

Written Statement of

**Timothy J. Scott
Chief Security Officer and Corporate Director
Emergency Services and Security
The Dow Chemical Company**

Representing

The American Chemistry Council

To the

**United States House of Representatives
Committee on Homeland Security**

On

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

**Oversight Hearing on Thursday, August 1, 2013
10:00 a.m., 311 Cannon House Office Building**

Introductory Statement from Timothy J. Scott on the Tragedy in West, Texas

The disaster in West, Texas, was both a national tragedy and a deeply personal tragedy for the families of the brave first responders that lost fathers, husbands, and even a grandmother. It is our shared responsibility to fully examine this catastrophe and apply what we learn to prevent future incidents and loss of life. While the cause of the explosion may never be known with certainty, the path that led to this disaster is clear – non-compliance with established regulations, lack of regulatory oversight, little or no community awareness, little or no training for local first responders, no warning system, and little security at the West Fertilizer Company facility. There were clear missed opportunities to avoid this tragedy or minimize the impact.

West Fertilizer was what we refer to as an outlier site. Outlier sites are facilities that store or distribute chemical-related products, but are not part of the established chemical industry, are not members of chemical-related industry associations, are not part of an industry performance improvement program such as Responsible Care, or participants in the local emergency planning committees (LEPCs) in which they operate. Outlier sites can pose a threat not only to the local communities in which operate, but also to the chemical industry as a whole, to ACC and The Dow Chemical Company. ACC and Dow have been proactive in calling for legislation that will level the playing field and bring these outlier sites into compliance.

The state and federal regulatory agencies with oversight responsibilities for the West, Texas facility must understand they could have done better. There are regulations in place at both the state and federal levels that require the submission of data relative to chemicals of interest and quantities on site that would have identified this facility as a potentially high risk site. Compliance and enforcement of these existing regulations is needed.

West, Texas, will recover from this terrible tragedy. On a national level, we must work to build on a robust and all-inclusive public-private partnership for chemical safety and security, which was built from the local communities up through the federal government and across the nation. ACC and Dow stand ready to join that partnership.

Safety and Security Are a Top Priority for the Chemical Industry

The American Chemistry Council (ACC) represents the leading chemical companies that produce essential products critical to everyday life. The business of chemistry is a vital aspect of our nation's economy since it employs more than 780,000 Americans and touches more than 96 percent of all manufactured goods.

Because of our critical role in the economy, our commitment to our customers and shareholders and our responsibility to our neighboring communities, safety and security remain a top priority. The men and women of the chemical industry have worked hard to develop a culture that has put our industry at the forefront of manufacturing when it comes to safety. We are very proud of the fact that the worker injury rate for the chemical sector is among the lowest of any manufacturing sector according to U.S. Bureau of Labor Statistics.

And, members of ACC have sought to build upon the overall industry's safety performance through Responsible Care®, the chemical industry's world-class environmental, health, safety, and security performance initiative. Under Responsible Care, ACC members work with emergency responders and communities to coordinate response plans and to continually improve industry performance. Implementation of Responsible Care is mandatory for all members of ACC, as well as for Responsible Care Partner companies, who represent chemical transporters, distributors, warehouses, logistics planners, and others along our supply chains.

The results of the program speak for themselves. Responsible Care companies have reduced injury and illness rates at their facilities by 79 percent since 1990. Thanks to this effort, these same companies have a worker injury rate five times lower than the U.S. manufacturing sector as a whole and nearly three times better than the business of chemistry overall. They also have reduced the number of process safety incidents that resulted in a product spill, fire, explosion, or injury by 58 percent since 1995.

In addition to Responsible Care, ACC's CHEMTREC® provides 24/7 emergency response assistance to requests from companies and from emergency responders to help coordinate and communicate critical product safety information that may be needed in mitigating a hazardous material-related incident. In addition, ACC sponsors TRANSCAER® (Transportation Community Awareness and Emergency Response), a voluntary national outreach effort that focuses on assisting communities prepare for and respond to a possible hazardous material transportation incident. For example, TRANSCAER® has trained more than 60,000 emergency responders just during its first year of anhydrous ammonia training. TRANSCAER® was founded in 1986 by the Dow Chemical Company and Union Pacific Railroad. Dow alone has completed 210 events for 6,825 people under TRANSCAER® since 2007.

Together, Responsible Care, CHEMTREC, and TRANSCAER® include community advisory panels, training, and awareness for emergency responders; integrated community and industry emergency response plans and systems; and awareness for the general public, schools, hospitals, and nearby neighbors.

