

**chemicalweek**

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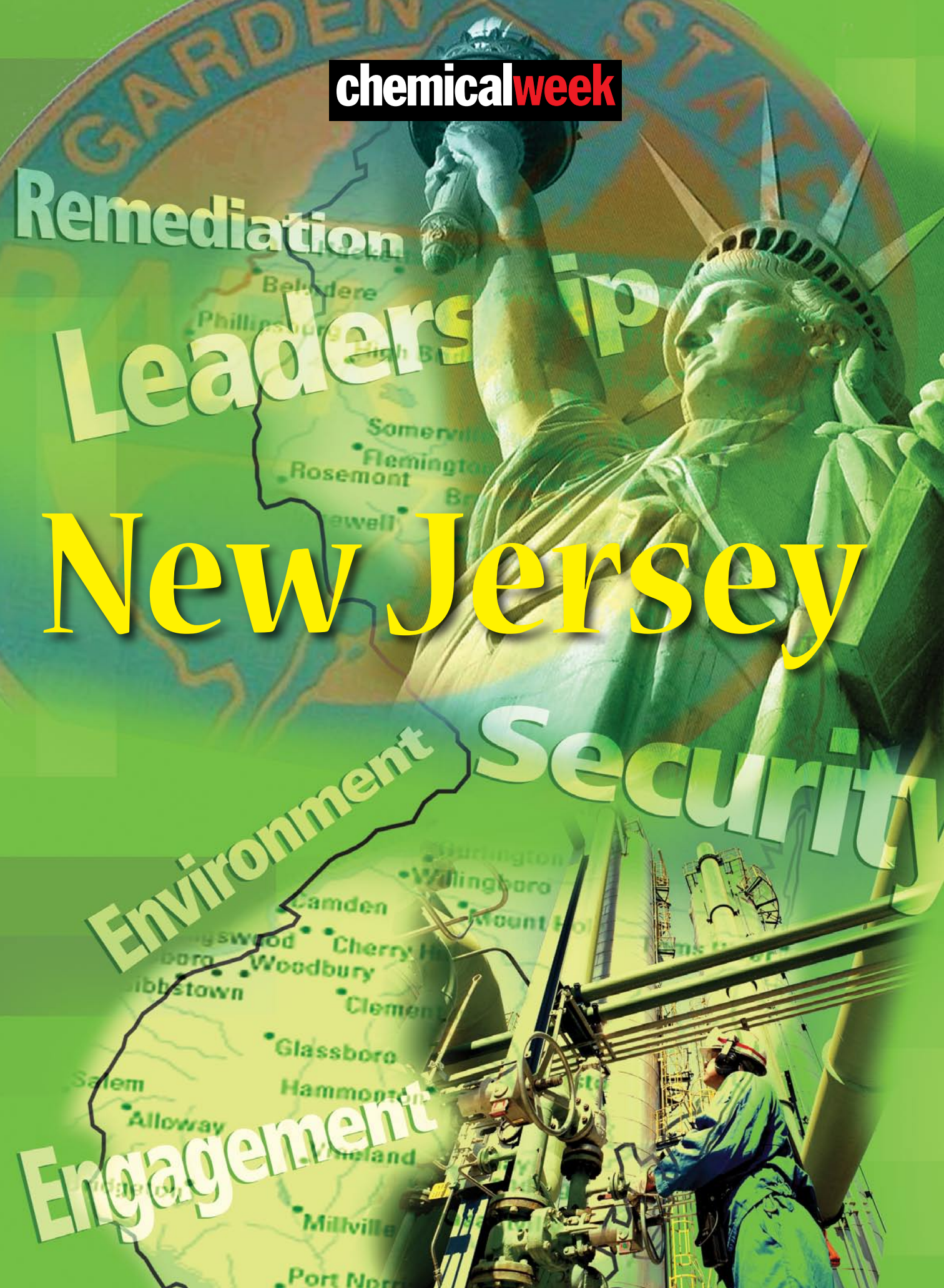
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# New Jersey

## DHS Rules Uphold Current Law

**N**ew Jersey lawmakers continue to challenge the Bush administration's chemical plant security rules, saying they provide no protection for states that wish to pass stricter site security laws in the future. The final rules, which were written by the Department of Homeland Security (DHS; Washington), appear to allow existing state laws that are stricter, but prohibit such laws in the future, sources say.

