

Before the

**SUBCOMMITTEE ON TRANSPORTATION SECURITY AND
INFRASTRUCTURE PROTECTION
OF THE
COMMITTEE ON HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES**

Statement of

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On

**Chemical Security -- A Rising Concern for America: Examination of the Department's
Security Regulations and its Effect on the Public and Private Sector**

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Introduction

Chairwoman Jackson Lee, ranking member Lungren and members of the Subcommittee, my name is Timothy J. Scott, and I am the Chief Security Officer and Global Director of Emergency Services and Security for The Dow Chemical Company -- the world's largest chemical and plastics company. In addition to my corporate roles, I am the site leader for Emergency Services and Security at Dow's Texas Operations in Freeport, Texas -- our company's largest manufacturing facility and one of the largest petrochemical complexes in the world. I also serve as the vice chairman of the Chemical Sector Coordinating Council (CSCC) working with the Department of Homeland Security (DHS) and a member of the National Maritime Security Advisory Committee for the U.S Coast Guard. Today, I am speaking on behalf of The Dow Chemical Company.

I want to thank Congress for giving DHS the necessary authority to regulate the security of our sector. The Subcommittee should be commended for holding today's hearing on chemical security regulations and their impact on the public and private sector. This is a subject that is of extreme importance to our nation, and I'm pleased to be able to share Dow's experience in security as well as continue to serve as a resource and partner to the federal government on this important issue.

Dow has taken an aggressive leadership role driving voluntary initiatives across the industry and has been a leading proponent for risk-based security regulations for chemical facilities. We are actively engaging in partnerships on security, emergency response and information sharing with federal, state, local and international governments as well as with other private entities and stakeholders.

For Dow, this is a world-wide responsibility every day. In the United States, we have over 21,000 employees at 45 sites. Half of our employees are in the U.S. In total, we are 42,000 employees, neighbors and community leaders from 400 different geographic regions around the world. We have about 200 manufacturing sites in 38 countries that supply more than 3,200 products to customers in 175 nations. The Journal of Commerce has ranked Dow as the nation's 7th largest exporter. Dow's products are essential to every aspect of the daily lives of each and every American, and the chemical sector as a whole is not only a part of our country's critical infrastructure, but a basic building block for each of the other sectors.

The three key points I would like Subcommittee members to take away from my remarks are:

- 1.) We must take a comprehensive, uniform and risk-based approach to protect the people and communities of our nation as well as our nation's critical infrastructure.
- 2.) Effective protection of critical infrastructure can only be achieved through government-public-private partnerships to ensure our nation's security while maintaining the flow of commerce for a vibrant and growing economy.
- 3.) While long-term authority for DHS to regulate chemical security is still required and some

issues remain, the Chemical Facility Anti-terrorism Standards (CFATS) are a significant step forward in ensuring all chemical facilities meet the same risk-based performance standards for security.

An Integrated Approach to Chemical Industry Security

Our commitment to leadership in safety and security did not start on 9/11. In 1985 Dow formalized its long-standing effort to provide ongoing training, awareness and support to local emergency responders and communities with the implementation of the Community Awareness and Emergency Response (CAER) program. In 1986, TransCAER was created by Dow in partnership with Union Pacific Railroad to help ensure training and awareness to communities and local responders along Dow/Union Pacific transportation routes. Later this year - in a renewal of that partnership - we are launching a TransCAER community training tour that will make 28 stops over 74 days in California, and from Texas to Louisiana to Chicago along Union Pacific rail lines.

In 1988 Dow developed a comprehensive, multi-level global security plan — a plan the company implemented during the first Gulf War and later on 9/11. Shortly after these tragic attacks, Dow helped the American Chemistry Council (ACC) draft the ACC Responsible Care® Security Code of Management Practices - a voluntary initiative by leading chemical manufacturers to set the industry standard for handling security. Through Dow's voluntary global implementation of the Security Code, we permanently heightened our security preparedness by investing hundreds of millions of dollars in risk-based security upgrades since 9/11 — not just in the United States, but worldwide – the only company to do so on a global level. Dow's efforts have been approved by the U.S. Coast Guard as meeting the requirements of the Maritime Transportation Security Act (“MTSA”) at the 12 U.S. integrated sites; and Dow sites in a dozen countries outside the United States have leveraged their Responsible Care Security Programs to demonstrate compliance with the International Maritime Organization's (IMO) International Ship and Port Facility Security Code.

Last year, Dow formed an Independent Advisory Panel of distinguished experts around the world from disciplines including physical security, manufacturing process safety, transportation and supply chain security, emergency response, and crisis management. This panel, chaired by the Honorable Lee Hamilton, was organized by Dow for an independent review of our efforts and visited Dow sites around the world and received an unprecedented inside look at the way Dow conducts its security business.

