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4 ``CHEMICAL FACILITY ANTI-TERRORISM STANDARDS (CFATS) PROGRAM:

5 A PROGRESS UPDATE''

6 THURSDAY, MARCH 14, 2013

7 House of Representatives,

8 Subcommittee on Environment and the Economy

9 Committee on Energy and Commerce

10 Washington, D.C.

11 The subcommittee met, pursuant to call, at 10:07 a.m.,
12 in Room 2322 of the Rayburn House Office Building, Hon. John
13 Shimkus [chairman of the subcommittee] presiding.

14 Members present: Representatives Shimkus, Pitts, Murphy,
15 Latta, Harper, Cassidy, McKinley, Bilirakis, Johnson, Barton,
16 Tonko, Green, Schakowsky, and Waxman (ex officio).

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17 Staff present: Nick Abraham, Legislative Clerk;
18 Charlotte Baker, Press Secretary; Matt Bravo, Professional
19 Staff Member; Jerry Couri, Senior Environmental Policy
20 Advisor; David McCarthy, Chief Counsel, Environment and the
21 Economy; Chris Sarley, Policy Coordinator, Environment and
22 the Economy; Tom Wilbur, Digital Media Advisor; Jacqueline
23 Cohen, Democratic Counsel; Greg Dotson, Democratic Staff
24 Director, Energy and Environment; and Caitlin Haberman,
25 Democratic Policy Analyst.

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26 Mr. {Shimkus.} I would like to call the hearing to
27 order.

28 We want to welcome our first panel, and I would like to
29 recognize myself for 5 minutes for an opening statement.

30 Good morning. The Subcommittee is now in order and I
31 want to recognize myself for 5 minutes. Today marks the
32 fourth hearing we have had on CFATS and the third consecutive
33 one we have had since I became the subcommittee chairman.

34 Sadly, it has been a very painful process to see how
35 badly CFATS had fallen short of our expectations and to see
36 the struggle, both inside of DHS as well as externally, to
37 get the program back on track. There are some positive
38 reports about progress from DHS, GAO, and the regulated
39 stakeholders, but we have uncovered more details showing that
40 in key areas the suggested progress is not what we had hoped.
41 I think strides have been made to remedy many of the
42 managerial concerns of 1 year ago, and some of our testimony
43 will suggest communication lines have been opened in a way
44 that could lead to longer-term achievements for the program.

45 By many accounts, Infrastructure Security Compliance

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46 Division Director David Wulf deserves a great deal of credit.
47 Mr. Wulf, we appreciate your tireless, consistent, candid,
48 and long-standing commitment to improving CFATS when others
49 could not. I also think this process is merely meant to get
50 us back to a semi-functional program, not a perfect or fully
51 implemented program.

52 Unfortunately, underlying programmatic issues we
53 discussed in the last hearing--such as the fact that CFATS
54 risk assessment falls far short of DHS' own National
55 Infrastructure Protection Plan and the CFATS regulations, and
56 the long time frame for evaluating Site Security Plans,
57 despite the incomplete risk assessment--continue to threaten
58 the credibility of the program not only on the Hill, but with
59 regulated stakeholders who are confused by many decisions
60 made within the program.

61 As Chairman Upton has said before to DHS, we are all on
62 the same side. The enemy here is the terrorists who would
63 seek to harm our Nation. We need to work together to
64 determine the best path forward for CFATS and its
65 reauthorization, but we can't do so if we aren't fully
66 informed and in a way that verifies the details coming

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67 forward. That is why we are going to have some tough and
68 balanced assessment of the program delivered by DHS, the
69 Government Accountability Office, and the CFATS stakeholder
70 community.

71 Our witnesses today may not tell us exactly what we want
72 to hear, but they will tell us what we need to know. I want
73 to thank all of these witnesses for appearing before our
74 panel here today. I believe we are at a critical juncture
75 for the success of the CFATS program in that the internal
76 issues distracting the program are not our focus, but rather
77 getting the program right, functioning effectively,
78 efficiently, as Congress drafted the law. Their perspective
79 will be crucial in getting serious questions answered by the
80 program and our ability to work together.

81 And with that I would like to yield 1 minute to the
82 gentleman from Texas, Mr. Barton.

83 [The prepared statement of Mr. Shimkus follows:]

84 ***** COMMITTEE INSERT *****

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|
85 Mr. {Barton.} Thank you, Mr. Chairman, for holding this
86 hearing today.

87 Two years in a row this subcommittee has convened a
88 hearing to discuss the concerns with the CFATS program. Last
89 year, we became aware of an internal DHS memorandum which
90 detailed an array of management flaws and achievement gaps
91 with that program. One of the witnesses today was a co-
92 author. When news of these problems surfaced, several
93 Members of Congress, including myself, asked the GAO to
94 determine what actions DHS was taking to address the
95 problems. We learned in the GAO report that resulted of a
96 94-item Action Plan that DHS developed to address those
97 various issues. I understand today that the most egregious
98 examples of waste of taxpayer dollars have been addressed but
99 there is still work to do. We are at a critical juncture.

100 DHS has been reviewing information since 2007 by
101 operators of over 40,000 facilities. By January of this
102 year, they had identified about 4,400 as high-risk
103 facilities. Of those, about 90 percent were tier-based on
104 the risk that they presented--meaning that they would have to

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105 submit Site Security Plans for DHS review. We now know that
106 there have been significant errors in the risk assessment
107 methodology. We also know that only a few dozen of the 3,100
108 high-risk security plans have been reviewed and approved.
109 There is much work to be done. I hope this hearing will
110 facilitate some of that work.

111 Thank you for the hearing and thank you for the time and
112 I yield back.

113 [The prepared statement of Mr. Barton follows:]

114 ***** COMMITTEE INSERT *****

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115 Mr. {Shimkus.} The gentleman yields back his time.

116 The chair now recognizes the ranking member of the
117 subcommittee, Mr. Tonko, for 5 minutes.

118 Mr. {Tonko.} Thank you. Thank you, Mr. Chairman. And
119 good morning and thank you to our chair for convening this
120 hearing and certainly to our witnesses for participating
121 today and providing your insight and offering very important
122 information.

123 Ensuring the safety of our citizens and avoiding serious
124 disruption of our economy requires us to remain vigilant and
125 to anticipate potential targets and actions of violent
126 individuals and groups. The goal of the Chemical Facility
127 Anti-Terrorism Standards, the CFATS program, is to ensure
128 that chemical facilities have robust plans to prevent
129 terrorists from sabotaging them and to minimize the impacts
130 should that prevention fail.

131 Two years ago, an internal memorandum revealed serious
132 problems with the CFATS program. While some progress has
133 been made to address some of the shortcomings, there is still
134 much more work to be done. That work surely falls to the

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135 Department of Homeland Security, clearly having more work to
136 do, but also it falls to Congress. Congress created the
137 Department of Homeland Security in 2002 and charged DHS with
138 coordinating federal policy to protect this Nation's critical
139 infrastructure. This is a complex task involving not only
140 the Federal Government but a partnership with state and local
141 governments, as well as the private sector.

142 Congress defined this complex and essential task of
143 protecting chemical facilities with a paragraph in an
144 appropriations bill. The deficiencies in this program are
145 partly a reflection of our failure to come together and
146 provide clear guidance to the administration.

147 The industry has been active in this area. They have
148 taken many steps through initiatives such as the Responsible
149 Care Program to develop and disseminate best practices to
150 member companies of industry organizations. These programs
151 are, however, voluntary. Private industry does not have the
152 tools of surveillance and intelligence that that which the
153 Federal Government has. In order to be most effective, we
154 must have partnerships working together and the program must
155 have the public's confidence that their communities are

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156 indeed safe. The public and the industry will benefit from a
157 federal program that is developed with their input and in
158 which standards, practices, and policies are defined clearly
159 by the Department of Homeland Security.

160 The CFATS program is not the only federal program
161 regulating chemical facilities. Other federal departments
162 and agencies have programs with longer histories and well-
163 established protocols. There should be a consultation
164 amongst federal agencies to apply best practices, identify
165 gaps in responsibility, and to avoid conflicting regulations
166 and policies.

167 I hope this will not be the last hearing on this issue.
168 This committee should develop legislation that provides clear
169 direction to DHS, certainty to the regulated industry, and
170 confidence to the public that the CFATS program is providing
171 the protection we require and deserve. A paragraph in an
172 appropriations bill that must be renewed annually simply does
173 not meet those needs.

174 I would like to thank all of our witnesses for appearing
175 before us today. I look forward to your testimony and to
176 hearing your views on how we can improve this most essential

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177 program.

178 With that, I thank you. Mr. Chairman, I yield back.

179 [The prepared statement of Mr. Tonko follows:]

180 ***** COMMITTEE INSERT *****

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|
181 Mr. {Shimkus.} I want to thank my colleague. And I can
182 guarantee it will not be last hearing on this issue, and we
183 would like to authorize a program.

184 So with that, I would like to turn to my colleagues on
185 my side and ask if anyone would like to submit an opening
186 statement.

187 Seeing none, I turn to your side. No one? Thank you
188 very much.

189 Now, I would like to recognize Mr. Rand Beers, the Under
190 Secretary for the National Protection and Programs
191 Directorate of the United States Department of Homeland
192 Security.

193 Sir, your full statement is in the record. You are
194 recognized for 5 minutes.

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|
195 ^STATEMENT OF HON. RAND BEERS, UNDER SECRETARY, NATIONAL
196 PROTECTION AND PROGRAMS DIRECTORATE, U.S. DEPARTMENT OF
197 HOMELAND SECURITY; AND DAVID WULF, DIRECTOR, INFRASTRUCTURE
198 SECURITY COMPLIANCE DIVISION, U.S. DEPARTMENT OF HOMELAND
199 SECURITY

|
200 ^STATEMENT OF HON. RAND BEERS

201 } Mr. {Beers.} Thank you, Chairman Shimkus and Ranking
202 Member Tonko and other members of the committee. I
203 appreciate the opportunity to be before you today to talk
204 about the Department's regulation of high-risk chemical
205 facilities.

206 Let me start by emphasizing that the CFATS program has
207 already made the Nation more secure. The program has
208 identified high-risk chemical facilities across the country.
209 It has provided them with the tools to identify their
210 vulnerabilities, and it has helped them to develop plans to
211 reduce the risks associated with these chemicals.

212 Since its inception, CFATS has helped 3,000 chemical

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213 facilities eliminate, reduce, or otherwise modify their
214 holdings so that they no longer possess potentially dangerous
215 chemicals and are no longer considered high-risk. The
216 significant reduction in the number of chemical facilities
217 that represent the highest risk is an important success of
218 the CFATS program and is attributable both to the design of
219 the program as enacted by Congress and to the work of the
220 CFATS personnel and industry at the thousands of chemical
221 facilities that we work with on a regular basis.

222 Over the past year, NPPD has worked diligently to turn a
223 corner and has addressed many of the challenges identified by
224 the program's leadership. The CFATS program has made
225 significant progress advancing programmatically while
226 simultaneously addressing the internal operational concerns.
227 Equally important, the Department remains committed to
228 working with stakeholders and with the Congress on a path
229 forward to ensure that the CFATS program continues to build
230 upon the successes to date.

231 Over the last 6 months ISCD has made considerable
232 progress in conducting authorization inspections and
233 improving Site Security Plans. When I was here in September,

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234 we had authorized 73 Site Security Plans. Today, we have
235 authorized 261. That is a 400 percent increase. In
236 September we had conducted 19 authorization inspections;
237 today, we have conducted 141. That is a 700 percent
238 increase. In September we had approved only two Site
239 Security Plans; now, we have approved 52, including 3
240 alternative Site Security Plans.

241 While these are significant achievements in the last 6
242 months, we recognize that we need to do much more and we need
243 to increase the pace at which we are doing it. And we are
244 looking at potential approaches for increasing the pace of
245 security plan reviews and inspections for the lower Tier 3
246 and Tier 4 facilities without sacrificing quality and
247 consistency.

248 NPPD will work with the regulated community to gather
249 feedback and thoughts on how best to increase the pace of the
250 lower tiers. For example, we have been looking with industry
251 on the development of templates, or corporate alternative
252 Site Security Plans, and we believe that the use of ASPs will
253 significantly increase the pace and improve our security
254 plans. We have also discussed ASPs the Coast Guard and will

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255 apply the lessons that they have learned regarding their use
256 of ASPs to take your point, Ranking Member Tonko, about
257 talking to our partners who also have regulatory programs.

258 Regarding our private sector partners, the Department
259 has received primarily positive feedback on outreaching
260 communications efforts from the regulated community. And we
261 will continue to address specific areas of interest to the
262 CFATS community. For instance, recognizing that regulated
263 facilities best understand their risk drivers and in support
264 of increased transparency, the Department is analyzing what
265 aspects of the classified risk tiering methodology it can and
266 should share with members of the regulated community. In
267 fact, that particular question has been presented to the risk
268 methodology external Peer Review Panel for analysis. And I
269 might add that this is a peer review that includes private
270 sector participation. And the Department is looking forward
271 very much to the panel's recommendations with respect to
272 this.

273 The Department has also actively engaged stakeholders
274 regarding personnel surety. During the last 6 months, we
275 have been listening to stakeholder feedback on personnel surety

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276 and we have revised our program based on this feedback. We
277 now believe we have a proposal which provides the regulated
278 community with flexibility for carrying out the outstanding
279 requirement for personnel surety and reflects input from
280 facilities of all sizes. This proposal balances the need to
281 conduct thorough vetting of personnel for national security
282 purposes with a desire to minimize the burden on facilities.
283 Our engagement with the private sector will be reflected in
284 two department notices that have gone from the Department to
285 the Federal Register and will be published in the coming
286 days.

287 I close with a note regarding the Department's current
288 statutory authority to implement CFATS. As you are aware,
289 the CFATS authorization currently extends through March 27 of
290 this year. The Department supports a permanent authorization
291 for the CFATS program and we are committed to working with
292 the Congress and other security partners to establish a
293 permanent authority for the CFATS program in federal law.
294 Overall, I am here before you today convinced that we have
295 positioned the program firmly on the right track and I would
296 be happy to respond to any questions that you may have.

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297 Thank you.

298 [The prepared statement of Mr. Beers follows:]

299 ***** INSERT A *****

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|
300 Mr. {Shimkus.} Thank you.

301 Also joining at the first panel is Mr. David Wulf, who
302 is the director of the Infrastructure Security and Compliance
303 Division. Obviously, you didn't submit an opening statement,
304 nor do you have one, but if you want to have anything just
305 for the record, I would like to recognize you for a few
306 minutes.

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|
307 ^STATEMENT OF MR. WULF

308 } Mr. {Wulf.} That would be great. Thank you so much,
309 Chairman Shimkus. I would like to thank you, Ranking Number
310 Tonko, and the other members of the subcommittee for the
311 opportunity to testify here today.

312 ISCD has made great progress in addressing the
313 challenges described in the internal memo and associated
314 Action Plan that we presented to Under Secretary Beers in the
315 fall of 2011. With strong support from leadership in the
316 National Protection and Programs Directorate and the Office
317 of Infrastructure Protection and through much hard work on
318 the part of the talented men and women of ISCD, we have
319 completed 88 of the 95 items outlined in our Action Plan. We
320 have developed improved policies, procedures, and training to
321 ensure that inspections are conducted in a consistent and
322 thorough fashion. We have implemented an effective
323 streamlined SSP review process, a process that has greatly
324 enhanced our ability to authorize, and as appropriate, grant
325 final approval for Site Security Plans.

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326 We have also done much to stabilize our organization and
327 our leadership cadre by hiring permanent supervisors,
328 including a permanent deputy director, and we continue to
329 foster transparency and open communication throughout our
330 organization.

331 I would like to recognize our workforce, which truly has
332 a passion for the mission of chemical facility security. And
333 I would like to recognize also the American Federation of
334 Government Employees which represents our bargaining unit
335 employees in the field, and has done much to expedite its
336 review of key policies and procedures over the past several
337 months.

338 In September I reported that we had turned an important
339 corner in the implementation of CFATS. I am pleased to be
340 able to report today that not only has that corner been
341 turned, but we are moving confidently down the road to
342 realizing the full potential of the program. ISCD and the
343 CFATS program are moving forward in a way that will foster
344 continued advances in the security of America's highest-risk
345 chemical facilities. We have achieved a marked increase in
346 the pace of SSP authorizations, facility inspections, and

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347 approved Site Security Plans.

348 As the under secretary noted, we have authorized more
349 than 260 SSPs and granted final approval for 52 of those. We
350 anticipate completing approvals of Site Security Plans for
351 facilities in the highest-risk tier, Tier 1, by September of
352 this year and completing final approvals of Tier 2 SSPs by
353 May of 2014. Reviews and authorizations of Tier 3 SSPs are
354 now underway as well.

355 However, recognizing that we must find ways to become
356 ever more efficient and effective in our inspection and SSP
357 review processes, we will be looking closely at, and
358 soliciting stakeholder input on, options to streamline the
359 review and approval cycle for facilities in Tiers 3 and 4. I
360 do anticipate that ASP templates will be an important tool to
361 enhance the efficiency of our reviews. The American
362 Chemistry Council recently worked with us to develop an ASP
363 template and we continue to work with industry associations
364 such as SOCMA, AFPM, and the National Association of Chemical
365 Distributors, who are all considering the adoption of ASP
366 templates for their member companies.

