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ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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April 4, 2013

Mr. Timothy J. Scott  
Chief Security Officer  
The Dow Chemical Company  
P.O. Box 156  
Lake Jackson, TX 77566

Dear Mr. Scott:

Thank you for appearing before the Subcommittee on Energy and Power on Thursday, March 14, 2013, to testify at the hearing entitled "The Chemical Facility Anti-Terrorism Standards Program – A Progress Update."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Thursday, April 18, 2013. Your responses should be e-mailed to the Legislative Clerk in Word format at [Nick.Abraham@mail.house.gov](mailto:Nick.Abraham@mail.house.gov) and mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus  
Chairman  
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member,  
Subcommittee on Environment and the Economy

Attachment

**The Honorable John Shimkus**

1. Do you think that ISCD is making progress with personnel surety? Is it headed in the right direction?
2. How does the recent experience of the regulated community with the CFATS program compare with its experience at the time of the Subcommittee's last hearing on September 11, 2012? Are there improvements and, if so, what are they?
3. What is the quality of communication between DHS and the regulated community? Is feedback systematic or based more on occasional, informal contacts?
4. Should feedback from the regulated facilities be more systematic through direct, detailed surveys? Would this significantly improve CFATS?
5. Overall, both DHS and GAO agree that there is progress on communication with the regulated community – do you think DHS has enabled you to fully understand the CFATS program and how DHS arrives at decisions?
6. GAO testified that it will take 7 to 9 years more to fully implement CFATS.
  - a. Could using Alternate Security Programs (ASPs) speed things up?
  - b. Is there any security trade-off between a CFATS Site Security Plan and an ASP?

**The Honorable Henry A. Waxman**

When the Committee drafted H.R. 2868 in the 111th Congress, several provisions were included to guide the tiering process for CFATS facilities.

Section 2102 of the bill directed the Department of Homeland Security to first make a list of high risk facilities, based on a consideration of threat and consequences, including adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy, as well as the geographic proximity to large population centers. Facilities on the list would then be sorted into tiers by the Department based on risk. Under this two step process, vulnerability would be considered in assessing risk and placing a facility into a tier, but not in determining whether a facility fell within the universe of CFATS regulated facilities. By removing vulnerability from the threshold determination of what facilities are covered by CFATS, this process might address the concern that a facility could cycle in and out of the regulated universe by adding or removing security measures.

1. Do ACC members support the consideration of vulnerability in determining the risk tier assignment for a facility, as set out in the National Infrastructure Protection Plan and the Interim Final Rule that created the CFATS program?
2. Do ACC members support the two step process set out in H.R. 2868, so that only threat and consequence would be considered in making the determination of whether a facility is subject to the CFATS regulations?

Section 2102 of the bill also outlined requirements for the Secretary of Homeland Security to provide owners and operators of covered facilities with the reason for the facilities tier assignment, and upon request,

information related to the criticality of the facility, the proximity to other critical infrastructure, and the potential human consequences of a successful attack.

3. Do ACC members support requirements to provide that information to the owners and operators of covered facilities?
4. Is there additional information that ACC members would want to receive with their tier assignment to increase transparency and accountability in the tiering process?

During the third panel of the hearing, you and other witnesses testified that under the existing CFATS framework, the regulatory process must be started over from the beginning any time a change is made in the facility. Section 2103 of H.R. 2868 called on the Secretary of Homeland Security to establish specific deadlines and requirements for the submission of information describing material modifications to a covered facility's operation that may affect the security of the facility.

5. Do ACC members support increasing transparency and predictability in the CFATS regulatory process through the establishment of specific deadlines and requirements for the submission of information describing material modifications to facility operations?

During the hearing you testified that all Dow facilities regulated under the MTSA program are currently meeting security standards for tier 1 CFATS facilities, on a voluntary basis. H.R. 2868 would have ensured that all MTSA facilities were held to the appropriate risk-based standards to ensure an equivalent level of security for substances of concern at all facilities, while maintaining the Commandant of the Coast Guard as the primary regulatory authority for MTSA facilities.

6. Are all ACC member companies implementing security measures at MTSA facilities sufficient to meet the CFATS tier 1 standards?
7. Do ACC members support requiring MTSA regulated facilities to meet security standards equivalent to the standards applicable to the tier such facilities would be assigned to if covered by the CFATS program?

One frequently cited measure of success for the CFATS program is the number of facilities reducing their chemical holdings to no longer be deemed high risk.

8. How many facilities owned or operated by ACC members have reduced their chemical holdings to "tier-out" of the CFATS program?
9. What chemicals, processes, or technologies, have those facilities used to reduce their holdings of substances of concern?