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6 THE CHEMICAL FACILITIES ANTI-TERRORISM

7 STANDARDS PROGRAM (CFATS) - A PROGRESS

8 REPORT

9 THURSDAY, JUNE 14, 2018

10 House of Representatives

11 Subcommittee on Environment

12 Committee on Energy and Commerce

13 Washington, D.C.

14

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17 The subcommittee met, pursuant to call, at 10:00 a.m.,
18 in Room 2123 Rayburn House Office Building, Hon. John Shimkus
19 [chairman of the subcommittee] presiding.

20 Members present: Representatives Shimkus, McKinley,
21 Harper, Olson, Johnson, Flores, Walberg, Carter, Duncan,
22 Walden (ex officio), Tonko, Ruiz, Peters, Green, DeGette,

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23 McNerney, Cardenas, Dingell, Matsui, and Pallone (ex
24 officio).

25 Staff present: Mike Bloomquist, Deputy Staff Director;
26 Samantha Bopp, Staff Assistant; Kelly Collins, Staff
27 Assistant; Jerry Couri, Chief Environmental Advisor; Margaret
28 Tucker Fogarty, Staff Assistant; Jordan Haverly, Policy
29 Coordinator, Environment; Mary Martin, Deputy Chief Counsel,
30 Energy & Environment; Sarah Matthews, Press Secretary; Drew
31 McDowell, Executive Assistant; Peter Spencer, Professional
32 Staff Member, Energy; Austin Stonebraker, Press Assistant;
33 Hamlin Wade, Special Advisor, External Affairs; Everett
34 Winnick, Director of Information Technology; Jean Fruci,
35 Minority Energy and Environment Policy Advisor; Caitlin
36 Haberman, Minority Professional Staff Member; Rick Kessler,
37 Minority Senior Advisor and Staff Director, Energy and
38 Environment; Jourdan Lewis, Minority Staff Assistant;
39 Alexander Ratner, Minority Policy Analyst; Tuley Wright,
40 Minority Energy and Environment Policy Advisor; C.J. Young,
41 Minority Press Secretary; and Catherine Zander, Minority
42 Environment Fellow.

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43 Mr. Shimkus. The subcommittee will now come to order.
44 The chair recognizes himself for five minutes for the purpose
45 of an opening statement.

46 Today, the subcommittee will check on the progress of
47 the Chemical Facilities Anti-Terrorism Standards Program, or
48 CFATS, allowing our subcommittee to review the progress of
49 the CFATS program, including overall implementation by the
50 Department of Homeland Security as well as overall
51 achievement of benchmark objectives identified in the past by
52 the Government Accountability Office.

53 This program, which Congress authorized in the fall of
54 2006 was a continuation of congressional efforts since the
55 terror attacks of September 11, 2001, to surgically and
56 directly address gaps in federal law regarding terrorism or
57 other intentional acts against high-risk facilities due to
58 their use or possession of chemicals of concern at levels of
59 concern.

60 The core of this new security-focused law was a
61 process where DHS issued risk-based performance standards
62 that required vulnerability assessments and the site security
63 plans by covered facilities.

64 Most importantly, to avoid overlapping with other

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65 federal programs, CFATS was designed to foster collaboration
66 between government and regulated parties.

67 Having finally set up this program, many had great
68 optimism about its possibilities. Unfortunately, the early
69 years of CFATS program implementation were marked
70 with several growing pains, some more hurtful than others.

71 No one knows that more than our witness from the
72 Department of Homeland Security, David Wulf. Very few people
73 have demonstrated the courage, commitment, and longevity with
74 the program that he has. He's kind of the Cal Ripken of
75 CFATS.

76 Based on this subcommittee's hearing in March 2014, we
77 know Mr. Wulf not only set many remedial goals to address
78 issues he found in the CFATS program, but GAO also found
79 areas that needed serious attention.

80 GAO provided recommendations to DHS on how to correct
81 these areas. I look forward to hearing about the progress
82 DHS is making here from Mr. Wulf on the first panel, and from
83 Christopher Currie at GAO, who is on the second panel.

84 I also look forward to a meaningful dialogue with our
85 other witnesses representing CFATS regulated stakeholders as
86 well as those of organized labor, environmental, and

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87 community advocacy interests.

88 Particularly, I am interested in knowing what steps DHS
89 has taken to improve its risk assessment methodology and what
90 that has meant for facility tiering, what DHS has done to
91 become more effective and efficient carrying out the CFATS
92 program, and, finally, what steps has DHS taken to improve
93 CFATS program transparency and communication with regulated
94 facilities, whether it relates to the facility tiering or
95 employee screening.

96 In my opinion, CFATS has had four uninterrupted years to
97 course correct and these are threshold questions that must be
98 addressed in evaluating whether CFATS is a worthwhile
99 investment for the United States taxpayer.

100 I know there are some who would like to see the CFATS
101 universe expand to also do EPA's job, or OSHA's job, or
102 FEMA's job, or addressed some other way and we have had
103 lively discussions on the advisability of these changes in
104 the past.

105 My own thinking has been guided by two thoughts. Are
106 these new requirements advisable as a legally enforceable
107 part of this program, filling a security gap that does not
108 exist or are they merely an additive burden without security

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109 benefits, and recognizing the challenges CFATS has faced in
110 the past, CFATS must excel at its present obligations before
111 being given new responsibilities.

112 I want to thank our witnesses for being with us today.
113 We look forward to having your experience, wisdom, and ideas.

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

115

116 *****INSERT 1*****

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117 Mr. Shimkus. With that, I have a minute left. Anyone
118 seeking time? No one is seeking time so I will yield back
119 and recognize the ranking member of the subcommittee, Mr.
120 Tonko from New York, for five minutes.

121 Mr. Tonko. Thank you, Mr. Chair, and thank you to our
122 witnesses for your testimony, the Department of Homeland
123 Security's Chemical Facility Anti-Terrorism Standards, or
124 CFATS program.

125 CFATS is an important part of our nation's
126 counterterrorism efforts to secure high-risk chemical
127 facilities. The program was first created in late 2006
128 through a DHS appropriations bill.

129 In the early years, Congress extended the program
130 through annual appropriations under the passage of a long-
131 term authorization in 2014.

132 Without further congressional action the program will
133 terminate in January of 2019. Under CFATS certain chemical
134 manufacturing, handling, and storage facilities must
135 implement risk-based performance standards for vulnerability
136 assessments and site security plans.

137 Facilities that possess certain chemicals of interest
138 must be screened by DHS. If a facility is deemed a high

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139 risk, it will be placed in one of four tiers that will
140 establish standards appropriate to secure the site.

141 As of May 30th of 2018 the CFATS program identifies
142 3,395 facilities as high risk with 159 in tier one and 78 in
143 tier two.

144 While there is complete agreement around the need for a
145 program to keep these chemicals out of the hands of
146 terrorists, even the program's most ardent supporters would
147 admit there have been implementation problems.

148 Over the years, DHS has addressed a number of concerns
149 with the program including some of GAO's recommendations
150 which we will hear about today, I am certain.

151 As Congress considers reauthorization, this is an
152 opportunity to review the program and consider what is
153 working, working well, and how the program could be improved.

154 This includes how we might continue to reduce risks at
155 these sites and ensure that workers, first responders, and
156 local communities have the information they need to stay
157 safe.

158 In my view, we should be working to reauthorize CFATS
159 and, hopefully, improving it. But I would caution against a
160 permanent reauthorization. It is rare for us to discuss this

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161 program and a permanent reauthorization may result in even
162 less congressional oversight.

163 We should also keep in mind that CFATS is not the only
164 federal program to regulate chemical facilities. While
165 others are beyond the scope of DHS, I strongly believe
166 Congress should be looking at all aspects of risks at
167 chemical facilities, not just terrorism.

168 Recent incidents should remind us that our concerns must
169 not be limited to security issues alone. We should take a
170 holistic approach to chemical risks which, obviously,
171 includes facility security as well as safety, accounting for
172 the risks to the people working there and living in nearby
173 communities and facilities' resilience.

174 Chemical fires, explosions, and releases can have
175 serious consequences regardless of whether an incident was an
176 accident, a natural disaster or an act of terrorism.

177 For example, EPA's risk management plan program is
178 focused on reducing chemical risk in the event of an
179 accidental release. RMP establishes emergency measures which
180 help local first responders prepare for and respond to a
181 chemical accident.

182 In January of 2017, the Obama administration finalized

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183 an RMP amendments rule but in June of last year EPA delayed
184 that rule's implementation, and a few weeks ago EPA proposed
185 a reconsideration of the RMP program, which would essentially
186 roll back nearly all of the safety measures that were adopted
187 in 2017.

188 In addition to safety issues, chemical facilities are
189 also vulnerable to climate change and natural disasters as we
190 have seen during Hurricane Harvey when a power outage and
191 equipment failure led to a significant chemical fire at the
192 Arkema facility in Crosby, Texas.

193 The Chemical Safety Board's post-Arkema report
194 recommended the development of comprehensive industry
195 guidance to help companies assess their risk for potential
196 extreme weather events.

197 While we all support keeping these facilities secure, I
198 hope we can also address these critical safety and resilience
199 issues, and if there is an opportunity to improve CFATS in a
200 way that close security gaps, reduce risks, better address
201 emerging threats such as cybersecurity and keep first
202 responders and workers safer, now is an excellent opportunity
203 to consider those changes to the program.

204 Again, I thank the chair for calling this hearing and

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205 thank our witnesses for being here today, and I yield back,
206 Mr. Chair.

207 Mr. Johnson. [Presiding.] I thank the gentleman for
208 yielding back.

209 The chair now recognizes the ranking member of the full
210 committee, Mr. Pallone, for five minutes.

211 Mr. Pallone. Thank you, Mr. Chairman.

212 It's been over five years since this committee held a
213 hearing on the Department of Homeland Security's Chemical
214 Facility Anti-Terrorism Standards, or CFATS.

215 Given CFATS' inauspicious history, I believe we should
216 have conducted more regular oversight. Existing CFATS
217 authorization expires on January 2019 so it's important that
218 Congress act to continue this program.

219 At the same time, there are well-documented gaps in the
220 current statute that Congress should address instead of
221 simply rubber stamping an extension of the existing program.

222 I've been an advocate for increased safety and security
223 at our nation's chemical facilities for many years, well
224 before the CFATS program was established in 2006.

225 My home state of New Jersey, which has a high population
226 density, also has a large number of chemical facilities. So

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227 the consequences of insufficient security are dire.

228 The program shouldn't have any gaps, and while it took
229 the program five years to approve its first chemical facility
230 security plan, I understand we will hear today that
231 improvements have been made.