Our approach to Chemical Facility and Site Security

Dow's security program incorporates measures focused to detect, deter, delay and to respond to intrusions at Dow's facilities. Dow's security program includes: intelligence gathering through various private and governmental resources to assess risk, Security Vulnerability Assessments (SVA's) to assess vulnerability based on that risk, security plans to address risk, and appropriate security processes to secure our assets – people, property, proprietary information and cyber systems. Emergency preparedness, response services, and community outreach, are the final pieces to our integrated site security processes – and this integrated

approach is embedded across our enterprise — in site and facility security, personnel security, supply chain security, information/cyber security and emergency response. This approach has also led to improved security awareness for our employees and communities as well as integrated response planning within the company and surrounding area.

Dow's vulnerability assessments are conducted by a team of security, process safety, and operations professionals to take a total approach — ensuring all aspects of security and safety are evaluated to identify and reduce vulnerabilities at our facilities. As a result of site vulnerability assessments, we've made physical improvements that are visible (such as fencing, access control, vehicle barricades and increased patrols), some that are more covert such as electronic monitoring, alarms and video surveillance, and we've taken steps to implement inherently safer approaches -- to change the way our products are manufactured, stored or transported to reduce risk.

Employees and others working on Dow sites, as well as the general public in the community around Dow sites are an essential element of our integrated security process – often acting as our first layer of security by reporting suspicious or unusual activity in the community our near the site perimeter. Dow has in place a site-by-site Emergency Services and Security call-in line and dispatch service for employees and contractors, local community call-in numbers and an 800 number for use by these same people or the general public from anywhere in the U.S., a global ethics helpline through which employees and concerned parties can report any observed or suspected violation of law or Dow Policies, as well as security issues or suspicious situations or persons. Callers to the Dow EthicsLine have the option to remain anonymous if they prefer. Both security awareness training and ethics training are conducted for all employees on an annual basis, and drills are required of all Dow plants and sites on a regular basis, with at least 25% of those site drills being based on a security scenario and quarterly drills involving various segments of the community and local responders. To maintain regular open communications each Dow site has active Community Advisory Panels (CAPs) and Employee Communications Advisory Panels (ECAPs) to address community and employee questions and communication needs.

As the partnership with various agencies matured and communication improved, a second round of Dow SVAs and additional upgrades were initiated around the world in 2005. Dow's program also includes an ongoing audit process to ensure the services and systems are maintained, updated and implemented appropriately.

Our Approach to Supply Chain Security

Securing complex supply chains requires collaboration between manufacturers, transportation service providers, customers and governments. As a manufacturer and shipper, Dow is responsible for providing materials in a safe container that will meet the rigors of transportation. It's the transportation service provider's responsibility to safely and securely move materials from our location to the destination. Finally, government provides the appropriate regulatory environment to help ensure the safe and secure transportation of vital materials. Because of this shared responsibility, it's essential that we partner with everyone

across Dow's supply chain as well as government agencies at all levels to evaluate vulnerabilities continuously and ensure that safeguards are in place.

Dow also has developed a comprehensive risk management system to ensure the safe and secure distribution of its raw materials, intermediates and products worldwide. Dow has implemented a comprehensive process for conducting reviews, audits and assessments of Dow and supply chain partner operations. Our Distribution Risk Review process also dates back to pre-9/11 times.

We have implemented a number of programs to reduce inventories and the amount of high hazard material we have to ship, we require security seals on shipping containers, and have programs in place to ensure background checks for transportation workers.

Our Approach to Cybersecurity

Dow has developed a company-wide cybersecurity management plan that includes incident management and business continuity, completed a comprehensive cyber security risk analysis based on the ISO information security standard (ISO/IEC17799), and integrated cyber and information security into our site vulnerability assessments.

Dow fully recognizes that cyber security is an integral part of overall security, and has helped integrate cybersecurity into chemical sector security programs such as the Responsible Care Security Code. In addition, Dow helped form the Chemical Sector Cyber Security Program to establish management practices and guidance to support overall chemical industry cybersecurity. Dow is committed to information security as an integrated approach to security.

Effective Government-Public-Private Partnerships

Dow has always embraced the partnership approach with DHS and many other governmental agencies. On the security front we work closely with almost every federal agency that has some homeland security role, including the Department of Transportation, Transportation Security Administration, Food and Drug Administration, Federal Bureau of Investigations, Federal Emergency Management Agency, Environmental Protection Agency, as well as state and local agencies and emergency responders. We strongly believe that coordination on all levels between public and private sectors is vital to protect critical infrastructure and effectively implement risk-based security programs.

