

**SECURING OUR NATION'S CHEMICAL FACILITIES:
STAKEHOLDER PERSPECTIVES ON IMPROVING
THE CFATS PROGRAM**

HEARING
BEFORE THE
SUBCOMMITTEE ON
CYBERSECURITY, INFRASTRUCTURE
PROTECTION, AND INNOVATION
OF THE
COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES
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SECURING OUR NATION'S CHEMICAL FACILITIES: STAKEHOLDER PERSPECTIVES ON IMPROVING THE CFATS PROGRAM

Tuesday, March 12, 2019

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON CYBERSECURITY,
INFRASTRUCTURE PROTECTION,
AND INNOVATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:09 a.m., in room 310, Cannon House Office Building, Hon. Cedric L. Richmond (Chairman of the subcommittee) presiding.

Present: Representatives Richmond, Jackson Lee, Langevin, Rice, Katko, Walker, and Taylor.

Also present: Representative Rogers.

Mr. RICHMOND. Good morning. I want to welcome everyone to today's hearing on the Department of Homeland Security's Chemical Facility Anti-Terrorism Standards or CFATS as we call it. It's a regulatory program that helps secure the Nation's highest-risk chemical facilities.

Congress has just over 1 year to reauthorize the CFATS program and I want to make one thing clear. This committee is committed to getting CFATS reauthorization done.

Last month we heard from DHS and GAO and today we will hear from stakeholders who deal with CFATS on the ground. Hearing from people on the ground and do this on a daily basis is important to us.

I understand how important the stability of CFATS program is to the chemical industry which is critical to my district's economy. I also know how important it is to have a program that keeps facilities safe and secure because my constituents are the people who live near these facilities, the employees who work at these facilities every day and the firefighters and police we call to respond to an emergency.

At the full committee hearing last month we discussed opportunities to build on the progress that has been made on the existing CFATS program. Since CFATS was established, the number of high-risk chemical facilities has dropped by half.

I believe, and DHS agreed, that there is an opportunity to take the data on how facilities are reducing risk and use it to develop voluntary best practices that other facilities could use to reduce risk.

This will be a win-win for chemical facilities, local communities, and the taxpayer, making us all safer and letting DHS focus its limited resources on the highest-risk facilities.

Unfortunately, we also heard about some of the areas where CFATS continues to fall short. The Department is still not making sure first responders and emergency planners have enough information or the right information about local CFATS facilities in their area. Six years after the disaster in West, Texas, this is simply unacceptable.

Also—excuse me—also it is not clear to me that CFATS facilities are including employees in the development of site security plans, vulnerability assessments, or inspections as they are required to by law.

Finally, if CFATS is going to be successful, we need to be sure that the program is taking all relevant factors into account to assess risk. Otherwise, we can't trust that CFATS is truly capturing the Nation's highest-risk facilities.

For example, right now, DHS does not consider whether the facility is located near a hospital, a school, a residential area, a military base, a power plant, or close to other chemical facilities. Any of these factors could make a facility a more attractive target or make an event even worse for the surrounding community.

This is especially concerning to me because research shows that facilities with dangerous chemicals tend to be heavily concentrated in minority and low-income areas, meaning that we may be exposing our most vulnerable populations to a disproportionate share of chemical security risk.

DHS should also do more to understand what it means to be high-risk and to use expertise of a broader group of stakeholders. Overcoming the information-sharing challenges will require us to rethink how we restrict access to certain information deemed sensitive to National security.

Although I am sensitive to the tension between security and transparency, it cannot be a barrier to better security or used to prioritize the security of some over others. I know many of our panelists have first-hand experience with many of these concerns and I look forward to hearing your perspectives.

[The statement of Chairman Richmond follows:]

STATEMENT OF CHAIRMAN CEDRIC L. RICHMOND

MARCH 12, 2019

Congress has just over 1 year to reauthorize the Chemical Facility Anti-Terrorism Standards (CFATS) program, and I want to make one thing clear: This committee is committed to getting reauthorization across the finish line.

Last month we heard from DHS and GAO, and today we will hear from stakeholders who deal with CFATS on the ground.

My district in Louisiana is home to more than 20 CFATS facilities. I understand how important the stability of the CFATS program is to the chemical industry, which is critical to my district's economy. Without regulatory stability, I am concerned CFATS facilities will not make strategic security investments, which is bad for business and bad for my community. I also represent the people who live near these facilities, the employees who work at these facilities every day, and the fire fighters and police we would call to respond to an emergency.

In short, reauthorizing CFATS is critical for every stakeholder communities like mine—from facility owners and employees to surrounding communities and first responders.

At the full committee hearing last month, we discussed opportunities to build on the progress that has been made under the existing CFATS program. Since CFATS was established, the number of “high-risk” chemical facilities has dropped by half. I believe—and DHS agreed—that there is an opportunity to take the data on how facilities are reducing risk and use it to develop voluntary best practices that other facilities could use to buy down risk. This would be a win for chemical facilities, local communities, and the taxpayer—making us all safer, and allowing DHS to focus its limited resources on the highest-risk facilities.

Unfortunately, we also heard about some of the areas where CFATS continues to fall short.

The Department is still not making sure first responders and emergency planners have enough information—or the right information—about local CFATS facilities in their area.

Six years after West, Texas, this is simply unacceptable.

Further, it is not clear to me that CFATS facilities are including employees in the development of site security plans, vulnerability assessments, or inspections—as they are required to do by law.

I am proud of the panel we have assembled here today and look forward to hearing our witness’ perspectives on how we can address some of the program’s shortcomings. We have panelists who know what it’s like to respond to an emergency at a chemical facility without knowing what chemicals are on-site or how to handle them. We have panelists who will be able to tell us what it’s like to live in the shadow of one or more of these high-risk facilities, and the difficulty communities have when it comes to preparing for and understanding the dangers those facilities present. And we have panelists who know what it’s like to work in a high-risk facility—but do not have a seat at the table when executives are making decisions about security.

Right now, it appears there are a number of relevant factors DHS is not including in its analysis. DHS does not consider whether the facility is located near a hospital, a school, a residential area, a military base, a power plant, or proximity to other chemical facilities. Any of these factors could make a facility a more attractive target, or intensify the consequences of an event to the surrounding community. If CFATS is going to be successful, we need to be sure that the program is taking all relevant factors into account to assess risk. Otherwise, we can’t trust that CFATS is truly capturing the Nation’s highest-risk facilities.

Moreover, research shows that facilities with dangerous chemicals tend to be heavily concentrated in minority and low-income areas, meaning that we may be exposing our most vulnerable populations to a disproportionate share of chemical security risks.

DHS should also do more to understand what it means to be “high-risk” and to leverage the expertise of a broader group of stakeholders. Overcoming information-sharing challenges will require us to rethink how we restrict access to certain information deemed sensitive to National security.

Although I am sensitive to the tension between security and transparency, it cannot be a barrier to better security, or used to prioritize the security of some over others.

I hope to hear your thoughts on how we might strike that balance, and I look forward to your testimony.

Mr. RICHMOND. With that, I will recognize our Ranking Member Mr. Katko.

Mr. KATKO. Thank you, Mr. Chairman. Thank you for holding this important hearing today.

Welcome to all the witnesses here.

As this is my first hearing as Ranking Member of this subcommittee, I just want to tell the Chairman that I look forward to working with him and all the Members of this subcommittee to improve our cybersecurity and protect our Nation’s critical infrastructure.

Cybersecurity is one of the great threats of our time and that’s why it’s such a high honor to be on this committee.

A long-term reauthorization of the CFATS is a crucial component of this subcommittee’s work to protect our infrastructure and in that regard I completely agree with the Chairman.

CFATS began in 2007 as a program aimed at keeping dangerous chemicals out of the hands of terrorists. Since then, it has evolved into a comprehensive, effective program that provides chemical facilities with the flexibility to implement security standards appropriate to mitigate their facility's level of risk.

CFATS must continue to evolve in small ways to ensure chemical facilities are equipped to address evolving security risks. The current program is a strong foundation upon which to build. The collaborative nature of this program between the Department of Homeland Security and chemical facilities is a key part of its value.

I believe that any changes to CFATS should preserve and encourage this inherent collaboration.

In addition, the certainty that the 4-year authorization of the 2014 bill provided was a strong signal to both DHS and industry stakeholders to invest and improve the program. Prioritizing another long-term bill is key to the success of this program.

As we look to reauthorize this program it is important that we hear from those involved and affected by the program. I appreciate GAO and DHS for providing their testimony last month on this topic and our witnesses for taking the time to be here this morning, and I thank you all for being here.

I look forward to our discussion about the CFATS program and look forward to working with my colleagues on this committee and in the Senate to continue this important program.

[The statement of Ranking Member Katko follows:]

STATEMENT OF RANKING MEMBER JOHN KATKO

MARCH 12, 2019

Mr. Chairman, thank you for holding this important hearing today. As this is my first hearing as Ranking Member of this subcommittee, I look forward to working with you, and all the Members of this subcommittee, to improve our cybersecurity and protect our Nation's critical infrastructure.

A long-term reauthorization of the Chemical Facilities Anti-Terrorism Standards Program, or CFATS, is a crucial component of this subcommittee's work to protect our critical infrastructure.

CFATS began in 2007 as a program aimed at keeping dangerous chemicals out of the hands of terrorists. Since then, it has evolved into a comprehensive, effective program that provides chemical facilities with the flexibility to implement security standards appropriate to mitigate their facility's level of risk.

CFATS must continue to evolve in small ways to ensure chemical facilities are equipped to address evolving security risks. The current program is a strong foundation upon which to build.

The collaborative nature of this program between the Department of Homeland Security and chemical facilities is a key part of its value. I believe that any changes to CFATS should preserve and encourage this collaboration.

In addition, the certainty that the 4-year authorization of the 2014 bill provided was a strong signal to both DHS and industry stakeholders to invest and improve the program. Prioritizing another long-term bill is key to the success of this program.

As we look to reauthorize this program, it is important that we hear from those involved and affected by the program. I appreciate GAO and DHS for providing their testimony last month on this topic, and our witnesses for taking time this morning.

I look forward to our discussion about the CFATS program and look forward to working with my colleagues on this committee and in the Senate to continue this important program.

Mr. KATKO. Before I yield back, Mr. Chairman, I ask for unanimous consent to submit statements for the record from the Fertilizer Institute and the Institute of Makers of Explosives.

Mr. RICHMOND. Without objection.
[The information follows:]

STATEMENT OF THE FERTILIZER INSTITUTE (TFI) AND AGRICULTURAL RETAILERS
ASSOCIATION (ARA)

MARCH 12, 2019

Thank you for holding today's hearing, entitled "Securing Our Nation's Chemical Facilities: Stakeholders Perspectives on Improving the CFATS Program."

The Chemical Facility Anti-Terrorism Standards (CFATS) program provides an important framework to ensure facilities are taking appropriate steps to be secure. The Fertilizer Institute¹ (TFI) and Agricultural Retailers Association² (ARA) represent hundreds of facilities that are subject to the CFATS program because they manufacture, store, handle, and sell certain CFATS chemicals of interest (COI), such as anhydrous ammonia, ammonium nitrate, sodium nitrate, and potassium nitrate. These fertilizers are needed to feed the crops that feed the world. Fertilizer is a key ingredient in feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all food grown around the world today is made possible through the use of fertilizer.

TFI and ARA represent companies that include large billion-dollar production facilities and thousands of small agriculture retailers, the latter of whom interact directly with American farmers. Agricultural retail facilities provide essential agronomic services and sell a variety of products to farmers, including fertilizer. Overall, the U.S. fertilizer industry generates more than \$154 billion in economic benefit annually and provides approximately 89,000 direct jobs and 406,000 indirect jobs for a total of 495,000 U.S. jobs.

DHS has estimated that over 3,500 facilities are presently subject to the CFATS program. TFI and ARA estimate that this includes as many as 1,500 fertilizer manufacturers and agricultural retail facilities, with retail facilities accounting for the overwhelming majority. The retail facilities are generally located in rural communities, interface directly with farmers and often have just 5–10 employees at a location.

Under the CFATS program, the Department of Homeland Security identifies chemicals which present potential security concerns. As previously mentioned, included on this list are a few fertilizers, including ammonia, ammonium nitrate, sodium nitrate, and potassium nitrate.

The safe and secure handling of fertilizers is a high priority for TFI, ARA, and our members. We actively participate in and sponsor numerous safety initiatives, including ResponsibleAg, TRANSCAER, and the Fertilizer Safety and Health Partners Alliance with the Occupational Safety and Health Administration (OSHA).

ResponsibleAg—which is a joint effort between TFI and ARA—exists to enhance compliance by agricultural retailers with a variety of Federal regulations, including those administered by the Department of Homeland Security's CFATS program. Each participating facility receives a Federal regulatory compliance assessment. Any noted compliance deficiencies must be corrected by the facility before it may be designated as certified under the program. The assessments are then conducted every 3 years.

ResponsibleAg is a voluntary, industry-driven initiative and most of the retail agribusiness industry participated in its formation. Since its creation over 4 years ago, approximately one-third of the industry has signed up to participate in the ResponsibleAg program. To date, over 2,568 facilities are registered with the ResponsibleAg program, over 1,365 of these facilities have been certified, 207 audi-

¹ TFI represents the Nation's fertilizer industry, which includes companies that are engaged in all aspects of the fertilizer supply chain. TFI's full-time staff, based in Washington, DC, serves its members through legislative, educational, technical, economic information, and public communication programs. TFI's members play a key role in producing and distributing vital crop nutrients, such as nitrogen, phosphorus, and potassium. These products are used to replenish soils throughout the United States and elsewhere to facilitate the production of healthy and abundant supplies of food, fiber, and fuel. Fertilizer is a key ingredient in feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all food grown around the world today is made possible through the use of fertilizer.

² ARA is a not-for-profit trade association that represents the Nation's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include: Fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all 50 States and range in size from small family held businesses or farmer cooperatives to large companies with multiple outlets.

tors have been trained, and almost 2,661 audits have been completed. Approximately 50,000 risks have been identified and corrected at facilities across the Nation. We are very proud of this industry-led compliance program.

In the context of the CFATS program, ResponsibleAg ensures facilities are taking the necessary steps to be secure. We believe it is appropriate for industry stewardship programs—such as ResponsibleAg, which is making positive contributions to the CFATS program—to be recognized in a reauthorization bill.

As Congress works to reauthorize the CFATS program, we have the following recommendations.

- Recognition of industry stewardship programs.
- Maintain CFATS focus on-site security.
- Enhance transparency between DHS and the regulated community. For example, DHS recently completed a process for reclassifying facilities. As a result, some of our member facilities were reclassified into a higher-risk classification. What was not clear to some of our members was the underlying basis for the new categorizations. We believe this should be a more transparent effort between DHS and individual facilities, allowing for a more thorough discussion of the security risks posed by individual facilities. This could ultimately bolster the quality of site security plans.
- Any updates or modifications to Appendix A should be subject to a comprehensive notice and comment rule making. Another example of the need for increased transparency is the way DHS utilizes Appendix A, the list of chemicals potentially subject to the CFATS program. We have encountered some confusing rule-making interpretations, particularly how the program addresses ammonium nitrate and ammonium nitrate mixtures. The uncertainty regarding which mixtures are or are not subject to CFATS has been the subject of many discussions, but has not been resolved to the satisfaction of our members, owing to the limited explanations received from DHS.
- Facility owner and operators should retain discretion to determine how site security information is shared.
- The personnel surety program (PSP) should not be expanded to risk groups Tier 3 and Tier 4. This would be an exponential expansion of the program from the less than 200 facilities presently covered to more than 3,500. TFI and ARA recommend that Congress consider making PSP optional for Tier 3 and Tier 4.

Thank you again for holding this hearing and for the opportunity to submit this statement. TFI and ARA strongly support efforts to enact a long-term reauthorization of the CFATS program, and look forward to working with the you.

STATEMENT OF THE INSTITUTE OF MAKERS OF EXPLOSIVES

March 12, 2019.

The Honorable BENNIE THOMPSON,
Chairman, Committee on Homeland Security, U.S. House of Representatives, Washington, DC 20515.

The Honorable MIKE ROGERS,
Ranking Member, Committee on Homeland Security, U.S. House of Representatives, Washington, DC 20515.

DEAR CHAIRMAN THOMPSON AND RANKING MEMBER ROGERS: On behalf of the Institute of Makers of Explosives (IME) and the commercial explosives industry, I respectfully submit the following information to provide you a clearer picture of the duplicative burden our industry faces from Department of Homeland Security's (OHS) regulations. First, however, I would like to thank you for your attention to reauthorizing the OHS Chemical Facility Anti-Terrorism Standards (CFATS) program and your efforts to preserve and improve this pivotal security program.