232 Nevertheless, there are still shortfalls in the program
233 that DHS cannot address without changes to the law. For
234 example, several significant categories of facilities are
235 exempt from the standards, such as public water systems and
236 wastewater treatment plants, and they should be added.

237 We should also reject a suggestion from Senate
238 Republicans that we exempt explosive manufacturers from this
239 anti-terrorism program.

240 We also cannot have a conversation about chemical
241 facilities without discussing the Trump administration's
242 reckless proposal to dismantle EPA's risk management program,
243 or RMP, improvement rule.

244 This is a common sense update to a nearly 20-year-old
245 risk planning and reduction policy for our nation's chemical
246 facilities. The rule would have improved chemical process
247 safety, assisted local emergency authorities and planning for
248 and responding to accidents and improved public awareness of

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249 chemical hazards at regulated facilities.

250 Unfortunately, the administration's decision to walk
251 away from the RMP improvement rule has widespread and harmful
252 ramifications. Dangerous incidents at chemical facilities
253 across the country are happening too often.

254 Forty-six incidents have occurred at RMP facilities
255 since Administrator Pruitt blocked the RMP improvement rule.
256 Had the rule been in place, those facilities would have been
257 required to prepare for and implement safety improvements to
258 reduce the frequency and severity of those events.

259 The highest profile case occurred in the aftermath of
260 Hurricane Harvey at the Arkema chemical plant in Crosby,
261 Texas. Heavy rains flooded the facility, causing equipment
262 to fail, triggering a chemical fire, and releasing hazardous
263 fumes and smoke into the air.

264 Last month, the Chemical Safety Court released an
265 investigative report on the incident and found that chemical
266 facilities are wholly unprepared for extreme weather events
267 like floods and hurricanes.

268 Improving the resiliency of these facilities will only
269 become more critical as the climate continues to change.
270 More frequent flooding and powerful storms associated with

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271 unchecked climate change increase the risk to workers and
272 vulnerable populations in and around these facilities which
273 too often are low-income communities and communities of
274 color.

275 Earlier this year, the New York Times reported that more
276 than 2,500 sites handling toxic chemicals are located in
277 flood-prone areas across the country.

278 It is clear that far more remains to be done to ensure
279 chemical facilities are truly resilient to this growing
280 threat.

281 Mr. Chairman, I also believe we must examine federal
282 chemical safety and security policy holistically. We can't
283 turn a blind eye to the administration's actions to undermine
284 the efficacy of EPA's RMP program.

285 Preventing terrorism at these facilities is important,
286 but accidents and industrial incidents due to extreme weather
287 are far more common and they should also be given due
288 consideration by this committee.

289 We have to ensure the safety and security of workers,
290 first responders, and communities living near our nation's
291 chemical facilities are being prepared on both fronts.

292 And with that, Mr. Chairman -- I don't think anybody

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293 wants my time -- I'll yield back.

294 Mr. McKinley. [Presiding.] Thank you, and absent the
295 chairman of the full committee, we will now conclude our --
296 the members' opening remarks.

297 The chair would like to remind our members that pursuant
298 to the committee rules, all members' opening statements be
299 made part of the record.

300 [The prepared statement of Mr. Walden follows:]

301

302 *****INSERT 2*****

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303 Mr. McKinley. That -- we thank -- we wish to thank the
304 -- all of our witnesses for being here today, taking the time
305 to testify before this subcommittee.

306 Today's witnesses, beginning with the first panel, will
307 have the opportunity to give opening statements followed by a
308 round of questions. You know the drill -- how this works.

309 Our first witness panel for today's hearing includes Mr.
310 David Wulf, the acting assistant secretary for infrastructure
311 protection with the Department of Homeland Security.

312 Mr. Wulf, we appreciate you being here today and we will
313 begin the program with you and you're recognized for your
314 five minutes to make an opening statement.

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315 STATEMENT OF DAVE WULF, ACTING DEPUTY ASSISTANT SECRETARY,
316 INFRASTRUCTURE PROTECTION, U.S. DEPARTMENT OF HOMELAND
317 SECURITY

318

319 STATEMENT OF DAVE WULF

320

321 Mr. Wulf. Thank you so much, Mr. Chairman. I really do
322 appreciate the opportunity to be here and thanks as well to
323 Ranking Member Tonko and other members of this committee.

324 I am excited to be here to provide an update on the
325 progress that the Chemical Facility Anti-Terrorism Standards,
326 or CFATS program, continues to make in fostering security at
327 high-risk chemical facilities across this nation.

328 When I last testified before this committee in 2013, no
329 question but that the CFATS program was in a very different
330 place, having experienced some significant difficulties in
331 its early years.

332 But we had at that point implemented a comprehensive
333 corrective action plan and had begun making measurable
334 forward progress.

335 At the time, I emphasized the importance of long-term
336 authorization for this critical anti-terrorism program and I

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337 am very grateful for the leadership that you all provided --
338 that this committee demonstrated in securing the four-year
339 CFATS authorization that was signed into law in December of
340 2014.

341 So as we now find ourselves nearly three and a half
342 years into the authorization period, I am grateful that this
343 committee is, again, taking a lead role in ensuring
344 continuing long-term authorization of CFATS.

345 Now, as I am sure you'll hear me say once or twice
346 today, the stability that has come along with long-term
347 authorization has driven unprecedented progress as we have
348 worked with CFATS-covered facilities to make America's high-
349 risk chemical infrastructure a truly hard target with
350 literally tens of thousands of security measures having been
351 put in place at high-risk chemical facilities across the
352 nation.

353 So the stability afforded by long-term authorization has
354 facilitated our planning and execution of important
355 programmatic improvements while it has also afforded
356 regulated industry stakeholders with the certainty they
357 deserved as they planned for and made significant investments
358 in CFATS-related security measures.

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359 I am very pleased that you'll be hearing today directly
360 from CFATS industry stakeholders about their direct
361 experience with CFATS. Doug Brown, Jamie Conrad, Steve
362 Roberts, along with a host of industry associations, have
363 been true leaders in promoting a strong culture of chemical
364 security across the nation and I really appreciate their
365 presence and that of the other witnesses here today.

366 As we are all too aware, the threat of chemical
367 terrorism remains a real and very relevant one. Around the
368 globe, we continue to see bad actors seeking to acquire and
369 using in attacks chemicals of the sort that trigger coverage
370 under CFATS and the threat stream continues to reflect that
371 chemical facilities themselves remain an attractive target
372 for terrorist.

373 I can tell you with certainty that the work we are doing
374 in concert with our committed stakeholders across the wide
375 variety of industries and facilities that compose the CFATS-
376 covered universe is making a real difference in protecting
377 the nation, and having had the opportunity to work closely
378 with my counterparts in other nations and to co-chair the G-7
379 Global Partnerships' Chemical Security Working Group, I can
380 absolutely tell you that what we are doing here in the United

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381 States through CFATS what you have helped build with your
382 support for long-term authorization is absolutely the envy of
383 the world.

384 With its 18 comprehensive risk-based performance
385 standards and its nonprescriptive flexible approach, CFATS is
386 well suited to enhancing security across the very diverse
387 universe of high-risk chemical facilities.

388 So what have we been doing to make CFATS even stronger
389 as we have enjoyed the stability of long-term authorization
390 over the past three and a half years?

391 Well, we have improved processes and we have seen
392 unprecedented progress in the pace of inspections and in the
393 review and approval of facility site security plans,
394 eliminating a backlog of security plan reviews six years
395 ahead of earlier GAO projections.

396 We have developed and launched an improved risk
397 assessment methodology that effectively accounts for all
398 relevant elements of risk and have reassessed the level of
399 risk associated with nearly 30,000 facilities across the
400 nation.

401 We have implemented the CFATS personnel surety program,
402 affording the highest tiered CFATS-covered facilities the

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403 ability to ensure that individuals with access to those
404 facilities have been vetted for terrorist ties and we have
405 significantly reduced burden across our stakeholder
406 community, having built and launched a streamlined more user-
407 friendly suite of online tools through which facilities
408 submit risk assessment or top-screen surveys and develop
409 their site security plans.

410 So in addition to facilitating all this progress, long-
411 term authorization as compared to our former reality of
412 authorization through the annual appropriations process
413 enabled us to continue to recruit and retain top talent and
414 it reduced the possibility of another lapse in authority such
415 as occurred during the October 2013 government shut down.

416 In addition to the confusion this situation created
417 among our industry stakeholders, the need had arisen for us
418 to take enforcement action to address the national security
419 threat at a CFATS facility during this period of lapse in
420 appropriations. The underlying statutory authority for such
421 enforcement action would have been in doubt.

422 I know this is not a situation that anyone wants to see
423 repeated. So to finish on a bit more of a positive note, I
424 would, again, like to thank this committee and your top-notch

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425 staff for your leadership in the CFATS reauthorization
426 process.

427 We are fond of saying that chemical security is a shared
428 commitment and, not unlike the role of our industry
429 stakeholders who have embraced and helped us to build this
430 program in so many ways and the role of our committed and
431 very talented team at DHS, the role of Congress and of this
432 committee in shaping and authorizing CFATS for the long term
433 has been hugely important and I am looking forward to working
434 further with you as we drive toward reauthorization this
435 year.

436 So thank you so much, Mr. Chairman. I look forward to
437 your questions and to the dialogue here today.

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

439

440 *****INSERT 3*****

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441 Mr. McKinley. Thank you for your testimony, Mr. Wulf,
442 and if I could recognize myself for five minutes to begin the
443 question -- round of questioning.

444 Mr. Wulf, last time you testified before the committee
445 one of the key issues identified by GAO regarding CFATS was
446 Homeland Security's approach to calculating risks and in fact
447 they concluded DHS did not take into consideration all the
448 elements and consequences of threat risk and vulnerability.

449 Your written testimony mentions an enhanced risk
450 assessment and tiered methodology that Homeland Security
451 believes more accurately reflects a facility risk.

452 Has DHS changed its policy to risk analysis?

453 Mr. Wulf. Yes. In fact, Mr. Chairman, we have.

454 So we took very seriously the dialogue we had with this
455 committee -- took very seriously the recommendations we
456 received from GAO, recognizing that our previous risk-tiering
457 methodology was not as comprehensive as they could have been.

458 It was very focused on the consequences of terrorist
459 attacks and less so on vulnerability and threat.

460 We commissioned a peer review with a committee drawn
461 from across -- from a panel of experts from across academia,
462 government partners, and industry.

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463 We received some excellent recommendations as to ways in
464 which we could enhance our risk-tiering methodology and we
465 set about doing just that.

