



Written Statement of

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Representing

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To the

**United States House of Representatives
Committee on Homeland Security
Subcommittee on Cybersecurity, Infrastructure
Protection, and Security Technologies**

Regarding a Legislative Hearing on the

**“Chemical Facility Anti-Terrorism Standards Program
Authorization and Accountability Act of 2014”**

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BASF – Written testimony before the United States House of Representatives Committee on Homeland Security, Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies 02/27/2014

Good morning, Chairman Meehan, Ranking Member Clarke and Members of the Committee. My name is Clyde Miller, and I am the director of corporate security for BASF Corporation. I am here today on behalf of BASF and the American Chemistry Council.

At BASF, I am responsible for all of the security functions at our chemical facilities in North America and for the implementation of the Chemical Facility Anti-Terrorism Standards, or CFATS, at our facilities in the United States. I have been directly involved in that effort since CFATS' inception. Last year, I was asked to serve on the Department of Homeland Security (DHS) commissioned Peer Review Panel analyzing the CFATS risk assessment methodology that was conducted by the Homeland Security Studies and Analysis Institute. For BASF and the chemical industry as a whole, security is an important aspect of our operations and there is no greater priority than the safety and security of our employees and the communities that surround our sites.

I appreciate the opportunity to appear here this morning to provide feedback on the Chemical Facility Anti-Terrorism Standards Program Authorization and Accountability Act of 2014. To that end, I would like to emphasize the following points in my remarks:

- **ONE:** We support moving the CFATS regulation from an appropriations process to an authorization process.
- **TWO:** We support the implementation of the overarching findings and recommendations of the Peer Review Panel, in the manner mentioned in this bill.
- **THREE:** Dave Wulf and his team have done a tremendous job of turning the CFATS program around and moving toward an effective chemical facility security program.
- **FOUR:** The passage of this bill by no means conflicts with Executive Order 13650. If anything, it will add to enhancing and strengthening security throughout the sector – one of the goals of the EO.

Now, I would like to elaborate on these points.

I. We support moving the CFATS program from an appropriations process to an authorization process.

This bill, for the most part, codifies what is in the original 2006 spending bill, which established the nation's first comprehensive chemical facility security regulation. Like the original bill, it is short and to the point and validates the original premise of establishing a risk-based performance model for enhancing chemical facility security across the nation.

I look at CFATS as an essay test rather than a multiple choice or fill-in-the-blank exam. Due to the CFATS security regulation being a collection of performance standards, a facility can implement a solution that draws from all available options to meet those

standards. And since not all facilities are the same, plans can also be tailored to address the unique needs of individual sites. To effectively comply with CFATS, an “essay” of measures has to be implemented. This can be perimeter-related measures as well as other security measures, combined with operating measures such as process cameras and alarms. The totality, or “essay,” becomes the regulation with which the facility complies and is given a pass or no-pass grade when undergoing a compliance inspection by DHS. A long-term authorized regulation provides industry with the confidence to make long-term capital investments. Further, having that certainty helps DHS in recruiting and retaining top talent to effectively oversee the regulation.

The bill does not try to reinvent the wheel or add complexity to the program, which seemed to doom previous attempts at long-term authorizations. Instead, this bill has some narrow fixes in a few areas that need to be addressed, such as a simplified Alternative Security Program, similar to that used by the U.S. Coast Guard under the Maritime Transportation Security Act, implementation of third party inspectors and some simplified solutions to the personnel surety program. Concerning the Personnel Surety Program, the bill requires DHS to accept other well-established federal credentials that currently continually vet their holders against the Terrorist Screening Database with no further obligation required of the facility.

This bill reiterates a part of the original regulation, using threat, vulnerability and consequence for assessing risk, which DHS had not been doing, as we discovered during the previously mentioned peer review process. The Peer Review Panel recommended DHS evaluate all three elements to fully assess risk, which is also required by the National Infrastructure Protection Program of 2009 and 2013. Finally, the bill sets up an oversight process to ensure the program continues to make improvements and establishes accountability by setting a timeline for the Secretary of DHS to report to Congress on its progress with implementation of recommendations made by the Peer Review Panel.

