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THE CHEMICAL FACILITY ANTI-TERRORISM STANDARDS PROGRAM: A PROGRESS REPORT

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

SEPTEMBER 11, 2012

Serial No. 112–172

Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PRINTING OFFICE
82–834 PDF WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
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[1] Mr. Beers, Mr. Wulf, and Ms. Berrick did not present oral statements.
[2] Mr. Beers and Mr. Wulf submitted a joint prepared statement.

THE CHEMICAL FACILITY ANTI–TERRORISM STANDARDS PROGRAM: A PROGRESS REPORT

TUESDAY, SEPTEMBER 11, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:00 a.m., in room 2322, Rayburn House Office Building, Hon. John Shimkus (chairman of the subcommittee) presiding.

Members present: Representatives Shimkus, Murphy, Latta, Cassidy, Gardner, Barton, Upton (ex officio), Green, Butterfield, and Barrow.

Also present: Representative Pompeo.

Staff present: Nick Abraham, Legislative Clerk; Charlotte Baker, Press Secretary; Sean Bonyun, Communications Director; Matt Bravo, Professional Staff Member; Jerry Couri, Senior Environmental Policy Advisor; David McCarthy, Chief Counsel, Environment and the Economy; Andrew Powaleny, Deputy Press Secretary; Chris Sarley, Policy Coordinator, Environment and the Economy; Brett Scott, Staff Assistant; Jacqueline Cohen, Democratic Counsel; Greg Dotson, Democratic Staff Director, Environment and the Economy; Elizabeth Letter, Democratic Assistant Press Secretary; Karen Lightfoot, Democratic Communications Director and Senior Policy Advisor; and Stephen Salsbury, Democratic Staff Assistant.

Mr. SHIMKUS. The subcommittee will come to order. And we would ask our guests to come on in and sit down and close the doors, and we will welcome our first panel.

I have an opening statement which I will read in part and hopefully then get unanimous consent to submit for the record.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

I have been thinking about CFATS for a long time, since the last hearing, and how long it has taken and the past problems, et cetera, et cetera, et cetera. We all know the story.

You know, the Illinois State flag has a banner underneath it that says "State sovereignty, national unity." And I think part of our debate is, here at the national level, are States still sovereign? And how do we address national unity issues like homeland security and the like? And I think this is a perfect program that, if done properly, we can move in a good direction.

What do we need on security? As many of you know, I have a military background. I served in West Germany during the old

days. I understand security, I understand perimeters, I understand threats, not as well as those who are involved more deeply today.

But we want folks to have perimeter security. We would like the national government to provide assistance in identifying insecure facilities or placement of chemicals and operations and stuff. As I said, assistance, not the threats, not the mandates.

And then we do need to address the personal assurance issues about who is involved in working around what type of materials.

I think that really encompasses my view of CFATS. How can we work together so that we are all better off? I think we still have a ways to go. I know we are making progress since the last hearing, but I think there are still issues to address.

And I know that there are some issues about why today, and was this planned, and was there politics behind today. At least that is what the rumors were from staff. And, first of all, no, this is the last full week here. We have to get through this.

But the second point I would say, how do you best honor those on a day like today than to address the threats of today? I think we do more, if we are really concerned about the threats posed, to continue to address our issues of safety and security on today. I think that is how you better honor folks, by moving forward.

So whatever debates and statements on that are, I don't really have a dog in that fight, and I could really care less what people think on that.

After the last hearing on this issue, I know testimony is going to be that we have implemented—or DHS has implemented 59 of its 95 corrective actions. We will want to ask, where we are at on the other 36?

I will address questions on the permanent branch chiefs. I do think having people in positions for a period of time is probably an important thing for continuity and for process. I have a national forest in my congressional district. My relationships with the manager and the forest and all the stakeholders are much better when the same person is there over a couple years versus swapping them out every 6 months or every year. And I think that is true probably at any Federal agency. My staffers who deal with constituent service are much better having continued to do that work over years versus having them doing different things.

We need to also address how do we move forward in a more transparent and open system and process. I think that is an issue, also, of the last hearing.

So I look forward to the hearing. I think it is very, very important.

Just for my colleagues who have shown up, Mr. Beers has agreed to waive his opening statement so that we can move questions after we get through ours because of the time constraints with the ceremony and your early departure. And we appreciate that.

So, with that, I am going to yield back the balance of my time and yield to the ranking member, Mr. Green, for 5 minutes.

[The prepared statement of Mr. Shimkus follows:]

Opening Statement Chairman John Shimkus
The CFATS Program – A Progress Report
September 11, 2012

The Subcommittee will now come to order. We have a very full hearing today and the House and the Committee have an ambitious schedule. We appreciate everyone's indulgence as we try to navigate all the considerations we face today.

The Chair now recognizes himself for the purpose of delivering an opening statement.

Many folks have commented about our hearing being scheduled for 9-11 – the 11th anniversary of the horrific attacks against our nation. Although today's hearing falling on the anniversary is a coincidence, the attacks were the driving force behind the creation of the Chemical Facility Anti-Terrorism Standards program, and we remain steadfast in our work to protect the American people from future attacks. I can guarantee that we will continue closely following the progress the Department of Homeland Security is making in fully implementing the CFATS program.

What I can guarantee everyone is it is no accident we are having another hearing on the progress the Department of Homeland Security is making in fully implementing the Chemical Facility Anti-Terrorism Standards program (CFATS).

This past February, the Subcommittee held a hearing which discussed enormous challenges confronting the CFATS program's execution. Sadly, this was a story contradicting most every ounce of previous testimony Congress had been provided by DHS and the regulated community about the soundness of DHS's implementation efforts. While I am glad the two brave employees penned the internal memo outlining the true state of play for CFATS, Congress shares some culpability in having allowed it to get this bad without greater oversight.

I support the CFATS statute and I think the regulations implementing the law are reasonable. I want it to succeed because I think it presents the best solution for dealing with terrorism at facilities with chemicals of interest. However, I do not support waste, fraud, and abuse -- and it seemed we had a bipartisan consensus on this point at the last CFATS hearing.

Seven months after our panel first heard sworn testimony from Under Secretary Beers about the state of CFATS and its plan forward today is our checkup on how things are going at DHS.

For all the support Congress has given over the years, CFATS should have more to show than repelling ropes, hazmat suits, and delayed implementation.

I understand DHS intends to tell us it has completed or implemented 59 or its 95 corrective "action" items. While I congratulate them for making progress, I want to know about how we are moving forward on the 36 remaining items, including the use of alternate security programs and the personnel surety program.

I also believe DHS is working on an alignment plan and finally making efforts to hire permanent branch chiefs. What I want to hear is whether DHS leadership has scoped out the job descriptions for these managers or if DHS intends to have their employees write the boss's job description. In addition, I want to know what DHS is doing to assure management continuity and reverse the constant turnover of CFATS leadership career employees.

Finally, Under Secretary Beers made several attempts in our February hearing to describe how he intends to create a more open, transparent and collaborative National Protection and Programs Directorate and thaw the chill from fear of retaliation employees felt if they delivered bad news. I want to know how that is going as well as examine concrete examples of his efforts.

I want to sincerely welcome all of our witnesses, we appreciate your being here and the perspective you provide. I will warn you: We are going to ask tough questions, and not for any reason other than because we are serious about protecting the American people from terrorism in the most appropriate way. We expect candor and the whole truth in response to our inquiries.

I now yield 5 minutes to my friend, the Ranking Member and distinguished gentleman from Houston, Texas, Mr. Green, for the purposes of delivering an opening statement.

OPENING STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GREEN. Thank you, Mr. Chairman, for holding this hearing today. And I don't know if it is special timing, but I think the reason we have chemical security is because of 9/11 and the concern we have about our major industrial facilities.

I want to welcome both of our panels.

This important issue—I am glad to see our subcommittee continue oversight of this critical program. I represent the Houston Ship Channel area, which is the largest petrochemical complex in the country. I cannot stress how important the success of the CFATS program is to my constituents who are the employees and live in the communities that surround the facilities. They deserve the best security standards possible to prevent acts of terrorism on U.S. Soil.

Secretary Beers, you did not testify under the best circumstances last February, but I hear that you have some positive things to report this time around. And I appreciate that things are starting to move, but we cannot ignore that it has been 6 years since this program was enacted and we are still not close to being there yet. It is time to get these plants inspected and approved, and I hope that you have a deadline for doing so to report to us this morning.

That said, it is Congress' job to make sure you have the resources to do this. I understand that the House appropriators significantly cut your budget. With movement finally happening in the last few months, now is not the time to limit resources. And I encourage my colleagues not to set us back now.

I want to end by talking about a subject that is of prime importance to me, and that is personnel surety. Developing and implementing a personnel surety program that relies on existing government credential systems, like the TWIC, would reduce a burden on DHS and the workers at these facilities and the industry.

Secretary Beers, last year I asked if the Department intended to integrate TWIC in the personnel security program. You gave me a positive response, and yet the proposal you sent to the OMB did not make it clear that TWIC is an acceptable background check. I am pleased that you rescinded the proposal in July, but understand that you will resubmit a revised personnel security program in the coming months. I hope today that you will definitely commit to allowing the Transport Worker Identification Card, or TWIC, to be used without caveats for workers or industries.

We will soon be reissuing thousands and thousands of TWIC cards because they are expiring, including mine expires in June of next year. I have spent so much time on plant sites in my district. At the Port of Houston, we have over 250,000 employees who use a TWIC card every day to get to work—250,000. Multiply that across the country. There is no reason to reinvent the wheel. We need to fix TWIC and use it as the standard card.

I regret Congress has still not passed a CFATS authorization. I still believe that a lot of problems with the CFATS program stems directly from not having a permanent authorization with direction from Congress. Chemical facilities security is extremely important to the protection of public health and safety throughout the U.S.,

particularly in our congressional district. There is no reason we should not act on this issue.

And I look forward to the testimony of our witnesses. And thank you, Mr. Chairman. I yield back my time.

Mr. SHIMKUS. The gentleman yields back his time.

The chair recognizes the chairman of the full committee, Mr. Upton, for 5 minutes.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Well, thank you, Mr. Chairman. I am going to ask that my full statement be made part of the record.

Mr. SHIMKUS. Without objection.

Mr. UPTON. I just want to say, 6 months ago we authorized CFATS. We were very conscious that the next terrorism incursion could come from within a chemical plant instead of on board an airplane.

And those of us who were here in DC. 11 years ago remember well every single minute of that day. And I, for one, made a promise that we should do everything that we can to make sure that that moment doesn't occur again in this Nation. We have to honor the victims and their loved ones by working together to ensure that such an attack can never happen again. And I support Chairman Shimkus and all that he is doing to make sure that, in fact, we are better safeguarded as a nation.

And I yield back my time.

[The prepared statement of Mr. Upton follows:]

Environment and the Economy Subcommittee Hearing on The Chemical Facilities Anti-Terrorism Standards Program – A Progress Report
September 11, 2012
Opening Statement of Chairman Fred Upton

Thank you, Mr. Chairman. In a few minutes this hearing will recess so that Members of both parties and both bodies of Congress can gather at the Capitol for a solemn observance of today's anniversary.

For eleven years now, we in this room, Members of Congress and Executive Branch officials, have been called to exhibit the courage and teamwork to protect America from terrorism. We have reassessed our daily lives and the systems we rely on to limit vulnerability without limiting the American way of life.

Six years ago this month we authorized the CFATS program, conscious that the next terrorist incursion could come from within a chemical plant instead of onboard an airplane. It is one of many facets of our complex economy that we look at differently in the shadow of 9/11, even as we recognize its important role in our nation's system of commerce.

Today we're examining key questions on the progress of this program:

- Where are we on preventing personal infiltration of chemical plants?

- Of the thousands of facilities that DHS says need CFATS, how many can confirm for their workers, their neighbors, their investors, and their insurers that they have achieved security against terrorism as defined by the U.S. Department of Homeland Security?

- Does the culture of the Department reinforce candor and teamwork in exchanging perspectives with each other, with stakeholders, and with the American people and their Representatives in Congress?

When we play team sports we know that "hide the ball" means hiding it from the opposition, not from members of our own team. Secretary Beers, this Committee is not your opponent; the terrorists are our common opponent. We are your teammates.

The horrific attacks against our nation that fateful morning eleven years ago continue driving all of our vigilance to protect the homeland. We must honor all of the victims and their loved ones by working together to ensure such an attack never happens again.

Mr. Chairman, I welcome all of our witnesses and look forward to their candid testimony and complete answers.

Mr. SHIMKUS. The gentleman yields back his time.

With that, seeing no other Members here authorized for an opening statement, the chair now recognizes himself.

First of all, as stated earlier, both Mr. Beers and Ms. Berrick, both have agreed to waive their opening statements so we can go right to questions. We appreciate that.

[The prepared statement of Mr. Beers and Mr. Wulf and the prepared statement of Ms. Berrick follow:]

Statement for the Record

Undersecretary Rand Beers
National Protection and Programs Directorate
Department of Homeland Security

Director David Wulf
National Protection and Programs Directorate
Department of Homeland Security

Before the
House Committee on Energy and Commerce
Subcommittee on Environment and the Economy
United States House of Representatives

September 11, 2012

Thank you, Chairman Shimkus, Ranking Member Green, and distinguished Members of the Committee. It is a pleasure to appear before you today to discuss the Department of Homeland Security's (DHS) regulation of high-risk chemical facilities under the Chemical Facility Anti-Terrorism Standards (CFATS). My testimony today focuses on improvements to the program, the current status of the program, examples of the program's successes to date, some of the current challenges facing the National Protection and Programs Directorate (NPPD) in implementing CFATS, and the actions we are taking to address these challenges through the Infrastructure Security Compliance Division (ISCD) Action Plan.

The CFATS program has made our Nation more secure and we welcome the opportunity to continue to work with Congress, all levels of government, and the private sector to further improve this vital national security program. As you are aware, the Department's current statutory authority to implement CFATS – Section 550 of the Fiscal Year (FY) 2007 Department of Homeland Security Appropriations Act, as amended –currently extends through October 4, 2012.

Since the inception of CFATS, more than 2,700 chemical facilities have eliminated, reduced, or otherwise made modifications to their holdings of potentially dangerous chemicals and are now no longer considered high-risk. In addition, NPPD's Chemical Security Inspectors have been actively working with facilities and governmental agencies across the country to facilitate the development of measures by high-risk chemical facilities that reduce security risks and enhance nationwide preparedness. Collectively, they have participated in more than 3,800 meetings with federal, state, and local officials; held more than 4,160 introductory meetings with owners and operators of CFATS-regulated or potentially regulated facilities; and conducted more than 1,050 Compliance Assistance Visits at chemical facilities to assist those facilities in the preparation of the necessary security-related documentation required by CFATS. In addition, NPPD has reviewed the Site Security Plans (SSPs) of the highest risk (Tier 1) facilities and is currently reviewing the SSPs for Tier 2 facilities. We have resumed authorization inspections [and begun approving SSPs for Tier 1 facilities].

At my direction, the program's leadership outlined its priorities, the challenges it believes the program faces, and a proposed path forward to address those challenges and accomplish program objectives. As the Directorate with oversight responsibility for the CFATS program, NPPD is continually evaluating the program to identify areas for improvement and correcting course when necessary to ensure proper implementation. I am pleased to inform you that NPPD has made progress on all 95 of the action items now included in the ISCD Action Plan and as of September 4, 2012 has completed 59 of them.

Chemical Facility Security Regulations

Section 550 of the FY 2007 Department of Homeland Security Appropriations Act directed the Department to develop and adopt within six months a regulatory framework to address the security of chemical facilities that the Department determines pose high levels of risk. Specifically, Section 550(a) of the Act authorized the Department to adopt regulatory requirements for high-risk chemical facilities to complete Security Vulnerability Assessments (SVAs), develop SSPs, and implement protective measures necessary to meet risk-based performance standards established by the Department. Consequently, the Department published final regulations, known as CFATS, on April 9, 2007. Section 550, however, expressly exempts from the regulation certain facilities that are regulated under other federal statutes, specifically those regulated by the United States Coast Guard (USCG) pursuant to the Maritime Transportation Security Act, drinking water and wastewater treatment facilities as defined by Section 1401 of the Safe Water Drinking Act and Section 212 of the Federal Water Pollution Control Act, and facilities owned or operated by the Department of Defense or Department of Energy, as well as certain facilities subject to regulation by the Nuclear Regulatory Commission (NRC).

The following core principles guided the development of the CFATS regulatory structure:

1. *Securing high-risk chemical facilities is a comprehensive undertaking that involves a national effort, including all levels of government and the private sector.* Integrated and effective participation by all stakeholders—Federal, state, local, and territorial government partners as well as the private sector—is essential to securing our critical infrastructure, including high-risk chemical facilities;

2. *Risk-based tiering is used to guide resource allocations.* Not all facilities present the same level of risk. The greatest level of scrutiny should be focused on those facilities that present the highest risk—those that, if targeted, would endanger the greatest number of lives;

3. *Reasonable, clear, and calibrated performance standards will lead to enhanced security.* The CFATS rule establishes enforceable risk-based performance standards (RBPS) for the security of our nation's high-risk chemical facilities. High-risk facilities have the flexibility to develop appropriate site-specific security measures that will effectively address risk by meeting these standards. ISCD will analyze all final high-risk facility SSPs to ensure they meet the applicable RBPS and will approve those that do. If necessary, ISCD will work with a facility to revise and resubmit an acceptable plan and can disapprove security plans if an acceptable plan is not submitted; and

4. *Recognition of the progress many companies have already made in improving facility security leverages those advancements.* Many companies made significant capital investments in security following 9/11, and even more have done so since the passage of the legislation establishing this program.

Rule Implementation

Within a few months after the final regulations were developed, on November 20, 2007, the Department published CFATS Appendix A, which identifies 322 chemicals of interest—including common industrial chemicals such as chlorine, propane, and anhydrous ammonia—as well as specialty chemicals, such as arsine and phosphorus trichloride. These chemicals were included after analyzing the potential consequences associated with one or more of the following three security issues:

1. Release – Toxic, flammable, or explosive chemicals that have the potential to create significant adverse consequences for human life or health if intentionally released or detonated;

2. Theft/Diversion – Chemicals that have the potential, if stolen or diverted, to be used as or converted into weapons that could cause significant adverse consequences for human life or health; and

3. Sabotage/Contamination – Chemicals that are shipped and that, if mixed with other readily available materials, have the potential to create significant adverse consequences for human life or health.

NPPD also established a Screening Threshold Quantity for each chemical of interest based on its potential to create significant adverse consequences to human life or health in one or more of these ways. Any chemical facility that possesses any chemical of interest at, or above the applicable Screening Threshold Quantity must submit an initial consequence-based screening tool, the "Top-Screen," to NPPD.

This Top-Screen process developed by NPPD allows the government, for the first time, to gather data that can identify potential high-risk facilities, which NPPD then assigns to one of four preliminary risk-based tiers, with Tier 1 representing the highest level of potential risk.

To support this activity, ISCD developed the Chemical Security Assessment Tool (CSAT) to help NPPD identify potentially high-risk facilities and to provide methodologies those facilities can use to conduct SVAs and to develop security plans. CSAT is a suite of online applications designed to facilitate compliance with the program; it includes user registration, the Top-Screen, an SVA tool, and an SSP template. To protect this sensitive information, NPPD developed an information management regime, Chemical-terrorism Vulnerability Information (CVI), which limits access to trained and authorized users.

In May 2009, NPPD issued *Risk-Based Performance Standards Guidance* to assist final high-risk chemical facilities in determining appropriate protective measures and practices to satisfy the RBPS. It is designed to help facilities comply with CFATS by providing detailed

descriptions of the 18 RBPS as well as examples of various security measures and practices that could enable facilities to achieve the appropriate level of performance for the RBPS at each tier level. The *Guidance* was informed by the experience of the Transportation Security Administration, United States Coast Guard, and the Environmental Protection Agency, and also reflects public and private sector dialogue on the RBPS and industrial security, including public comments on the draft guidance document. High-risk facilities are free to make use of whichever security programs or processes they choose—whether or not in the *Guidance*—provided that NPPD determines through approval of the facilities' SSPs that they achieve the requisite level of performance under the CFATS RBPS.

Implementation Status

To date, ISCD has data from more than 41,000 Top-Screens submitted by chemical facilities, providing important information about their chemical holdings. Since June 2008, ISCD identified more than 8,000 facilities that it has initially designated as high-risk. These facilities have used the CSAT tool to compile and submit SVAs. In May 2009, following reviews of facilities' SVA submissions, ISCD began notifying facilities of their final high-risk determinations, risk-based tiering assignments, and the requirement to complete and submit an SSP or an Alternative Security Program (ASP) in lieu of an SSP.

As of September 4, 2012, CFATS covers 4,433 high-risk facilities nationwide; of these 4,433 facilities, 3,660 are currently subject to final high-risk determinations and have developed security plans for NPPD review. The remaining facilities are awaiting final tier determinations based on their SVA submissions. ISCD continues to issue final tier notifications to facilities across all four risk tiers.[1]

Highlights and Successes of CFATS Program

As we have previously discussed with this Subcommittee, the ISCD Action Plan currently contains 95 items, each of which has been assigned to a member of ISCD's senior leadership team for implementation. For accountability, planning, and tracking purposes, the members of that leadership team have established milestones and projected timeframes for the completion of each task assigned to them. In addition, ISCD leadership meets with the Deputy Under Secretary of NPPD at least once per week to provide status updates on the action items and discuss ways that NPPD leadership can help. As of September 4, 2012, 59 of the 95 action items contained in the Action Plan have been completed.

I would like to share with the Subcommittee some of the highlights and successes that are a direct result of the implementation of the Action Plan and other recent initiatives performed by ISCD. These include: improving the SSP review process and increasing the pace of SSP reviews; refining inspector tools and training; reinvigorating industry engagement on their

[1] Tiering determinations are dynamic; for example, a tiering determination can change when a facility voluntarily alters its operations in a material way that reduces its risk profile. "Final tiering" refers to a tiering assignment following a Security Vulnerability Assessment; it does not imply that this is the final tiering assignment a facility may receive.

development of ASP templates; improving internal communications and organizational culture; and preparing for an external peer review of the CFATS risk assessment methodology.

SSP Review Process. ISCD is currently utilizing a refined approach for reviewing SSPs in order to move forward in a more efficient and timely fashion. At this time, ISCD has completed its review of all Tier 1 SSPs and has begun reviewing Tier 2 SSPs. As of September 9, 2012, of the Tier 1 SSPs reviewed, we have authorized or conditionally authorized SSPs for 73 facilities and approved 1. Of the remaining Tier 1 SSPs reviewed by NPPD, we are either validating results or reaching out to these facilities to obtain additional information or action in the hope of resolving the outstanding issues affecting their SSPs. Going forward, ISCD will continue to work to improve its SSP review process to make it as efficient and effective as possible.

Inspections. Last Fall, ISCD established an Inspector Tools Working Group to ensure the Chemical Security Inspectors have up-to-date and, where appropriate, improved inspections procedures, policies, equipment, and guidance. In late spring 2012, ISCD finished updating and revising its internal inspections policy and guidance materials for conducting inspections. Over the course of the summer, ISCD conducted five inspector training sessions, which focused on the updated policy, procedures and related materials to prepare Chemical Security Inspectors to resume authorization inspections at facilities with authorized or conditionally authorized SSPs. As of July 16, 2012, ISCD has resumed authorization inspections at Tier 1 facilities. This is a vital step for moving the CFATS program toward a regular cycle of approving SSPs and conducting compliance inspections for facilities with approved SSPs.

Alternative Security Programs (ASPs). Many members of the regulated community and their representative industry associations have expressed interest in exploring ways to use the ASP provisions of the CFATS regulation to streamline the security plan submission and review process. In support of this, ISCD has been holding vigorous discussions with industry stakeholders in regard to their development and submission of ASPs. One particularly promising effort has been ISCD's engagement with the American Chemistry Council (ACC) in support of its efforts to develop an ASP template for use by interested members of its organization. The ACC has developed a template that was piloted at a facility in early August and is expected to be available for use by ACC members later this year. In addition, DHS has been in discussion with other industry stakeholders, including the Agricultural Retailers Association, about developing templates specific to their members. ASPs submitted by facilities using a template will be reviewed under the same standards that ISCD currently reviews SSPs. Additionally, DHS continues to review existing industry programs, such as ACC Responsible Care® and SOCMA ChemStewards®, to identify potential areas of engagement and further discussion.

Internal Communications and Employee Morale. The Action Plan contains a number of items designed to improve internal communications and morale within ISCD. ISCD has implemented many of these action items and has made significant progress on many others. For instance, ISCD employees now contribute to and receive a monthly ISCD newsletter, which covers a wide variety of both field and headquarters activities. ISCD leadership has promoted staff engagement and a dialogue about issues and concerns through monthly town halls and a senior leadership open-door policy. ISCD staff has a standing invitation to participate in group open-door sessions or to schedule one-on-one discussions with Division leadership.

ISCD is also moving forward with issuing vacancy announcements to hire a permanent leadership team; several announcements have already been posted and several others are nearing posting. Supervisors have been provided with additional supervisory training and guidance on performance monitoring. The Division has developed a mission statement, vision statement, and core values. As a result of these and other efforts, I believe that Division-wide morale is improving, which ultimately will pay dividends not only in improved staff retention, but also in improved staff performance and program execution.

Risk Assessment Methodology Review. In light of prior revisions to the SVA risk assessment computer program for chemical facilities, NPPD has committed to doing a thorough review of the risk assessment process and keeping the Subcommittee apprised of any significant issues related to that review. In support of this, NPPD developed a three-phased approach, which is captured in the ISCD Action Plan and includes: documenting all processes and procedures relating to the risk assessment methodology; conducting an internal NPPD review of the risk assessment process; and initiating an external peer review of the risk assessment methodology. The Division has made significant progress on this action item by completing the first two steps. ISCD is also approaching completion of procurement actions for the external peer review, which is expected to begin before the end of FY 2012.

NPPD remains committed to both developing appropriate responses to any risk assessment issues that it identifies and keeping Congress and stakeholders apprised of any significant issues related to that review.

Personnel Surety. Under CFATS Risk-Based Performance Standard 12 (RBPS 12), final high-risk chemical facilities are required to perform background checks on certain individuals with access to restricted areas or critical assets. NPPD has been seeking to implement a CFATS Personnel Surety Program to enable facilities to comply with the requirement to identify individuals who may pose a risk to chemical security by enabling facilities to submit biographical information to NPPD. NPPD would compare this biographical information against information about known or suspected terrorists listed in the Terrorist Screening Database (TSDB).

Although NPPD has the authority under CFATS to implement the Personnel Surety Program, under the Paperwork Reduction Act (PRA) the Office of Management and Budget (OMB) must still approve how the NPPD proposes to collect the necessary information to conduct vetting against the TSDB. In June of 2009, DHS began the process to obtain OMB approval by publishing in the Federal Register a notice soliciting public comments for 60 days.

Following the public comment, DHS submitted the Information Collection Request (ICR) to OMB in June of 2011. Since that time, the Department's position on how facilities can comply with RBPS 12 has evolved, thanks in large part to information the chemical industry has provided to us as part of the PRA process. As a result, in July of 2012, the Department withdrew the ICR from OMB review. This has enabled the Department to engage in direct dialogue with security partners and with stakeholders in the regulated community about the CFATS Personnel Surety Program. Additionally, the Department has learned a great deal about various facilities through visits to chemical facilities it has conducted. This on-the-ground knowledge of the facilities will help to inform the Department of any impacts that the Personnel Surety Program

will may have. The Department plans to re-initiate the PRA process by publishing a 60-day notice to solicit comment in the Federal Register in the near future. After that, the Department will concurrently publish a 30-day notice to solicit additional comments, and submit a new ICR for the CFATS Personnel Surety Program to OMB for review.

Outreach Efforts

Since the establishment of CFATS in April 2007, NPPD and ISCD have taken significant steps to publicize the rule and ensure that the regulated community and other interested or affected entities are aware of and meeting its requirements. NPPD and ISCD management and staff have presented at hundreds of security and chemical industry conferences and participated in a variety of other meetings. As part of this outreach program, NPPD and ISCD have regularly updated impacted sectors through their Sector Coordinating Councils and the Government Coordinating Councils—including the Chemical, Oil and Natural Gas, and Food and Agriculture Sectors.

NPPD and ISCD continue to collaborate within DHS and with other federal agencies in the area of chemical security, including routine engagement with: the USCG; the Transportation Security Administration; the Department of Justice's Federal Bureau of Investigation and Bureau of Alcohol, Tobacco, Firearms and Explosives; the NRC; and the Environmental Protection Agency. In addition, ISCD continues to focus on fostering solid working relationships with state and local officials including first responders.

