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United States Government Accountability Office
Washington, DC 20548

April 23, 2013

The Honorable John Shimkus
Chairman
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
House of Representatives

Subject: *Critical Infrastructure Protection: GAO Response to Posthearing Questions for the Record*

Dear Mr. Chairman,

On March 14, 2013 we testified before your committee on the actions the Department of Homeland Security (DHS) has underway to better manage its chemical security program,¹ and have subsequently issued a related report.² You requested that we provide additional information on a number of post hearing questions. The questions and our answers are provided in the Enclosure. The responses are based on work associated with previously issued GAO products. If you have any questions about this letter or need additional information, please contact me at (202) 512-9610 or Caldwells@gao.gov.

Sincerely yours,

Stephen L. Caldwell
Director
Homeland Security and Justice

Enclosure

¹GAO, *Critical Infrastructure Protection: Preliminary Observations on DHS Efforts to Assess Chemical Security Risk and Gather Feedback on Facility Outreach*, GAO-13-412T (Washington D.C.: March 14, 2013).

²GAO, *Critical Infrastructure Protection: DHS Efforts to Assess Chemical Security Risk and Gather Feedback on Facility Outreach Can Be Strengthened*, GAO-13-353, (Washington, D.C.: April 5, 2013).

Enclosure

Questions from the Honorable John Shimkus

Infrastructure Security Compliance Division (ISCD) risk assessment approach

- 1. Do you think the peer review should precede any amendments to the Chemical Facility Anti-Terrorism Standards (CFATS) regulations or expansion of the list of chemicals of interest?**

In a report issued subsequent to our testimony before this Subcommittee, we recommended that DHS conduct an independent peer review, after ISCD completes enhancements to its risk assessment approach that fully validates and verifies the approach.^{3,4} However, we did not examine whether a peer review should precede any amendments to the rule or an expansion of the list of chemicals of interest. As we have previously reported, independent peer reviews cannot ensure the success of a risk assessment approach, but they can increase the probability of success by improving the technical quality of projects and the credibility of the decision-making process.⁵ Commissioning an independent peer review—including a complete verification and validation of the models used to tier facilities—following DHS actions to revise and enhance its risk assessment approach might better inform any changes to the rule and the list of chemicals of interest included in Appendix A.

- 2. Given that past evaluations did not disclose problems with the current model, will the peer review be in a better position to identify potential problems? Why?**

Once the panel of subject matter experts completes its ongoing examination of the current risk assessment approach, ISCD may have a better understanding of the current approach's strengths, weaknesses, and whether ISCD is heading in the right direction when tiering facilities. After the panel of experts recommendations are incorporated into the risk assessment approach, the peer review is to include steps that are to independently validate and verify the CFATS risk assessment approach, such as analyzing the structure of the approach and determining whether the risk models included in the approach calculate values correctly. By including these validation and verification steps, ISCD should be better positioned to identify any additional potential problems with the CFATS risk assessment approach.

³GAO, *Critical Infrastructure Protection: Preliminary Observations on DHS Efforts to Assess Chemical Security Risk and Gather Feedback on Facility Outreach*, GAO-13-412T (Washington D.C.: March 14, 2013).

⁴GAO, *Critical Infrastructure Protection: DHS Efforts to Assess Chemical Security Risk and Gather Feedback on Facility Outreach Can Be Strengthened*, GAO-13-353, (Washington, D.C.: April 5, 2013).

⁵See GAO-12-14 and GAO, *Homeland Security: Summary of Challenges Faced in Targeting Oceaongoing Cargo Containers for Inspection*, GAO-04-557T (Washington D.C.: Mar. 31, 2004).

ISCD security plan review process

3. How does ISCD's problems implementing CFATS jeopardize its ability to effectively assess facility risk including reviewing site security plans and regulate and work with the chemical industry?

We identified three factors that could affect program operations and jeopardize ISCD's ability to implement an operational CFATS regulatory regime. First, the risk assessment approach is not yet complete because it does not consider all elements of risk called for by the National Infrastructure Protection Plan (NIPP) and the CFATS rule. Until ISCD incorporates all elements of risk into its risk assessment approach, ISCD will not know if it is regulating all of the facilities that pose the greatest risk or conversely, regulating facilities that should not be included in the program.

Second, ISCD has increased the number of security plan approvals and attributes this increase to changes in the security plan review process. However, ISCD is unable to measure how these changes have affected the review process because ISCD did not track data on prior processes. Moving forward, ISCD plans to measure the time it takes to review plans, among other things, but it will not be able to fully measure progress until the new security plan review process matures. Tracking the time it takes to review security plans would enable ISCD to identify any problems and, where appropriate, take corrective actions.