466 So in the fall of 2016, we did in fact launch a new and
467 improved risk-tiering methodology that accounts for all
468 relevant elements of risk. So consequence, vulnerability,
469 and threat, and we set about retiering the universe of
470 chemical facilities against that new tiering methodology.

471 Mr. McKinley. With this tiering methodology, I am just
472 curious -- has it been peer reviewed what you've done on that
473 methodology?

474 Mr. Wulf. Yes. It sure has. So after we developed the
475 methodology we drew together another group of experts, again,
476 from across government academia and our industry community to
477 go over the methodology -- to make recommendations for
478 potential tweaks before we finalized the methodology.

479 And following that, we embarked upon a verification and
480 validation process that was conducted by Sandia National
481 Labs, which advised us that our methodology was in fact
482 sound, was working as intended, and at that point, we
483 launched upon the retiering process.

484 Mr. McKinley. Again, back on the tiers, Mr. Wulf,

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485 almost half the group changed tiers onto this new
486 methodology. Fifteen percent apparently left the program and
487 four became newly regulated.

488 And so my question is, is what quality reviews and are
489 there updates occurring to make sure that you are
490 appropriately tiering everybody that should be in the system
491 and, as the engineering room counts up the numbers, your
492 numbers total over 100 percent. So I am curious if there is
493 a discrepancy in your math.

494 Mr. Wulf. That is a -- that is a good question. So I
495 would say the way to look at the math is, you know, looking
496 at the -- looking at the number of facilities that had been
497 previously tiered, that group should add up to 100 percent.

498 So of that -- of that group, about 36 percent of
499 previously tiered high-risk facilities stayed put at the same
500 tier level.

501 About 48 percent, as I think you mentioned, moved across
502 tiers from one tier to another and about 15 percent of that
503 previously tiered population was determined to be no longer
504 high risk, using the new methodology, and fell out of the
505 high-risk category.

506 So those three numbers add up to 99 -- 100 percent when

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507 you take into account the decimals. The additional 4 percent
508 is from the population that had previously been not
509 determined to be high risk -- those previously untiered
510 facilities.

511 Four percent of those were subsequently determined under
512 the new methodology to be high risk and moved into the risk
513 tiers.

514 Mr. McKinley. Just in the time that remains -- the 30
515 some seconds -- what are you doing to -- how do -- how do we
516 have confidence that you're appropriately tiering people,
517 risk-tiering companies.

518 Mr. Wulf. So, you know, the risk-tiering methodology is
519 a sound one and is very robust and now takes into account all
520 relevant elements of risk.

521 We have built in -- we have built a system in which
522 human eyes look at tiering for each facility as we move
523 through the process and before a final tiering decision is
524 issued and if anything looks off -- if it appears as though a
525 facility might have submitted information in a way that
526 doesn't quite make sense, we are able to reach out directly
527 through our field inspectors, through our compliance case
528 managers directly, to the facility to resolve any

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529 discrepancies and to ensure that we are in fact issuing the
530 correct tier.

531 Mr. McKinley. Thank you. Thank you for my question.

532 Now, the -- recognize the ranking member, Mr. Tonko from
533 New York, for five minutes.

534 Mr. Tonko. Thank you, Mr. Chair.

535 And Mr. Wulf, again, welcome and thank you for your
536 testimony. I commend you on the progress that has been made
537 over the recent years.

538 I believe, however there are ways we can continue to
539 reduce risks and improve the program. I want to reference a
540 few issues that came up when DHS last testified before this
541 committee on the CFATS program.

542 This includes the importance of closing security gaps.
543 Is it true that drinking water and wastewater facilities are
544 statutorily exempt from the CFATS program?

545 Mr. Wulf. Water and wastewater facilities are among the
546 statutory exemptions along with facilities regulated by our
547 friends in the Coast Guard through the NHTSA program and a
548 handful of other exemptions.

549 Mr. Tonko. Thank you. And do you think they were
550 exempted because there are no risks of terrorist attacks on -

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551 - at these sites?

552 Mr. Wulf. I was not -- I was not here when that -- when
553 that exemption went into effect. Certainly, I think it might
554 be worth studying whether, you know, what gaps may continue
555 to -- may exist in that arena. I think that might be a --
556 might be a sound next step.

557 Mr. Tonko. Okay. And is it true that nuclear
558 facilities are also statutorily exempt from the CFATS
559 program?

560 Mr. Wulf. Facilities regulated by the NRC are exempt.

561 Mr. Tonko. And what about federal facilities that have
562 large amounts of chemicals of interest? Are they exempt?

563 Mr. Wulf. Facilities owned and operated by the
564 Department of Energy and the Department of Defense, both of
565 which have robust standards and audit controls of their own,
566 are exempt as well.

567 Mr. Tonko. Just because a facility is not covered by
568 CFATS does that mean it is not a potential target by
569 terrorists? Should these sites be monitored at all?

570 Mr. Wulf. So, you know, CFATS is designed -- you know,
571 it's very focused. It is a risk-based program. It is
572 targeted at the highest -- you know, those facilities that

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573 are assessed to be at the highest risk of terrorist attack or
574 exploitation so I think it is a -- you know, it is an
575 appropriate targeting of our best resources to the facilities
576 that are at the highest risk.

577 That is certainly not to say that other facilities do
578 not present a risk. We have within the Department of
579 Homeland Security a suite of voluntary tools and resources
580 that are available to other chemical facilities through our
581 chemical sector-specific agency.

582 We have protective security advisors who work with
583 facilities on a voluntary basis across the nation every day.
584 So yes, certainly --

585 Mr. Tonko. But that's statutorily imposed. So --

586 Mr. Wulf. Yes. Those are not a statutory requirement.

587 Mr. Tonko. Okay. Obviously, there are very different
588 security and regulatory regimes at nuclear facilities --
589 federal facilities -- and other sites that have received
590 exemptions.

591 But in the past, DHS has expressed concerns over the
592 gaps created by these exemptions. A number of years ago, DHS
593 testified that the administration's position to support
594 closing security gaps at drinking water and waste water

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595 facilities -- is that still the administration's position?

596 Mr. Wulf. I think I would have to take that -- I would
597 have to take that back.

598 Mr. Tonko. Okay. And does the administration still
599 support maintaining EPA as the lead agency for drinking water
600 and waste water facility security with the DHS supporting
601 EPA's efforts?

602 Mr. Wulf. I think that is another one we would need to
603 take back.

604 Mr. Tonko. All right. If you can get back to the
605 committee, please.

606 And can you explain how DHS has worked with EPA in
607 recent years to encourage improvements in chemical security
608 at water facilities?

609 Mr. Wulf. So I can speak -- I can speak more broadly to
610 the work we have done with EPA across the chemical sector.
611 So as you -- as you probably know, in the wake of the tragic
612 explosion at west Texas, an executive order on improving
613 chemical security safety and security was issued.

614 In implementing that order, we developed a national
615 working group composed of us at DHS along with EPA, OSHA,
616 Bureau of Alcohol, Tobacco, Firearms, and Explosives and

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617 others with a role in assuring chemical facility safety and
618 security.

619 We took steps to ensure that we were sharing information
620 as fully as possibly, comparing notes on inspections,
621 comparing notes on facilities that existed in our relative
622 respective jurisdictions and ensuring that word was getting
623 out as widely as possible about all of the -- all of the --
624 all of the different regulatory and other requirements.

625 Mr. Tonko. Okay. I would simply encourage the
626 committee to consider how we might close some of these
627 security gaps before we debate creating new ones through
628 additional exemptions and I think it's important that we have
629 this holistic approach to cover everyone that might be
630 impacted.

631 With that, I yield back, Mr. Chair.

632 Mr. McKinley. Thank you.

633 And now I recognize my colleague from Mississippi, Mr.
634 Harper, for five minutes.

635 Mr. Harper. Thank you, Mr. Chairman.

636 Mr. Wulf, thank you for your time being here, and we
637 appreciate it. It's such an important issue and topic for us
638 to continue to look at and we know that we all want to be on

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639 the same page, you know, here on where we go, what we look
640 at, and how we try to strengthen this in the future.

641 One of the issues that was identified by the GAO, and
642 also a second witness that will be on the next panel, as a
643 place that needed improvement was compliance, inspections,
644 and enforcement, and I'd like to know what steps DHS has
645 taken to improve in this area.

646 Mr. Wulf. I appreciate -- I appreciate the question.
647 We have made really unprecedented progress in our conduct of
648 inspections in our review and adjudication of site security
649 plans and have moved as well in -- as a result have enclosed
650 the backlog of site security plan reviews and adjudications.

651 We have moved now into sort of steady state phase of the
652 program. So, you know, more than 90 percent of the
653 inspections we are now conducting are the -- for post site
654 security plan approval, compliance inspection, variety of
655 inspections.

656 So we have -- we have developed standard operating
657 procedures for these inspections and I will say that the
658 inspections that are happening across the country are going
659 well almost across the board.

660 Facilities are taking seriously their obligation to

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661 implement their site security plans. They are putting in
662 place planned or new security measures in accordance with
663 agreed upon time lines where issues are being identified or
664 found by inspectors.

665 Nearly always they are being resolved -- being resolved
666 quickly and in good faith by the facility. You know, we are
667 not hesitant though where needed to use the enforcement
668 authorities with which we have been entrusted.

669 But our overwhelming bias continues to be to work with
670 facilities that are working with us in good faith to come
671 into -- to come into compliance.

672 Mr. Harper. Mr. Wulf, let's talk about your -- the
673 inspectors for just a moment. Is there a -- does DHS have
674 minimum qualification requirements for inspectors so they
675 could demonstrate the knowledge and understanding of the
676 facilities that they encounter and relevant guidance on
677 enforcement requirements.

678 Do you have those -- do you have the minimum
679 qualifications there and, if yes, will you provide the
680 committee any written items the department has governing
681 inspector qualifications and training?

682 Mr. Wulf. Glad to do that, sir, and absolutely, we have

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683 minimum standards -- a pretty high bar for those standards as
684 well for our inspectors who go through a comprehensive
685 training program when they first come on board at DHS and to
686 whom we provide advanced training throughout their careers on
687 topics -- specific topics such as cybersecurity or personnel
688 surety background check focused program among many others.

689 You know, there is an exam at the end of the basic
690 training and it is rigorous. We also focus heavily on on-
691 the-job training and on fostering consistency across our
692 inspector cadre and the inspections they conduct.

693 We have put in place relatively recently a group of
694 senior inspectors in each of our 10 regions and their job is
695 to sort of foster training, the development of our inspector
696 cadre and to ensure that we are -- we are working in a
697 consistent way. But absolutely glad to provide you
698 information.