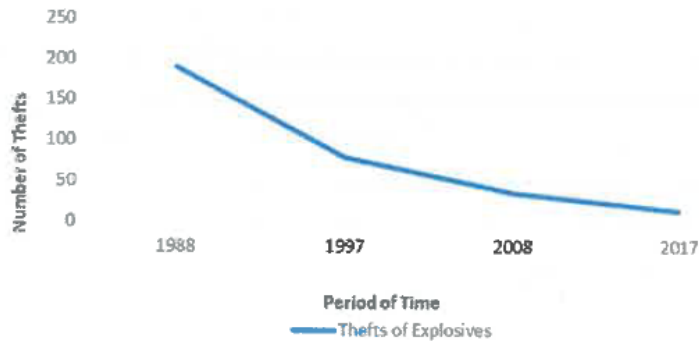
Founded in 1913, IME is the safety and security association for the commercial explosives industry, a charge we do not take lightly, as evidenced by the industry's excellent track record. Our industry's dedication to continual improvement, in conjunction with the regulations set forth by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), has resulted in an ever-increasing culture of security that has seen the use of regulated commercial explosives as components of improvised explosives devices in bombing incidents remain below 2 percent for the last 25 years, according to available ATF Explosives Incident Reports (EIRs). IME takes an active role in promoting responsible practices through the full life cycle of commercial explosives and regularly publishes, updates, and distributes free of charge, our series of Safety Library Publications (SLPs), including SLP 27 Security in Manufacturing, Transportation, Storage and Use of Commercial Explosives, to the benefit of our workers and the general public.

On February 27, 2019, the committee held the first oversight hearing of the 116th Congress on the CFATS program and took concrete steps toward ensuring the security of our nation's chemical facilities. IME, along with our partners in the CFATS Coalition, strongly supports the reauthorization of the program and believes that a bi-partisan and bi-cameral reauthorization process will result in a robust program that enhances national security while reducing regulatory uncertainty and undue burden to industry.

During the hearing, David Wulf, Director of DHS' Infrastructure Security Compliance Division, was asked about OHS regulations that resulted in duplicative regulation on industry germane to the CFATS program. IME believes that while Director Wulf's answer that CFATS is "in all cases bringing something additional to the table" was made in good faith, it neglected to address the unique and superfluous impact of the program on materials that have been successfully regulated by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) for nearly 50 years, namely commercial explosives.

In fact, contrary to what one would expect from a new regulatory program, the commercial explosives industry did not experience a significant drop in thefts because of CFATS requirements. Instead, data obtained from the ATF's U.S. Bomb Data Center (USBDC) reveals a continuation of a trendline started in the 1980's that has seen thefts of commercial explosives drop from 191 thefts in 1988 to 15 in 2017, as shown in Figure 1 (right). While IME respects DHS' position that CFATS is a perceived value add, we question whether they can provide supporting evidence to quantify the magnitude of this value.

Figure 1 Thefts of Explosives from 1988 to 2017



The impressive and consistent progress by the industry in reducing thefts validates not only the effective regulation of commercial explosives security by ATF for nearly 5 decades, but also the industry's commitment to continually improving security. On this point, after the tragic events of 9/11, IME members worked directly with Congress to draft the Safe Explosives Act of 2002, which implemented background checks for all persons receiving explosives, restricted the availability of explosives to prohibited persons, strengthened licensing and permitting requirements and aided in the fight against terrorism. The industry proudly works with the ATF to improve security wherever possible and is pleased to see the results of this partnership and on-going commitment to security of commercial explosives.

While the duplicative CFATS program may not have significantly improved the security of our previously regulated industry, it has significantly impacted, in a negative way, industry resources. The commercial explosives industry has approximately 30 facilities throughout the country that are regulated under CFATS. The compliance costs to these sites for 2018 alone reached over \$1.7 million. There is no data that shows that these costs required to comply with CFATS have resulted in an increase in security over the course of the program. The CFATS program may help the broader chemical sector improve security, but the evidence shows that ATF, in concert with the commercial explosives industry's best practices, has had increasing success in mitigating explosives thefts since long before 2007 and the implementation of CFATS.

IME respectfully disagrees with Director Wulf's assertion that the program is "in all cases bringing something additional to the table" and would like DHS to quantify their statement. The inability of DHS to provide metrics to substantiate the value of CFATS to the previously regulated explosives industry coupled with the USBDC's comprehensive data to the contrary, makes an exemption for ATF-regulated materials to the CFATS program a clear opportunity to make impactful and sensible reform without having an adverse effect on national security.

As a matter of fact, Director Wulf did, during the 115th Congress, indicate that the industry's record of security is appropriate to safeguard commercial explosives from terrorists. On June 12, 2018, during a Senate Homeland Security & Governmental Affairs Committee round table—Examining the Chemical Facility Anti-Terrorism Standards Program, when asked about an exemption for facilities regulated by ATF, Wulf responded that he "would not lose sleep if they exited the program. . . ." Forty-eight hours later, Director Wulf reinforced this position when testifying before the House Energy & Commerce Subcommittee on the Environment at a hearing titled The Chemical Facilities Anti-Terrorism Standards Program (CFATS)—A Progress Report. In response to a similar question from Congressman Jeff Duncan, Director Wulf reiterated that explosives are "among the things that I would not lose too much sleep over exiting the program". This is, in DHS' own words, a testament to the effectiveness of ATF regulation and industry stewardship, and soundly reinforces the feasibility of an exemption for commercial explosives in the CFATS program.

For the reasons explained above, IME requests an exemption for explosive materials regulated by the Bureau of ATF from the duplicative CFATS regulations be included in the next CFATS reauthorization bill the Committee drafts. Specifically, Congress should amend 6 U.S.C. Chapter 1, Subchapter XVI, Chemical Facility Anti-Terrorism Standards, Section 621(4) to include as an excluded facility "(F) a business premises where explosive materials are manufactured, imported, stored or distributed subject to the regulation of the Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives, under 18 U.S.C. Chapter 40 and 27 CFR Part 555.

If I can be of any assistance or can provide data that will help you make a decision on this issue, please contact me[.]

Respectfully,

JOHN BOLING,
Vice President of Government Affairs.

Mr. KATKO. With that, I yield back.

Mr. RICHMOND. I will now recognize the Ranking Member of the full Homeland Security Committee, Mr. Rogers.

Mr. ROGERS. Thank you, Mr. Chairman.

As you have heard the Chairman and Ranking Member emphasize, CFATS is a critically important country—program to our country. In the past, Republicans and Democrats have worked together to reauthorize CFATS and make the program—with improvements.

I hope that tradition of bipartisanship on this issue can continue. I believe that with bipartisan, bicameral process we can quickly move a long-term reauthorization of CFATS to the President's desk. I look forward to working collaboratively with the Majority and the Senate and the stakeholders and DHS to reauthorize the CFATS program.

I look forward also to this hearing and today's witnesses.

Mr. ROGERS. With that, I yield back, Mr. Chairman.

Mr. RICHMOND. Thank you to the Ranking Member of the full committee. Other Members are reminded that statements may be submitted for the record.

[The statements of Chairman Thompson and Honorable Jackson Lee follow:]

STATEMENT OF CHAIRMAN BENNIE G. THOMPSON

MARCH 12, 2019

The perspectives we will hear today are often underrepresented in conversations about how to improve this important anti-terrorism program, and I am proud we have given them a seat at the table.

Last month, the full committee received testimony from both the Department of Homeland Security and the Government Accountability Office to kick off our CFATS reauthorization efforts. The conversations at that hearing revealed 3 on-going challenges.

No. 1: First responders still do not have the information they need to respond safely and effectively to an incident at a chemical facility. As a former volunteer fire fighter who fought to include first responder information access provisions in the CFATS Act of 2014, I am disturbed that gap still exists nearly 5 years after the West, Texas disaster.

No. 2: DHS is not fully leveraging the data and lessons learned as facilities have tiered down or out of the CFATS program. DHS should use the information it collects and the experience of the regulated community to develop voluntary best practices to further reduce risk.

Finally: The CFATS risk-tiering methodology does not appear to take into consideration the full spectrum of factors that should inform a facility's risk profile. For example, the CFATS' tiering methodology rigidly focuses on loss of life when evaluating the consequences of a release at a chemical facility. It fails to consider on-going health consequences, whether the facility is located next door to an elementary school or a nursing home, or whether neighboring structures might make the facility a more desirable terrorist target.

DHS's failure to integrate this kind of information into its tiering methodology is particularly troubling because communities along a chemical facility's fence line tend to be poorer and have first responders who may not be well-resourced to respond to chemical facility disaster. I will be interested in hearing our witnesses' perspectives on these important points today.

Another important priority I am glad we will have the opportunity to discuss today is facility engagement with its workforce. Despite provisions in the CFATS Act of 2014 requiring employee engagement on-site security plans, I understand that the engagement Congress envisioned is not happening uniformly across the country. In some cases, it is not happening because employees are unaware that facilities are covered under CFATS in the first place. Facility employees are important force multipliers in keeping chemical facilities secure. And in the event of a disaster, facility employees are likely the people who will provide first responders with situational awareness critical to the response.

In the past, this program has enjoyed broad, bipartisan support on and off the Hill. Every Secretary of Homeland Security from Secretary Chertoff to Secretary Nielsen has warned of threats posed by chemical weapons and has supported the CFATS program to make our communities safer and more secure.

I will remind everyone here that we have only until April 2020 to reauthorize this important program. As Chairman, I am committed to getting a CFATS reauthorization package across the finish line. But as I made clear at the CFATS hearing last month, reauthorization will not become an excuse to water down the program.

I look forward to working with my colleagues to get CFATS reauthorization done, and I look forward to the testimony from our witnesses today.

STATEMENT OF HONORABLE SHEILA JACKSON LEE

MARCH 12, 2019

Chairman Bennie G. Thompson, and Ranking Member Mike Rogers, for holding today's hearing on "Securing Our Nation's Chemical Facilities: Stakeholder Perspectives on Improving the CFATS Program," which affords the committee the opportunity to hear from non-Government chemical facility security stakeholders.

Today's hearing will give Members an opportunity to hear from non-Government witnesses in advance of CFATS reauthorization in April 2020.

I thank today's witnesses for their testimony before this subcommittee:

- Major General Randy E. Manner (Retired), U.S. Army, former acting director of the Defense Threat Reduction Agency;
- Dr. Michael Wilson, national director of occupational and environmental health program, Blue Green Alliance;

- John Morawetz, health and safety representative, International Chemical Workers Union Council (ICWUC);
- Pamela Nixon, president, People Concerned About Chemical Safety (PCACS); and
- Kirsten Meskill, director of corporate security, BASF (Minority witness).

The CFATS program was established in response to warnings from security experts, including former Homeland Security Secretary Michael Chertoff, of credible terrorist threats to U.S. chemical plants.

As a stop-gap measure Congress added the CFATS program to a fiscal year 2007 appropriations rider, which granted DHS temporary authority to run the program.

DHS was authorized to administer the CFATS regulatory program that required high-risk chemical plant owners and operators to adhere to a set of security standards and adopt preventative measures to address on-site vulnerabilities.

National security experts, former President Obama, and every Secretary of Homeland Security from Chertoff to Nielsen have warned that facilities with large amounts of hazardous chemicals are rich targets for terrorists, who could steal, release, or exploit such chemicals to inflict harm.

Keeping CFATS linked to the appropriations cycle meant that the NPPD Office of Infrastructure Protection's Infrastructure Security Compliance Division (ISCD), has struggled to make strategic investments, retain staff, and develop policies to sustain the program.

Overall, CFATS has made the country safer. Most covered facilities are implementing security measures to reduce risk, DHS is working more effectively with interagency partners like the EPA and OSHA, and the number of high-risk facilities has dropped by half—from over 7,000 in 2007 to roughly 3,300 today.

In 2011, a leaked internal memo prompted a series of Congressional hearings and investigations when it revealed major issues in ISCD's ability to hire and train personnel, process facility applications, and carry out timely inspections.

Congressional inaction was upended by the April 2013, fertilizer plant explosion in West, Texas that killed 15 and wounded over 160 others—many of the dead were first responders.

The U.S. Chemical Safety and Hazard Investigation Board (CSB) investigation into the West, Texas incident revealed gaps in Federal, State, and local regulations about the handling and storing of hazardous materials.

DHS had no knowledge of the facility, despite the fact that the facility had publicly reported threshold quantities of CFATS chemicals of interest to other Federal and State regulators, including the EPA's Risk Management Program (RMP).

On December 18, 2014, the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (CFATS Act of 2014) authorized the CFATS program for 4 years.

This law gave DHS the guidance and stability it needed to plan for the program's future by investing in better tools, personnel, and policy development efforts.

Since 2014, ISCD has streamlined the facility submissions process, eliminated the backlog of unapproved SSPs, and performed compliance inspections for most of the regulated population.

As a result, the majority of CFATS facilities have now moved from planning security measures to actually implementing them.

DHS has reported that since the inception of the CFATS program, there has been a dramatic reduction in the overall number of "high-risk" facilities throughout the country.

This shift suggests that CFATS has actually been a driver in encouraging facilities to voluntarily reduce or remove chemical risks.

The issue of great concern to me is the placement of chemical facilities in areas that may be impacted by severe weather events, such as was the case with Hurricane Harvey which struck the Houston area in 2017.

During the storm and the subsequent flooding of an organic peroxides factory, in the Houston-area operated by Arkema, Inc., in a facility located in Crosby, Texas, experienced a power outage and inundation by flood water.

Organic peroxides are reactive chemicals and can be dangerous if mistreated or mishandled.

Proper storage is critical to the safe handling and use of organic peroxides, particularly those requiring controlled temperature storage.

Storage should be between below 100° Fahrenheit however the RECOMMENDED storage temperature is below 86° Fahrenheit and if this is not maintained, uncontrolled decomposition can occur.

The temperature controls for the organic peroxides kept by Arkema, Inc., at the time of Hurricane Harvey lost its temperature control systems, which resulted in a major leak and explosions.

The Arkema Inc.'s organic peroxide facility was constructed on a 100-year flood plain in 2007.

But its emergency response plan, revised as recently as 2016, offers little direction for containing flood waters.

A copy of the plan reviewed by the Associated Press says simply that "care shall be taken to be sure water is kept out" of buildings.

A log Arkema kept of workers' efforts to safeguard the plant did not mention any effort to relocate its organic peroxides given the forecast anticipated over 50 inches of rain.

The U.S. Chemical Safety Board determined that Arkema's facility was not prepared for such heavy rainfall.

Given that climate change has and will continue to have unpredictable episodes of extreme weather events, it is important that plans for chemical facilities take into consideration conditions that would pose a risk to the stability of products or processes.

The CFATS Act of 2014 requires facilities with threshold quantities of "chemicals of interest" (COI) to register with DHS and use an on-line tool to provide information on chemical holdings, processes, and other conditions on-site (referred to as a Top Screen).

If DHS determines that the facility "presents a high level of security risk," the facility must perform a Security Vulnerability Assessment and develop a Site Security Plan (SSP) that addresses vulnerabilities in alignment with 18 risk-based performance standards.

I plan to reintroduce H.R. 68, from the 113th Congress that provides that no Federal funds may be used by the Secretary of Homeland Security to approve a site security plan for a chemical facility, unless the facility meets or exceeds security standards and requirements to protect the facility against acts of terrorism and incorporate in their plan coordination and engagement of local and State first responders.

I want to work with the committee on steps that must be taken to limit risks identified by the Arkema Inc., experience when CFATS reauthorization is taken up by this committee.

I will pursue several measures to address CFATS that include:

- Reintroduction of H.R. 68, a bill to provide for the evaluation and adoption of proven safety measures that provides for quantifiable data on the capacity of local first responders to react and respond to worst-case scenarios of Risk Management Planning.
- Introduction of a bill to evaluate the efficacy and effectiveness of the safety measure of "sheltering in place" with regard to civilian populations living in close proximity to chemical facilities, storage, or transport capacity.
- Finally, I plan to introduce a measure to assess environmental risk factors that can impact the safety and stability of chemicals or chemical processing including an assessment of proven safety measures such as alternatives assessments that evaluate if Hydrofluoric acid is replaced with Ionic Liquids or Solid Acids as a catalyst to report on how this change would affect toxicity or flammability risks.

I look forward to hearing from today's witnesses on their views of the Chemical Facility Anti-Terrorism Standards Program.

Mr. Chair, I yield back.

Mr. RICHMOND. I now welcome our panel of witnesses. Our first witness, Dr. Michael Wilson, is the national director for Occupational and Environmental Health at the BlueGreen Alliance. Prior to that, he served as the chief scientist with the California Department of Industrial Relations and he has also spent 13 years working as a first responder.

Next, we will hear from John Morawetz, who is here on behalf of the International Chemical Workers Union Council of the United Food and Commercial Workers International Union, which represents 20,000 chemical workers in 32 States.

Our third witness, Ms. Pamela Nixon, is the president of People Concerned About Chemical Safety, an organization that advocates for individuals and families of the Kanawha Valley Community of West Virginia, which is home to multiple high-risk CFATS facilities.