Conflicting interpretations of states' right to have stricter chemical plant security laws are likely to generate lawsuits, officials say. Governor Jon Corzine (D.) has already said he will take the government to court if federal officials prohibit writing stricter plant security laws. Corzine's recent car accident and result-

ing significant injuries are not likely to affect the state's chemical security policies should his recovery be delayed, sources say. The policy is largely in the hands of the New Jersey Department of Environmental Protection (DEP; Trenton), sources say.

New Jersey's existing chemical security laws are not affected by DHS's ability to preempt state laws, DHS says. That is not enough to assuage concerns about the federal rule, however, and Democrats in Congress have been sharply critical of DHS. The state's right to pass stricter laws is of particular concern to New Jersey because of the number of facilities that are near densely populated areas, activists say.

"In New Jersey there are hundreds of plants across the state that could affect tens of thousands of people or more," says Denise Patel,

campaign organizer/chemical site security for the labor and environmental coalition New Jersey Work Environment Council (WEC; Trenton). The state has 140 major chemical facilities, officials say.

The DHS rule released April 4 "is unacceptable. It prevents New Jersey and other states from continuing to pursue stronger chemical security laws," says New Jersey Senator Frank Lautenberg (D.). "Congress is on record supporting the right of states to protect their communities from a chemical attack. It's time for the federal government to follow Congress's lead and make sure our states have that right. Lautenberg has proposed an amendment that would preserve "states' rights to craft stronger chemical security laws than the federal government," he says. The amendment, which is



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attached to a military funding bill, has survived a strident campaign by chemical industry lobbyists to defeat it, he adds.

Lautenberg says he has tried to pass chemical plant security legislation since 1999, and that the bill that eventually passed in late 2006 is unacceptable. Lautenberg and Senator Barack Obama (D., IL) introduced a chemical plant security bill in March 2006 that would make chemical companies consider inherently safer technologies (ISTs) "whenever possible."

New Jersey is the only state to have a plant security laws that requires consideration of ISTs.

The Chemical Industry Council of New Jersey (CCNJ; Trenton) recently formed what industry and labor representatives call a landmark industry-union collaboration to promote security awareness training, says CCNJ executive director Hal Bozarth. The U.S. Department of Labor gave the local AFL-CIO chapter a grant to carry out the program. CCNJ, the AFL-CIO, and the United Steelworkers Union (Pittsburgh) agreed on a curriculum for the program a year ago, and the coalition has

trained representatives from more than 70 companies, Bozarth says. Those people then go back and train their colleagues, he says.

Passed in November 2005 by an executive order by then acting governor Richard Codey (D.), who is again serving as acting governor due to Corzine's injuries, the rules require 94



**Corzine: Feds can expect a lawsuit.**

**Chertoff: Highest risk to be defined.**

**Bozarth: No conflict with state law.**

facilities in New Jersey to develop an assessment of facility vulnerabilities and hazards that might be exploited by potential terrorists.

The assessments must include a critical review of: security systems and access to the facility grounds; existing or needed security measures outside the perimeter of the facility that would reduce vulnerabilities to an attack on the facility;

storage and processing of potentially hazardous materials; employee and contractor background checks and other personnel security measures; and the state of information and cybersecurity, officials say. "As part of the new requirements, these 43 facilities must review the potential for adopting inherently safer technology as part of their assessment," officials say. New Jersey's law is also the only that includes worker participation in the safety inspections.

The IST requirement has been completed by all companies in New Jersey, but state officials will not make public details of the compliance plans. The law is administered by the state DHS and the New Jersey DEP.