699 Mr. Harper. And that would be great. And do you --
700 obviously, the goal here is that the inspectors -- that if
701 you had any inspector come in to any facility that there
702 would be a consistent review and finding, do you sense that
703 the training you have in place -- the ongoing training for
704 those inspectors is going to meet that?

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705 Mr. Wulf. Yes, I do. I think, you know, it's never
706 completely perfect. We strive for absolute consistency. We
707 appreciate the feedback we receive from our industry
708 stakeholders, you know, many of whom own and operate
709 companies that have facilities in different parts of the
710 country and, you know, if we hear things are perhaps a little
711 different in one part of the country than the other, we work
712 quickly to address that.

713 You know, in some cases there are reasons for that. It
714 may be that, you know, one of the kind of game changing
715 things we have done as an organization is to begin to take
716 more of a corporate approach to inspections.

717 So we are looking at a number of issues at the corporate
718 headquarters level so if there are policies that apply across
719 facilities it may be that a company's facility that is hit
720 from an inspection standpoint early on in the process it
721 might appear to that facility that it's getting a little more
722 thorough treatment than one that's hit later in the process.
723 But that is likely only because we have --

724 Mr. Harper. My time has expired, Mr. Wulf. My time has
725 expired. Thank you so much, and I yield back.

726 Mr. Wulf. Thank you so much.

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727 Mr. McKinley. Thank you, and now five minutes -- yield
728 five minutes to my -- one of my latest friends, Mr. Peters
729 from California, for five minutes.

730 Mr. Peters. Thank you, Mr. Chairman.

731 Thank you, Mr. Wulf, for being here today. I want to
732 commend you for the improvements in the CFATS program over
733 the last few years.

734 A longer-term authorization or focus on fixing the known
735 deficiencies in program management have helped to eliminate
736 the site security plan backlog and start the process of
737 compliance inspections.

738 However, a program can only be as good as the statute
739 that authorized it. So I wanted to talk a little bit about
740 how we might improve the statute, if you thought that was
741 useful, starting with effective enforcement.

742 In your testimony, you note that where issues have been
743 identified during inspections they have nearly always been
744 quickly remedied where needed. However, we have utilized our
745 enforcement authorities to incentivize compliance.

746 So can you explain to me, Mr. Wulf, what kind of types
747 of enforcement mechanisms you've been able to use under the
748 program?

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749 Mr. Wulf. So yes, I appreciate the -- I appreciate the
750 question. So the enforcement process within the program I
751 think is in line with the -- with the flexible
752 nonprescriptive approach to the program and, you know, our
753 general -- our general orientation to work with facilities to
754 foster compliance.

755 So where issues are identified on inspections, you know,
756 we work with a facility, assuming the facility is working
757 with us in good faith to resolve them.

758 So, occasionally, if, for instance, a planned measure
759 that has been, you know, agreed in the site security plan to
760 be put into place on a -- on a certain time line has slipped
761 on that time line, it may be that there has been a change in
762 personnel, you know, sort of a lack of understanding of what
763 was in the site security plan.

764 We will, you know, work on, you know, an agreeable quick
765 time frame to get that planned measure in place and
766 frequently those sorts of things are resolved at that point.

767 If we get into the enforcement structure, you know, it
768 is a two-step process. The first step involves the issuance
769 of a -- essentially, a notice of noncompliance, which gives a
770 facility formally a certain period of time, generally, not

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771 too much time to come into compliance and I am pleased to say
772 before a penalty order is issued -- I am pleased to say that
773 95 percent of the cases that is enough to bring the facility
774 into compliance.

775 Where if -- if we get to a point where a facility has
776 run through that period we will go ahead and issue a penalty
777 order. We do take into account facility status as a --
778 potentially, a small business, a facility's ability to pay in
779 determining the ultimate penalty.

780 That has -- it's only happened in a small number of
781 cases.

782 Mr. Peters. I was going to ask you, so how many times
783 have you had to use penalties or cease operation orders for
784 facilities that aren't executing their --

785 Mr. Wulf. So we have issued penalty orders in three
786 instances at this point.

787 Mr. Peters. Three instances. Okay.

788 And is that -- so that's the number of times you had to
789 enforce against a noncompliant facility?

790 Mr. Wulf. That's the number of times we have gotten to
791 the point of --

792 Mr. Peters. To that point, right.

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793 Mr. Wulf. -- a penalty, probably in about 70 occasions
794 begun the process.

795 Mr. Peters. Great. And do you see that the bill that
796 the -- that act as it's written is -- does it give you enough
797 authority to do what you have to do? It sounds like that's
798 going fairly well.

799 Mr. Wulf. I believe that we have -- we have the
800 authority that we need to do what we need to -- that we need
801 to do to foster security at America's highest-risk chemical
802 facilities.

803 I think it's a good -- I think it is a -- it is a
804 regulatory framework that is really well suited to the
805 mission at hand and to the diversity of the -- of America's
806 chemical infrastructure.

807 Mr. Peters. Great. Just one other topic then -- the
808 effective and adequate enforcement mechanisms are crucial to
809 preventing noncompliance. We saw the dangers of
810 noncompliance when the West Fertilizer Company in West, Texas
811 exploded.

812 Facilities that don't report their holdings to DHS and
813 are otherwise not identified to the department still pose a
814 risk to workers, first responders, and surrounding

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815 communities.

816 What kind of steps have you taken to address the problem
817 of these so-called outlier facilities?

818 Mr. Wulf. Yes. So, certainly, a high priority for us,
819 ensuring that we are getting the word out as widely as
820 possible to facilities about their obligations to report
821 information to us through the -- through the top-screen.

822 So we work through industry associations. We
823 participate in conferences. We drill down to the state and
824 local level through state industry associations, though
825 recognizing that, you know, not all chemical facilities,
826 companies are members of these associations.

827 We -- you know, we get creative. We work through --

828 Mr. Peters. I am going to run out of --

829 Mr. Wulf. -- the state and local law enforcement,
830 preparing lists of facilities and comparing information about
831 --

832 Mr. Peters. We are out of time. But I have five
833 seconds for you to tell us if there is anything Congress can
834 improve in this area. Is there anything you would ask us to
835 improve within the law?

836 Mr. Wulf. No. I think -- I think we have what we need

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837 from an outreach standpoint.

838 Mr. Peters. Thank you.

839 Mr. Chairman, I yield back.

840 Mr. McKinley. Thank you, and the chair now recognizes
841 Mr. Johnson from Ohio for five minutes.

842 Mr. Johnson. Thank you, Mr. Chairman, and Mr. Wulf,
843 thanks for joining us today.

844 I've heard concerns that any changes to Appendix A
845 through guidance -- including through guidance might not be
846 subject to notice and comment.

847 So would changes to Appendix A by guidance be subject to
848 public notice and comment based on requirements of OMB?

849 Mr. Wulf. So yes, I appreciate the -- appreciate the
850 question, and Appendix A are a list of chemicals of interest
851 -- 320 or some chemicals -- is part of our regulation and so,
852 you know, under the Administrative Procedures Act it cannot
853 be adjusted or changed without going through the notice and
854 comment rulemaking process. So as things currently stand,
855 that would be the --

856 Mr. Johnson. Even through guidance?

857 Mr. Wulf. Pardon me?

858 Mr. Johnson. Even through guidance.

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859 Mr. Wulf. That's right.

860 Mr. Johnson. Okay.

861 Mr. Wulf. I think it would be considered significant
862 guidance that would need to go through notice of rulemaking.

863 Mr. Johnson. Okay. Great.

864 Previously, GAO indicated that DHS does not
865 systematically solicit feedback to assess the effectiveness
866 of outreach efforts and does not have a mechanism to measure
867 effectiveness of your outreach activities.

868 Mr. Currie, in his written testimony, indicated that DHS
869 developed a questionnaire to solicit feedback on outreach
870 with industry stakeholders.

871 Would you please walk us through the questionnaire and
872 explain whether it's been effective?

873 Mr. Wulf. Yes. Absolutely. Glad to -- I am glad to do
874 that.

875 So, you know, we have taken GAO's recommendations
876 seriously. As you mentioned, we have developed that outreach
877 questionnaire. I do believe it is effective. We are in the
878 relative early stages of its deployment.

879 We are using it as we go out to conferences as opposed
880 to going facility by facility during inspections or

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881 compliance assistance visits.

882 You know, we ask in this questionnaire those who
883 participate in our engagements to sort of give us some
884 feedback on the content, on the speaker, on the relevance of
885 the information, on the extent to which they expect to be
886 using the information to inform their chemical security risk-
887 based decisions.

888 You know, the challenge sometimes is to get the
889 questionnaire into the hands of the -- of the people who have
890 actually participated in the event as, you know, we are
891 guests at these conferences. We don't necessarily control
892 the attendance -- attendee email distribution lists.

893 So we work with organizers of the conference to push it
894 out. To this point, we have received upwards of 60 responses
895 back. Ninety-seven percent of those who responded reported
896 that information was relevant and highly useful.

897 So we are going to continue to look at how we can expand
898 the use of the -- of the questionnaire. I think it is very
899 much a worthwhile tool.

900 Mr. Johnson. Good. Okay.

901 Well, since the last time the department testified
902 before our committee the Government Accountability Office has

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903 made 10 recommendations for improvements to the CFATS
904 program.

905 What progress have you made on those recommendations?

906 Mr. Wulf. I appreciate that, and I appreciate GAO's
907 engagement and, you know, very helpful oversight and
908 recommendations over the course of the year.

909 I am confident that we are among the most thoroughly
910 scrutinized programs in the government and pleased that GAO
911 has recognized our significant forward progress over the --
912 over the year and, you know, happy to report that we are
913 making -- have made a lot of progress in implementing GAO's
914 recommendations.

915 I think those recommendations, broadly speaking, fall
916 into a couple of different bins. One of those focused on our
917 risk assessment process, our tiering methodology.

918 You know, we, as I've mentioned in this hearing, made a
919 lot of progress in developing our new risk-tiering
920 methodology, one that comprehensively accounts for all
921 relevant elements of risk.

922 Along with that, we have launched a new and very much
923 streamlined and user-friendly suite of online tools to
924 facilitate tiering.

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925 I am confident that when GAO issues its next report it
926 will recommend or it will close out the remaining
927 recommendations related to our development of our tiering
928 methodology -- the conduct of the tiering peer review among
929 other tiering-related issues.

930 The second bin I think concerns, broadly, our internal
931 processes and controls and, you know, we have made a lot of
932 progress on that front, too, executing a 95-point action plan
933 to improve the program, developing standard operating
934 procedures on things like enforcement and on the conduct of
935 inspections, developing metrics to measure the effectiveness
936 of the program and, you know, pleased to report, based upon
937 those metrics, facilities that are within the program have
938 enhanced their security very, very measurably under CFATS.
939 It's a program that is working.