Finally, we have Kirsten Meskill—I hope I pronounced that right—the director of Corporate Security for BASF Corporation, who is here testifying on behalf of the American Chemical Council, who also has a facility in the Second Congressional District of Louisiana.

So without objection, the witnesses' full statements will be inserted into the record. I ask—now ask each witness to summarize his or her statement for 5 minutes beginning with Dr. Wilson.

STATEMENT OF MICHAEL P. WILSON, PHD, MPH, NATIONAL DIRECTOR, OCCUPATIONAL AND ENVIRONMENT HEALTH PROGRAM, BLUEGREEN ALLIANCE

Mr. WILSON. Thank you, Chairman Richmond, Ranking Member Katko, and distinguished Members. My name is Mike Wilson. I am the national director for occupational and environmental health of the BlueGreen Alliance.

We are a national coalition of 14 labor unions and environmental organizations that has been working together for over a decade to build our Nation's clean energy economy in ways that also create good jobs with family supporting wages and safe working conditions.

On behalf of the BlueGreen Alliance and the millions of members and supporters our partners represent, I thank you for inviting me today.

We believe CFATS should be reauthorized, but in doing so we urge Congress to take the opportunity to modernize it by strengthening its requirements in three areas: Emergency response, worker participation, and risk reduction. I will touch on each of these briefly.

In the area of emergency response, CFATS gives authority to the Secretary to provide information to local and governments, and I quote, "to help ensure that first responders are properly prepared and provided with the situational awareness needed to respond to security incidents at covered chemical facilities."

This is useful but it's not sufficient if the objective is to give firefighters the ability to respond effectively to an industrial chemical incident. As we know from the experience of the Emergency Planning and Community Right-to-Know Act or EPCRA, firefighters need much more than chemical information.

They need to talk to the people who run the facilities in their jurisdiction. They need to get inside those facilities regularly to see how chemicals are stored and processed in order to imagine what could go wrong. They need to train side-by-side with facility operators.

This is pre-fire planning and it's crucial to a safe and effective response. It requires an on-going commitment by industry. That commitment, however, needs to be explicitly required under CFATS, more so than what is currently recommended within the non-mandatory risk-based performance standards.

Because the fact is that except in an emergency, many facilities are reluctant to invite firefighters and other responders in to look around their property, let alone to pull out their equipment and conduct training.

I speak to this based on my own 13 years of work as a professional firefighter, EMT, and paramedic during which time I responded to about 10,000 emergency calls, including to industrial chemical releases and fires. I can tell you that to do their job, firefighters need both information and access and they are like—they are more likely to get these if facilities are required to provide them on a routine basis under CFATS.

Our second recommendation pertains to the role of front-line workers in site security. The existing CFATS language on employee input is helpful but too generic to be effective. Depending on the inclinations of the facility, the term employee input can mean everything from a manager checking the box to get worker sign-off on a fully executed site security plan or it could mean a real seat for workers at management's decision-making table.

In any case, the right of workers to participate meaningfully in site security decision making needs to be explicit in CFATS because just as they are reluctant to give routine access to firefighters, many facilities are reluctant to seriously involve front-line workers in decision making.

Yet, industry itself recognizes that workers have a great deal of knowledge and experience to contribute. We suggest that you consider language from the 2017 process safety management regulations in California which require oil refineries to involve workers throughout all phases of process safety decision making.

If adopted by CFATS, this type of language will help ensure that the insights of front-line workers are genuinely integrated into site security.

Finally, our third recommendation pertains to risk reduction. CFATS is based on a risk management framework which assumes that dangerous chemicals used at a facility cannot be reduced or eliminated. So they have to be surrounded by layers of protection.

Industry is far more innovative and clever than this, of course, and DHS has reported that under CFATS thousands of facilities have voluntarily taken action to reduce their use of dangerous chemicals by consolidating them from multiple sites into one or two sites, replacing a hazardous chemical with a less hazardous one, reducing the total quantity held on-site or switching to a less concentrated form.

These approaches can make a facility much safer and they have the effect of reducing the desirability of the facility as a target of opportunity. CFATS could do more to encourage or require facilities to implement these types of approaches and we encourage you to make these changes during reauthorization.

In closing, we know from the record and from the excellent work of the Chemical Safety Board that a major industrial chemical incident can devastate the lives of workers, communities, and entire communities. We urge you to use the reauthorization of CFATS as an opportunity to strengthen it in the ways we have described.

So thank you, and I am glad to answer any questions you might have.

[The prepared statement of Mr. Wilson follows:]

PREPARED STATEMENT OF MICHAEL P. WILSON

MARCH 12, 2019

Thank you Chairman Richmond, Ranking Member Katko, and distinguished Members. My name is Michael Wilson, and I am the national director for occupational and environmental health at the BlueGreen Alliance. On behalf of my organization, our national labor and environmental partners, and the millions of members and supporters they represent, I want to thank you for convening the hearing today and for your continuing interest in chemical security.

The BlueGreen Alliance's 14 member organizations represent thousands of workers in industrial facilities, as well as teachers, health care workers, construction workers, scientists, and citizens in communities across the country. Each one of our partners' members wants to come home at the end of the day and live in a safe community.

As you contemplate changes to the Chemical Facility Anti-terrorism Standards (CFATS), we urge you to consider revisions that would motivate and require companies to meet three key objectives:

- Ensure a safe, effective emergency response to a major industrial chemical incident;
- Provide for meaningful worker participation in security planning and decision making; and,
- Implement risk reduction measures to limit the attractiveness of chemical facilities as targets of opportunity.

I. CFATS MEETS A CRITICAL NEED IN PROTECTING COMMUNITIES AND WORKERS

In the context of CFATS, the stakes for communities and workers could not be higher. When I was serving as chief scientist in the California Department of Industrial Relations (DIR), I worked with U.S. EPA Region IX on strategies to prioritize the risks posed by chemical facilities in our State. One of the ways we did this was by looking at the "worst-case scenario" numbers that facilities submitted to EPA under the Risk Management Program (RMP) requirements. These numbers are estimates of the potential casualties that could result in the event of a catastrophic failure and loss of chemical containment at a facility.

We found a concerning number of chemical facilities in California that reported potential casualties in the hundreds of thousands and above. These numbers resulted from a combination of factors, including:

- The health hazards and physical properties of the chemicals used at the facility;
- The population density surrounding the facility; and,
- Local weather patterns, which might cause chemical vapors released from a facility to travel into nearby neighborhoods and beyond.

I invite you to envision the implications, for example, of a major release of chlorine, which expands in air about 400 times when it's released from its container. Chlorine vapors are 3 to 4 times heavier than air, so they're capable of traveling close to the ground for miles from their point of release. Chlorine vapors convert to acid when inhaled into the lungs, which can produce pulmonary edema and even death at concentrations greater than 400 parts per million in air, which is the equivalent of 0.04 percent chlorine in air. Children are more vulnerable to the effects of pulmonary edema due to their smaller airways.

As with chlorine, some of the most dangerous chemicals can produce life-threatening health effects even at very low exposure concentrations.

II. CASE STUDY: THE 2015 TORRANCE, CALIFORNIA REFINERY EXPLOSION ENDANGERED THE LIVES OF THOUSANDS OF RESIDENTS

We recently experienced a near-miss in California from a chemical whose effects are somewhat similar to those of chlorine. In 2015, an explosion occurred in the electrostatic precipitator at the oil refinery in the city of Torrance, near Los Angeles. The explosion sent tons of industrial dust into Torrance up to a mile away from the refinery, and the heavy metal debris that was blown off of the structure nearly struck a tank that contained tens of thousands of pounds of hydrofluoric acid (HF).

Like chlorine, HF produces death through inhalation and pulmonary edema. The former chair of the U.S. Chemical Safety Board, Vanessa Sutherland, noted in the CSB press release related to this incident that "hydrofluoric acid can pose a severe hazard to the population and environment if a release occurs. After HF acid vaporizes it condenses into small droplets that form a dense low-lying cloud that will travel along the ground for several miles and can cause severe damage to the res-

piratory system, skin, and bones of those who are exposed, potentially resulting in death.”¹

Given that 330,000 residents, 71 schools, and 8 hospitals are located within 3 miles of the refinery, the CSB concluded that the release had “the potential to cause serious injury or death to many community members.”² I invite you to contemplate thinking of Torrance as your place of residence in light of that statement.

III. GAO: MANY COMPANIES HAVE NOT COMPLIED WITH THE REQUIREMENTS OF CFATS

While most companies no doubt operate their facilities responsibly, it’s also reasonable to expect that companies might find it difficult—or at least time- and resource-intensive—to establish effective security measures that would protect against a deliberate act of industrial terrorism. Facility managers already face enormous demands to ensure that product moves safely in and out of the plant, so perhaps it’s not a surprise that past GAO reports on the implementation of CFATS have found issues with facilities mis-reporting information to DHS (e.g., their “Distance of Concern”) or failing to report to DHS at all.³

The GAO did not speak directly to the notion of fraudulent reporting, but it highlighted the importance of supporting CFATS implementation with more direct oversight by DHS, including with enforcement actions and penalties as a matter of routine practice.

IV. CONGRESS SHOULD MAKE CHANGES TO CFATS IN ORDER TO ACHIEVE AT LEAST THREE OBJECTIVES

I will now return to the 3 objectives noted above that we believe Congress should seek to achieve in revising CFATS:

Objective No. 1: Ensure a safe, effective emergency response to a major industrial chemical incident

In the area of emergency planning and response, CFATS must ensure that facilities have put in place—and routinely test—an effective emergency response plan for a major chemical incident.

I’m familiar with the emergency response arena because I worked for 13 years as a professional firefighter, paramedic, and EMT, during which time I responded to about 10,000 emergency calls, including to industrial facilities with chemical releases and fires. I also served with the U.S. Coast Guard Reserve for 7 years, and I was rostered for deployment for 5 years with FEMA Task Force 4, based out of the Oakland Fire Department, as part of FEMA’s National Response System.

In responding to industrial incidents in the fire service, we typically had very little information about chemicals inside the building. There was a lot of uncertainty, and I don’t think we fully appreciated how little we understood about the potential risks we were facing at these incidents. At one industrial fire that occurred late at night, we were preparing to force open a door when an explosion occurred inside the building and a 55-gallon drum burst through the roof, landing in a nearby parking lot.

On another occasion, a routine-sounding dispatch came in for “a worker experiencing chest pain” inside a vegetable processing plant, so when we arrived, we didn’t feel the need to don our self-contained breathing apparatus (SCBA) to enter the building. Once we were deep inside the plant, however, we found that there were in fact several workers experiencing shortness of breath, chest pain, and nausea from a chlorine gas leak. We were no better protected than the workers we were attempting to help.

Planning and responding effectively to an industrial chemical release is more complicated than it might sound. It requires much more than what is currently required under CFATS, which simply gives authority to the Secretary to share facility infor-

¹U.S. Chemical Safety and Hazard Investigation Board (CSB), *U.S. Chemical Safety Board Finds Multiple Safety Deficiencies Led to February 2015 Explosion and Serious Near Miss at the Exxon Mobil Refinery in Torrance, California*. January 13, 2016. Available online: <https://www.csb.gov/us-chemical-safety-board-finds-multiple-safety-deficiencies-led-to-february-2015-explosion-and-serious-near-miss-at-the-exxon-mobil-refinery-in-torrance-california/>.

²Ibid.

³U.S. Government Accountability Office (GAO), Nathan Anderson, Acting Director, Homeland Security and Justice, Testimony before the Committee on Homeland Security, House of Representatives. *Critical infrastructure protection: Progress and Challenges in DHS’s Management of Its Chemical Facility Security Program*. GAO-19-402T. February 27, 2019. Available on-line: <https://www.gao.gov/assets/700/697117.pdf>.

mation with first responders in order to improve their “situational awareness” in responding to a chemical release.⁴

While this CFATS requirement is marginally useful, it is far from sufficient. Even if the information is provided by facilities to the Secretary and transmitted to fire departments, it’s difficult for firefighters to apply the information in actual response planning. The information—in and of itself—will be of limited value without additional facility-specific information, coordination, and training. For fire departments, chemical information about a facility is essential, but it is not enough to execute a safe and effective emergency response.

To be useful to firefighters, information needs to be facility-specific and continuously updated, and it needs to be part of a broader coordination, planning, and training effort between the facility and fire department. Firefighters need to train regularly with the facility in order to be capable of answering several questions in the event of a major chemical incident, including the following:

- The identity of the chemical involved in the release;
- The size of the release;
- The hazards and physical properties of the chemical;
- The physical lay-out of the plant, with points of access and egress;
- The plume size, behavior, and direction;
- The possible health consequences of the release for the public;
- Safe operating distances for firefighters and evacuation distances for the public;
- Suppression, containment, and extinguishment practices;
- The potential for escalation to nearby vessels or piping;
- Appropriate personal protective equipment; and
- On-scene conditions, including actions taken by the facility to contain and mitigate the release, numbers of persons injured or trapped, and other associated hazards.

These types of questions can only be answered by knowledge and experience gained through:

- Curated, facility-specific chemical information, as well as information about the facility lay-out and structure;
- Regular planning and training with the facility;
- Appropriately-trained hazardous materials personnel;
- Proper personal protective equipment;
- Effective mutual aid systems; and
- Continuous on-plume modeling, evacuation management, and hazardous materials operations.

In short, an effective response requires much more than the transmission of chemical information to responders, as currently required—albeit indirectly—under CFATS.

In practice, the emergency planning and response aspects of EPCRA and CFATS are similarly limited.

CFATS appears to be following the model of the Federal Emergency Planning and Community Right-to-Know Act (EPCRA), which has been only marginally successful in improving emergency planning and response to major industrial incidents.

Congress passed EPCRA in 1986 in response to the Bhopal disaster and other U.S. industrial chemical accidents. It consists of three major elements: The Toxics Release Inventory (TRI); an emergency planning provision; and a citizen suit provision.

Under its emergency planning provisions, EPCRA requires facilities to provide chemical information to fire departments through Local Emergency Planning Committees (LEPCs) and State Emergency Response Commissions (SERCs)—or directly to fire departments—either by submitting copies of Material Safety Data Sheets (MSDS) or by providing a list of chemicals that are used and stored on-site. EPCRA requires the LEPCs to update this information annually, and to develop annual emergency response plans to be used during a major chemical incident. It requires facilities (under section 311) to submit an annual Emergency and Hazardous Chemical Inventory Form with information on how and where chemicals are stored on-site.⁵

⁴Public Law 113–254, Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, Title XXI—Chemical Facility Anti-Terrorism Standards. 6 USC 621, Section 2103, Protection and Sharing of Information, at (b) *Sharing of Information with States and Local Governments*, and at (c) *Sharing of Information with First Responders*. December 18, 2014. Available on-line: <https://www.govinfo.gov/app/details/PLAW-113publ254>.

⁵U.S. Environmental Protection Agency (EPA), “Emergency Planning and Community Right-to-Know Act (EPCRA) Hazardous Chemical Inventory Reporting Requirements.” Available on-line: <https://www.epa.gov/epcra/epcra-sections-311-312>.

EPCRA certainly improved industry transparency with regard to the production and release of hazardous chemicals, and it represents a step forward for emergency planning and response. Its contributions to improving actual emergency operations, however, have been constrained by a lack of resources on the part of LEPCs, limited capacity among fire departments to assimilate and act on chemical information, an outdated informational architecture and uneven enforcement by EPA.⁶

EPCRA's reliance on LEPCs is particularly problematic because the LEPCs are voluntary entities that in the great majority of cases simply do not have the capacity to receive and organize complex industrial chemical information and update and distribute emergency planning documents. I witnessed this when I served on the State Emergency Response Commission (SERC) in California, where I heard reports from the volunteer LEPC representatives and heard their complaints about the objectives they were expected to meet—without the resources necessary for doing so.

For fire departments, raw chemical information is of limited utility. Fire departments are not well-suited to organizing, assimilating, and acting on raw chemical hazard information provided by facilities. To be useful, chemical information from facilities—at a minimum—needs to be curated and formatted, and tied to facility-specific information, as noted above.

The CFATS emergency planning and response provisions could be significantly improved.

The U.S. Chemical Safety and Hazard Investigation Board (CSB) identified emergency response deficiencies as a contributor to at least 14 major industrial chemical incidents. Most of the deficiencies occurred in the following areas:

- Training for emergency responders, including hazardous materials training;
- Emergency planning and community response plans and teams;
- Use of community notification systems;
- Use of an incident command system and the National Incident Management System;
- Conducting emergency response exercises;
- Sharing of information among facilities, emergency responders, and the community; and
- Communicating during emergencies.⁷

Based on these findings, CFATS could improve its emergency planning and response provisions by requiring facilities to:

- Transmit specific types of chemical and facility information to fire departments and other public response agencies;
- Conduct regular planning meetings and training exercises with fire departments and other agencies;
- Conduct an assessment to understand the capacity of fire departments and other agencies to respond effectively to a major chemical incident; and
- Implement corrective actions to address gaps identified in the assessment.

