



**Statement of  
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**before the**

**United States House of Representatives  
Energy and Commerce Committee's Subcommittee on  
Environment and Hazardous Materials**

**“Legislative Hearing on H.R. 5533, the Chemical  
Facilities Act of 2008, and H.R. 5577, the Chemical  
Facility Anti-Terrorism Act of 2008.”**

**June 12, 2008**

Madame Chairwoman, Ranking Member Shadegg, and Members of the Committee, my name is Marty Durbin, and I am the Managing Director of Federal Affairs for the American Chemistry Council (ACC). Thank you for this opportunity to speak today on behalf of the Council's members on the important subject of security in the business of chemistry, a critical sector of America's infrastructure.

My testimony today will highlight several key points:

1. The chemical industry, a crucial part of the nation's infrastructure, is essential to America's economy and security. Through our extended value chain of customers and intermediary chemical users, we are deeply integrated into American life.
2. Security has long been a top priority for our industry. Following 9/11, our members initiated ACC's mandatory Responsible Care Security Code<sup>®</sup> to enhance security at their facilities.
3. Since passage of chemical security legislation in 2006 – legislation ACC strongly supported – the Department of Homeland Security (DHS) has moved swiftly to set meaningful, risk-based standards, and along with our industry partners, ACC members are working hard to implement the new regulatory requirements.
4. Both Congress and DHS have a crucial role in ensuring security – in particular, we ask Congress to ensure that DHS has the resources required to do its job in all aspects of national security.
5. Provide ACC's view on pending chemical security legislation.

## **1. American Chemistry is Essential**

ACC represents 140 leading companies in the U.S. chemical manufacturing responsible for approximately 90 percent of basic industrial chemical production. This sector of our economy employs nearly one million people in America, produces 21 percent of the world's chemicals, and is the largest private industry investor in research and

development at \$27 billion annually. Not surprisingly, we generate nearly 10 percent of all U.S. patents.

ACC member companies manufacture essential products critical to homeland security and everyday items that keep the economy moving. Over 96% of all manufactured goods are directly touched by the business of chemistry. Our members provide the chemistry that is used to produce life saving medications and medical devices, body armor used by our military and law enforcement officers, de-icing fluids for airplanes, energy saving solar panels, and so much more.

In addition, our members make products that are critical to many aspects of American life, including keeping our drinking water safe, supporting agriculture, and spurring medical innovations that prevent and treat disease. I am pleased to note that September will mark the 100<sup>th</sup> anniversary of the use of chlorine to treat drinking water – a step hailed by *Life* magazine as “the greatest public health achievement of the 20<sup>th</sup> Century.” Harvard University research suggests that, in the early 20th century, drinking water filtration and chlorination reduced typhoid fever death rates by more than 90 percent and childhood mortality by more than 50 percent in major U.S. cities.

Because of the long list of benefits chemicals provide to society, DHS identified the chemical sector as a part of the nation’s critical infrastructure, a national asset that needs to be protected from terrorism.

It is important to remember that the members of ACC do not represent the entire universe of facilities that use or store chemicals. Rather, our members provide chemicals that are used as raw materials or in processes that are vital for auto companies, farms, pharmaceutical and medical device manufacturers, electric utility companies, laboratories, and many others.

## 2. Security And Safety Are The Top Priorities for ACC Members

Security has long been a priority for ACC members and the chemical sector. In 2001, our members agreed to adopt an aggressive security program that became the Responsible Care<sup>®</sup> Security Code. It is part of the overall Responsible Care initiative which is ACC's signature program of ethical principles and management systems designed to continuously improve our members' safety, health and environmental performance – as well as their security performance.

Implementation of Responsible Care is mandatory for all members of the American Chemistry Council, as well as for Responsible Care Partner companies, who represent chemical transporters, distributors, warehouses, logistics planners and others along the supply/value chain. In developing the Security Code, we consulted closely with first responders and government agencies at all levels.

The Security Code requires member companies to:

- Prioritize their sites by degree of risk, sorting them into four tiers.
- Thoroughly assess vulnerabilities, using rigorous methodologies developed by Sandia National Labs and the Center for Chemical Process Safety (CCPS), a program of the American Institute of Chemical Engineers (AIChE).
- Implement security enhancements commensurate with risks, taking into account inherently safer approaches, engineering and administrative controls, and other security, prevention and mitigation measures.
- Verify the implementation of these physical security measures, using third parties that are credible with the local community, such as first responders or law enforcement officials.