To promote information sharing, ISCD has developed several communication tools for stakeholder use, including: the Chemical Security website (www.DHS.gov/chemicalsecurity); a Help Desk for CFATS-related questions; a CFATS tip-line for anonymous chemical security reporting; and CFATS-Share, a web-based information-sharing portal that provides certain Federal, state, and local agencies access to key details on CFATS facility information as needed.

ISCD Budget Priorities for FY 2013

The President's Budget for FY 2013 requested $74.544 million for the Infrastructure Security Compliance Program, including funds for 253 full-time positions/242 full-time equivalents (FTE). The primary initiatives under Infrastructure Security Compliance are the implementation of the CFATS Program and the development and implementation of the proposed Ammonium Nitrate Security Program. In helping to develop the President's Budget, DHS considered as a priority the retention of basic CFATS functionality. Accordingly, DHS prioritized its funding request to enable DHS to thoroughly and expediently review SSPs of CFATS-covered facilities that pose the highest level of risk to ensure that such facilities' security measures meet applicable risk-based performance standards and to expedite the performance of inspections at those facilities.

Conclusion

ISCD, NPPD, and the Department are moving forward quickly and strategically to address the challenges before us. CFATS is reducing the risks associated with our nation's chemical infrastructure. We believe that CFATS is making the nation safer and are dedicated to its success. As we implement CFATS, we will continue to work with stakeholders to get the job

done, meet the challenges identified in the ISCD report, and execute a program to help prevent terrorists from exploiting chemicals or chemical facilities.

Thank you for holding this important hearing. I would be happy to respond to any questions you may have.

United States Government Accountability Office

GAO

Testimony

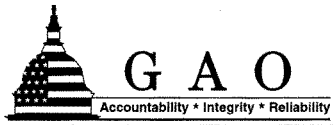
Before the Subcommittee on the Environment and the Economy, Committee on Energy and Commerce, House of Representatives

For Release on Delivery
Expected at 10:00 a.m. EDT
Tuesday, September 11, 2012

CRITICAL INFRASTRUCTURE PROTECTION

DHS Is Taking Action to Better Manage Its Chemical Security Program, but It Is Too Early to Assess Results

Statement of Cathleen A. Berrick, Managing Director
Homeland Security and Justice



GAO-12-567T

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Highlights

Highlights of GAO-12-567T, a testimony before the Subcommittee on the Environment and the Economy, Committee on Energy and Commerce, House of Representatives.

September 2012

CRITICAL INFRASTRUCTURE PROTECTION

DHS Is Taking Action to Better Manage Its Chemical Security Program, but It Is Too Early to Assess Results

Why GAO Did This Study

The events of September 11, 2001, triggered a national re-examination of the security of facilities that use or store hazardous chemicals in quantities that, in the event of a terrorist attack, could put large numbers of Americans at risk of serious injury or death. As required by statute, DHS issued regulations that establish standards for the security of high-risk chemical facilities. DHS established the CFATS program to assess the risk posed by these facilities and inspect them to ensure compliance with DHS standards. ISCD, a division of IP, manages the program. A November 2011 internal ISCD memorandum, prepared by ISCD senior managers, expressed concerns about the management of the program. This statement addresses (1) how the memorandum was developed and any challenges identified, (2) what actions are being taken in response to any challenges identified, and (3) the extent to which ISCD's proposed solutions require collaboration with NPPD or IP. GAO's comments are based on recently completed work analyzing the memorandum and related actions. GAO reviewed laws, regulations, DHS's internal memorandum and action plans, and related documents, and interviewed DHS officials.

In a July 2012 report, GAO recommended that ISCD explore opportunities to develop measures, where practical, to determine where actual performance deviates from expected results. ISCD concurred and has taken action to address the recommendation.

View GAO-12-567T. For more information, contact Cathleen A. Berrick, (202) 512-8777, BerrickC@gao.gov.

What GAO Found

The November 2011 memorandum that discussed the management of the Chemical Facility Anti-Terrorism Standards (CFATS) program was prepared based primarily on the observations of the former Director of the Department of Homeland Security's (DHS) Infrastructure Security Compliance Division (ISCD), a division of the Office of Infrastructure Protection (IP) within the National Protection and Programs Directorate (NPPD). The memorandum was intended to highlight various challenges that have hindered ISCD efforts to implement the CFATS program. According to the former Director, the challenges facing ISCD included not having a fully developed direction and plan for implementing the program, hiring staff without establishing need, and inconsistent ISCD leadership—factors that the Director believed place the CFATS program at risk. These challenges centered on three main areas: (1) human capital issues, including problems hiring, training, and managing ISCD staff; (2) mission issues, including problems reviewing facility plans to mitigate security vulnerabilities; and (3) administrative issues, including concerns about NPPD and IP not supporting ISCD's management and administrative functions.

ISCD has begun to take various actions intended to address the issues identified in the ISCD memorandum and has developed a 94-item action plan to track its progress. According to ISCD managers, the plan appears to be a catalyst for addressing some of the long-standing issues the memorandum identified. As of June 2012, ISCD reported that 40 percent (38 of 94) of the items in the plan had been completed. These include directing ISCD managers to meet with staff to involve them in addressing challenges, clarifying priorities, and changing ISCD's culture; and developing a proposal to establish a quality control function over compliance activities. The remaining 60 percent (56 of 94) that were in progress include those requiring longer-term efforts—i.e., streamlining the process for reviewing facility security plans and developing facility inspection processes; those requiring completion of other items in the plan; or those awaiting action by others, such as approvals by ISCD leadership. ISCD appears to be heading in the right direction, but it is too early to tell if corrective actions are having their desired effect because ISCD is in the early stages of implementing them and has not yet established performance measures to assess results.

According to ISCD officials, almost half of the action items included in the June 2012 action plan require ISCD collaboration with or action by NPPD and IP. The ISCD memorandum stated that IP and NPPD did not provide the support needed to manage the CFATS program when the program was first under development. ISCD, IP, and NPPD officials confirmed that IP and NPPD are now providing needed support and stated that the action plan prompted them to work together to address the various human capital and administrative issues identified.

Chairman Shimkus, Ranking Member Green, and Members of the Subcommittee:

I am pleased to be here today to discuss the Department of Homeland Security's (DHS) efforts to address the various challenges in implementing and managing the Chemical Facility Anti-Terrorism Standards (CFATS) program. My statement today summarizes the testimony we delivered on July 26, 2012 before the House Committee on Appropriations, Subcommittee on Homeland Security.[1] The events of September 11, 2001, triggered a national re-examination of the security of facilities that use or store hazardous chemicals in quantities that, in the event of a terrorist attack, could put large numbers of Americans at risk of serious injury or death. Chemicals held at these facilities can be used to cause harm to surrounding populations during terrorist attacks; can be stolen and used as chemical weapons or as precursors (the ingredients for making chemical weapons); or stolen and used to build an improvised explosive device. To mitigate this risk, the DHS appropriations act for fiscal year 2007[2] required DHS to issue regulations to establish risk-based performance standards for securing high-risk chemical facilities, among other things.[3] DHS established the CFATS program to assess the risk, if any, posed by chemical facilities; place high-risk facilities in one of four risk-based tiers; require high-risk facilities to develop security plans; review these plans; and inspect the facilities to ensure compliance with the regulatory requirements. DHS's National Protection and Programs Directorate (NPPD) is responsible for the CFATS program. Within NPPD, the Infrastructure Security Compliance Division (ISCD), a division of the Office of Infrastructure Protection (IP), manages the program.

A November 2011, internal ISCD memorandum, prepared by ISCD's former Director in consultation with the former Deputy Director[4] and

[1]GAO, *Critical Infrastructure Protection: DHS Is Taking Action to Better Manage Its Chemical Security Program, but It Is too Early to Assess Results*, GAO-12-515T (Washington, D.C.: July 2012).

[2]Pub. L. No. 109-295, § 550, 120 Stat. 1355, 1388 (2006).

[3]According to DHS, a high-risk chemical facility is one that, in the discretion of the Secretary of Homeland Security, presents a high risk of significant adverse consequences for human life or health, national security, or critical economic assets if subjected to a terrorist attack, compromise, infiltration, or exploitation. 6 C.F.R. § 27.105.

[4]The ISCD director who prepared the internal memorandum is no longer in that position, and the deputy director who assisted with the internal memorandum is now the director.

designated by DHS as "for official use only" (FOUO), expressed concerns about the management of the CFATS program. The ISCD memorandum, which was leaked to the media in December 2011, cited an array of challenges that, according to these officials, hindered ISCD's ability to implement and manage the CFATS program.[5] My statement today discusses: (1) how the memorandum was developed and what challenges were identified; (2) what actions are being taken to address the challenges identified; and (3) the extent to which ISCD's planned actions and proposed solutions require action to be taken by or in collaboration with NPPD or IP.

This statement is based on work we recently completed for this subcommittee on the ISCD memorandum and related actions. To conduct this work, we reviewed applicable laws and regulations, as well as NPPD, IP, and ISCD policies and procedures for administering the CFATS program, analyzed the ISCD memorandum prepared by the former ISCD Director in consultation with the former Deputy Director, compared it with the proposed action plan ISCD officials prepared to address the challenges identified, and compared subsequent action plans to monitor ISCD's progress.[6] Our results are based on the ISCD's action plan as of June 2012 so these results reflect the status of ISCD's progress up to that point in time. The details of our scope and methodology can be found in our July 2012 statement. In August 2012, ISCD provided us with an updated action plan which we used to document the additional action items completed between June 2012 and August 2012. We did not verify the status of these action items.

We conducted this performance audit from February 2012 to July 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our analysis based on our audit objectives.

[5]According to DHS officials, the ISCD memorandum was never intended to be publically released.

[6]We initially reviewed an ISCD action plan developed in January 2012. ISCD periodically updated the plan to monitor progress on the action items and we reviewed 8 versions of the action plan up to and including one developed in June 2012.

Background

Section 550 of the DHS appropriations act for fiscal year 2007[7] requires DHS to issue regulations establishing risk-based performance standards[8] for the security of facilities that the Secretary determines to present high levels of security risk, among other things. The CFATS rule was published in April 2007[9] and Appendix A to the rule, published in November 2007, listed 322 chemicals of interest and the screening threshold quantities for each.[10] ISCD has direct responsibility for implementing DHS's CFATS rule, including assessing potential risks and identifying high-risk chemical facilities, promoting effective security planning, and ensuring that final high-risk facilities meet the applicable risk-based performance standards though site security plans approved by DHS. ISCD is managed by a Director and a Deputy Director and operates five branches that are, among other things, responsible for information technology operations, policy and planning, and providing compliance and technical support. From fiscal years 2007 through 2012, DHS dedicated about $442 million to the CFATS program. During fiscal year 2012, ISCD was authorized 242 full-time-equivalent positions. For fiscal year 2013, DHS's budget request for the CFATS program was $75 million and 242 positions.

[7]Pub. L. No. 109-295, § 550, 120 Stat. 1355, 1388 (2006).

[8]The CFATS rule establishes 18 risk-based performance standards that identify the areas for which a facility's security posture are to be examined, such as perimeter security, access control, and cyber security. To meet these standards, facilities are free to choose whatever security programs or processes they deem appropriate so long as DHS determines that the facilities achieve the requisite level of performance in each applicable standard.

[9]72 Fed. Reg. 17,688 (Apr. 9, 2007) (codified at 6 C.F.R. pt. 27).

[10]72 Fed. Reg. 65,396 (Nov. 20, 2007). According to DHS, CFATS not only covers facilities that manufacture chemicals but also covers facilities that store or use certain chemicals as part of their daily operations. This can include food-manufacturing facilities that use chemicals of interest in the manufacturing process, farms that use certain quantities of ammonium nitrate or urea fertilizers, or universities that use chemicals to do experiments.

Senior ISCD Leaders Developed the ISCD Memorandum to Highlight Various Challenges Hindering CFATS Implementation

ISCD's Memorandum Based Largely on Observations of Senior ISCD Managers

Our review of the ISCD memorandum and discussions with ISCD officials showed that the memorandum was developed during the latter part of 2011 and was developed primarily based on discussions with ISCD staff and the observations of the ISCD former Director in consultation with the former Deputy Director. In November 2011, the former Director and Deputy Director provided the Under Secretary with the ISCD memorandum entitled "Challenges Facing ISCD, and the Path Forward." These officials stated that the memorandum was developed to inform leadership about the status of ISCD, the challenges it was facing, and the proposed solutions identified to date. In transmitting a copy of the memorandum to congressional stakeholders following the leak in December 2011, the NPPD Under Secretary discussed caveats about the memorandum, including that it had not undergone the normal review process by DHS's Executive Secretariat and contained opinions and conclusions that did not reflect the position of DHS.

The former ISCD Director stated that the memo was intended to begin a dialog about the program and challenges it faced. The former Director confirmed that she developed the memorandum by (1) surveying division staff to obtain their opinions on program strengths, challenges, and recommendations for improvement; (2) observing CFATS program operations, including the security plan review process; and (3) analyzing an internal DHS report on CFATS operations,[11] which, according to the former Director served as a basis for identifying some administrative challenges and corrective action. The senior ISCD and NPPD officials we contacted said that they generally agreed with the material that they saw,

[11]DHS Office of Compliance and Security, National Protection and Programs Directorate, *Infrastructure Security Compliance Division (ISCD) Program Inspection*, April-September, 2011.

but noted that they believed the memorandum was missing context and balance. For example, one NPPD official stated that that the tone of the memorandum was too negative and the problems it discussed were not supported by sound evaluation. However, the official expressed the view that the CFATS program is now on the right track.

ISCD Management Was Concerned That Challenges Place the CFATS Program at Risk

The ISCD memorandum discussed numerous challenges that, according to the former Director, pose a risk to the program. The former Director pointed out that, among other things, ISCD had not approved any site security plans or carried out any compliance inspections on regulated facilities. The former Director attributed this to various management challenges, including a lack of planning, poor internal controls, and a workforce whose skills were inadequate to fulfill the program's mission, and highlighted several challenges that have had an impact on the progress of the program. In addition, the memorandum provided a detailed discussion of the issues or problems facing ISCD, grouped into three categories: (1) human capital management, such as poor staffing decisions; (2) mission issues, such as the lack of an established inspection process; and (3) administrative issues, such as a lack of infrastructure and support, both within ISCD and on the part of NPPD and IP.

ISCD Has Begun to Take Various Actions Intended to Address Challenges Identified

ISCD's Action Plan Included Time Frames and Appears to be Helping Address Some Legacy Issues

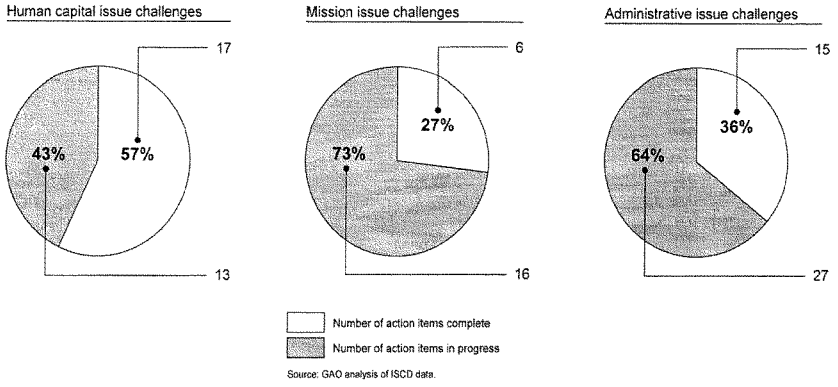
ISCD is using an action plan to track its progress addressing the challenges identified in the memorandum, and, according to senior division officials, the plan may be helping them address some legacy issues that staff were attempting to deal with before the memorandum was developed. The January 2012 version of the proposed action plan listed 91 actions to be taken categorized by issue—human capital management issues, mission issues, or administrative issues—that, according to the former ISCD Director, were developed to be consistent with the ISCD memorandum. However, the January 2012 version of the action plan did not provide information on when the action was started or to be finished. Eleven of the 12 ISCD managers (other than the former Director and Deputy Director) assigned to work as the coordinators of the

individual action items told us that even though they were not given the opportunity to view the final version of the ISCD memorandum, the former Director provided them the sections of the action plan for which they were responsible to help them develop and implement any corrective actions. They said that they agreed that actions being taken in the plan were needed to resolve challenges facing ISCD. Our discussions with these officials also showed that about 39 percent (37 of 94) of the items in the March and June 2012 action plans addressed some legacy issues that were previously identified and, according to these officials, corrective actions were already underway for all 37 of these items.

ISCD's June 2012 Plan Update Showed 38 Action Items Completed

Our analysis of the June 2012 version of the ISCD action plan showed that 40 percent of the items in the plan (38 of 94) had been completed. The remaining 60 percent (56 of 94) were in progress. Of the 38 completed items, we determined that 32 were associated with human capital management and administrative issues, including those involving culture and human resources, contracting, and documentation. The remaining 6 of 38 action items categorized by ISCD as completed were associated with mission issues. Figure 1 shows the status of action items by each of the three categories as of June 2012.

Figure 1: Status of ISCD Action Plan by Category, as of June 2012



Source: GAO analysis of ISCD data.

For the remaining 56 items that were in progress as of June 2012, 40 involved human capital management and administrative issues. According to ISCD officials, these 40 issues generally involved longer-term efforts—such as organizational realignment—or those that require approval or additional action on the part of IP or NPPD. Sixteen of 56 remaining actions items in progress covered mission issues that will likely also require long-term efforts to address.

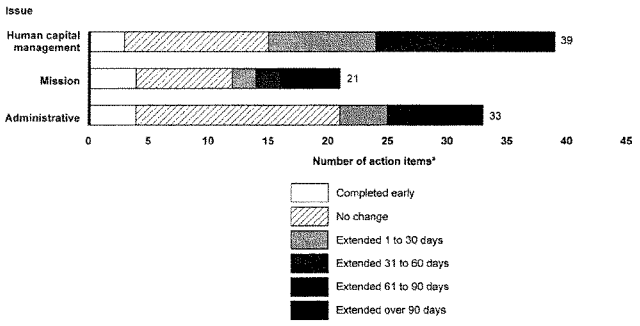
As of August 2012, ISCD reported that it had completed another 21 action items, of which 8 were to address mission-related issues. We did not verify ISCD's efforts to complete actions since June 2012. However, we have recently begun a follow-up review of CFATS at the request of this and other committees, which will focus on DHS's efforts to address mission-related issues. We expect to report the results of these efforts early in 2013.

Almost Half of ISCD's Action Item Completion Dates Had Been Extended since April 2012

Our analysis of the April and June versions of the plan shows that the division had extended the estimated completion dates for nearly half of the action items. Estimated completion dates for 52 percent (48 of 93 items)[12] either did not change (37 items) or the date displayed in the June 2012 plan was earlier than the date in the April 2012 version of the plan (11 items). Conversely, 48 percent (45 of 93) of the items in the June 2012 version of the plan had estimated completion dates that had been extended beyond the date in the April 2012 plan. Figure 2 shows the extent to which action plan items were completed earlier than planned, did not change, or were extended, from April 2012 through June 2012, for the human capital management, mission, and administrative issues identified in the plan.

[12]ISCD data showed that 93 of 94 action items were consistent between the April 2012 and June 2012 action plans; therefore, computation of the estimated completion dates was based on 93 total items. One action item in the April 2012 plan dealing with strategies for managing ISCD funding levels was removed from the June 2012 plan because after the analysis was prepared and submitted to NPPD, the decision was made to delete the item from the plan. The funding action item was replaced in the June 2012 action plan with an action item to conduct a peer review of the facility tiering process and formula. For purposes of this analysis, we used the 93 action items (instead of 94 action items) that were consistent between the April and June 2012 action plans.

Figure 2: Change in CFATS Action Plans Estimated Completion Dates from April 2012 to June 2012



Source: GAO analysis of ISCD data.
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ISCD officials told us that estimated completion dates had been extended for various reasons. For example, one reason for moving these dates was that the work required to address some items was not fully defined when the plan was first developed and as the requirements were better defined, the estimated completion dates were revised and updated. In addition, ISCD officials also stated that timelines had been adversely affected for some action items because staff had been reassigned to work on higher priority responsibilities, such as reducing the backlog of security plans under review.

Action Plan Performance Measures Could Help Gauge Progress

ISCD, through its action plan, appears to be heading in the right direction towards addressing the challenges identified, but it is too early to tell if the action plan is having the desired effect because (1) the division had only recently completed some action items and continues to work on completing more than half of the others, some of which entail long-term

changes, and (2) ISCD had not yet developed an approach for measuring the results of its efforts. ISCD officials told us that they had not yet begun to plan or develop any measures, metrics, or other documentation focused on measuring the impact of the action plan on overall CFATS implementation because they plan to wait until corrective action on all items has been completed before they can determine the impact of the plan on the CFATS program. For the near term, ISCD officials stated that they plan to assess at a high level the impact of the action plan on CFATS program implementation by comparing ISCD's performance rates and metrics pre-action plan implementation and post-action plan implementation.[13] However, because ISCD will not be completing some action items until 2014, it will be difficult for ISCD officials to obtain a complete understanding of the impact of the plan on the program using this comparison only.

In our July 2012 statement, we recommended that ISCD look for opportunities, where practical, to measure results of their efforts to implement particular action items, and where performance measures can be developed, periodically monitor these measures and indicators to identify where corrective actions, if any, are needed. The agency concurred with our recommendation and developed a new action item (number 95) intended to develop metrics for measuring, where practical, results of efforts to implement action plan items, including processes for periodic monitoring and indicators for corrective actions. This action item is in progress.

ISCD Officials Stated That Almost Half of the Action Items Required Collaboration with or Action by NPPD or IP

According to ISCD officials, almost half of the action items included in the June 2012 action plan either require ISCD to collaborate with NPPD and IP or require NPPD and IP to take action to address the challenges identified in the ISCD memorandum. NPPD, IP, and ISCD officials have been working together to identify solutions to the challenges the memorandum identified and to close pertinent action items. According to division officials, 46 of the 94 action items included in the June 2012 action plan required action either by NPPD and IP or collaboration with NPPD and IP. This includes collaborating with NPPD officials

[13]According to ISCD officials, ISCD uses a performance measure to track the performance of the CFATS program overall, but as of June 2012 did not have performance measures in place to track the progress of the action plan, or particular action items.

representing the NPPD human capital, facilities, and employee and labor relations offices, among others, and with IP's Directorate of Management Office.[14] As of June 2012, 13 of the 46 items that require action by or collaboration with NPPD or IP were complete; 33 of 46 were in progress. As of August 2012, ISCD reported that it had completed 8 more of these action items, such that 21 of the 46 were complete and 25 were in progress. We did not verify ISCD's efforts to close these additional action items.

Chairman Shimkus, Ranking Member Green, and members of the subcommittee, this completes my prepared statement. I would be happy to respond to any questions you may have at this time.

GAO Contact and Staff Acknowledgements

For information about this statement please contact Cathleen A. Berrick, Managing Director, Homeland Security and Justice, at (202) 512-8777 or BerrickC@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Other individuals making key contributions include Stephen L. Caldwell, Director; John F. Mortin, Assistant Director; Ellen Wolfe, Analyst-in-Charge; Charles Bausell; Jose Cardenas; Andrew M. Curry; Michele Fejfar; Tracey King; Marvin McGill; Mona E. Nichols-Blake; and Jessica Orr.

[14]The IP Directorate of Management Office is responsible for providing IP divisions with program management support such as training and facilities management.

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QUESTIONING OF RAND BEERS, UNDER SECRETARY, NATIONAL PROTECTION AND PROGRAMS DIRECTORATE, DEPARTMENT OF HOMELAND SECURITY, ACCOMPANIED BY DAVID WULF, DIRECTOR, INFRASTRUCTURE SECURITY COMPLIANCE DIVISION, OFFICE OF INFRASTRUCTURE PROTECTION, NATIONAL PROTECTION AND PROGRAMS DIRECTORATE, DEPARTMENT OF HOMELAND SECURITY; AND CATHLEEN A. BERRICK, MANAGING DIRECTOR, HOMELAND SECURITY AND JUSTICE, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. SHIMKUS. And so I will start.

Mr. Beers, it is my understanding from your Web site that you have one facility that is approved under the program. And of that one, what is its plan on personnel assurance?

Mr. BEERS. Sir, we have now two plans that have been approved. Those approvals are conditional pending the completion of the response to Risk-Based Performance Standard 12, which is the personnel surety standard. So we are working actively now to reintroduce the request to OMB for the collection program that we need to move forward.

But let me say three things about that.

Mr. SHIMKUS. Quickly.

Mr. BEERS. First, Ranking Member Green, TWIC will be included in that.

We will also have the opportunity for entire companies and service providers to be able to submit for their entire companies. And they will be authorized to go to any plant that they go to that is covered by this program.

And, thirdly, we are going to work this program heavily with industry to make sure that we move as quickly as possible, but recognizing their needs, as well.

Mr. SHIMKUS. You understand my concern. If we have two that are approved and we still don't have the personnel assurance issue, it is hard for me to understand how we say it is conditionally approved without the whole ball game—a standard being reached across the board. I know we want to send positive signals, but we don't want to send false signals, either, that we are better off and we have a full program.

Do you want to respond, Mr. Beers?

Mr. BEERS. Sir, I totally agree with you that we don't want to leave any security requirement not fulfilled. But it was our view that the conditional authorization process, because of the slowness with which we were getting the necessary personnel surety questions answered, meant that we believe that we ought to move forward with the conditional authorization and catch up as quickly as possible with the personnel assurance.

Mr. SHIMKUS. OK.

Let me move to the—the last hearing, we also had an issue because all facilities were placed into the same tier. So we had a big debate about, how do we get risk tiering, and what is the methodology, and let's make sure we have the proper people doing that.

And my understanding is, risk tiering is a formula; is that correct?

Mr. BEERS. Yes, sir.

Mr. SHIMKUS. We have a formula to do that. And what comprises the formula?

Mr. BEERS. Sir, there are a series of factors that are involved in that formula. First of all, we——

Mr. SHIMKUS. We have to go quickly.

Mr. BEERS. The——

Mr. SHIMKUS. How about if I just help out here? Threat times vulnerability times consequence is the risk factor, correct?

Mr. BEERS. That is the essential equation, and then each of those elements has sub-elements within it.

Mr. SHIMKUS. So let me ask about, how do you—I don't claim to be a great mathematician,but I understand formulas and I understand constants and I understand variables. One of our concerns is that vulnerability you have as a constant versus a variable, and that concerns us in the formula.

In fact, I would like to go to the GAO. Did you know that, in this formula, that for that issue of vulnerability, that vulnerability is listed as a constant and not a variable?

Ms. BERRICK. We do know that, Chairman, and we are looking at that right now.

I think the specifics of this are for official use only. But to talk about this at an unclassified level, we found a similar—we look at how DHS calculates risk scores across the Department as a part of a number of our reviews. We found a similar problem in how they calculate risk for a major grant program and, in fact, recommended that they not hold vulnerability constant. DHS implemented that recommendation in the last grant cycle and varied it.

So we have cited that as a concern in past work.

Mr. SHIMKUS. And the point being, two similar facilities—one in downtown Manhattan; one outside Olney, Illinois—two very different risk portfolios. And so that is why we would argue that there should be a variable aspect on that formula.

And from last time, how do you move a facility through the site security process, approve SSPs, inspect, et cetera, when there is no personnel surety plan that assures a facility manager that no one in the plant is on the terrorist watch list? It is kind of going back to the previous question.

Mr. BEERS. Sir, there is more to the site security plan than simply the individuals involved, which is not to say that that is not a very significant and important part. So the question is, what are the other security provisions within the plan that we and they can record and review and inspect?

Mr. SHIMKUS. Thank you. My time is expired, but I want to keep this going, and I appreciate that response.

I would just say that, in chemical facilities, probably the biggest threat would be someone internally being able to get inside the facility and know the facility. So of all of the threats, that is probably the biggest one, I would venture to guess.

So, with that, I would yield to the ranking member, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

Secretary Beers, as of 2 days ago, the Tier 1 site plans reviewed or authorized were 73, and 2 that were approved.

What does "conditionally authorized" mean? Does that mean that they can continue to operate? Or is there——

Mr. BEERS. That means that they can move forward with implementation of the site security plan elements that were approved, and that we come back when we have a personnel surety program that we have agreed on and implement those.

But let me just make one point with respect to personnel surety. It is not that this government has been quiet or inattentive to looking at insider threats within this area. FBI, which we work in partnership with, has a very robust program of looking for threats within the country and ensuring that they are being inspected. This program would be an additional program to the excellent work that the FBI is doing on a daily basis.

Mr. GREEN. How long does it take to get a plan from conditionally approved to approved?

Mr. BEERS. That is going to depend, sir, on when the personnel surety risk-based performance standards—excuse me—when we agree on what the standards are that they are supposed to meet.