These requirements would provide a foundation for improving the capacity of local fire departments and other agencies to respond effectively to a major chemical incident, intentional or otherwise.

Alongside these improvements in CFATS, we believe there is a need for a comprehensive, National emergency response capacity study to identify at-risk communities and develop realistic response plans. Many communities—particularly those served by volunteer fire departments—have very limited capacity to respond to a major industrial chemical incident.

Objective No. 2: Provide for meaningful worker participation in security planning and decision making

CFATS section 2102(b)(2) on Employee Input requires that, “to the greatest extent practicable, a facility’s security vulnerability assessment and site security plan shall include input from at least one facility employee and, where applicable, one employee representative from the bargaining agent at that facility, each of whom possesses, in the determination of the facility’s security officer, relevant knowledge, experience, training, or education as pertains to matters of site security.”

This is an important aspect of CFATS, and it could be made more effective by including a more complete set of employee rights to participate in security decision

⁶Purifoy DM, *EPCRA: A Retrospective on the Environmental Right-to-Know Act*. Available on-line: <https://www.ncbi.nlm.nih.gov/pubmed/2434082>.

⁷U.S. CSB, *Drivers of Critical Chemical Safety Change: Emergency Planning and Response (Preparedness)*. Available on-line: <https://www.csb.gov/recommendations/emergency-response/>.

making, modeled California's 2017 process safety management (PSM) regulations for petroleum refineries, as follows:⁸

- The right of employees to participate “throughout all phases” of CFATS decision making, from design to implementation, training, evaluation, and maintenance;
- The right of employees to select their representatives who participate in management's CFATS decision-making processes;
- Access by employees to information relevant to CFATS decision making, including information that might be subject to protection as a trade secret;
- The right of employees to anonymously report site security weaknesses; and
- The obligation of employers to maintain a record of all employee reports of site security weaknesses.

Industry recognizes that employees can play an important role in improving industrial safety; this role would apply equally to industrial security.

In its *Guidelines for Risk-Based Process Safety*, the process industry's Center for Chemical Process Safety (CCPS) lists “workforce involvement” as one of 20 management systems necessary to reduce process safety risks and prevent chemical accidents, pointing out that:⁹

“ . . . workers are potentially the most knowledgeable people with respect to the day-to-day details of operating the process and maintaining the equipment and facilities, and may be the sole source for some types of knowledge gained through their unique experiences. Workforce involvement provides management a formalized mechanism for tapping into this valuable expertise.”

The CCPS defines “workforce involvement” as a “system for enabling the active participation of company and contractor workers in the design, development, implementation, and continuous improvement of the Risk-Based Process Safety management system.”¹⁰ This same definition could be applied to the role of employees under CFATS.

The CCPS *Guidelines* were developed and reviewed by experts from many of the Nation's leading chemical process companies, including Dow, DuPont, ExxonMobil, Chevron Energy Technology Company, 3M, Air Product and Chemicals Inc., Shell Chemical, BP, Olin Corporation, Bayer Material Science, and others.¹¹

The evidence suggests that the 2012 Richmond, California, Chevron refinery fire might have been prevented if managers had involved employee representatives in decision making.

Evidence identified by the CSB points to a lack of employee participation in process safety decision making as a key factor leading up to the 2102 Richmond, California, Chevron refinery fire, which endangered the lives of 19 workers and caused some 15,000 area residents to seek medical attention for symptoms related to exposure to smoke and fire gasses.

The CSB's interim report of that incident shows that the catastrophic pipe failure in the plant's crude unit would have been prevented if Chevron's managers had followed the recommendations of their own engineers. The fact that they did not result in part because Chevron employee representatives were excluded from management's decision-making process.

Over a period of several years leading up to the pipe failure and fire, the CSB found that Chevron's engineers issued at least 6 reports calling attention to the problem of sulfidation corrosion in the crude unit and recommending a more aggressive pipe inspection and monitoring program. As the CSB pointed out, Chevron's engineers made these recommendations against a backdrop of serious sulfidation corrosion incidents in the U.S. refinery sector, including at:

- Chevron's El Paso, Texas refinery (1988);
- Chevron's Pascagoula, Mississippi refinery (1988 and 1993);
- Chevron's Salt Lake City, Utah refinery (2002);
- Chevron's Richmond refinery (2007);
- The Silver Eagle refinery in Woods Cross, Utah (2009);

⁸ California Occupational Safety and Health Standards Board, California Code of Regulations (CCR) Title 8, General Industry Safety Orders (GISO) § 5189.1, *Process Safety Management for Petroleum Refineries*. 2017. Available on-line: https://www.dir.ca.gov/title8/5189_1.html. A description of the purpose and necessity for each PSM element is provided in DIR's Initial Statement of Reasons. Available on-line: <http://www.dir.ca.gov/OSHSB/documents/Process-Safety-Management-for-Petroleum-Refineries-ISOR.pdf>.

⁹ Center for Chemical Process Safety (CCPS) and American Institute of Chemical Engineers, *Guidelines for Risk-Based Process Safety*. Wiley and Sons. (p. 124). 2007.

¹⁰ *Ibid.* (p. 124).

¹¹ *Ibid.*. (Preface).

- The Regina Saskatchewan, Canada refinery (2011); and
- The BP Cherry Point, Washington refinery (2012).¹²

By 2009, Chevron’s engineers warned of the potential for a catastrophic pipe failure, and still management chose not to act. The pipe finally failed in August 2012 in the area the engineers predicted it would, and 19 workers nearly lost their lives.

Had Chevron been required to involve employee representatives in management’s pipe corrosion assessments, those representatives would likely have been aware of the engineers’ reports, and they would almost certainly have requested that the engineers’ recommendations be implemented. In taking those actions, the serious state of corrosion in the crude unit would have become apparent. This would likely have resulted in a shut down of the unit to replace damaged sections of pipe, thereby preventing the vapor cloud explosion that ultimately occurred in August 2012.

The same conditions would apply in the security context under CFATS. Employees possess unique knowledge and experience that can be crucial to ensuring an effective chemical security program.

The perspectives of rank-and-file employees are invaluable in site security decision making, but only if they are given the right to meaningfully participate.

The requirement for employee input is critical to the success of CFATS. Experienced employees often have a deep understanding of the practical workings of a plant, and they can apply this experience in setting priorities and determining if a proposed security measure will function as intended. Employees have a direct stake in protecting the safety of the facility. As the CSB identified in the Richmond, California, Chevron fire, effective employee participation can improve the transparency and accountability of management decision making, which can otherwise be skewed by production and financial pressures.

In practice, however, employees and their representatives will not normally be invited to participate with any real authority in management’s decision-making committees, including those focused on plant security. At a minimum—including with a unionized workforce—employees need regulatory authority to obtain a seat at the table. For employee participation to be meaningful, however, that authority must provide much more than the basic right to participate; it must provide for the following 7 elements:

- Allow employees to select their representatives, either through their collective bargaining agent, where present, or by a credible process established by the employer;
- Ensure employee participation throughout all phases of site security decision making, not simply as a final “rubber stamp” to management’s proposals;
- Provide for on-going participation in the implementation and maintenance of security measures;
- Provide for participation in the training and evaluation of site security measures;
- Provide a means for anonymous reporting of site security problems, and an obligation of owners or operators to maintain a record of such reports;
- Provide a means for confidential input by employees to regulators during CFATS audits and inspections; and
- Provide a means to document the extent to which employee input has been received and integrated into plant security measures.

The 2017 California PSM regulations include employee participation rights that require the first 5 of the elements noted above, while also providing for the right of employees to refuse unsafe work, request that a process be shut down, and—for operators—actually shut down a refinery process.

Objective No. 3: Implement risk reduction measures to limit the attractiveness of chemical facilities as targets of opportunity

CFATS is a risk management—rather than risk reduction—framework; that is, it assumes that industrial chemical hazards cannot be reduced or eliminated, and that those hazards must therefore be “surrounded” by layers of security in order to reduce the risk of a major release initiated by a motivated actor.

There is evidence, however, that CFATS is motivating some companies to voluntarily implement risk reduction strategies. DHS reports that thousands of high-risk facilities have chosen to meet their chemical security obligations not only through traditional security measures, but also by risk reduction strategies that include:

- Consolidating chemicals from multiple sites into one or two sites;

¹²U.S. CSB, *Interim Investigation Report*. Chevron Richmond Refinery Fire of August 6, 2012. (pp. 24–27). Available on-line: <https://www.csb.gov/chevron-refinery-fire/>.

- Replacing a hazardous chemical with a less hazardous one;
- Reducing the total quantity of a chemical held on-site; or
- Switching to a less concentrated form of the chemical.¹³

Assuming DHS is confident in the veracity of these claims—and is taking steps to validate them—these approaches represent progress toward reducing industrial chemical risks at CFATS-regulated facilities.

CFATS could do more to improve industrial resilience against a motivated actor by further encouraging or requiring facilities to investigate—and implement to the extent feasible—approaches such as these, which minimize, substitute, moderate, or simplify the chemicals and/or processes they have on-site.

This approach is recommended by the industry’s Center for Chemical Process Safety (CCPS) of the American Institute of Chemical Engineers (AIChE) in the context of process safety, but it is equally applicable in the security context:¹⁴

- To minimize a hazard, the facility could use smaller quantities of a hazardous chemical.
- To substitute a hazard, the facility could replace a hazardous chemical with a less toxic or less flammable one, or it could use a less concentrated form of the chemical.
- To moderate a process, the facility could operate a process under less hazardous conditions, such as by running a process closer to ambient temperature and pressure.
- To simplify a process, the facility could introduce design changes to eliminate unnecessary complexity, and to make operating errors less likely, as well as more forgiving if errors do occur.

By reducing the hazard severity of chemicals and/or processes used at a facility, these measures can limit the attractiveness of the facility as a target of opportunity. This approach was developed by many of the Nation’s leading process companies, including Dow, DuPont, Eli Lilly, Rohm and Haas, Honeywell, Braskem, Shering Plough, and Nova, and they were peer-reviewed by process safety experts from academia, industry, and Government.¹⁵

California’s 2017 PSM regulations for petroleum refineries could serve as a model for implementing risk reduction provisions into CFATS.¹⁶

V. CONGRESS SHOULD TAKE ACTION TO STRENGTHEN CFATS

It is essential that Congress take action to protect workers, communities, and the Nation’s industrial infrastructure from the threat of an intentional attack. The findings of the GAO illustrate that the CFATS program is making progress in meeting this objective, and that more can and must be done. The BlueGreen Alliance recommends that Congress improve the effectiveness of CFATS by making revisions that will motivate and require companies to meet three critical objectives:

- Ensure a safe, effective emergency response to a major industrial chemical incident;
- Provide for meaningful worker participation in security planning and decision making; and
- Implement risk reduction measures to limit the attractiveness of chemical facilities as targets of opportunity.

The historical record and the findings of the CSB illustrate that a major industrial chemical release, fire, or explosion caused by a motivated actor could devastate the lives of workers, families, and entire communities. We urge you to use the reauthorization of CFATS as an opportunity to strengthen the program. The result will be improved security for our Nation’s process facilities, safer workplaces and communities, and a more resilient industrial infrastructure.

Chairman Richmond, Ranking Member Katko, and distinguished Members, thank you again for granting me the opportunity to appear at today’s hearing.

Mr. RICHMOND. Thank you.

I now recognize Mr. Morawetz to summarize his statement for 5 minutes.

¹³Suzanne E. Spaulding, DHS Under Secretary, Correspondence to the Honorable Bennie G. Thompson, Ranking Member, Committee on Homeland Security. January 11, 2017. See Addendum at page 6, item 12.

¹⁴CCPS and American Institute of Chemical Engineers, *Inherently Safer Chemical Processes: A Life Cycle Approach, Second Edition*. 2009. Wiley and Sons. (p. 27).

¹⁵Ibid. (Preface)

¹⁶California Occupational Safety and Health Standards Board, California Code of Regulations (CCR) Title 8, General Industry Safety Orders (GISO) § 5189.1, *Process Safety Management for Petroleum Refineries*. 2009. Available on-line: https://www.dir.ca.gov/title8/5189_1.html.

STATEMENT OF JOHN S. MORAWETZ, HEALTH AND SAFETY REPRESENTATIVE, INTERNATIONAL CHEMICAL WORKERS UNION COUNCIL

Mr. MORAWETZ. Thank you, Chairman Richmond, Ranking Member Katko, and subcommittee Members for the honor of appearing before you to talk about the safety of our chemical facility members and facility security.

My name is John Morawetz and I am here today representing the International Chemical Workers Union Council, which is a council of the United Food and Commercial Workers Union. The ICWUC was founded in 1944 and represents 20,000 chemical workers in 32 States.

The million-member UFCW strongly supports a multi-year authorization of CFATS with certain essential improvements. The industries we work in include petroleum and coal products, pharmaceuticals, agricultural chemicals, natural gas distribution, nuclear weapons and power plants.

We work with extremely hazardous substances and have a vested interest in the safe operation of their facilities for all workers' health and their facilities' and communities' well-being.

We handle many of the CFATS Appendix A hazardous materials in railcars, storage tanks, reactor vessels and respond as part of on-site response teams. Thankfully, there has not been a terrorist attack on a chemical facility, but much can be learned from an unintentional releases at facilities we represent.

In 2014, 4 people died from a massive release of methyl mercaptan in Houston, Texas and in 2016 there was a complete rupture of a full chlorine tanker care in West Virginia that luckily did not kill anybody.

Most tragically, in 1971 a Georgia facility that manufactured magnesium trip flares had some fires and then blew up. Horribly, the evacuation distance was not sufficient and 27 workers were killed.

We can and must learn from each event, large or small, or from near-misses. We recommend 4 CFATS improvements: Worker involvement in security plans, more training for workers and inspectors, stronger whistleblower protections, and compilation of best practices.

First and foremost, workers and representatives in labor need to be involved in protecting our chemical infrastructure. Chemical workers have direct, current knowledge and experience. It is invaluable in solving a site-specific problem. It's important that workers' expertise, the same expertise that operates these plants every day, be utilized in the drafting, implementation, and evaluation of plant security plans.

We recommend that facility operators document and certify employee security recommendations and share these with CFATS inspectors.

I would love to tell you about CFATS inspections, but we don't know since we are not informed of these visits. Since the law allows inspectors the discretion of involving workers or not, our locals and members have not been included. Therefore, an important stakeholder and their valuable information has been excluded from inspections.

Other Federal agencies, including OSHA, NIOSH, the EPA, and the U.S. Chemical Safety Board, have established inspection models for working with both management and labor.

The second key to effective security, worksite security, is good training for everyone about their roles and responsibilities and drills for proper response, as well as training of CFATS inspectors. This is more fully described in my written testimony.

Third, whistleblowers who disclose wrongdoing can save lives and help improve public safety and should not face retaliation. Regrettably, fear is a fact of life in all too many workplaces and jeopardizing one's job by blowing the whistle can be risky.

We recommend that OSHA, which currently administers whistleblower complaints for 22 Federal agencies, handles CFATS complaints.

Last, facilities that have successfully reduced their risk have valuable best-practice information that should be aggregated and annually released. DHS has stated that many, "CFATS facilities have either reduced their holdings of high-risk chemicals of interest or eliminated them completely, substituting less risky chemicals or have changed their processes and have actually come out of the program."

We believe facilities have much to learn from each other and best practices such as safer substances, reductions in storage and—use are some of them.

I applaud the recognition that the measures you are discussing will help protect us, not only from a terrorist attack but also hazardous material releases from a natural disaster or accident. The changes outlined in my testimony will fulfill CFATS' mandate and mitigate the consequences and risk of a release, regardless of the cause.

We support the work of this subcommittee to ensure the safety of our chemical workers, their communities, and all Americans through a multi-year CFATS reauthorization. This will reduce risk and protect workers and communities from a terrorist attack and other tragedies.

Thank you, and I will take questions later.

[The prepared statement of Mr. Morawetz follows:]

PREPARED STATEMENT OF JOHN S. MORAWETZ

MARCH 12, 2019

Thank you, Chairman Richmond, Ranking Member Katko, and Members of the subcommittee for holding this important hearing and for the opportunity to testify. I am here today representing the International Chemical Workers Union Council (ICWUC) of the United Food and Commercial Workers International Union (UFCW). The ICWUC was founded in 1944 and represents approximately 20,000 chemical workers in 32 States. In 1996, we merged with the UFCW and this mutually-beneficial partnership continues to serve our members well today. It is my honor to appear before you to address the safety and health of our members who work in chemical plants and the security of these facilities.

ICWUC strongly supports a multi-year authorization of the Chemical Facilities Anti-Terrorism Standards (CFATS) program with certain essential changes.