940 Mr. Johnson. Well, great. Well, thank you for your
941 responses. I yield back, Mr. Chair.

942 Mr. McKinley. Thank you.

943 And I now recognize our colleague, Mr. Green from Texas,
944 for five minutes.

945 Mr. Green. Thank you, Mr. Chairman.

946 Secretary Wulf, thank you for being here. I have a very

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947 urban district in Houston in East Harris County that's home
948 to one of the largest petrochemical complexes in the world so
949 I know how important CFATS is and I'd like to thank you for
950 your work in implementing these safety standards, and I'd
951 heard a lot of good things about the work.

952 I was glad in your earlier testimony or question you
953 acknowledged that CFATS, because it was called anti-terrorism
954 standards, was -- we are more likely to have a natural
955 disaster than we are a terrorist.

956 In fact, in my area, I think we could take care of the
957 terrorists pretty quickly. As I say in Texas, we don't have
958 any shortage of small arms. So but Hurricane Harvey that hit
959 our community -- and I know the other issue was the -- that
960 facility out in Crosby, Texas, and that's not my area but
961 East Harris County is.

962 But a lot of our refineries literally were under water
963 in the Houston Ship Channel and that's what my concern is and
964 maybe we need to focus on that, although, admittedly, when we
965 passed the Chemical Facilities Anti-Terrorism Standards
966 program we didn't think about natural disasters.

967 But now we need to recognize that because about every
968 seven years in Houston, Texas or southeast Texas we get a

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969 tropical storm or a hurricane, and although the last one with
970 Harvey I don't know how we could ever plan for 55 inches of
971 rain in four days.

972 So but can you talk about how subjecting CFATS to a
973 yearly authorization through the appropriations process
974 before 2014 put a burden on the program?

975 Mr. Wulf. Yes, absolutely. Glad to. You know, until
976 we -- until we attained long-term authorization, we were --
977 you know, we were subject to the -- to the vicissitudes of
978 the appropriations process.

979 So going from year to year or, worse, from continuing
980 resolution to continuing resolution. You know, when the
981 government shut down --

982 Mr. Green. I think every federal agency has that
983 problem.

984 Mr. Wulf. Yes. You know, when the -- when the
985 government shut down in October or November -- October 2013,
986 you know, our stakeholders didn't know whether CFATS
987 continued in force.

988 You know, we didn't know whether -- if we needed to take
989 enforcement action to address a national security threat at a
990 CFATS facility, whether the underlying statutory authority

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991 was in existence.

992 So long-term authorization in December of 2014 was huge
993 for us. It enabled us to plan for and execute important
994 improvements to the program, some of which I have detailed
995 here today.

996 It provided our industry stakeholders with the certainty
997 that they deserved as they thought through making significant
998 investments in CFATS-focused security measures.

999 So I cannot underscore enough how important continuing
1000 long-term authorization for the program is.

1001 Mr. Green. Do you think we need to put specific
1002 language in there? Because when we have these shut downs
1003 that our committee doesn't have a whole lot to do with since
1004 we are not appropriations.

1005 Mr. Wulf. Yes.

1006 Mr. Green. But, you know, our military still functions.
1007 Our law enforcement functions. Why would we not want our
1008 terrorism safety or even if there is a natural disaster
1009 during a shut down? So do you think we need specific
1010 language to say that?

1011 Mr. Wulf. So I think that the long-term authorization
1012 language -- I think the language we have in the current

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1013 authorization does the trick there.

1014 But I think you have summed up exactly the importance of
1015 longer-term authorization to continue -- the program
1016 continues in force regardless of what is happening on the
1017 appropriations front.

1018 Mr. Green. Do you currently feel that the facilities
1019 labeled high risk have enough incentive through the program
1020 to reduce that risk and do you see facilities switching tiers
1021 commonly after a high risk designation?

1022 Mr. Wulf. So, you know, as we have gone through the
1023 retiering process using our new risk tiering methodology, we
1024 have seen some shifting across tiers. We have seen some new
1025 facilities come into the program, some previously designated
1026 high-risk facilities move out of the program.

1027 But I do think that kind of organically the CFATS
1028 program promotes the consideration by facilities of -- you
1029 know, of safer processes, you know, consideration of
1030 different chemicals.

1031 So, you know, there is an incentive for facilities to
1032 lower their level of risk by doing things differently based
1033 on the -- based on the CFATS program and, you know, over the
1034 course of the program we have seen about 4,000 programs -- or

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1035 4,000 facilities that have changed their processes, changed
1036 their chemical holdings, and dropped out of high-risk status,
1037 which we view as a good thing.

1038 Mr. Green. Well, in a way that's good -- they are
1039 responding to the threat. Has the industry response been in
1040 revamping of the chemical safety assessment tool, or CSAT?

1041 Do you feel the program is now easy enough to comply
1042 with if you're a small-scale manufacturer?

1043 Mr. Wulf. Yes, I do. I think we made some significant
1044 strides forward with CSAT 2.0, that new online suite of
1045 tools. The amount of time it now takes facilities to work
1046 through the process of submitting a top-screen or a site
1047 security plan has been cut by about 75 percent across the
1048 board.

1049 The tool is much simpler. It's more of a Turbo Tax sort
1050 of model. Duplicative irrelevant questions are no longer
1051 seen by facilities. So greatly simplified and we have had
1052 really tremendous feedback from our -- from our industry
1053 stakeholders on it.

1054 And, you know, in many respects they helped us to
1055 develop it. They were closest to the pain of working through
1056 the old system. They were able to help us understand ways in

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1057 which we could simplify it and make it more user friendly.

1058 Mr. Green. Well, I -- Mr. Chairman, thank you for your
1059 patience. In my area, we don't have those smaller facilities
1060 that you have.

1061 Mr. Wulf. Yes, I know.

1062 Mr. Green. Chemical plants and refineries who run
1063 250,000 barrels a day. So but I know that we like to go
1064 where the problems are, not just be a paper pusher.

1065 So thank you, Mr. Chairman.

1066 Mr. Wulf. Yes. You're in the center of the
1067 petrochemical universe.

1068 Mr. McKinley. Thank you.

1069 And the chair now recognizes Mr. Duncan from South
1070 Carolina for his five minutes.

1071 Mr. Duncan. Thank you, Mr. Chairman.

1072 Back in 2014, I was on the Homeland Security Committee
1073 and I worked with them to help reauthorize CFATS for four
1074 consecutive years.

1075 H.R. 4007, Protecting and Securing Chemical Facilities
1076 from Terrorist Attacks Act of 2014 was under jurisdiction of
1077 both Homeland and Energy and Commerce.

1078 Now we are back to yearly funding extensions and this

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1079 creates instability for both DHS and companies operating
1080 under the program.

1081 If Congress were able, Mr. Wulf, to provide multi-year
1082 authorization like we did back in 2014 how can we ensure DHS
1083 will update the program as intended?

1084 Mr. Wulf. So we are very incentivized to try to
1085 continually improve the program. You know, I think a long-
1086 term authorization gives us the stability that we need to
1087 focus on those -- on those improvements.

1088 We have made a number of them over the course of the
1089 last four years. You know, we are eager to push forward
1090 through the rule making process to engage with our
1091 stakeholders through notice and comment in a number of
1092 different areas --

1093 Mr. Duncan. How can we -- how can we be certain that
1094 you will take the stakeholders' comments into consideration?

1095 Mr. Wulf. I think we have demonstrated over the course
1096 of the last four years that we take very seriously our
1097 stakeholders' comments and that, you know, we seek to involve
1098 them in the -- in the program.

1099 You know, this whole effort is a shared commitment. It
1100 wouldn't work without the buy-in of our stakeholders. We

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1101 have put into place tens of thousands of security measures at
1102 facilities across the country.

1103 So, you know, they know -- they know in many ways best
1104 ways in which we can improve the program. That's why we have
1105 involved them in the development of the new risk-tiering
1106 methodology.

1107 That's why we have involved them in the development of
1108 the new suite of online tools and their input on those fronts
1109 have been -- has been invaluable.

1110 Mr. Duncan. I think as long as they know how to comply
1111 and what you're going to expect of them it makes it easy for
1112 them.

1113 Let me shift gears for just a minute. There is a
1114 company in my home county, Austin Powder, and it's a company
1115 facility there in Clinton and previously noted how duplicate
1116 regulations cost them substantial amounts of money.

1117 The facility has explosive regulated both by the ATF and
1118 by DHS under CFATS. The compliance mandated under CFATS does
1119 not measurably improve their facility security. It seems ATF
1120 adequately protects against theft and diversion.

1121 So given the cost of compliance, which stakeholders in
1122 the explosives industry face in return for no measurable

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1123 security gain, what is, in your opinion -- what is your
1124 opinion on exempting those in the explosive industry already
1125 regulated by ATF from the CFATS program?

1126 Mr. Wulf. So we are very, very -- you know, certainly
1127 sympathetic -- sensitive to concerns about duplicative
1128 regulation. I think in the case of explosive materials, you
1129 know, there is regulation in place with ATF.

1130 I think we are talking about a universe of about 30
1131 facilities that are regulated both by CFATS for explosives
1132 only and also by ATF.

1133 You know, I -- ATF and DHS have different programs but I
1134 think they are both -- they are both solid programs. So, you
1135 know, we are open to working with the committee on a path
1136 forward there.

1137 You know, I am not sure I completely agree with the
1138 premise that, you know, CFATS doesn't provide any additional
1139 security benefit but there is certainly other -- there are
1140 certainly measures in place at ATF-regulated facility. I've
1141 spent a dozen years myself at ATF. You know, a very solid
1142 program there. And so, you know, among the things that I
1143 would not lose too much sleep over exiting the program,
1144 explosives are one of those.

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1145 I will note, though, that ATF's program does not address
1146 explosives' precursor chemicals. So, you know, I think many
1147 of those facilities receive benefits still under CFATS with
1148 respect to the regulation of security of explosives'
1149 precursor chemicals -- for instance, ammonia nitrate.

1150 Mr. Duncan. So do you think the redundancy and overlap
1151 of regulations are okay? I don't hear a whole lot of
1152 jurisdictional prejudice in your answer there.

1153 We are going to look at that. We are going to look and
1154 see, because what we are trying to do is make sure that
1155 businesses aren't faced with multiple compliance burdens when
1156 one agency can handle it, and we run into that too much in
1157 government, I think, where you've got this jurisdictional
1158 overlap and one agency is coveting that and they don't want
1159 to give it up when there maybe be a better agency that can
1160 handle it. And in this case, DHS might be the best agency
1161 and take it away from ATF -- I don't know that -- or vice
1162 versa.