So, right now, we are looking at publishing the request for information in the next 30 days and collecting that information over a 60-day period, and then going forward with our proposal to OMB.

Mr. GREEN. You mentioned that as of July the 16th, in your statement, ISCD has resumed authorization inspections on Tier 1 facilities. How many inspections, on the average, are you conducting a month?

Mr. BEERS. David, do you want to answer that question?

Mr. WULF. We have a total of about 10 inspections scheduled during the month of September. We anticipate continuing to increase the pace of inspections going forward. So I think, you know, you will see hundreds of inspections occurring over the course of the next year.

Mr. GREEN. OK. At that rate, how long do you think it will take to get to all those sites that are awaiting inspection? A year?

Mr. WULF. Well, the sites that are awaiting inspection are those that have received their authorization, and right now those are 73 sites. Several of those have already been inspected. We have conducted a total of 19 authorization inspections to this point. The remainder of those 73 and additional ones that we anticipate authorizing over the next months will certainly be inspected in the next year.

Mr. GREEN. And I would hope folks are moving into the conditional authorization, so that group will be expanding, I assume.

Mr. WULF. Yes, the numbers of finally approved SSPs will certainly be, you know, continuing to grow.

Mr. GREEN. Given the current status of the SSP tool, has DHS explored how to better use the authority, use alternative security plans to help expedite the CFATS approval process?

Mr. BEERS. Yes, sir. That is an important element of our efforts. We have been working with the American Chemistry Council. We have run a pilot program with an alternative security plan with them and are hoping to issue some guidance for the members of that council to be able to use the alternative security plan. We are also working with agricultural industries, looking at the same possibility.

Mr. GREEN. OK. Well, I appreciate you being willing to use similar credential programs like TWIC. The Federal Government really doesn't need to reinvent the wheel. TWIC is not perfect, believe me, as I learned when it was rolled out and we will see as we do the reissuing of them. But we need to learn from that and have one ID, whether you are on water side or on land side, your facility.

The internal DHS memo leaked to the press last year articulated programmatic breakdowns, serious deficiencies. What is the timeline for the full implementation of the 91 recommendations for improving the CFATS program?

Mr. BEERS. Sir, with respect to all 95 now of those, some of them are going to go on over a longer period of time, but we are moving as quickly as possible. We have, since we submitted the testimony, the written testimony with the September 4 deadline, increased the number of items that have been completed.

And, David, I don't want to speak to the precise number, but when would you say we would be up in the 80s?

Mr. WULF. I would say we will be in the 80s by the end of the calendar year, most likely.

Mr. GREEN. OK.

Mr. Chairman, I am out of time, and I have one question on the site security plan I would like to submit and hear the answer. And I appreciate you all for getting back to us.

Mr. SHIMKUS. Thank you. Without objection.

The chair recognizes the vice chair of the subcommittee, Mr. Murphy, for 5 minutes.

Mr. MURPHY. Thank you, Mr. Chairman.

And thank you to our witnesses today.

I just want to verify. So the number of site security plans that have been approved is two?

Mr. WULF. Two, sir.

Mr. MURPHY. You got the funding in 2006 to go forward on this; am I correct?

Mr. BEERS. Excuse me?

Mr. MURPHY. The funding came forth to start these inspections in 2006; is that correct? 2007? It was a few years ago?

Mr. BEERS. I don't know whether it came forward in—the authorization occurred then.

Mr. MURPHY. Authorization, OK.

Mr. BEERS. But we have not been in a position to actually finally approve them, really, until this summer, in part because of the management problems that have been revealed and in part because as we have gone forward with the program we have learned a whole lot. And the whole lot that we have learned has also created the appreciation that it was more complicated than it was originally thought to be at the beginning of the program.

Mr. MURPHY. So how long have you been getting the money, and how much money is it you have been receiving to do this, then?

Mr. BEERS. I believe the total amount of money that we have received is slightly under $500 million.

David?

Mr. WULF. Yes, I think on the order of $400 million, $450 million.

Mr. MURPHY. Wow. And we still have, what, over 4,000 plans to review?

Mr. BEERS. We have about 4,400 plans to review. We have 4,433 facilities that have been designated or have preliminary designations as being in the high-risk category.

Mr. MURPHY. So we hope this goes better because, otherwise, you are at the rate of approving them all within a few centuries, and we wanted to help you speed that up.

You have said that the inspectors weren't well-trained and there was a number of problems. How many inspectors are trained now?

Mr. BEERS. All the inspectors that we have. The number is over 100. A hundred and fourteen, I believe, is the actual number. And that training about doing the inspections was completed during the month of July.

Mr. MURPHY. And they are all qualified to do the inspections?

Mr. BEERS. Yes, sir.

Mr. MURPHY. How many inspectors are needed to do each plan?

Mr. BEERS. We have a planned workforce that is in—David, about 120-something overall?

Mr. WULF. Yes, yes, we do. And that will encompass ammonium nitrate inspections when that program comes on line.

Mr. MURPHY. But, I mean, how many people do you need for doing each one?

Mr. WULF. It varies depending on the size and scope of the facility, but, you know, I would say anywhere from two to three, four, five.

Mr. MURPHY. So I am still looking here at—you have about $2 million per person there to do this, and you need two or three to do each one. Using those kinds of numbers and those figures, when do you anticipate you will even reach the halfway point with these inspections?

Mr. WULF. We anticipate within the next year that we will have, you know, authorized, conducted inspections. And if all goes well with the site security plans, we will have approved close to 300 plans.

Mr. MURPHY. That still leaves us 3,500 or so to do. I know you are concerned, and we are too. I am trying to find ways we can help you.

Mr. SHIMKUS. Would the gentleman yield for 1 second?

Mr. MURPHY. Yes.

Mr. SHIMKUS. What I would weigh in is, that is why we need to properly tier the facilities. And that is why this debate that is going on about alternative security plans is very, very important, so that we use the plans that are already established out there in industry which are trying to do the same thing, for the most part, and work together versus against each other.

Mr. MURPHY. Precisely. No, no, I want to work together. I am just trying to find out if there are specific recommendations of things you need from us to facilitate that in moving forward. Because we know you want to be accurate, and we know you want to do this in a way that protects public safety and works with the things that industry has found.

And so I am wondering, in the process of going through, are you finding ways in this that, in addition to the people that you have

approved for the inspections, which the chairman was mentioning, within the industry, can facilitate that and actually speed up this process in a way that helps too? Is there something that we can learn from that?

Mr. BEERS. Sir, that is in large measure what we are about right now, which is to ensure that the people are trained, to ensure that the review process to get the plans to the authorization stage so that we can send out the inspectors to do that moves more quickly and more efficiently than it has in the past.

And I think that the record since the review process to make the internal reviews go faster has shown an increase. I think that the inspection plan training has increased the number of inspections. So I think we are moving at a rate that is going to be increasing.

But I have to say here, sir, it will not help us if the House Appropriations Committee appropriation level for this program, which cut $40 million——

Mr. MURPHY. If I might add, I know oftentimes when I am visiting businesses, they are very concerned that government seems to come in, work against them, doesn't ask them for their assistance. And I would like to echo what the chairman said, that, I mean, these are people who also care about their communities, their families, their workers. And I hope that you do talk with them and see what you can learn from so many of these companies because they do want to facilitate and move this forward.

And I yield back. Thank you.

Mr. SHIMKUS. The gentleman yields back his time.

It is tough to argue dollars and cents when we have a track record of millions of dollars per individual. So I wouldn't go down that route, Mr. Beers.

The chair would now recognize my colleague from North Carolina, Mr. Butterfield, for 5 minutes.

Mr. BUTTERFIELD. Let me thank you very much, Mr. Chairman, and certainly thank the three witnesses for coming forward today with your testimony.

I am going to not take up the entire 5 minutes, but I do want to ask Secretary Beers and possibly Mr. Wulf a very short question.

I am told that the Department has a hotline for whistleblowers. That is what my staff tells me, that there is now in place a hotline for whistleblowers and that anyone can call that hotline with security concerns.

Department employees have whistleblower protections, but what protections, if any, cover facility employees and even the general public? Mr. Beers, can you help me with that?

Mr. BEERS. I am going to turn to David to answer the question about the hotline.

But it is certainly our view that we solicit both from within the Department of Homeland Security and from the private sector and from citizens any indication of issues that we ought to pay attention to.

The protection involved there will be that we will provide anonymity if anonymity is requested. That is a basic policy of hotlines, if that is what the person wants. So if it is from an employee of the company, we will keep that——

Mr. BUTTERFIELD. What about downstream at the facilities?

Mr. BEERS. Yes.

Mr. BUTTERFIELD. The same thing with the facilities?

Mr. BEERS. Yes. I mean, insofar as they tell us. We are not going to reveal the names of the individuals who gave us that information if they want their identity protected.

Mr. BUTTERFIELD. And the same with the general public?

Mr. BEERS. And the same for the general public, yes, sir.

Mr. BUTTERFIELD. All right.

Mr. WULF. And we do maintain, as the Under Secretary noted, a tip line, a CFATS-focused tip line, so members of the public, facility personnel can call in and report concerns, can report information about facilities that may, you know, benefit from being part of the CFATS program.

Mr. BUTTERFIELD. All right.

More than 2,700 facilities have eliminated or reduced holdings of dangerouschemicals, so they are no longer considered high-risk facilities. How does DHS ensure those facilities do not increase the amount of those chemicals in their inventory at a later date?

Mr. BEERS. David?

Mr. WULF. Well, those facilities—and, you know, if I can mention, you know, that is one of the many successes that we view in the CFATS program to this point. And there is a pretty significant list of things that America has received for its investment in CFATS.

But with regard to those facilities, having been part of the program, having gone through the initial Top-Screen, they are made aware of their obligation when they bring into the facility chemicals above the screening threshold quantity that are on the list of 322 chemicals of interest, their obligation to report that to us. So they are fully aware of that and, you know, meet those obligations. So facilities come back into the program, as well.

Mr. BUTTERFIELD. OK.

And now to the managing director: The Department of Homeland Security Infrastructure Security Compliance Division completed 21 of 94 items from its action plan between June and September of this year. And prior to that, the Department had only completed 38 items.

Is DHS now completing the 94-item action plan at a faster rate than the GAO anticipated?

Ms. BERRICK. I think they are making good process on the action plan. They demonstrated their commitment. They are actively tracking it. We had some suggestions to provide some additional details on the plan, which they have incorporated.

The one thing I would mention about the action plan, I think it is a very good first step. However, you know, to address these issues that were highlighted in the management memo is going to take leadership, sustained leadership, support over the long term.

Some of these action plans are designed to develop plans to, you know, implement a program—for example, a framework to create a quality division. While that is very important, the actual execution of this quality division, how they oversee this process, is really what is going to be critical.

So we think it is a very good first step, but it is going to require long-term and sustained leadership support to refine these actions,

update them as needed, and make sure that they execute on the plans that they have put in place.

Mr. BUTTERFIELD. All right.

And I will end where I began, with Mr. Beers or Mr. Wulf. You mentioned that 73 facilities have authorized or have conditionally authorized Tier 1 security plans. Are there any additional steps those facilities must complete before inspection and approval?

Mr. BEERS. No, sir. That means that they are ready for inspection. The ones that haven't been authorized or conditionally authorized either need to provide more data or we need to have a better understanding of the data that they did provide.

Mr. BUTTERFIELD. Do the steps vary across facilities?

Mr. BEERS. Excuse me?

Mr. BUTTERFIELD. Do the final steps vary across the different facilities?

Mr. BEERS. Well, no facility is necessarily the same, so what they need to do in order to meet the Risk-Based Performance Standards may be different for each facility, which means that there is no automatic template, when you look at a response, that either it is "yes" or "no." You have to look at what they actually said with respect to that particular performance standard and make sure that it matches what the performance standard lays out.

Mr. SHIMKUS. The gentleman's time has expired.

Mr. BUTTERFIELD. Thank you, Mr. Chairman.

Mr. SHIMKUS. The chair now recognizes the gentleman from Colorado, Mr. Gardner, for 5 minutes.

Mr. GARDNER. Thank you, Mr. Chairman.

And thank you to the witnesses for joining us today.

Mr. Beers, I want to ask a couple of questions to follow up on a committee hearing we had February 3rd, 2012. I want to read the transcript from about 30 seconds' worth of our conversation.

I started the conversation by asking about the Anderson Wulf memorandum and said, "So the inspector general has looked into this?"

And your response was, "The inspector general has access to these reports, yes, sir, but this was not done by—"

And I stated, "Have you had conversations with the inspector general?"

Mr. Beers: "With respect to this report?"

"Yes."

Mr. Beers: "I can't speak to that. I have not personally had that conversation."

And I followed up with, "But he has this memorandum?"

Your response to that was, "As with all these kinds of reports, yes, they are available."

"They are available, or he has them? I mean, you have sent it to him?"

Your response was, "I will have to confirm that, sir."

And so, Mr. Beers, to follow up with that, you never did get back to me or to the committee to confirm that you had given the Anderson memo to the inspector general, did you?

Mr. BEERS. Yes, sir.

Mr. GARDNER. You got back to us?

Mr. BEERS. I am sorry, I am not certain that we got back to you. But, yes, they have it.

Mr. GARDNER. OK. But I don't think you got back to me. I certainly never received the information. You didn't get back to this committee.

But it was after this committee hearing, it was after the February 3rd committee hearing, when the inspector general had watched the broadcast of our interaction, and it was more than a month after it was all over the national news and 2 months after you received the memorandum that the IG called you to obtain the memorandum.Is that correct?

Mr. BEERS. We had a conversation immediately after this hearing, yes, sir.

Mr. GARDNER. And when did he get the report then?

Mr. BEERS. I can't say the specific day on which he got it.

Mr. GARDNER. It was 2 month after the conversation.

And, again, you didn't give it to him right away after the committee hearing. After that conversation, did you give it to him right away? Surely you remember that.

Mr. BEERS. I did not personally give it to him. I asked my staff that it be given to him immediately, per the conversation that he and I had.

Mr. GARDNER. And staff was directed to immediately give it to him?

Mr. BEERS. Yes, sir.

Mr. GARDNER. And the memorandum, though, didn't go out until May. Is that correct?

Mr. BEERS. Sir, I don't have that information.

Mr. GARDNER. Do you have staff here that could answer that?

Mr. BEERS. David?

Mr. WULF. I don't believe I can answer that, sir.

Mr. GARDNER. And so, here is the problem that I have. And that is why I would ask you for the full story here.

How many times have you ever communicated with either Richard Skinner or Charles Edwards, in their respective positions as inspector general at DHS or the acting inspector general, or anyone else from the DHS Inspector General Office about the CFATS program?

Mr. BEERS. I have talked to Mr. Edwards on at least, I want to say—I am positive that I have spoken to him on at least three occasions. And I could have had other conversations with him beyond that, but I don't recall.

Mr. GARDNER. And were those conversations started by you, or were they initiated by—who initiated those conversations?

Mr. BEERS. In one case, it was him. In the other cases, it was me.

Mr. GARDNER. And so, you know, have you discussed the conduct of an audit inspection or investigation of the CFATS program? Was that the purpose of the conversation?

Mr. BEERS. We had a conversation about that, yes.

Mr. GARDNER. And that was a conversation that you started or that they started?

Mr. BEERS. I believe that was one that I started.

Mr. GARDNER. And have you or anyone in NPPD, IP, or ISCD ever suggested that the Homeland Security inspector general come in and look at the problems being encountered by CFATS?

Mr. BEERS. Sir, as a result of that round of hearings, a Member of Congress requested the IG to come in and look at it. When——

Mr. GARDNER. But you never?

Mr. BEERS. When he and I had the conversation about the management report, I did not request that he come in and look at it, but I certainly said we are open to anything that you believe is appropriate to looking at this program.

Mr. GARDNER. And so the recommendations by—so nobody, again, nobody in NPPD, IP, or ISCD ever suggested that?

Mr. BEERS. To?

Mr. GARDNER. To come in and look at the problems being encountered by CFATS. That was all a Member of Congress that suggested that.

Mr. BEERS. There was a discussion in the fall of 2010 as to whether or not the inspector general should be invited to conduct a management review, which would have required us to pay them to hire an outside consultant to conduct that review. When we looked at——

Mr. GARDNER. And that was a suggestion that they had made?

Mr. BEERS. Excuse me?

Mr. GARDNER. That was a suggestion that somebody in one of the——

Mr. BEERS. That was a suggestion that Assistant Secretary Todd Keil made in a memo——

Mr. GARDNER. And so what did you do with that recommendation?

Mr. BEERS. Excuse me?

Mr. GARDNER. What did you do with that recommendation?

Mr. BEERS. We sat down in senior leadership, including Assistant Secretary Keil, and decided that we could perform that particular review within Office of Compliance and Security, which exists within NPPD but not within IP, and that we could do it more quickly and we could do it without an additional cost to the program.

And that report was done and delivered in September of 2011 and became part of the management review that Penny Anderson and David Wulf undertook. The results are in that effort.

Mr. GARDNER. So just to follow up, with this most recent February 3rd hearing, the revelations in the Anderson-Wulf memo, did anyone—I will follow up again—did anyone in NPPD, IP, or ISCD ever suggest to you that DHS IG come in and look at the problems being encountered?

Mr. BEERS. After that hearing, no.

Mr. SHIMKUS. The gentleman's time has expired.

Mr. Barrow, do you seek recognition?

The chair now recognizes the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. LATTA. Thank you, Mr. Chairman.

And thank you very much for coming in today to testify again before the committee.

Mr. Beers, let me ask, could you inform us of the misuse of government-owned vehicles by the Washington-based headquarters personnel?

Mr. BEERS. I am sorry, sir? Could you repeat——

Mr. LATTA. Could you inform us about any misuse of government-owned vehicles by Washington-based headquarters personnel?

Mr. BEERS. Sir, I do not have an indication of that kind of misuse. We did look at that issue.

David, do you want to add to that?

Mr. WULF. There were, before Ms. Anderson and I came into the division, vehicles that were housed at our headquarters location. Before we arrived, those vehicles had been removed. So I don't have—we don't have—we didn't have any indication that the vehicles had been misused. But, you know, we believed their presence at headquarters was not necessary for the——

Mr. LATTA. OK. When you say "removed," could you explain? When you say "removed," were they removed to another government agency? What happened to them?

Mr. WULF. I believe—and I wasn't there at the time—that they were pushed out to our field force.

Mr. LATTA. OK. But were the records kept on those vehicles prior to that time as to where they were going, like mileage records, odometer statements, gas records, et cetera?

Mr. WULF. I don't know that.

Mr. LATTA. Is there a way to get those records?

Mr. BEERS. Sir, I want to acknowledge, that is one of the management problems that we discovered, that there was inadequate recordkeeping. And that is one of the deficiencies that we have corrected.

Mr. LATTA. OK. But I think what we need to have in the committee, though, is we should have the—if we could request that information. And if you have to go back and find those records—because, again, it would seem to me that if it is a government vehicle, and when you have those government vehicles out there, that you have the odometer statements. And, also, there would be gas records and things like that. They would have to be filled up; they would have to have some service. There would have to be different records out there.

So I think it is very important for the committee to get that information from you all so we can start with that point, as to know exactly where those vehicles were and if they were misused. So that is one of the things we would like to do.

And let me ask, just to follow up again—maybe you just mentioned it—when did you all become aware of that problem with those vehicles? When you said you came in and those vehicles were removed, when were you all aware of it?

Mr. BEERS. David, fill in if I am not precise on this.

But my understanding is that that came out in the management review that was done by our Office of Compliance and Security. So the detail about the lack of records and oversight was finally reported in September of 2011, made available to David and Penny Anderson for incorporation in their report.

Mr. LATTA. Let me ask, was any of this turned over to the IG for investigation?

Mr. BEERS. No, sir, that was not turned over to the IG. The report itself said that there was a lack of recordkeeping but that there was not an indication of waste, fraud, and abuse associated with that. "Not an indication"—not saying that it wasn't, but it was not indicated.

Mr. LATTA. OK. And, again, how many vehicles are we talking about in total?

Mr. WULF. I would have to get that back to you.

Mr. LATTA. Could we get that back from you, then? We would appreciate that information.

Mr. WULF. A relatively small number, I believe.

Four to six vehicles?

Mr. BEERS. That is what my staff is telling me, four to six vehicles.

Mr. LATTA. OK.

And, Under Secretary, you were aware of the unsatisfactory condition of the SSP process before you testified back in March of last year and in 2012. Is that correct, that you were aware of that?

Mr. BEERS. I was aware that we were not moving at a pace that we had previously told you we should be moving at, yes, sir. And I indicated that I was disappointed in that and that I had hoped that we would move more rapidly on that.

Mr. LATTA. OK. And I am sorry, did you say that you brought those problems and that information to the committee at that time?

Mr. BEERS. Sir, which hearing are we talking about now?

Mr. LATTA. The March 2011 or the February 2012 hearing?

Mr. BEERS. So, at the March 2011 hearing, I believe I acknowledged that we had not achieved the objectives of getting the site security plans authorized at the rate that I had previously been told we would complete those plans, and that I had hoped—and I am now talking 2011—that we would be in a position to move forward on that. That was, unfortunately, not an accurate statement at that time either.

Mr. SHIMKUS. The gentleman's time has expired.

Mr. LATTA. My time has expired, and I yield back.

Mr. SHIMKUS. I would encourage my colleagues who want to go to the memorial service to head on down to the rotunda. We are going to finish with Butch Cassidy for 5 minutes, and then we will tell how we are going to operate after that.

So the gentleman from Louisiana is recognized for 5 minutes.

Mr. CASSIDY. Hello, gentlemen.

I have a lot of petrochemical plants in my State, and my workers and my communities are at risk. And I have to say that when I speak of dysfunction in Washington, you all are case number one. I say that not to be mean but just to kind of observe.

In the report that was the internal report that kind of broke this open, there are statements such as, "Legacy employees are doing a tremendous amount of work, while I see others sitting at their desk not contributing."

Those folks who are not contributing, are they still with the agency or have they been released?

Mr. BEERS. David, would you answer that?

Mr. WULF. Yes, we have made a concerted effort to ensure that all members of our team are contributing to the program. And part of what we have done, as we have moved forward, kind of, toward a realignment of the organization, is to ensure that we can achieve a greater fit between the individual employees and the position in which——

Mr. CASSIDY. Has anybody been released? Because the document suggested that some that were hired were totally inappropriately—had skill sets and attitudes that were totally inappropriate to their job description, making it sound more as not something that required some adjustment, but required, frankly, rehiring.

Has anybody been released?

Mr. WULF. No one has been released, but, you know——

Mr. CASSIDY. Can I just keep on going then?

They also, in that same report, said that not only had you not done any inspections, you had not developed a process to inspect. An incredible indictment.

Are we to believe that you now have a process to inspect?

Mr. BEERS. Yes, sir. We have retrained all of the inspectors that are currently on board. We completed that process in July——

Mr. CASSIDY. Now—I am sorry, just because we have limited time. I apologize to interrupt.

It also said that because of your union contracts and your necessity to bargain even on minutia, even on things to bring into compliance with government policy, that it was anticipated that this could take weeks, months, it implied years, in order to actually implement the policy changes necessary to do an effective inspection.

What has happened with that?

Mr. BEERS. Sir, we have worked with the union, and I think we have a productive and expedited process to have those items that are required to be reviewed by the union so that they move swiftly.

But I want to turn to David, who has been managing this on a day-to-day.

Mr. WULF. And if I can just add, sir, that the point that we are trying to make in the "challenges" memo was that, at the early stage in which this program found itself, the presence of a union added an additional layer of complexity. But, you know, I am glad to report that we have developed a very strong relationship with our bargaining unit and that——

Mr. CASSIDY. But no one has been released, and it is so clear throughout here that there was a problem with—it was a problem not just of form but also of who was hired. That tells me, you guys, your credibility, frankly, is a little weak. I apologize.

But here, for example—again, I am reading from your internal document—a large number of inspectors, quote, "were hired who have unrealistic expectations and the wrong skill set or mindset to do the work of a regulatory inspector; who are located in geographic areas that do not make sense or aligned to the mission; who, for example, seek law enforcement authority as opposed to work, using the uniform as a symbol of identity and authority rather than a tool to be used."

I mean, that suggests to me that it wasn't just a tweaking, a little improvement of the bonding with the union, but there were people hired who were inappropriate to the position to which they

were hired. I can give further examples of that. The fact that you tell me that, no, we haven't really released anybody, we have just reassigned them, tells me you haven't been serious about what you are doing.

Mr. WULF. I think we have come a long way in building the culture of the organization and building the regulatory compliance organization. And we have, you know, some very professional, extraordinarily talented folks throughout our team. They come from a variety of backgrounds——

Mr. CASSIDY. OK. So, "some"—this is plural—"some are simply unsuited for supervision, treating employees in an unfair, unprofessional, or disrespectful manner. Others are uninformed about their responsibilities as a supervisor to manage employee issues."

This is your internal document. And yet what I am hearing from you is, no, we haven't really released anybody, but we are working on it. Frankly, that doesn't help your credibility.

Mr. BEERS. Sir, some of the thoughts behind that statement were that individuals were hired into positions that they weren't adequately trained and, from a baseline resume review, didn't have the background for.

Mr. CASSIDY. I am out of time——

Mr. BEERS. What we have done is go through the process of training, go through the process of moving those individuals to more appropriate positions that are cast against their qualifications.

Mr. CASSIDY. Has anybody had a reduction in pay? Because another thing was, "An excess number of highly graded personnel are serving in positions that do not contribute to the mission at a level commensurate with their pay grades." Has anybody taken a decrease in pay?

Mr. BEERS. That is where I say we are moving people to more appropriate positions.

But let me ask David to clarify.

Mr. WULF. And we have made a lot of process over the past year. I mean, that report was put together about a year ago, and we have put into place a variety of things, including training for supervisors. We have——

Mr. CASSIDY. If I am a taxpayer and if I see something that smacks of cronyism, per your report, the obvious question is, am I getting more bang for my taxpayer buck?

Has anybody taken a cut in pay?

Mr. WULF. We have people in positions for which they are more suited. And we have put into place, you know, an open and transparent process.

Mr. CASSIDY. I will take that as a "no." We are out of time. I apologize.

Mr. SHIMKUS. The gentleman is yielding back his time.

I guess the big point is, if you can't do the small things, how can the country, the localities, the taxpayers, the public interest groups, expect us to do the big things? And that line of questioning, I think, just highlights that.

The chair wants to announce that he wishes to recess this hearing so Members and interested persons can go to the 9/11 service at the Capitol.

With no objection, Mr. Beers is excused from the first panel.

Mr. Beers, will you commit to provide full and accurate responses to written questions within 10 days of their submission?

Mr. BEERS. Yes, sir.

Mr. SHIMKUS. And that is a request from both sides.

When we return, we will have Mr. Wulf and Ms. Berrick continue answering some questions, if that is OK with you all.

The committee stands in recess until 11:45.

[Recess.]

Mr. SHIMKUS. I would like to call the hearing back to order.

Again, we want to thank you for your patience and for giving us an opportunity to join our colleagues out on the east steps of the Capitol. It is always a memorable time and usually very short because on September 11th, that it was a short event in which we gathered. So I think those of us who were here remember that with a lot of emotions, as Americans do. And that is why I think what we are doing here today is still important and relevant.

So, with that, I would like to recognize myself, which would be a second round of questions, for 5 minutes.

Ms. Berrick, CBS originally reported on problems with the CFATS program. The report showed a video clip of the Under Secretary of the National Protection and Programs Directorate, during which he called the CFATS program a "tremendous success to date."

Would GAO characterize the program the same way?

Ms. BERRICK. No, Mr. Chairman, not based on the work we have done to date.

And I think what is going to dictate whether or not it is successful is whether it is able to execute its mission. And I think they are still in the early phases of positioning themselves to be able to do that.

Mr. SHIMKUS. And, following up on your response, should they still be in the early stages?

Ms. BERRICK. You know, comparing them to other regulatory programs across DHS, I think it is certainly taking them longer to get CFATS up and running. For example, comparing them to the Coast Guard, who also had to set up a regulatory regime at the ports when the Maritime and Transportation Security Act was passed, the Coast Guard got it up and running probably in a year and a half, although the Coast Guard did have personnel in place and an infrastructure, so they were better equipped to get up to speed earlier.

TSA may be a better comparison since that was a new organization and they were setting up a new regulatory regime. It took TSA, I think, several years, looking across both their regulatory and voluntary programs, and they also had some challenges but not to the degree that CFATS has had.

I think part of this could also be contributed to the standards that inspectors are assessing against. And CFATS is performance-based, which are broader, whereas at TSA the standards tended to be more specific, and that could be, in some respects, easier to establish a framework to assess against those specific standards.

So some differences, but looking across the Department, it has taken CFATS longer to get up and running.