ABOUT THE INTERNATIONAL CHEMICAL WORKERS UNION COUNCIL

The ICWUC has been active for decades in promoting strong and effective health and safety standards in hazardous chemical facilities where our members work. Workers and their union representatives have a vested interest in safe worksites.

The ICWUC supports chemical safety standards and laws to protect both our members, the facilities they work at, and the public.

UFCW chemical workers work in many different manufacturing industries including petroleum and coal products, fertilizers, pharmaceuticals, pesticides, and other agricultural chemicals in smelters and refineries, as well as, natural gas distribution, nuclear weapon production, and power plants. Our members work with extremely hazardous substances and have a vested interest in the safe operation of their facilities for their own health, for their coworkers' health and for their communities' well-being.

Our members handle many of the hazardous materials in CFATS Appendix A. Specifically, we unload tankers and railcars that contain hazardous materials, monitor large storage tanks filled with these substances, move the storage tanks within our facilities, manage the control rooms that monitor and operate reactor vessels, and load the containers for their shipment offsite. The vast majority of the time, the handling of chemicals is done safely, but when there is a release, we respond in a range of roles including on-site response teams. Thankfully there has not been a terrorist attack on a chemical facility to date, but there is much that can be learned from unintentional incidents. Examples of the tragic impact of the release of Appendix A hazardous materials include an incident in 2014, where 4 people were overcome by the massive release of methyl mercaptan in Houston, Texas or the rupture of a full chlorine tanker car in West Virginia that luckily did not kill anyone.¹ Chemical safety is a very serious issue that we are familiar with and the workers at chemical facilities want to do everything possible to prevent these types of events whether from terrorism or other causes.

Past incidents remind us of the danger that these chemicals pose. The site of one of ICWUC's most tragic loss of lives was in 1971 at the Thiokol facility near Woodbine, Georgia, which manufactured magnesium trip flares for the U.S. Army during the Vietnam War. On February 3, 1971, the Thiokol facility was evacuated after several small fires broke out inside the plant which caused the flares to ignite and the plant was destroyed. Horribly, the evacuation distance was not sufficient, and 27 workers were killed when the plant blew up. The Thiokol explosion led to a better understanding of the full danger of the materials in that plant and what a safe evacuation distance should be.

Unions have a proud history of fighting for the right to a safe workplace and for the basic right for workers to return home after a day on the job as healthy as when they left. Unions have made sure their members are educated and trained on the safety and health hazards they face on the job. Union negotiators bargain over health and safety contract language, unions actively participate in the investigation and identification of health and safety hazards, and testify in support of legislation which strengthens workplace safety and health. We are actively involved in making our workplaces safer. It is therefore an honor for me to appear before you to address the safety and health of our members who work in chemical plants and the security of these facilities.

As to my background, I have over 3 decades of experience investigating occupational health hazards for the National Institute for Occupational Safety and Health (NIOSH); as the director of health and safety for the Molders Union and here at the Chemical Workers Union as the director of health and safety and currently the director of the Training Center in Cincinnati, Ohio. I am testifying today in my capacity as a representative of the ICWUC Health and Safety Department.

In my testimony, I will address the following elements that are crucial to the safety of chemical plants:

- (1) worker involvement in security plans,
- (2) effective training requirements,
- (3) strong whistleblower protections, and
- (4) successful practices.

ABOUT CFATS

In 2007, the Department of Homeland Security (DHS) established the CFATS program to identify and assess the security risk posed by facilities that contain hazardous chemicals that could be used by terrorists to inflict mass casualties or harm surrounding populations. DHS approves facility security plans and inspects high-risk facilities to ensure that the facilities are compliant with required security measures and procedures.

¹<https://www.nts.gov/investigations/AccidentReports/Reports/HZM1901.pdf>.

WORKERS MUST BE INVOLVED IN CHEMICAL PLANT SECURITY

CFATS inspectors, workers, labor representatives and company representatives all need to be involved in protecting our chemical infrastructure. Chemical workers have direct, current knowledge and experience of plant operations that is invaluable in solving site-specific problems. Chemical workers know first-hand how a plant works, what chemicals are used, how those chemicals react to one another and their facilities' weaknesses. We also know if back-up systems will work when the power goes out. We know the exact location of the CFATS hazardous materials and we know if training is effective. All these responsibilities make chemical workers the first and best line of defense.

We believe employee involvement in the drafting, implementation, and evaluation of plants' chemical security plans is crucial. It is important that workers' expertise—the same expertise that operates these plants everyday—be utilized. Including chemical workers in this process will enhance facility security and protection. We believe the facility's operator should document recommendations received from employees in their site security plans, certify that there has been worker input into the site security plan, and share employee recommendations with inspectors.

Workers should be involved in chemical facility security because our on-site responders are the first people to respond to catastrophic events. At many sites, there is a joint labor management response team that is usually the first on the scene to an incident. The experiences and knowledge of workers is important when considering how to prevent or plan for future incidents. These workers should be talking with CFATS inspectors and sharing their knowledge along with management.

Workers should also be protected from any type of retaliation on the part of employers for full involvement in workplace safety and health, and chemical plant security efforts. Any barriers to involvement, such as discipline for reporting incidents or talking with CFATS inspectors should be identified and removed.

I'd love to tell you about our perspective of what takes place during a CFATS inspection, but we don't know since we are not informed of these visits. Right now, the law allows discretion on the part of inspectors as to whether workers and the union are advised of an inspection. We currently have no information that our locals or members have been involved in inspections, and this means an important stakeholder and their valuable information may be excluded from the process.

Concerns about interfering in the labor management relationship should not be a barrier to greater chemical plant safety. Federal agencies including the Occupational Safety and Health Administration (OSHA), NIOSH, the U.S. Chemical Safety Board and the Environmental Protection Agency (EPA) all have procedures to work with both management and labor during their inspections. By not involving labor in these inspections, they are relying on management's information and have de facto taken a side.

Workers need to know their basic CFATS rights. One way to inform and include workers is to require a CFATS breakroom poster in all chemical facilities that submitted a Top Screen survey. The poster could include basic facts about CFATS and contact information like OSHA breakroom posters.

EFFECTIVE TRAINING FOR ALL WORKERS AT COVERED AREAS IN CFATS-TIERED FACILITIES

Key to effective worksite security is good training for everyone about their roles and responsibilities and drills for proper response and evacuation. For over 30 years my union has run training programs and collected data on how much training our members received in the previous 12 months in 10 specific areas. OSHA's Hazard Communication Standard is the primary OSHA standard requiring training on hazardous chemicals, and the requirement is minimal—only when initially assigned to a job, or if new chemicals are introduced. Other than this initial training, workers often do not receive further training on hazardous chemicals. According to data collected by our union, we found that from 2017 to 2018 over 80 percent of workers who attended ICWUC training had no training in the last year in 9 of the 10 key worker safety areas. The 9 areas not trained on were: Engineering Controls, Air Monitoring, Decontamination, Toxic Effects, Emergency Response Procedures, OSHA Regulations, Plugging and Patching, Selection of Protective Clothing or Respirators. The Government and companies must increase the amount and type of training for all workers inside of CFATS-covered plants.

Effective training requires training materials that are easily understood, and that are targeted to the audience using the materials. An example of where materials have been developed that are useable and understandable, is the State of New Jersey which has taken a strong interest in the security of their chemical plants. The State has devoted a considerable amount of time and effort over the last 30 years

to developing clear resources on these key issues. The New Jersey training materials cover many of the CFATS substances.

Implementing good training is not easy. One facility that I reviewed was trying to implement the right procedures but after careful review, I realized that all the drills were taking place on the first shift because that is when the salaried employees worked. The facility has three shifts and operates continuously, so only a fraction of the workers were being drilled for these types of events.

Training is also important for the CFATS inspectors. They should be trained on toxic effects, chemical operations, CFATS procedures, Top Screen operation and definition of tiers, effective controls, incompatible substances, relevant guidelines and standards, and methods that reduce the potential consequences of a terrorist attack. Their training should also include knowledge of methods to reduce or remove hazards that could be attractive targets. It would be extremely valuable to inspectors to know how similar facilities have reduced or removed such hazards. We need to be sure that information received by CFATS inspectors is consistent with the best industry practices and inspection observations.

WHISTLEBLOWER PROTECTIONS FOR WORKERS TO REPORT PROBLEMS TO CFATS

In addition to routine interactions with inspectors, employees at facilities with hazardous chemicals can play an important role in helping to ensure CFATS compliance by submitting a whistleblower report when they suspect noncompliance. Whistleblowers who disclose wrongdoing at chemical facilities can save lives and help improve public safety and health and should not face retaliation.

Regretfully fear is a fact of life at all too many workplaces and jeopardizing one's job by blowing the whistle is a risky thing to do. Workers, who bravely come forward to protect themselves, their co-workers, and communities around the plant, should not fear losing their jobs when they speak out. Whistleblower protection is vital in assuring the free exchange of ideas, improving security, and ensuring that effective measures are actually implemented. Workers must have the ability to come forth and communicate program deficiencies without fear of retribution.

DHS is responsible for managing the CFATS whistleblower process and procedures, but DHS lacks a process and procedures to address whistleblower retaliation reports. OSHA has developed guidance with recommended practices for public, private, and non-profit employers to use in preventing and addressing whistleblower retaliation. To help ensure that whistleblower retaliation reports are addressed efficiently and effectively, we recommend that OSHA, which currently administers whistleblower complaints from 22 Federal agencies, should administer CFATS complaints as well.

CFATS SHOULD IDENTIFY AND DISSEMINATE SUCCESSFUL PRACTICES

There are many steps and measures that could and should be taken to improve chemical plant safety and security. The U.S. Department of Homeland Security has stated that many "CFATS facilities have either reduced their holdings of high-risk chemicals of interest or eliminated them completely, substituting less risky chemicals or have changed their processes and have actually come out of the program and determined to no longer to be high risk."² These facilities have substituted less dangerous formulations, better designed containers, or various engineering steps, which all can minimize the consequences of an accident or attack at a chemical plant. Unfortunately, there is no report that can be shared with other facilities that spells out the methods to reduce the consequences of a catastrophic release of chemicals from intentional attacks or unintentional disasters.

Although reducing potential consequences may not be feasible in all circumstances, either technologically or economically, safer solvents or formulations could be substituted for more dangerous ones. The quantities or concentrations can be reduced to below threshold amounts, some substances can be used in a less dangerous form, alternative processes can be used, chemicals can be used "just in time" (without storage), vulnerable sections can be reinforced, improving inventory control, minimizing bulk storage and maintenance schedules reviewed regularly. Many companies have implemented these changes and there is much to be learned from which changes have been the most effective. This information sharing can be done without identifying individual companies or locations.

Incorporating these considerations into site security planning will ensure that covered chemical facilities are aware of the security implications of their production processes and enable the selection of more effective security methods.

²Secretary Wulf's testimony before House Homeland Security Committee on February 27, 2019.

Facilities that have successfully reduced their risk have valuable best practices information that should be aggregated and annually released. Facilities have much to learn from each other and aggregated data could be one step.

CONCLUSION

Although this committee's mandate is the protection of facilities from terrorist attack, I applaud the recognition that the measures that you are discussing will protect us not only from a terrorist attack but will also minimize a hazardous materials release resulting from a natural disaster or accident. The dangers we face in a chemical release come from a variety of directions, but the changes outlined in my testimony will mitigate the consequences and risks of a release regardless of the cause of that release and fulfill CFATS' mandate.

The International Chemical Workers Union Council supports the work of this subcommittee to ensure the safety of our chemical workers, the communities around the facilities and all Americans. We strongly support a multi-year reauthorization of the Chemical Facilities Anti-Terrorism Standards program, hope this authorization will reduce risk, protect workers and communities, prevent a terrorist attack and tragedies like the Thiokol explosion in 1971.

On behalf of the ICWUC, I urge you to act now to protect America—to protect all workers and their families—by strengthening and reauthorizing CFATS before it expires next year.

Again, I thank you for your time and would be pleased to answer any questions that you may have.

Mr. RICHMOND. Thank you, Mr. Morawetz. I now recognize Ms. Nixon for 5 minutes.

STATEMENT OF PAMELA NIXON, PRESIDENT, PEOPLE CONCERNED ABOUT CHEMICAL SAFETY

Ms. NIXON. Good morning. Thank you for allowing me the opportunity to provide a community perspective for improving CFATS. I am representing People Concerned About Chemical Safety, also known as PCACS. We are located in the center of Appalachia in Charleston, West Virginia in the Kanawha Valley.

We are dedicated to protect the health and safety of those who reside, work, and study in the vicinity of local facilities that produce highly toxic chemicals.

The core of our work is to promote environmental and social justice principles and encourage the inclusion of all peoples that are disproportionately impacted by decision makers. PCACS is also affiliated with Environmental Justice Health Alliance for Chemical Policy Reform.

For decades it has been proven that in study after study that low-income communities and communities of color are disproportionately impacted by hazardous waste facilities and facilities that emit highly toxic and extremely hazardous chemicals.

In Kanawha County there is a community called Institute. It's mostly an African-American community of about 800 households and it's also the home for a—an historically black university, West Virginia State University, which is on direct—directly on the fence line of one of the hazardous high-risk facilities in the Kanawha County.

Seventy—approximately 70 percent of the people in Kanawha County live in a 3-mile radius of one or more high-risk facilities that are included in the EPA Risk Management Plan Program.

We have experienced chemical fires, explosions, worker deaths, and numerous air releases forcing us to shelter in place. These incidences were not acts of terrorism and many of them occurred in the Institute area.

Making a chemical facility harder for terrorists to attack and adding cybersecurity doesn't fundamentally change the probability of a major chemical incident that can cause off-site consequences.

PCACS has met over the years with chemical company officials asking them to reduce their hazardous chemical inventory, to replace the highly toxic, extremely hazardous compounds with less dangerous chemicals when possible, to switch to safer processes when feasible, and to adopt best practices identified by employees and process safety experts.

It is important—it was only after the 2008 explosion at the Bayer Crop Science Facility in Institute and findings from the Chemical Safety Board and the National Research Council that some of the chemical plants in Kanawha County began steps to reduce their risks to the community.

It is important that CFATS coordinates with other Government agencies to reduce these facilities as target risks.

West Virginia is a rural State and many of our fire departments are run by volunteers and with very little funding. It's imperative that CFATS and high-risk facilities share information with first responders and especially with volunteer fire departments to ensure that they are properly trained, understand the characteristics of the hazardous chemicals, and have the proper protective equipment. Proper training and current information on these chemicals allow first responders to return home safely.

According to our Kanawha Putnam Emergency Planning Committee Terrorist Incident Response Section, Kanawha and Putnam County metro area are vulnerable to terrorist incidents.

We have 4 clusters of high-risk chemical facilities located along the valley floor. Four. These are all reasons why communities like mine and others in E.J. need to be protected—in EJHA need to be protected by policy language that addresses cumulative impacts. Our communities cannot afford to have anything less.

We encourage improvements in CFATS to include coordinating with other Government agencies to ensure that high-risk facilities reduce their risk, ensuring that the facilities provide the current information to the first responders, sharing information as much as possible without compromising security to address public concerns in order to improve confidence in CFATS.

We need CFATS to recognize and account for cumulative impacts, including the presence of more than one facility near a community. Respecting the critical importance of the community to assess the information—to access information on hazards of—that—on hazards ensuring that the community have access to the information. We need to be informed as partners in security.

Assessing how facilities that have tiered out—that have tiered out of the program and to share this information and practices with other facilities and to work with covered facilities to help them to be proactive in assessing whether they should reduce or eliminate their chemical vulnerabilities.

Thank you.

[The prepared statement of Ms. Nixon follows:]

PREPARED STATEMENT OF PAMELA NIXON

MARCH 12, 2019

Good morning, my name is Pamela Nixon. Thank you for allowing me the opportunity to provide a community perspective for improving the Chemical Facility Anti-Terrorism Standards (CFATS) program of the Department of Homeland Security (DHS).

I am representing People Concerned About Chemical Safety (PCACS), located in the center of Appalachia in Charleston, WV, in the Kanawha Valley.

PCACS, formerly known as People Concerned about MIC, has been active in community for over 30 years. It was formed after we learned that methyl isocyanate (MIC) was being produced in Institute, WV. MIC is the same chemical that killed and injured thousands in the Bhopal, India, in 1984.

We are dedicated to protect the health and safety of all who reside, work, and study in the vicinity of local facilities that produce highly toxic chemicals. The core of our work is to promote environmental and social justice principles that encourage the inclusion of people disproportionately impacted by decision makers.¹

PCACS is affiliated with the Environmental Justice Health Alliance for Chemical Policy Reform (EJHA), which networks grassroots organizations throughout the country to build collective intelligence and advocate for chemical policy reforms that protect environmental justice communities.²

For decades it has been proven in study after study that low-income communities and communities of color are disproportionately impacted by hazardous waste facilities, facilities that emit highly toxic and extremely hazardous chemicals being located nearby.^{3 4} These communities are the most vulnerable and when there is a disaster, they have the least ability to recover financially, physically, and mentally.