ACC and its member companies care deeply about the communities where they operate. They do not just run businesses; they also live in and contribute to the vitality of their towns and cities. They work hard to establish relationships with their neighbors as well as local officials and emergency responders to help address potential safety and security issues. Our industry's ongoing efforts are intended to benefit not just the people we employ but also the communities surrounding our facilities. Our commitment to harnessing the latest technologies and innovations to help enhance safety and security has never been stronger.

Strong Support for Regulatory Oversight

Because the nation depends on chemical producers every day to form the building blocks and processes necessary for safe drinking water, a plentiful food supply, life-saving medicines, and modern technologies, the federal government has established a comprehensive set of laws to regulate all aspects of safety and security at chemical facilities.

In fact, multiple agencies, including the U.S. Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), U.S. Department of Homeland Security (DHS), U.S. Department of Transportation (DOT), and the Transportation Security Administration (TSA), have the authority to regulate the safety and security of chemical facilities through a comprehensive array of regulatory programs (see appendix).

ACC and its members fully support compliance with these federal regulations and believe that agencies should have the appropriate resources to enforce safety and security regulations. We fully support the role of the government in overseeing safety and security through the numerous federal programs in place that regulate the operation of chemical facilities, and we believe that agencies should have the appropriate resources to effectively train its field inspectors, educate the regulated community, and enforce regulations. And just as important, we believe companies have an obligation to understand their legal and regulatory obligations and take action to comply.

We also value the Chemical Safety Board's (CSB) independent and technical insight. The CSB investigation of accidents and subsequent recommendations are vital to determine what actions might be warranted based on the root causes of incidents. As part of our effort to continuously improve our performance, the chemical industry captures and disseminates lessons learned from incidents and utilizes those lessons to improve performance, as well as standards and practices.

Critical Role of CFATS

DHS has created a solid regulatory framework under the Chemical Facility Anti-Terrorism Standards (CFATS). ACC believes that CFATS has had a positive impact on enhancing security, and we fully support implementation of the program. Under CFATS, DHS has analyzed nearly 40,000 chemical facilities across the United States, identifying more than 7,000 facilities as potentially high-risk chemical facilities. Since then nearly 3,000 facilities have reduced their potential security risks by making operational changes that reduced or eliminated onsite chemical inventories. As a result, the CFATS regulated community currently includes approximately 4,500 facilities across the nation.

While DHS has faced some challenges implementing the CFATS program, these challenges are not insurmountable. Since the release of the DHS internal memo, the agency has made progress on implementing the action items and putting in place a workable management structure that will enable an effective CFATS implementation process. The industry has seen considerably increased inspection activity, improved quality of inspections and expedited authorizations. Key management positions have been filled with permanent, qualified professionals who have regulatory program experience. DHS has reengaged the public/private sector security partnership that was so valuable early in the program and is now providing an opportunity to make additional strides as we work together to secure the nation's chemical infrastructure.

DHS leadership has demonstrated a commitment to working through the current issues and working with stakeholders to improve the implementation of the CFATS program. ACC urges Congress to provide the Agency with sufficient resources to properly handle the workload and to ensure that chemical facility security is implemented in a timely fashion. Eventually, we hope that Congress will provide DHS permanent statutory authority for the CFATS program, thus

providing regulatory certainty and operational stability that is necessary for capital investments to be appropriately planned and budgeted. These improvements will also ensure that long-term security decisions can be made without concern as to whether the regulatory landscape under the CFATS program will be altered.

The Path Forward

Just as we have seen with CFATS, a strong partnership is fundamental to success. While determining the root cause of the West incident and CSB's recommendations will be instrumental in pointing to specific areas for improvement, we should act on an opportunity that is available to us right now to enhance safety and security.

We need to make sure that the regulations are being implemented fully and properly and that the agencies have the necessary resources to get the job done. In addition, federal officials at all levels have to work together and coordinate their activities across all regulatory programs. Equally significant is strengthening the partnership between government officials and a facility operator is sorely needed. Everyone must be on the same page and working together when it comes to protecting workers and communities. This can be accomplished by first redirecting agency priorities towards training and educational resources for the regulated community and for on-site field inspectors to ensure they have the appropriate knowledge, skills, and proficiencies to focus on verifying compliance with the various programs.

Investing in compliance assistance programs for federal, state, and local officials that are responsible for certifying the accuracy and applicability of agency reports will ultimately ensure the safety and security of the community and environment. Moreover, an affirmative investment in effective and consistent outreach programs for facility owners and operators is equally imperative to ensure the regulated community thoroughly understands the mission of each agency. A strong financial and administrative commitment to educational outreach and assistance programs and devoting technical resources to consistently maintain, assess, and oversee the current chemical database systems will likely improve overall compliance and understanding of agency objectives, thus reducing ambiguities and inaccuracies in reporting and auditing.