Mr. SHIMKUS. Well, I think it was last year when I had an inspector just come visit and kind of do an open-office-hour type of thing. And he was well-intentioned, wanted to do the right thing, but really was really lacking any guidance. So I think they were going around visiting facilities but really having no idea what they were checking for and why they were checking for it. And it kind of saddened me just because he really wanted to do the right thing but there was really a lack of guidance. And this was last year, last August, so not this past August.

I understand that GAO has placed DHS on its high-risk list due to management challenges facing the Department. And we are talking about the whole Department of Homeland Security. To what extent have these management challenges had an impact on the NPPD's ability to manage the CFATS program?

Ms. BERRICK. You know, I think CFATS is an example of those management challenges that we talk about in the high-risk area.

We placed DHS on the high-risk list in 2003 after it was created because we found that they didn't have the rigor and procedures and oversight over their core management functions, and this is acquisition management, financial management, information technology, and human capital management.

And what we were finding is, because of not having the discipline in these management areas, it was having a negative effect on DHS's ability to implement its mission. So there were a number of programs that weren't meeting performance expectations, cost more than what they were supposed to cost, were taking longer to field, because of these management challenges.

I think CFATS is an example of this. For example, in the human capital area, we have talked throughout the Department about DHS's challenges and bringing people with the needed skills and abilities on board to fill critical positions. They have had challenges in doing that.

In the information technology area, you know, CFATS has an information technology tool to solicit input from the facilities to look at their site security plans and vulnerability assessments. The tool has some challenges, which were identified in the internal memo, mainly that it provides a lot of data but not in a real user-friendly format to read. So that is an example of an IT challenge.

I think the Department as a whole has recognized these management problems. They have some good strategies in place to address them, but they are in the relatively early stages of doing that.

Mr. SHIMKUS. So DHS is in the high-risk; CFATS is probably their number-one problem of concern. I think it goes back to the issue of, if you can't get the small things right, how do people trust you to do the big things in this issue? So we appreciate your analysis.

And my final question: Given the seriousness and multitude of problems CFATS is facing, particularly with respect to conducting its mission, would it be viable to consider, quote/unquote, "standing down" the program for some period of time so that these issues can be addressed before attempting to move forward with this regulatory mission?

And to put it in another way, it is like trying to build a car while you are racing the car.

Ms. BERRICK. Right.

Mr. SHIMKUS. Could we get a better return on investment and a more timely process getting it right before it deployed? Do you understand the question?

Ms. BERRICK. Yes, I do. Thank you Mr. Chairman.

You know, I think that is something DHS would have to consider, weighing that against the need to field a program to address existing security vulnerabilities.

You know, there is an example in DHS's history where they did just that. They were working to field a program called Secure Flight, which was a high-priority program within the Department that compared the matching of passenger information against terrorist watch lists for airline passengers. Air carriers used to have that function. The 9/11 Commission recommended that DHS take over that function from carriers.

Well, DHS tried to field this program for several years. Five years into it, they weren't able to field a successful program, and so they did just what you mentioned. They actually stood down the program. They went back and instilled some rigor in the acquisition that wasn't there before. They were making sure that they were preparing appropriate documentation. And they did that for a year. And then when they turned the switch on and moved forward, they ended up fielding a successful program.

So even though there was a delay when they did stand down the program, ultimately they probably saved time, in that they were able to address those problems they had, finish that, and then focus on implementing the program. So I think it is something worth thinking about.

Mr. SHIMKUS. Time, effort, energy, frustration, all of the above. And I would agree, I think I am going through the secure TSA thing now. It just popped up; I wasn't given much warning. And all of a sudden, I can go in a different lane. So it is pretty nice.

The chair now recognizes the ranking member, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

In June of this year, the House passed an appropriations bill for the Department of Homeland Security that cut funding for CFATS in half.

Mr. Wulf, what impact would cutting your budget in half, on the CFATS program, what impact would it have?

Mr. WULF. That proposed cut would have a pretty major impact on our ability to move the program forward at, you know, what is really a critical time for the program.

You know, we have made a great deal of progress in our action plan. You know, we have, in essence, taken a bit of an operational pause over the past several months. We are now at the point where we have conducted the training. We have developed a streamlined site security plan review process. We have our inspectors out, having recommenced authorization inspections. We have turned an important corner in the program. And a cut, as the House Appropriations Committee has proposed, would force some very, very difficult choices.

We would have a limited ability to pursue needed improvements to the site security plan tool and the Top-Screen and SVA tool,

something we are moving forward with in partnership with our industry stakeholders. We would have limited ability to continue implementing the action plan. We have made a considerable amount of progress in that implementation process, having completed 67 of the 95 action items.

It would essentially cut the legs out from under us when we have turned an important corner, when we do expect and anticipate and have already begun to see a heightened pace of site security plan authorizations, approvals, and facility inspections.

Mr. GREEN. Well, and I am sure you understand the frustration after 6 years and funding and funding and that frustration. But we are seeing some improvement now, and to cut the funding and still expect results is just not going to happen. And so I don't know what the continuing resolution we will vote on this week has for the 6 months, but I would hope it would be something that would give you the resources to do your job.

Mr. Wulf, the site security plan process is a key link to your ability to effectively review and approve plans. Have you made progress with improving this vital tool so that the covered facilities have clear instruction on information DHS needs?

Mr. WULF. Yes, we have, in fact. We, over the past several months, having learned many lessons ourselves as we went through the site security plan reviews at our headquarters, have been out kind of piggybacking on events that industry associations have been holding across the country, to get the word out to facilities about how they can provide the detail that will enable us to get more efficiently and effectively through the review of the site security plans and get to authorization and approval in a more streamlined fashion.

You know, at the same time, we are kicking off the SSP tool focus groups, working groups, with industry to continue to try to improve that tool to make it more user-friendly, both to the facilities and to our reviewers, and also continuing to work with industry on the alternative security program templates.

Mr. GREEN. Well, I am glad you are bringing in the regulated community because, again, I have huge numbers of those in our district. And we have a particular group that I work with a lot, the East Harris County Manufacturers, made up of oil refiners, chemical plants, service companies. And that is one of the issues, when I talk to them, that they want to be part of the solution instead of just being told what to do. And sometimes the Federal Government is known for giving instructions that don't work on the ground.

Mr. WULF. Yes.

Mr. GREEN. And so I am glad you are bringing them in.

Ms. Berrick, the GAO has done extensive work on the need for strong security at chemical facilities going back as far as 2003. Can you describe the risk posed by these facilities?

Ms. BERRICK. There is a risk posed by these facilities, the details of which are classified. We will be happy to come up and brief you and your staff separately on that. But there is a risk, according to DHS's threat assessment.

Mr. GREEN. I have no doubt that there is a risk. In fact, I have companies that produce ammonia, that we ship ammonia, all sorts

of volatile chemicals. That is just the nature of our district. It is important to have an effective government program, though, that ensures chemical facilities are protected from a terrorist attack. Is that correct?

Ms. BERRICK. According to DHS's threat assessments, they have identified a need for such a program.

Mr. GREEN. And, you know, there are things that are happening in the last 6 years, even though the oversight may not be there, or what we need. Because I know, both through the FBI working with local law enforcement and our plant security, I have seen them there, our local special agent in charge has told me they have been on every plant site, in fact, probably, by now, a number of times, to be able to work with the folks who actually work there and produce these products that our country needs.

Mr. Chairman, I know I am over time, so thank you.

Mr. SHIMKUS. The gentleman yields back his time.

The chair now recognizes the gentleman from Louisiana, Mr. Cassidy, 5 minutes.

Mr. CASSIDY. Mr. Wulf, again, I am a physician. I know if you continue to have the same inputs, you should expect the same output. So all my questions go back to that initial report as to the inputs of your process, which obviously have been lacking.

And, by the way, when you haven't laid off anybody and yet we have an internal report showing that some of the people are sitting at their desk are doing nothing, but you continue to maintain you need the same amount of money, I am wondering why we are giving you any because, frankly, the public trust is not being met by your actions. That is just my perspective and as a counterpoint to what Mr. Green said.

Ms. Berrick, in the internal report, it said that the database CHEMS was the wrong database. "It does appear the database can be modified to meet needs but requires a substantial amount of redefining requirements, reworking protocols, codes, et cetera, calling into question the funding spent to date," going back to funding.

Is the database now adequate?

Ms. BERRICK. It is not, according to the office and based on the work we have done to date.

It does provide some value because it is a tool to collect the needed information for CFATS to assess. However, it is not very user-friendly. Outputs are oftentimes data dumps that are difficult to sift through, especially when you are looking at something as complex as what CFATS is looking at.

So there are identified challenges that CFATS has identified themselves and are working to try to address, but it is going to take time and money to, I think, make those revisions to the system.

Mr. CASSIDY. OK. Time and money to make that revision, and yet somehow we are going to be back on track certifying plants. And I don't want this to be mean, but I am supposed to be providing oversight for the American taxpayer, who, if she knew what was going on, would just be furious.

Ms. Berrick, it said in the internal report that ISCD does not have an established records management system to document, development, and maintenance of necessary historical documentation

related to programs owned by the division. Has that now been corrected?

Ms. BERRICK. I don't know if that has been a closed action item or not. I believe it is in progress. Maybe Mr. Wulf has the current status.

Mr. WULF. Yes, it is in progress. And we are keeping records very, very extensively and thoroughly. It is a high priority and something we take very seriously, as the remainder of the action items, as well, on which we have made a significant amount of progress on.

Mr. CASSIDY. So, yes or no, do you have an established records management system now?

Mr. WULF. We do.

Ms. BERRICK. If I could mention, Mr. Cassidy, GAO has ongoing work looking in more detail at CFATS' ability to meet its mission. We will be reporting on those results early next year, including looking at the records retention issue.

Mr. CASSIDY. OK. That would be great.

Budget: Our lack of focus and vision has resulted in problems, how we spend our money, how we are managing these funds—for example, buying first responder equipment such as hazmat suits when, as a regulatory entity, we do not have a first-responder role.

Ms. Berrick, has that been corrected?

Ms. BERRICK. I do not know, Mr. Cassidy.

Mr. CASSIDY. Mr. Wulf?

Mr. WULF. Yes, it absolutely has. In the early days of the program, there were course corrections. There was some thought—and this was before my time—that the chemical security inspectors would have a response role. As the program evolved and as it became clear that they would not, that equipment was repurposed within the Department.

Mr. CASSIDY. Are we still paying more than $20,000 per year for professional memberships in ASIS that are unnecessary, et cetera?

Mr. WULF. We are not paying for those memberships anymore.

Mr. CASSIDY. And now, it says, ISCD lacks—again, internal document—lacks a system for tracking the usage of consumable supplies, which creates an environment for fraud, waste, and abuse to exist.

Has that, Ms. Berrick, now been established?

Ms. BERRICK. I am sorry, I don't know the current status of that item.

Mr. CASSIDY. Mr. Wulf?

Mr. WULF. Yes, we are track tracking those supplies.

Mr. CASSIDY. OK.

Now, I could go on, but I think we are making the point. There seems to be substantial amounts of really critical things which have to be addressed. And in an ongoing basis, we are keeping people employed who, again, your internal documentation suggests are the inappropriate person for their roles.

Build a case why we should give you more money.

Mr. WULF. Well, as I have said, we have made a significance amount of progress. I think with regard to——

Mr. CASSIDY. Now, I am a physician, and I teach. So when a medical student—and I say this not to be abusive, and I apologize

if I come across this way. But if somebody tells me "significant"—"significant" is one of those loosey-goosey words that may or may not have significance.

It certainly would move the ball from here to there, but if this is threshold at which you can actually accomplish a mission—where are you relative to getting to the threshold where you can actually accomplish your mission? Sure, you may have made significant progress, but you may have this incredible gap between where you are now and the threshold at which you can actually accomplish your mission.

Actually, Ms. Berrick, where would you guess they are?

Ms. BERRICK. I think they are in their early stages. They are still setting up a framework to position themselves——

Mr. CASSIDY. Are we 10 percent of the way there? A hundred percent? Fifty percent? Sixty percent?

Ms. BERRICK. If I had to put a guess, an educated guess percentage, you know, maybe 25 percent.

Mr. CASSIDY. Can you give us a timeframe in terms of years at which they will reach the threshold of being able to accomplish their mission?

Ms. BERRICK. You know, all the actions under way have different timelines. We have been told that it—CFATS is estimating it could up take up to 3 years to complete compliance inspections once they review the site security plans.

Mr. CASSIDY. But we don't even have a database yet which can be easily used in order to support that initial site—so the 3 years was after the threshold is met?

Ms. BERRICK. Three years from today is the estimate that they provided us. And, again, we are going to continue to review this as a part of our ongoing work. And I think early next year we will be positioned to provide you details on where we think they are in terms of this continuum of progress.

Mr. CASSIDY. OK. Thank you.

I yield back.

Mr. SHIMKUS. Mr. Wulf, do you want to respond?

Mr. WULF. Yes, I mean, I would love to.

We are, I believe, accomplishing our mission. The CFATS program has accomplished a great deal over the course of its existence. You know, the 2,700 facilities that have removed or reduced their chemicals of interest; you know, the 7,800 security vulnerability assessments that have been completed and reviewed by our staff; the more than 3,000 compliance assistance visits and other outreach visits that our inspectors have conducted have laid important groundwork.

We are at the point where we are seeing a heightened pace of reviews of site security plans. Within the last week, we have authorized, myself along with Assistant Secretary Durkovich, have authorized 10 additional plans and approved our first 2 site security plans.

We are going to be moving this program forward. And, you know, I am very pleased to say that, you know, I have had, as have the rest of our team in ISCD, a tremendous amount of support within the organization. There is a tremendous amount of commitment for getting this job done.

We are accomplishing the mission. In terms of percentages, we put into place that corrective action plan last fall; we are 70 percent done with that. You know, not that we are ever going to be completely done. We are going to continue forward—I am sorry, sir.

Mr. SHIMKUS. I appreciate your passion in defending the program. You can understand why my colleague, his frustration.

Mr. WULF. Sure.

Mr. SHIMKUS. And we all want to move this together.

In talking with my ranking member, two things: He wants to make sure we put on record that, obviously, our oversight is not going to end, so we will just keep monitoring this. And I think for both of us, for the defense of the program, and for the giving due preference and diligence to our taxpayers, I think it is the right course of action, to make sure that we finish this and we have a program that we can defend publicly.

Also, without objection, I would like to pose one other question, just because we were talking about budgets. The President is supposed to lay out, hopefully, sequestration issues Friday. Sequestration, 50 percent of that comes out of defense and homeland security, national defense issues.

Have you all heard—and I know that you have a small program within Homeland Security. But I would venture to say that whatever budget that the House has proposed that might address funding, sequestration might do even more.

Have you guys even talked about what effect sequestration might have to the CFATS program?

Mr. WULF. I have not been part of those discussions.

Mr. SHIMKUS. And we await the President's disclosing what he may or may not do.

Seeing no other Members asking for time, we would like to thank you for coming back, making sure that we could get the second round. It was very important for all of us. And we would like to dismiss you and empanel the second panel. So, with that, thank you very much.

Mr. WULF. Thank you.

Mr. SHIMKUS. We also want to thank you all for coming.

The way I operate is I am going to introduce you all, like, right off the bat, and then we will go for 5-minute opening statements.

We also ask unanimous consent that all members of the subcommittee have 5 days to forward questions to you all, too. And, without objection, so ordered.

On the second panel, we have Mr. Timothy Scott, chief security officer of Dow Chemical Company. We also have Mr. Matthew Leary, corporate EHS&S manager, Pilot Chemical Company. We have Ms. Anna Fendley, United Steelworkers, Health, Safety, and Environment Department; and Mr. Paul Orum on his own behalf.

So, with that, we appreciate you attending. You all have 5 minutes for an opening statement. Your full statement will be submitted for the record. I did review them, scanned them, all last night. And so I appreciate the efforts you made on that behalf.

And, with that, we will begin with Mr. Scott for 5 minutes.

STATEMENTS OF TIMOTHY J. SCOTT, CHIEF SECURITY OFFICER AND CORPORATE DIRECTOR, EMERGENCY SERVICES AND SECURITY, THE DOW CHEMICAL COMPANY; MATTHEW J. LEARY, CORPORATE EHS&S MANAGER, PILOT CHEMICAL COMPANY; ANNA FENDLEY, HEALTH, SAFETY, AND ENVIRONMENT DEPARTMENT, UNITED STEELWORKERS; AND PAUL ORUM, BLUE GREEN CHEMICAL SECURITY COALITION, INDEPENDENT CONSULTANT TO THE CENTER FOR AMERICAN PROGRESS

STATEMENT OF TIMOTHY J. SCOTT

Mr. SCOTT. Chairman Shimkus, Ranking Member Green, and members of the subcommittee, my name is Tim Scott, and I am the chief security officer for The Dow Chemical Company. I am speaking today on behalf of Dow and the American Chemical Council, and I will focus on four points.

First, the chemical industry and DHS have a common goal of improving the security profile of the chemical sector, reducing the risk of attack or the use of chemicals as a weapon, and minimizing the impact of the potential threats on our country.

Second, the chemical industry and DHS have made some progress using both voluntary industry initiatives and collaborative efforts to clarify and meet performance standards.

Third, the concerns associated with the implementation of the Chemical Facilities Anti-Terrorism Standards and internal DHS management issues are real. It is promising to hear that improvements are being made in both areas. In spite of these distractions, industry has made progress.

And, lastly, we need to build on this progress to achieve an efficient, integrated, and sustainable security plan for the chemical industry and our country. It is time to move on and, in fact, accelerate our efforts.

The CFATS concept is fundamentally sound. DHS established Risk-Based Performance Standards, flexibility for the regulated companies to apply customized security solutions for each unique site and situation, and DHS final approval and review for compliance. That is the goal: to set expectations, meet those standards, and, by doing so, reduce the vulnerability and risk of our chemical sector.

Too often, we fixate on the methods used to achieve the goal instead of the goal itself. No one method addresses every site or every situation, but we are making progress.

The concept of alternative security plans offer an excellent opportunity for a thorough but expeditious review and approval process of the site security plans at many CFATS-regulated facilities, especially those in the lower-tiered sites and companies that have multiple regulated sites.

DHS recently completed a pilot test of an ACC-developed alternative security plan, and it proved to be a worthwhile exercise for both industry and DHS—an excellent example of an open and collaborative effort to improve and expedite the process. Members of the ACC implemented the Responsible Care Security Code in 2002. And over the past decade, ACC members have spent nearly $10 billion on security enhancements.

The code is a requirement for membership and is included in independent, third-party audits of the Responsible Care Management System. Recognition of the value of such voluntary industry initiatives is being considered as another possible means of fast-tracking reviews of site security plans.

The next generation of the DHS site security plan tool is being developed and will be both easier and more efficient for industry and a more valuable and usable source of information for DHS. Progress has been made, but there are still some hurdles to overcome.

Personnel surety is critical to any security program, and most companies had background checks and programs in place well before the creation of DHS. Screening against the terrorist database is a welcome addition to the performance standards and is, as it should be, a government responsibility.

CFATS is closing this gap, but this is an area where we can use your help. By design, CFATS allows the flexibility to address each performance standard using the method best suited to each particular site and situation. The personnel surety program and performance standards should be no exception.

There are many readily available government-approved options that would fully comply with this standard, and there is no valid reason to limit the options. In the case of the personnel surety standard, however, DHS management has not demonstrated the flexibility that is integral to and authorized by CFATS.

Also in the area of the terrorist database screening, there is one concept in which all security managers agree: We should know that a person can pass this screening before we issue an entry card and let a potential threat in the gate. And we should keep any potential threat out of the site. That is a pretty basic security concept, but it is not clear that DHS management is in agreement with this important point, and that is a cause for significant concern.

There is definitely room for improvement in the implementation of the Chemical Facilities Anti-Terrorism Standards, but the necessary corrections can be made and success can be achieved. Success demands constancy of purpose, commitment, and collaboration. ACC member companies are committed. We should not return to square one with DHS or change course in midstream. We should strengthen collaboration and increase the pace to build an efficient, integrated, and sustainable chemical security process for our country.

Thank you.

Mr. SHIMKUS. Thank you, sir.

[The prepared statement of Mr. Scott follows:]

Before the

SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

OF THE

COMMITTEE ON ENERGY AND COMMERCE

UNITED STATES HOUSE OF REPRESENTATIVES

Statement of

Timothy J. Scott

Chief Security Officer and Corporate Director
Emergency Services and Security
The Dow Chemical Company

Representing

The American Chemistry Council
And
The Dow Chemical Company

On

The Chemical Facilities Anti-Terrorism Standards Program:
A Progress Report

Tuesday, September 11, 2012

Chairman Shimkus, Ranking Member Green and members of the subcommittee, my name is Tim Scott and I'm the Chief Security Officer of The Dow Chemical Company.

I'm speaking today on behalf of Dow and the American Chemistry Council, the nation's largest chemical industry trade representative.

Ours is a robust and diverse industry -- our nation's largest exporting sector, employing over three-quarters of a million people in the United States, and investing billions of dollars in the safety and security of our facilities.

I'll focus on four points today:

The chemical industry and Department of Homeland Security have a common goal of improving the security profile of the chemical sector, reducing the risk of attack against the industry or the use of chemicals as a weapon, and minimizing the impact of potential threats to our country.

The chemical industry and DHS have made progress using both voluntary industry initiatives and collaborative efforts with DHS to clarify and meet performance standards.

The concerns associated with the implementation of the Chemical Facilities Anti-Terrorism Standards and internal DHS management issues are real. It's promising to hear that progress is being made in both areas. In spite of these distractions the sector has made progress.

And lastly, we need to build on this progress – as respectful partners with a common goal – to achieve an efficient, integrated and sustainable security plan for the chemical industry and our country.

It's time to move on – and in fact accelerate our efforts.

The CFATS concept is fundamentally sound – risk-based and focused on the right priorities – allowing the regulated companies to apply customized security solutions to each unique site and situation for DHS review and approval for compliance with the DHS-established risk-based performance standards.

THAT is the goal – to meet the standards and by doing so reduce the vulnerability and risk of our chemical sector. Too often we fixate on the methods used to achieve the goal instead of the goal itself. No one method, no single silver bullet addresses every site or every situation. The path to success can -- and usually does -- vary with every site or situation.

We are making progress:

The concept of alternative security plans that would expedite the review and approval process – especially for lower tiered sites and companies that have multiple regulated sites – is being tested. DHS recently completed a pilot test of an ACC-developed alternative security plan, and

it proved to be a worthwhile exercise for both industry and DHS -- an excellent example of an open and collaborative effort to improve and expedite the process.

Members of the American Chemistry Council implemented the Responsible Care Security Code in 2002 and over the past decade ACC members have spent nearly 10 billion dollars on security enhancements. The Code is a requirement for membership and is included in independent third party audits of the Responsible Care Management System. Recognition of the value of industry initiatives is being considered as another possible means of fast tracking reviews of site security plans.

Both examples offer an excellent opportunity for a thorough but expeditious review and approval process of the site security plans at CFATS-regulated facilities.

The next generation of the site security plan tool is close to launch, and is both easier and more efficient for the industry and a more valuable and useable source of information for DHS.

Progress has been made, but there are still some hurdles to overcome.

Personnel Surety is critical to any security management program. Most companies had robust background check programs in place well before the creation of the DHS. Screening against the Terrorist Database is a welcome addition to the performance standards, and is – as it should be

- a government responsibility. CFATS is closing this gap but this is an area where we can use your help.

By design CFATS allows the flexibility to address each performance standard using the method best suited to each particular site and situation. The personnel surety performance standard is no exception. As with all the risk-based performance standards there are many ways to comply with this requirement. There is no valid reason to limit the options when many readily-available options would meet the performance standard. In the case of the personnel surety program DHS has not demonstrated the flexibility that is integral to and authorized by CFATS.

In the discussion of TDB screening there is one area in which all security managers agree -- we should know that a person can pass the TDB screening BEFORE we issue an entry card and let a potential threat in the gate -- and we should keep any potential threat out of the site. It is not clear that DHS management is in agreement with this important point, and that is a cause for concern.

Industry and DHS -- have made progress in improving the security of the chemical sector. There have been missteps, but we can make the necessary corrections and achieve successful results. It takes commitment and collaboration. ACC member companies are committed.

We should not return to square one with DHS or change course in mid-stream. Instead we should strengthen the collaboration between DHS and industry with the unified goal of

increasing the pace to build an efficient, integrated and sustainable chemical security process for our country.

Thank you.

Mr. SHIMKUS. I would now like to recognize Mr. Leary for 5 minutes.

STATEMENT OF MATTHEW J. LEARY

Mr. LEARY. Good afternoon, Chairman Shimkus, Ranking Member Green, and members of the subcommittee. My name is Matt Leary, and I am both corporate security officer as well as the environment, health, and safety manager for Pilot Chemical Company in Cincinnati, Ohio.

I am pleased to provide this testimony on behalf of the Society of Chemical Manufacturers and Affiliates regarding how the Department of Homeland Security has been implementing the Chemical Facility Anti-Terrorism Standards and what that has meant for Pilot's two covered facilities.

Pilot Chemical is a small, privately held company celebrating its 60th anniversary on the 19th of this month. We specialize in alkylation, sulfonation, and sulfation, which are used to manufacture detergents. We have only 200 employees. We have four facilities, two of which are subject to CFATS.

Maintaining the security of our facilities has always been a priority for SOCMA members like Pilot. After the tragic events of 9/11, which occurred 11 years ago today, SOCMA members did not wait for new government regulations before researching, investing in, and implementing additional and far-reaching facilities security measures to address these new threats. However, there were no uniform Federal standards for measuring and implementing these security improvements across industry. CFATS standardized that process.

Definitively, DHS's Chemical Facility Anti-Terrorism Standards work. DHS listened to the private sector in developing a regulatory framework that is risk-based and preserves the ability for security professionals to make investments in measures that suit their specific facilities but that also provides robust performance standards and imposes strict penalties for noncompliance.

But that does not mean that the CFATS experience has been easy for regulated companies, especially small ones like Pilot.

In several respects, the manner in which DHS has implemented the regulations has imposed substantial uncertainties and costs on companies. I recognize that DHS has been building out the program at the very same time it has been implementing it. Nonetheless, I am confident that DHS could have substantially reduced these uncertainties and costs if they had implemented the program more quickly and confidently. They still could.

An ongoing challenge for Pilot has been the unwillingness of DHS to give us useful guidance on how to comply with the risk-based performance standards that are at the heart of CFATS. DHS staff said they cannot give us clear guidance because the CFATS statute prohibits DHS from requiring facilities to implement specific security measures.

That is ridiculous, however. The statute's prohibition on requiring particular security measures doesn't prevent DHS staff from saying security measure X is one way to meet RBPS Y at tier level Z. It is not the only way, and we are certainly open to discussing other ways.

If DHS staff were willing to offer nonexclusive safe harbors to those seeking feedback, companies like Pilot that are looking for clear compliance guidelines would be able to obtain it.

The other reason we believe DHS has been unwilling to give clear guidance is described on page 10 of the Anderson-Wulf memo, which says, "There exists within the cadre of SSP reviewers a reluctance to recommend good enough SSPs for authorization or conditional authorization out of fear that the leadership has a zero-tolerance philosophy toward mistakes and out of a lack of clarity regarding expectations."

DHS needs to make clear to staff that they are expected to use their judgment to make decisions and that management will not punish them for doing so.

Another issue of concern to Pilot has been DHS's misguided personnel surety proposal. Last year, DHS announced its intent to establish a Web-based application that would require facility owners and operators to submit personally identifying information about current and prospective employees, as well as contractor and visitor personnel seeking access to a plant.

Our industry has expressed serious reservations about the logistical nightmares that this proposal could lead to, given the heavy presence of contractors at chemical sites, especially during plant-wide maintenance turnarounds. DHS has been open to discussing alternative approaches, and the industry has proposed both interim and long-term alternatives that could involve reliance on existing Federal vetting programs, mechanisms by which contractor and visitor employees could submit information regarding their own employees, and ultimately a universal Federal security credential that would supersede all others.

Many smaller companies like Pilot would benefit from leveraging existing processes for vetting individuals that we feel meet the intent of the standards. DHS's prior proposal would unnecessarily limit the number of options open to regulated facilities for complying with RBPS 12. Resolving this challenge expeditiously would free up ISCD resources to focus on the more pressing task of approving SSPs and initiating compliance inspections.

As I have testified today, the CFATS framework is sound, but DHS's implementation has been flawed. We have seen progress made by the Department under the recent management of Deputy Under Secretary Suzanne Spaulding and ISCD Director David Wulf. To help ensure further progress is made, however, DHS must not drift away from the spirit of the public-private partnership on chemical security that it has so often hailed as the keystone of the CFATS program.

I appreciate this opportunity to testify before you today and look forward to your questions.

Mr. SHIMKUS. Thank you, sir.