The community of Institute is mostly an African American unincorporated community, and is home to West Virginia State University, a Historically Black College and University (HBCU) which is directly at the fence line of a high-risk facility. The majority of the chemical incidents that have occurred in the Kanawha Valley, occurred in Institute. The residential community and approximately 4,000 students, staff, and faculty on campus have always had to shelter in place because the 2-lane road is not be capable to evacuate them out in a timely manner. In the eastern part of Kanawha County the community of Belle would have a similar issue evacuating from around the facility located there.

Seventy percent of people in the Charleston area live within a 3-mile radius of one or more high-risk chemical plants.⁵ We have experienced chemical fires, explosions, worker deaths, and numerous air releases forcing us to shelter in place. And these incidents were not acts of terrorism.

Making a chemical facility harder for terrorists to attack and adding cybersecurity, doesn't change the probability of a major chemical incident that can have off-site consequences. Over the decades PCACS met with company officials and requested that they assess their vulnerabilities in order to lower their risk as a target. We wanted them to reduce their inventory, to install inherently safer technologies, to substitute the highly toxic/extremely hazardous compounds with less dangerous chemicals, and to involve the workforce with engineers for insight on simplifying the process to less complex procedures that would minimize the human error factor. It was only after the 2008 explosion at the Bayer CropScience plant in Institute, and the findings from the investigations of the U.S. Chemical Safety and Hazard Investigation Board (CSB), and National Research Council of the National Academies

¹People Concerned about Chemical Safety website: <http://peopleconcernedaboutmic.com/>.

²Environmental Justice Health Alliance for Chemical Policy Reform website: <https://ej4all.org/about-us/overview>.

³*Toxic Wastes And Race In The United States*. United Church of Christ. 1987. <https://www.nrc.gov/docs/ML1310/ML13109A339.pdf>.

⁴*Who's In Danger? Race, Poverty, and Chemical Disasters*. Environmental Justice and Health Alliance for Chemical Policy Reform. May 2014. <https://comingcleaninc.org/assets/media/images/Reports/Who%27s%20in%20Danger%20Report%20FINAL.pdf>.

⁵*Life At The Fenceline: Understanding Cumulative Health Hazards in Environmental Justice Communities*. Sept 2018. Environmental Justice Health Alliance For Chemical Policy Reform/Coming Clean/Campaign For Healthier Solutions. <https://new.comingcleaninc.org/assets/media/documents/Life%20at%20the%20Fenceline%20%20English%20%20Public.pdf>.

that some companies in Kanawha began to take steps to reduce risks at their facilities.^{6 7}

It is important that CFATS coordinates with other governmental agencies to reduce the facilities risks as a target. West Virginia is a rural State and many of our fire departments are run by volunteers with very little funding. It is imperative for CFATS and the high-risk facilities to share information with first responders, and especially with volunteer fire departments to insure they are properly trained, understand characteristics of the hazardous chemicals, and have the proper protective equipment. Fortunately, our high-risk chemical facilities in the Kanawha Valley have their own in-house responders, and they send their nearest first responders to training and provide them with some essential protective equipment in case the department is needed to provide mutual aid. Proper training and current information on the chemicals will allow them to return home safely.

According to our Kanawha Putnam Emergency Planning Committee (KPEPC) Terrorist Incident Response section of the Emergency Management Plan, the Kanawha/Putnam Metro area is vulnerable to terrorist incidents. We have four clusters of high-risk chemical facilities located along the valley floor. If there is a terrorist incident, by Federal mandate the FBI is the lead agency for crisis intervention. The DHS or FEMA may elect to lead consequence management,⁸ but the lack of public information may make it difficult for DHS CFATS to address public information.

These are all reasons why communities like mine and others in EJHA be protected by policy language that addresses cumulative impacts. At this point our communities cannot afford to have anything less.

We encourage improvement of the CFATS program to include:

- Coordinating with other Government agencies to ensure the high-risk facilities reduce their risk at being a target;
- Coordinating with other Government agencies to ensure there are no regulatory conflicts in the laws to prevent security breaches;
- Ensuring high-risk facilities provide the current information on hazardous chemicals to first responders;
- Have information to address public concerns in order to improve confidence in CFATS;
- Recognizing and accounting for cumulative impacts, including the presence of more than one hazardous facility in a community;
- Respecting the critical importance of community access to information on hazards and solutions, ensuring that communities have access to the information they need to be informed partners in security, and ensuring this information does not present the communities any additional exposure (recognizing that much information about these facilities is already available in the public domain);
- Assessing how facilities that have “tiered out” of the program did so (i.e. reduced or eliminated their chemical vulnerabilities so that they are no longer required to participate), and sharing those practices or approaches with other facilities in the program; and
- Working with covered facilities to help them pro-actively assess whether they could reduce or eliminate chemical vulnerabilities.

Thank you for allowing me to speak today.

Mr. RICHMOND. Thank you, Ms. Nixon. We will now have Ms. Meskill.

STATEMENT OF KIRSTEN MESKILL, DIRECTOR, CORPORATE SECURITY, BASF

Ms. MESKILL. Thank you and good morning, Chairman Richmond, Ranking Member Katko, and Members of the subcommittee, for the opportunity to testify today.

⁶CSB Final Report: Bayer CropScience. <https://www.csb.gov/bayer-cropscience-pesticide-waste-tank-explosion/>

⁷*The Use and Storage of Methyl Isocyanate (MIC) at Bayer CropScience*. National Research Council of the National Academies. 2012. <https://www.nap.edu/catalog/13385/the-use-and-storage-of-methyl-isocyanate-mic-at-bayer-cropscience>.

⁸Terrorist Incident Response. Kanawha Putnam Emergency Management Plan. Revised 4/18/2017. http://www.kpepc.org/shared/content/Page_objects/ahp_docs/FA_A20_Terrorism-.pdf.

I am Kirsten Meskill, director of corporate security for BASF Corp., a corporation headquartered in Florham Park, New Jersey.

We have over 100 facilities in 30 States and more than 20,000 employees in North America. I am the immediate past chair of the Chemical Sector Coordinating Council, and I am currently serving as the Chair for the Security Committee of the American Chem Council, ACC.

I am here today on behalf of the ACC to voice general support for a multi-year reauthorization of the Chemical Facility Anti-Terrorism Standards, CFATS. ACC member companies manufacture products that are critical to the everyday health and well-being of our Nation and essential to developing a more sustainable and competitive economy.

Based on our critical role in the Nation's economy and our responsibility to employees and the communities where we operate, security is a top priority for my company and for the ACC.

In 2001, ACC created a stringent mandatory security program called The Responsible Care Security Code. Since its creation ACC members have invested more than \$17 billion under the Security Code to further enhance site security, transportation security, and cybersecurity at our facilities. The Security Code has become a gold standard for the industry and serves as a model for regulatory programs.

Over the past 4 years the Department of Homeland Security has significantly improved its administration of the CFATS program and has a—has had a positive impact on enhancing security at chemical facilities.

Most importantly, DHS leadership has demonstrated a commitment to working with members of the regulated community to improve implementation of the CFATS program.

While DHS has made considerable strides to improve CFATS, there are additional areas for improvement. I would like to highlight 4 of these today.

Ensure multi-year authorization. While industry was pleased that Congress passed a short-term extension in January to avoid a complete shutdown of CFATS, I think we all agree that it is not the best solution going forward. Longer authorization periods provide important stability for planning security investments and allow DHS to operate the program efficiently and effectively.

Congressional oversight is important to evaluate the efficacy of CFATS regarding the changing security environment; however, multi-year authorization is warranted to meet the key objectives of stability and efficiency of the program overall.

Second, assess the value of TSDB screening at low-risk facilities. Recently DHS has been implementing a risk-based performance standard at 200 high-risk facilities, those that are at Tiers 1 and 2.

This requires facility operations—operators to collect sensitive personal information from thousands of employees and contractors for DHS to vet against a terrorist screening database.

DHS is now planning to extend the program to an additional 3,000 low-risk Tier 3 and 4 facilities. This will expand vetting to tens of thousands of more employees and contractors. ACC and its

members are concerned that with such an expansion it is unnecessary and it will put personal information at risk.

Furthermore, it is unclear what benefit is associated with the additional vetting given the cost. While we support vetting at high-risk Tier 1 and 2 facilities, we hope DHS can reconsider this requirement for lower-risk 3 and 4 facilities.

Third, improving transparency in DHS risk determinations. This comes by being more transparent with facility operators about risk determination, tiering levels, and ways to potentially reduce that risk.

Since the operator is responsible and has authority to make security risk-management decisions for the facility it is important that they have access to all the information about risk-sharing.

Finally, establish a CFATS public-private partnership. DHS should leverage CFATS and industry stewardship programs such as ACC Responsible Care Program with the goal of further enhancing the security of hazardous chemicals.

By doing so, DHS would be able to recognize responsible operators for going beyond mere regulatory compliance and incentivize the use of chemical security programs that enhance security beyond the universe of CFATS-regulated facilities.

I would like to close by saying CFATS has helped make our industry and communities more secure. It's a program that will grow stronger by adopting some additional improvements while ensuring it retains a strict focus on security and continued engagement of this community. Thank you.

[The prepared statement of Ms. Meskill follows:]

PREPARED STATEMENT OF KIRSTEN MESKILL

MARCH 12, 2019

Thank you, Chairman Richmond, Ranking Member Katko, and Members of the subcommittee for inviting me to participate in today's hearing. I am the director of corporate security for the BASF Corporation. Headquartered in Florham Park, New Jersey, BASF operates over 100 production facilities with a footprint in 30 States and employs more than 20,000 people across North America. BASF's largest sites are located in Geismar, Louisiana and Freeport, Texas.

I have also served as the chair of the Chemical Sector Coordinating Council and I am current chair of the security committee of the American Chemistry Council (ACC), on whose behalf I am testifying today. ACC represents a majority of the chemical producers across the United States, including a diverse set of small and medium-sized companies engaged in the business of chemistry.

The business of chemistry is a \$526 billion enterprise; providing more than 500,000 skilled, good-paying American jobs. The chemical manufacturing industry is experiencing a renaissance in the United States thanks to the increase in domestic shale gas production. In fact, ACC has identified more than 330 new capital investment projects worth more than \$200 billion adding tens of thousands of jobs and generating almost \$300 billion dollars in economic activity.

BASF has a responsibility to protect our employees and the communities in which we operate, so chemical security remains a top priority for us and for all member companies of ACC. In fact, in 2001, ACC created a stringent, mandatory security program known as the Responsible Care® Security Code. Since the Security Code was established, ACC members have invested more than \$17 billion to further enhance site security, transportation security, and cybersecurity at all member facilities. The Security Code has become the gold standard for the industry and serves as a model for regulatory programs.

ACC supports a long-term reauthorization of the Chemical Facility Anti-Terrorism Standards (CFATS) program. Ensuring that CFATS remains in place is a crucial part of establishing a stable regulatory environment and providing the needed certainty to foster long-term security investments.

PROGRAM IMPROVEMENTS

Over the past few years, the Department of Homeland Security (DHS) has significantly improved its administration of the CFATS program; having a positive impact on chemical security across the United States. Several factors have led to its recent success, including: Improved site security inspections; improved risk assessment; and, a more streamlined and consistent Site Security Plan (SSP) authorization process. Most importantly, DHS leadership has demonstrated a willingness and commitment to work with the regulated community to help improve the program.

While DHS has made considerable strides to enhance the CFATS program, more work needs to be done. ACC would like to offer the following recommendations for CFATS improvement:

1. Ensure Multi-Year Authorization.—Recently, Congress approved a short-term (15 months) extension to the CFATS program, following a previous 4-year authorization period. Longer authorization periods provide important stability for planning security investments, as well as allowing DHS to efficiently manage the program. Periodic Congressional oversight of the program is also important for assessing the efficacy of CFATS to meet a changing security environment. Therefore, a multi-year reauthorization of the CFATS program is necessary to meet these key objectives: Oversight, stability, and efficiency.

2. Assess the Value of TSDB Screening at Lower-risk Facilities.—Over the past couple years, DHS has been implementing phase one of Risk-Based Performance Standard 12(iv), screening individuals for terrorist ties. Phase one was limited to approximately 240 of the highest-risk CFATS facilities in Tiers 1 and 2. This process requires CFATS facilities to collect sensitive personal information from thousands of employees and contractors and transmit that information over the internet to DHS for vetting against the Terrorist Screening Database (TSDB).

DHS is planning to significantly expand this requirement to more than 3,000 lower-risk facilities, Tiers 3 and 4, involving tens of thousands of employees and contractors' personal information. ACC believes such an expansion is unnecessary and will needlessly create a security risk by exposing thousands of individual records to loss or cyber theft and operational interruptions (e.g., false positives, etc.). Further, the benefit associated with TSDB vetting at these lower-risk facilities is minimal at best. While we support TSDB vetting at highest-risk Tier 1 and Tier 2 facilities, we strongly recommend DHS reconsider this requirement for the lower risk, Tier 3 and Tier 4 facilities.

3. Improve Transparency in DHS Risk Determinations.—DHS should be more transparent with CFATS facilities regarding the specific factors driving risk at each location. Further, DHS should proactively engage CFATS facilities to reduce risk. CFATS facilities are not fully aware of the specific threat driving risk at a specified tier level. Site managers have the overall responsibility and authority for making critical security risk management decisions at CFATS facilities and are directly responsible for protecting the site and its operations. The facility manager or responsible security director should be fully informed by DHS of all details related to threat and risk. If needed this can be done in a Classified setting.

4. Establish a CFATS Recognition Program.—DHS should leverage Industry Stewardship Programs, such as ACC's Responsible Care Security Code, by creating a Recognition Program under CFATS. By doing so, DHS would be able to recognize responsible operators for going beyond regulatory compliance and incentivize the creation of new stewardship programs. Performance data shows that facilities that participate in well-established stewardship programs perform better than their peers who do not, and better than the industry overall. By providing regulatory incentives, DHS can expand improved performance beyond the universe of the CFATS-regulated community and prioritize their efforts where they are needed the most. This would also help to lessen the burden of security regulation on industry partners that balance similar yet disparate requirements of other security regulations under USCG, DEA, TSA, FDA, etc.

CFATS has helped make our industry and communities more secure. It is a program that will grow stronger by adopting the improvements outlined above and by the continued engagement of this committee to make sure CFATS stays on track.

MAINTAIN PROGRAM FOCUS

It is also important that CFATS maintain its security focus. The continued success of the CFATS program will depend upon its ability to help manage security risks. CFATS should not stray into areas outside of its primary function of addressing security risks and into areas already addressed by well-established environmental and safety regulatory programs administered by other Federal and State agencies. Layering on additional responsibilities could impair its focus and will im-

pede its progress toward the goal of protecting important critical infrastructure from security threats.

INFORMATION SHARING AND COORDINATION

Coordinating with local emergency planners, first responders and law enforcement is essential to ensure an effective response during an incident at any facility, but especially at high-risk ones. In fact, it is in the facility's best interest to make sure this happens in order to protect its employees, local communities, and continuity of operations. It is equally important that the sharing of sensitive information is done on a need-to-know basis.

The current regulatory framework strikes the right balance to ensure that those with a need to know have sufficient information to respond effectively. Risk-Based Performance Standard (RBPS) 11 requires CFATS facilities to coordinate emergency plans with local response groups. CFATS compliance inspectors will not approve a facility's Site Security Plan (SSP) if this coordination has not occurred.

Protecting our people, communities, and operations from security risk is never taken lightly. We engage and include all the necessary experts and stakeholders to ensure our security plans are solid, comprehensive, and sustainable. If any issues arise, they can be addressed collaboratively. CFATS covers these important areas to help ensure that regulated facilities are taking a sound approach to developing security plans and providing opportunities for feedback.

CYBERSECURITY

Cybersecurity is an important element of a comprehensive security risk management system. Cyber requirements and needs vary greatly across a diverse chemical sector. CFATS includes Risk-Based Performance Standard (RBPS) 8, which is a performance standard that addresses the deterrence of cyber sabotage—including the prevention of unauthorized onsite or remote access to critical process controls and critical business systems, and other sensitive computerized systems. The level and degree of cyber protection expected at facilities increases in correlation to its level of cyber integration. ACC believes that DHS could do a better job in sharing cyber threat information with CFATS facilities. This data would be very helpful for facilities to prioritize risk evaluation and security planning. DHS inspectors should also be trained in the latest trends in cybersecurity threats against chemical operators and handlers so those trends can be shared with regulated facilities and plans can be adapted accordingly.

CONCLUSION

The long-term security of our Nation is a goal and a commitment that we all share. That is why ACC and its members encourage you to provide the necessary stability to this important security program and make the improvements that are needed to take CFATS to the next level while providing DHS with the appropriate Congressional oversight and guidance.