367 So even as we continue to seek ways to improve, it does

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368 bear noting that ISCD's chemical security inspectors are
369 today providing compliance assistance to facilities and
370 conducting inspections at an unprecedented rate. And I am
371 pleased to report that I have received much favorable
372 feedback from our industry stakeholders about their
373 experience with these inspections. As you know, and this is
374 something for which I am profoundly grateful, our
375 stakeholders are not shy when it comes to expressing their
376 candid thoughts and concerns about the program. So I am
377 confident that when I am hearing positive things from
378 industry about their facilities inspections-related
379 experiences, we are on the right track.

380 I would like to share one quote from Cathy Cross,
381 Director of Security for Phillips 66 regarding a recent
382 inspection in Oklahoma. Ms. Cross conveyed to me that her
383 facilities experience with the DHS inspectors was a very
384 positive one, that the members of the ISCD inspection team
385 were knowledgeable, courteous, and quite helpful in their
386 collaborative approach as they evaluated the facility, its
387 SSP draft, and planned measures. Continuing, Ms. Cross noted
388 that the inspectors provided thoughtful comments and were

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389 receptive to alternate proposals for meeting security
390 objectives.

391 So ISCD continues to fully engage with our industry
392 stakeholders, and I very much do appreciate industry's
393 continued support for the program. And our stakeholder
394 engagement continues to take many forms. At the facility
395 level, in addition to inspections, we continue to conduct
396 compliance assistance visits and other outreach to work with
397 the facilities as they develop their Site Security Plans. We
398 also engage with stakeholders on important programmatic
399 issues. We continue to work on the development of ASP
400 templates, and we are in the process of gathering industry
401 feedback as we move forward to improve our suite of online
402 tools.

403 Also, as the under secretary noted, we recently
404 concluded a productive and extensive series of discussions on
405 the important issue of personnel surety. Ensuring that those
406 who seek unescorted access to high-risk chemical facilities
407 are vetted for terrorist ties is a critical piece of the
408 CFATS effort and one that we must move forward to implement
409 in the near term.

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410 I am also appreciative of the work done by GAO and the
411 perspectives GAO has offered us on the CFATS risk-tiering
412 methodology and on the management of tracking of our
413 stakeholder outreach activities. With regard to our risk-
414 tiering efforts, while I am confident that our current
415 methodology, with its focus on the consequences of a
416 potential terrorist attack, is appropriate for a regulatory
417 compliance program such as CFATS, considering ways in which
418 our tiering efforts may be enhanced is something to which we
419 are very much open at ISCD.

420 I am very much eagerly anticipating the results of our
421 external peer review in this regard on risk-tiering and any
422 recommendations that may be forthcoming from the Peer Review
423 Panel.

424 As for our external outreach, ensuring that we
425 appropriately track and manage our outreach activities is an
426 important priority for ISCD and one that we will pursue.

427 Thank you again for the opportunity to provide an update
428 on the forward progress the CFATS program continues to make.
429 It is an honor and a privilege to serve with the dedicated
430 professionals at ISCD. I firmly believe we have made much

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431 progress in coming together as a regulatory compliance
432 organization, and along with rest of the ISCD team, I am
433 excited and optimistic about the future of the CFATS program.

434 Thank you again for the opportunity and I welcome any
435 questions that you may have. I apologize for the extra 30
436 seconds.

437 [The prepared statement of Mr. Wulf follows:]

438 ***** COMMITTEE INSERT *****

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439 Mr. {Shimkus.} Oh, you are fine. Thank you, Mr. Wulf.

440 And before I recognize myself for the first round of
441 questions, I think just a comment for staff--especially, I
442 think we have some guests in the room--is that maybe we need
443 to put up a placard that defines these acronyms, because if
444 you are visiting this room and you have no idea what these
445 acronyms are, you are like probably listening to Chinese. So
446 stuff like CFATS--Chemical Facility Anti-Terrorist Standards.
447 We will talk about NIPPs which is the National Infrastructure
448 Protection Plan. We will talk about ASP, Alternate Security
449 Plan. So we know there are a lot of you that are well
450 knowledgeable out there, but we probably could do better by
451 having a display of some of these acronyms out there. So I
452 am from the military a long time ago so we were acronym-
453 focused also.

454 So I will recognize myself for the first 5 minutes of
455 questions and my questions will be directed to Mr. Beers.

456 Mr. Beers, GAO says CFATS does not consider or analyze
457 vulnerability threat or economic consequence during the
458 tiering process. We knew about the vulnerability gap but not

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459 the others. But in GAO's testimony--Government Accounting
460 Office--when would the regulated community, the Hill, and
461 others have learned of this?

462 Mr. {Beers.} Sir, I do not know when the vulnerability
463 issue surfaced specifically, but I do know that it surfaced
464 within at least the last year as far as I am aware. With
465 respect to the economic consequences issue, as I was not
466 present when the program was originally briefed to this
467 committee and other committees, I am simply unaware of when
468 or whether that might have been brought to the Committee's
469 attention.

470 Mr. {Shimkus.} Yes. So the follow-up is, had not
471 Chairman Upton, Joe Barton, Henry Waxman not asked for this
472 GAO report, we on the Hill and stakeholders may not have
473 learned of the vulnerability gap. Is that safe to say?

474 Mr. {Beers.} Sir, that is certainly a conclusion that
475 can be drawn from that. But one thing that I would add to
476 that, which David I have both spoken of, is that one of the
477 things that we have asked of the peer review committee after
478 our own internal review is that this methodology be looked at
479 independently. Obviously, we are going to take note of the

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480 GAO's comments on this and it is certainly our intention to
481 have full disclosure with you all, and if some of the
482 material is classified, we will do that in a classified
483 setting.

484 Mr. {Shimkus.} Thank you. According to the National
485 Infrastructure Protection Plan, risk is a function of three
486 components: consequence, threat, and vulnerability--we did
487 this in the last hearing--and a risk assessment approach must
488 assess each one. Have you analyzed the effect of not
489 considering vulnerability for all the regulated facilities?

490 Mr. {Beers.} Sir, we have. The rationale behind that
491 is that while we have--

492 Mr. {Shimkus.} Did your mike go off or it is not pulled
493 close enough?

494 Mr. {Beers.} Let me start over again. We looked at
495 consequences and threats and gave them a definition in the
496 tiering methodology, but because vulnerability was what the
497 whole program was about reducing and because we did not have
498 the kind of data that we needed in order to be able to assign
499 vulnerability factors with specific and differentiated
500 levels, we chose to hold that constant. Tier on the basis of

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501 threat and consequence and ask the facilities then to come
502 back to us with an indication of what their vulnerabilities
503 were and to work with them on Site Security Plans to deal
504 with those vulnerabilities.

505 The consequence of this is that the tiering works to set
506 them aside by threat and vulnerability and the whole endgame
507 is about reducing vulnerability or risk. So we chose to hold
508 that constant in the tiering; we chose to deal with that
509 through the Site Security Plan process.

510 Mr. {Shimkus.} And I guess then our follow-up would be
511 we think you have evaluated part of the threat, not the
512 entire threat, and there is no economic process that has been
513 defined so far which is a part of that whole calculation.
514 But you did identify in your comment about up-to-date data.
515 So what is the effect of not using up-to-date threat data in
516 the risk-tiering approach?

517 Mr. {Beers.} Sir, as we go through this process, if
518 there is additional threat data or altered threat data, our
519 intention is to include that. That is certainly something
520 that we are talking with the Peer Review Committee about and
521 my guess is we will get some different information.

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522 David, do you want to add to that?

523 Mr. {Wulf.} Yes, I would. Yes, the tiering
524 methodology, as it currently exists, is certainly very much
525 consequence-based. You know, I think that consequence is
526 tied very much directly to threat as we use the threat in the
527 tiering engine. You know, targets that have high value from
528 a terrorist perspective in terms of the consequence, you
529 know, will also typically have a pretty high score on the
530 threat side. We are certainly very much open to ways in
531 which we can enhance the tiering methodology and that is, you
532 know, the very reason we are having this external peer
533 review.

534 But I think focusing principally on consequence in a
535 regulatory compliance framework is an appropriate way to tier
536 facilities. If we focused heavily on vulnerability in the
537 actual tiering, we would have potential situations in which a
538 facility would tier highly because of a heightened
539 vulnerability that it identified. As a result of tiering
540 highly, it would put into place hopefully significant and
541 successful security measures to address the vulnerability.
542 The vulnerability would then be diminished and theoretically

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543 that facility would tier out, not have those requirements any
544 longer, conceivably have its vulnerability go up again, tier
545 back in, and we would have sort of a rollercoaster effect.

546 So I think the way in which we and the CFATS program
547 have woven the vulnerability factor into the remainder of the
548 program in the facilities assessment of vulnerabilities, in
549 the development of their security vulnerability assessments,
550 and in their development of Site Security Plans makes sense.
551 That is not to say there isn't room for improvement and I
552 certainly anticipate we will get some solid recommendations
553 in those regards from the Peer Review Panel.

554 Mr. {Shimkus.} Thank you. My time has expired. The
555 chair now recognizes Mr. Tonko for 5 minutes.

556 Mr. {Tonko.} Thank you, Mr. Chair.

557 It appears that the Department of Homeland Security has
558 good progress to report implementing their Action Plan to
559 strengthen the CFATS program, but I am concerned that
560 fundamental problems may still exist. I would like to focus
561 on one of those concerns and that has just been the focus of
562 the chair's address and that being the tiering of facilities.

563 CFATS is a risk-based program meaning that facilities

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564 placed in a high-risk tier have to meet higher standards, I
565 am told, for security. Lower-tiered facilities then meet
566 lower standards. An error in tiering could mean that a high-
567 risk facility is not adequately secured or that the owners
568 and operators of a low-risk facility have to invest in
569 unnecessary security measures. The tiering process must be,
570 therefore, as accurate as possible.

571 The Department published a National Infrastructure
572 Protection Plan in 2006 and I believe revised it in 2009.
573 This plan discusses how risk analysis for terrorism threats
574 should be conducted. Under Secretary Beers, should the CFATS
575 program be consistent with that plan, the developed plan of
576 2006, and improved in '09?

577 Mr. {Beers.} Sir, the National Infrastructure and
578 Protection Plan is a global statement of risk. All of the
579 programs in the Department of Homeland Security should be in
580 rough alignment with that. But we also have to recognize
581 that different sectors and different companies may have some
582 specifics that cause some alteration or some specific
583 requirement relevant to them and perhaps only to them. But
584 as a general measure, yes, that is correct, sir.

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585 Mr. {Tonko.} So as a general measure, we say yes. And
586 according to the National Infrastructure Protection Plan,
587 risk assessments must account for threat, vulnerability, and
588 consequences. But that is not what CFATS, as a program,
589 currently does. GAO is critical of the fact that apparently
590 DHS completely ignores the potential economic consequences of
591 a terrorist attack when conducting a risk assessment. And
592 GAO is not the first to say this. In 2010, the National
593 Academies published a report, requested by Congress, on
594 department-wide efforts to analyze risk. And the Academies
595 approved of the framework in the National Infrastructure
596 Protection Plan but found that ``many of the departments
597 risk-analysis models and processes are weak and are not on a
598 trajectory to improve.'' According to Academies, the methods
599 were not ``documented, reproducible, transparent, or
600 defensible.''

601 These are very serious criticisms and to address these
602 issues the National Academies made a number of specific
603 recommendations. So my question to you, Under Secretary, is
604 that did the Department ever provide a formal response to the
605 National Academies' report?

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606 Mr. {Beers.} Sir, there was a response by the
607 Department to that. I can get you a copy of that. I don't
608 have it at hand at this particular point in time. But we
609 were certainly aware of the Academies' report and we did
610 respond to it.

611 Mr. {Tonko.} Under Secretary Beers, can you please
612 explain the process you are currently engaged in to improve
613 the risk assessment done in the CFATS program and whether it
614 will respond to the recommendations made by GAO and the
615 National Academies?

616 Mr. {Beers.} Sir, let me respond on two levels here,
617 firstly, to go back to the original premise, which is the
618 threat, consequences, and vulnerability address how one
619 should be dealing with risk and simply say we believe in the
620 CFATS program that we do address all three of those aspects
621 even though the tiering methodology, which is not the entire
622 dealing with risk, only focuses on consequences and threat
623 and holds vulnerability constant. But as I said in my
624 earlier response to the chairman's question, we believe that
625 the vulnerability part of that equation is dealt with in the
626 development of the Site Security Plans.

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627 With respect to the larger question, I think that what
628 we are trying to do here is work through a regulatory program
629 which is different--the NIPP was really written in
630 association with voluntary programs, which meant that while
631 we could lay out best practices or standards or thoughts on
632 how to deal with this, it was really entirely up to the
633 companies in order to do that. And in the regulatory
634 program, we have the ability to state whether or not their
635 response is in fact adequate to the regulatory requirement
636 that we have. And that makes it somewhat different from the
637 framework in which the NIPP was written.

638 But let me also turned to David Wulf to add anything
639 that he may wish to add.

640 Mr. {Wulf.} I would just add a couple of things. You
641 know, we committed to do three things when we encountered
642 some issues with the tiering methodology. One was to do an
643 internal documentation of our processes and our methodology,
644 do sort of an internal department look at the CFATS
645 methodology and to do what is ongoing right now, the external
646 peer review. As we conducted our documentation, you know, we
647 have tried to be transparent about what we found. We have

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648 talked through issues with staff up here, with our industry
649 stakeholders, and have tried to keep everyone abreast of the
650 progress we are making on the economic criticality piece of
651 this, of the consequence assessment in the tiering
652 methodology.

653 In that regard, you know, I would note for the Committee
654 that we are actively engaged in trying to address the
655 economic consequence part of the equation. We are working
656 with Sandia National Labs on that effort. I received a
657 briefing I want to say a couple of months ago. Our
658 expectation is that Sandia's work--and it is difficult stuff
659 assessing economic consequences of potential terrorist
660 attack--will be complete early 2014. We anticipate talking
661 through the Sandia findings with our stakeholders. We are
662 not going to proceed in a vacuum as we look to incorporate
663 economic consequence into the model, but I do believe, you
664 know, as I think you do as well, that it is an important
665 piece to the puzzle. So, you know, we are going to continue
666 to seek to improve the methodology.

667 The thing we struggle with is trying to be a learning,
668 continually improving program, at the same time trying to

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669 afford a degree of certainty to our industry stakeholders
670 who, you know, for whom it would be difficult to have an
671 ever-changing target in terms of the tiering. So, you know,
672 we have to balance all of that, but we are taking a hard look
673 at it all.

674 Mr. {Tonko.} Thank you.

675 Mr. {Shimkus.} The gentleman's time has expired.

676 Again the NIPP is the National Infrastructure Protection
677 Plan again for our guests who are now leaving.

678 So the chair now recognizes the gentleman from
679 Pennsylvania, Mr. Pitts, for 5 minutes.

680 Mr. {Pitts.} Thank you, Mr. Chairman. Under Secretary
681 Beers, according to the NIPP, risk management should help
682 focus planning and allocate resources. How can you
683 prioritize resources and manage risk if you don't
684 differentiate between threat or vulnerability?

685 Mr. {Beers.} Sir, we definitely do differentiate
686 between threat and vulnerability. What we have tried to do
687 here is ensure that the compliance part of the effort which
688 is to buy down risk, it was measured against the threat-and-
689 consequence tiering of the tiering methodology. So the whole

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690 program is designed to reduce the vulnerability to the
691 American people, to the communities that surround those
692 facilities. And every effort is made through the risk-based
693 performance standards to help those facilities produce Site
694 Security Plans that in fact protect the communities in which
695 they live far more than when there was no regulation on those
696 facilities. Which is not to say that they weren't trying in
697 their own way to do that, but what we have tried to do is to
698 provide a general way in which they can approach that to help
699 them or to give them thoughts about other ways that they
700 might think about buying down that risk by reducing the
701 vulnerabilities through their Site Security Plans.

702 David, would you add anything?

703 Mr. {Wulf.} No. I think that pretty well covers it.
704 You know, the vulnerability is, you know, as I have
705 expressed, woven through the fabric of the program in the
706 security vulnerability assessments that facilities conduct,
707 and in their development of Site Security Plans.

708 Mr. {Pitts.} Given incomplete aspects of your risk
709 assessment model, are you confident that the CFATS risk-
710 tiering approach adequately tiers facilities?

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711 Mr. {Beers.} Based on the way that we have put forward
712 the methodology, we are confident that the general model is
713 correct, as has been indicated here. We are going to look at
714 economic consequences to see whether or not--and if so, how--
715 that ought to be injected into the methodology. And we are
716 reviewing the threat information as well. So this, as David
717 just said, is not a static program and we are looking for
718 assistance and help from the peer review effort to see how we
719 might do a better job. But as David also said, we want to do
720 this in a fashion in which we are not constantly changing and
721 moving everything because industry also needs a degree of
722 stability as they consider how to improve their own site
723 security.

724 Mr. {Pitts.} Now why do you collect data, information
725 that you do not use? Regulated facilities are required to
726 provide substantial information to facilitate the tiering
727 process but ISCD only uses a small amount of this data.

728 Mr. {Wulf.} My assessment is that all of the data that
729 we take in is valuable to the program, and it is useful as we
730 evaluate, you know, not only the tiering as we assign risk
731 tiers but as we look at evaluation of Site Security Plans.

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732 So, you know, the questions and the information that is
733 provided in response to those questions I think goes a long
734 way toward prompting facilities to give thought to their
735 vulnerabilities and to incorporate appropriate responses to
736 those vulnerabilities and to implement security measures
737 appropriate to respond to those vulnerabilities as they
738 develop their Site Security Plans.

739 Mr. {Pitts.} My time has expired. Thank you.

740 Mr. {Shimkus.} The gentleman's time has expired. I
741 would hope that he will pay close attention to the GAO report
742 because they say, obviously, there is a lot of data that is
743 not used and that is the reason why that question is asked.

