

US Senate, Committee on Homeland Security and Government Affairs

Roundtable: Examining the Chemical Facility Anti-Terrorism Standards (CFATS) Program

Statement by Bill Erny on behalf of the American Chemistry Council

10:00 am June 12, 2018, SD-106 Dirksen Senate Office Building

The American Chemistry Council (ACC) represents the major chemical producers across the United States, including a diverse set of small and medium-sized companies engaged in the business of chemistry. ACC members make and enhance products that are critical to the everyday health and welfare of our Nation. Because of our critical role in the U.S. economy, and our responsibility to employees and our communities, chemical security is a top priority for ACC and our members.

The business of chemistry is a \$768 billion enterprise and growing; providing roughly 800,000 skilled and good-paying American jobs. Today, the industry is experiencing a renaissance in the United States thanks in large part to the growth in domestic shale gas production. In fact, ACC has identified over 300 new capital investment projects currently underway across the United States, worth over \$185 billion in economic growth and adding thousands of new jobs. Ensuring that clear and workable programs such as CFATS remain in place is critical to establishing the stable regulatory environment needed that will help foster additional investments in expanding U.S. operations.

This year marks the 30th anniversary of the ACC's **Responsible Care® Program**, the leading chemical industry stewardship initiative. Shortly after 9/11, ACC added the Security Code, a comprehensive security management system. Implementation of Responsible Care and the Security Code is mandatory for all members of the ACC. The program has enjoyed great success over the years and is a terrific complement to CFATS and other safety and regulatory programs. ACC members have invested more than \$17 billion under the Security Code to further enhance their security. The Security Code has become a gold standard for the industry, is international in scope and serves as a model for regulatory programs.

ACC supports long-term reauthorization of the DHS CFATS Program. Over the past four years, DHS' efforts have had a positive impact on enhancing security at chemical facilities. Several factors have led to the recent success of CFATS, including better site inspections, improved training of DHS headquarters and inspection staff and a more streamlined authorization process. Most importantly, DHS leadership has demonstrated a commitment to working with members of the regulated community to improve implementation of the CFATS program.

While DHS has made considerable strides to improve CFATS, we have 3 major recommendations for enhancements to the program:

1. Improve Transparency in DHS risk determinations.

DHS should be more transparent with regulated facilities regarding risk tiering determinations and what actions the Agency may take to further mitigate risk. Often times the facility security director - the very person with the overall responsibility and authority

for making critical security risk management decisions for the site - is not aware of the determining factor(s) behind the assigned risk tier level;. DHS should provide a detailed explanation as to why a facility is being tiered at a certain level.

2. Eliminate the requirement for TSDB Screening at lower risk facilities.

Over the past year, DHS has been implementing the terrorist screening portion of the CFATS PSP or personnel surety program (RBPS 12(iv)) at all Tier 1 and Tier 2 high-risk facilities (around 200 sites). This process requires the facility to collect, manage and protect sensitive personal identifying information on employees and contractors and send that information to DHS for vetting against the Terrorist Screening Database (TSDB).

DHS is planning to extend this program to an additional 3,000 lower risk Tiers 3 and 4 facilities, involving tens of thousands of employees and contractors and their personal information. ACC is concerned that such an expansion of the PSP program is unnecessary and will needlessly put personal employee information at risk. ACC believes the benefit associated with TSDB vetting is simply not worth the cost or the risk. While we support TSDB vetting at high risk Tier 1 and 2 facilities, ACC recommends elimination of this requirement for lower risk Tiers 3 and 4 facilities, or could be an option for those who choose to participate.

3. Establish a CFATS Recognition Program

DHS should leverage chemical industry stewardship programs, such as ACC's Responsible Care Security Code, with the goal of further enhancing the safety and security of hazardous chemicals across the Nation. Under CFATS, DHS can provide regulatory recognition for responsible operators that demonstrate superior performance and who exceed regulatory compliance. Such a program would incentivize the implementation of existing industry stewardship programs – and the creation of new ones where necessary -- thus enhancing chemical security across the sector and beyond the universe of CFATS regulated facilities.

CFATS has helped make our industry and our communities safer and more secure. We hope that in considering long-term reauthorization of the program, this Committee will consider ACC's recommendations and supply the needed regulatory certainty and stability for companies to continue to make prudent risk management decisions and investments. ACC and its members encourage you to support this important program and take CFATS to the next level, while continuing to provide effective Congressional oversight and guidance.