1163 Mr. Wulf. Yes. We are happy to -- happy to work with
1164 you on that.

1165 Mr. Duncan. Thank you.

1166 Mr. Chairman, I yield back.

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1167 Mr. McKinley. Thank you. Now I recognize my colleague,
1168 Mr. McNerney from California, for five minutes.

1169 Mr. McNerney. I don't know if I sense a little
1170 reluctance in that acknowledgment, Mr. Chairman.

1171 I thank the panelist. Mr. Wulf, I missed your testimony
1172 and I apologize about that. Now, there are several
1173 categories of threats. I am going to list a few of them.

1174 There is natural disasters. There is physical attacks.
1175 There is industrial accidents and cyber attacks. Do you feel
1176 that cyber attacks are on par with the others in terms of
1177 risk to public safety and health?

1178 Mr. Wulf. I think cyber is a -- cyber is a very
1179 important threat vector and I think that, you know, no
1180 question but that America has critical infrastructure and
1181 that includes America's chemical infrastructure is in the
1182 cross-hairs of, you know, cyber criminals.

1183 Mr. McNerney. Well, I've learned from the utility
1184 industry that there is some difficulty getting information
1185 sharing across because of security clearance -- lack of
1186 security clearance within the utility industry mainly because
1187 of the length of time it takes to get a security clearance.

1188 So you think that that is also an issue with the

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1189 chemical industry is a lack of security clearance within the
1190 industry prohibiting information sharing that could be
1191 helpful in safety areas?

1192 Mr. Wulf. I think, certainly, getting appropriate folks
1193 across the industry cleared to receive classified threat
1194 information is helpful.

1195 We maintain a program called the private sector
1196 clearance program through which we grant clearances to folks
1197 in the private sector to include those who serve on our
1198 sector coordinating counsels.

1199 So I think, certainly, important and the extent -- to
1200 the extent we can streamline that process, you know, that's a
1201 good thing.

1202 Mr. McNerney. Would it be helpful for the legislative
1203 branch to get involved in streamlining that process or would
1204 that be cumbersome?

1205 Mr. Wulf. You know, I think we are -- we are -- you
1206 know, we are working the issue. It is a high priority for
1207 us. You know, I think it's sort of a process -- a process
1208 thing, in my view, that, you know, we need to continue to
1209 focus like a laser beam upon and we are certainly committed
1210 to doing that.

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1211 Mr. McNerney. Well, supposed someone goes into the
1212 industry, say, from the Department of Energy with a pretty
1213 high clearance level -- a Q clearance or some clearance --
1214 top secret clearance. How long would it take them to get the
1215 clearance to get information sharing once they go into
1216 industry?

1217 Mr. Wulf. Yes. I would hope not very long. I might
1218 have to get back to you on exact time lines.

1219 Mr. McNerney. Yes. I have a specific case where it
1220 took someone with a top secret clearance 18 months to get a
1221 secret clearance in industry.

1222 Mr. Wulf. Yes, that's -- yes, not good.

1223 Mr. McNerney. Okay. Well, I'd like to follow up on
1224 that and hear specifically how that that's going to be --

1225 Mr. Wulf. Happy to talk with you more about that
1226 program.

1227 Mr. McNerney. Okay. Do you think that there is -- on a
1228 different subject, is there resistance to safety regulations
1229 by industry of regulations that actually provide safety to
1230 the public?

1231 Mr. Wulf. So we are -- you know, although our security-
1232 focused regulation has positive benefits from a safety

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1233 standpoint, you know, I don't know if I am in a position to
1234 talk about the extent to which there may or may not be
1235 resistance to EPA's or OSHA's safety-focused regulations.

1236 I would hope not. I think there is a strong culture
1237 across the chemical industry of safety and security. So my
1238 expectation is that, you know, they are meeting requirements
1239 across the board.

1240 Mr. McNerney. Right. I mean, it just takes one bad
1241 player to cause an accident to hurt the whole industry.

1242 Mr. Wulf. Yes. Absolutely.

1243 Mr. McNerney. So I think we both and industry
1244 understand that and are anxious to work with regulatory
1245 bodies such as yours.

1246 Mr. Wulf. Yes.

1247 Mr. McNerney. Okay. Mr. Chairman, I am going to yield
1248 back. I'll give you a minute.

1249 Mr. McKinley. Thank you.

1250 Now the chair recognizes Mr. Flores from Texas for five
1251 minutes.

1252 Mr. Flores. I thank the chairman and I thank this
1253 subcommittee for holding this important hearing.

1254 On April 18th, 2013 one of the communities in my

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1255 district, that being West, Texas experienced a disastrous
1256 explosion that took 15 lives. Twelve of them were first
1257 responders. So this -- CFATS is important to me and to my
1258 district.

1259 Furthermore, it was really disturbing to learn from the
1260 findings that were released three years later that this
1261 wasn't an industrial accident. It was actually arson.

1262 That said, the citizens of West deserve great credit for
1263 how they've been resilient in rebuilding their community and
1264 the rebound of West today is really remarkable.

1265 As the current authorization for CFATS is set to expire
1266 in January of next year, we must carefully consider how the
1267 program is measured and what improvements should be made or
1268 could be made in the reauthorizing legislation.

1269 I want to thank all of today's witnesses for their
1270 insight in this hearing. And so now I'll move to my question
1271 for Mr. Wulf.

1272 Some people argued that the greater public sharing of
1273 chemical vulnerability information -- or the CVI, as we call
1274 it -- is necessary for communities to be better prepared.

1275 So, Mr. Wulf, I have three subquestions under that.
1276 First of all, to whom does Section 2103 currently allow

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1277 access to CVI?

1278 Mr. Wulf. So that section of the statute currently
1279 allows access to state and local government officials who
1280 essentially have a need to know that information in
1281 performing their official duties in the first response arena
1282 -- emergency planning arena.

1283 Mr. Flores. Do you think -- so the next question would
1284 be do you think it's wise to have CVI publicly disclosed?

1285 Mr. Wulf. I do not. You know, the reason we developed
1286 the chemical terrorism vulnerability information protection
1287 regime was to keep close hold among those who have a need to
1288 know information about high-risk chemical facilities and the
1289 chemical holdings at those sites.

1290 Mr. Flores. Okay. And so that brings us to the next
1291 one. Some people have suggested that local emergency planning
1292 commissions should have access to CVI. Is there a reason to
1293 not provide it to them?

1294 Mr. Wulf. So local emergency planning commissions
1295 perform an important function. But they vary in their -- in
1296 their composition. So there are certainly folks who are
1297 members of local emergency planning missions who do have a
1298 need to know information about high-risk chemical facilities

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1299 and chemical holdings.

1300 So those emergency -- those first responders, those
1301 emergency planners, we absolutely want to ensure that they
1302 have the information they need to perform their -- to perform
1303 their official duties.

1304 But we need to balance that with the -- with the need to
1305 ensure that we are not sharing so broadly that we make it
1306 easy for terrorists and other adversaries to obtain
1307 information to effectively have a roadmap to America's
1308 highest risk facilities.

1309 Mr. Flores. If you have first responders that are CVI
1310 trained, would it be appropriate to share the information
1311 with those first responders?

1312 Mr. Wulf. Absolutely.

1313 Mr. Flores. Okay. Mr. Chairman, this has been helpful
1314 and I thank you.

1315 I yield back the balance of my time.

1316 Mr. McKinley. Thank you very much, and now the chair
1317 recognizes Mr. Cardenas from California for five minutes.

1318 Mr. Cardenas. Thank you very much, Mr. Chairman. I
1319 appreciate the opportunity to discuss this very, very
1320 important issue that affects all Americans.

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1321 Thank you for being here, Mr. Wulf. Earlier this year
1322 at a subcommittee hearing before the House Committee on
1323 Homeland Security, chemical safety advocate Paul Oram
1324 testified that facility owners should be required to develop
1325 and maintain employee input plans.

1326 Mr. Oram commented that, and I quote, "Employees are
1327 often the most vulnerable in the chemical release but also
1328 the most knowledgeable about problems and remedies."

1329 So with that, has DHS encouraged or required facility
1330 owners to consult with employees when developing security
1331 vulnerability assessments?

1332 Mr. Wulf. So I appreciate the question. You know, we
1333 certainly urge companies -- we urge high-risk facilities to
1334 involve their employees in development of site security plans
1335 and I would say that almost across the board employees are
1336 involved in the development of those plans.

1337 You know, the 2014 long-term authorization act makes
1338 clear that to the extent practicable, facilities should be
1339 involving employee and my expectation and my general
1340 understanding is that facilities are doing just that.

1341 I mean, facility employees are the ones developing
1342 plans.

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1343 Mr. Cardenas. So the facilities' owners -- these plants
1344 voluntarily give that feedback to you? If it's not one of
1345 the checklist things that the department asks, by the way, do
1346 you have an employee input plan on your site?

1347 Mr. Wulf. It is not a checklist thing. We are not --
1348 we are not really a checklist program. But we are, you know,
1349 a program that engages very constructively with facilities.
1350 So that is voluntary feedback. That's the experience --

1351 Mr. Cardenas. Okay.

1352 Mr. Wulf. -- of our inspectors working with these
1353 facilities.

1354 Mr. Cardenas. So that feedback right now is ad hoc?
1355 It's just as --

1356 Mr. Wulf. I don't know if I'd characterize it as ad
1357 hoc, and we're -- you know, no one -- there is not a check
1358 box.

1359 Mr. Cardenas. Okay. Well, I'll describe it as ad hoc
1360 if there is not a formal process. Five years ago when we
1361 last -- the last oversight hearings on the CFATS program then
1362 under Secretary Rand Beers noted on the record that the
1363 department's strategic communications plan may eventually
1364 include, and I quote, "systematic outreach to facilities

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1365 including employees at the facilities."

1366 Has systematic outreach become the norm in the CFATS
1367 program?

1368 Mr. Wulf. Yes. I am pleased -- I am pleased to say
1369 that it has and we have an outreach engagement plan. We
1370 identify areas of priority from year to year and we focus on
1371 ensuring that we are getting the word out to those relevant
1372 communities and that certainly includes to the -- to the
1373 organized labor -- relevant organized labor communities.

1374 Mr. Cardenas. Mr. Oram also stated that public
1375 confidence is critical to the success of the CFATS program
1376 and the secrecy is not in the best interest of the
1377 communities.

1378 I couldn't agree more. As a parent, I would not want to
1379 know if I lived down the street from a facility that that
1380 puts my family at risk. I would want to know as much as I
1381 can -- as much as we believe possible.