744 Five minutes to Mr. Green.

745 Mr. {Green.} Thank you, Mr. Chairman.

746 Welcome to our panel. Under Secretary Beers, in your
747 testimony for today's hearing you state that DHS will be
748 publishing a revised Personnel Surety Program rule next week.
749 Regarding the PSP, are you able to commit the day that the
750 new rule will allow similar credential programs like the TWIC
751 program for land-based--so we would have one ID for employees
752 whether they work for a company's land-based site or the

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753 water-based site?

754 Mr. {Beers.} Sir, you are correct. We have provided
755 our Personnel Surety Program notice to the Federal Register
756 and the Department has provided a TWIC Reader Rule
757 Requirement Program to the Federal Register also this week.
758 Those will be published, I am told, next week. It takes that
759 long to actually put it out. It will include the ability to
760 use a TWIC card as a personnel identification and personnel
761 surety credential within the program for those who qualify
762 for the program. The larger TWIC reader rule will allow
763 companies, facilities to know what kind of a validation
764 system they have in order for those TWIC cards to be
765 validated as individuals pass into those facilities. That
766 was, as you will recall, an original requirement of the whole
767 TWIC program, which has been operating unfortunately without
768 that reader rule requirement up to this point in time.

769 Mr. {Green.} Well, and you know, we have talked about
770 this for a couple of years now and I appreciate the agencies
771 doing that because a lot of plants have waterside and land-
772 based--and employees move back and forth and most of the time
773 the employees have to buy those cards themselves and it just

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774 seems like it did not make any sense to make an employee, you
775 know, have to buy two cards that really should be issued by
776 the Federal Government. You only need one.

777 Mr. {Beers.} I couldn't agree with you more, sir.

778 Mr. {Green.} And can you share the efforts the
779 Department made to incorporate both employee and union
780 interest, because I know of some in my area--we have
781 steelworkers that represent my refiners and chemical plants,
782 a number of them. Were they involved in this decision or
783 received input?

784 Mr. {Wulf.} The earlier information collection request
785 that was withdrawn during the summer was open for comment
786 across the board. We did not work specifically or discuss
787 any of this specifically with labor unions.

788 Mr. {Green.} Okay. Well, I know one of their concerns
789 is that their members would have to have these two cards.
790 And when does your agency anticipate to complete the site
791 security program review for all facilities and including Tier
792 3 and 4?

793 Mr. {Wulf.} You know, as I mentioned, we are looking to
794 be through with Tiers 1 and 2 by the first part of 2014.

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795 With regard to Tiers 3 and 4, we are looking at ways that we
796 can increase the pace of the review. I know the GAO, you
797 know, looking at sort of the current pace, has projected it
798 could take, you know, between 6 to 9 years. That is a pace
799 that is, in our view, not an acceptable one. I think that we
800 are going to continue to see the pace quicken. I don't want
801 to provide a certain date because I am sure I will be
802 slightly off.

803 But, you know, I think as we move forward with the
804 heightened pace of inspections as we learn more about how to
805 achieve efficiencies in the SSP reviews and the inspection
806 process, we will get better at doing them and be able to
807 inspect, review, and approve larger numbers of SSPs. I think
808 the alternative security programs will provide a means to
809 heighten the pace as well. So as those templates come into
810 greater use, and particularly as they are used by multiple
811 facilities within the same company, I think we will see the
812 pace quicken significantly. We will also continue to look at
813 the resources we have to do those inspections. We are
814 bringing on board another 18 inspectors which will increase
815 our capacity. We will continue to look at whether there

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816 might be a possibility of getting some additional folks on
817 board as well.

818 Mr. {Green.} Mr. Chairman, I know my time is--but there
819 has been a substantial public sector investment and private
820 sector investment and we would hope to see some of that, that
821 they would have their security plans at least on what they
822 have invested literally hundreds of millions of dollars on,
823 both, like I said, public money and private money.

824 Thank you, Mr. Chairman.

825 Mr. {Shimkus.} The gentleman's time has expired.
826 Before I move to Mr. Cassidy, just for clarification, Mr.
827 Wulf, and for the transcriber, when you said the 6 to 9 years
828 did you say is not an acceptable or did you say not
829 unacceptable?

830 Mr. {Wulf.} I said it is not acceptable.

831 Mr. {Shimkus.} Okay.

832 Mr. {Wulf.} It is not an acceptable--

833 Mr. {Shimkus.} Great. Thank you. It caught my
834 attention there for a second.

835 So now the chair recognizes the gentleman from
836 Louisiana, Mr. Cassidy, for 5 minutes.

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837 Dr. {Cassidy.} Hey, gentlemen. Thank you for being
838 here. I understand that you all have done a heck of a lot of
839 work to address some of the issues and as I have obviously
840 been a sharp critic, so first, I thank you for your hard work
841 that you have done.

842 With that said, you might guess I have got a couple
843 other concerns. The fact that you can--

844 Mr. {Wulf.} I said I suspected you might.

845 Dr. {Cassidy.} The fact that you can buy down risk or
846 buy down vulnerability by decreasing threat suggests that
847 risk is some constant. You have some number for risk,
848 however you calculate that number, that you would like to
849 address. It is also my understanding, I think you said
850 earlier, the review panel will come up with a new model in
851 which they will assess both the economic consequences and
852 life consequences and all these other factors in a more
853 sophisticated fashion than currently you are doing. Are they
854 going to have access to your data--this category of data,
855 this continuum of data that you have--in order to see the
856 robustness of their model?

857 Mr. {Wulf.} Yes, sir. The Peer Review Panel has access

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858 to everything that we have, classified and otherwise.

859 Dr. {Cassidy.} Now, is it possible that that will show
860 that what you are currently doing is--I suppose that means if
861 they are coming up with a new model, it will show either that
862 you are doing a good job or that you are not doing a good
863 job. Correct?

864 Mr. {Wulf.} Well, you know, I don't know that it is
865 fair to say that the panel's charter is to come up with a new
866 model. The charter is to, you know, take a fresh look at
867 what we are doing.

868 Dr. {Cassidy.} But if you don't currently have--I don't
869 mean to interrupt, I am sorry. It is limited time. If you
870 don't have economic consequences in there, and I understand
871 at some point, reading the testimony or GAO report, that
872 population density wasn't factored in some places. It
873 certainly seems that you need a new model. Does that make
874 sense? I mean if we are going to include economic
875 consequences, and what you are doing now does not do so, then
876 clearly you need new model.

877 Mr. {Wulf.} As we look to incorporate economic
878 consequences--and I should mention that at Sandia National

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879 Labs that is doing the work for us on economic consequences--
880 but certainly something the Peer Review Panel can, and I
881 suspect will, look at as well. As we move to incorporate
882 that into the model certainly we would have to revise the
883 model.

884 Dr. {Cassidy.} So you do anticipate giving them access
885 to your compendium of information for them to check to see
886 the robustness of the model?

887 Mr. {Wulf.} Absolutely.

888 Dr. {Cassidy.} And will you share that with the
889 Committee?

890 Mr. {Wulf.} We can certainly look at that, you know--

891 Dr. {Cassidy.} I mean, like, why wouldn't you?

892 Mr. {Wulf.} I don't see why not.

893 Dr. {Cassidy.} Yes. Now, if you decide upon this model
894 as being that model which you should use, would you share it
895 with the industry?

896 Mr. {Wulf.} The underlying information?

897 Dr. {Cassidy.} No, not the underlying information, the
898 model itself. Because if, Mr. Beers, you say that they can
899 buy down vulnerability by whatever--addressing in a greater

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900 way threat--I imagine you have some, you know, retrogression
901 analysis and that you can plug these things in. Really,
902 right now, it appears that there is a certain degree of
903 subjectivity.

904 Mr. {Wulf.} Well, you know, looking--

905 Mr. {Beers.} Sir, we are committed. And that is one of
906 the questions that we have asked the peer review to look at
907 is, what should we share from the tiering methodology with
908 them? Now, we have some parts of it which are currently
909 classified. We are also looking at the possibility of
910 declassifying some of that information as well. Because we
911 firmly believe as the program has matured that the
912 transparency of the tiering model is important. That will
913 help them think about their own Site Security Plans in a
914 better way than to simply use the risk-based performance
915 standards by themselves. The objective here is to reduce
916 risk. The objective here is to reduce vulnerability and we
917 believe as we have considered this, that that kind of
918 transparency is necessary.

919 If there remains classified parts of the program, we
920 will look at whether or not we can at least have some

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921 industry representatives, as we do generally with the
922 National Infrastructure Protection Program, cleared to
923 receive classified information even if we can't make it
924 broadly available.

925 Dr. {Cassidy.} So I am asking now, not to challenge but
926 rather for information, if you have a formula by which
927 someone can decide what their relative risk is, you plug in
928 these variables and you come up risk, it seems to me that--I
929 don't know whether that would be classified. Listen, a 15-
930 foot fence will get you here and a 30-foot fence will get you
931 there and video cameras will get you here and armored cars
932 will get you there. So knowing that some of the information
933 is classified, are the variables that you plug in classified?

934 Mr. {Beers.} David?

935 Mr. {Wulf.} Some of the factors that go into the
936 calculation of the risk score are classified. But, you know,
937 I would just echo the under secretary's comments that, you
938 know, that fostering greater transparency for our
939 stakeholders in tiering is one of our goals and certainly one
940 that we are going to pursue.

941 Dr. {Cassidy.} Last question--and you may have

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942 mentioned this earlier--when do you expect the panel to come
943 back with their report and then ideally to run some of those
944 compendium of information to check out what you have been
945 currently doing and et cetera?

946 Mr. {Wulf.} We are anticipating a report from the Peer
947 Review Panel this summer.

948 Dr. {Cassidy.} Okay. Thank you. I yield back.

949 Mr. {Shimkus.} The gentleman yields back his time. The
950 chair now recognizes the ranking member of the full
951 committee, Mr. Waxman, for 5 minutes.

952 Mr. {Waxman.} Thank you, Mr. Chairman. Today's hearing
953 underscores the need for reform of this program, and in my
954 view, this committee should develop comprehensive
955 reauthorization legislation.

956 Today, GAO will testify that it will take 8 to 10 years
957 before the Department can review and approve the Site
958 Security Plans it has already received. Additionally, the
959 Department must revise its risk analysis model, which could
960 mean that the current tiering of facilities will have to be
961 revised, requiring many facilities to begin the process over
962 again.

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963 In the 111th Congress, the Committee produced a
964 comprehensive Chemical and Water Facility Security Bill to
965 finally set this program on the path to sustainable success.
966 Mr. Beers, you testified in support of that bill as did
967 representatives of the labor community, the environmental
968 community, water utilities, and the chemical industry. At
969 that time you said, ``given the complexity of chemical
970 facility regulation, the Department is committed to fully
971 exploring all issues before the program is made permanent.''
972 I agree with that statement and I would like to explore some
973 of those issues with you today.

974 Mr. Beers, does the administration still support closing
975 security gaps for wastewater and drinking water facilities?

976 Mr. {Beers.} Yes, sir.

977 Mr. {Waxman.} Does the administration still support
978 maintaining EPA as the lead agency for drinking water and
979 wastewater facilities with the Department supporting EPA's
980 efforts?

981 Mr. {Beers.} That is our position.

982 Mr. {Waxman.} Does the administration still believe
983 that all high-risk chemical facilities should assess

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984 inherently safer technology and that the appropriate
985 regulatory entity should have the authority to require the
986 highest-risk facilities to implement those inherently safer
987 technologies if feasible?

988 Mr. {Beers.} The statement at that time still remains
989 the administration's position, sir.

990 Mr. {Waxman.} Since we worked on that bill 3 years ago,
991 additional challenges have come to light. Specifically, the
992 internal review and memorandum prepared in November 2011
993 found serious problems. The Department produced an Action
994 Plan to address these problems. That Action Plan included
995 the formation of a task force to develop recommendations for
996 legislative and regulatory changes to the CFATS program. My
997 understanding is that the Department reports that it has
998 completed development of those recommendations. Mr. Beers,
999 when can we expect to see those recommendations?

1000 Mr. {Beers.} Sir, I will have to get back to you on
1001 that. I don't have specific answer on that question.

1002 Mr. {Waxman.} Okay. Well, I look forward to you
1003 getting back and to have the record held open so that we can
1004 get that response.

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1005 Mr. {Shimkus.} Without objection. So ordered.

1006 Mr. {Waxman.} As the Committee further considers the
1007 CFATS program, having your legislative recommendations for
1008 reforming the program would obviously be very helpful.

1009 Thank you, Mr. Chairman. I yield back my time.

1010 Mr. {Shimkus.} The gentleman yields back his time. The
1011 chair now recognizes the other gentleman from Pennsylvania,
1012 Mr. Murphy, for 5 minutes.

1013 Mr. {Murphy.} Thank you, Mr. Chairman. And thank you,
1014 to the panel.

1015 According to the CFATS rule, a high-risk chemical
1016 facility is one that, in the discretion of the under
1017 secretary, presents a high risk of significant consequences
1018 for human life and health and now security and critical
1019 assets. Let me ask you a few comments on this. If, as a
1020 result of your work with Sandia National Laboratories
1021 economic consequences are incorporated into the CFATS risk-
1022 tiering approach, how will this impact the current list of
1023 related facilities and do you expect more facilities to be
1024 covered?

1025 Mr. {Wulf.} I think it is hard to say right now. You

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1026 know, depending on what we get back and our analysis of
1027 Sandia's work, you know, it could impact the numbers of
1028 facilities that are covered in a few different ways. You
1029 know, depending on the weighting that is given to the
1030 economic consequence piece of the equation and really the
1031 general fabric of the assessment on economic consequences.
1032 So I don't think I am in a position today to forecast that.

1033 Mr. {Murphy.} Can you give any estimates at all how
1034 much you think it is going to cost to incorporate the results
1035 of the Sandia National Laboratories work into the current
1036 CFATS risk assessment approach?

1037 Mr. {Wulf.} I don't at this time, not without the
1038 assessment from Sandia.

1039 Mr. {Murphy.} Well, given also it is going take
1040 approximately 7 to 9 years for ISCD to review plans submitted
1041 by regular facilities, how practical is it for you to expand
1042 the program to include additional facilities?

1043 Mr. {Wulf.} You know, we are going to, you know, first,
1044 you know, as I said, the 6 to 9 years is not an acceptable
1045 pace and we are going to everything in our power to pick up
1046 that pace. You know, I think though that it is important

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1047 that we foster enhanced security for all chemical facilities
1048 that are high risk in nature. So, you know, to the extent
1049 the universe of high-risk facilities is framed and includes
1050 in the calculation of that universe or in the formation of
1051 that universe the economic consequences and the universe
1052 grows, we will look at ways to make that work.

1053 As I said, we are bringing on additional inspectors; we
1054 are improving our processes and procedures. We are going to
1055 get better and better at this. So, you know, if that
1056 challenge presents itself, you know, we will meet the
1057 challenge.

1058 Mr. {Murphy.} I know we have talked about these things
1059 in other hearings that the chairman has conducted here, and
1060 you are expecting about 30 to 40 site plan approvals per
1061 month. That is your anticipated goal for the future?

1062 Mr. {Wulf.} That is our current pace.

1063 Mr. {Murphy.} The current pace. Well, how many did you
1064 approve in January of 2013?

1065 Mr. {Wulf.} I would have to get that to you
1066 specifically.

1067 Mr. {Murphy.} February? Just last month, any idea?

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1068 Mr. {Wulf.} I would imagine between 20 and 30 in
1069 February.

1070 Mr. {Murphy.} So you said you expect--

1071 Mr. {Wulf.} Yes.

1072 Mr. {Murphy.} You are currently at 30 to 40 but you are
1073 half that in February. I am just trying to--

1074 Mr. {Wulf.} Yes. I expect it is going to continue to
1075 ramp up because what we are doing more of in January and
1076 February was authorizing plans. And as we authorize the
1077 plans, we schedule the inspections. That is what leads to
1078 the approvals. So the approval pace will pick up. We
1079 anticipate by the end of September being up to upwards of 350
1080 approvals. So that will be, you know, all of Tier 1 and
1081 probably about halfway through the Tier 2 facilities. So,
1082 you know, actually, in 6 months, 6-1/2 months from now, you
1083 know, we will likely be doing about 50 approvals a month for
1084 the next foreseeable future.

1085 Mr. {Murphy.} You have a mechanism for continuous
1086 improvement as you go through these to speed them up, for
1087 example, getting feedback as you go through these approval
1088 processes--feedback from people you have worked on with those

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1089 saying what we could have done to make this better, faster,
1090 more thorough?

1091 Mr. {Wulf.} Yes, we sure do. We are constantly
1092 evaluating our processes and looking at ways we can do things
1093 better.

1094 Mr. {Murphy.} Is that an internal process? Do you also
1095 get external feedback on that?

1096 Mr. {Wulf.} Well, it is an internal certainly within
1097 the division and the relevant branches within the division.
1098 But also we are talking consistently with our stakeholders,
1099 and I was able to share, you know, one comment we received
1100 back during my opening statement. But we are always talking
1101 to our stakeholders about improving. And one of the things
1102 we have done to pick up the pace and to increase the pace of
1103 SSP authorizations in approvals specifically has been to
1104 include our field inspectors, who are most familiar with the
1105 facilities in the authorization and approval loop early in
1106 the processes. As issues are identified, those SSPs are
1107 kicked out to the field and squared away and kicked back into
1108 the authorization approval loop more quickly.

