VERBAL COMMENTS

Before the
Chemical Facility Safety and Security Working Group

January 8, 2014
Good afternoon, my name is Tim Shestek and I am speaking on behalf of the American Chemistry Council. Our member companies have worked hard to develop a culture that has put our industry at the forefront when it comes to safety. We have made it clear that we want to work with all of the agencies in the Working Group, to help ensure the President’s Executive Order improves the effectiveness of the myriad of federal programs in place that govern the safety of chemical facilities.

Many of the proposed changes identified in the recently released Executive Order 13650 Section 6(a) Preliminary Options for Improving Chemical Safety and Security report could have a profound effect on how employers throughout the country operate on a day-to-day basis. We have appreciated the opportunity to offer our expert views regarding this EO through previous stakeholder sessions and will be submitting detailed written comments.

We are encouraged to see that the Working Group is considering some of the concepts we have recommended, including opportunities to improve the interaction of existing regulatory programs, leverage industry programs, identify outlier facilities and create better mechanisms for sharing information with communities and first responders.

We are concerned with some of the options that the Working Group is looking to possibly pursue, and I would like focus my comments on addressing several of them.

**Inherently Safer Alternatives (IST)**

ACC believes that a regulatory approach focusing on inherently safer alternatives would be counterproductive to the overall goal of the Presidential Executive Order. The current performance based regulations in place today and best practices provide strong incentives for companies to consider and adopt IST measures where feasible. These programs allow facility operators to look at all of the risk management tools and options at their disposal, while considering the complexities of their unique operating environment. Adding a regulatory requirement that specifically addresses IST is unnecessary, and would create
regulatory confusion and further stretch agency and facility management resources.

Furthermore, no one Agency or regulatory program addresses the holistic aspect of the safety risk environment of a given chemical operation. And no one Agency can fully appreciate or regulate the entirety of a facility’s operational risk and potential impacts to the supply chain, the surrounding community and the surrounding environment. Changes in process can have severe and detrimental impacts downstream or in other parts of the supply chain. Generally, substituting one chemical for another in manufacturing an end product will always involve tradeoffs that could potentially impact public health and safety. For example, chemical substitution generally requires that higher volumes be shipped and used thus increasing the transportation, storage and loading risks in the community and require more energy to manufacture the end product thus generating more waste streams and air pollution, including greenhouse gases. This is truly a case where, there is no such thing as a free lunch.

**Safety Case**

ACC recently submitted formal comments to the Chemical Safety Board (CSB) in response to the Chevron Richmond Refinery Regulatory Report to the State of California. While ACC shares the CSB’s mission in preventing chemical accidents and improving safety practices through root cause investigations of chemical accidents at fixed industrial facilities, ACC has a number of concerns about the recommendations outlined in the CSB Report regarding the establishment of a safety management regulatory framework based on “safety case” principles. In particular, ACC believes that its members, through OSHA’s current Process Safety Management (PSM) standard and voluntary programs such as Responsible Care®, already address the continuous improvement goals detailed in the CSB Report. ACC further believes that the recommended safety case regulatory regime is not justified by the reasons articulated in the CSB Report, nor would the safety case framework actually achieve the desired results and benefits for covered workplaces. It also represents a drastic and unnecessary change in policy from the current regulatory framework governing process safety and would create
significant practical problems as well as legal issues without any corresponding benefit in workplace safety. As outlined in our formal comments, ACC believes that certain recommendations in the CSB report ultimately would detract from worker safety and create an atmosphere of uncertainty and confusion for employers and regulators alike.

**Reactives**

A 2002 CSB study on reactives concluded in its recommendations that “Using lists of chemicals is an inadequate approach for regulatory coverage of reactive hazards.” However, in spite of this observation, CSB continues to push both OSHA and EPA to modify the PSM and Risk Management Plan (RMP) regulations to cover reactive hazards. Improving reactive hazard management requires that both regulators and industry address the hazards from combinations of chemicals and process-specific conditions rather than focus exclusively on the inherent properties of individual chemicals. As the PSM rule is essentially a list-based rule, ACC believes that this statement is as true today as when it was published by CSB in 2002, and that there has been no new data in the intervening 12 years to contradict this conclusion.

ACC recommends that OSHA focus on only compounds that are strongly self-reactive, or react violently with air and or water be considered for addition to the list of PSM chemicals, and then only if actual incident data are sufficient to justify the need for reopening and amending the PSM chemical list.

Thank you for the opportunity to present these comments.