Mr. RICHMOND. Thank you. I thank all the witnesses for their testimony.

I will remind each Member that he or she will have 5 minutes to question the panel.

I will now recognize myself for 5 minutes to ask questions.

I will start with Dr. Wilson. As a first responder I think you bring a unique perspective, so just a couple questions. Based on that first-responder experience, how is a lack of information for first responders putting that first responder at risk?

Mr. WILSON. Well, in a number of ways, and it is an excellent question. One of the structural problems is that information is transmitted to local emergency response committees, LEPCs, and these are essentially volunteer committees set up by representatives from the safety and emergency response community.

They are under—they are under-funded and I would say vastly over-tasked with what they are responsible for doing. Since 9/11 and Katrina, these LEPCs are responsible for industrial emergency response plans, for preparing communities for natural disasters

and as well for terrorist attacks, and for transmitting information to first responders.

I think there is good evidence to show that that structure needs to be re-evaluated, that—and that first responders need to get information that is timely, that is comprehensive. They need to be able to match that information to their experience.

As I said in my testimony, in my written testimony, actually getting their hands and getting themselves into the—the plants themselves to better understand what it is they are walking into in the event they are—that an emergency occurs at the facility.

You know, in my experience it's—it was even difficult to get information in the first place and then it was very difficult to have an on-going cooperation with the industrial facilities in our jurisdiction.

So as a consequence when we responded to industrial chemical releases, to fires at industrial facilities, there was a lot of uncertainty. Honestly I don't think we fully appreciated the risks that we were facing going into those incidents.

Mr. RICHMOND. You mentioned the LEPCs. So I will go to Ms. Nixon now and ask, as a member of your local LEPC, can you tell us why emergency managers need to have some visibility into chemical security risks so they can protect their communities?

Ms. NIXON. They need this because they are getting most of their information from the EPA's Risk Management Program and so it's difficult for them to know exactly all of the chemicals that are within the facilities. Then they have to transmit all that, as Mr. Wilson said, to the first responders.

I know that during our 2008 fire and explosion at the Institute plant it was hours before the first responders knew exactly which unit it was that was burning and that had exploded.

Even though they questioned them routinely over the radio over—through the dispatcher trying to find this information, it was difficult for them to get this information. So if they had all this information is—it's imperative that it is shared with our first responders.

Mr. RICHMOND. Well—and this question I will just ask generally and maybe start with Ms. Meskill.

In the event of an incident workers would likely be the first to answer the door when firefighters and police arrive. Is there a risk that if employees are not involved in a security plan emergency response could suffer almost like Ms. Nixon just spoke of?

Ms. MESKILL. Sure. So at BASF and I know at many of my peer colleagues in the ACC, employees are involved in security planning for all the reasons that were—been summarized today.

The expertise is shared across the facility how to best prevent, contain, and react to an incident. So definitely for our company site security planning is very collaborative and includes many employees. It's absolutely essential that that planning extends to local emergency responders.

I know at BASF and my peers in the chemical industry at ACC also proactively engage local law enforcement and emergency responders to participate in our emergency planning, our site security planning and in some cases even in, you know, table-top exercise and insight drills and exercises.

Mr. RICHMOND. I applaud that. My question would be—follow-up question would be, do you think that every facility does that?

I know you said BASF and many of your ACC but would you think that that is across the board 100 percent? Or do you just think it's a best practice that should be 100 percent?

Ms. MESKILL. Yes. Unfortunately I cannot comment as to whether or not it's done 100 percent, but it definitely is a best practice in security planning and emergency response planning.

Mr. RICHMOND. Thank you.

I now recognize the Ranking Member Mr. Katko for 5 minutes.

Mr. KATKO. Thank you, Mr. Chairman.

Thank you all for your thoughtful testimony.

A couple quick questions, Mr.—Dr. Wilson. First of all, thank you for your time as a first responder. Prior to coming to Congress I was on the front lines with organized crime cases and I have worked hand-in-glove with first responders on a daily basis, so I thank you for your service there.

Have you heard of the term the chemical vulnerability information?

Mr. WILSON. Was it chemical vulnerability information?

Mr. KATKO. Yes.

Mr. WILSON. Sure.

Mr. KATKO. Yes. OK. So in order—first responders have access to that if they go through proper training, is that fair to say? That allows them to have access to what information—what chemicals are in a facility?

Mr. WILSON. They have access through the LEPCs through information on chemicals that are located and the quantities of those chemicals located at facilities in their jurisdiction, yes.

Mr. KATKO. Correct. In order to have access to that, the first responders have to get training. I guess my question is are the first responders getting the proper training and proper support to get that training so that they can have the information about each of these facilities?

Mr. WILSON. I would respond to that by saying it really varies. In urban—

Mr. KATKO. That's my concern. Yes.

Mr. WILSON. Yes. I think your concern is warranted. I think in urban areas we have some of the Nation's elite hazardous materials response teams. Those folks are well-trained. They are well-equipped. They are capable of responding.

We also have rural departments, many, you know, that are served—in rural areas that are served by volunteers who have other jobs. I can tell you that one of the things that I did in serving with the FEMA National Response Team on Task Force Four out in—with the Oakland Fire Department was serving as an adjudicator for a large Bay Area exercise called Operation Urban Shield.

I was a judge for really top-notch hazmat teams who were responsible for going through an exercise responding to a massive chlorine leak at a water treatment plant. I can tell you that even with those folks who understand the challenges they are up against and are well-resourced, it was—it's a difficult exercise.

It's a high-consequence, low-frequency type of event and there is a lot of information that—and the situation is dynamic and chang-

ing every—and so there's both, as I said in my testimony, the need for both information and also routine access to these facilities—

Mr. KATKO. Right.

Mr. WILSON. For firefighters and—

Mr. KATKO. OK. So that's my next—it's a good segue to my next question here.

But first of all, I want to remind everyone that there is other—other agencies oversee the chemical distributors. Lord knows Ms. Meskill knows that. So the core function of CFATS is anti-terrorism.

Mr. WILSON. Right.

Mr. KATKO. Right? So I am concerned that with the CFATS bill that we don't bleed into other things that are jurisdictions of other areas. CFATS is about anti-terrorism best practices. Right? So let's keep that in mind.

So there are—and with that mind, sir, there is the Emergency Planning and Community Right to Know Act, there is the Clean Air Act's Risk Management Plan, there is a toxic release inventory requirement, Toxic Substances Control Act, as well as other Federal statutes, all of which allow you to accomplish some of these things. Isn't that fair to say?

Mr. WILSON. It's not. Not quite. I mean, there are, you know, often large gaps, limitations with the Toxic Substance Control Act. We have had historic problems with the Risk Management Program and that was the subject of hearings under Executive Order 13650.

Those corrections to the RMP Program were implemented under Executive Order 13650 and subsequently removed and the sort—and that arena is sort-of in conflict still about what kinds of information should be transmitted to first responders and in what form.

Mr. KATKO. Right. I—I am sorry to interrupt you because I only have a little bit of time and I understand what you are saying. But wouldn't it be the purview of some of the other committees under those acts to fix those? My concern, again, is that CFATS should be laser-focused on the anti-terrorism component.

But I agree that we need to fix those other things, if they are a concern.

Mr. WILSON. Yes.

Mr. KATKO. But I am just wondering whether that—this is the right arena.

Since I don't have enough time, Mr. Morawetz and Ms. Nixon, Ms. Meskill, I just note a couple of things here and perhaps one of my colleagues can pick up on it.

Some employees do not have the security clearances to get access to some areas of chemical facilities because they have different screening levels. So if there's a concern about employee information, probably some of that should be designated to a high-level employee with the right screening should be there.

Last, under the inherently safer technologies issue for chemical facilities there's a built-in incentive, I believe, for a chemical manufacturer to get the least volatile chemicals because if you get the—if you get a better IST rating or a better rating by the CFATS control because that the chemicals you have are not as volatile or dan-

gerous, you get a better rating and get less oversight. So there's a built-in incentive there as well.

With that, Mr. Chairman, I yield back.

Mr. RICHMOND. Thank you.

I now recognize Mr. Langevin.

Mr. LANGEVIN. Thank you, Mr. Chairman.

I want to thank our witnesses for your testimony here today. I also want to extend my condolences to our Representative Katko on the loss of his father and welcome him back to the subcommittee.

So I want to look at another aspect of security that is focused on cybersecurity at these facilities. Mr. Morawetz in your testimony you highlight the importance of training to the workers at chemical facilities, and I am particularly interested in the cybersecurity training.

I think that the old adage we are only as strong as your weakest link certainly applies in this case.

So what type of cybersecurity training do most workers at chemical facilities receive today?

Again, you click on the wrong link, you, you know, you download a piece of malware, you could put everybody at risk. So I—I am looking at what type of cybersecurity training do most workers receive at these facilities?

Mr. MORAWETZ. Cybersecurity is really not my area of expertise, so it is limited what I can say about it. I do know though that in the limited number of control rooms that I have been in these are very sophisticated operations and I can only imagine the kind of training that needs to be sure adequate protections are taken. But it's really not my area.

Mr. LANGEVIN. OK. Well, I bring this up because I need to—it is an important topic that, again, all workers need to be cyber-conscious, if you will, particularly people that are in the control rooms.

But, you know, bringing in your home laptop and plugging it in somehow to the network and the systems administrator is not aware of it and you have got malware on your computer then you have potentially just infected the system of the entire facility and could potentially have very serious consequences.

So I think that's something that really needs to be built into the culture of the organization just as a regular part of the training.

The reason I bring this up, Mr. Chairman, is that my colleague Mr. Thompson and I have introduced a bipartisan piece of legislation to help ensure that our career and technical education programs in our high schools or—or even at community colleges incorporate cybersecurity, particularly within the critical area of the critical infrastructure.

I certainly hope that our Cybersecurity Skills Integration Act is going to help improve the security at the chemical sector as well.

Let me turn to Ms. Meskill. Staying on the topic of cybersecurity, if I could ask you what metrics does your industry use to assess your cybersecurity posture?

Ms. MESKILL. Thank you very much for the question. We have—BASF being an extremely large organization, and as I stated earlier, hundreds of facilities, different types of facilities, manufacturing, distribution, R&D, we have multi-levels of cyber risk. So

the metrics that we use really look across that spectrum and we do take the risk-based approach.

So we are looking at, you know, risks that might come up in an administrative building, so trade secrets and things of that nature. R&D where it might be attacked by, again competitors or others trying to steal our innovation. Then, of course, to the topic that you already referred to, to our industrial control systems.

So once we understand the risks then we start layering our security planning on top of it. It is rooted, very much as you suggested, in strong employee awareness of what that risk might be in the area that they are operating in.

Bringing it back to the point that Chairman Richmond, you know, originally pointed out, was employee involvement. If they hear something, say something. They are the folks that are going to be most keenly aware of something that's not right.

So the metrics that we are using to evaluate our programs really span, I think, to understanding what the risk is that's undermining our ability to do what we are doing or the safety and security of our employees.

It's really looking at awareness across our employee base. We have got 20,000 folks working, you know, just employees and you layer on top of that contractors. Our awareness efforts also extend to them as well. We have got to make sure that these guys are understanding what might look strange and then know how to respond to it and report it.

Mr. LANGEVIN. Yes, yes. Excellent points in your answer. Thank you.

Can you—do you happen to know how often you refresh the metrics that you use? Is there an annual audit, or something quarterly?

Ms. MESKILL. It's constant. So these areas are being reviewed by internal audit, by our I.T. function, by our security function, by our Responsible Care auditing function, and cybersecurity is a topic that they are reviewing. Information protection actually is what we call it within in our organization. So they are constantly looking at it.

Mr. LANGEVIN. Thank you very much. I appreciate your answer. My time has expired, but thank you.

I yield back.

Mr. RICHMOND. I thank the gentlemen.

I will now recognize Mr. Walker from North Carolina.

Mr. WALKER. Thank you Mr. Chairman. Thank you for calling this hearing.

I—Ms. Meskill, you seem to be the one getting the most questions, but I do have a few more for you and I appreciate your patience and certainly the entire panel. As you know, DHS has implemented the Personal Surety Program at the Tier 1 and Tier 2 facilities. My question is—first question is do you have any feedback on how that's going at this point?

Ms. MESKILL. At this point, the feedback that I will share from my own organization is when we went through the process it was smooth and it's fine. I am hearing pretty much the same from my peers in the ACC. There were some initial hiccups, as you would expect, but now those seem to have been ironed out.

Mr. WALKER. As you look, I guess, potentially to implement some of the changes in the Tiers 3 and 4, would you speak to talking about maybe the challenges that would exist in implementing such a program?

Ms. MESKILL. Absolutely. So as it happens, at BASF and I think at many of the companies of our size, many of our facilities we have worked to reduce our risk and so we are now down to either 3 or 4 tier levels.

So as I mentioned earlier, this is an enormous number of folks that we have to do the additional screening on. But perhaps the more complicated would be the contractors and visitors that we have on-site. That's where it gets a little bit—a lot more complicated to ensure that all those individuals that are coming on to our site day-in, day-out have gone through the screening process. It's costly. It's very expensive, needless to say, for us as well as for the contractors that support us.

Mr. WALKER. So that would be one of the challenges for the cost as well?

Ms. MESKILL. Correct.

Mr. WALKER. Ms. Meskill, how would you rate the coordination with State and local officials to improve emergency management operations? Would you speak to that?

Ms. MESKILL. Sure. So again, we take a very proactive approach at BASF, and I know my peers in ACC do as well, to ensure that we are networking and coordinating with local law enforcement, State and Federal, as well as emergency responders. Our primary responsibility is the safety of our own people and the continuity of operations, the protection of the communities that we work in. We recognize our responsibility to do that.

The best way that we can do that is ensuring that our local responders and law enforcement officials understand our plans, know who we are, are familiar with our facilities, and that our efforts to contain, prevent, and mitigate these threats are completely aligned and collaborated with them.

Mr. WALKER. That's a great goal. Can you unpack that a little bit more and tell me the intentionality that it takes to be able to build that relationship?

Ms. MESKILL. It's constant, again. So I am not familiar with any cases where we have been turned down or where a local law enforcement, State or Federal entity or emergency responder has not welcomed that opportunity.

But as referenced earlier by Dr. Wilson, it is something that needs to happen at least annually. I know our sites strive to have that meeting—conversation at least annually to, you know, talk about any changes, particularly as people rotate through positions.

Mr. WALKER. Ms. Meskill, how has stakeholder engagement been enhanced since the beginning of the CFATS program? How in your opinion can it be regionally improved as we move forward?

Ms. MESKILL. I am sorry. Could you clarify stakeholder?

Mr. WALKER. Yes. The stakeholder specifically is the engagement of those that may have some kind of interest or connection with your organization.

Ms. MESKILL. OK. So external—

Mr. WALKER. Yes.

Ms. MESKILL. As well as internal. I cannot comment as to whether CFATS has improved that because it's already, as I mentioned earlier, a best practice for emergency response planning and site security planning. So I believe that engagement at least at BASF was occurring—would have occurred with or without CFATS.

Mr. WALKER. It would—it—fair enough. If you are not comfortable with stakeholder then maybe this final question if you could elaborate on it? It's where is engagement by the DHS lacking?

Ms. MESKILL. OK, for DHS. We have not experienced a gap with DHS. There perhaps was when they implemented the new risk-tiering levels and they needed to educate inspectors as to the new standards and requirements, but those, again, were part of working in a new program.

I think they have addressed the issue. As soon as they heard industry raise it as a concern, they addressed it and now we are quite satisfied with that level of support.

Mr. WALKER. Well, thank you for your expertise in this area.

Ms. MESKILL. Thank you.

Mr. WALKER. With that, I yield back, Mr. Chairman.

Mr. RICHMOND. Thank you, Mr. Walker.

I now would like to recognize the gentlewoman from New York, Miss Rice.

Miss RICE. Thank you, Mr. Chairman.

I want to thank you all for coming here today to talk about this very important issue. As one of the founders and co-chairs of the House Whistleblower Protection Caucus, I am very concerned to hear that facility employees and union representatives have been left out of the development and implementation of whistleblower programs at chemical facilities.

So Mr. Wilson, I think I will give—address my questions to you. What is the current process for an employee to report a concern and how is DHS disseminating information on appropriate whistleblower procedures to facility employees?

Mr. WILSON. For—my understanding is that there are whistleblower protections within CFATS, but the ways in which that's actually implemented out in the field it's not clear to me.

It's also not clear in looking through the risk-based performance standards if inspections include an assessment of whether and to what extent whistleblowers, you know, have been protected or have been retaliated against in some way or another.

Miss RICE. Well, have you heard of any specific whistleblower retaliation cases that—at any CFATS facility, you personally?

Mr. WILSON. I have not personally, no.

