

TESTIMONY OF
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BEFORE THE
House Committee on Homeland Security
Subcommittee on Cybersecurity, Infrastructure Protection and Security Technologies

REGARDING
“West Fertilizer, Off the Grid: The Problem of Unidentified Chemical Facilities”

August 1, 2013

Chairman McCaul, Ranking Member Thompson, and Subcommittee Chairman Meehan-Ranking Subcommittee Member Clarke, and members of the House Homeland Security Committee, Subcommittee on Cybersecurity, Infrastructure Protection and Security Technologies, than you for allowing the Texas Ag Industries Association (TAIA) the opportunity to testify today on “West Fertilizer, Off the Grid: The Problem of Unidentified Chemical Facilities.” Before I begin my testimony, I would like to extend my thoughts and prayers to my fellow Texans who have experienced such great loss as a result of the West, Texas explosion.

Texas Ag Industries Association’s membership is comprised of manufacturers, distributors, retail dealers, and allied companies involved in the sale of fertilizer, agriculture chemicals, and related services. TAIA’s mission statement is “to advocate, influence, educate, and provide services to support its members in their quest to foster a sustainable business environment while being productive stewards of agriculture.” TAIA has always worked with its industry members and nonmembers to help them with their compliance issues. For the last several years TAIA has been affiliated with the ASMARK® Institute. The ASMARK® Institute is a not-for-profit resource center that provides compliance materials and services, develops common sense solutions to new regulatory requirements and monitors enforcement. I have served as President of TAIA since 2003. Prior to coming to TAIA I worked for the Texas Department of Agriculture serving as Assistant Commissioner for the Pesticide Programs. Prior to the Texas Department of Agriculture I managed a farm and ranch retail business somewhat similar to the West Fertilizer Co. facility. I currently serve on the Texas Feed and Fertilizer Adviser Committee representing TAIA.

TAIA holds a minimum of five educational programs a year to keep our industry apprised of current practices and concerns in crop production, laws, regulations and environmental issues. It has always been a concern that we do not have more dealer participation at our educational

meetings. After surveying the dealer membership to find ways to improve participation, we found that many retail dealers cannot leave their business to attend an all-day meeting without closing the doors for an entire day. Small dealers also do not have additional employees to operate their business if they are not there. I believe this is also the problem we see with regulatory compliance issues. Small retail dealers may have one or two individuals that are trying to run a business and regulatory issues may not be their main concern each day in operating their facility nor are they always aware of the extensive list of regulations that pertain to their business. In contrast, distributors and manufacturers typically have designated employees whose only job is ensuring that they are in compliance with all the laws and regulations and that best management practices are implemented.

After the fire and explosion at West Fertilizer Co. our office was over whelmed with calls, first from the press wanting us to speculate on what caused the tragedy. Next came several calls from the manager at West Fertilizer Co. As you could imagine, he had a tremendous difficulty even talking about what happened that night. Being from a small town, he most likely knew every one of the individuals who perished in the explosion. On one of the calls he expressed his concern that the news was saying that West Fertilizer Co. was not registered with the U. S. Department of Homeland Security (DHS). He told me "I had the certificate hanging on my office wall that said we were registered to handle ammonium nitrate." I asked him if he was sure they had completed a top screen with DHS. He said that he had inspectors that came to his plant to check the security of ammonium nitrate and checked his sales records. I then realized he was referring to the inspectors from the Texas Feed and Fertilizer Control Service (TFFCS). The Texas Feed and Fertilizer control Service estimates that there are approximately 546 retail Dealers in the State of Texas, of which approximately 129 handle ammonium nitrate.

Texas Law provides, the Office of the State Chemist, whom Texas Feed and Fertilizer Control Service is under, with the responsibility for ensuring that facilities handling ammonium nitrate are able to secure the product at all times from theft and misused and that they have records of every sale. In addition to state laws, once Homeland Security finalizes the pending Ammonium nitrate Security Program they should know where every facility selling ammonium nitrate is located as this program will require anyone selling or purchasing ammonium nitrate to register with them. After the tragedy at West Fertilizer Co, TAIA mailed a letter to every fertilizer retail dealer in the state asking them to make sure they are in compliance with all the regulations that pertain to their operation. With the help of the ASMARK Institute, we were able to offer retail dealers access to ASMARK's Compliance Assessment Tool. The Compliance Assessment Tool assists retail dealers with identifying the specific activities in their businesses and the program provides them with a summary of their regulatory requirements and offers suggested best management practices. ASMARK also made the Compliance Assessment Tool available to retail dealers all across the U. S. through our national associations, The Fertilizer Institute and the Agricultural Retailers Association.

After sending the letter we received many calls from retail dealers which led us to discover that the confusion between registering with DHS and the Texas Feed and Fertilizer Control service was very prevalent. The first question I asked was "Do you handle ammonium nitrate and if so are you registered with DHS?" We have worked with several retail dealers to help them register with Homeland Security and I have several more requests for help on my desk. One of the big problems we have run into with getting retail dealers registered is the requirement that they must have a secure email address. Many of the retail dealers use email address such as hotmail, gmail, AOL, godaddy or others that are not considered "secure." The retail dealers also have to be able to identify the longitude and latitude location of their businesses. The top screen registration offers a program to help find the location, but many times these coordinates are not correct or not accepted by the program. The majority of the registration attempts we have helped with are over the phone. Many of the retail dealer's computer skills are limited and they become very frustrated and ask to quit or have to quit the registration process to set up a new email address or find out why the program is not taking their coordinates. Even though ammonium nitrate is an East Texas fertilizer and very little is used west of Interstate 35, the area is simply too big to allow my travel to help each individual retail dealer that has problems registering.

The situations I have outlined I do not believe are unique to Texas. There are many, many small retail dealers like West Fertilizer Co. throughout the U. S. One suggestion I would have is that DHS work with its local inspectors, the state fertilizer control officials such as the Texas Feed and Fertilizer Control Service, and through state associations such as TAIA, to come up with a process to help these small facilities.

Several of the retail dealers have chosen to use the ASMARK Institute's compliance services, many will use their insurance company; and some will try to do it on their own. Whatever way they choose, TAIA will continue to work with the agricultural industries in Texas to help them comply with their regulatory requirements. Again I thank you for the invitation to testify at this hearing. I will be glad to answer any questions you may have.