[The prepared statement of Mr. Leary follows:]

Testimony of

Matthew J. Leary
Corporate EHS&S Manager
Pilot Chemical Company

On Behalf of the
Society of Chemical Manufacturers and Affiliates

before the

House Committee on Energy and Commerce
Subcommittee on Environment and the Economy

on

The Chemical Facility Anti-Terrorism Standards Program – A Progress Report

September 11, 2012

Good morning Chairman Shimkus, Ranking Member Green, and members of the Subcommittee. My name is Matt Leary and I am both Corporate Security Officer as well as the Environment, Health, and Safety Manager for Pilot Chemical Company in Cincinnati, Ohio. I am pleased to provide this testimony on behalf of the Society of Chemical Manufacturers and Affiliates (SOCMA) regarding how the Department of Homeland Security (DHS) has been implementing the Chemical Facility Anti-Terrorism Standards (CFATS) and what that has meant for Pilot Chemical's two covered facilities.

Pilot Chemical is a small privately-held company, celebrating its 60th anniversary on the 19th of this month. We specialize in alkylation, sulfonation and sulfation, which are used to manufacture detergents. We have only 200 employees. We have 4 facilities, two of which are subject to CFATS.

Pilot Chemical is in many ways typical of the members of the Society of Chemical Manufacturers and Affiliates, to which we are proud to belong. For 91 years, SOCMA has been and continues to be the leading trade association representing the batch, custom, and specialty chemical industry. SOCMA's nearly 230 member companies employ more than 100,000 workers across the country and produce some 50,000 products – valued at $60 billion annually – that make our standard of living possible. From pharmaceuticals to cosmetics, soaps to plastics and all manner of industrial and construction products, SOCMA members make materials that save lives, make our food supply safe and abundant, and enable the manufacture of literally thousands of other products. Over 80% of SOCMA's active members are small businesses like Pilot Chemical.

Maintaining the security of our facilities has always been a priority for SOCMA members, and was so before September 11. After the tragic events of 9/11, which occurred 11 years ago today, SOCMA members did not wait for new government regulations before researching, investing in and implementing additional and far-reaching facility security measures to address these new threats. Under SOCMA's ChemStewards® initiative, SOCMA members were required to conduct security vulnerability assessments (SVAs) and to implement security measures. However, there were no uniform federal standards for measuring and implementing these security improvements across industry. CFATS standardized that security process.

Many SOCMA member company facilities, just like Pilot Chemical's, are encompassed within the CFATS program. They have submitted their Site Security Plans (SSPs) and – we assume – will eventually be inspected by DHS to verify the adequacy of those plans and their conformance to them. SOCMA members have spent billions of dollars and have devoted countless man-hours to secure their facilities and operations. These investments will naturally continue for the foreseeable future. SOCMA has tried to actively engage with DHS to accelerate and continuously improve the implementation of the CFATS program, exploring new approaches to personnel surety and Alternative Security Programs.

Definitively, DHS's Chemical Facility Anti-Terrorism Standards **work**. DHS listened to the private sector in developing a regulatory framework that is performance-based and preserves the ability for security professionals to make investments in measures that suit their specific

facilities, but that also provides robust performance standards and imposes strict penalties for non-compliance.

But that does not mean that the CFATS experience has been easy for regulated companies, especially small ones like Pilot Chemical. In several respects, the way that DHS has implemented the CFATS regulations has imposed substantial uncertainties and costs on companies. I recognize that DHS has been building out the program at the very same time it has been implementing it. Nonetheless, I believe that DHS could have substantially reduced these uncertainties and costs if they had implemented the program more quickly and confidently. They still could.

At the same time, Pilot Chemical along with SOCMA wants to recognize the marked improvement in CFATS implementation under the leadership of National Programs and Protection Directorate (NPPD) Deputy Undersecretary Suzanne Spaulding and Infrastructure Security Compliance Division (ISCD) Director David Wulf, both of whom joined the Department last year. We are confident that this program with continue to move forward with the both of them at the helm.

Below I will (i) explain what is good about CFATS; (ii) describe the problems with its implementation and the impacts on smaller companies like Pilot Chemical; and (iii) describe some needed improvements.

I. Despite Departmental Mismanagement, CFATS is Reducing Risk

To be clear, SOCMA's membership regards the program thus far as a success, even if its implementation has moved much more slowly and cautiously than we all would prefer. The CFATS statute was wisely drafted to be comprehensive and flexibly structured to impose security performance standards that are relatively more demanding of higher-risk facilities and less demanding of lower-risk plants. To a great extent, DHS's rules implement the statutory mandate issued by Congress in 2006.

Both the law and the rules are fundamentally sound and do not require replacement. Since the program was launched in 2007, more than 2,000 facilities have changed processes or inventories in ways that have enabled them to screen out of the program. Thus, as predicted, CFATS is driving facilities to reduce inherent hazards, where in their expert judgment doing so is in fact safer, does not transfer risk to some other point in the supply chain, and makes economic sense. Hundreds of other regulated facilities that had not already done so have already made significant proactive investments in security measures in anticipation of compliance with the full implementation of CFATS. As a result of CFATS, our nation is more secure from terrorist chemical attacks and other threats than it was before the program's inception. And this risk reduction has taken place through a market-based approach that has certainly cost society less than if all the initially covered facilities were still subject to regulation.

Furthermore, due to the outstanding cooperation of the chemical sector, there has been 100% compliance with the requirements to submit Top-Screens, SVAs and SSPs – DHS has not yet had to institute a single administrative penalty action to enforce compliance.

SOCMA also supports the CFATS program because our members have invested significant amounts of financial and human capital in it over the past several years. Overall, covered facilities have invested billions of dollars in security upgrades to meet CFATS's requirements – Pilot Chemical itself has invested hundreds of thousands of dollars. SOCMA's members alone, a majority of which are small manufacturers with under $40 million in annual sales, have invested an estimated $515 million in security measures to date. CFATS has provided significant additional security to a critical segment of our nation's infrastructure, as well as the general public.

No one should dispute that, despite the challenges to its implementation, the two main alternatives to CFATS would both be far worse. Having no chemical security regulation at all would create a risky and tilted playing field in which most companies secured their facilities voluntarily, at significant cost, while a minority created risks for us all, and gained an unfair economic advantage, by not doing so. Our nation would also not be well-served by a prescriptive program that mandated incorporation of inherently safer technology (IST). Such an approach would threaten to drive chemical operations overseas where security standards are weaker.

II. Small Businesses Suffer Disproportionately from DHS's Problems Implementing CFATS

A. The Impact of Delay on Budgeting, Investment and Staff Credibility

As Corporate Security Officer for Pilot Chemical, I can tell you that the most frustrating aspect of CFATS implementation has been not knowing, for years now, how much to budget for compliance. In this tough economy, every penny counts. Finance directors want to know when and how much our company will be spending on security measures to meet the requirements of CFATS compliance. Unfortunately, there is no way for me to answer either question.

While security budgeting is an issue for any company whose site falls under CFATS, the challenges are especially great for small businesses like Pilot Chemical. We have limited capital to invest. Obviously, we would like to invest that money in plants and equipment so that we can take advantage of profitable business opportunities as they present themselves. We also have limited cash flow from operations, which we would like to be able spend buying raw materials and creating jobs. We recognize that we have to comply with CFATS, and we are prepared to do so, but we need to know how much it will cost and when those costs will be incurred. Instead, we have been forced to guess, and to hold the amount of projected early outlays in suspense, unavailable for productive purposes, in case DHS suddenly approves our SSP and we need to start incurring expenses to comply. You can, I hope, imagine our frustration as this situation persists, year after year, and we still have no idea when DHS will ever get to authorization inspections for our facilities' tiers. That frustration is compounded as we relive the annual drama of whether Congress will extend the perennially expiring regulations for yet another year.

We believe that our facilities are appropriately secure. But we have no real idea what DHS will conclude is required based on our submitted SSP, and companies the size of Pilot Chemical

cannot afford to guess. The biggest catastrophe for a small business is to hear something like: "The $250,000 you just shelled out for [fill in the blank] did not really help your profile and was in fact not needed." As a result, we cannot spend dollars on security in advance unless we are clear that what is spent will directly lead to compliance with the standard.

Besides tying up assets and preventing productive investments, the extended delays in implementation of CFATS also lead companies to question whether their government is really serious about the security of chemical facilities. While DHS expects regulated facilities to submit their SVAs and SSPs on time, commitments made about approving SSPs and completing pre-authorizing inspections by date X are repeatedly broken. Rarely are such exceptions made for industry. Such failures cause security professionals to lose credibility with their superiors who authorize compliance costs, as these managers conclude that their security staff are simply "crying wolf" about their regulatory obligations. DHS mismanagement has, in some cases, stopped the momentum that security managers had with their own senior management in convincing them of the need for certain cost decisions, placing forward progress in a holding pattern.

B. The Inability to Get Meaningful Guidance from DHS

An ongoing challenge for Pilot Chemical, and for many other companies that have yet to see their SSP reviewed by DHS or that have had their submission rejected, has been the unwillingness of DHS to give us useful guidance on how to comply with the Risk-Based Performance Standards (RBPS) that are the heart of CFATS. When facilities ask headquarters or regional DHS staff whether particular security measures would satisfy a given standard for a given tier level, the staff routinely decline to give us a clear answer. We are only able to get non-specific comments that security professionals cannot translate into particular actions.

DHS staff say they cannot give us clear guidance because the CFATS statute prohibits DHS from requiring facilities to implement specific security measures. That is ridiculous, however. The statute's prohibition on requiring particular security measures doesn't prevent DHS staff from saying "Security measure X is one way to meet RBPS Y at tier level Z. It is not the only way, and we are certainly open to discussing other ways." The implementation of CFATS would be vastly improved if DHS staff were willing to offer non-exclusive safe harbors in this fashion. Then smaller companies like Pilot Chemical that are looking for clear compliance guidance would be able to obtain it, and larger companies would be free to design and propose their own solutions.

I agree it would be a problem if DHS regularly disapproved SSPs that included anything besides the example or safe harbor guidance. But the possibility that this might occur somewhere, sometime, is not a good reason to prohibit DHS staff across the board from offering safe harbors.

The other reason we believe DHS has been unwilling to give clear guidance is described on page 10 of the Anderson/Wulf memo, which says "there exists within the cadre of SSP reviewers a reluctance to recommend 'good enough' SSPs for authorization or conditional authorization out of fear that the leadership has a zero tolerance philosophy towards mistakes and out of a lack of clarity regarding expectations." As DHS has testified today, only one SSP has been

conditionally approved to-date. DHS has obviously been letting the perfect be the enemy of the good. While SOCMA does not support a rushed process that accepts inadequate or incomplete SSPs, DHS needs to make clear to staff that they are expected to use their judgment and to make decisions – and that their management will not punish them for doing so.

That said, despite the bad picture the Anderson/Wulf memorandum has painted of inspectors, they have always been available to SOCMA and its members, either providing compliance assistance on-site upon request or attending SOCMA events, and have been very engaging with our membership.

C. Small Business Concerns with DHS's Personnel Surety Program

RBPS #12 requires facilities to implement security measures designed to: (i) verify and validate identity; (ii) check criminal history; (iii) verify and validate legal authorization to work; and (iv) identify people with terrorist ties. The facility is responsible for the first three tasks and for determining what criminal background findings would be disqualifying. Evaluating terrorist ties requires federal government involvement, however, in the form of evaluating names against the national Terrorist Screening Database (TSDB) maintained by the FBI.

Last year, DHS announced its intent to establish a web-based application that would require facility owners and operators to submit personally-identifying information about current and prospective employees, as well as contractor and visitor personnel seeking access to a plant. Contrary to the flexible spirit of the CFATS program, this proposal would not grant companies the ability to decide how to vet personnel, such as accepting any of the half-dozen or so other federally-issued credentials that involve a TSDB check unless facilities gather additional information from persons presenting them.

Our industry has expressed serious reservations about the logistical nightmares that this proposal could lead to, given the heavy presence of contractors at chemical sites, especially during plant-wide maintenance "turnarounds." We have strongly urged DHS to accept other federally-issued credentials that involve a TSDB check without further collection of information. Unions have also expressed concern about DHS's proposal.

DHS has been open to discussing alternative approaches, and the industry has proposed both interim and long-term alternatives that could involve reliance on existing federal vetting programs, mechanisms by which contractor and visitor employers could submit information regarding their own employees, and ultimately a universal federal security credential that would supersede all others.

Many smaller companies like Pilot Chemical would benefit from leveraging existing processes for vetting individuals that we feel meet the intent of the standards. DHS's prior proposal would unnecessarily limit the number of options open to regulated facilities for complying with RBPS #12.

We have had productive discussions with the Office of Infrastructure Protection on our proposals, and DHS has accepted some of them (and backed off from some of its other

problematic proposals). DHS has also shown a good faith effort to engage industry since it withdrew its initial proposal in July from the Office of Management and Budget, which was reviewing it under the Paperwork Reduction Act. However, further progress has had to struggle against the desires of some within DHS to make CFATS a system for tracking which persons have ever had access to which chemical facility.

Moving forward, I would emphasize that smaller companies have a seat at the table on personnel surety.

Resolving this challenge expeditiously would free up ISCD resources to focus on the more pressing tasks of approving SSPs and initiating compliance inspections.

D. Stalled Progress in Developing a Viable ASP

The Alternative Security Program (ASP) originated under the Coast Guard's Maritime Transportation Security Act (MTSA) program. The concept was to be a standardized plan designed for particular classes of facilities that would be more tailored to their circumstances and more flexible and open-ended option.

DHS's first mistake in this regard was in its Interim Final Rule, when DHS abandoned its original proposal and limited ASPs to individual facilities – so that DHS could not approve a single ASP for more than one facility.[1] This is one of the few areas where DHS could and should revise its CFATS regulations to make them better.

As a result of DHS's change, the option for facilities to submit an ASP has all but disappeared. Again, DHS has said that it wants to engage regulated facilities in developing more useful ASPs, but these discussions have not yet borne fruit. Many companies, including SOCMA members, have said that in order to produce an ASP template that satisfies DHS, they essentially need to replicate the SSP. For this reason, Pilot Chemical has chosen not to even attempt crafting an ASP. Until it revises its rules, DHS needs to be more open to models that are more like the security plans that companies actually use, and to approve generic or model ASPs that individual facilities could adopt for their own submissions.

E. Delays in CSAT Tool Improvement

The SSP tool was developed without sufficient input from industry. As a result, it is really a data collection tool, not a plan. A site security plan is an actionable document that tells managers what to do in a given circumstance. The CSAT SSP does not do this – you cannot manage with it.

DHS has been working, on and off, for over a year on a "Gen II" SSP. DHS should accelerate that work. They should actively engage the industry in that process and work closely together to produce a product that makes sense and meets the needs of both DHS and facilities.

[1] Compare current 6 C.F.R. § 27.235 with the proposal (located at 71 Fed. Reg. 78298, Dec. 28, 2006).

III. DHS Must Improve Communication with the Regulated Community and Embrace Industry to Achieve Real Progress in Implementation

As I have testified today, and as SOCMA has repeatedly testified before, the CFATS framework is sound, but DHS's implementation has been flawed. This is largely because DHS has drifted away from the spirit of the public-private partnership on chemical security that it has so often hailed as a keystone of the CFATS program. Congress should encourage ISCD to work collaboratively with the regulated community to solve the technical, training and tool-related issues currently presenting challenges to the implementation of CFATS. Additionally, DHS must provide better guidance to the regulated community – particularly smaller companies without the benefit of a team of in-house experts or a budget that can accommodate outside consultants – on how to produce a SSP or ASP that meets the requirements of the RBPS.

Industry can provide much assistance moving forward, including ways for DHS to minimize the future cost and complexity of the CFATS program. SOCMA believes that CFATS can successfully be implemented without the need for additional legislation. Success will require DHS to (i) give CFATS facilities regulatory certainty; (ii) make demonstrable progress reviewing and approving SSPs and inspecting facilities; and (iii) suitably engage industry in improving the CFATS program, especially as regards SSPs, ASPs and personnel surety. Congress can increase the chances of success by (i) conducting regular oversight, (ii) reauthorizing the statute for an extended period of time; and (iii) adequately funding the CFATS program.

I appreciate this opportunity to testify before you today and look forward to your questions.

Mr. SHIMKUS. The chair now recognizes Ms. Fendley for 5 minutes.

STATEMENT OF ANNA FENDLEY

Ms. FENDLEY. Thank you. Chairman Shimkus, Ranking Member Green, and members of the committee, thank you for the opportunity to be here today.

I represent the Health, Safety, and Environment Department for the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union—"USW" for short. We represent 850,000 workers in the sectors I just mentioned and many others, including the majority of unionized workers in the chemical industry and hundreds of thousands of men and women whose workplaces use and store large quantities of industrial chemicals.

I am here today on the 11th anniversary of the September 11th attacks to talk about the critical and unfulfilled need for comprehensive chemical security protections for workers and citizens.

There were promises and hopes that CFATS would protect American citizens when it was enacted as a temporary measure before a more comprehensive program could be passed. And some security measures have been implemented under CFATS. But CFATS is not and never will be the comprehensive program that we need to protect against an unforeseen terrorist attack.

Most notable for our members are several gaps in CFATS jurisdiction that leave millions of Americans and American infrastructure at risk. CFATS exempts thousands of water-treatment facilities containing poisonous chlorine gas and other chemicals. It also exempts port facilities on navigable waters which are covered by the Maritime Transportation Security Act.

Many of those port facilities are oil refineries, where our USW members work in the vicinity of small towns and major U.S. cities like Houston, Philadelphia, Los Angeles, and San Francisco. Other facilities that fall outside of CFATS are those under the jurisdiction of the U.S. Coast Guard, the Department of Energy, the Department of Defense, and the Nuclear Regulatory Commission.

CFATS also does not cover chemicals shipped or stored outside the fence line in nearby rail yards or elsewhere that may have little or no security measures. It does not prohibit the shifting of these risks from one location to another. I have seen pictures and gotten accounts from our members of railcars full of hazardous chemicals parked for days outside the fence line, within yards of a busy road, near homes and other businesses.

Employers may engage in this form of risk-shifting to be taken off the list of high-risk facilities, or risk-shifting could be an established practice, occurring for years, because workers and management simply do not recognize the hazard and the potential for a criminal act. Under CFATS, there is no way of knowing if and how these risks are being shifted.

Additionally, CFATS explicitly prohibits the requirement of any particular security measures, such as safer chemical processes. My colleagues and I work with employers every day. Many take safety measures that go above and beyond, but there are always some

that will only do the minimum required by law and, as we all know, some who won't even do that.

Some companies have shifted to safer processes or reduced their inventory of hazardous chemicals. These facilities include where our USW members make paper, aluminum, glass, and other products. But many companies will never even look at innovating without a legal requirement to do so.

Another important deficiency of CFATS is the lack of a meaningful role for workers in chemical security. Workers who operate and maintain facilities know the most about what needs to be done to reduce vulnerability and protect against a terrorist attack. However, under CFATS, background checks done by employers or third parties may be used against workers or be full of inaccuracies due to errors in reporting. CFATS also is lacking in its provisions for an appropriate appeal process when errors made in background checks improperly exclude workers.

Employer background checks allow for a risk of releasing personal information and may also result in duplication of effort when many workers at high-risk sites already must acquire a Transportation Worker Identification Credential, a TWIC, issued by the TSA, which is part of DHS but separate from the CFATS office. TWIC requires background checks, and TSA safeguards personal information.

Workers across this country, those who would be hurt first and worst during an attack, need stronger comprehensive chemical security legislation that is effectively implemented. Congress can no longer simply oversee implementation of a measure that was intended as temporary. Action is needed to legislate a comprehensive chemical security program that addresses the gaps in CFATS that leave millions of American workers and their families at risk. You, Mr. Chairman, and your committee could take action to make these improvements.

Thank you again for the opportunity to testify today.

Mr. SHIMKUS. Thank you very much.

[The prepared statement of Ms. Fendley follows:]

Testimony of
Anna Fendley, MPH
Health, Safety and Environment Department
United Steelworkers
before the
House Subcommittee on Environment and the Economy
on
The Chemical Facility Anti-Terrorism Standards Program – A Progress Report
September 11, 2012
Washington, DC

Chairman Shimkus, Ranking Member Green and members of the Committee, thank you for the opportunity to testify today on the important issue of chemical safety and security. My name is Anna Fendley. I represent the Health, Safety and Environment Department for the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union – USW for short. We represent 850,000 workers in the sectors I just mentioned and many others, including the majority of unionized workers in the chemical industry and hundreds of thousands of men and women whose workplaces use and store large quantities industrial chemicals.

I am here today, on the eleventh anniversary of the September 11th attacks, to talk about the critical and unfulfilled need for comprehensive chemical security protections for workers and citizens who are put at risk by working in or living near the nation's chemical facilities.

There were promises and hopes that the Chemical Facility Anti-Terrorism Standards Program (CFATS) would protect American citizens when it was enacted as a temporary measure before a more comprehensive program could be passed. And some security measures have been implemented under CFATS. But CFATS is not and never will be the comprehensive program that we need to protect against an unforeseen terrorist attack or an accidental release that could be equally devastating.

Most notable for our members are several gaps in CFATS's jurisdiction that leave millions of Americans and American infrastructure at risk. CFATS exempts thousands of water treatment facilities containing poisonous chlorine gas and other chemicals because those facilities are covered by the Public Health Security and Bio-terrorism Preparedness and Response Act of 2002. It also exempts port facilities on navigable waters

which are covered by the Maritime Transportation Security Act (MTSA) of 2002. Many of those port facilities are oil refineries where our USW members work in the vicinity of small towns and major US cities like Houston, Philadelphia, Los Angeles and San Francisco. Other facilities that fall outside of CFATs are those under the jurisdiction of the US Coast Guard, the Department of Energy, the Department of Defense and the Nuclear Regulatory Commission.

CFATS also does not cover chemicals shipped or stored outside the fence line in nearby rail yards or elsewhere that may have little or no security measures. It does not prohibit the shifting of these risks from one location to another. I have seen pictures and gotten accounts from our union members of rail cars full of hazardous chemicals parked for days outside the fence line within yards of a busy road near homes and other businesses. Employers may engage in this form of risk shifting to be taken off the list of high-risk facilities, or risk shifting could be an established practice occurring for years because workers and management simply do not recognize the hazard and the potential for a criminal act. Under CFATS there is no way of knowing if and how these risks are being shifted, leaving large numbers of Americans in danger.

Additionally CFATS explicitly prohibits the requirement of any "particular security measure," such as safer chemical processes. My colleagues and I work with employers every day. Many take safety measures that go above and beyond, but there are always some that will only do the minimum required by law and as we all know some who refuse to even do the minimum required. Some companies have shifted to safer processes or reduced their inventory of hazardous chemicals so they are no longer listed as high risk. These include high profile companies like Clorox, which switched from chlorine gas to the safer liquid bleach. It also includes smaller facilities where our USW members make paper, aluminum, glass, and other products. But many companies will never even look into innovating with safer chemical processes without a legal requirement to do so. Those are the facilities that put American workers and their families at risk during a terrorist attack.

Another important deficiency of CFATS is the lack of a meaningful role for workers in chemical security. Workers who operate and maintain facilities know the most about what needs to be done to reduce vulnerability and protect against a terrorist attack. However, under CFATS background checks done by employers or third parties may be used against workers or be full of inaccuracies due to errors in reporting. CFATS also is lacking in its provisions for an appropriate appeal process when errors made in

background checks improperly exclude workers. Employer background checks allow for a risk of releasing personal information and may also result in duplication of effort when many workers at high-risk sites already must acquire a Transportation Worker Identification Credential (TWIC) issued by the Transportation Security Administration, which is part of the Department of Homeland Security but separate from the office that oversees CFATS. TWIC requires background checks, and TSA safeguards personal information.

Workers across this country, those who would be hurt first and worst during an attack, need stronger comprehensive chemical security legislation that is effectively implemented. Congress can no longer simply oversee implementation of a measure that was intended as temporary. Action is needed to legislate a comprehensive chemical security program that addresses the gaps in CFATS that leave millions of American workers and their families at risk. You, Mr. Chairman, and your committee could take action to make these improvements.

Thank you again for the opportunity to testify today as we remember those who were killed in the terrorist attacks on September 11th and stand ready to work with you to improve chemical plant safety and security.

Mr. SHIMKUS. And, Mr. Orum, you are recognized for 5 minutes. Thanks for joining us.

STATEMENT OF PAUL ORUM

Mr. ORUM. Good afternoon. I am Paul Orum. I am pleased to represent the views today important to the Blue Green Chemical Security Coalition, as well as findings from research conducted for the Center for American Progress and others.

I plan to make three main points: one, the chemical security problem is well-known; two, the current program, CFATS, won't, in my view, fix the problem; and, three, Congress should pass comprehensive chemical security legislation.

The chemical security problem is well-known. More than two dozen government agencies and others have warned that industrial chemicals could be intentionally or inadvertently released to cause harm. Many of these resources are listed in my testimony, and for brevity I won't repeat them.

Two, the current temporary Chemical Facility Anti-Terrorism Standards won't fix the problem. The standards lack basic elements of an effective program. CFATS exempts drinking-water facilities, exempts wastewater facilities, exempts many major refineries and terminals and chemical manufacturers that happen to be on navigable waters.

It excludes knowledgeable employees and their representatives from security planning. It doesn't allow DHS to require companies to fix specific security problems on the ground. It lacks clear deadlines for completion and approval of assessments and plans. It lacks basic government accountability measures, such as regular progress reports.

It doesn't secure chemical supply chains. In my view, it perpetuates uncertainty. And, very importantly, it neglects technological changes that can make chemical facilities less attractive targets.

These flaws are in the law. They are all found in the appropriations rider that created CFATS as a temporary program.

Congress should authorize a comprehensive chemical security program. The last Congress, about 3 years ago, did so after—the House passed after a lengthy consultation with stakeholders in four congressional committees. This bill would have closed the greatest loopholes while seamlessly incorporating CFATS. It is the responsibility of Congress to authorize a comprehensive program.

In addition, Congress should support, not hinder, existing authority of the U.S. EPA to promote safer technologies under the general duty clause of the Clear Air Act and, likewise, the authority of DHS to promote intrinsically more secure technologies as a security measure under CFATS.

While Congress should close all the chemical security loopholes, I would like to elaborate on two current deficiencies.

First, government accountability. If we spent $500 million on chemical security, it is important for the public to know what the effort is producing.

The comprehensive program passed in 2009 included government accountability provisions, namely, regular public progress reports to Congress. The reports were to summarize how facilities were complying and lay out the basic scope of the program—how many

facilities, how many plants, how many approved, and so forth. Had these provisions been included in CFATS, the first report to Congress would have been due some 5 years ago, and many challenges would have come to light systematically rather than as a result of leaked internal memoranda.

In my opinion, the program will inevitably lack public credibility if it doesn't require a complete public accounting of facilities and scope and progress.

An effective program should also help companies identify and remove avoidable chemical hazards. Under CFATS, DHS has not developed the removal of unnecessary chemical targets as a security measure.

We know that some 1,600 or more facilities have reportedly removed chemicals of concern and others have dropped below reporting thresholds. While we lack basic public information about these changes, the numbers do suggest that much more than this could be done with a structured program.

Each facility that tiers out of the program is a facility that DHS does not have to oversee. Removing unnecessary targets should be one of the tools in the chemical security toolbox.

Thank you again for the opportunity to testify. Please let me know of any questions or ways that I or my colleagues can be helpful to the committee.

Mr. SHIMKUS. Thank you very much.

[The prepared statement of Mr. Orum follows:]

Testimony of Paul Orum
Blue Green Chemical Security Coalition/
Independent Consultant to Center for American Progress

before the

Energy and Commerce Committee
Subcommittee on Environment and the Economy
U.S. House of Representatives

on

The Chemical Facility Anti-Terrorism Standards Program –
A Progress Report

September 11, 2012

My name is Paul Orum, and I have worked more than 20 years for effective chemical safety and security policies, most recently as a consultant to public interest organizations. My primary expertise is government information policy regarding hazardous chemicals. Thank you for the opportunity to testify on the nation's chemical security program.

The Blue Green Chemical Security Coalition of labor, community, and public health organizations supports chemical security policies that include safer and more secure technologies, employee participation, and government accountability. Two relevant letters from this coalition are attached to my testimony.

I will make three main points:

1) The problem is well known;
2) The current program won't fix the problem;
3) Congress should pass comprehensive chemical security standards.

1. The chemical security problem is well known.

Many government agencies and others have documented the problem. Large quantities of industrial chemicals can cause serious harm if suddenly released, particularly in populated areas, and cannot be secured by conventional security alone.