1109 Mr. {Murphy.} In my remaining time I just want to ask

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1110 real quick. We understand there are some documentation
1111 issues regarding the CFATS risk-tiering approach. Can you
1112 give me a little information of what those documentation
1113 issues are? Is that something slowing you down, too, or what
1114 are those documentation issues?

1115 Mr. {Wulf.} No, I don't think so. The documentation I
1116 referenced earlier was our effort over the past year to
1117 thoroughly document the tiering methodology.

1118 Mr. {Murphy.} Is that also improving over time?
1119 Thoroughly documenting so you are--

1120 Mr. {Wulf.} Yes.

1121 Mr. {Murphy.} Well, I am out of time here I know but I
1122 will follow up on the other questions. Thank you.

1123 Mr. {Wulf.} Okay.

1124 Mr. {Shimkus.} The gentleman's time has expired.

1125 The chair now recognizes the gentleman from California,
1126 Mr. McNerney, for 5 minutes.

1127 Mr. {McNerney.} Thank you, Mr. Chairman.

1128 Mr. Wulf, is the ISCD responsible for addressing cyber
1129 threats to chemical plants?

1130 Mr. {Wulf.} Yes, sir. Yes, sir. One of our Risk-Based

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1131 Performance Standards, RBPS 8, relates to cyber.

1132 Mr. {McNerney.} So are there specific cyber threats for
1133 potential catastrophic results to human beings that you know
1134 of?

1135 Mr. {Wulf.} I think potentially there could be, which
1136 is why CFATS addresses cyber. It focuses within the CFATS
1137 framework on industrial control systems, on systems that can
1138 impact the release of chemicals, and on systems that can
1139 impact the security of a facility.

1140 Mr. {McNerney.} So how effective then is the DHS in
1141 addressing these potential cyber threats?

1142 Mr. {Beers.} Sir, we have the best team in the country
1143 to deal with industrial control systems as announced by
1144 Security magazine. The ICS or Industrial Control Systems
1145 team that we have in our cyber office is absolutely the best
1146 in the country. They provide regular assessments on requests
1147 from people. We are expanding that program. It will also be
1148 part of the work that we are doing with respect to the
1149 Executive Order on cybersecurity and the Presidential Policy
1150 Directive that came out, both for those in February, a major
1151 area of concern and a major area of involvement. We are

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1152 basically teaching the rest of the government how to deal
1153 with this issue.

1154 Mr. {McNerney.} Good. Good. In my mind there are two
1155 aspects of cyber defense: protection and retaliation. Maybe
1156 that is not the way that you look at it, but a kinetic attack
1157 will almost certainly involve a strong response from this
1158 government. But on the other hand, a cyber attack may not
1159 elicit a response. So the question I have is, are there
1160 rules of engagement for cyber attacks on chemical facilities
1161 in this country?

1162 Mr. {Beers.} Sir, there are general rules of engagement
1163 that is not part of the DHS activity set. That belongs to
1164 the Department of Defense. But we and the Department of
1165 Defense and the Department of Justice have a very robust
1166 effort to work together on a regular basis at all of those
1167 things short of an actual attack. I mean, we are, as you
1168 well know, in a sort of cold state of a lot of
1169 reconnaissance, a lot of intellectual property theft that is
1170 going on now that the three departments are working mightily
1171 to try to deal with. But the offensive side is the domain of
1172 the Department of Defense. We are aware of what they do in a

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1173 general sense but it is not part of our responsibility.

1174 Mr. {McNerney.} So I mean there must be some
1175 coordination then. I mean cyber attacks are happening on a
1176 continuing basis, some of them less of a threat and some of
1177 them more of a threat. And so what I would like to get is
1178 some comfort that there is going to be a consequence to
1179 conducting cyber attacks at any level on facilities in this
1180 country.

1181 Mr. {Beers.} Sir, I certainly can't comment on that in
1182 this unclassified setting.

1183 Mr. {McNerney.} Okay. Mr. Chairman, I yield back.

1184 Mr. {Shimkus.} The gentleman yields back the time.

1185 The chair now recognizes the gentleman from West
1186 Virginia, Mr. McKinley, for 5 minutes.

1187 Mr. {McKinley.} Thank you, Mr. Chairman. This is an
1188 interesting subject.

1189 Mr. {Shimkus.} Mr. McKinley, can you turn your mike on,
1190 I think?

1191 Mr. {McKinley.} It is on.

1192 Mr. {Shimkus.} Oh, you do.

1193 Mr. {McKinley.} Yes, this is an interesting subject.

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1194 As an engineer and as someone who has worked in some of these
1195 chemical plants, I am curious to learn more about what we
1196 have been doing and how long it has been going on. I am just
1197 curious, first, I guess is, do either of you feel are
1198 terrorism threats on the rise? Is it status? What is
1199 happening in this country? I am just curious.

1200 Mr. {Beers.} Yes, sir. That is a very good question.
1201 I think what we have seen since 9/11, a continued threat
1202 within the country that has been primarily executed by
1203 individuals who have been inspired by the rhetoric of the
1204 jihadists to conduct acts within the country. Fortunately,
1205 we have been able to thwart most of them. Some of them just
1206 simply failed because they weren't very well executed. The
1207 Bureau has a very extensive program trying to detect this.
1208 Could something happen from overseas again? Yes, that is
1209 always a possibility, but that is a major effort that we and
1210 the other departments are working on.

1211 Mr. {McKinley.} Well, again, are the attacks on the
1212 rise? Threats I should say. Are threats of attacks on the
1213 rise?

1214 Mr. {Beers.} Are threats of attacks on the rise? The

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1215 threat and capability, because aspirational threats--

1216 Mr. {McKinley.} It should be just a yes or no. Isn't
1217 it a yes or no?

1218 Mr. {Beers.} --occur on a regular basis and you could
1219 look--and there is something every day. Threat and
1220 capability matched with one another--

1221 Mr. {McKinley.} Are threats on the rise?

1222 Mr. {Beers.} --I think at this point are not on the
1223 rise.

1224 Mr. {McKinley.} Okay. That is fine.

1225 Mr. {Beers.} Are not on the rise.

1226 Mr. {McKinley.} What is their objective? Is it just to
1227 have access? Are they trying to just blow up a facility?
1228 What is the threat that you are hearing? What are they
1229 trying to accomplish?

1230 Mr. {Beers.} So there is the local objective and there
1231 is the broader objective, and they think in both of these
1232 realms. The local objective is to have an event that is
1233 sufficiently newsworthy, sufficiently damaging, that it
1234 causes people to take notice of it and gives them credit for
1235 the ability to actually execute. The broader issue, though,

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1236 is to destroy--and bin Laden and his successors have been
1237 very clear about this--is to destroy the will of the West,
1238 and the will of the United States to oppose them and withdraw
1239 from the region.

1240 Mr. {McKinley.} So if I can continue with the question,
1241 can you give me an example of a chemical facility that has
1242 been attacked successfully in the West?

1243 Mr. {Beers.} No, sir. Unless you want to include the
1244 Amenas plant in Algeria, which is the one recent one--

1245 Mr. {McKinley.} Okay. That is fair.

1246 Mr. {Beers.} --that we had, but other than that, I
1247 can't tell you.

1248 Mr. {McKinley.} It is one thing if they want to disrupt
1249 it, would we not pose a threat also in where the products
1250 that we are producing in these chemical plants--does it
1251 extend your risk assessment and evaluation? Does that also
1252 go to the distribution centers and transportation or is it
1253 just at the plant?

1254 Mr. {Beers.} It is in all of those, sir, depending upon
1255 the holdings, where the holdings are--

1256 Mr. {McKinley.} So you go the whole route. You are not

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1257 just on risk assessment--

1258 Mr. {Beers.} But again, if the holding isn't large
1259 enough to be tiered in by the consequence, then they are not
1260 regulated. But we do look at distribution centers as well.
1261 David, you want to--

1262 Mr. {Wulf.} But CFATS focuses on facilities. So there
1263 are other agencies that deal with, you know, the
1264 transportation sectors. So the transportation of hazardous
1265 materials is covered, you know, by the Department of
1266 Transportation, Transportation Security Administration.
1267 CFATS is focused on facilities but certainly including
1268 distribution centers. And among the chemicals of interest
1269 that we assess are, you know, those chemicals that could be
1270 successfully used by terrorists in an attack as well as
1271 chemicals that can be released.

1272 Mr. {McKinley.} In the time frame that I have left, are
1273 the four other European nations, do they have something
1274 comparable to what we are doing here?

1275 Mr. {Wulf.} I think in many ways were on the cutting
1276 edge here. And I think CFATS is a sound program and really a
1277 model that, were it implemented elsewhere, you know, could be

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1278 of value to securing chemical facilities and hardening them
1279 against potential terrorist attacks.

1280 Mr. {Shimkus.} Gentleman's--

1281 Mr. {McKinley.} Okay. Time has expired on that, but I
1282 just want to say, even though they have not had an attack in
1283 Europe and they don't have anything comparable to this, I am
1284 just curious.

1285 Mr. {Wulf.} I think Congress' assessment and our
1286 assessment as well is that high-risk chemical facilities pose
1287 a very attractive target to terrorists.

1288 Mr. {McKinley.} Thank you.

1289 Mr. {Shimkus.} The gentleman's time has expired.

1290 The chair will now recognize the gentleman from Ohio,
1291 Mr. Johnson, for 5 minutes.

1292 Mr. {Johnson.} Thank you, Mr. Chairman.

1293 Mr. Beers, the Department of Homeland Security has
1294 adjusted its chemicals-of-interest release model because of
1295 errors in the formula. Are you aware of any other issues
1296 that may affect this or any other models within the risk
1297 assessment approach?

1298 Mr. {Beers.} Sir, I am not, but let me turn to my

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1299 expert here and ask him if there is anything you want to add
1300 to that.

1301 Mr. {Wulf.} No. Our documentation found some minor
1302 issues that we have briefed staff on and that we have
1303 addressed and that have not led to significant re-tierings or
1304 significant numbers of re-tierings of facilities. So, you
1305 know, we are, you know, looking forward to receiving the
1306 report from the Peer Review Panel and any recommendations for
1307 improvements they may have for the tiering engine.

1308 Mr. {Johnson.} Is this the expert panel review that you
1309 are talking about?

1310 Mr. {Wulf.} That is right.

1311 Mr. {Johnson.} Okay. Before you became aware of
1312 problems with the chemicals-of-interest release model, had
1313 you conducted any evaluations, Mr. Beers, of the risk-tiering
1314 approach?

1315 Mr. {Beers.} Sir, before we became aware of that
1316 particular problem, I am not aware of any reviews that had
1317 taken place. Having said that, it was, as we look backward
1318 on when that matter was brought to my attention, that there
1319 were questions about it a year prior to that. And the review

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1320 that happened at that time turned out not to be an accurate
1321 review. So in that sense, there were anomalies that were
1322 looked at; unfortunately, they failed to detect the problem
1323 that ultimately surfaced several years ago.

1324 Mr. {Johnson.} Okay. All right. In regards to the
1325 expert panel review, it is our understanding that the current
1326 expert panel review will not include a formal validation or
1327 verification of the model. How does that impact the value of
1328 the review?

1329 Mr. {Wulf.} We have asked the panel to take a full look
1330 at the program, at the tiering methodology, and to give us an
1331 assessment as to whether it is, in fact, a sound methodology
1332 for assessing risk and also to provide us any recommendations
1333 for potential enhancements and improvements to the
1334 methodology. So, you know, I don't anticipate a formal stamp
1335 of approval, but, you know, I expect that they will let us
1336 know how they feel about what we are doing in the tiering
1337 arena.

1338 Mr. {Johnson.} But it is important though, right? I
1339 mean, it is important to get that information, to get that
1340 stamp of approval.

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1341 Mr. {Wulf.} I think that is why we are doing this. Not

1342 to--

1343 Mr. {Johnson.} But you said you are not expecting a

1344 stamp of approval.

1345 Mr. {Wulf.} Well, not--

1346 Mr. {Johnson.} So there is--

1347 Mr. {Wulf.} --an actual stamp, I guess.

1348 Mr. {Johnson.} Yes.

1349 Mr. {Wulf.} I am--

1350 Mr. {Johnson.} We don't want them to just look at it;

1351 we want them to give us a validation and verification that

1352 the model is accurate according to what we know today.

1353 Correct?

1354 Mr. {Wulf.} Yes. We want them to look at the

1355 methodology and let us know their thoughts on whether it

1356 works and if there are ways in which it could work better.

1357 Mr. {Johnson.} Okay. Given that you have not been able

1358 to review the Site Security Plans for the Tier 3 and 4

1359 facilities, how would you characterize how they are currently

1360 being regulated?

1361 Mr. {Wulf.} Well, I would mention that we have begun

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1362 review of the Tier 3 Site Security Plans and I have
1363 authorized some of those. But that is admittedly in the
1364 early stages.

1365 Mr. {Johnson.} Tier 3 and 4, or just 3?

1366 Mr. {Wulf.} Tier 3. Tier 3.

1367 Mr. {Johnson.} Okay. So 4 is not being included?

1368 Mr. {Wulf.} Tier 4 reviews have not begun, you know, on
1369 the SSPs. But I would say that across the tiers to include
1370 Tiers 3 and 4, you know, CFATS has had an impact. Those Tier
1371 3 and Tier 4 facilities have gone through the top screening
1372 process, have developed security vulnerability assessments,
1373 have, in most cases, met directly with CFATS inspectors who
1374 have worked with them through compliance assistance visits
1375 and other outreach in the order of more than 3,000 such
1376 visits and encounters to work with them on the development of
1377 their Site Security Plans. So I think in all cases, you
1378 know, even without authorization or approval of those
1379 facilities, you know, their security has been enhanced by
1380 CFATS and the work of our inspectors.

1381 Mr. {Johnson.} Okay. With that I yield back, Mr.
1382 Chairman.

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1383 Mr. {Shimkus.} The gentleman's time has expired.

1384 The chair now recognizes the gentleman from Mississippi,

1385 Mr. Harper, for 5 minutes.

1386 Mr. {Harper.} Thank you, Mr. Chairman.

1387 Thank you, gentlemen for being here. I know this is

1388 always an exciting time, but we welcome you and appreciate

1389 the insight. We are obviously concerned about security for

1390 these facilities, how we accomplish that. And as we are

1391 looking at the number of facilities we have, has there ever

1392 been any thought on your side of maybe just limiting the

1393 scope of regulating facilities only to the Tier 1 and Tier 2

1394 facilities? Has there been any thought on that?

1395 Mr. {Wulf.} I would say that, no, there hasn't. You

1396 know, inasmuch as all four tiers represent high-risk chemical

1397 facilities and, you know, a relatively small percentage of

1398 the total number of chemical facilities in the country, you

1399 know, our assessment is that all four tiers are worth

1400 covering under CFATS.

1401 Mr. {Harper.} Do you agree with that?

1402 Mr. {Beers.} Sir, remembering that this is a

1403 consequence-focused--

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1404 Mr. {Harper.} Yes, sir.

1405 Mr. {Beers.} --issue, the original decision on all four
1406 of the tiers were that the consequences, the potential loss
1407 of life in the vicinity of those facilities--this is the
1408 primary reason--

1409 Mr. {Harper.} Yes, sir.

1410 Mr. {Beers.} --was significant in terms of the
1411 communities that surrounded them. So it is, as you well
1412 know, impossible to put a cost on the loss of even one life.
1413 So that is why this is such an important decision and why we
1414 really haven't gone that step and said, no, that 3 and 4 are
1415 not high-risk.

1416 Mr. {Harper.} Okay. Let me ask this: as you are
1417 establishing these, you do a preliminary tier risk rating and
1418 then you do further evaluation--the SVA--and you determine
1419 what the final rating is.

1420 Mr. {Beers.} Yes.

1421 Mr. {Harper.} And once that is established, what is the
1422 review process after that? Is there a time with that final
1423 tier risk rating that it might change in the future? How
1424 often are you going back to review those?

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1425 Mr. {Wulf.} As facilities make changes to their
1426 chemical holdings or to their processes, you know, they may
1427 submit a request for redetermination or may submit a revised
1428 top screen to ISCD and we will, you know, rerun that and
1429 assign as appropriate a--

1430 Mr. {Beers.} So the nearly 3,000 changes that have been
1431 made--

1432 Mr. {Harper.} Sure.

1433 Mr. {Beers.} --including tiering out are a result of
1434 changes in holdings that have been able--

1435 Mr. {Harper.} Okay.

1436 Mr. {Beers.} --to be recognized in that fashion.

1437 Mr. {Harper.} So is that possible review or change of a
1438 tier risk, is that something that you have to wait on them to
1439 notify you or are you on a schedule? Do you go back and
1440 review those yourself even if you are not notified of any
1441 changes on their part?

1442 Mr. {Wulf.} To the extent that our inspectors are out
1443 working with these facilities through compliance assistance
1444 visits or other outreach--

1445 Mr. {Harper.} Okay.

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1446 Mr. {Wulf.} --you know, that is sort of the form that
1447 would take. So our involvement would happen in that way but
1448 there is not a formal process for going back and--

1449 Mr. {Harper.} Not a calendar date say every 2 years, 3
1450 years we are going to come back and review? Okay. Now, it
1451 is my understanding that if you have two facilities that have
1452 the same chemical of interest, one that has very little
1453 physical security near a major city, and another stored with
1454 the same chemical in an extremely secure location near that
1455 same major city, they would be tiered identically? Is that
1456 accurate? If it is the same chemical of interest, regardless
1457 of the level of security near that major city, in two
1458 different facilities, would they be tiered the same?

