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Statement of Rep. Henry A. Waxman
Ranking Member, Committee on Energy and Commerce
Hearing on "The Chemical Facilities Anti-terrorism Standards (CFATS) Program: A Progress Update"
Subcommittee on Environment and the Economy
March 14, 2013

I thank the Chairman for calling this hearing on this very important program. The Chemical Facilities Anti-Terrorism Standards Program, or CFATS, is a critical national security program designed to protect communities from potential terrorist attacks on industrial facilities with significant stores of dangerous chemicals.

Since 2001, federal officials, the Government Accountability Office (GAO), and outside experts have warned that the nation's drinking water utilities and chemical facilities remain vulnerable to terrorist attack.

Unfortunately, the CFATS program is a grave disappointment. At the end of 2011, we learned the program was in disarray. No facilities had approved site security plans. Homeland Security officials felt their enforcement authority was insufficient and ineffective. There were no procedures in place to document important programmatic decisions. No one on staff was even qualified to conduct a compliance inspection.

There has been some progress. We will hear from the Department today about their efforts to strengthen the CFATS program and the advances the Department has made since undertaking a serious internal examination of the program in 2011.

But today we will also hear from the Government Accountability Office, which has undertaken the first rigorous external accounting of the program. GAO has found that fundamental problems still plague the program. More work is needed before Congress and the American public can have confidence in the risk assessments that determine the potential dangers facilities pose.

Perhaps we shouldn't be surprised. CFATS was created in the sloppiest legislative fashion possible. It was established in 2006 by a provision tucked into an appropriations bill without the benefit of hearings or markups by the Committee.

The problems with the program are not all Congress' fault. Both the current and previous administrations have failed to implement the program effectively. The Department issued an interim final rule within six months of the law's passage. This rule determined what chemicals might be targets, how risk would be assessed, and what security standards would be applied. Given the quick action and limited statutory guidance, the rule was flawed. But now – six years later – it still hasn't been updated and improved.

In the 111th Congress, we worked on a bipartisan basis with industry, labor, and other affected stakeholders to methodically resolve each of the issues surrounding the CFATS program.

The result was H.R. 2868, the Chemical and Water Security Act of 2009, which passed the House by a vote of 230-193. That legislation would have addressed many of the challenges the program now faces, increased transparency and accountability, clarified the process for approving or disapproving site security plans, and set enforceable deadlines. It also would have strengthened security at covered facilities by requiring assessment, and in particular circumstances, adoption of safer chemicals, processes, or technologies to reduce the consequences of a terrorist attack.

Unfortunately, that bill did not become law, and that opportunity to set this program on a more successful path was missed.

In the years since, this Committee has failed to develop comprehensive legislation to reform the CFATS program. It has also failed to offer any legislation to close security gaps or address security at water facilities.

This Committee needs to do more. Comprehensive legislation is long overdue.

I look forward to the testimony of the witnesses today, and I invite all of them and other stakeholders to engage with this Committee and help us seek solutions to a troubled, yet critically important anti-terrorism program.