- More than two-dozen government agencies, industry associations, labor unions, insurers, think tanks, public interest groups, and others have warned that industrial chemicals could be intentionally or inadvertently released to cause harm in workplaces, businesses, and communities.[i]
- Some 480 industrial facilities across the country pose worst-case chemical release hazards to any of 100,000 or more nearby residents.[ii]
- Local emergency response capacities are not typically sufficient or designed to handle a worst-case release.
- A worst-case release is a low probability, high consequence event that is difficult for market forces to account for without government standards.

The problem is well known. Effective action is overdue.

2. Current temporary Chemical Facility Anti-Terrorism Standards (CFATS) won't fix the problem.

The current temporary standards lack basic elements of an effective program. The CFATS program:

- Exempts drinking water facilities;
- Exempts wastewater facilities;
- Exempts many major refineries, terminals, and chemical manufacturers that happen to be on navigable waters;[iii]

- Excludes knowledgeable employees and their representatives from security planning;
- Does not allow the Department of Homeland Security (DHS) to require companies to fix specific security problems on the ground;
- Lacks clear deadlines for the completion and approval or disapproval of facility security assessments and plans;
- Lacks basic government accountability measures such as regular progress reports to Congress;
- Does not provide citizen enforcement suits or petitions of the government to ensure implementation;
- Does not secure chemical supply chains, relying instead on conventional security and continuing current indirect subsidies that encourage pervasive shifting of chemical hazards among locations;
- Perpetuates uncertainty by sinking time and resources into conventional security measures that may inevitably fall short;
- Neglects technological changes that can make chemical facilities less attractive targets—the most foolproof solution—while modernizing operations.

The flaw is in the law. These deficiencies are all in the appropriations rider that created CFATS as a temporary program.

3. Congress should authorize a comprehensive chemical security program.

The last House of Representatives passed a credible compromise bill (H.R. 2868, 111th Congress) after lengthy consultation with stakeholders and four Congressional Committees. This bill would have closed the greatest security loopholes while seamlessly incorporating CFATS, but the Senate failed to act. It is the responsibility of Congress to authorize a comprehensive program.

In addition, Congress should support, not hinder, the existing authority of the Environmental Protection Agency to promote safer technologies under the general duty clause of the Clean Air Act.[iv] Congress should likewise support the authority of the Department of Homeland Security to promote intrinsically more secure technologies as a security measure under CFATS.

While Congress should close all the chemical security loopholes, I would like to elaborate on two current deficiencies:

Government Accountability

If Congress directs millions of dollars to chemical security, it is important for the public to know what the effort is producing. The comprehensive program passed in 2009 (H.R. 2868, 111th Congress) included government accountability provisions that are much more structured than the leaked documents by which Congress is now belatedly reviewing the program—namely regular public progress reports to Congress.

The reports were to summarize how facilities were complying with performance standards and to enumerate the basic scope of the program, such as the number of facilities that:

- possess chemicals of concern;
- are assigned a risk tier by DHS;
- submit vulnerability assessments and site security plans;
- have assessments and plans approved or disapproved;
- have received compliance orders, civil penalties, or administrative penalties,
- exit the program and the methods used;
- and other relevant measures of program activity.[v]

Had these oversight provisions been included in CFATS, the first report to Congress would have been due some five years ago, with subsequent reports due regularly thereafter. Many implementation challenges would have come to light systematically years ago

rather than as the result of an internal memorandum leaked to the news media. Oversight by leaked memoranda is not as effective as regular public progress reports.

The program will inevitably lack public credibility if it doesn't require a complete public accounting of facilities, scope, and progress. Periodic progress reports provide a basis to monitor and improve implementation.

Intrinsically More Secure Facilities

An effective chemical security program should help companies identify and remove avoidable chemical hazards. Such provisions were included in the comprehensive bill of 2009. In comparison, under CFATS the DHS has not developed the removal of unnecessary chemical targets as a security measure.

Under CFATS more than 1,600 facilities have reportedly completely removed their chemicals of concern, and more than 700 additional facilities have reduced chemicals below high-risk thresholds. While we lack basic public information about these changes, the numbers do suggest that much more could be done with a structured program that requires companies to do their homework. Each facility that tiers-out of the program is a facility that DHS does not have to oversee. Removing unnecessary targets should be one of the tools in the chemical security toolbox.

Policy makers need better information *from covered facilities* about methods to remove avoidable chemical hazards. The 2009 House-passed bill required high hazard chemical facilities to report to DHS "the technical feasibility, costs, avoided costs (including liabilities), personnel implications, savings, and applicability of implementing each method to reduce the consequences of a terrorist attack."[vi]

Such reporting would help generate solutions. It should produce information on the substances, industry sectors, and processes involved at facilities that tier-out of the program, and the most common methods used such as: substituting a less hazardous chemical; using a chemical in a less hazardous form; using an alternate process; producing and using a chemical as needed in process without storage; or reducing inventory.

Survey reports I produced through the Center for American Progress identified alternatives that are already in use at hundreds of facilities across more than 20 industry sectors.[vii] But even in industry sectors that show gradual improvement, such as water and wastewater treatment, it would take more than half a century to remove high-hazard processes. A structured program can accelerate progress.

Thank you for the opportunity to testify. Please let me know any questions and ways that I, or my colleagues, can be helpful to the Committee.

Attachments:
Blue-Green Coalition letter to House of Representatives, June 21, 2011.
Blue-Green Coalition letter to President Obama, May 16, 2012.

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[i] Sample reports and statements warning about chemical terrorism include:

- The Chemical Threat to America, by Christine Todd Whitman in the *New York Times*, August 29, 2012.
- Preventing Toxic Terrorism: How Some Chemical Facilities are Removing Danger to American Communities, Center for American Progress, 2006.
- Toxic Trains and the Terrorist Threat: How Water Utilities Can Get Chlorine Gas off the Rails and Out of American Communities, Center for American Progress, 2007.
- Chemical Security 101: What You Don't Have Can't leak, or Be Blown Up by Terrorists, Center for American Progress, 2008.
- Safer Chemicals Create a More Secure America: We Can Diminish the Security Threat from Chemical Plants, Center for American Progress, 2010.
- Wastewater Facilities: Experts' Views on How Federal Funds Should Be Spent to Improve Security, Government Accountability Office, GAO-05-165, January 2005.
- Chemical Terrorism: US Policies to Reduce the Chemical Terror Threat, Partnership for a Secure America, September 2008.
- National Planning Scenario 8: Chemical Attack—Chlorine Tank Explosion, Homeland Security Council in partnership with the Department of Homeland Security, 2005.

- Statement before the U.S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Railroads, Association of American Railroads, June 13, 2006.
- Homeland Security Committee Urged to Consider Safer Chemicals; Chemical Companies Should Stop Manufacturing Extremely Dangerous Chemicals, Association of American Railroads, 2008.
- Catastrophe, Injury, and Insurance: The Impact of Catastrophes on Workers Compensation, Life, and Health Insurance, Risk Management Solutions, Inc., 2004.
- Assessing Terrorist Motivations for Attacking Critical "Chemical" Infrastructure, Laurence Livermore National Laboratory, December 20, 2004.
- Testimony of Dr. Jay Boris before the City Council of the District of Columbia, U.S. Naval Research Laboratory, October 6, 2003.
- A Method to Assess the Vulnerability of U.S. Chemical Facilities, National Institute of Justice, U.S. Department of Justice, November 2002.
- Strategic Plan for Homeland Security, U.S. Environmental Protection Agency, September 2002.
- Homeland Security: Voluntary Initiatives Are Under Way at Chemical Facilities, but the Extent of Security Preparedness is Unknown, U.S. General Accounting Office, GAO-03-439, March 14, 2003.
- Homeland Security and the Private Sector, Congressional Budget Office, December 2004.
- Statement by the Department of Homeland Security on Continued Al-Qaeda Threats, Department of Homeland Security, November 21, 2003.
- Industrial Chemicals and Terrorism: Human Health Threat Analysis, Mitigation and Prevention, Agency for Toxic Substances and Disease Registry, 1999; and, Terrorist Use of Expedient Chemical Agents: Health Risk Assessment and Las Vegas Case Study, Agency for Toxic Substances and Disease Registry, undated.
- Study Assesses Risk of Attack on Chemical Plant, Army Surgeon General reported in *Washington Post*, March 12, 2002.
- The Terrorist Threat in America, Chemical Manufacturers Association (American Chemistry Council), April 1998.
- PACE International Union Survey: Workplace Incident Prevention and Response Since 9/11, Paper, Allied-Industrial, Chemical and Energy Workers International Union (PACE), October 27, 2004.
- America the Vulnerable: How Our Government Is Failing to Protect Us From Terrorism, Stephen Flynn, 2004.
- Protecting the American Homeland, Brookings Institution, March 2002.
- Toxic Warfare, RAND Corporation, 2002.
- News Release: Chemical Facilities Vulnerable, Center for Strategic and International Studies, December 23, 2003.
- Eliminating Hometown Hazards: Cutting Chemical Risks at Wastewater Treatment Facilities, Environmental Defense, December 2003.
- The Safe Hometowns Guide, The Safe Hometowns Initiative, 2002.
- Needless Risk: Oil Refineries and Hazard Reduction, U.S. PIRG Education Fund, August 2005.
- Unnecessary Dangers: Emergency Chemical Release Hazards at Power Plants, Working Group on Community Right-to-Know, July 21, 2004.
- Chemical Plants Remain Vulnerable to Terrorists: A Call to Action, United Steelworkers of America, undated.
- High Alert: Workers Warn of Security Gaps on Nation's Railroads, International Brotherhood of Teamsters, 2005.
- Making the Nation Safer: The Role of Science and Technology in Countering Terrorism, National Research Council, National Academy of Sciences, 2002.
- Terrorism and the Chemical Infrastructure: Protecting people and Reducing Vulnerabilities, National Research Council, National Academy of Sciences, 2006.
- The Use and Storage of Methyl Isocyanate (MIC) at Bayer CropScience, National Research Council, National Academy of Sciences, 2012.

[ii] Congressional Research Service, Memorandum to Senator Frank Lautenberg, April 12, 2011.

[iii] Sample Maritime Transportation Security Act regulated facilities that are reportedly exempt from CFATS include: Kuehne Chemical, South Kearny, N.J.; Citgo Refinery, Corpus Christi, Texas; Valero Refinery,

Port Arthur, Texas; Marathon Refinery, Texas City, Texas; Bayer CropScience, Institute, W.V.; Dow Chemical, Freeport, Texas.

[iv] See the National Environmental Justice Advisory Council letter to EPA Administrator Lisa Jackson, March 14, 2012. https://s3.amazonaws.com/s3.documentcloud.org/documents/332041/nejac-letter.pdf

[v] H.R. 2868, 111th Congress, Section 2119.

[vi] H.R. 2868, 111th Congress, Section 2111.

[vii] Center for American Progress: Leading Water Utilities Secure Their Chemicals (2010); Chemical Security 101: What You Don't Have Can't Leak, Or Be Blown Up by Terrorists (2008); Toxic Trains and the Terrorist Threat: How Water Utilities Can Get Chlorine Gas Off the Rails and Out of American Communities (2007); Preventing Toxic Terrorism: How Some Chemical Facilities Are Removing Danger to American Communities (2006).

Mr. SHIMKUS. I am going to ask unanimous consent that Mr. Pompeo can sit in. I know there may be another from your side joining us. And then, as per tradition, if members of the subcommittee are done asking their questions, then we will go to other members from the full committee who are joining us.

So, with that, I recognize myself for 5 minutes, and my questions will start with Mr. Scott.

It is my view that CFATS officials are trying to operate a regulatory program like a police program. This brings me to concerns with the personnel surety program, which has been addressed a couple times today already.

As I understand it, the terrorist screening database is operated by the Federal Bureau of Investigation, not DHS. Under another DHS program, the Maritime Transportation Security Act—we do a lot of acronyms, so I like to read these out—if someone with a TWIC card gets a hit on the terrorist screening database, the TWIC is automatically deactivated and the facility notified. Minimum DHS interference in that process.

Under CFATS, the program seems to insist that all information be passed through them to the FBI but that the Infrastructure Security Compliance Division cannot let a facility know if a terrorist is working in their plant.

Do you agree with me that DHS is not trying to operate CFATS like it was intended by Congress but more like a policing and response program?

Mr. SCOTT. Yes, sir. They seem to be gathering information and holding information within DHS instead of sharing in a partnership, as we started out.

So the TWIC program and the background check program, personnel surety is one example of that, where we would be required to submit information to DHS and really never get an answer back. Especially concerning is we don't get an answer back if they do have somebody that is a hit in the terrorist database. We are going to have them—if they don't tell us, we still have a potential terrorist working in our plant, and that is absolutely crazy.

Mr. SHIMKUS. And the first panel, as I was talking to Under Secretary Beers and I—how can you give approval or the wink and nod that a facility has been approved when they really haven't established the personnel surety program in an operation? I would think that would be the number-one concern.

If DHS has no response function, is there a reason why the facility cannot communicate directly with the FBI?

Mr. SCOTT. No, there is absolutely no reason. In fact, most facilities are going to communicate with their local Joint Terrorism Task Force and the FBI and the local law enforcement. I mean, that is the response agencies for a situation that does occur at your site.

Mr. SHIMKUS. Has your experience under the MTSA, which is the Maritime Transportation Security Act, led you to believe that it is doable to prevent known terrorists from wandering around a land-based plant?

Mr. SCOTT. Several of our larger sites are covered under the Maritime Transportation Security Act. And we have a very good relationship, and the Coast Guard is a very strong organization, both on the response side and the enforcement side, and have worked

with us very closely because our MTSA sites have the same security upgrades and same security programs as all of our CFATS-covered sites.

Mr. SHIMKUS. Why do you believe strongly, as some of the panelists do not, that EPA should not be the chemical security agency for the Federal Government?

Mr. SCOTT. Well, the general duty clause was—it came to us under the Clean Air Act. It is specifically designed for environmental protection and does a very good job—EPA does a very good job in that respect. They do not have a lot of expertise in site-security types of programs, and we don't really need to start over with a new agency, to go back to square one and try to do this again.

Mr. SHIMKUS. Thank you.

Let me turn to Mr. Leary now, because Dow—monstrous, big; Mr. Leary—small, hopefully profitable.

You testified that you have limited capital to invest in needs across your plants, not just CFATS-related ones. So what percentage of your capital is being tied up by the poor implementation of the CFATS program?

Mr. LEARY. Chairman, I can't really speak to the corporation, but I can, as an example, talk to you about my department's budgetary concerns. And at least in what I have just submitted—our fiscal year runs September—and I think security accounted for over 100 percent of the budget, as compared to everything else that we are tasked to do.

Mr. SHIMKUS. How do we assure that the real financial needs of your security professionals are taken seriously within the context of CFATS implementation?

Mr. LEARY. Chairman, I can only speak for Pilot in this respect. And I am very proud to report to the subcommittee that I have been given more than enough support to do so. And at least from a Pilot perspective, there have been no issues whatsoever in terms of getting support to go ahead and do what we have to do under the standard.

Mr. SHIMKUS. Thank you.

I have 13 seconds left. I will yield back my time and turn to my ranking member, Mr. Green, for 5 minutes.

Mr. GREEN. Again, thank you for being here and patient today.

Were you here during the first panel?

Mr. LEARY. Uh-huh.

Mr. GREEN. The question for all of you, including the U.S. Steelworkers, is that the CFATS personnel surety program proposal was recently rescinded and received much criticism from industry and unions. Can you explain what the criticism was? And how did DHS respond to your concerns?

Mr. SCOTT. I will be glad to address that a little bit.

The concern is the burden on industry. You have many sites that, mentioned earlier, have a contractor base that travels along the gulf coast, for example, during all the shutdowns, and you may have thousands of new employees coming in on a daily basis for a shutdown. And they may show up at The Dow Chemical Company today, and we would have to submit a thousand names. And they may show up tomorrow at one of our neighboring companies, and they will have to submit the same thousand names.

It is a very burdensome process. And they don't recognize any easy solutions that are out there, like a TWIC card from MTSA.

Mr. GREEN. And I have a Dow facility in my district, not your largest, obviously, not Freeport, but I assume the contractors have their TWIC cards.

Mr. SCOTT. Most contractors on the gulf coast have a TWIC card and they travel between sites.

Mr. GREEN. Yes. OK.

Any other response to that?

Were the steelworkers brought in? I am glad, you know, the industry—was the small chemical—I have to admit, I don't have many small plants in our area; we have big plants. But were the small plant owners also brought in, along with steelworkers?

Mr. LEARY. Yes, I will—at the recent security summit, put on by SOCMA and I believe cosponsored by DHS, actually Pilot had an opportunity to sit in on a roundtable with DHS regarding just this topic. And I was surprisingly pleased that we were actually asked our opinion. And so I do believe at least they are concerned about our opinions.

Mr. GREEN. Ms. Fendley?

Ms. FENDLEY. To my knowledge, we were not brought in. But we are very concerned about the deference to industry, as well, and the lack of an appeals process if there is an error.

Mr. GREEN. You know, it seems like the testimony from our previous panel said that they were working with the employee groups. Did I mishear that from the earlier panel? That is what I am concerned about. And believe me, we want everybody at the table, you know, about whether it be the industry, small or large, but also the employees involved there.

Maybe that opening went because they announced that they were going to deal with using the TWIC-type application, which I know—I have lots of steelworkers, I have four of my five refineries and a number of my chemical plants are organized by the steelworkers. And a few years ago, we had problem-solving, because some of my constituents were denied their TWIC card, but then we would find out it was a mistake, and we would work with them on that. And I know, with our renewal coming up now, it is going to be a problem.

But we understand the problem we have. We don't want to reinvent it with another type of surety. And that is what worries me. They ought to base it on whether you are—and Dow has, at least in my area, they are all waterside, both Freeport and the one on the Houston Ship Channel. But I know you have plants that are not.

And is Pilot covered by it in Cincinnati——

Mr. LEARY. No, sir.

Mr. SHIMKUS [continuing]. The TWIC card?

Mr. LEARY. No, sir. It is not. Actually, our knowledge of the TWIC beyond these proceedings and our involvement with SOCMA is somewhat minimal.

Mr. GREEN. OK. All right. Well, we will continue to encourage them to bring everybody at the table.

And a question for anyone else on the panel: What would you like to see DHS do to help achieve a more smooth implementation of the CFATS program?

One of the things we have all recognized, there has to be some continuity and real reauthorization. And we haven't seen that, and I don't think we will see that this Congress. But the year-to-year is an issue.

But we also need to make sure—because my complaint is that the year-to-year, a lot of industries don't want to spend—they want to make sure what they are doing is going to be compliant with whatever DHS comes out with.

Is that an issue that you all dealt with within your companies?

Mr. LEARY. From a Pilot perspective, that is one of the biggest issues, actually. I could easily recount, for much longer than allowed, discussions with our finance director regarding the difficulties in budgeting for securing our facilities. We are very much afraid that we will be looking at an SSP approval and immediately have to expend thousands of dollars.

Mr. GREEN. Mr. Scott, one of the concerns I have, because, literally, Dow's facility is back-to-back in my area, along with a lot of other ones, in the testimony that I have read shows that, is there an issue with industry taking chemicals that are produced in our plants and leaving it at unsecured facilities off-plant-site?

You know, that bothers me because, again, I would see, in our district—and I haven't had any complaints, but I know that is what Ms. Fendley's testimony that is submitted included. And that is a security issue, whether it is made at ABC or Dow or ExxonMobil or anybody else, that some volatile chemicals are not in a secure facility, including a rail yard that has protections off-site.

Mr. SCOTT. Sir, we have put the same restrictions, the same requirements on our shippers and on the people that—and I am talking about Dow Chemical now—but, in general, the ACC member companies. As part of the Responsible Care Code, security is from the production site to the delivery to the customer. So we have a strong security program in place.

And Dow, in particular, we have submitted our site security plans to the DHS Safety Act Office and had the site security plans approved. And our transportation distribution security plans also have certification under the DHS Safety Act Office, which is kind of the Good Housekeeping seal of approval.

So that whole chain of events takes a significant amount of security. So I think ACC member companies certainly take that into consideration under the Responsible Care Code.

Mr. GREEN. OK.

Thank you, Mr. Chairman.

Mr. SHIMKUS. The gentleman's time has expired.

The chair now recognizes the gentleman from the State of Kansas, Mr. Pompeo, for 5 minutes. Welcome to the subcommittee.

Mr. POMPEO. Thank you, Mr. Chairman, thank you, Mr. Green, for allowing me to participate today. I appreciate it.

Look, Mr. Scott, I have two questions for you that I wanted to come here today and speak about. The first is, in your written testimony, you talked about some of the problems in DHS's program, but you were very clear that the program is fundamentally sound,

it is risk-based, it is focused on the right set of priorities, so DHS, in large measure, has it right. And there are things that we can improve on and tweak, but it has largely got it right.

There are some folks who disagree with that. Former EPA Administrator Christie Whitman said that EPA should be the primary agency in charge of chemical security. Greenpeace has said that EPA already has the power under the general duty clause, in their view. There have been folks at EPA who have suggested that, as well.

As someone who has watched EPA in other places do real harm to potentially tens and tens of thousands of jobs across America, that causes great concern to me.

I have introduced legislation that clarifies what I think is already pretty clear regarding the general duty clause. It would require EPA to complete a rulemaking process before finding any facilities in violation of the general duty clause. And it would clarify EPA's jurisdiction by prohibiting it from regulating chemical security through section 112(r)(1), the general duty clause.

What is your view, Mr. Scott, on the recent calls by the environmental community to try and use the Clean Air Act to regulate chemical security when we already have this enormous apparatus in place?

Mr. SCOTT. Well, first, we think your legislation is a step in the right direction to clarify roles and responsibilities.

As I mentioned earlier, EPA and the general duty clause came under the Clean Air Act, and EPA is very strong on environmental protection and not as strong in site security, physical security, transportation security—all the things that come into the supply chain around the chemical industry. So that is not their area of expertise, and that is exactly the reason why chemical security was put under the Department of Homeland Security, the focus on security and all things in addition to chemical security.

So the expertise and the foundation for the CFATS program lies with DHS, not with EPA. So I don't think we should muddy the waters, change in midstream, or even take one step back. We need to move forward with DHS.

Mr. POMPEO. Right. Do you think there is also some risk that, when you have two agencies in, it is contradictory, they present competing demands on entities, and all of a sudden we are in a worse place than we are even today with the challenges DHS is facing? Do you think there is some risk of that, as well?

Mr. SCOTT. I think if we are going to put an effort in to combine some things, it certainly shouldn't be with DHS and EPA. I would look to continue the harmonization with MTSA and CFATS, Coast Guard and DHS. A lot of the facilities are very similar. A lot of the facilities are already covered by one or the other or sometimes both, and I think they can be harmonized extremely well.

Dow has built our security programs—whether it is a CFATS site or an MTSA site, we put security in place at the same level. And I think that is the direction we should go if we are going to harmonize.

Mr. POMPEO. Well, thank you. I appreciate that.

Your testimony also strongly supported the use of alternative security programs in CFATS by DHS. How broadly do you think the

ASBs should be applied under CFATS? Is it by facility? Or by sector? Do you have a view, does Dow have a view on that?

Mr. SCOTT. Well, again, it depends on the site. But you could certainly expand an alternative security plan to companies that puts similar security programs in place throughout all of their regulated sites.

So the alternative security plan, the only intent is to give DHS all the information they need to make a decision, improve the security of the site, and make it easier on the submission of the information to DHS. That is the goal of an alternative security plan.

Mr. POMPEO. I appreciate that.

Last question: Do you think that the ASP provides any less protection for a facility than if the facility were to go through the entire CFATS compliance regime? Or do you think it achieves the same objective?

Mr. SCOTT. It is the same objective. It is just a different way to submit the site's plan, and it is a more expeditious way to submit the site's plan. So there is no difference in the end result. It is either approved or it is not approved, and the security upgrades are the same.

Mr. POMPEO. Great. Thank you.

Thank you, gentlemen.

I yield back the balance of my time.

Mr. SHIMKUS. The gentleman yields back his time.

The ranking member has asked unanimous consent to ask one additional question. Mr. Pompeo, you may want to stay around and listen to the answer.

And, without objection, the gentleman is recognized.

Mr. GREEN. I would just like the panel, if you would give us an opinion. We are having a hearing on Mr. Pompeo's bill. I have some concern, but would you all have any opinion on it? I know it is not on the list.

Mr. ORUM. Yes, I do.

Mr. GREEN. We will go right to left this time.

Mr. ORUM. Recall that EPA is the lead agency for security at water and wastewater facilities, which are CFATS-exempt. But also, more generally, for chemical facilities, people in communities don't necessarily make much of a distinction whether it was inadvertent or deliberate if a gas cloud comes to where they are.

When EPA acts to reduce catastrophic hazard potentials under its authorities, it has the secondary benefit of removing terrorist targets. So it is not necessarily so that EPA is acting as a security agency, but it may yet have security benefits.

Mr. GREEN. Ms. Fendley?

Ms. FENDLEY. I would agree with Mr. Orum. For workers at these sites, the potential for a terrorist attack and the potential for an accidental release, you know, they would have the same effect. And if EPA can also work to reduce the presence and the quantities of hazardous chemicals on these sites, we are incredibly supportive of that.

Mr. LEARY. SOCMA most certainly supports the bill as intended. And I really can't—I think Mr. Scott said it all in regards to our feelings, as well.

Mr. SCOTT. I have no disagreement as far as the routine operation of the plant. We don't want an accidental release. We don't want an attack that causes a release.

EPA takes care of the first part. And we do run our plants safely and securely and within EPA guidelines for routine operations. I think we need the focus on security to really improve the overall security of the sector coming from DHS.

Mr. GREEN. I have to admit, I have some concern about two Federal agencies dealings with it because we have enough trouble now with DHS doing their job. But, you know, EPA does have statutory authority already on certain things. But I would hope our Federal agencies would work together, instead of you having to jump through two hoops. You at least know that these agencies are on the same page.

Mr. SHIMKUS. With that—and I would just weigh in in saying, obviously I don't think the general duty clause has relevance in plant security issues.

So, with that, we appreciate the testimony and the second panel coming.

All members of the subcommittee have 5 days to submit opening statements, have 10 days to submit written questions.

One letter from the American Fuels and Petrochemical Manufacturers is inserted into the record. Without objection, so ordered.

[The information follows:]

Charles T. Drevna
President

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September 10, 2012

The Honorable John Shimkus
Chairman
U.S. House Subcommittee on
Environment and the Economy
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Gene Green
Ranking Member
U.S. House Subcommittee on
Environment and the Economy
2125 Rayburn House Office Building
Washington, D.C. 20515

RE: Subcommittee Hearing on Chemical Facility Anti-Terrorism Standards

Dear Chairman Shimkus and Ranking Member Green:

AFPM, the American Fuel & Petrochemical Manufacturers, appreciates the opportunity to submit this written statement for the record for the House Energy and Commerce Subcommittee on Environment and the Economy hearing on the "Chemical Facility Anti-Terrorism Standards (CFATS) program – A Progress Report."

AFPM is a 110-year old trade association formerly known as NPRA, the National Petrochemical & Refiners Association, until earlier this year. AFPM represents high-tech American manufacturers that use oil and natural gas liquids as raw materials to make virtually the entire U.S. supply of gasoline, diesel, jet fuel, other fuels and home heating oil, as well as the petrochemicals used as building blocks for thousands of vital products in daily life. AFPM members make modern life possible while keeping America moving and growing as we meet the needs of our nation and local communities, strengthen economic and national security, and support 2 million American jobs.

America's refining and petrochemical companies play a pivotal role in ensuring and maintaining the security of America's energy and petrochemical infrastructure. Nothing is more important to AFPM's member companies than the safety and security of our employees, facilities and communities. Our members have worked extensively with DHS – and have invested millions of dollars – toward strengthening facility security. Our industry recognizes that protection of critical infrastructure against potential threats or terrorist attacks should be a shared responsibility between government and stakeholders.

AFPM appreciates that DHS conducted an internal review to identify administrative problems that need fixing immediately and that the agency developed an action plan for improving CFATS implementation. It is important to recognize that the structure of the CFATS framework itself is sound. Since the beginning of the CFATS program, DHS and industry, including some AFPM members, worked together and developed robust, risk-based performance standards (RBPS) that avoid being too prescriptive for an industry as diverse in size and function as the chemical sector,

but that also include strict enforcement penalties for noncompliance. For example, each site develops a unique and appropriate Site Security Plan to address the specific risk issues of the facility, while meeting DHS-established performance standards. Since the inception of CFATS, hundreds of regulated facilities have proactively invested in security to comply with, and indeed exceed, requirements of the regulations.

Since the development of the CFATS program AFPM's members have also partnered with DHS on many important security initiatives and programs, including the Risk Assessment Methodology for Critical Asset Protection (RAMCAP), Site Vulnerability Assessments (SVAs), Site Security Plans (SSPs), and by our participation in the Chemical Sector Coordinating Council (CSCC) and the Oil and Natural Gas Sector Coordinating Council (ONGSCC).