The IST requirement will expand to more facilities if the DEP is successful in finalizing proposed rules to expand the state's Toxic Catastrophe Protection Act (TCPA) to include consideration of IST. It would also expand the IST provision to require that facilities also "both qualitatively and quantitatively justify its reasoning for not adopting IST," Patel says.

CCNJ and other industry executives say



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they do not expect the federal rules to conflict with New Jersey's existing law or the proposed amendments to the TCPA.

The NJ DEP will hold a hearing on the expanded TCPA on March 14, and the rule will be open to public comment for several months following the hearing. New Jersey Senator Robert Menendez (D.) has taken up Lautenberg's cause to tighten plant security. DHS "continues to crawl toward the goal of stronger security, while many of the states know that we should be running toward it." Menendez also joined Lautenberg in attaching the block to state preemption to the military funding bill.

The problem that Democrats and environmental groups have with the federal plant security legislation passed by Congress last year is that it prohibits DHS from mandating any specific security measure, a clause that gives the chemical industry a blank check to do almost whatever it deems appropriate, critics say. They say this is backed up by the language of the DHS regulations, which say that a regulated facility is permitted "in developing and implementing site security plans, to select layered

security measures that, in combination, appropriately address the vulnerability assessment and the risk-based performance standards for security for the facility." DHS also "may not disapprove a site security plan submitted under this section based on the presence or absence of a particular security measure, but the secretary may disapprove a site security plan if the plan fails to satisfy the risk-based performance standards established by this section," the statute says.

Critics also say the rules will not apply to enough facilities, and that the rules should not have exempted wastewater facilities, which store chlorine to purify water supplies.

DHS Secretary Michael Chertoff says the federal plant security rules will affect about 7,000 facilities nationwide. Only about 300-400 will fall into the two highest-risk tiers, Chertoff says. "We're going to divide high-risk facilities into four tiers, and the higher up you go in the tier-

ing, the more—the tougher, frankly, the security measures are going to be," he says.

Companies have an option to use "lower-risk chemicals, which would bring them down in the level of tiers, and would thereby reduce the amount of regulatory or protective activity they have to undertake," Chertoff says.

DHS will use its Chemical Security Compliance Division within the Office of Infrastructure and Protection to implement the rules. DHS has requested \$25 million in its fiscal year 2008 budget

to staff and support this new office, Chertoff says. "Among the kinds of performance standards we're looking for are standards about how long and how robustly you secure the perimeter and the critical target, how you control your access, how you deter and prevent theft of potentially dangerous chemicals, and how you prevent internal sabotage," he says.

—KARA SISSELL



**Menendez: Federal rules too weak.**



**Lautenberg: Congress will reverse DHS.**

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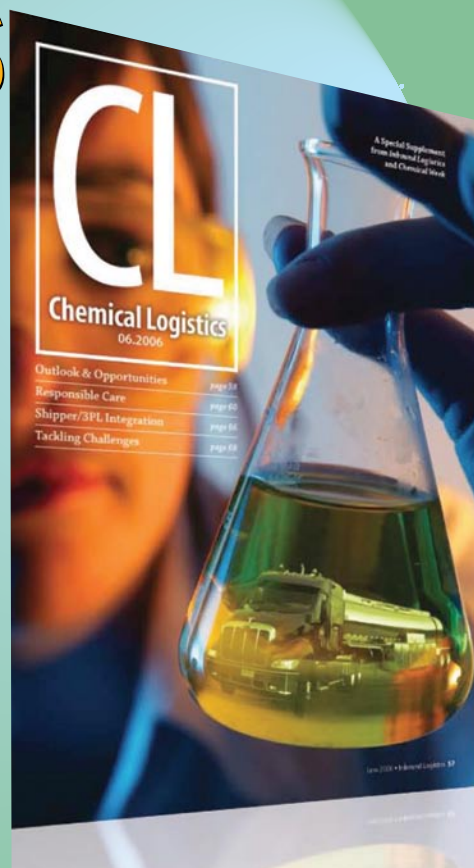
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