1459 Mr. {Wulf.} I think that is accurate.

1460 Mr. {Harper.} Okay.

1461 Mr. {Wulf.} The tiering is based on the potential
1462 consequence of that.

1463 Mr. {Harper.} All right. Is that a good way to manage
1464 and mitigate chemical facility terrorism risk?

1465 Mr. {Wulf.} Well, I think it is in that the facility,
1466 you know, without the hardened security would, as a result of

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1467 being tiered, have to look to implement security measures,
1468 develop a Site Security Plan that would bring it up to an
1469 acceptable level of security.

1470 Mr. {Beers.} The whole notion here is we want to level
1471 the playing field so--

1472 Mr. {Harper.} Sure, but--

1473 Mr. {Beers.} --a secure facility is great. An
1474 unsecured facility is something that we would want to change.
1475 We want to take the unsecured facility and raise it to
1476 roughly equivalent standards to the secure facility.

1477 Mr. {Harper.} But it appears to me that perhaps we are
1478 discouraging high-risk chemical facilities from increasing
1479 security at their facilities and making them stronger. And I
1480 don't know that that is having the desired effect that you
1481 are saying you want. Is it having that impact? And my time
1482 is up, so I guess I won't get a formal answer from you.

1483 And I yield back.

1484 Mr. {Shimkus.} The gentleman yields back his time.

1485 And I see no other members. But before I dismiss the
1486 panel, I just want to reference the law. Because, Mr. Beers,
1487 you keep saying a consequence, which is something that we

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1488 need to be concerned about. But that is not what the law
1489 says. The law says a risk-based system.

1490 Mr. {Beers.} Yes, sir.

1491 Mr. {Shimkus.} Consequence is a part of that but it is
1492 not the whole calculation. I think you have caused more
1493 questions by this testimony today than answered questions.

1494 So I think we will have them back, Mr. Ranking Member,
1495 to keep ferreting this out because the law is pretty clear.
1496 And you can see there are still a lot of questions on how we
1497 are trying to define this.

1498 So we do thank you for coming. We do have the ability
1499 to offer written questions as the ranking member of the full
1500 committee asked. And with that, we would dismiss the first
1501 panel.

1502 Mr. {Beers.} Sir, may I respond to the question that
1503 you posed in writing?

1504 Mr. {Shimkus.} Correct. You may. I would be happy to--
1505 -

1506 Mr. {Beers.} I think if you are still not satisfied,
1507 then we have more work to do to--

1508 Mr. {Shimkus.} I think you have a lot more work to do.

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1509 So we will dismiss this panel and we will have the
1510 second panel.

1511 Staff, if I can get the back doors closed. Someone?
1512 Then we can move promptly.

1513 We would like to continue the hearing and welcome our
1514 second panel, a one-member panel, so we can put full
1515 attention to the testimony and answer questions. So we would
1516 like to welcome Mr. Stephen Caldwell, Director of Homeland
1517 Security and Justice from the Government Accountability
1518 Office.

1519 Sir, your full statement is in the record. You are
1520 recognized for 5 minutes.

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|
1521 ^STATEMENT OF STEPHEN L. CALDWELL, DIRECTOR, HOMELAND
1522 SECURITY AND JUSTICE, GOVERNMENT ACCOUNTABILITY OFFICE

1523 } Mr. {Caldwell.} Thank you very much, Chairman Shimkus
1524 and Ranking Member Tonko. I appreciate being here to talk
1525 about CFATS and the findings in our about-to-be released
1526 report on the program.

1527 As you know, our earlier report focused on an internal
1528 DHS memo documenting management problems with the CFATS
1529 program and agency efforts to come up with corrective
1530 actions. But our current report focuses on agency efforts to
1531 do three things related to its core mission. The first of
1532 those is assess risks at the facility, which we have talked
1533 about quite a bit; review the Site Security Plans; and work
1534 with industry to improve security.

1535 Let me start with the risk assessments. As noted, both
1536 the Department and GAO have established criteria for risk
1537 assessments and these were not followed closely in the CFATS
1538 program. Specifically, the three elements of risk--threat,
1539 vulnerability, and consequence--were not all used. As has

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1540 been discussed, vulnerability has not been used even though
1541 DHS does collect extensive information on it. Some of the
1542 CFATS program criteria in its own 2007 rule, including the
1543 economic consequences, also have yet to be implemented.

1544 Regarding the Site Security Plans, we found that the
1545 Department had a cumbersome process in place for reviewing
1546 the security plans which led to a backlog of security plans
1547 awaiting approval. The Department has attempted to
1548 streamline the review process by doing concurrent reviews
1549 among its experts when it had formerly been doing sequential
1550 reviews. However, the impacts of the streamlining is not
1551 known because no metrics were kept on how long the old
1552 process was taking.

1553 But even with a more streamlined review process, as we
1554 have noted in our statement, we are estimating 7 to 9 years
1555 to improve those facilities that have been tiered. But our
1556 estimate does exclude some of the important parts of the
1557 regime as a whole, such as the compliance inspections.

1558 Regarding industry, the CFATS program has increased its
1559 outreach, and this was noted in the inquiries we made through
1560 industry associations representing chemical facilities. The

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1561 industry also expressed concerns about the burden of
1562 submitting and updating information to DHS, as well as
1563 frustration in wanting more details on the how and why the
1564 facilities were tiered a certain way. Some of these issues,
1565 as has been noted, may be resolved in terms of the Department
1566 is considering what information on its tiering process it
1567 might provide to industry. Nevertheless, the CFATS program
1568 could benefit from systematically monitoring the
1569 effectiveness of its outreach activities.

1570 In closing, I would like to briefly look back at our
1571 previous report, which commented on the serious management
1572 problems within the CFATS program. Because of a lack of
1573 documentation in the earlier years, we were really unable to
1574 determine the root causes for a lot of those problems. And
1575 this condition was found in our current work. As an example,
1576 we found no documentation as to why the current incomplete
1577 approach to risk assessment was chosen. So to some extent,
1578 the current program is still recovering from some of those
1579 earlier management problems.

1580 But we have found the Department to be responsive to our
1581 recent recommendations and our current findings. We hope

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1582 their positive attitude continues to result in improvements.

1583 And related to this, I would like to note that my

1584 written statement is titled ``Preliminary Observations.``

1585 Because we are still awaiting Department comments on the

1586 recommendations in our current draft report, we will finalize

1587 that report once we receive those comments and we anticipate

1588 issuing that in early April.

1589 With that, I am happy to respond to any questions.

1590 [The prepared statement of Mr. Caldwell follows:]

1591 ***** INSERT C *****

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1592 Mr. {Shimkus.} Thank you, Mr. Caldwell.

1593 I would like to recognize myself for 5 minutes for the
1594 first round of questions.

1595 You were in here for the last panel and probably
1596 listened to my last exchange based upon the language of the
1597 law. Could you understand my frustration with the question
1598 based upon what members had said before about the formula for
1599 risk and if there are two variables that are undefined, how
1600 do you identify risk?

1601 Mr. {Caldwell.} Yes. I guess I agree with your point.
1602 The law calls for an assessment of risk, not of consequence.
1603 I think the DHS response we have heard today kind of
1604 indicates that the exclusion of vulnerability was part of a
1605 well-laid-out and thoughtful methodology and analysis that
1606 they used from the start. We certainly found no evidence of
1607 this. I mean our early discussions with methodology with
1608 them last year indicated the fissures did not know why the
1609 current methodology was picked or why vulnerability was left
1610 out. And there certainly was no documentation on that. It
1611 was really only when we raised the issue of the lack of the

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1612 consideration of vulnerability--

1613 Mr. {Shimkus.} It was?

1614 Mr. {Caldwell.} --that the current narrative emerged
1615 that you heard today. So I think that really reinforces the
1616 need for an independent peer review, preferably earlier in
1617 the process than now because the problems they will have if
1618 they find major changes. And I have some other comments on
1619 peer review I can make as well.

1620 Mr. {Shimkus.} Did you get any comfort from the
1621 response that the formula is being reviewed by Sandia? And I
1622 think the frustration from my end was that we might take it;
1623 we might consider it. I mean, it was pretty vague as to
1624 whether all of this work that they would even consider is
1625 part of a fix to the formula.

1626 Mr. {Caldwell.} Yes. Let me make two comments on the
1627 peer review. I think based on our work today--and they have
1628 been sharing a lot of information with us--but we are still
1629 not sure how much of a free hand and leeway this new peer
1630 review is going to have, this expert panel. You know, will
1631 they have the leeway to really start from scratch and kind of
1632 come up with fundamental changes from the model if they think

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1633 they are needed?

1634 And then, of course, we are also not really sure and the
1635 Department really hasn't committed to really how they would
1636 receive any major recommendations for changes because of
1637 impacts it could have on the peering process. So that is
1638 what I will call the peer review's need to do a review of the
1639 methodology.

1640 But what the peer review would also need to do to be
1641 comprehensive would be what is called the V and V, or a
1642 verification and validation. We know that there was some
1643 miscalculations found in the formula. This did lead to the
1644 re-tiering of several facilities. Also, in the course of our
1645 work, we found out there was an omission of certain locations
1646 such as Hawaii, Alaska, and Puerto Rico from the data in the
1647 model calculations. And they don't think this will lead to
1648 any changes in tiering, but, I mean, together they certainly
1649 don't give us a warm, fuzzy feeling that they have looked at
1650 the actual mechanics of the model to make sure that even if
1651 the methodology is correct that the model is working the way
1652 it was intended to. So it is also important that the peer
1653 review do a V and V, a verification and validation, to

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1654 actually look at the model, play with the numbers, do
1655 calculations, ensure they are correct, and maybe do some
1656 sensitivity analysis as well.

1657 Mr. {Shimkus.} Well, and just kind of following up on
1658 this line of questions because it was asked by one of my
1659 colleagues on data, data collection, and what is it used for.
1660 Again, a pretty vague answer by our first panel as to what
1661 they really needed, what they had, and why they had it. You
1662 found that owners and operators were spending unnecessary
1663 resources complying with CFATS data collection requirements.
1664 Can you elaborate on your findings?

1665 Mr. {Caldwell.} Well, I will say two things. I think
1666 whether the industry feels that they misspent funds or wasted
1667 funds, I will leave maybe for the third panel. You can ask
1668 them that. But in terms of the question about whether all
1669 this vulnerability data was useful that the Department is
1670 capturing but is not using, I think the way they put it is
1671 that it is data that then the facilities have been able to
1672 use or could use. So again, that is a question for the
1673 facilities. I mean, you could ask the facilities and
1674 industry--

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1675 Mr. {Shimkus.} But the facilities are the ones who
1676 provide the data. So it is kind of like we got the data, we
1677 gave it to Homeland Security, and then Homeland Security says
1678 we got the data, here is your data because it is going to
1679 help you out, or the collection of that data will help you
1680 out. I mean, it is just--

1681 Mr. {Caldwell.} Yes.

1682 Mr. {Shimkus.} --counterintuitive. I am struggling
1683 with this.

1684 Mr. {Caldwell.} We found that the Department is not
1685 using the vulnerability data at all that it collected from
1686 facilities.

1687 One other thing on that point, when we talked to them
1688 about why they were not using the vulnerability data, they
1689 said, well, they were concerned because it was self-reported
1690 and thus might be either exaggerated or not exaggerated. But
1691 everything in this thing is self-reported until--I mean
1692 everything going into tiering about how much chemicals they
1693 have and where they have them and the method of storage--all
1694 of that is self-reported. So I am not sure that I agree with
1695 that distinction.

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1696 Mr. {Shimkus.} You are not helping me very much but
1697 thank you. My frustration level continues to mount.

1698 So I would like to recognize the ranking member, Mr.
1699 Tonko, for 5 minutes.

1700 Mr. {Tonko.} Thank you, Mr. Chairman. I hope you can
1701 relax for a moment.

1702 I thank you, Mr. Caldwell, for appearing here today.

1703 GAO's analysis reveals significant concerns about this
1704 important national security program and the sufficiency of
1705 the Department of Homeland Security's Action Plan to address
1706 these concerns. We heard from the Department on the first
1707 panel that they are taking GAO's findings seriously and
1708 intend to follow GAO's recommendations to strengthen the risk
1709 assessment models used in their programs.

1710 It seems that some of these concerns are long-standing.
1711 For instance, stakeholders have long called for a greater
1712 transparency in the risk assessment process. I welcome the
1713 GAO's testimony today and have a few questions that, I think,
1714 would be helpful in providing the information we require. To
1715 the DHS methodology itself, does it appropriately, in your
1716 opinion, account for threat?

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1717 Mr. {Caldwell.} Threat is a little tougher. And so I
1718 think in our own analysis we have been less critical of the
1719 Department on that. And the reason that threat is more
1720 difficult is because the threat comes from a potentially
1721 adaptive adversary that can see where vulnerabilities have
1722 been reduced or maybe where vulnerabilities still exist and
1723 change their targets. But even more so, when you are looking
1724 at these chemical facilities, the facilities themselves could
1725 be attacked or some of the chemicals at those facilities
1726 could be stolen or diverted and then moved and then used
1727 again in a population center or any other location. So I
1728 think it is very difficult, and also I think in terms of some
1729 of the questions about threat there were asked, there just
1730 really is not a lot of actionable, you know, real
1731 intelligence that shows there is a threat against these
1732 facilities or specific facilities.

1733 Mr. {Tonko.} Thank you. And to that methodology again,
1734 does it account for the two minimum components of
1735 consequences, that being human consequences and economic
1736 consequences?

1737 Mr. {Caldwell.} It does not include economic

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1738 consequences. As the Department has stated, they have now
1739 engaged Sandia National Labs to do that but it has been a
1740 while. I mean, the rule came out in 2007 that specifically
1741 said that they would include that at some point. And if you
1742 look at the National Infrastructure Protection Plan it does
1743 say at a minimum consequence needs to include both human
1744 casualties and fatalities, those things, as well as the
1745 economic consequences.

1746 Mr. {Tonko.} Thank you. And I would imagine that GAO
1747 has looked at risk assessments prepared by many different
1748 agencies over the years. How would you say the CFATS risk
1749 assessments compare to the work at those other agencies?

1750 Mr. {Caldwell.} Well, there are a couple of examples I
1751 can think of. At the Coast Guard, for example, we have done
1752 extensive work on their risk assessment model. It is called
1753 the Maritime Security Risk Assessment Model. And it does
1754 include all the components. And that is probably the most
1755 sophisticated model within DHS because it also takes into
1756 account the mitigation efforts that a facility is doing and
1757 how that impacts the risk.

1758 There have been other cases--I believe it is TSA--I will

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1759 have to correct my statement if I find that it is a different
1760 agency--where we found that vulnerability was also being held
1761 constant and we have made those recommendations that they not
1762 do that and that that particular component agreed with that
1763 recommendation.

1764 Mr. {Tonko.} Thank you. During the first panel
1765 Director Wulf indicated that including vulnerability in risk
1766 assessments would lead to an ever-changing tier assignment
1767 for a given facility. Is this a valid enough reason for
1768 leaving the criteria out of the assessment?

1769 Mr. {Caldwell.} Well, I think if in the beginning that
1770 was thought through and done on purpose, I could have maybe
1771 given him a little more sympathy if he is trying to design
1772 something to do that. But as I said, that narrative was
1773 developed pretty recently as to why was left out. There is a
1774 problem now in that a lot of these facilities, thousands of
1775 these facilities--and if there are major changes in their
1776 model because of the peer review or things we have said or
1777 adding the economic consequences, this could reasonably
1778 change the tiering of those facilities.

1779 Mr. {Tonko.} And this committee is aware of two mis-

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1780 tiering incidences at the Department were facilities were
1781 placed in the wrong tier because of errors made by the
1782 Department. That is a serious problem. But now we hear from
1783 GAO that none of the more than 3,500 tiering decisions that
1784 have been made are reliable. They are all based on a risk
1785 assessment methodology that is seriously lacking. Is that an
1786 accurate assessment?

1787 Mr. {Caldwell.} I wouldn't use the term that this is a
1788 fatal flaw or things like that. But certainly we are
1789 questioning why they haven't included vulnerability. I think
1790 that we have a concern. Now, we do believe the best way to
1791 address that would be to have a peer review come in
1792 externally, review it. As we have said before, and as you
1793 said before, the National Academies of Sciences came in and
1794 found very similar problems across the Department that we are
1795 talking about here within the CFATS program.

1796 Mr. {Tonko.} Well, I see that my time has expired so I
1797 will yield back, Mr. Chairman.

1798 Mr. {Shimkus.} Thank you.

1799 The chair now recognizes the gentleman from
1800 Pennsylvania, Mr. Pitts, for 5 minutes.

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1801 Mr. {Pitts.} Thank you, Mr. Chairman.

1802 Mr. Caldwell, you noted in your statement that it could
1803 take 7 to 9 years before ISCD completes the review of the
1804 3,120 security plans currently in the review queue and that
1805 the estimate does not include work by ISCD on other missioned
1806 activities. What are some examples of these ISCD activities?

1807 Mr. {Caldwell.} Well, that estimate does not include
1808 about 900 facilities that have yet to be assigned into a
1809 final tier. Also, the time required to review the plans to
1810 resolve issues related to personnel surety take some time
1811 because some of the plans have been provisionally or
1812 conditionally approved. So they have to go back and revisit
1813 that once the personnel surety rule is in place. And then
1814 there are the compliance inspections that they would do which
1815 are separate from the plan approval, but those are generally
1816 done a year after. So you are looking at another year out
1817 there for individual facilities before they have the
1818 compliance inspections. And really, it is only until you
1819 have the compliance inspection whether you know that the
1820 facility is actually implementing the things in its security
1821 plan.