America's critical infrastructure facilities are secure and there have been no terrorist attacks on chemical facilities since the development of the CFATS program. Despite some implementation challenges, Congress should continue to provide sufficient funding for the CFATS program. Inadequate funding for the CFATS program would create a major setback to the implementation of the program. In particular, resources that government and industry have invested in CFATS implementation would effectively be stranded. Nonetheless, it is clear that DHS needs to better manage its resources and set priorities to make progress in areas that need immediate attention, including approving site security plans and conducting inspections. Such measures would work to strengthen the program and our national security. They would also ensure more efficient, effective use of taxpayer dollars.

To assist DHS in addressing these CFATS implementation challenges, additional stakeholder input is needed. Areas that industry and DHS should focus on include technical, training and tool-related issues that were identified in the DHS internal review. Greater transparency from DHS is critical to an effective collaboration moving forward.

To be clear, AFPM recognizes that there are internal personnel and financial issues within DHS that must be addressed administratively where industry has no role. However, DHS could address the following issues quickly, with the help of industry, in order to enhance the effectiveness of CFATS implementation in the short-term.

- **Personnel Surety Program** - Congress intended that the Risk-Based Performance Standard 12 on Personnel Surety, which governs access to high-risk facilities, be written as a performance standard allowing facilities the flexibility to determine the most efficient manner to meet the standard. Instead, DHS initially proposed a personnel surety program that fails to recognize, and actually duplicates, established federal vetting programs. Such a program would be burdensome to both DHS and industry and would be a wasteful and ineffective use of agency and industry resources. In July, DHS withdrew its proposal on the Personnel Surety Program from the Office of Management and Budget (OMB). However,

as DHS works to resubmit a proposal, it is important that any proposal follow Congressional intent and be written as a performance standard. Facilities should have the option to use established federally secure vetting programs, such as the Transportation Worker Identification Credential (TWIC), to satisfy CFATS without submitting additional personnel information to DHS. DHS should remain focused on fixing the current problems and not expand beyond the scope of the core program.

AFPM is encouraged and applauds DHS for taking another look at this issue. Moreover, AFPM is pleased that DHS has decided to hold a series of meetings with industry, and hopes that collaboration will yield a less burdensome, yet still protective PSP for CFATS sites.

- **Site Security Plans** - DHS should focus on Tier 1 Site Security Plan (SSP) approvals. Moreover, to reduce confusion about DHS' expectations for SSPs, AFPM recommends that DHS conduct a series of outreach meetings to educate industry about their expectations for necessary components of SSPs. These outreach meetings would allow DHS to discuss, with the actual owners and operators of CFATS sites that have completed an SSP, the flaws in the site's SSP and work collaboratively on solutions.

  DHS should also consider approving alternative security plans (ASPs) for a variety of CFATS sites. DHS should work with all sectors governed by CFATS to develop ASPs. For sites that are smaller or contain fewer chemicals of interest (COIs) an ASP makes sense and review and approval time for ASPs should not take as long as for a regular SSP.

- **Inspections** - Inspections are a key part of the SSP approval process. Like SSPs, DHS should focus on Tier 1 sites. DHS recently started up CFATS inspector training courses and developed new inspection guidelines for inspectors. AFPM has offered multiple times for DHS to have our members speak at the inspector training classes to provide an overview of the chemical and oil and natural gas industry and the CFATS applicability issues at those sites. To date, DHS has yet to take us up on this offer. AFPM believes this would be an invaluable opportunity for new inspectors to learn about security practices at CFATS sites prior to going to a site. AFPM hopes that DHS will consider this offer.

- **Risk Modeling** - AFPM is concerned that the DHS risk modeling used for setting risk tier levels for facilities in CFATS is seriously flawed. More specifically, and troubling, is that the release modeling for both flammables and toxins is incorrect. The risk modeling of the CFATS sites is the foundation of the CFATS program and AFPM urges DHS to expeditiously establish a stakeholder workgroup to resolve the modeling issues.

- **Stakeholder Input** - Stakeholder input is important for security awareness and creating the best plans to secure our critical infrastructure. The framework of the CFATS program is sound and was developed with industry's input. Securing the nation's critical infrastructure

must be done with industry at the table or the unfortunate implementation issues the program has experienced to date will be repeated. Many of the implementation delays have resulted from the lack of knowledge and experience within ISCD. A simple example involves the Top Screen process, which did not work for many companies because in the beginning of the program. In this instance, ISCD did not know that the ONG sector stores millions of pounds of materials, not thousands. The data field in the web page simply did not include enough digits to record actual volumes and required several weeks to correct. It is worth noting, however, that the level of stakeholder outreach has improved in the past year. AFPM encourages DHS to continue this positive trend.

- **Transparency** - Informed discussions with stakeholders will lead to less confusion and quicken implementation for all parties. In particular, in the National Academies of Science's "Review of the Department of Homeland Security's Approach to Risk Analysis," the Academy comments multiple times on the significance of stakeholder involvement and transparency in effective risk modeling. While the National Academies is commenting on risk assessment practices within DHS, the comment is directly applicable to CFATS implementation. The National Academies recommendations for transparency and stakeholder input would provide benefit not only the risk assessment practices within the Infrastructure Security Compliance Division (ISCD), but also provide substantial improvement on rule implementation.

AFPM looks forward to working with you as Congress oversees the progress of CFATS implementation.

Sincerely,

Charles T. Drevna
President

Mr. SHIMKUS. The hearing is now adjourned.

[Whereupon, at 12:53 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

Majority (202) 225–2927
Minority (202) 225–3641

Opening Statement of Rep. Henry A. Waxman
Ranking Member, Committee on Energy and Commerce
Hearing on "The Chemical Facility Antiterrorism Standards Program – A Progress Report"
Subcommittee on Environment and the Economy
September 11, 2012

The 9/11 attacks took nearly 3,000 lives. It was the worst attack against the United States since Pearl Harbor, and a higher death toll was inflicted on 9/11 than even on the date President Roosevelt said would "live in infamy."

The 9/11 attacks were directed at our freedoms, our way of life, and modern civilization itself. It was an assault against American leadership in the world and against the ideals that have guided us since the founding of the Republic.

Our resolve from that terrible day was clear: to pursue and defeat those who perpetrated this evil and to make sure they can never again threaten the United States of America and those who live here.

Last May, President Obama and brave Navy SEALs eliminated the threat of Osama bin Laden.

Today, as members of the Energy and Commerce Committee, we also have a responsibility. We must ask ourselves if we've done our part to protect the nation from terrorist attack.

Nearly three years ago, this Subcommittee held a legislative hearing on legislation to establish security programs for chemical and drinking water facilities. Our goal was to develop comprehensive legislation that would close security gaps, strengthen enforcement authority, clarify the criteria for approving or disapproving site security plans, and set enforceable deadlines.

I called that legislation unfinished business from 9/11 – critical to homeland security, the safety of workers at those facilities, and the public at large. Regrettably, that business remains unfinished.

This Congress is nearly over and we are no closer to action.

However, I thank the Chairman for calling this hearing. Conducting oversight of agency efforts to implement the existing chemical facility anti-terrorism standards, called CFATS, is important, even if the existing standards have too many loopholes.

As this Congress comes to a close, I hope this hearing will serve to renew our commitment to improving the safety of chemical plants. This should not be a partisan issue. We need to be able to work together to solve our nation's problems, as we have many times in the past.

There is little time left to work on CFATS this year, but I hope next year we can return and develop legislation that best serves the American people.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
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COMMITTEE ON ENERGY AND COMMERCE
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October 1, 2012

The Honorable Rand Beers
Undersecretary
National Protection and Programs Directorate
Department of Homeland Security
Washington, D.C. 20528

Dear Undersecretary Beers:

Thank you for appearing before the Subcommittee on Environment and the Economy on September 11, 2012, to testify at the hearing entitled "The Chemical Facility Antiterrorism Standards Program – A Progress Report."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and then (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please e-mail your responses, in Word or PDF format, to Nick.Abraham@mail.house.gov by the close of business on Monday, October 15, 2012.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Gene Green, Ranking Member,
Subcommittee on Environment and the Economy

Attachment

Question#:	1
Topic:	V Factor
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Despite the statutory requirement that the Chemical Facility Anti-Terrorism Standards (CFATS) program be "risk-based," this Committee recently learned that the Department of Homeland Security (DHS) methodology of assessing risk for tiering purposes does not vary the vulnerability factor from facility to facility, leaving the program more consequence-based than risk-based.

Has DHS done anything to ensure that each site's risk profile is evaluated based on that site's distinct vulnerability profile? If so, what specific actions have been undertaken?

Response: While CFATS facilities were treated as being equally vulnerable during the risk assessment process, each facility's distinct vulnerability profile is taken into consideration during the CFATS process. Specifically, when a facility completes its Site Security Plan (SSP), or Alternative Security Program (ASP) in lieu of an SSP, the facility is asked to identify vulnerability issues related to the security of its chemical(s) of interest. Each facility that receives a final tiering letter is informed that it must address certain security/vulnerability issues (i.e., theft, release, sabotage) in its SSP or ASP related to that facility's specific chemicals of interest. The Department's physical, chemical, and cyber analysts examine the security measures outlined in the SSP/ASP for their potential to mitigate the specific vulnerabilities of the facility. Additionally, during Authorization Inspections, CFATS Chemical Security Inspectors review existing and planned security measures to ensure that all identified vulnerabilities are being adequately addressed.

Question: When were you first briefed on the "V-Factor" and "vulnerability" being set at the same number for all facilities?

Response: To the best of our knowledge, Under Secretary Beers was originally briefed on the "V-factor" and "vulnerability" subject in the summer of 2011 as part of the review of the F1 factor issue.

Question: Why weren't this Committee, the regulated community, and other interested parties briefed on the "V-Factor" and its legal and policy implications for the CFATS program?

Response: Throughout the history of the CFATS program, the Department has briefed numerous entities, including Congressional staff members, members of the regulated community, and other interested parties, on their overall approach to tiering facilities.

Question#:	1
Topic:	V Factor
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

During these briefings, it has routinely been noted that the overall tiering methodology is risk-based but that potential consequences are the primary driver of the facility's risk profile for purposes of CFATS risk tiering.

Question#:	2
Topic:	Personnel Surety
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: DHS first issued a public notice on the Personnel Surety Program (PSP) in June 2009, but recently withdrew its proposal from the Office of Management and Budget. Now DHS says it will be issuing another 60 day notice for public comment before the end of this year and then resubmit a revised final proposal to OMB for its review and approval, perhaps by March 2013.

Given the time already spent to develop a PSP why is DHS proposing such a protracted follow-up process to address issues that have clearly been articulated by the regulated community and others?

Response: In July 2012, the National Protection and Programs Directorate (NPPD) withdrew the Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program Information Collection Request (ICR) because our thinking about the CFATS Personnel Surety Program had evolved since the ICR was initially submitted to the Office of Management and Budget (OMB) in June of 2011.

In order to implement the information collection aspects of a CFATS Personnel Surety Program, DHS must comply with the Paperwork Reduction Act requirements, which includes the publication of a Federal Register notice that solicits comments for 60 days on proposed information collection requests.

Question: Will DHS provide options for PSP compliance based on the unique circumstances of a covered facility? Please elaborate.

Response: Yes. The Department has designed CFATS and the CFATS Personnel Surety Program to allow each facility in its Site Security Plan or Alternative Security Program to account for its unique circumstances when considering how to comply with RBPS-12(iv), which requires that final high-risk chemical facilities implement "measures designed to identify people with terrorist ties." The ability to identify individuals with terrorist ties requires the use of information held in Federal government databases that are unavailable to high-risk chemical facilities. When implemented, the CFATS Personnel Surety Program will provide facilities multiple options to comply with this regulatory requirement.

High-risk chemical facilities will have, through their Site Security Plans or Alternative Security Programs, the ability to address RBPS 12(iv). High-risk chemical facilities may restrict the numbers and types of persons whom they allow to access their restricted areas

Question#:	2
Topic:	Personnel Surety
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

and critical assets, thus limiting the number of persons who will need to be vetted for terrorist ties. High-risk chemical facilities also have wide latitude in how they define their restricted areas and critical assets in their SSPs or ASPs, thus potentially limiting or controlling the number of persons who will need to be vetted for terrorist ties. High-risk chemical facilities also may choose to escort visitors to restricted areas and critical assets in lieu of performing the background checks required by RBPS 12.

In addition, high-risk chemical facilities will be able to (1) choose one or more options for terrorist-ties vetting or vetting verification that the Department has described to date or may make available in the future, or (2) propose a different alternative altogether that works best for their circumstances.

Question: Will DHS continue to insist on duplicative reporting of personally identifiable information (PII) for those who carry a current and valid Transportation Worker Identification Credential (TWIC)?

Response: The Department supports the sharing and reuse of vetting results among different screening programs and is actively considering, and discussing with stakeholders, options for effectively leveraging vetting already done on individuals with current and valid TWICs.

Question#:	3
Topic:	TSDB
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Recent media reports indicate DHS will accept the use of certain government issued ID cards as complying with the PSP requirement for terrorist database screening (TSDB), but will continue to require regulated sites to submit personnel information on those entering the site to DHS. Why would DHS require this redundant information?

Response: The Department of Homeland Security (DHS) supports the sharing and reuse of vetting results among different screening programs and is actively considering, and discussing with stakeholders, options for effectively leveraging vetting already done on individuals who hold current and valid credentials.

Question#:	4
Topic:	electronic card readers
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Is DHS or the Administration contemplating requiring electronic card readers at CFATS facilities as part of its new evolved thinking on the PSP? How does DHS square this proposal with Sec. 550 of P.L. 109-295 which explicitly prohibits DHS from prescribing specific security measures?

Response: No, the Department of Homeland Security is not contemplating requiring electronic card readers at Chemical Facility Anti-Terrorism Standards (CFATS) facilities as part of the CFATS Personnel Surety Program. Facilities will have a variety of options for complying with RBPS 12(iv) as part of their Site Security Plans or Alternative Security Programs.

Question#:	5
Topic:	potential hits
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Does DHS believe it has an investigative role when it comes to potential hits on the TSDB? If so, please cite that legal authority.

Response: No; however, the Department of Homeland Security will coordinate with Federal law enforcement entities to effectively address situations in which known or suspected terrorists seek access to high-risk chemical facilities.

Question#:	6
Topic:	SSP
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: DHS previously announced that it planned to conclude inspections and issue Site Security Plan (SSP) authorizations for Tier 1 facilities before the end of the calendar year with the hope of beginning compliance activities at Tier 2s shortly thereafter. Does DHS have a more specific implementation plan that includes specific milestones for each phase of the approval process and for each CFATS Tier Level? Please provide your implementation timeline and plan to this Committee.

Response: Prior to approving a Site Security Plan (SSP), or an Alternative Security Program (ASP) in lieu of an SSP, the Infrastructure Security Compliance Division (ISCD) must first review and then authorize the SSP or ASP. The review process is initiated when ISCD receives the SSP or ASP from a covered facility. ISCD then reviews the SSP/ASP to preliminarily determine if it satisfies the applicable Risk Based Performance Standards (RBPS) under the Chemical Facility Anti-Terrorism Standards regulation, 6 C.F.R. Part 27. This process typically involves discussions between ISCD staff and the facility and often requires additional information from the facility and revision of the SSP/ASP before ISCD can complete its initial review and issue the facility a Letter of Authorization for its SSP/ASP. After issuing a Letter of Authorization, ISCD conducts a comprehensive and detailed authorization inspection. The inspection results, as well as any further revisions that the facility may make to the SSP/ASP, are reviewed to make a final determination as to whether the facility's SSP/ASP satisfies the applicable RBPSs and whether to issue a Letter of Approval. Upon approval, the facility must implement the applicable provisions of the SSP/ASP. If ISCD determines that an SSP/ASP does not satisfy the applicable RBPS, ISCD may issue a Notice of Deficiency and require the facility to resubmit a sufficient SSP/ASP. If the facility fails to do so, ISCD may disapprove the SSP/ASP.

ISCD is scheduled to complete Authorization Inspections by the fourth quarter of Fiscal Year (FY) 2013 for Tier 1 facilities and by the second quarter FY14 for Tier 2 facilities. Following the Authorization Inspection, facilities are generally granted an additional 45 days to make any necessary modifications to their SSP/ASPs. ISCD will then review the re-submitted SSP/ASP and make a final determination on whether the SSP/ASP warrants the issuance of a Letter of Approval. In some cases, the facility may require a Technical Consultation and another opportunity to revise its SSP/ASP. Therefore, the schedule to issue Letters of Approval to facilities is projected to be the first quarter of FY 2014 for Tier 1, and by the third quarter FY 2014 for Tier 2 facilities.

Question#:	6
Topic:	SSP
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

The population of Tier 3 and Tier 4 facilities, which pose relatively lower risks than Tier 1 and Tier 2 facilities, is much larger and DHS is developing options to effectively evaluate their SSPs/ASPs.

Question#:	7
Topic:	SVA
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: The current CFATS requirements mandate that facilities resubmit a Site Vulnerability Assessment (SVA) to DHS every two years. Given DHS's lack of progress in conducting authorization activities and the likelihood that it will not finish approving all Tier 1 sites before the end of this year as initially hoped, will DHS consider suspending this SVA resubmission requirement until it completes authorizations for these tiers?

Response: The Chemical Facility Anti-Terrorism Standards (CFATS) regulations do not mandate that chemical facilities resubmit a Security Vulnerability Assessment (SVA) to the Department of Homeland Security (DHS) every two years.

Under 6 C.F.R. § 27.210(b)(1), CFATS Tier 1 and Tier 2 high-risk facilities must submit new Top-Screens to DHS no less than two years, and no more than two years and 60 calendar days, from the date of DHS's approval of the respective facilities' Site Security Plans (SSPs). Under the same provision, CFATS Tier 3 and Tier 4 high-risk facilities must submit new Top-Screens to DHS no less than three years, and no more than three years and 60 calendar days, from the date of DHS's approval of the respective facilities' SSPs. Under 6 C.F.R. § 27.210(b)(2), following the resubmission of a Top-Screen pursuant to 6 C.F.R. § 27.210(b)(1), the Department may require a covered facility to complete and submit a new SVA within 90 calendar days of written notification from DHS. Thus, under these provisions, a high-risk facility would not be required to resubmit an SVA unless DHS's review of the facility's resubmitted Top-Screen resulted in a determination that an SVA resubmission is warranted.

Question#:	8
Topic:	ISCD
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: ISCD has announced that it is currently developing a new, more user-friendly SSP tool as part of its CSAT revamp (which includes top screens and SVAs as well).

Can you detail for us what this redevelopment entails?

How do you plan to engage industry in developing the SSP tool and reexamining the CSAT suite of tools as a whole?

What is the projected time frame for putting in place a usable tool for regulated facilities?

Response: Over the past few years, while implementing the Chemical Facility Anti-Terrorism Standards (CFATS), the Department of Homeland Security (DHS) has received significant feedback on and suggestions for improving its Chemical Security Assessment Tool (CSAT) and the various applications that comprise CSAT. Concurrently, the Department internally has identified a variety of ways it believes it can refine its three primary CSAT applications—the Top-Screen, the Security Vulnerability Assessment (SVA), and the Site Security Plan (SSP)—to make the overall CFATS process more user-friendly for industry, while simultaneously making it more efficient and effective.

In order to ensure we are incorporating industry feedback to the extent practicable in the refinement of the CSAT applications, the Department intends to hold multiple roundtables with members of the regulated community in various locations throughout the country to solicit additional feedback on the CSAT tools. In addition, the Department intends to highlight this effort during its routine outreach and engagement activities and use those venues to seek and encourage additional input on potential ways to improve CSAT. At the appropriate times during the CSAT improvement effort, the Department intends to pilot or 'beta test' planned CSAT refinements with members of industry. Finally, the public will have an opportunity to comment on revisions to CSAT during the PRA process.

The Department is seeking to release the improved version of the CSAT tool in the third quarter of Fiscal Year 2014.

Question#:	9
Topic:	PSP
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: You testified that DHS is currently not able to fully approve or authorize SSPs until the PSP has been finalized, and that DHS will only be issuing "conditional" authorizations and approvals until the PSP program is in place. If so, does this mean that DHS may disapprove an SSP that was previously conditionally approved, once the PSP is in place?

Response: The Infrastructure Security Compliance Division (ISCD) reviews and approves facility Site Security Plans (SSPs) based on established Risk Based Performance Standards (RBPS). RBPS-12 (Personnel Surety) requires covered facilities to implement security measures to identify individuals with terrorist ties. The Department of Homeland Security (DHS) is developing a Personnel Surety Program that would provide facilities with options to implement such measures. Once finalized, an Information Collection Request (ICR) will be submitted to the Office of Management and Budget (OMB). DHS cannot fully implement the program until OMB approves the ICR. DHS is currently reserving judgment on the approval of Site Security Plans (SSPs) with regard to that aspect of RBPS-12. ISCD will work with covered facilities to ensure that their SSPs adequately address all applicable aspects of RBPS-12 as the implementation of the Personnel Surety Program progresses. In the meantime, ISCD is moving forward with approvals so that facilities can implement the other security measures described in their plans.

Question#:	10
Topic:	security
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Congress gave DHS authority to engage with various industry groups on development of Alternative Security Program (ASP) templates. DHS has said it continues to review existing industry programs, such as ACC Responsible Care® and SOCMA ChemStewards®, to identify potential areas of engagement and further discussion. Will DHS leverage these and/or other existing programs to help improve chemical security and advance CFATS implementation? Please explain your progress in this area.

Response: Many members of the regulated community and their representative industry associations have expressed interest in exploring ways to use the Alternative Security Program (ASP) provisions of the Chemical Facility Anti-Terrorism Standards (CFATS) regulation to streamline the security plan submission and review process. The Infrastructure Security Compliance Division (ISCD) shares this goal and has been holding discussions with industry stakeholders in regard to their development of ASP templates on behalf of their members. One example has been ISCD's engagement with the American Chemistry Council (ACC) in support of its efforts to develop an ASP template for use by interested members of its organization. The ACC developed a template which was piloted at facilities in August and October. ACC has indicated that it expects its ASP template to be available for wider use later this year. In addition, the Department of Homeland Security (DHS) has been in discussions with other industry stakeholders and associations about developing templates specific to their members and sub-sectors. ASPs submitted by facilities using industry-established models, such as the ACC template, will be reviewed under the same standards that ISCD currently reviews Site Security Plans, but the use of ASP templates may streamline both the plan development and plan review processes. Additionally, DHS continues to review existing industry, and sector specific programs, such as ACC Responsible Care® and SOCMA ChemStewards®, to identify potential areas of engagement that may contribute to CFATS implementation.

As of October 23, 2012, 426 ASPs have been submitted in lieu of SSPs and 13 ASPs have been submitted by Tier 4 facilities in lieu of SVAs.

Question#:	11
Topic:	facilities
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: While DHS is focusing on the highest risk facilities first, the bulk of the facilities in the CFATS program are in the lower risk tiers. At the current pace, it will be many years before DHS will even begin approving lower risk facilities. What steps is DHS taking to address the lower tiered facilities faster? Has DHS considered using its ASP authority for review and approval of lower risk facilities in a way that will streamline the implementation process?

Response: Over the past few months, the Department of Homeland Security (DHS) has taken numerous steps to make its procedures more efficient and to increase the pace at which facilities' Site Security Plans (SSPs) are evaluated. These include streamlining the SSP review process itself, working on improvements to both the data collection and plan review tools, and getting the Department's field staff involved earlier in the process to help identify and work with facilities whose SSPs require additional information before they can be fully evaluated. Additionally, the Department is currently exploring various approaches to address lower tiered facilities in an even more efficient manner. This includes working with industry on Alternative Security Programs (ASPs) and identifying ways to make ASPs a more effective option that could be used to a greater extent by lower tier high-risk facilities.

Question#:	12
Topic:	examples/models
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Has DHS looked at other examples/models such as the Coast Guard's Alternative Security Program as a best practice to help improve the pace of SSP approvals?

Response: Since 2009, the Department of Homeland Security's (DHS) National Protection and Programs Directorate (NPPD) has met routinely with the U.S. Coast Guard (USCG) under the auspices of a Chemical Facility Anti-Terrorism Standards (CFATS) / Maritime Transportation Security Act (MTSA) Harmonization Working Group to exchange ideas and best practices for potentially improving both CFATS and MTSA. As part of this engagement, NPPD and the USCG previously discussed their respective approaches to Alternative Security Programs (ASPs) to identify best practices and lessons learned regarding the use of ASPs. NPPD is currently exploring ways to leverage ASPs to improve the pace of Site Security Plan reviews and is committed to reengaging the USCG on its approach to ASPs to see if there are additional best practices or lessons learned that could be incorporated by NPPD in the implementation of CFATS.

Question#:	13
Topic:	mis-tiering
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Has a facility ever suggested to DHS that it has been placed in a tier lower than it should be? If so, when were you or your staff told?

Response: According to our records, no facility has ever indicated to the Department of Homeland Security in writing that it has been tiered lower than it should be.

Question#:	14
Topic:	Appendix A
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Is DHS reviewing the Appendix A list of chemicals? If so, when do you plan to conclude your review? Do you expect significant amendments to the current list? Will this revision slow down or otherwise impact your progress with CFATS implementation?

Response: The Department of Homeland Security (DHS) is in the process of reviewing the Chemical Facility Anti-Terrorism Standards (CFATS) Appendix A list of Chemicals of Interest (COIs). Additionally, in support of that effort, the Department's National Protection and Programs Directorate (NPPD) recently entered into a 24-month agreement with the Science and Technology Directorate's Chemical Security Analysis Center (CSAC) to conduct applied research on issues related to Appendix A. The CSAC recommendations will then be evaluated by DHS and, as previously stated, any potential changes to Appendix A will be made through the rulemaking process in coordination with OMB.

The effort to review Appendix A during fiscal years 2013 and 2014 should not have any significant impact on the progress of CFATS implementation during this period.

Question#:	15
Topic:	outreach
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Have any changes been made to CFATS based upon the recommendations of regulated stakeholders? If yes, please detail all of them.

Has NPPD/IP/ISCD specifically sat down to talk with regulated stakeholders about ways to better understand the diverse nature of the chemical industry? What changes, if any, to CFATS have been-made based upon those discussions?

Response: Throughout the development and implementation of the Chemical Facility Anti-Terrorism Standards (CFATS), the Department of Homeland Security (DHS) has routinely sought the input of the regulated community and other stakeholders. This input has been sought and provided in a variety of forums, including requests for public comment on the proposed CFATS regulations and Appendix A as well as the *Risk-Based Performance Standards (RBPS) Guidance.* Many of industry's suggestions in their public comments were reflected in the final CFATS regulation, including Appendix A, and in the *RBPS Guidance*.

In addition, DHS sought input from industry prior to seeking public comments on the *RBPS Guidance* and in the piloting or 'beta-testing' of various tools used by the regulated community or other CFATS stakeholders. Moreover, the Department has participated in thousands of outreach and engagement activities, ranging from major conferences such as the annual Chemical Security Summit, to meetings with the Chemical Sector Coordinating Council and various industry groups, to one-on-one meetings with facility owners and operators.

This ongoing engagement has resulted in numerous improvements in CFATS implementation, including the functionality of the various Chemical Security Assessment Tool applications, such as the Top-Screen, the Security Vulnerability Assessment, and the Site Security Plan tool. In addition, DHS has sought industry and other stakeholder input in the development of the Department's proposed approach to the CFATS Personnel Surety Program. The Department will continue to engage with our industry stakeholders as we further develop and make improvements to the CFATS program.

Question#:	16
Topic:	funding
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Please provide the amounts appropriated and the amounts obligated for ISCD for fiscal years 2007 through 2012. How much of the appropriated money remains available to be expended?

Response: The Infrastructure Security Compliance (ISC) Project has two primary initiatives—the development and implementation of the Chemical Facility Anti-Terrorism Standards (CFATS) program and the development and implementation of the Ammonium Nitrate Security Program. Since its inception, the ISC Project has received $442.6641 million in appropriated funds and has completed a full accounting of these funds. Below is a high-level overview of ISC funding from Fiscal Year (FY) 2007 to FY 2012.

Fiscal Year	Enacted Funding ($M)	Obligated Funds ($M)†	Rescission ($M)
2007*	22.0	21.9	0.0
2008	50.0	50.0	0.0
2009**	78.0	77.7	0.0
2010	103.4	98.2	4.8
2011	95.9	95.7	0.0
2012	93.3	88.7	0.0
Total	**442.6**	**432.2**	**4.8**

Note: Totals may not sum due to rounding.