Facility operators need to be actively engaged in local communities' emergency planning processes and ensure that local responders are aware of the materials being used on their sites. This includes opening plant gates to provide periodic tours for local officials and coordinated training and drills. Emergency planning and coordination does not have to be limited to plant events which can impact the community. As I said earlier, we live in the communities where we operate and there are other threats, both natural – hurricanes, tornadoes – and man-made, for which local responders must prepare.

Local Emergency Planning Committees (LEPC) created under Title III of the Superfund Amendments and Reauthorization Act (SARA Title III) in the mid-1980s are still in force and viable today. Each state was required to establish a State Emergency Response Commission, which in turn specified where LEPCs needed to be established. These LEPCs include members of the community, media, special interest groups, local government, emergency responders, and

industry. LEPCs need strong support and active participation of facility operators as well as continued support from local officials. LEPCs are a first line of defense for the community and they deserve all the support the private and public sectors can give them.

The federal government needs to work with industry to help share and leverage existing best practices and industry program to make sure “outliers” are aware there are tools and resources available to them. ACC and its members remain committed to working with government officials at all levels to enhance safety and security at our facilities, so we all continue to enjoy the essential benefits of a strong and growing chemical industry in America.

Appendix – Current Safety & Security Regulatory Programs

Safety

- OSHA
 - Process Safety Management (PSM) Regulations (29 CFR 1910.119) – This regulation helps prevent accidental releases of highly hazardous chemicals, thus protecting employees, contractors and people who live and work around chemical operations.
 - a. Chemical National Emphasis Program (NEP) establishes policies and procedures for inspecting workplaces that are covered by OSHA's process safety management (PSM) standard, protecting workers from catastrophic releases of highly hazardous chemicals.
 - Combustible Dust Rulemaking – OSHA believes a comprehensive dust standard is needed to prevent dust explosions and is therefore pursuing a combustible dust rulemaking.
 - Voluntary Protection Program (VPP) – Many member companies participate in VPP, a program that promotes effective worksite-based safety and health.
 - Emergency Planning and Community Right-to-Know Act (EPCRA)
 - a. There are four major provisions of EPCRA:
 - i. Emergency Planning (Sections 301 — 303)
 - ii. Emergency Release Notification (Section 304)
 - iii. Hazardous Chemical Storage Reporting (Sections 311 — 312)
 - iv. Toxic Chemical Release Inventory (Section 313)
 - Responsible Care Process Safety Metrics – Responsible Care companies are committed to the safe operations of their chemical processes. The enhanced Process Safety Code sets forth this collective commitment to a culture of process safety throughout chemical facility processing operations, management systems and leadership organizations. It is also intended to complement regulatory requirements, such as OSHA's Process Safety Management (PSM) standard and EPA's Risk Management Program (RMP) standard.
- EPA
 - Risk Management Program (RMP): Under the authority of section 112(r) of the Clean Air Act, the Chemical Accident Prevention Provisions require facilities that produce, handle, process, distribute or store certain chemicals to develop a Risk Management Program and prepare a Risk Management Plan (RMP).
- U.S. Chemical Safety and Hazard Investigation Board (CSB)
 - While industry is not regulated by them, their recommendations are factored into decision making.
- Department of Transportation
 - The Hazardous Materials Regulations (HMR) govern the transportation of hazardous materials by highway, rail, vessel and air. The HMR addresses hazardous materials classification, packaging, hazard communication, emergency response information and training.

Chemical Security Regulations

- Department of Homeland Security
 - The Chemical Facility Anti-Terrorism Standards (CFATS), also known as 6 CFR, Part 27, are a set of US government security regulations for high-risk chemical facilities such as chemical plants, electrical generating facilities, refineries, and universities. The US Department of Homeland Security promulgated the Final Rule on April 9, 2007. The regulations came into effect on June 8, 2007, apart from material covered in Appendix A, which took effect upon its publication in the Federal Register on November 20, 2007.
- U.S. Coast Guard
 - The Maritime Transportation Security Act of 2002 (MTSA) (Pub.L. 107–295) was signed into law by President George W. Bush on November 25, 2002. This law is the U.S. implementation of the International Ship and Port Facility Security Code (ISPS). It requires port facilities to conduct vulnerability assessments and develop security plans that may include screening procedures; security patrols; establishing restricted areas; personnel identification procedures; access control measures; and/or installation of surveillance equipment. The Act creates a consistent security program for all the nation's ports to better identify and deter threats. The U.S. Coast Guard issued regulations to enact the provisions of the Act and to align domestic regulations with the maritime security standards of SOLAS and the ISPS Code. The regulations are found in Title 33 of the Code of Federal Regulations, Parts 101 through 107. Part 105 contains port facility security regulations, including those that apply to chemical facilities.