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1822 Mr. {Pitts.} So will implementing these mission
1823 activities further delay full CFATS program implementation?

1824 Mr. {Caldwell.} Well, certainly until all of the pieces
1825 are in place, it is not going to be there. And I think
1826 several figures have been thrown out; 8 to 10 years we said
1827 in our last hearing. I mean, now, we are looking at 7 to 9
1828 just for the approval plan. So it is going to be some time
1829 before this regime is completely in place. It is in contrast
1830 to maybe some of the other programs that were put in place
1831 after 9/11.

1832 Mr. {Pitts.} Now, the regulated industry says that
1833 ISCD's efforts to communicate regarding CFATS-related issues
1834 are mixed in effectiveness. Does ISCD measure the
1835 effectiveness of its outreach efforts and could they?

1836 Mr. {Caldwell.} No, they don't. They measure some of
1837 the things like how many meetings they have and those kinds
1838 of things, but they haven't outreached really to find out
1839 whether these have been effective so we are considering--

1840 Mr. {Pitts.} Should they or could they?

1841 Mr. {Caldwell.} Yes. And we are considering a
1842 recommendation with the Department. We are in discussions

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1843 with a recommendation that we ask that they do so.

1844 Mr. {Pitts.} What should we take away from the input
1845 that you got from trade associations?

1846 Mr. {Caldwell.} Some of the things are working pretty
1847 well. The meetings with this Sector Coordinating Council
1848 seem to be effective according to industry. Also some of the
1849 visits to facilities, a little bit mixed there. I think the
1850 more recent things based on some of the testimony you will
1851 hear later today is that the officials doing those
1852 inspections from DHS do seem qualified and helpful, whereas I
1853 think some of the early responses that they were very
1854 reluctant to actually make useful concrete suggestions on how
1855 to improve security.

1856 Mr. {Pitts.} Now, you found that owners and operators
1857 were spending unnecessary resources complying with CFATS data
1858 collection requirements. Would you elaborate on that?

1859 Mr. {Caldwell.} I don't believe we ever said they were
1860 unnecessary. I just think they were worried about a
1861 substantial burden in terms of the cost it was taking to do
1862 these, particularly, if something changed and they did this.
1863 I think one of the things industry may tell you about in the

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1864 next panel is, you know, the chemical industry can be a
1865 complicated business, so sometimes they change mixes of their
1866 chemicals in terms of some of their processes. And there has
1867 been a debate about whether then do they have to go back to
1868 DHS and resubmit everything because their mixture of
1869 chemicals is slightly different? It is a concern.

1870 Mr. {Pitts.} And what in your view is the difference
1871 between the current Site Security Plans and Alternative
1872 Security Plans?

1873 Mr. {Caldwell.} Well, I think the Alternative Security
1874 Plans look a little simpler. I think that they have some of
1875 the same information but perhaps in a more useful way because
1876 it is portrayed as a plan as opposed to a data dump of a lot
1877 of individual information that is in the DHS tool.

1878 Mr. {Pitts.} Thank you, Mr. Chairman.

1879 Mr. {Shimkus.} Thank you.

1880 The chair now recognizes the gentleman from California,
1881 Mr. McNerney, for 5 minutes.

1882 Mr. {McNerney.} Thank you, Mr. Chairman.

1883 Mr. Caldwell, we have been hearing this morning a lot
1884 about tiering formulas and about the risk assessment models.

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1885 How familiar are you with the details of these models and
1886 formulas?

1887 Mr. {Caldwell.} We have not done the kind of
1888 verification and validation that a peer review of experts
1889 might do. So we have talked through what they use, we have
1890 discussed the factors, but I can't say we have tried to
1891 reproduce their models or do sensitivity analysis.

1892 Mr. {McNerney.} Are these by-and-large Excel
1893 spreadsheets or what do they look like? What form do they
1894 take or how do people have access to the models?

1895 Mr. {Caldwell.} It is an online tool so it is some kind
1896 of relational database. But beyond that, I can't tell you
1897 too much about the formulas or what the actual algorithms
1898 are.

1899 Mr. {McNerney.} And what sort of security do the models
1900 have in terms of making changes to parameters--not parameters
1901 but the way the models are executed? Is there a very secure
1902 methodology that is required for someone within DHS to change
1903 the model itself?

1904 Mr. {Caldwell.} We have not looked at the internal
1905 controls or the security settings on the model.

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1906 Mr. {McNerney.} So as far as you know somebody in one
1907 of these departments can say, well, gee, I think this model
1908 is a little off; I am going to change it? I mean, there has
1909 to be some sort of control on these things.

1910 Mr. {Caldwell.} There should be, yes, sir.

1911 Mr. {McNerney.} Is that something you think you can
1912 find out or make an assessment?

1913 Mr. {Caldwell.} We can certainly ask the Department and
1914 answer that as a question for the record or if you could
1915 direct it to the Department, then that might expedite things
1916 or not.

1917 Mr. {McNerney.} All right. Thank you. I have a
1918 question. Were you assured by the under secretary's
1919 declaration that they have the best teams on cybersecurity
1920 and that they are on top of this issue and we don't have
1921 anything to worry about?

1922 Mr. {Caldwell.} That is not an aspect we looked at. So
1923 I have no comments on that.

1924 Mr. {McNerney.} So cybersecurity is not within your,
1925 sort of, realm?

1926 Mr. {Caldwell.} It is one of the many standards that

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1927 they apply here. We do have other experts in GAO on
1928 cybersecurity that if you want to ask us a question for the
1929 record, we might be able to take that and answer it for you,
1930 sir.

1931 Mr. {McNerney.} All right. Thank you.

1932 That is all I have, Mr. Chairman.

1933 Mr. {Shimkus.} The chair thanks the gentleman.

1934 The chair now recognizes, I believe, the gentleman from
1935 Ohio, Mr. Latta, for 5 minutes.

1936 Mr. {Latta.} Well, thank you very much, Mr. Chairman.
1937 And thank you very much for being here. And we have got a
1938 couple of hearings going on so I am sorry that we are kind of
1939 in out today.

1940 But if I could start with this question: how important
1941 is it for the Infrastructure Security Compliance Division to
1942 have a complete validated and verified risk assessment
1943 approach?

1944 Mr. {Caldwell.} I mean I think our position is that the
1945 current approach is incomplete. So to the extent that they
1946 are using an incomplete model, they don't have an assurance
1947 that they are tiering these in the right fashion appropriate

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1948 with the National Infrastructure Protection Plans criteria,
1949 which is, pretty much the Department's, you know, criteria in
1950 terms of how you do risk assessments.

1951 Mr. {Latta.} So how would you have to go about to get
1952 that complete?

1953 Mr. {Wulf.} You would have to include vulnerability in
1954 it and economic consequences are maybe the two minimum things
1955 that would need to be added into it. We have also asked that
1956 they update some of their threat data. Some of the threat
1957 data that they were using was a few years old, which they
1958 have agreed to do.

1959 Mr. {Latta.} Okay. Thank you. Also, how important is
1960 it for the ISCD to eventually conduct an independent peer-
1961 review on CFATS risk assessment approach?

1962 Mr. {Caldwell.} We think it is very critical that there
1963 be an independent peer review. And I think you might have
1964 missed my answer talking to the chairman a few minutes ago,
1965 but there are really two factors. One is to make sure they
1966 have the methodology right, and secondly, to make sure the
1967 model, once you have the methodology right or at least with
1968 existing methodology, is the model actually functioning as

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1969 intended? And as we have noted, there has been some
1970 miscalculations in the model that have been found which
1971 should, again, call for doing a verification and validation
1972 of the model itself.

1973 Mr. {Latta.} And just to follow up on that, how soon
1974 should that independent peer review occur?

1975 Mr. {Caldwell.} Well, I think it has already started.
1976 At least the panel that they have now, I think that there is
1977 a statement in Mr. Beers' written comments that if they need
1978 to do a second one, they are willing to do that as well. So
1979 the first one may be to find out where they are now, make
1980 some recommendations, and maybe would require a second peer
1981 review to actually go in and validate the model--

1982 Mr. {Latta.} Okay.

1983 Mr. {Caldwell.} --with any changes.

1984 Mr. {Latta.} Okay. Mr. Chairman, I have no further
1985 questions. Thank you.

1986 Mr. {Shimkus.} And the chair thanks the gentleman.

1987 The chair now recognizes the gentleman from Florida, Mr.
1988 Bilirakis, for 5 minutes.

1989 Mr. {Bilirakis.} Thank you, Mr. Chairman. I appreciate

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1990 it very much. I have one question. What is the difference
1991 between the current Site Security Plans and Alternative
1992 Security Plans?

1993 Mr. {Caldwell.} The Alternative Security Plans are
1994 written more like a plan. The Site Security Plans that DHS
1995 has I would describe as more of a data dump. It is a lot of
1996 different data that is in there. I mean, both can be useful,
1997 but I think industry feels--and you can ask the third panel--
1998 that the alternative site plan or the Alternative Security
1999 Plan is a little more user-friendly and still get you there
2000 in the end.

2001 Mr. {Bilirakis.} Thank you, Mr. Chairman.

2002 Mr. {Shimkus.} Seeing no other members present, we
2003 would like to thank you, Mr. Caldwell, for appearing before
2004 us. You have done great work on this report. It looks like
2005 we have got a lot more work to do.

2006 And with that, we will allow the second panel to be
2007 dismissed and ask the third panel to join us at the table.
2008 Thank you, sir.

2009 Mr. {Caldwell.} Thank you very much.

2010 Mr. {Shimkus.} We want to thank the third panel for

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2011 joining us and sitting through most of the testimony. I am
2012 sure that is going to be helpful for the remaining members as
2013 we listened to your opening statements and direct questions.
2014 And we will do so now.

2015 The first person that I would like to recognize is--yes,
2016 I am going to recognize Mr. Allmond--that is okay, Jerry, I
2017 am great--Mr. Allmond, who is vice president of the Society
2018 of Chemical Manufactures and Affiliates. Sir, you are
2019 recognized for 5 minutes. Your full statement is in the
2020 record.

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|
2021 ^STATEMENTS OF BILL ALLMOND, VICE PRESIDENT, SOCIETY OF
2022 CHEMICAL MANUFACTURERS AND AFFILIATES; TIMOTHY J. SCOTT,
2023 CHIEF SECURITY OFFICER AND CORPORATE DIRECTOR, THE DOW
2024 CHEMICAL COMPANY, ON BEHALF OF THE AMERICAN CHEMISTRY
2025 COUNCIL; CHARLIE DREVNA, PRESIDENT, AMERICAN FUEL AND
2026 PETROCHEMICAL MANUFACTURERS; AND RICK HIND, LEGISLATIVE
2027 DIRECTOR, GREENPEACE

|
2028 ^STATEMENT OF BILL ALLMOND

2029 } Mr. {Allmond.} Thank you. And good morning, Chairman
2030 Shimkus, Ranking Member Tonko, and members of the
2031 subcommittee.

2032 My name is Bill Allmond and I am the vice president of
2033 Government and Public Relations at the Society of Chemical
2034 Manufacturers and Affiliates. I am pleased to have the
2035 opportunity to provide you with an update on the Department
2036 of Homeland Security's implementation of CFATS from the
2037 perspective of specialty chemical manufacturers, many of
2038 which are small and medium-sized companies.

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2039 Since the previous hearing last September, there are
2040 several areas we feel are worthy to highlight in terms of
2041 implementation progress. First, CFATS continues to reduce
2042 risk. Second, authorizing inspections are revealing some
2043 positives about DHS' implementation but also some challenges
2044 for small and medium-sized facilities. Lastly, a
2045 collaboration with the regulated community has improved.

2046 With respect to risk reduction, CFATS continues to drive
2047 facilities to reduce inherent hazards where, in their
2048 judgment, doing so is in fact safer, does not transfer risk
2049 to some other point in the supply chain, and makes economic
2050 sense. Today, nearly 3,000 facilities have changed processes
2051 or inventories in ways that have enabled them to screen out
2052 of the regulation.

2053 Furthermore, due to the outstanding cooperation of the
2054 chemical sector, there has been 100 percent compliance with
2055 requirements to date. DHS has not yet had to institute a
2056 single administrative penalty action to enforce compliance.
2057 As a result of CFATS, our Nation is more secure from
2058 terrorist chemical attacks than it was before the
2059 regulation's inception.

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2060 Turning to DHS' inspection process, the few that so far
2061 have been conducted at SOCMA members reveal some positive
2062 aspects about how the Department is carrying out the
2063 regulation, as well as some challenges being presented among
2064 small and medium-sized facilities. Among the positives is
2065 the level of interaction of DHS inspectors with facilities
2066 scheduled for an inspection. Inspectors are providing
2067 sufficient details with facilities prior to their arrival,
2068 which aids the planning process to ensure resources and
2069 facility personnel are available.

2070 Similarly, facilities are finding DHS inspectors
2071 generally to be reasonable during the onsite inspection,
2072 which is perhaps due to the fact that some of them have
2073 chemical facility experience. Such operational familiarity
2074 is necessary when interpreting how risk-based performance
2075 standards apply to, and could be implemented at, such
2076 facilities.

2077 Importantly, inspections have so far appropriately
2078 verified a facility's approach to addressing risk-based
2079 performance standards. Inspectors appear not to be adhering
2080 rigidly to the RBPS guidance and instead to permitting

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2081 company personnel to explain from the facility perspective,
2082 how they are appropriately implementing their Site Security
2083 Plan.

2084 The principal challenge that SOCMA's smaller facilities
2085 are finding with the inspection process, however, is the
2086 enormous amount of time and resources to meet DHS demands
2087 following an inspection. Of highest concern is an
2088 unwillingness by DHS to reasonably extend deadlines for
2089 facility response. In SOCMA's opinion, DHS should be more
2090 willing to extend the time of which a small and medium-sized
2091 facility has to respond to a post-inspection report.

2092 Facilities are learning that, even if they had an
2093 inspection that went well, they are having to rewrite much of
2094 their Site Security Plans. Under a 30-day deadline, which
2095 has been the usual case, facilities are having to pull two to
2096 three workers for 2 to 3 days each to ensure that they meet
2097 the deadline. To us, this is unreasonable. In small
2098 companies, there simply may not be more than a few people
2099 qualified to work on security measures and all those people
2100 have other obligations which frequently include compliance
2101 with other regulatory programs.

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2102 It is still early in the inspections process, and these
2103 burdens are now coming to light. However, DHS still has time
2104 to make adjustments given a willingness to do so.

2105 And lastly, collaboration with facilities on
2106 implementation has improved. We are pleased that DHS has
2107 recently worked with industry to establish an alternative
2108 security program template with possibly more the future.

2109 Additionally, DHS appears prepared this year to co-host
2110 another Chemical Sector Security Summit. For the past 6
2111 years the Summit has been a collaborative effort by the
2112 Department and the chemical sector to provide an educational
2113 forum for CFATS stakeholders. An overwhelming majority of
2114 attendees each year are industry personnel who, when
2115 satisfaction surveys, consistently rate the Summit as having
2116 a high value to them.

2117 Many of the improvements over the past year have
2118 occurred under leadership of Deputy Under Secretary Suzanne
2119 Spaulding and Director David Wulf and their actions to help
2120 put CFATS back on track is worthy of recognition. I
2121 appreciate the opportunity to testify this morning and I look
2122 forward to your questions.

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2123 [The prepared statement of Mr. Allmond follows:]

2124 ***** INSERT D *****

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|
2125 Mr. {Shimkus.} Thank you very much. I would now like
2126 to recognize, as I move my papers all around--where is his
2127 name? Here it is--Mr. Timothy Scott, Chief Security Officer
2128 and Corporate Director of Dow Chemical Company, on behalf of
2129 The American Chemistry Council. Sir, you are recognized for
2130 5 minutes.

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|
2131 ^STATEMENT OF TIMOTHY J. SCOTT

2132 } Mr. {Scott.} Thank you, Chairman Shimkus, Ranking
2133 Member Tonko, and members of the subcommittee. I am Tim
2134 Scott, Chief Security officer of the Dow Chemical Company,
2135 speaking today on behalf of Dow and the American Chemistry
2136 Counsel.

2137 The chemical industry and Department of Homeland
2138 Security have a common goal: to improve the security profile
2139 of the chemical sector and reduce the risk of attack against
2140 industry or the use of chemicals as a weapon. Our positions
2141 are that security is a top priority of the chemical industry.
2142 Progress has been made in all areas of chemical security, but
2143 there is still, obviously, work to be done. ACC will
2144 continue to partner with DHS to achieve success and we need
2145 the certainty of a multiyear extension of DHS authority for a
2146 sustainable program. Progress has been made and we need to
2147 build on that progress as respectful partners with different
2148 skills and expertise but with a common goal.

2149 DHS has evaluated nearly 40,000 chemical facilities

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2150 across United States initially identifying more than 7,000 as
2151 potentially high-risk. Since then, more than 3,000
2152 facilities have lowered their chemical risk profile, clear
2153 evidence that we have made progress. Last year, ACC
2154 published an alternative security program guidance document
2155 available at no cost to the regulated community, the result
2156 of a year-long effort and full cooperation with DHS. This
2157 ASP approach offers an efficient alternative to DHS process
2158 and is an excellent example of how an effective public-
2159 private partnership can create smart regulatory solutions
2160 that benefit both partners, while ensuring the security and
2161 safety of our industry.

2162 While we have made progress, there are many more
2163 opportunities for efficient and effective compliance options
2164 that will accelerate CFATS implementation while maintaining
2165 the quality and integrity of the program. Existing industry
2166 security programs such as the Responsible Care Security Code
2167 should be recognized by DHS under their ASP authority as
2168 meeting the initial hurdles for authorization, thus
2169 streamlining and prioritizing reviews, especially at the
2170 lower tiered sites.