II. We support the implementation of the overarching findings and recommendations of the Peer Review Panel, in the manner mentioned in this bill.

A peer review panel was established last year by the Homeland Security Studies and Analysis Institute to study the methodology used by DHS to tier facilities covered under CFATS. This panel was made up of subject matter experts covering 15 areas of expertise, including industrial security, risk analysis, toxicology, process safety, infrastructure security and other pertinent areas. This effort resulted in a report setting out key findings and over-arching recommendations. As a member of that panel, it is gratifying to see that the effort is mentioned in this bill and requires DHS to report on the progress in implementation of those recommendations.

III. Since Dave Wulf and his team have arrived at DHS; they have done a tremendous job of turning around the program and moving CFATS toward an effective chemical facility security program.

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First, recognizing that the Chemical Security Assessment Tool (CSAT) process could be streamlined, they embraced the American Chemistry Council's Alternative Security Plan (ASP) template, which provides an alternate path for developing and submitting site security plans.

Second, they significantly increased the number of approved site security plans, having recently passed the 500th approved security plan.

Third, they have greatly increased the pace of inspections, up to 100 inspections per month. They have completed nearly all of the Tier 1 and 2 high risk facilities and have started reaching into the Tier 3 and Tier 4 sites. BASF has had sites that have gone through these authorization inspections and I can assure you that the heightened pace has not reduced their effectiveness or compromised the program.

Fourth, they recognized that implementing a new regulatory program required significant outreach to the regulated community. As a result, they have enhanced their outreach efforts, engaging with industry via sector councils and other means. They've increased the number of Compliance Assistance Visits and inspectors regularly participate in introductory meetings with owners and operators of CFATS-regulated or potentially regulated facilities.

Finally, DHS has undertaken efforts to better identify "outlier" facilities that should have submitted Top-Screens but have failed to do so by coordinating with other agencies such as EPA, the U.S. Coast Guard and state and local authorities.

IV. The passage of this bill by no means conflicts with Executive Order 13650. If anything, it will add to enhancing and strengthening security throughout the sector – one of the goals of the EO.

As just mentioned, DHS is undertaking many of the activities being considered under the Executive Order. Passage of this bill will allow DHS to increase these activities that go to the heart of their mission – ensuring chemical facility security throughout the sector. It is precisely these efforts, without any changes to the program that might hamper efficiency or speed, that the EO – and Congress - should be encouraging and supporting. Passing this bill will give the program the permanency it needs so that it does not risk lapsing as occurred during the government shutdown last year.

Conclusion

CFATS has had a positive impact on enhancing security at US chemical sites, and we support making this a permanent program for the approximately 4,500 sites that are regulated under CFATS. It is a robust program, for example at BASF we already had a fairly comprehensive and effective security program. However, for facilities under the CFATS regulation, we have seen increased capital spending and operating costs to ensure we meet or exceed the performance standards set out in the regulation.

In complying with CFATS facilities have evaluated their processes and security programs and in some cases taken measures to reduce their risk and dropped out of the program. The previously mentioned Peer Review made recommendations to make some process changes to make the program more transparent and consistent. To try to reinvent CFATS by passing more comprehensive legislation, I'm afraid, would have a significantly negative impact on the program.

Congressional oversight via authorization would help DHS continue to address some of the challenges they have faced implementing the program, even as the Agency has made progress with a new management team. The industry has seen considerable increased activity from DHS, including improved quality of inspections and faster authorizations. Most importantly, DHS leadership has demonstrated a commitment to working with stakeholders to improve the implementation of the CFATS program. A long term authorization will provide the regulatory certainty and operational stability to give the industry confidence that our long term capital commitments to this program are appropriate, and provide a stronger foundation for the overall success of the program.

We support and share in your efforts to provide a long term authorization for CFATS. We pledge our continued support as this legislation moves forward, and look forward to continuing to work in partnership with you and your staff as this process moves forward. Thank you again for the opportunity to testify in support of this bill. I'll be glad to answer any questions you may have.