1382 Do you agree that this is important to proactively
1383 engage communities living near or next to these facilities?

1384 Mr. Wulf. So I think, again, it's a balance. I think
1385 we need to ensure that those who are charged with protecting
1386 our communities, our first responders, our emergency planners

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1387 have the information that they need.

1388 You know, the balance, though, is in ensuring that we
1389 are not making sensitive information so widely available that
1390 it can be accessed by those who would seek to do harm to the
1391 community. So it's a balance.

1392 Mr. Cardenas. So what, if any, specific steps has DHS
1393 taken to improve community outreach and engagement through
1394 the CFATS program?

1395 Mr. Wulf. So, you know, we are -- as part of our
1396 outreach engagement plan we are out talking to local
1397 emergency planning committees. You know, those can include
1398 members of -- and frequently do include members of the
1399 community and public officials, first responders, emergency
1400 planners. That is one of the main means by which we are out
1401 across the -- across the relevant communities.

1402 Mr. Cardenas. Thank you. I can't stress enough how
1403 important it is for employees and local members of the
1404 community to be involved in disaster assessment and
1405 preparedness process.

1406 These individuals are the ones bearing the greatest
1407 risk. They work, live, shop, walk to school, pray, and drive
1408 to jobs near these facilities and they might be at high risk

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1409 and they need to know about that. And yet, they are often
1410 left in the dark when it comes to disaster preparedness.
1411 Their voices are critical to the facility and community
1412 safety and I hope that we can work together to improve
1413 engagement efforts under the CFATS.

1414 So I appreciate your time. Thank you very much. I
1415 yield back.

1416 Mr. Wulf. Thank you.

1417 Mr. McKinley. Thank you very much.

1418 The chair recognizes Mr. Walberg from Michigan for five
1419 minutes.

1420 Mr. Walberg. Thank you, Mr. Chairman, and thank you,
1421 Mr. Wulf, for being here.

1422 In your written testimony you indicate that DHS has
1423 conducted over 3,500 compliance inspections and that, and I
1424 quote your statement, "Nearly across the board results of
1425 these inspections have been positive."

1426 That's good. Could you elaborate a little bit more for
1427 us?

1428 Mr. Wulf. Yes. No, I am glad to.

1429 So we are in sort of steady state compliance inspection
1430 phase. Most of the inspections we are doing across the

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1431 country are, you know, post-site security plan approval
1432 inspections.

1433 So we are assessing the extent to which facilities are
1434 doing what they signed up to do in developing their site
1435 security plans, whether they are implementing those plans,
1436 whether they are putting in place new security measures along
1437 the time lines agreed to in the plans and I'd say almost
1438 across the board that is absolutely happening. That has been
1439 our experience in conducting these inspections.

1440 Where we have identified issues nearly always we are
1441 able to resolve those with the -- with the facility in pretty
1442 short order.

1443 So, you know, the chemical industry stakeholder
1444 community is taking its obligations seriously under CFATS.
1445 Those facilities that have been identified as being at the
1446 highest risk of terrorist attack or exploitation that are
1447 covered by CFATS are taking their obligations seriously and
1448 are implementing their plans.

1449 They have put into place literally tens of thousands of
1450 security measures at facilities across the -- across the
1451 country. So, you know, really appreciate their commitment to
1452 the program and their buy-in.

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1453 Mr. Walberg. Do you sense and your inspectors sense
1454 that they see you as a partner with them -- that it's a
1455 benefit and not a burden?

1456 Mr. Wulf. I do. Yes, I do. And I think, you know, the
1457 program is one that lends itself to a little bit of that
1458 partnership approach. Certainly, you know, we are -- we are
1459 regulators.

1460 But this is a nonprescriptive regulatory framework. So
1461 we are in a position to work with facilities to identify
1462 security measures within a site security plan that work for
1463 that -- that make sense, given that specific facility's
1464 unique circumstance.

1465 So, you know, really pleased to be able to work with
1466 facilities that way, and we will say also that we prioritize
1467 not just being out there to conduct inspections but to
1468 provide compliance assistance.

1469 So to talk with facilities, to talk with those who own
1470 and operate those facilities about options for meeting the --
1471 meeting the spirit of the 18 CFATS risk-based performance
1472 standards.

1473 So, you know, I think it is a -- it is a really unique
1474 and -- I want to say uniquely effective program that is well

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1475 suited to the diversity of the nation's chemical industry
1476 infrastructure.

1477 Mr. Walberg. I encourage that. We certainly know of
1478 other entities that are involved in regulating and inspecting
1479 at the work site, at the business, that have no -- there is
1480 no relationship. This seems to be a partner relationship.

1481 Mr. Wulf. Yes.

1482 Mr. Walberg. This is an important --

1483 Mr. Wulf. Absolutely, and we rely on our industry
1484 stakeholders very much to help us think through potential
1485 improvements to the program, to develop, you know, new tools
1486 like our new and improved suite of online tools through which
1487 top-screens and site security plans are developed to help us
1488 develop things like our new risk-tiering methodology.

1489 So, you know, in a lot of ways it is a thriving
1490 partnership relationship with our entire stakeholder
1491 community. I am very grateful for that.

1492 Mr. Walberg. Thank you.

1493 Your written testimony notes that where necessary DHS
1494 has utilized our enforcement authorities to incentivize
1495 compliance. Can you elaborate on that? Explain that a
1496 little more?

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1497 Mr. Wulf. Yes. I am glad to.

1498 So we have a two-step enforcement process. You know, as
1499 I mentioned, the vast majority of the time we are able to
1500 resolve issues without getting into the enforcement process.

1501 But in about 70 instances over the history of the
1502 program we have begun the -- we have begun the process. We
1503 have issued a notice of not compliance that, under the law,
1504 gives a facility a specific amount of time to come into
1505 compliance.

1506 I am happy to say that most of time that is sufficient
1507 where other -- you know, where cooperative work with the
1508 facility has worked to nudge the facility into compliance.

1509 But if that doesn't work we are -- you know, we will go
1510 ahead and issue a penalty order, and in all cases -- and it's
1511 only three cases in which we have had to get to the penalty
1512 order -- you know, that has been the thing that has compelled
1513 compliance.

1514 So we are -- your know, our overwhelming bias is to work
1515 with facilities and, certainly, the vast majority of
1516 facilities out there are acting, in my experience, in good
1517 faith and are committed to the program and understand --
1518 committed to meeting their obligations under CFATS.

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1519 But in the small number of instances where that is not
1520 happening, you know, we will go ahead and use those
1521 enforcement authorities.

1522 Mr. Walberg. Thank you.

1523 I yield back.

1524 Mr. McKinley. Thank you very much.

1525 Now the chair recognizes Ms. Matsui from one of the
1526 three possible states of California for the next five
1527 minutes.

1528 Ms. Matsui. I think we are still going to be united --
1529 still one state.

1530 Thank you, Mr. Chairman. Today we have talked a lot
1531 about the industries and facilities that we calmly associate
1532 with chemicals.

1533 But the CFATS program also covers many types of
1534 facilities that we don't always think of as using high-risk
1535 chemicals like hospitals and universities.

1536 In Sacramento, we have four major hospital systems
1537 including an academic medical center, which represents the
1538 second largest employer in the district.

1539 So I am pleased that DHS has emphasized the importance
1540 of stakeholder involvement, and I've also heard that the

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1541 agency and hospitals in California collaborate well.

1542 You've emphasized the CFATS as a nonprescriptive
1543 regulatory framework, which gives flexibility to regulated
1544 facilities.

1545 What are some of the unique challenges that hospitals
1546 face under CFATS and how has DHS worked with hospitals to
1547 tailor security measures to those challenges?

1548 Mr. Wulf. And I appreciate that question. You're
1549 absolutely right. The universe of facilities covered under
1550 CFATS is a very broad one.

1551 So, you know, we prioritize getting out across the
1552 relevant communities and working to address the unique
1553 circumstances of facilities such as hospitals.

1554 So hospitals, you know, college university campuses
1555 can't necessarily be secured in the same way as, you know, a
1556 more traditional chemical manufacturing or chemical
1557 distribution site.

1558 We need to maintain reasonably open access to the site.
1559 You have members of the public coming in and out so, you
1560 know, what we have -- what we have recommended in cases like
1561 that and in -- you know, in the -- in the conduct of our
1562 compliance assistance with those sites is taking kind of an

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1563 asset-based approach to security.

1564 So you're not necessarily constructing a perimeter
1565 around the entirety of the hospital but ensuring that where
1566 those sensitive chemicals are being held you have the
1567 requisite security in place. So that tends to be the
1568 approach for facilities such as hospitals.

1569 Ms. Matsui. Okay. Thank you.

1570 I understand the CFATS has improved its risk-based
1571 performance standards and risk calculations based upon actual
1572 threat level and facility vulnerability.

1573 It makes me wonder -- as climate change is increasing
1574 the frequency and severity of extreme weather if the CFATS
1575 couldn't be used to address weather-related vulnerabilities.

1576 Recently, the Chemical Safety Board released their
1577 investigative report on the Arkema chemical plant fire and
1578 explosion in Crosby, Texas.

1579 The CSB found that the plant was not adequately prepared
1580 for the extreme flooding that occurred during Hurricane
1581 Harvey and that a number of equipment failures occurred as a
1582 result.

1583 The CSB also indicated that other facilities in flood
1584 prone areas face similar problems and made recommendations on

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1585 how to address some of these risks.

1586 I think that many of these recommendations are relevant
1587 to CFATS facilities. Do you believe that the damage extreme
1588 weather causes facilities covered by CFATS is a serious
1589 threat to the safety of surrounding communities?

1590 Mr. Wulf. I think, certainly, natural hazards are just
1591 that and, you know, we have certainly seen them impact
1592 chemical facilities.

1593 Ms. Matsui. Okay. Do you think a CFATS security plan
1594 should consider the threat of severe weather and help protect
1595 facility worker and communities? Why or why not?

1596 Mr. Wulf. So I think it's important that CFATS be able
1597 to stay focused on security. It is a security-focused anti-
1598 terrorism program.

1599 But I -- you know, I will note that there is a lot about
1600 the CFATS program and about security measures that are put
1601 into place or that are required to be put in place at CFATS-
1602 covered facilities that has a positive impact in addressing,
1603 you know, the facilities' resilience in the face of natural
1604 disasters.

1605 So, you know, we require facilities to develop response
1606 plans, to conduct training, to conduct exercise, to conduct

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1607 exercises to make contact with their local first responders
1608 and all of those things are equally important in both the
1609 terrorism context, in the deliberate manmade attack context,
1610 as well as in the natural disaster context and we have seen
1611 it play out in instances in which, for instance, a tornado
1612 hit a CFATS-covered facility in Illinois and it was very well
1613 prepared.