Dow has worked closely with U.S. Sandia National Laboratories to refine the security vulnerability assessment methodology we use today for our internal security vulnerability assessments and have piloted DHS's RAMCAP risk assessment methodology. Dow will continue to provide information and expertise – directly, and through the various industry associations or the Chemical Sector Coordinating Council.

Dow is working closely with our supply chain partners – the Federal Railroad Administration, Transport Canada, Union Pacific Railroad and Union Tank Car -- in developing the Next Generation Rail Tank Car that takes into account new security scenarios, improving

safety performance, and utilizing track-and-trace technology. The U.S. Senate recently appropriated an additional \$3 million in FY 2008 for the FRA to conduct additional baseline testing of existing rail tank cars and the evaluation of an advanced tank car design and a prototype of a safer rail tank car.

Dow was one of the first chemical companies to work with U.S Customs and Border Protection (CBP) to implement their Customs-Trade Partnership Against Terrorism (C-TPAT) security initiative. C-TPAT is a joint government-business initiative to strengthen overall supply chain and border security. Dow has been awarded the highest level of recognition and approval in the program. Only a fraction of all companies that have applied for membership in the C-TPAT program have achieved this premier (Tier Three) status.

The Chemical Facility Anti-terrorism Standards (CFATS)

Dow has continually advocated for uniform, national, risk-based performance standards for chemical facility security – allowing the chemical facility to reduce the vulnerability by using the appropriate combination of tools for that site including physical security upgrades that could include one or more options such as additional deterrence and delay mechanisms, safety devices, stronger containment, impenetrable seals and well trained personnel; or to utilize inherently safer approaches through process improvements such as by reducing quantities in process or inventory, changing to safer materials and improving process designs.

Compliance with the new Chemical Facility Anti-terrorism Standards requires a great commitment of resources by the regulated community. However, Dow, to a great extent, has already assumed the burden and costs of security at its chemical facilities as part of its corporate responsibility. As a leader in chemical facility safety and security, Dow believes national standards enforced by DHS are necessary to elevate the security preparedness of all high risk chemical facilities in the U.S., regardless of the operator. We believe anyone or any facility that manufacturers, uses or possesses materials in hazardous quantities should be required to implement risk-based security measures.

Clear, strong, and consistent performance standards (as Congress has mandated for commercial aviation, nuclear power, or maritime commerce) must be applied uniformly to all facilities nationwide to ensure effective national security and oversight. Consistency is critical to our country's success in addressing the security of the chemical industry and our nation's critical infrastructure in general. Consistent risk-based performance-based regulations, standards and guidelines; consistent planning, integration and implementation of those plans from top to bottom, from the National Infrastructure Protection Plan (NIPP) to the state and local response organizations to the chemical industry site response team – bringing all the resources and plans together under an integrated incident management system.

DHS must work with all levels of federal, state, and local government to ensure that the performance goals are met, but without creating conflicting and competing programs on how a facility much achieve those goals. States have a critical role to play in protection of the homeland and we coordinate every day with state and local governments on emergency preparations, response, and environment health and safety.

Dow is also cognizant that states and localities may have unique security issues that may need to be addressed through State Law. For instance, because of geographical location or population density, a state may wish to add an additional risk-based performance standard that supplements, but does not conflict with, the DHS regulation. To ensure the national standard provided by Section 550 and the proposed rule will not be frustrated and that conflict will not occur, Dow believes that a coordinated effort between federal and state authorities is necessary, before such supplementary State Law is enacted.

Dow continues to support the Rule's underlying premise of establishing risk-based performance standards for the security of high-risk chemical facilities. Dow also supports the stated purpose of Appendix A and the Topscreen approach -- to be sufficiently inclusive of chemicals and quantities that might present a high level of risk without being overly inclusive and therefore capturing facilities which are unlikely to present a high level of risk. However, Dow is concerned that given the broad and expansive nature of the draft Appendix A list, thousands of relatively low risk facilities could be swept up by the Rule, thereby diluting DHS' resources and enforcement capacity and defeating the intended focus on "high risk" chemical facilities. DHS has indicated that it is working to revise this list to incorporate comments and feedback from the rulemaking process. It is our hope that the Department will address these specific concerns.

Finally, Dow has concerns regarding the impact of the sunset clause on DHS's authority to fully implement CFATS. For too long, Dow and other industry leaders have made significant voluntary investments to improve security and we've done a good job on our own. These new regulations go a long way in standardizing security requirements and ensuring that high risk chemical facilities have taken the necessary steps to evaluate risk and address vulnerabilities.

Conclusion

In closing, only through a comprehensive, uniform and risk-based approach can we protect the people and communities of our nation as well as our nation's critical chemical infrastructure. We are encouraged by the leadership of Congress and the continued partnership environment and drive to implement CFATS by DHS. We believe it is long overdue.

Thank you and I'd be happy to answer any questions.