Miss RICE. Do you know if DHS requires training for all facilities covered by CFATS on how to appropriately handle whistleblower complaints?

Mr. WILSON. My understanding, again, in looking through the risk-based performance standards and the guidance documents is that their training around the handling of whistleblowers and the protection of whistleblowers from retaliation would be a helpful addition to the program.

Miss RICE. Does DHS need additional statutory authority to compel facility owners and operators with whistleblower regulations?

Mr. WILSON. I think that would be a benefit as well, yes.

Miss RICE. So are you aware of GAO's recommendations in regards to whistleblower retaliation that DHS has not yet implemented—any of those recommendations that they have not yet implemented?

Mr. WILSON. My—in looking through the GAO reports my recollection is that those have not yet been—have not yet been implemented.

Again though, I would have to look at the GAO reports a little more carefully.

I recall that they have been looking for a way to formalize those complaints and to surface them and ensure that employees know that they have the right to call attention to a problem and that they can do so without fear of retaliation, that there's a system for doing that and there's notification within their workplaces to that effect.

Miss RICE. So, would you agree with DHS's assessment that it does not have the authority to pressure facilities to comply with whistleblower regulations?

Mr. WILSON. It's—that's a little bit outside of my expertise. But my—in reading just simply, you know, a read of the statute itself, it does have whistleblower protection. But DHS, you know, would have to make a determination to that effect.

Miss RICE. Ms. Meskill, can you answer that question?

Ms. MESKILL. Would you please repeat the question?

Miss RICE. Do you agree with DHS's assessment that it does not have the authority to pressure facilities to comply with whistleblower regulations?

Ms. MESKILL. No, I am sorry. I can't comment on that question as far as DHS authority.

Miss RICE. OK. But any whistleblower—are you aware of any whistleblower issues?

Ms. MESKILL. No, none at all. We have our own, of course, internal means for employees to escalate concerns and issues.

Miss RICE. OK.

Ms. MESKILL. Yes.

Miss RICE. Does DHS issue guidance for cyber—I don't know if you—if Mr. Langevin asked this question, but does DHS issue guidance for cybersecurity standards that CFATS facilities have to meet? Yes.

Ms. MESKILL. Yes, they do. They—in the risk-based performance standard there are guidelines for cybersecurity, yes.

Miss RICE. Let me just ask you to expound on a comment that you made before about when you gave a list of 4 recommendations. You were talking about a concern that you had about the value of testing on lower-level facilities and what that would encompass in terms of the number of employees and the privacy issue. Can you just expound a little bit—

Ms. MESKILL. Sure.

Miss RICE [continuing]. More on that?

Ms. MESKILL. Sure. This is going back to the question that was raised before. It has to do with the terrorist database screening of employees and contractors at lower-risk facilities.

Miss RICE. What are your specific concerns about that?

Ms. MESKILL. Our concerns are exposing personal data of thousands of—more thousands and thousands and thousands of employees and contractors for this terrorist database screening and whether the value actually is there for the cost and for the potential risk of exposing this personal data to cybersecurity risks.

Miss RICE. But don't you think that's one of the core ways to ensure security at these facilities?

Ms. MESKILL. Well, we are conducting our own background screening anyway, which includes, you know, criminal background checks also, so it seems duplicative, yes.

Miss RICE. So have you communicated that?

Ms. MESKILL. Yes.

Miss RICE. Are there any questions that they include in their review of their background check that you do not?

Ms. MESKILL. I cannot answer that question. I am not—I don't know the answer to that.

Miss RICE. OK.

Thank you, Mr. Chairman.

Mr. RICHMOND. Thank you.

The gentleman from Texas, Mr. Taylor, is recognized.

Mr. TAYLOR. Thank you, Mr. Chairman. Thank you for having this hearing.

Ms. Meskill, just a question for you about CFATS facilities. So I know that you have, as Mr. Katko was saying earlier, multiple regulatory entities coming in, you know, looking at all kinds of different things. In terms of the counterterrorism piece, the security piece, is the—is DHS the only counterterrorism security regulatory body that you deal with?

Ms. MESKILL. No. So—thank you very much for the question.

So again, looking at the perspective—my perspective as security director for BASF with—which has, you know, over 100 manufacturing facilities in North America, we are exposed to or complying with additional Federal security regulations, so really looking at security planning and security measures. That includes the U.S. Coast Guard at several of our sites, where they have jurisdiction, of course, DHS and CFATS, transportation security.

We also have for our drug precursors, DEA security requirements that we need to comply with, Food Defense Administration for any food-grade chemicals that we are manufacturing or handling. So yes, there are extensive regulatory security, really focused on security measures, regulations that we need to consider and comply with.

Mr. TAYLOR. So, does that—by having multiple groups coming in and saying, hey, move this over here, no, no move that over there, are you getting conflicting regulation—I mean, so in other words, one regulator says one thing one month, the next regulator says another thing another month, and so you are—I mean it is just—it is difficult, because you got different people—

Ms. MESKILL. It is difficult.

Mr. TAYLOR [continuing]. That want different things—

Ms. MESKILL. Yes.

Mr. TAYLOR. So rather than having one consistent, you know, coach you have got multiple coaches telling you what to do.

Ms. MESKILL. Correct. So I would say conflicting, most likely not, because security best practice in those measures are usually pretty much the same. But keeping track of all of those regulations as a security director, but then working with our business partners and facility managers and directors to understand which security measure they need to implement is where the complexity arises.

Then layered on top of that, of course, is the additional responsibility that we have already taken on ourselves. So we have our own internal security practices and requirements that we need to comply with, as well as the Responsible Care Security Code.

So when I talk about tiering, just to give you an example, to paint a picture for you, when I talk about tiering a site, such as Chairman Richmond's, you know, in his district, I have four different tiers that I can use to describe that site.

So that is where the level of complexity comes in. Each of those tiers is looked through a different lens of security.

Mr. TAYLOR. I am sure you would view it favorably if Congress moved to simplify that—

Ms. MESKILL. Absolutely.

Mr. TAYLOR. Just to make it easier to do your job and to do what we are all trying to do here.

Ms. MESKILL. It's not just easier. It's really keeping our focus. So what I think everybody here can agree with that you want to make sure that chemical manufacturers and handlers are completely focused all the time on the security risk, on the terrorist risk.

If I am spreading that focus across many different regulations, then it can get distracting. If I am more focused on complying with regulation, rather than managing the threat to my site, then I am potentially gonna lose focus. I think that's the greater concern.

Mr. TAYLOR. Right.

Mr. Chairman, I would like to yield my time to Ranking Member Katko.

Mr. RICHMOND. The gentleman is recognized.

Mr. KATKO. Thank you, Mr. Chairman. Thank you, Mr. Taylor, for yielding time.

So I have just got a quick question. Does the CFATS—anyone aware that CFATS has what is a—a tip line program? The reason I ask that is if they have it why isn't it being used more by employees?

If there's something we need to do to beef that up, to help incentivize employees in a confidential nature to come forward with information, if they have concerns. Anybody?

Mr. MORAWETZ. I would say the basic question is how much do our labor unions and the members know about the hotlines?

Mr. KATKO. Yes. That's my concern.

Mr. MORAWETZ. The problem is we have been having discussions with CFATS about the possibility of publicizing it in a way that's confidential, where it needs to be, that information, but it hasn't happened yet. We would be open, and it is in my testimony, a way that workers can know just like there are posters about OSHA, posters about minimum wage, a simple way people can know without identifying what tier you are on, if you are in danger, here's what you are doing—

Mr. KATKO. Right. It might ameliorate some of the—some of my colleague Ms. Rice’s concerns about whistleblower retaliation. But it seems like something we can do to help incentivize that program and do something to force the Homeland Security to better publicize that in all the facilities.

Does that make sense, Ms. Meskill?

Ms. MESKILL. Sure. It could definitely help. I think it’s one poster among many. If you have been to a manufacturing facility and you have seen that wall, there’s probably 15 posters. But no, definitely I think it could help for sure.

Mr. KATKO. OK. Well, we will get you off-line. Maybe if you have some ideas afterwards that you could submit to me in writing, I would appreciate it. Because I would like to figure out how we can just incentivize people to kind-of fill that gap a little bit by saying, you know, hey, you have an anonymous way of doing this, if you don’t want to get involved with the whole whistleblower thing.

I think that would help the unions feel more empowered as well. So I would love—I would welcome your input on that.

I yield back, Mr. Chairman.

Mr. RICHMOND. Thank you.

The gentlewoman from Texas, Ms. Jackson Lee, is recognized.

Ms. JACKSON LEE. Mr. Chairman, thank you very much for holding this hearing.

Thank you to the witnesses.

Mr. Morawetz, I am concerned about the workers, who every day are—certainly the community, because many of the workers live in the community.

Likewise, Ms. Nixon, concerned about communities and we want to make sure that they are safe. So I know that during a chemical incident, for example, time can mean lives and knowledge about what chemicals are involved can help make the right decisions in first responders easier.

So Mr. Morawetz, would you share with me the—on the issue of providing insight on how the lack of information about a facility or the chemicals can hinder the safety and security of the members, the workers because they may be working with chemicals that no one has apprised them of or the facility or the surrounding area.

I am reminded of a terrible incident in Texas that many of you may be aware of, would flatten the whole area and schools, and we only were saved, if you will, in terms of lives—extensive lives lost because it was a weekend.

Mr. Morawetz, the knowledge of what the chemicals are?

Mr. MORAWETZ. Thank you, Ms. Lee. Well, actually Texas has been the scene of a number of incidents with Hurricane Harvey. I believe there was a facility that blew up many days afterwards. As I mentioned in my testimony, 4 workers died in a facility in Houston.

As I put in my testimony, one problem is the knowledge that workers have, under another jurisdiction, is under OSHA, is a one-time deal. It is basically—it has communication and you are trained once and that’s it.

Under the realm of Homeland Security, I would say that you—there is a role that CFATS can play to say—to mitigate the possibility of an incident happening and what can happen afterwards.

That training should be enhanced. I—I am not fully aware of the CFATS inspectors' training, but that's part of it also.

The other thing I would say, that in terms of knowledge, the other question is what do you do with that knowledge? Part of the problem that's been alluded to is emergency responders. Our members, as well as salaried people, are on joint emergency response teams.

One thing you could enhance is the ability and the mandate to say you have to train. You have to train internally. You have to train with the LEPCs, so local first responders. We have found if people don't drill that things fall apart and some of those tragedies are really horrendous.

Ms. JACKSON LEE. Thank you so very much. I am intending to introduce again the Frank Lautenberg Chemical Facility Cybersecurity Act. I know that with all of our excellent workers that we are moving to more of a cyber system in many of our facilities. What happens when a cyber attack, combined with chemicals, is potentially unspeakable.

So we have computer programs that need to be secured, and Mr. Morawetz, you are making a very good point that I am going take up on because I am very interested in that in terms of the training. I think that training should also involve the cybersecurity system.

So Mr.—Dr. Wilson, do you feel able to comment on that, the cybersecurity system?

Mr. WILSON. If there's a specific question regarding cybersecurity, could you repeat that?

Ms. JACKSON LEE. The importance of also assessing the cyber system in a chemical plant.

Mr. WILSON. That's outside my area of expertise.

Ms. JACKSON LEE. OK.

Let me conclude my comments, Mr. Chairman. We are in an infrastructure committee as well, and we do not have this matter before us, but I just feel compelled just to make a comment on the recent tragedy dealing with the Ethiopian airlines.

I know that we have a lot of responsibilities. I consider that a security issue, and frankly, believe that the FAA should ground the 737 MAX 8 to protect the lives of individuals because pilots and flight attendants and passengers count.

So I thank the gentleman, and I yield back my time.

Mr. RICHMOND. I also share the gentlelady's concern, especially the neighborhood schools and other facilities that our planes fly over.

Let me just thank the witnesses for their valuable testimony, and the Members for their questions. The Members of the committee may have additional questions for the witnesses, and we ask that you respond expeditiously in writing to those questions.

Hearing no further business, the committee stands adjourned.

[Whereupon, at 11:16 a.m., the subcommittee was adjourned.]

APPENDIX

QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON FOR JOHN S. MORAWETZ

Question 1a. The CFATS Act of 2014 directs DHS to provide “such information as is necessary to help ensure that first responders are properly prepared and provided with the situational awareness” to respond to an incident at a CFATS facility.

Last year, GAO reported that CFATS information is still not making it into the hands of first responders and emergency managers consistently, especially at the local level. How does this put first responders at risk?

Answer. Response was not received at the time of publication.

Question 1b. GAO also reported that, without consistent access to CFATS information, first responders have to rely on information reported to EPA under the Emergency Preparedness and Community Risk to Know Act (EPCRA). Is the EPCRA framework for information sharing adequate? How do the information-sharing provisions under CFATS compare with EPCRA?

Answer. Response was not received at the time of publication.

Question 2a. You mentioned the importance of facilities not only managing risk, but also working to eliminate or reduce those risks when it is possible, and depending on factors like cost and the unique conditions on-site.

What are some of the ways facilities can modify, reduce, or eliminate risk?

Answer. Response was not received at the time of publication.

Question 2b. One of the promising aspects of CFATS is that, over the years, it has encouraged thousands of facilities to voluntarily modify chemicals or processes in ways that lower their risk profile, and as a result, their overall regulatory burden. Is there an opportunity for DHS to use that data to develop a flexible set of best practices on how facilities are making these modifications?

Answer. Response was not received at the time of publication.

Question 3a. While the location of CFATS facilities is not publicly available, research has shown that facilities with dangerous chemicals tend to be concentrated low-income and minority communities. That means these communities are exposed to a disproportionate share of chemical safety hazards, and disproportionately vulnerable to chemical security risks.

For communities with multiple high-risk facilities, is it possible the close proximity of these facilities could exacerbate the impact of a security incident or terrorist attack? Or, make that community a prime target for a terrorist?

Answer. Response was not received at the time of publication.

Question 3b. Should DHS consider the presence of multiple chemical facilities clustered together as part of its risk assessment?

Answer. Response was not received at the time of publication.

Question 3c. Are there ways DHS and other regulators could work with these communities to make sure, for instance, that they have sufficient first-responder capacity and emergency response plans?

Answer. Response was not received at the time of publication.

Question 3d. Are there resources available through other Federal regulators, like the EPA’s EJ Screen tool, that DHS could use to better understand communities where CFATS facilities are located?

Answer. Response was not received at the time of publication.

Question 4a. The CFATS Act of 2014 has some limited requirements for facility owners and operators to consult with at least 1 knowledgeable employee and/or labor union representative in the security planning process, but only “to the extent practicable.”

Can you elaborate on the benefit of having employees on the ground contribute to security plans and serve as force multipliers for monitoring compliance?

Answer. Response was not received at the time of publication.

Question 4b. How would you characterize the level of engagement between owners, operators, and workers at CFATS facilities?

Answer. Response was not received at the time of publication.

Question 4c. The CFATS Act of 2014 also establishes a whistleblower process for employees to report potential CFATS violations. If employees do not know their facility is subject to CFATS, or have never heard of the CFATS program to begin with, how can they be expected to report violations?

Answer. Response was not received at the time of publication.

Question 5a. The CFATS program is supposed to be identifying the Nation's highest-risk chemical facilities. In the past, there have been questions about the metrics DHS uses to assess risk, and whether those metrics are comprehensive enough to consider the full range of consequences. As a result, CFATS may be defining "high-risk" too narrowly and leaving many facilities insecure.

Right now, DHS does not consider nearby infrastructure, like hospitals, schools, power plants, military bases, or other sensitive buildings, in calculating risk. Should DHS consider these factors?

Answer. Response was not received at the time of publication.

Question 5b. Similarly, DHS considers potential loss of life, but not adverse health consequences of chemical exposure. Is it fair to say that human illness and injury could result from a chemical attack?

Answer. Response was not received at the time of publication.

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Answer. Response was not received at the time of publication.

Question 3. In February, DHS testified that they have done outreach to “literally thousands” of local emergency planning committees (LEPCs), including 800 LEPCs last year alone. You’ve served on your LEPC for over a decade—and, your community is home to 4 CFATS facilities, 2 of which are in the highest-risk tier. How would you characterize the outreach you have received from DHS thus far?

Answer. Response was not received at the time of publication.

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Question 5a. In 2008, a Bayer pesticide plant explosion in your area of West Virginia sparked a National controversy after the CEO acknowledged during Congressional testimony that he had advised officials to refuse information to first responders, and mark records as sensitive security information that were unrelated to security, in a blatant effort to conceal information from first responders, law enforcement, and Federal regulators. Over 10 years have passed since that incident.

Through your work with the Environmental Justice and Health Alliance, do you still encounter issues with chemical companies refusing to provide information on National security grounds?

Answer. Response was not recieved at the time of publication.

Question 5b. Are there areas where further improvement is needed when it comes to sharing information about chemical security risks?

Answer. Response was not recieved at the time of publication.