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2171 We must develop a workable process regarding personnel
2172 surety. The goal of the PSP program is to ensure that
2173 personnel accessing sensitive sites of high-risk chemical
2174 facilities are trustworthy and do not pose a security risk.
2175 It is essential that these individuals are properly vetted
2176 against the terrorist screening database. We all agree on
2177 that. But is also essential that the site know these
2178 individuals are cleared before granting access to such
2179 sensitive areas.

2180 Under the current proposals, industry submits the
2181 individual's personal information and receives no
2182 verification of any kind. We are supposed to be satisfied
2183 that simply submitting the data is enough to grant site
2184 access. This is simply a poor security practice, especially
2185 when solutions already exist. It is good to hear that we may
2186 be making progress in this area with DHS. By leveraging
2187 existing PSP programs and allowing for corporate and third-
2188 party submissions for vetting against a terrorist screening
2189 database, a significant reporting burden will be minimized
2190 and the integrity of the program will be much improved.

2191 Another opportunity for efficiency that can easily be

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2192 implemented is in what we call corporate audits. These
2193 audits cover areas of the risk-based performance standards in
2194 which many companies' sites operate under a single corporate
2195 process, such as cybersecurity or security escalation
2196 processes. Current inspections often have inspectors getting
2197 the same corporate answers site-by-site instead of addressing
2198 the issue once at the corporate level. This can
2199 unnecessarily extend the length of a site inspection. We
2200 also heard that DHS is working on this.

2201 ACC believes that DHS should be more transparent about
2202 all factors related to a covered facility's risk assessment.
2203 Trust is at the core of an effective security partnership and
2204 ACC strongly recommends that DHS improve the transparency of
2205 its risk determinations with the site security managers. A
2206 lack of transparency has been the source for many of the
2207 inefficiencies and missteps during the CFATS implementation.

2208 The CFATS concept is fundamentally sound, risk-based,
2209 focused on the right priorities allowing regulated sites to
2210 choose and apply customized security solutions for DHS review
2211 and evaluation for compliance with the DHS-established risk-
2212 based performance standards. And that is the goal, to meet

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2213 the standards. And industry will.

2214 DHS has demonstrated renewed commitment and effort to
2215 our partnership due in part by oversight of this committee.
2216 ACC urges Congress to provide DHS extended statutory
2217 authority for the CFATS program to provide the regulatory
2218 certainty and stability needed for industry to make prudent
2219 security investment and capital planning decisions. Industry
2220 and DHS have made progress in improving the security of the
2221 chemical sector. There have been missteps, but we should
2222 acknowledge the progress and the challenge and commit to
2223 making CFATS work. Thank you.

2224 [The prepared statement of Mr. Scott follows:]

2225 ***** INSERT E *****

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|

2226 Mr. {Shimkus.} Thank you. Next, I would like to
2227 recognize Mr. Charlie Drevna, President, American Fuel and
2228 Petrochemical Manufacturers.
2229 Sir, you are recognized for 5 minutes.

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|
2230 ^STATEMENT OF CHARLIE DREVNA

2231 } Mr. {Drevna.} Chairman Shimkus, Ranking Member Tonko,
2232 and members of the subcommittee, thank you for giving me the
2233 opportunity to testify today on today's hearing on the
2234 progress report of the CFATS program. I am Charlie Drevna
2235 and I serve as president of AFPM.

2236 We are a 111-year-old trade association representing
2237 high-tech American manufactures that use oil and natural gas
2238 liquids as raw materials to make virtually the entire supply
2239 of U.S. gasoline, diesel, jet fuel, other fuels such as home
2240 heating oil, as well as the petrochemicals used as building
2241 blocks for thousands of products vital in everyone's daily
2242 lives.

2243 America's refining and petrochemical companies play a
2244 pivotal role in ensuring and maintaining the security of
2245 America's energy and petrochemical infrastructure. Nothing
2246 is more important to AFPM member companies than the safety
2247 and security of our employees, facilities, and communities.
2248 Our members have worked extensively with the Department of

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2249 Homeland Security and we have invested hundreds of millions
2250 of dollars. And we don't mind investing the money as long as
2251 we know it is going for the right reasons, and again, toward
2252 strengthening facility security.

2253 Our industry also recognizes that protection of critical
2254 infrastructure against potential threats or terrorist attacks
2255 should be a shared responsibility between government and
2256 stakeholders.

2257 AFPM appreciates that DHS conducted an internal review
2258 to identify administrative and implementation problems that
2259 require immediate action and that the Agency developed an
2260 Action Plan for improving CFATS implementation. But it is
2261 important, however, to recognize that the structure of the
2262 CFATS framework itself is sound, even though the leaked
2263 report from GAO revealed the implementation of CFATS program
2264 was somewhat flawed.

2265 Additionally, America's critical infrastructure
2266 facilities are secure and there have been no attacks on
2267 chemical facilities since development of the CFATS program.
2268 Nonetheless, it is clear that DHS needs to better manage its
2269 resources and set priorities to make progress in areas that

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2270 need immediate action, including faster approval of Site
2271 Security Plans and finalizing a workable Personnel Surety
2272 Program, a PSP. Such measures would work to strengthen the
2273 program and our national security.

2274 AFPM believes that DHS has made progress over the past
2275 year to address the problems identified in the DHS-leaked
2276 report and Action Plan. However, DHS should continue to make
2277 improvements by addressing issues including personnel surety
2278 with the help of the industry in order to enhance the overall
2279 effectiveness of CFATS implementation in the short-term.

2280 AFPM is pleased that DHS withdrew the personnel surety
2281 proposal from the Office of Management and Budget last July
2282 and then held a series of meetings with industry to take
2283 another look at this issue. Congress intended, and I heard
2284 today a repeat of that intent, that the risk-based
2285 performance standard on personnel surety which governs access
2286 to high-risk facilities, allow facilities the flexibility to
2287 determine the most efficient manner to meet that standard.

2288 Instead, DHS initially proposed and arguably prescribed
2289 PSP program that failed to recognize the Transportation
2290 Worker Identification Credential, or TWIC card, and other

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2291 established federal vetting programs. Such a program would
2292 have been burdensome to both DHS and industry, and would be a
2293 wasteful and ineffective use of agency and industry
2294 resources. Instead of proposing a duplicative, burdensome
2295 PSP, DHS should remain focused on fixing the current problems
2296 and not expand beyond the scopes of the core CFATS program.

2297 The PSP program must be fixed soon and we hope that DHS
2298 will honor the TWIC and other federal credentials at CFATS
2299 sites. Facilities should have the option to use federally
2300 secure vetting programs such as TWIC to satisfy CFATS without
2301 submitting additional personnel information. AFPM supports a
2302 PSP program that requires only a one-time submission of
2303 personnel identifying information to DHS, recognition of TWIC
2304 and other federal credentials, and the use of third-party
2305 submitters for corporate submissions. This would lessen the
2306 burden on both DHS and industry, and would potentially
2307 account for half of the population affected by the Personnel
2308 Surety Programs, specifically, contractors coming to CFATS
2309 sites who would already have those cards.

2310 Stakeholder input is necessary. To assist DHS in
2311 addressing CFATS implementation challenges, continued

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2312 stakeholder input is necessary. We are encouraged that we
2313 are seeing DHS do this more and more.

2314 In summary, AFPM believes that DHS has made progress
2315 over the year addressing the problems identified in the
2316 internal report. We also acknowledge that there is been far
2317 greater outreach and more detailed discussions with DHS, and
2318 we hope that those continue in the future.

2319 Thank you and I look forward to any questions you may
2320 have regarding my testimony.

2321 [The prepared statement of Mr. Drevna follows:]

2322 ***** INSERT F *****

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|
2323 Mr. {Shimkus.} Thank you. And now the chair recognizes
2324 Mr. Rick Hind, Legislative Director for Greenpeace. Sir, you
2325 are recognized for 5 minutes.

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|

2326 ^STATEMENT OF RICK HIND

2327 } Mr. {Hind.} Thank you, Mr. Chairman. My name is Rick
2328 Hind. I am the legislative director of Greenpeace, as you
2329 mentioned. I appreciate the opportunity to talk to you today
2330 both to this committee and with this panel here.

2331 We work with over 100 other organizations, mainly
2332 unions, environmental justice organizations, other
2333 environmental groups, security experts, 9/11 families, and
2334 others who, for 10 years, have pushed for disaster
2335 prevention. The legislation that passed the House in 2009--
2336 November, actually, 2009--had that component in it but it
2337 also addressed a lot of the problems that you have been
2338 hearing about today. It provided for regular scheduling of
2339 the DHS issuing vulnerability and security plans as well as
2340 keeping regular reports back to Congress. I think you
2341 probably would have been hearing about any these problems in
2342 2011 at the latest if that legislation had been enacted in
2343 2010.

2344 That legislation also would have seamlessly replaced the

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2345 2006 authorization that you have referred to earlier, which
2346 was never really thought to be adequate. Everybody knew that
2347 and that is why it had a 3-year expiration date on it. And
2348 today, we are extending it now 6 years, 1 or so years at a
2349 time, and therefore, I think you have appropriately given the
2350 due that DHS staff deserved. Their dedication and stick-to-
2351 itiveness in a program that is really inadequate, from the
2352 legislative foundation through to the continuity of its
2353 funding by Congress.

2354 However, the kind of big elephants in the room that we
2355 see unaddressed are the fact that the statute actually
2356 prohibits the government from requiring disaster prevention
2357 in the statute barring any particular security measure for
2358 approval of security plans. In addition, the statute
2359 actually exempts thousands of facilities. So what we are
2360 talking about here when you think of the classic Bhopal
2361 disaster of poison gas drifting out of a plant endangering
2362 people--and in this country we have hundreds of plants that
2363 can do that.

2364 In looking at the tiering of DHS, if you separate that
2365 by risk issue, or I should say security issue, the release

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2366 issue security facilities in Tiers 1 and 2 totals 35. That
2367 is totaling, in all 4 tiers, 370 facilities. That data is
2368 2011 so it may be slightly less now. The point is that less
2369 than 10 percent of the facilities that you think of as the
2370 3,900 CFATS facilities may be chemical disasters in the sense
2371 we all think of it as. And that is because they are being
2372 regulated by other programs like the MTSA, which look at more
2373 the water access of the facility.

2374 Major facilities in the country, like this Keeney plant,
2375 probably the highest-risk facility in the United States, is
2376 regulated by MTSA. That facility puts 12 million people at
2377 risk. They, for 2 years on their website, say they are
2378 converting. We hope they are. Clorox converted all of their
2379 facilities in 3 years eliminating these risks to 13 million
2380 people. And we say risk, we mean a consequence; we mean the
2381 poison gas like chlorine that can drift 14 to 20 miles from a
2382 facility and put everyone downwind in danger of pulmonary
2383 edema, which would mean your lungs would literally melt. You
2384 would drown in your lung fluid. Those who would survive
2385 could have long-lasting, lifelong health problems.

2386 So when we hear about the rush to approve security plans

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2387 now, and were not comforted by the 7- to 9-year schedule GAO
2388 brings out, we are also not comforted by the fact that it is
2389 not a complete deck that we are dealing with here. So
2390 approval of a plan doesn't necessarily make it secure and it
2391 certainly doesn't make it no longer vulnerable. The CEO of
2392 DuPont admitted that if an airplane or a small helicopter
2393 coming into a plant couldn't be stopped by fence-line
2394 security, which is the entire basis of this kind of security.

2395 Similar communities living near these plants are not
2396 comforted by these Alternative Security Plans developed by
2397 industry lobbies. They have heard too often when they have
2398 sheltered in place, or see explosions and flares and fires--
2399 were averaging about 45 a year, by the way, at refineries--
2400 that everything is okay. There are no dangerous levels of
2401 chemicals released.

2402 So when you look at our testimony, look at the people
2403 who we have quoted in there, but also look at the Center for
2404 American Progress reports we sited, which identified hundreds
2405 of facilities that have converted and eliminated these risks
2406 to millions of people. We think any plant that can convert
2407 should be required to convert and, in fact, the CEP studies

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2408 found that 87 percent of those converted that were surveyed
2409 did so for \$1 million or less; 1/3 expected to save money.
2410 So this is good business. It also means eliminating
2411 liability and regulatory obligations.

2412 And I have much more to say but I will wait for your
2413 questions. Thank you again for allowing us to appear today.

2414 [The prepared statement of Mr. Hind follows:]

2415 ***** INSERT G *****

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2416 Mr. {Shimkus.} Thank you, Mr. Hind.

2417 Now, I would like to recognize myself for the first 5
2418 minutes of questions.

2419 I want to start off whatever script I was given to ask
2420 Mr. Scott a question. Were you in the room when
2421 Representative McKinley was asking about the risk assessment
2422 issue? And, of course, DHS responded that, well, we don't
2423 know of any identifiable risks. And I am paraphrasing here--
2424 then the question went to about European security and DHS
2425 responded, well, we think we are the gold standard. Since
2426 you operate around the globe, does individual European
2427 countries or the EU at large have a CFATS-type program?

2428 Mr. {Scott.} No, but they are discussing a similar
2429 program. The difference you have there, you are working
2430 between various countries. But they do have regulations in
2431 place like the Seveso regulations that impact offsite types
2432 of emergencies. The EU is having a conversation about are
2433 there any general rules and regulations that we can put in
2434 place? They have been talking. They have talked with DHS in
2435 the past. We are working with--

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2436 Mr. {Shimkus.} Maybe they should talk with our GAO, our
2437 Government Accounting Office, then DHS.

2438 Mr. {Scott.} Yes. Well, DHS is a standard; I wouldn't
2439 say it is a gold standard. But the folks overseas are
2440 looking at similar directions to go, both in transportation
2441 and site security. But we also have a lot of work that we
2442 have done over there through the Responsible Care Code. It
2443 is a global code. So that has been implemented. And a lot
2444 of the same safety and security cultures that are in place in
2445 the U.S. are in place throughout Europe.

2446 Mr. {Shimkus.} I appreciate that.

2447 Now, for Mr. Allmond and Mr. Scott and Mr. Drevna, GAO
2448 reports--and you all have heard these conversations earlier
2449 today--that DHS largely disregards vulnerability, economic
2450 criticality, and threat assessments as part of the risk
2451 calculations making CFATS a modified consequence prevention-
2452 only program. Are you concerned your members might be
2453 overregulated or under-tiered? Mr. Allmond?

2454 Mr. {Allmond.} Well, certainly these revelations are
2455 concerning. And it is going to take me some time to get back
2456 to my members to find out from their perspective how they

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2457 would like to proceed. You know, I think completely stopping
2458 the CFATS program from going forward probably would be
2459 overboard. Perhaps some components could go forward. But
2460 certainly--

2461 Mr. {Shimkus.} Okay. But you were here during the
2462 testimony. Do you think that some of your folks are
2463 overregulated or under-tiered? It is pretty easy--

2464 Mr. {Allmond.} Well, at this point it seems like that
2465 may be the case.

2466 Mr. {Shimkus.} Thank you. Mr. Scott?

2467 Mr. {Scott.} I would say yes. Looking at the
2468 variability in the sites that we have that are covered, there
2469 is a lot of question on how we got where we got.

2470 Mr. {Shimkus.} Mr. Drevna?

2471 Mr. {Drevna.} I concur.

2472 Mr. {Shimkus.} You have heard from panels one and two
2473 that DHS has collected a lot of information that it will not
2474 use in risk assessment. Are you comfortable with that? Mr.
2475 Allmond?

2476 Mr. {Allmond.} No, we are not.

2477 Mr. {Shimkus.} And why?

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2478 Mr. {Allmond.} DHS should use the information that is
2479 given to them. As has been testify before, there has been an
2480 enormous amount of resources given to--from our side--given
2481 to the Department that we are compelled to do and there is an
2482 understanding that the Department is going to use that
2483 information.

2484 Mr. {Shimkus.} Mr. Scott?

2485 Mr. {Scott.} I agree. The inefficiency in the process
2486 caused a lot of unnecessary work, a lot of information that
2487 they have never used, and we don't know where the information
2488 went. It seems like they felt like they had the answer
2489 before we started the process.

2490 Mr. {Shimkus.} Mr. Drevna?

2491 Mr. {Drevna.} Yes. And I would like to add to that,
2492 Chairman Shimkus, that, you know, in chemical facilities, you
2493 know, you are changing processes constantly. So we are
2494 submitting information, you know, it goes somewhere, lots of
2495 information, up to 900 questions on some things. It goes
2496 somewhere. Whether it is used or not, probably not all of
2497 it. Again, if it is vital, perfect. If it is not, let us
2498 work with you to get it done. But then you change your

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2499 process again, you may have to go through the whole thing
2500 again because these things are not static kinds of plants.
2501 We are always changing volumes and chemicals.

2502 Mr. {Shimkus.} Mr. Scott?

2503 Mr. {Scott.} I would like to add to that. That is one
2504 of the big issues that we have is we typically have larger
2505 plants, a lot of processes in those plants and we are
2506 required to submit any time we change anything in the
2507 process, make another submission. That puts you back to
2508 square one in the whole process.

2509 Mr. {Shimkus.} And just because my time is getting
2510 short, and Mr. McNerney is not here, but he talked a lot
2511 about cyber stuff. So you have got all this data going
2512 somewhere. If it is not being used, why it is being held and
2513 what is the risk of that being pulled out to make your
2514 facilities less secure. Is that a risk? Mr. Scott?

