernobyl type disaster in the US could have severe consequences. We need to ensure the highest level of safety for these facilities. We repeat the recommendation for high risk chemical facilities here.

**Recommendation:** Concerted government efforts are essential immediately to systematically prioritize and inspect all nuclear plants and waste facilities, identifying safety concerns and requiring timely corrections. This recommendation should be classified as prevention. NRC, EPA, OSHA and possibly other agencies should be involved. We have not attempted to define the type of reviews for radiological facilities.

### **3. The work of Prevention is uniquely different and has received far too little attention.**

In general we believe prevention should have been more prominent in the workgroup report. It also should be a separate activity and clearly delineated from "preparedness". Too often the word prevention is thrown in with preparedness and training, when there is in fact no actual activity or even conceptual idea of what planning for prevention means. We agree that there is much wrong with the whole national emergency response program for chemical emergencies, however, since funding is at the root of the problem, there is far more to be gained with limited dollars from prevention of chemical disasters than from building up an adequate response network. This is not to suggest that we should not do both.

We could view this similarly to energy efficiency measures which prevent the waste of energy-- far more cost effective than building more power plants and non-polluting. We recommend a significant expansion of prevention training-- particularly for fire personnel, municipal officials and environmental agency personnel. The whole concept of Local Emergency planning was an excellent one, but this terrific law and idea was supposed to move forward with no funding, when highly technical analysis and enormous work was involved. It has been an almost complete failure, except in a handful of areas where dedicated people forged ahead.

We note that the report included prevention, but never separated it for individual attention in a recommendation. This is a mistake. Currently greater than 95% of resources are devoted to preparedness and response, even when prevention is part of an organization's mission. Tasking a government agency with prevention and everything else will ensure that prevention gets no attention-- unless it is in a separate department with a separate budget and clear mandates.

We are cognizant of your recommendation for a whole system and the importance of integration and coordination among many parties. However, there are notable differences associated with prevention activities and the long term neglect of prevention must be corrected immediately. We believe Prevention activities can be separated for specialized attention, while still facilitating reports back so that all parts of the system understand what prevention work is being done.

A second issue is very important to prevention-- post incident review with all involved parties and identification of lessons learned. If this process is really used as a tool, it informs not just future emergency response but prevention, ie., what was wrong with the way chemicals were stored? , what was found at this facility may relate to all similar facilities, etc. This could lead to constructive prevention recommendations. It can also be used as a training exercise.

We were disappointed to not see a mention of the success of New Jersey's chemical accident prevention law, the Toxic Catastrophe Prevention Act. New Jersey's law and implementation has reduced the overall number of high hazard facilities and increased safety.

In addition New Jersey has now adopted a rule regarding inherently safe technology, which will require compliance for all covered facilities.

In addition we believe a listing of the most common prevention activities within the report is useful to overall understanding of this issue: For example,

Substitute the chemicals used for less hazardous ones

Reduce the volume of chemicals stored on site

Isolate the process from other hazardous processes to prevent interaction

Automatic shut off valves, redundant safety devices and other types of inherently safer technologies

Preventative required maintenance

On p. 11 where data needs are listed, we recommend the addition of inherently safe technologies and best practices.

**4. Our national emergency response system was established for natural disasters. We need a new law to expand the scope and put one or more health agencies in charge of protection of workers and the public.**

FEMA cannot even provide funding for other than natural disasters. We have been through 2 serious disasters that involved the exposure of thousands of workers to hazardous substances. No agency was responsible for issuing precautionary health and safety recommendations for those most directly impacted-workers. In the case of the World Trade Center, this failing resulted in late funding for studies of workers health and some funding for health damages. However, no lessons were learned regarding the future handling of such disasters and the need to require precautionary health measures at the beginning of the response effort. Thus we then watched in horror the Gulf oil disaster unfold.

Currently there is no direct authority for health and safety issues. The response itself is scattered, disorganized and ineffectual as well. While not unique to chemical disasters-- Post-Katrina flooding and Haiti's earthquake are examples of failed disaster responses-- chemical hazards have no established response mechanisms and no funding.

There must be clear authority for one or more health agency to take emergency action to prevent health impacts to workers and the public and this must take precedence over all other priorities-- like getting Wall Street functioning immediately.

**5. We urge the workgroup to make a strong funding recommendation.**

Beginning on p. 9, the issue of limited funding is briefly discussed, but the workgroup takes a pass on this issue and is unwilling to make a recommendation for more funding. Given the seriousness of this issue, we cannot believe that the majority of the workgroup did not support greater funding. If this has to be expressed as a majority opinion with dissent then it should be handled this way, but not recommending funding is antithetical to everything in this report. How will all this be accomplished if not with funding?

The committee should be aware of the \$3 trillion spent on Iraq and the over a trillion spent to bail out the banks. Look at the profits of just the petroleum giants, whose US refineries are at the end of their useful lives and need major reconstruction or new facilities, and ask yourselves whether the externalities of chemical accidents shouldn't be funded somehow.

The danger of not doing so is too great and this report should say-- Fund it now !

**6. We recommend training milestones for progress and urge the inclusion of training for confined space entry.**

In most everything we like to see specific milestones for progress that are measurable. Some of the recommendations could be stated as percentages trained by a certain date, etc. We urge the inclusion of confined space entry training in recommendation #8, as far too many deaths occur every year because of improper procedures relate to entering confined spaces. This affects many emergency responders. Reducing and eliminating confined space deaths is entirely possible.

**7. Responsible parties of any chemical or health and safety incident have no business being involved in a comprehensive injury and illness reporting system.**

Health and Safety information as well as injury and illness reporting must be managed exclusively by government officials with these functions as their primary mission. We do not agree and cannot support the idea expressed on p. 16 of public-private partnerships, particularly that a responsible party should have anything to do with the comprehensive injury and illness reporting system. A responsible party has a clear and serious conflict of interest in collecting accurate injury and illness information, which could later be used in assessing damages against the responsible party. This must be the job of government agencies, whose primary expertise is health.

Nothing related to the health information and reporting has gone well in the Gulf and we object to this example. BP specifically prohibited all of its contractors from speaking to the media and often refused to provide personal protective equipment when workers requested it. Further the Coast Guard's core mission is to serve industry and thus they were ill-suited to be responsible for other duties involving protection of the public and workers.

## **8. Global Harmonized system**

This report strongly supports the global harmonized system, as if it is a complete solution. We recommend a slightly more nuanced approach, acknowledging that improvements are needed in the system in the future and that US governments and others should work toward that end.

A key issue associated with the vast number of chemicals in commerce is the adequacy of testing. GHS appears to accept these limitations:

*GHS classification criteria are based on currently available data and it does not include establishment of uniform test methods or promotion of further testing. Compliance with these criteria will not require retesting of chemicals.*

( From an official UN document describing the program.)