Third, ISCD currently does not solicit or collect feedback in a systematic fashion on its industry outreach efforts so that the effectiveness of these efforts can be measured. By not doing so, ISCD may be missing opportunities to improve its interactions with the chemical industry. Also, soliciting systematic feedback could help ISCD identify any emerging issues associated with implementing CFATS so that it could address potential problems before they occur.

4. ISCD told you that it has efforts underway to expedite the review of the backlog of security plans. Will these efforts clear the backlog more quickly?

In March 2013, ISCD began actively exploring how the security plan review process might be expedited, such as potentially leveraging alternative security programs, reprioritizing resources, and streamlining review and inspection requirements. Since ISCD only recently began exploring these efforts, it is too early to tell whether these efforts will result in the expedited review of security plans.

- 5. Could you comment on the documentation issues regarding the CFATS risk tiering approach? Does this lack of documentation impact the Department of Homeland Security's (DHS) ability to appropriately tier high risk chemical facilities?**

The effect of the lack of documentation on DHS's ability to appropriately tier facilities the CFATS risk tiering may not be known until the efforts of the ongoing expert panel and the aforementioned independent peer review are completed. It is possible that the lack of documentation could hinder the ongoing expert panel and independent peer review in their efforts to review the CFATS risk assessment approach because participants will not have the benefit of knowing how and why decisions about the design and structure of the approach were made during the early years of the program.

ISCD outreach to owners and operators

- 6. Would a systematic approach to soliciting feedback on ISCD's outreach efforts and progress improve the CFATS program?**

Consistent with our recommendation that ISCD explore opportunities and take action to systematically solicit and document feedback on facility outreach, systematic efforts to solicit feedback from the regulated community might provide ISCD with an opportunity to determine if problems exist, not only with outreach efforts, but also within the broader CFATS program as well. Feedback solicited from regulated facility owners and operators and industry stakeholders might also allow ISCD to make specific changes to outreach activities and also address any problems identified with CFATS operations in general. For example, we suggested in our report that ISCD could solicit feedback as a part of after-action reviews conducted at assistance visits, meetings and presentations and work with trade associations or other representatives of the regulated community to design and conduct member surveys. Feedback solicited through these mechanisms might better position ISCD to identify programmatic issues experienced by regulated facilities, create an opportunity for discussion of these issues and highlight potential changes and take corrective actions, if necessary, to address the problems identified.

Questions from the Honorable Henry A. Waxman

The Government Accountability Office's written testimony examined the Department of Homeland Security's outreach to facility owners and operators as well as some stakeholders, such as state and local governments and trade associations. Outreach to other stakeholders was not described.

- 1. In your review, did you find formal outreach or communication with stakeholders in the public interest community, such as labor or environmental groups?**

2. **Did you find formal outreach or communication with workers at covered facilities, or their representatives?**
3. **Did you find formal outreach or communication with residents or community leaders around these facilities?**
4. **Did you find informal outreach with any of the above mentioned groups?**

The scope of our work was limited to assessing ISCD's outreach to selected chemical industry trade associations and their members and as such, we did not review the extent to which the agency took action to provide outreach to the stakeholder communities beyond the trade associations and their members. The industry trade associations highlighted in our review were selected because ISCD interacts with these organizations on CFATS issues, among other things, and because these associations represent a large number of regulated facility owners and operators in the program. ISCD data on outreach activities performed from fiscal year 2007 through the first quarter of fiscal year 2013 did not provide sufficient detail to determine whether formal or informal outreach or communication was performed with other stakeholder communities, such as labor and environmental groups and residents and community leaders around these facilities.

In the GAO's written testimony on the Department's forthcoming strategic communications plan, the Department's efforts are compared to other "customer service efforts in the government" suggesting that, "those receiving services can provide helpful information as to the kind and quality of services they want." The service provided by the CFATS program is a guarantee of security, and those receiving that service include workers in high risk facilities and people living around them.

5. **Based on your review, does the Department view those workers and residents as customers of the CFATS program?**
6. **Taking those groups as the customers of the CFATS program, how do the Department's communication efforts compare to other customer service efforts in the government?**

The scope of our work was limited to assessing ISCD's outreach by obtaining views from selected chemical industry trade associations and their members. Thus, we did not examine whether DHS views workers in high risk facilities and the people living around them as customers of the CFATS program nor did we compare ISCD's communications efforts with those of other customer service efforts in the federal government. Furthermore, ISCD data on its outreach efforts did not provide the level of specificity that would enable us to determine if, or to what extent, ISCD's outreach efforts included workers at high-risk facilities or

residents living around them as customers. For example, ISCD data showed that outreach efforts included meetings at CFATS regulated facilities; presentations at federal, state, local, or private industry events; and meetings with federal, state, local, or private industry partners.