2515 Mr. {Scott.} Well, it is a risk whenever you release
2516 the information that you hope it is going to be secure. But
2517 in the earlier panel, we also heard that, well, maybe we can
2518 declassify that so everybody can talk about it. And I am
2519 concerned about the level of declassification. If it is just

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2520 open to the public, that is a real security concern.

2521 Mr. {Shimkus.} Anyone else while my time is expired?

2522 Mr. Drevna?

2523 Mr. {Drevna.} I would like to add to that. You are
2524 probably one hit of forward or reply all from exactly what
2525 Mr. Scott was just talking about.

2526 Mr. {Allmond.} Absolutely.

2527 Mr. {Shimkus.} Mr. Allmond. Okay. Thank you. The
2528 chair now recognizes ranking member, Mr. Tonko, for 5
2529 minutes.

2530 Mr. {Tonko.} Thank you, Mr. Chairman.

2531 And to the gentleman on the panel, thank you for your
2532 time and your input today.

2533 To the industry witnesses, did you participate in GAO's
2534 survey?

2535 Mr. {Allmond.} Oh, SOCMA did, yes.

2536 Mr. {Scott.} ACC did, yes.

2537 Mr. {Drevna.} Yes, sir.

2538 Mr. {Tonko.} So you all did.

2539 GAO found that transparency in the tiering process
2540 should be improved. Can each of you state whether you agree

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2541 with this GAO conclusion?

2542 Mr. {Allmond.} I will say absolutely. As Mr. Scott was
2543 saying, a lot of times these facilities give information
2544 without getting a really detailed understanding about why
2545 they got the tier level they did.

2546 Mr. {Scott.} All of the information was submitted. I
2547 absolutely think it should be more transparent with the
2548 people that we were supposed to be working as partners.

2549 Mr. {Drevna.} I agree, Mr. Tonko. But I will say that,
2550 you know, the process has somewhat improved. I mean we have
2551 got a long way to go, but we weren't where we were before
2552 this report came out.

2553 Mr. {Tonko.} Mr. Drevna, you talked about the PSP
2554 process--

2555 Mr. {Drevna.} Yes, sir.

2556 Mr. {Tonko.} --and utilizing it more readily.

2557 Mr. {Drevna.} Yes, sir.

2558 Mr. {Tonko.} Can you just develop that a bit for me?

2559 Mr. {Drevna.} Well, you know, at refineries and
2560 petrochemical facilities, you have constantly--you know, you
2561 have your own employees--but you have constant, you know,

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2562 contractors coming in and out, turnarounds, changeovers, et
2563 cetera, and they are authorized, the contractors, under TWIC,
2564 Transportation Worker Identification Credential. And what
2565 the DHS will tell us is that, well, we are coming up with a
2566 remedy for that but those rules aren't going to be ready for
2567 who knows how many more years. Meanwhile, you know, we have
2568 to, perhaps, have other identification notices or
2569 identification cards for the various employees and
2570 contractors.

2571 It is sort of like if I can make some sort of an
2572 analogy, sort of like me or you going through an airport and
2573 you have to have your passport to go through the first gate,
2574 and your driver's license you through the second, and maybe
2575 your voter ID card to go through the third or whatever. But
2576 it doesn't make any sense. So, you know, I mean, you know,
2577 you talk to us in industry and we usually object to the one-
2578 size-fits-all approach and maybe that is not applicable. But
2579 we need something that is not duplicative, time-consuming,
2580 and sometimes conflicting.

2581 Mr. {Tonko.} Thank you. Thank you, Mr. Drevna.

2582 Mr. Hind, you made mention, or I think to use your

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2583 words, we are not dealing with a complete deck. Can you
2584 elaborate on that? What else should be done to make certain
2585 that we are providing for the public safety elements out
2586 there or in keeping with the mission of the legislation?

2587 Mr. {Hind.} Well, if you look at the EPA's database
2588 through its risk management program, which is really kind of
2589 an imperfect larger universe of the facilities we are worried
2590 about, those that have off-site consequences, the total
2591 number of facilities in that program is 12,440 according to
2592 CRS' latest update in November. Of those, 2,500 plants each
2593 put 10,000 people or more at risk. Of the 2,500, some of
2594 them could put over a million at risk. In fact, 473 put
2595 100,000 at risk. And so my question to the panel here is,
2596 which of your member companies are actually part of MTSA and
2597 exempt from CFATS or part of a DOE program or even Defense
2598 Department? And I think that the numbers would be rather
2599 revealing in terms of which they are.

2600 We have heard that Dow's largest plant the country at
2601 Freeport, Texas, is that MTSA facility. So that means there
2602 are huge holes, or as Congressman Waxman called them, gaps in
2603 the security and in terms of the continuity of security by

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2604 the government accountability over the industry.

2605 Mr. {Tonko.} Thank you. And from the public interest
2606 perspective, what are the problems with incorrect tiering of
2607 facilities?

2608 Mr. {Hind.} You mean in terms of the way that the risk
2609 assessment has been conducted and so forth? Well, in our
2610 view, we are a little bit nervous to hear about economic
2611 considerations being added and also vulnerability. I think
2612 that all of these facilities are vulnerable. If somebody
2613 takes a small plane or hijacked it, all of the guards and
2614 cameras and gates are not going to be enough to stop a small
2615 plane, as the CEO of DuPont admitted years ago. So I think
2616 that, as the former EPA administrator Ruckels has warned,
2617 risk assessment is like a captured spy. If you torture it
2618 enough, you can get to say anything. And I fear that we are
2619 going down a slippery slope here, and what needs to be done
2620 is adding alternative assessment to the process. Each
2621 company should be going out and saying to the DHS, we have
2622 looked at all the alternatives and there is nothing feasible
2623 for facility, or we are like Clorox and we can convert. And
2624 then you have zero risk.

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2625 Mr. {Tonko.} Thank you. I think some of you might have
2626 a comment to that, too, or--

2627 Mr. {Scott.} Yes, I just--

2628 Mr. {Shimkus.} Without objection, we will continue for
2629 a minute to get a response. Mr. Scott?

2630 Mr. {Scott.} Okay. Yes, I would just like to reply on
2631 the MTSA question. There are several sites that are covered
2632 by MTSA, but rightly so. They have waterside security
2633 included on their security. But the Texas operation site is
2634 the one that Mr. Hind mentioned, which is our largest site.
2635 It is the largest chemical site in the United States. It is
2636 covered by MTSA so it does have different requirements. It
2637 also has exactly the same security upgrades already in place
2638 that are required of a Tier 1 CFATS site. So if you come
2639 down to Freeport operations or Texas operations, you will see
2640 we would be in full compliance with CFATS right now as a Tier
2641 1 site. All of our MTSA sites are upgraded security-wise
2642 exactly the same as our CFATS sites. And all of our sites
2643 globally are tiered the same way and have security upgrades
2644 in place the same way. So I think that addresses the issue
2645 that we can have integration of the two systems very well.

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2646 Mr. {Shimkus.} Thank you very much.

2647 The chair now recognizes the gentleman from

2648 Pennsylvania, Mr. Pitts, for 5 minutes.

2649 Mr. {Pitts.} Mr. Drevna, did you want to add to that?

2650 Mr. {Drevna.} Well, if you don't mind, Mr. Chairman,

2651 thank you.

2652 You know, I agree with everything that Mr. Scott had

2653 said exponentially. But since the question was asked from

2654 the panel to the panel, you know, in short of installing

2655 patriot missile batteries at all facilities, I don't see how

2656 we are going to stop anything from coming in from outside the

2657 gate like an airplane or helicopter.

2658 Mr. {Pitts.} Mr. Allmond, you testified that DHS should

2659 be more willing to extend the amount of time a small or

2660 medium-sized facility has to respond to a post-inspection

2661 report. How much time is reasonable so that the small and

2662 medium-sized facility still feels the urge to promptly

2663 respond while also giving them the chance to provide a

2664 quality response?

2665 Mr. {Allmond.} Yes. Thank you for that question. I

2666 think a minimum of 90 days will be sufficient.

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2667 Mr. {Pitts.} Do you believe DHS still has time to make
2668 program adjustments and will consider your perspective, and
2669 if so, what gives you that confidence?

2670 Mr. {Allmond.} I do. In fact, I have already broached
2671 this concern with the Department and they have been receptive
2672 to hearing our proposal.

2673 Mr. {Pitts.} Thank you. Mr. Drevna, your testimony
2674 discusses the importance your members place on getting a
2675 workable Personnel Surety Program. Is DHS addressing your
2676 particular concerns?

2677 Mr. {Drevna.} Well, we have been working with them, and
2678 as I said previously, ever since, you know, the report came
2679 out and we have sat down--and I have to admit, there has been
2680 more transparency and they are willing to work with us. But
2681 you know, we have got to establish the fact that we--you
2682 know, as I said before, the TWIC reader card implementation
2683 is years away. But we are in the process of doing all this
2684 now. So there has to be some meeting of the minds here that
2685 says, okay, let's get this done in a timely fashion so we can
2686 move on.

2687 Mr. {Pitts.} Has AFPM tried to get an Alternative

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2688 Security Plan approved by DHS for its members? What has been
2689 your experience with DHS in trying to advance--

2690 Mr. {Drevna.} Well, we support the alternative plans.
2691 We haven't particularly as an association done it, but our
2692 members have. And that is one of the things we keep, you
2693 know, the tiering process, the kind of data that is needed.
2694 It is a little bit confusing between what is, you know,
2695 needed for the full assessment, what is needed to get you
2696 into a quicker AV alternative plan. So, you know, we are
2697 working with them. We support it and again, you know, we are
2698 seeing the light at the end of this tunnel but we still have
2699 a ways to go.

2700 Mr. {Pitts.} Assuming DHS, with the help from a Peer
2701 Review Panel, comes up with a better risk assessment model,
2702 when should it be applied to CFATS activities? Does it
2703 affect the speed with which your members would have their
2704 Site Security Plans reviewed and approved?

2705 Mr. {Drevna.} Is that for me, sir?

2706 Mr. {Pitts.} Yes.

2707 Mr. {Drevna.} I believe it would. I mean, we have
2708 three members companies on that tiering panel. And, you

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2709 know, we are confident that, you know, we are getting joint
2710 cooperation. Anytime you get three companies on the panel, a
2711 government panel, we are happy with that. But, you know, the
2712 proof is going to be at the end of the day with what is
2713 accepted and what isn't.

2714 Mr. {Pitts.} All right. Mr. Scott, your testimony
2715 raised concerns about transparency by DHS officials because
2716 they did a poor job of communicating threat information to
2717 CFATS-regulated facilities. Do you think DHS can formulate
2718 credible threat information and assessments?

2719 Mr. {Scott.} I think they can give us the information
2720 that they have available to us. There is a NIAC study out
2721 that is on communications amongst the intelligence
2722 communities in the D.C. area and DHS did not come out very
2723 highly on that panel.

2724 Mr. {Pitts.} Does it surprise you that GAO found that
2725 DHS really doesn't assess threat for 90 percent of terror
2726 threats at facilities with chemicals?

2727 Mr. {Scott.} Threat typically is not discussed, and
2728 when you have a meeting with DHS, typically, it starts with
2729 there are no credible threats to the chemical industry at

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2730 this time. We go on the premise that because we are part of
2731 the critical infrastructure, we are a potential threat or
2732 there is always a potential threat. That is the discussions
2733 we have always had.

2734 Mr. {Pitts.} What recommendations do you have for DHS
2735 to improve its threat characterizations and communications?

2736 Mr. {Scott.} You have to identify the baseline on the
2737 threats that you are going to address, and then you have to
2738 have plans in place to escalate your security programs
2739 accordingly as the risk increases.

2740 Mr. {Pitts.} Do you agree with GAO that DHS assessment
2741 tools, particularly threat consequence and vulnerability
2742 ones, should be verified and valid before being deployed?

2743 Mr. {Scott.} Yes, I do. Validity is important, yes.

2744 Mr. {Pitts.} My time has expired. Thank you.

2745 Mr. {Shimkus.} The gentleman's time has expired.

2746 The chair now recognizes the gentleman from Texas, Mr.
2747 Green, for 5 minutes.

2748 Mr. {Green.} Thank you, Mr. Chairman. And obviously,
2749 our threat assessments are a work in progress because I
2750 remember in late 2001 there was in one of the caves in

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2751 Afghanistan there was information on an attack on a refinery
2752 in Pasadena, California. It didn't take too long to know
2753 there are no refineries in Pasadena, California. But I
2754 represent Pasadena, Texas, and we have no shortage of
2755 refineries. And that was right after 9/11. Obviously, it
2756 was infancy.

2757 And today, though, there is a lot--and I know at least
2758 in the industries that I work with in my area in East Harris
2759 County, the coordination between the federal agencies and our
2760 local police agencies is amazing. Now, I don't know what DHS
2761 does with the local law enforcement, you know, the FBI, the
2762 Customs and Border Protection, the Coast Guard. In fact, I
2763 was at the Coast Guard facility in our district that now is
2764 co-located at a Coast Guard facility with the Harris County
2765 Sheriff's office boats, along with the Houston Police
2766 Department boats at the same location in our district in
2767 Galena Park, Texas. So, I mean, it is a work in progress.

2768 Were you all here for the first panel? Do you feel
2769 confident that we are going to end up not having to jump
2770 through second hoops on your non-MTSA facilities and that the
2771 TWIC card is going to be able to be used? If you have a site

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2772 that Dow does, for example, in Freeport, that the TWIC card
2773 works and you have a land-based site, the TWIC card will
2774 also, ultimately when they get through, will also be able to
2775 be used for an ID at that land-based facility for Dow?

2776 Mr. {Scott.} That is the direction that they are moving
2777 in. So yes, a TWIC card would be acceptable and usable at
2778 any of those sites. Yes.

2779 Mr. {Green.} Well, Mr. Chairman, we need to just
2780 monitor that because I know we in the Subcommittee had that
2781 discussion for a number of years, and frankly, we probably
2782 wouldn't have gotten where we are without a great GAO study
2783 to show that the problem is within DHS.

2784 For Mr. Drevna and Mr. Scott, over the past year, have
2785 you seen changes in outreach and cooperation from DHS and the
2786 industry, particularly as they relates to chemical and fuel
2787 and petrochemical manufacturers in the last year?

2788 Mr. {Drevna.} Yes. In the last year they have
2789 significantly improved the communications from DHS to their
2790 people in the field and from the people in the field to the
2791 sites. Yes.

2792 Mr. {Green.} Well, and I understand in your testimony

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2793 you are concerned that the transparency on the decision-
2794 making ought to be much better and our committee ought to be
2795 encouraging that. Now, I do have some concern about the
2796 information provided on your plant facilities, because again,
2797 the experience we have over the last 12 years is that if a
2798 lot of your information is given to DHS, it is public record.
2799 There are folks in part of the world who, you know, can, with
2800 the punch of a button, can look up plant design and plant
2801 vulnerability. That should not be public record. And I am
2802 concerned about that.

2803 You know, we want transparency in the approval process
2804 but, you know, as much as I want as much public information
2805 for my constituents that live around and work on those
2806 plants, I also know I don't want to give a guide to somebody
2807 who wants to fly that Piper Cub over it. Is that some of
2808 your concern?

2809 Mr. {Drevna.} Absolutely. You know, like I said
2810 before, Congressman Green, you know, we submit information
2811 and we submit it in good faith and--

2812 Mr. {Green.} Well, you are required to.

2813 Mr. {Drevna.} But like I say, it is either one reply

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2814 all or one forward button away from getting into the wrong
2815 hands.

2816 Mr. {Green.} Well, I think in follow-up hearings we
2817 might have DHS come talk about what they do with information
2818 that is provided so it is protected. But I have to admit,
2819 Charlie, it is interesting, the ultimate 2nd Amendment is
2820 somebody having a Stinger missile to protect their plant or
2821 their house from a Piper Cub flying over it. I don't think
2822 we are going to get to that point. But I see planes fly over
2823 my plants literally every day when I am at home. And there
2824 is a special protection, though, you have to have special
2825 access to be able to fly over those facilities and no system
2826 is foolproof. But also, I don't know if I really want us to
2827 have to train our plant personnel to have a Stinger missile
2828 on their shoulder.

2829 Mr. {Drevna.} I would concur, Congressman Green.

2830 Mr. {Green.} But Mr. Chairman, you know, I appreciate
2831 the hearing. It seems like we made progress, but obviously
2832 DHS needs to come a little more with plants who, as I have
2833 said before, have made a million dollars in federal tax
2834 dollars, millions of dollars of investments and partnerships

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2835 with our local communities that we still don't know what
2836 hoops and what will be approved, whether it be Tier 1, 2, 3,
2837 or 4. And I would like to have, you know, some certainty
2838 there, and I know Greenpeace would like that to, and so would
2839 my constituents. Thank you.

2840 Mr. {Shimkus.} The gentleman yields back his time.

2841 We want to thank the third panel for being here and ask
2842 unanimous consent for 5 days for subcommittee members to
2843 submit opening statements for the record. Without objection,
2844 so ordered. We would also ask unanimous consent for 10 days
2845 to submit written questions for submittal to witnesses for an
2846 inclusion in the records. That also pertains to you all.

2847 And inclusion of a letter, I ask unanimous consent for
2848 the inclusion of a letter from the National Association of
2849 Chemical Distributors to myself and Mr. Tonko--your staff has
2850 approved--dated March 12, 2013, on the CFATS program.

2851 Without objection, so ordered.

2852 [The information follows:]

2853 ***** COMMITTEE INSERT *****

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2854 Mr. {Shimkus.} And the hearing is now adjourned.
2855 [Whereupon, at 12:43 p.m., the subcommittee was
2856 adjourned.]