ACC members are required to conduct an annual review of their security implementation activities and report their status to ACC. In addition, all ACC members are required to obtain certification to the ACC approved management system framework, RCMS<sup>®</sup> or RC

14001<sup>®</sup> (RC14001 includes the entirety of ISO 14001). Both systems require an assessment of security risks; implementation of protective measures at facilities; and evaluation and protection of products throughout a company's value chain. Certification to the management system is conducted by independent third party auditors who are credentialed by the Board of Environmental Health and Safety Auditor Certification (BEAC) or RABQSA International.

The Security Code also covers the crucial area of cyber security, to protect our highly automated operations from being attacked electronically. Here again, the efforts of ACC members provide a model to other industries employing similar automated systems.

The Code has won praise from Congress, senior DHS officials, and the media. Its risk-based provisions served as model for state and local programs in Maryland, New Jersey and New York. And, it is important to note that many non-ACC members have taken aggressive action to enhance security at their facilities through similar industry programs.

### **3. DHS Is Moving Aggressively and Chemical Facilities Are Moving Quickly to Comply.**

After six years of debate, Congress enacted Section 550 of the FY07 DHS Appropriations Act,<sup>1</sup> the law that authorized the new Chemical Facility Anti-terrorism Standards (CFATS).<sup>2</sup> Under a spotlight of public scrutiny and Congressional oversight, DHS and chemical facilities are acting swiftly to implement this groundbreaking program.

While this program shares elements with the programs established by several states, the CFATS program is, by far, more comprehensive and demanding. So, although ACC member company facilities have already invested more than \$6 billion to enhance security through the ACC Responsible Care<sup>®</sup> Security Code, the DHS rules leave little doubt that more action will be required at facilities that are deemed high risk. In fact,

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<sup>1</sup> Pub. L. No. 109-295, § 550 (2006).

<sup>2</sup> 6 C.F.R. Part 27, 72 Fed. Reg. 17688 (April 9, 2007), 65396 (Nov. 20, 2007).

DHS anticipates more than \$8 billion will be needed to implement CFATS over the first eight years of the program.

DHS has successfully issued comprehensive security regulations that have required more than 50,000 facilities nationwide to complete a risk-based screening assessment, known as “Top-Screen”. Through informed decisions based upon Top-Screen, DHS will now prioritize thousands of facilities that will have to comply with chemical security standards under CFATS.

Throughout 2008, these priority facilities will be required to assess their vulnerabilities, develop site security plans and minimize and implement layered security measures. DHS will inspect regulated facilities and evaluate security enhancements against stringent performance based standards. Fines and facility shutdowns will await those who do not comply.

#### **4. What The Chemical Sector Needs From Congress and DHS**

While DHS has gotten off to a solid start, there is a crucial role for Congress. For example:

##### Provide Adequate Funding to Support Full Implementation of the CFATS Requirements

While CFATS requires considerable action from chemical facilities in a short period of time, it also will place enormous burdens on DHS to implement the rules. DHS personnel will be required to conduct reviews of site-specific vulnerability information and site security plans, and to make site visits at each regulated facility. This will include assessing how each facility has addressed the applicable risk-based performance standards for facilities in its risk tier – a complex, site-specific, judgmental task.

We think implementation of CFATS requirements necessitates a significant increase of staffing resources. While DHS staff has demonstrated outstanding commitment and

effort to date, we urge Congress to provide the agency with the necessary resources to handle the workload and to ensure that chemical facility security is properly implemented in a timely manner.

#### Allow DHS Enough Time to Do the Job Congress Has Given It

Within weeks, thousands of facilities will receive letters outlining their specific requirements for completing vulnerability assessments and setting a schedule for completion of these assessments. Facilities will draft site-specific security plans. The plans will outline security enhancements to be implemented based on 19 stringent performance metrics. Plans for the highest risk sites are due later this year and remaining plans should be submitted to DHS before the end of next year. Thus, the rules provide a clear path for completion of requirements on an aggressive timetable, including inspections and a review process that requires sites to revisit their situation and assess whether any changes to their security plans are required.

In our view, therefore, while we understand the program will need to be reauthorized, and support making the program permanent, we believe Congress should allow the program to be fully implemented before making any significant, substantive changes.