* Includes a one-time supplemental appropriation to the Infrastructure Security Compliance Division in FY 2007.
**Includes $5 million for the Ammonium Nitrate Security Program (ANSP). ANSP funding has been included in the base ISCD request from 2010 to present.
† Between FY 2007 and FY 2011, NPPD tracked salary and benefit funding at a higher level than Infrastructure Security Compliance. The figures for those years reflect the enacted amount of salary and benefits funding.

Question: How much of the appropriated money remains available to be expended?

Response: Of the funds appropriated from FY 2007 to FY 2012, $4,603,655 remains available to be obligated as of September 30, 2012.

Question#:	17
Topic:	realignment and continuity
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: In the fall of 2011, ISCD leadership began actively engaging the workforce in the realignment of the organization by soliciting feedback and inputs and engaging the ISCD leadership team, including making efforts to hire permanent branch chiefs.

What has been done to scope out the job descriptions for these managers? Has the union provided any formal or informal input in these job descriptions?

Response: Job descriptions for the Deputy Director, Chief of Staff, and Branch Chiefs have been completed. The Deputy Director, Chief of Staff, and Branch Chief positions are all considered supervisory/leadership positions that are not covered by the current Collective Bargaining Agreement. Any additional job description scoping efforts that affect the ISCD inspector workforce will be coordinated with the union leadership. Although not required, we have been continually updating AFGE Local 918 on progress made on our realignment efforts.

Question: What is DHS doing to improve management continuity and reverse turnover of CFATS leadership, including the ISCD director and personnel in the office of the NPPD Undersecretary who work with ISCD?

Response: The Department of Homeland Security (DHS) continues to recruit career oriented personnel who are committed to the success of ICSD's mission. Going forward, it is the goal of ISCD to use "detailed" or "acting" personnel on a very limited and short term basis to fill gaps due to vacancies. As part of the realignment, many of these details and acting positions will end. ISCD has already begun the process of announcing and hiring for many of the positions that are currently held by detailees or personnel operating in an acting capacity. NPPD will also continue to use a balanced approach in its hiring practices that allows for internal career growth within the organization as well as external recruitment practices to bring in qualified personnel and improve the organizational culture.

Question#:	18
Topic:	staff
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: The Anderson/Wulf Memo expressed concerns that ISCD staff have been detailed to NPPD and that calls to return these personnel to ISCD have gone unfulfilled. Have these ISCD staff been returned from NPPD to ISCD? If not, why not?

Response: Leadership in the Infrastructure Security Compliance Division (ISCD), National Protection and Programs Directorate (NPPD), and Office of Infrastructure Protection (IP) are determining the "right-sizing" of each of these organizations and the benefits and shortfalls of both long and short term details. While several ISCD employees have been detailed outside the organization, many of these employees are receiving experience and training on elements that will benefit ISCD when they return at the end of their details. Additionally, ISCD benefits from individuals from within NPPD being detailed to fill critical positions within ISCD until permanent staff selections are made. ISCD is approaching the final stages of hiring individuals to permanently fill these positions.

Question#:	19
Topic:	OCS
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: What is OCS and when was it established?

Response: The National Protection and Programs Directorate (NPPD) established the Office of Compliance and Security (OCS) in October 2010, to independently review and evaluate NPPD operations, programs and activities. OCS also investigates alleged misconduct by NPPD employees on behalf of NPPD management.

Question: In 2011, did you task the Office of Compliance and Security (OCS) with a fact-finding mission for issues within ISCD?

Response: Under Secretary Beers tasked OCS to coordinate an inspection of ISCD in January 2011. An inspection is an internal evaluation process that enables NPPD management to objectively evaluate the strengths and weaknesses of NPPD programs. OCS conducted its inspection between April and September 2011, completing its report in September 2011 and providing it to NPPD management in October 2011.

Question: In response to Mr. Latta's question about vehicles provided to Washington-area personnel you referred to an OCS-prepared report of September 2011. Did you share a copy of that report with any Congressional Committee? If so when? Please provide this Committee with that OCS report, and with any other OCS findings or recommendations with regard to CFATS.

Response: The OCS report was completed in September 2011 and provided to NPPD management in October 2011. Copies of the OCS report were provided to the Government Accountability Office in March 2012 and to the Department of Homeland Security's (DHS) Office of the Inspector General (OIG) in May 2012, but it was not provided to any Congressional Committee. OCS inspections are internal reviews designed to assist management with ensuring that NPPD programs are operating efficiently and effectively. Accordingly, inspection reports are provided to appropriate NPPD management officials and appropriate Subcomponent leadership.

Question: Was any OCS review ever used a substitute for any other investigatory effort?

Response: The OCS program reviews do not function as a substitute for other inquiry efforts by DHS or other entities. OCS occasionally undertakes investigations referred or declined by the Office of the Inspector General (OIG). In addition, as noted above, OCS conducted a program review of CFATS in early 2011. The then-Assistant Secretary for

Question#:	19
Topic:	OCS
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Infrastructure Protection (AS/IP) had initially proposed a management review be done by contractors, paid for by IP, under the auspices of the OIG. NPPD leadership, including the then-AS/IP, concluded that a review by OCS would be more appropriate, effective, timely, and cost-efficient.

Question: Are OCS findings ever made public?

Response: These reports are not made public, but requests from the public can be processed through the Freedom of Information Act or the Privacy Act. All, or portions of, reports could be released to the public through such requests, but appropriate exemptions would apply to the requested documents.

Question: Who receives OCS findings and reports?

Response: OCS inspections are internal reviews designed to assist management with ensuring that NPPD programs are operating efficiently and effectively. Accordingly, inspection reports are provided to appropriate NPPD management officials and appropriate Subcomponent leadership. OCS reports of investigations that result from allegations of misconduct are provided to appropriate management levels of the Subcomponent where the subject employee works, as well as to the NPPD Office of Employee and Labor Relations and the Office of the General Counsel, if necessary. If an inspection uncovers waste, fraud, or abuse, the Inspector General would be notified.

Question: Did you task OCS to investigate and report on the methodology issues facing CFATS? If so, what is the status of that?

Response: Under Secretary Beers did not task OCS to investigate the Chemical Facility Anti-Terrorism Standards (CFATS) program's methodology. Risk methodology is a technically complex issue and is appropriately being reviewed by subject matter experts as part of our approach to ensuring that the tiering methodology is sound and facilities are properly classified.

Question#:	20
Topic:	action items
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: You indicate that DHS has completed more than two-thirds of its self-assigned corrective "action" items. What is the status of the remaining items?

Response: As of November 8, 2012, ISCD has completed 78 of 95 action items. Good progress has been made on all of the remaining Action Items and a number of them are expected to be completed within the next few weeks. Some action items, however, such as Action Item 47 which calls for the revision of the Chemical Security Assessment Tool (CSAT), are long term activities and require more time to complete. The revision of the CSAT tool is the final milestone on the Action Plan and we project it to be completed in the third quarter of Fiscal Year 2014.

Question#:	21
Topic:	document
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable Bill Cassidy
Committee:	ENERGY & COMMERCE (HOUSE)

Question: The internal document stated that some employees felt that a certain person within the agency was filling subordinate positions based on cronyism. Who was this person? Is this individual still employed by the agency and in the same position? Are these cronies, if you will, still employed there as well? What about contracts? Were any contracts awarded or not awarded because of cronyism?

The memo indicated there were pay grades for employees that were not justified. Since you say that unqualified workers have simply been retrained, have their pay grades been adjusted? If not, how do you train someone for a position they were not qualified to fill in the first place?

Response: The internal memorandum cited a perceived lack of transparency with regard to personnel actions, including a perception of cronyism and favoritism. However, no evidence of cronyism has been identified within the Infrastructure Security Compliance Division (ISCD). The Department is not aware of any personnel selections made or contracts awarded based upon favoritism or preexisting relationships.

With regard to the pay grade structure within the division, ISCD is working to ensure that all employees are in positions that are appropriate to their grade levels and best suited to their skills and expertise.

Question#:	22
Topic:	non-productive workers
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable Bill Cassidy
Committee:	ENERGY & COMMERCE (HOUSE)

Question: It has been indicated that there were a number of non-productive workers in the program. Yet, your testimony on March 31, 2011, indicated that the overall workload was being accomplished. Clearly these workers were not needed to accomplish the work, or alternatively you were misleading Congress. If it is the former, why have these unproductive workers not been released? If it is the latter, how do you justify the impression you gave in March of 2011 suggesting that the workload was being accomplished? Also, if these employees were let go, how much money would be saved by the agency?

To go one step further, in the recent report you stated that the agency has taken numerous steps to improve the work environment and encourage a system of accountability. What has been done about these unproductive workers?

Response: The internal memorandum observed that, in some instances within Infrastructure Security Compliance Division (ISCD) programs, there were discrepancies between personnel and their positions. As part of its organizational realignment efforts, ISCD is working to ensure that all employees are in positions where they can perform most effectively and are best suited to their skills and expertise. Additionally, we have been working diligently to ensure that all supervisors in the organization have the appropriate training to ensure that there are appropriate chains of accountability.

Question#:	23
Topic:	gas cards
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable Bill Cassidy
Committee:	ENERGY & COMMERCE (HOUSE)

Question: The memo stated there were instances of workers who abused their gas cards. It is my understanding that this is fraud, or even theft of some kind. Why were these individuals simply reassigned and not dismissed from the agency? Was there a similar move for their supervisors? What accountability has been put in place for situations such as this?

Response: The internal memorandum stated that the absence of effective policies and procedures in certain areas could have created an environment where fraud, waste, and abuse could have occurred; however, the memorandum did not identify any specific instances of fraud, waste, or abuse.

The Infrastructure Security Compliance Division (ISCD) has instituted several processes to ensure accountability to make sure that any misuse would be systematically identified and corrective actions taken. For example, ISCD tracks vehicle mileage through both the Chemical-Security Management System (CHEMS) and the monthly General Services Administration (GSA) invoice. Workers have been instructed to enter their mileage into the CHEMS system for every trip that they make in a Government vehicle. ISCD compares the GSA mileage to what is recorded in CHEMS.

ISCD has focused on training its personnel on the proper use of government travel cards and purchase cards. ISCD is also providing supervisory training in order to better equip its managers to lead their teams and to better foster chains of accountability. Additionally, ISCD has outlined, documented, and implemented appropriate procedures for using and reporting the use of travel cards. These procedures have been disseminated throughout the Division.

Question#:	24
Topic:	computer program
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable Bill Cassidy
Committee:	ENERGY & COMMERCE (HOUSE)

Question: The Government Accountability Office stated in their recent report that the computer program being used was poorly suited for the CFATS program and it would take significant time and money to fix this problem. What has been done on this front? How much money has been spent on improvements and how much more will be spent? Is there independent analysis of the program, and if so, is it now suitable to meet the required function? On a scale of 1 – 100, where are we on making this program suitable for use?

Response: The Chemical Facility Anti-Terrorism Standards (CFATS) information technology (IT) tool suite is suitable now; however, it is not optimal. The Infrastructure Security Compliance Division (ISCD) has spent approximately $80 million beginning in the fourth quarter of fiscal year (FY) 2006 through FY 2012 (Project Life Cycle) on its IT investments. ISCD estimates that it will cost approximately $6 million to make enhancements to its IT systems in FY 2013. These funds are included in the FY 2013 request. The planned improvements were identified internally by ISCD through integrated project teams and other requirement elicitation techniques. ISCD anticipates that improvements to the CFATS tools suite will be released in the third quarter of FY14.

ISCD will continually evaluate its IT capabilities and identify areas of improvement, making enhancements and modifications as necessary.

Question#:	25
Topic:	union contracts
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable Bill Cassidy
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Initially, union contracts were blamed for struggles to accomplish even minor changes to the program. Has the union renegotiated and accepted changes in the contract governing how work rules can be changed and implemented? If not, why are we to believe that great strides are being made when the internal report indicated that contracts would limit ability to makes these changes? What large scale changes have been made? Specifically list and share what processes took place to approve these changes.

Response: The internal memorandum described the potential complexities the presence of a union could have presented during the relatively early stages of the program's development. That being said, we believe that the American Federation of Government Employees, Local 918 (AFGE Local 918) has been supportive of the Chemical Facility Anti-Terrorism Standards (CFATS) program. The union shares with NPPD an interest in moving the program forward and has provided valuable perspectives in the implementation process. AFGE Local 918 and NPPD enjoy a productive relationship that has grown through close coordination, communication, and regular meetings. The union has expedited its review of key policies and procedures that have enabled the Infrastructure Security Compliance Division to turn the corner in implementing the CFATS program. We will continue to build upon this working relationship to ensure that AFGE Local 918 continues to be a key stakeholder in helping to move the CFATS program forward.

Question#:	26
Topic:	investigation
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable Bill Cassidy
Committee:	ENERGY & COMMERCE (HOUSE)

Question: During the original investigation, it was found that a number of employees had a law enforcement mindset, as opposed to a regulator mindset envisioned within the original statute. Have these individuals been given the pistols, badges, and uniforms they requested; have they been replaced by others with a proper mindset; or have they simply not been replaced?

Response: The Infrastructure Security Compliance Division (ISCD) staff brings a wealth of experience from careers in industry, law enforcement, military service, and a host of other disciplines. This breadth of experience has contributed to the progress ISCD has made as a regulatory compliance organization. During the initial stages of the Chemical Facility Anti-Terrorism Standards (CFATS) program, a number of individuals with law enforcement backgrounds were detailed from the Federal Protective Service (FPS) to help establish the initial corps of CFATS inspectors. As the CFATS program matured, the roles and responsibilities of the inspectors were clarified.

When the FPS details expired, a number of the original detailees applied for permanent positions with ISCD with the knowledge that CFATS inspectors are not law enforcement officers. The remaining FPS personnel who were detailed to ISCD returned to FPS. ISCD has also worked to ensure that the inspectors who were subsequently hired also understand that their positions do not involve acting as law enforcement officers.

ISCD inspectors have been issued Department of Homeland Security (DHS) credentials and often wear standardized rough duty outerwear to accommodate field activity and more readily identify the inspectors to the regulated community and other Federal, state, and local agencies. At no time, however, has the Department provided firearms or badges to inspectors under CFATS.

Question#:	27
Topic:	feedback
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable Bill Cassidy
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Is there a method in place for your industry partners to give feedback on inspectors without fear of reprisal?

Response: Extensive outreach activities provide numerous opportunities for industry to give feedback on inspectors and other aspects of the program. The National Protection and Programs Directorate (NPPD) and Infrastructure Security Compliance Division (ISCD) management and staff have presented at hundreds of security and chemical industry conferences and participated in a variety of other meetings. As part of this outreach program, NPPD and ISCD have regularly communicated with impacted sectors through numerous trade associations and through the Sector Coordinating Councils—including the Chemical, Oil and Natural Gas, and Food and Agriculture Sectors. Additionally, this past summer marked the sixth iteration of the Chemical Sector Security Summit, an annual event co-sponsored by DHS and the Chemical Sector Coordinating Council (SCC). The Summit is essential to the Department's continuous outreach with the chemical industry and provides another opportunity for dialogue with our infrastructure stakeholders.

It is our hope that by building these relationships industry stakeholders do not feel inhibited or fear reprisal in providing candid feedback on the performance of CFATS inspectors or other members of ISCD staff.

Question#:	28
Topic:	internal report
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable Bill Cassidy
Committee:	ENERGY & COMMERCE (HOUSE)

Question: The internal report stated employees demanded overtime to answer their phones on official business during the lunch hour. Do they receive overtime now? If not, do they take official calls? Is this subject to union negotiation and agreement to the work rules?

Response: There are no employees within the Infrastructure Security Compliance Division (ISCD) demanding overtime to answer phone calls during allotted lunch times. The Division's employees are professionals who recognize that securing America's high-risk chemical facilities cannot always be accomplished on a "9 to 5" work schedule. In light of this reality, ISCD continues to work closely with National Protection and Programs Directorate (NPPD) and Office of Infrastructure Protection (IP) human capital staffs to ensure all matters related to approved premium pay and overtime work are implemented in accordance with 5 U.S.C. Chapter 55, Subchapter 5 and applicable Office of Personnel Management guidance.

Question#:	29
Topic:	CFATS program
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable Bill Cassidy
Committee:	ENERGY & COMMERCE (HOUSE)

Question: In your testimony on March 31, 2011, you gave no indication of problems in the program, yet you were simultaneously requesting that an informal internal investigation be carried out. How can we trust that you are currently being honest as to how the CFATS program is progressing?

Response: The National Protection and Programs Directorate's (NPPD) Office of Compliance and Security (OCS) completed its report in October 2011. At the time of the hearing, I did not have reason to believe that any of concerns that prompted the review would prevent the Chemical Facility Anti-Terrorism Standards (CFATS) program from making progress. The Infrastructure Security Compliance Division's (ISCD) proactive approach to identifying, mitigating, and resolving programmatic and management issues has led to substantial progress. We remain committed to working with you and the Committee to keep you informed about the progress of the program, and as part of that commitment, we will also keep you apprised of significant issues that arise.

Question: On another note, you claim that since January of 2012, two sites have been approved by the CFATS standards. How can this be true given that the personnel surety issue has not been resolved?

Response: For the Site Security Plans (SSPs) that ISCD has approved thus far, the Letters of Approval specifically state that the Department of Homeland Security (DHS) has reserved judgment with respect to Risk Based Performance Standard (RBPS) 12: Personnel Surety. The Department will continue to work with the facilities to ensure that their SSPs fully address all applicable aspects of RBPS-12, and will assist the facilities in understanding the Personnel Surety Program when it is finalized.

Question#:	30
Topic:	personnel surety program
Hearing:	The Chemical Facility Antiterrorism Standards Program – A Progress Report
Primary:	The Honorable Bill Cassidy
Committee:	ENERGY & COMMERCE (HOUSE)

Question: NPPD's approach to the personnel surety program seems more in line with a police force culture than that of a regulatory program. For example, NPPD/ISCD has proposed that regulated entities submit detailed personnel data to ISCD, but has not proposed helping those same entities by informing them whether personnel with chemical facility access are or are not on the terrorist watch list. By contrast TSA, by issuing a TWIC card, reassures the Coast Guard's regulated chemical facilities that a person is not on the watch list. Why do two agencies within the same Department take such different approaches? How is a chemical facility to assure its workers, neighbors, insurers, and investors that it meets minimum standards for anti-terrorism security if it is not permitted to know whether its employees are or are not on the terrorist watch list?

Response: The design of both the Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program and the Transportation Worker Identification Credential (TWIC) program include a recurrent check for ties to terrorism. The Department of Homeland Security follows Government-wide procedures already in place regarding notification of terrorist watchlist matches as a result of security checks we conduct. Under the CFATS Personnel Surety Program, as with all other Department programs such as TWIC, the Department will continue to coordinate our efforts and responses with appropriate law enforcement and the intelligence community on a case-by-case basis.

United States Government Accountability Office
Washington, DC 20548

October 15, 2012

The Honorable John Shimkus
Chairman
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
House of Representatives

Subject: *Critical Infrastructure Protection: GAO Response to Posthearing Questions for the Record*

Dear Mr. Chairman:

On September 11, 2012, we testified before your committee on the Department of Homeland Security's (DHS) actions underway to better manage its chemical security program.[1] The Chairman of the committee requested that we provide additional comments to a number of post hearing questions. The questions and our answers are provided in the Enclosure. The responses are based on work associated with previously issued GAO products. If you have any questions about this letter or need additional information, please contact me at (202) 512-3404 or berrickc@gao.gov.

Sincerely yours,

Cathleen A. Berrick

Cathleen A. Berrick
Managing Director
Homeland Security and Justice

Enclosure

[1] GAO, *Critical Infrastructure Protection: DHS Is Taking Action to Better Manage Its Chemical Security Program, but It Is Too Early to Assess Results*, GAO-12-567T (Washington, D.C.: Sept. 11, 2012).

Enclosure

The Honorable John Shimkus

1. **We are told that DHS has historically scored towards the bottom of all departments and agencies surveyed by OPM on employee morale. Given that the former ISCD Director characterized employee morale as "a significant issue," do these survey results for NPPD specifically offer any insight into this issue?**

Data on the National Protection and Programs Directorate's (NPPD) scores provide insights into morale problems facing NPPD overall. Specifically, data from the survey showed that, in 2011, NPPD scored slightly lower than the Department of Homeland Security (DHS) average in three of four categories—leadership and knowledge management; talent management, and job satisfaction—and slightly higher than the DHS average for the fourth category—results-oriented performance culture. NPPD also scored lower in all four categories relative to government-wide averages for those categories. Table 1 compares OPM survey results for NPPD, DHS, and Government-wide for the four categories.

Table 1: Percent of NPPD Employees Who Responded Positively to 2011 Federal Employee Viewpoint Survey Questions about Leadership and Knowledge Management, Results-Oriented Performance Culture, Talent Management, and Job Satisfaction Compared to Responses by Employees DHS and Government-wide

Organization	Leadership and Knowledge Management Index[a]	Results-Oriented Performance Culture Index[b]	Talent Management Index[c]	Job Satisfaction Index[d]
NPPD	51%	51%	50%	62%
DHS	55%	48%	53%	64%
Government-wide	62%	54%	60%	68%

Source: OPM's 2011 Federal Employee Viewpoint Survey.

[a]The Leadership and Knowledge Management Index shows the percent of employees who responded positively to survey questions about the extent to which employees hold leadership in high regard, both overall and on specific facets of leadership.
[b]The Results-Oriented Performance Culture Index shows the percent of employees who responded positively to survey questions about the extent to which employees believe their organizational culture promotes improvements in processes, products and services, and organization outcomes.
[c]The Talent Management Index shows the percent of employees who responded positively to survey questions about the extent to which employees within the organization have the talent necessary to achieve organization goals.
[d]The Job Satisfaction Index shows the percent of employees who responded positively to survey questions about the extent to which employees are satisfied with their jobs.

DHS has taken steps to identify where it has the most significant employee satisfaction problems and developed plans to address those problems, but has not yet improved DHS employee satisfaction survey results. We have previously reported that concerns about pay and a lack of trust in leadership can lead to morale problems.[2] We stated that, given the critical nature of

[2] GAO, *Department of Homeland Security: Preliminary Observations on DHS's Efforts to Improve Employee Morale*, GAO-12-509T (Washington, D.C,: Mar. 22, 2012).

DHS's mission to protect the security and economy of the United States, it is important that DHS employees are satisfied with their jobs so that DHS can attract and retain the talent required to complete its work. We plan to issue a report on the final results of our work related to employee morale issues at DHS later this month.

2. **Has leadership turnover in the CFATS program contributed to many of the problems the program has encountered? What can DHS do to reduce this problem?**

   The numerous changes in Chemical Facility Anti-Terrorism Standards (CFATS) program leadership, and the fact that many of the Infrastructure Security Compliance Division (ISCD) leaders have served in "acting" roles and have since left the position, could have impacted ISCD's ability to implement and transform the CFATS program. For example, a senior NPPD official told us that changes in ISCD management have made it difficult to have ongoing budget discussions with ISCD. However, we have not specifically reviewed the extent to which turnover in the program has contributed to existing problems. When a program is attempting to transform itself, however, leadership is critical. Our work on organizational transformation found that top organizational leadership must set the direction, pace, and tone, and provide a clear, consistent rationale that brings everyone together behind a single mission. Appointing Mr. Wulf as the new director should benefit the program because he knows the challenges the program has experienced and has been involved in managing some of the more recent efforts to address those challenges.

3. **It appears that many of the dates for completing items in the action plan have slipped by as many as 90 days, some because the work required to complete items was not fully understood, others because the action had not yet been approved by either NPPD or IP. What do these date slippages say about management leadership?**

   ISCD, the Office of Infrastructure Protection (IP), and NPPD appear to be making a concerted effort to address and resolve the human capital, mission, and administrative challenges identified in the November 2011 internal memorandum, but it's too early to tell what the ultimate impact of these efforts will be on the CFATS program. While the efforts outlined in the action plan are a good beginning to addressing identified issues, it is important to note that successfully implementing the action plan won't in itself ensure success for the program; rather, sustained commitment to and leadership by NPPD, IP, and ISCD, as well as continual monitoring and adjustment, as needed, will be critical. Further, where progress or performance deviates from expected results, it will be important for NPPD, IP, and ISCD managers to identify causes and take corrective actions, as needed.

4. **One of the most important aspects of CFATS implementation centers on developing viable partnerships between government and facilities**

covered by the rule. Where does DHS currently stand with regard to building and forming partnerships with the CFATS community?

A senior ISCD official told us that ISCD has recently reinvigorated its outreach to industry as part of the action plan that accompanied the internal memorandum. This could be important to the success of the program. We intend to examine ISCD's process for gathering and reviewing facility information, as well as ISCD's efforts to work with industry, during the second phase of our work on mission-related issues. We expect to report on the results of this work in the spring of 2013.

5. **Many of the issues discussed in the action plan cut across IP components. These issues include the management of Administratively Uncontrollable Overtime, the location of field offices, the use of vehicles and purchase cards, and the management of travel among IP field staff.**

   a. **To what extent is NPPD looking to consolidate the management of these issues to avoid inconsistencies?**

      NPPD is in the process of consolidating management for some administrative activities at the NPPD-level. For example, NPPD officials told us that they were developing a guidance document that is intended to make the use of administratively uncontrollable overtime more consistent throughout NPPD. Also, NPPD is in the process of finalizing a NPPD-wide fleet management standard operating procedure that is intended to standardize vehicle use across NPPD. Furthermore, NPPD officials stated that NPPD is developing a field structure that is to consider the needs of all NPPD components, including ISCD and the Protective Security Coordination Division. However, these efforts are in various stages of implementation, and it's too early to tell whether they will result in improved management of these administrative functions or avoid inconsistencies.

   b. **What challenges does NPPD face developing a consistent way to manage these functions across components and what can NPPD do to overcome any challenges?**

      NPPD faces challenges overseeing a diverse group of components, including IP, the Office of Cybersecurity and Communications, and the Federal Protective Service. Furthermore, some organizations within these components have diverse missions and responsibilities. For example, IP houses ISCD which has regulatory responsibility with regard to the security of high-risk chemical facilities and also houses the Protective Security Coordination Division, which manages DHS's voluntary critical infrastructure protection programs. Efforts to consolidate some administrative activities across components could help NPPD better manage these activities but it remains to be seen the extent to which NPPD is successful in doing so. It will be important for

NPPD to monitor the results of its consolidation initiatives once implemented to help ensure intended outcomes are achieved.

c. **Based on your work, does it appear that NPPD and IP are taking adequate steps to provide the support ISCD needs to address management and administrative issues?**

NPPD, IP, and ISCD officials are meeting regularly to discuss the challenges highlighted in the ISCD internal memorandum and are working together to develop solutions. In addition, according to officials, IP plans to co-locate one of its staff with ISCD to facilitate hiring of ISCD staff; accelerate the hiring process; and help keep ISCD hiring on track.

6. **You have recommended that DHS explore opportunities to develop performance measures associated with the action plan, where practical.**

a. **Why are performance measures important?**

By developing performance measures, managers in departments and agencies and their components, like ISCD, can be better positioned to identify any gaps in their efforts to enhance performance and have the tools available to measure and monitor performance in the future. Performance measures also provide a framework for providing continuity of operations when new managers or staff are hired, managers move from position to position, or as the program changes—a key factor in some of the challenges facing ISCD. Furthermore, having performance measures better equips organizations, like ISCD, to inform stakeholders of their progress as their organization moves toward addressing problems or issues, and managing for results. Moreover, measuring results associated with particular action items would be consistent with *Standards for Internal Control in the Federal Government*, which calls for the establishment and review of performance measures and indicators to monitor activities and compare actual performance with planned or expected results throughout the organization and analyze significant differences.

b. **What is the value of developing performance measures now, as opposed to after the action plan is complete, as suggested by DHS?**

Having performance measures in place as the action plan is being implemented would help provide DHS with information on how well the processes it is putting in place as part of the action plan are working, and whether corrective actions or adjustments are needed to keep the organization on track with achieving its goals. As such, it would serve DHS well to develop performance measures as elements of the action plan are completed, rather than waiting until the entire action plan is complete, which may be some time away.

c. What types of things do you think that DHS should measure?

ISCD performance measures would allow ISCD to link an action from the action plan to longer term programmatic improvements. For example, one action item calls for ISCD to identify and develop an appropriate IT platform in support of inspection activities. As ISCD begins to develop the platform, it could build in ways to measure its progress developing the platform as well as the platform's functionality in meeting user's needs. Another action item calls for ISCD to "revise the Chemical Security Assessment Tool (CSAT) to create a more efficient and effective tool for both industry and ISCD based on industry engagement." As the revision to the CSAT begins, ISCD could develop measures to compare the old tool to the new tool including actions it has taken to make the tool more efficient and effective. For example, ISCD could develop measures to determine if the length of time to complete each part of the tool is reduced from both the perspective of the facility (when completing the tool) and ISCD (when reviewing the information the facility provides via the tool).