#### **5. ACC Comments on Pending Legislation**

ACC supports a risk-based program applied even-handedly across the board. We know some have questioned whether Congress should have included other categories of facilities in the regulatory program. Let me be clear, ACC did not seek or support any carve-outs under CFATS for our facilities or our products, or anyone else's. Rather, we believe that any facilities Congress decides to include should be subject to the same comprehensive, risk-based security requirements developed through CFATS.

With HR 5577, Chairman Thompson and his Homeland Security Committee took an important first step to provide a permanent framework for chemical facility security regulations. ACC clearly supports that goal. We're pleased to see the bill reflect many of

the security measures that will be implemented under CFATS, and we appreciate the efforts made to minimize duplication of effort by facilities that have already acted or will take further action under the program.

However, we remain concerned regarding a provision in the bill that would grant DHS authority to override chemical engineers, process safety experts and industry security officials when it comes to decisions regarding changes to chemical processes. In our view, CFATS takes the right approach by helping facilities identify potential security enhancements – including “methods to reduce consequences” or “inherently safer” approaches – through the vulnerability assessment. The rules then encourage implementation of appropriate security enhancements by providing an opportunity to move your facility to a lower-risk tier, thereby potentially reducing your regulatory requirements. Importantly, this allows decisions regarding chemical processes in the hands of safety, security, and engineering experts at the facility.

Any notion that companies will automatically avoid making such changes should be dismissed. We have the greatest interest in the safety of our employees, our facilities, and the communities in which we operate. In fact, I’m proud to say ACC member companies achieved an employee safety record more than four times safer than the average of the U.S. manufacturing sector. So, being innovative in our operations is not only good for safety and security, it’s good for business.

Congress, therefore, should not abandon a strategy to enhance security that employs performance-based security standards by pursuing provisions that try to mandate innovation. The current approach allows DHS to unleash the ingenuity, expertise and resources of the chemical sector while allowing DHS to focus on enforcing security standards based on a multitude of specific terrorist threat scenarios.

Turning to HR 5533, we believe it provides permanence, predictability and consistency to the current CFATS program. However, we do have concerns regarding the approach the bill takes in regard to federal preemption.



DHS, in furtherance of its mission to ensure security to the homeland, has struck a necessary and reasonable balance on possible preemption of state and local laws by following precedent set by existing national security laws for aviation, rail and port security. In fact, Congress continued to support this level of federal protection on national security issues through legislation enacted last year addressing rail security. There is no compelling reason to treat the security of critical chemical facilities differently, and lessen the predictability and consistency of the CFATS program.

### **In Conclusion**

At the direction of Congress, DHS acted quickly and has developed a comprehensive, stringent regulatory program to protect our nation's chemical facilities. Congress can ensure the program continues and thrives.

I hope Members will agree that our first priority should be to enhance security at sites nationwide as soon as practicable. CFATS is meeting this priority. Give DHS and the industry enough time to implement the current program and then determine what gaps remain. Congress will have the assurance that nationwide, the security at chemical facilities will have been significantly upgraded during the process. Members will also have the benefit of seeing what works in the program and what needs to be enhanced.

The crucial partnership between our industry and the federal government requires each of us to do our part. ACC and its member companies are our committed to safeguarding America's chemical facilities, and will continue to work with Congress and DHS in that spirit.

## ACC Testimony

### Summary

- The chemical industry is a critical part of our nation's infrastructure, essential to the national economy and security.
- Security has long been a priority for the chemical industry, and ACC members initiated a mandatory security program for its members immediately following September 11, 2001. The Responsible Care Security Code has been used as a model for security programs at all levels of government, and ACC members have invested more than \$6 billion further enhancing security at more than 2000 facilities since 9/11.
- Since passage of legislation in 2006 establishing the Chemical Facility Anti-Terrorism Standards (CFATS) – legislation strongly supported by ACC – DHS has moved swiftly to set stringent, risk-based security standards. Industry is working hard and DHS is making significant progress toward implementing the new regulatory requirements.
- Congress should make CFATS permanent. Prior to Congress making significant, substantive changes to CFATS, however, ACC believes Congress should give DHS both the time and resources necessary to complete the job it was given.
- HR 5577 took an important first step to provide a permanent framework for chemical facility security, but we remain concerned over a provision that allows DHS to override chemical engineers, process safety experts and security professionals regarding changes to chemical processes.
- HR 5533 provides permanence, predictability and consistency to the CFATS program, but we are concerned about its approach to preemption. We believe legislation should follow the precedent set by existing national security laws for aviation, rail and port security.