1614 Ms. Matsui. So you're really preparing -- in essence,
1615 to really coordinate these activities more in the sense of
1616 part of the program to review how to do this so, in a sense,
1617 it's part of the program?

1618 Mr. Wulf. I don't believe it makes sense to make it a
1619 formal part of the program. I think it's important that we
1620 retain our focus on security. But, again, I think their
1621 security and safety are very much complementary.

1622 There are agencies that focus, you know, squarely on the
1623 safety issues on those hazards. We work very closely with
1624 the likes of EPA, OSHA, with our friends at FEMA, within the
1625 Department of Homeland Security.

1626 So I think as a federal government community we are
1627 committed -- very much committed to that.

1628 Ms. Matsui. Okay. Thank you very much.

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1629 I yield back.

1630 Mr. McKinley. Thank you. And now the chair recognizes
1631 the chairman of the full committee, the gentleman from
1632 Oregon, Mr. Walden, five minutes.

1633 The Chairman. Thank you very much, Mr. Chairman, and
1634 thanks to you for holding this hearing and, Mr. Wulf, thank
1635 you for being here. We appreciate your guidance.

1636 I just have a couple of questions. You've been with the
1637 program a long time -- I won't say a very long time -- a long
1638 time, and, frankly, many people credit your leadership --
1639 your leadership and your committed staff with the gains the
1640 program has made in recent years.

1641 So, you know, we go through this with different agencies
1642 and, frankly, depending on who's in charge doesn't seem to
1643 matter sometimes which -- who's in the White House.

1644 So this isn't a partisan issue because we have seen it
1645 in other agencies. But having seen how a less committed
1646 senior political leadership can wreak havoc on a program, how
1647 do we know these reforms are permanent?

1648 Mr. Wulf. Thank you. Thank you, Mr. Chairman. I
1649 appreciate very much the kind words. We have a great team in
1650 place within our program and great buy-in and commitment

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1651 across our industry stakeholder community. So it's very much
1652 -- very much a team effort.

1653 I can tell you that, you know, our new senior political
1654 leadership with the change of administration is very, very
1655 committed to the future of CFATS.

1656 It remains a priority within this -- with this
1657 administration, very focused on ensuring that we are able to
1658 maintain positive momentum that we have the resources we need
1659 to do just that.

1660 So, you know, we remain focused like a laser beam. We
1661 have nothing -- I've seen nothing but support from the --
1662 from the upper reaches of the department and the
1663 administration.

1664 The Chairman. Right. And some of the witnesses on the
1665 second panel in their testimony -- their testimony today on
1666 CFATS -- have made -- that they say that CFATS has made
1667 serious improvements in problems it was facing four years
1668 ago.

1669 What do you attribute the progress of CFATS program over
1670 the course of the last four years?

1671 Mr. Wulf. I appreciate that question.

1672 I think, first and foremost, I attribute the progress we

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1673 have been able to make to the -- to the environment of
1674 stability that has been fostered by long-term authorization
1675 on which this committee showed so much leadership in 2014.

1676 So that gave us the stability that we needed to plan for
1677 and execute many of the improvements I've detailed here
1678 today. It afforded our industry stakeholders the certainty
1679 they deserved as they were thinking through making
1680 significant investments in CFATS-focused security measures.

1681 I would say also I would credit a lot of the progress to
1682 the spirit of openness and transparency which we have strived
1683 to operate over the past -- over the past four years.

1684 So, you know, we have a very strong relationship with
1685 our industry stakeholders. We take their feedback very
1686 seriously. We involve them in efforts to improve the --
1687 improve the program. We very much value their input.

1688 And, thirdly, I would just -- I would point maybe to a
1689 willingness to change processes -- to, you know, not stick
1690 with, you know, with the status quo to do game changing
1691 things like take a corporate approach to inspection activity,
1692 to take a fresh look at our suite of online tools and see
1693 what we can do about making them more user friendly, more
1694 streamlined, and more useful in the development of top-screen

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1695 risk assessment surveys and site security plans.

1696 So all of the above but, you know, at its core, you
1697 know, the stability of that long-term authorization has been
1698 absolutely key.

1699 The Chairman. Well, and as chairman of the full
1700 committee, you have my assurance that we are going to move
1701 expeditiously to reauthorize this work.

1702 Mr. Wulf. We appreciate that.

1703 The Chairman. We know of its critical importance. You
1704 keep this up, you may get cloned and your staff too because
1705 not every program and agency achieves these kinds of results.

1706 So we do appreciate your leadership and that of your
1707 team and you look forward to working with you so we meet our
1708 deadlines here and get this reauthorized.

1709 So with that, Mr. Chairman, I'd yield back.

1710 Mr. McKinley. Thank you very much.

1711 The chair recognizes Ms. DeGette from Colorado for five
1712 minutes.

1713 Ms. DeGette. Thank you, Mr. Chairman.

1714 Thank you for coming today, Mr. Wulf. Right outside of
1715 my -- right on the border of my district is the Suncour oil
1716 refinery.

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1717 There are 53,000 people that live within a three-mile
1718 radius of that refinery and that includes over 5,000 children
1719 under five years old who are particularly susceptible to air
1720 toxins.

1721 The neighborhood that's the closest to the refinery,
1722 Elyria-Swansea, has a population that's over 80 percent
1723 Latino with over 25 percent of the residents living with
1724 incomes below the poverty line, and as you know, these
1725 characteristics are pretty common for neighborhoods that are
1726 nearby industrial facilities.

1727 So I wanted to ask you would you agree that while
1728 security is important for all chemical facilities, additional
1729 considerations like mitigation are necessary when you're
1730 dealing with urban facilities with large populations next --
1731 right nearby. Security is not the only issue that these
1732 institutions or that these refineries and others are facing.

1733 Mr. Wulf. Well, sure. Yes. Absolutely.

1734 Ms. DeGette. And one thing that happened over at
1735 Suncour we have had problems with interruptions from the
1736 external power supply and, as you know, even brief
1737 disruptions to the power supply can cause harmful chemical
1738 emissions.

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1739 In October 2016, the Suncour refinery suffered an
1740 accidental power failure that led to release of a yellow
1741 cloud of smoke, which closed the highway and caused 14 local
1742 schools to go into lockdown.

1743 And then they had a second power outage in March 2017
1744 which released more than 500 pounds of sulfur dioxide gas and
1745 a hundred pounds of hydrogen sulfide gas.

1746 So my question is -- I know, you look a little puzzled
1747 because -- but I am wanting to know is power supply security
1748 a consideration when the Department of Homeland Security
1749 considers site security plans submitted by high-risk
1750 facilities?

1751 Mr. Wulf. So, yes, the power supply is certainly
1752 something that --

1753 Ms. DeGette. Is one of the things?

1754 Mr. Wulf. -- something to be considered and also
1755 considering what contingencies are in place it is certainly
1756 important from a security perspective when the power goes
1757 out.

1758 Ms. DeGette. Okay. Does DHS have specific
1759 recommendations for providing a secure power supply under
1760 CFATS?

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1761 Mr. Wulf. I will get back to you on that, certainly.

1762 Ms. DeGette. Thank you. Okay. Now, DHS is not allowed
1763 to disapprove of the site security plan because it lacks
1764 specific security measures. Is that right?

1765 Mr. Wulf. That is -- that is correct. It's a
1766 nonprescriptive program so we work with facilities to assess
1767 what makes sense and meets the intent of the relevant risk-
1768 based performance standards.

1769 Ms. DeGette. So would you consider a facility secure if
1770 it suffered a significant chemical release due to a brief
1771 power outage or would that show that the facility might be
1772 susceptible to deliberate disruption? Would you look at
1773 that?

1774 Mr. Wulf. It would be something we would look at,
1775 certainly.

1776 Ms. DeGette. Now, the CFATS program is intended to
1777 protect chemical facilities from terrorist attacks. Is that
1778 right?

1779 Mr. Wulf. That is correct, to protect against terrorist
1780 attack or exploitation. The majority of the facilities we
1781 have in the program that have been designated at high risk
1782 are designated as such owing to the threat of theft or

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1783 diversion of chemicals --

1784 Ms. DeGette. Okay.

1785 Mr. Wulf. -- and taking -- their being taken offsite
1786 and deployed.

1787 Ms. DeGette. Off site. So the Suncour refinery
1788 incidents I talked about before caused by accidental power
1789 outages they would be included in the scope of the program
1790 though, right?

1791 Power outages that are causing chemical releases.

1792 Mr. Wulf. Yes. I mean, the power situation and
1793 resilience in the face of power -- you know, ensuring that
1794 the security systems are resilience is important.

1795 Ms. DeGette. Now, what about emissions caused by
1796 negligence, natural disasters, or other types of actions?
1797 That would not be included?

1798 Mr. Wulf. That is not within our purview. But, you
1799 know, as I've mentioned here, many of the measures that we
1800 require to be put in place through CFATS such as the conduct
1801 of training, exercise the development of response plans that
1802 are applicable --

1803 Ms. DeGette. They would -- they would --

1804 Mr. Wulf. -- in both the natural disaster context or,

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1805 you know, manmade attacks.

1806 Ms. DeGette. They would have that potential spillover
1807 effect, right?

1808 Mr. Wulf. Right. Right. A complementary -- a
1809 complementary --

1810 Ms. DeGette. Yes. But, Mr. Chairman, the reason why I
1811 bring this up is because I think it's -- security is really
1812 important to me but there is so many other issues.

1813 I would hope that we can also come to bipartisan
1814 agreement on how we address these toxic releases, because in
1815 my district and many other districts in the country, there --
1816 people are living right next to these plants and even if it's
1817 not a terrorist attack or a natural disaster, they are at
1818 risk of contamination every day.

1819 So I would hope that would be another issue that we
1820 could work on in this committee.

1821 Thank you, and I yield back.

1822 Mr. McKinley. Thank you very much, and I hope we can
1823 continue that dialogue on that.

1824 Now the chair recognizes from Texas Mr. Olson for five
1825 minutes.

1826 Mr. Olson. I thank the chair, and welcome, Mr. Wulf.

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1827 As you know, I am a congressman from Texas 22. I like
1828 to call that the suburbs of the energy capital of the entire
1829 world, the massive petrochemical complex along the Port of
1830 Houston and Houston ship channel.

1831 Mr. Wulf. Absolutely.

1832 Mr. Olson. As you know, there are lots of nasty
1833 chemicals on our highways and our railroads. In fact, this
1834 last month, Houston had the anniversary but remembered that -
1835 - see, was it in 1976 had a tanker turn over a truck with
1836 ammonia.

1837 Six people died. Over 60 were hospitalized. That was
1838 right by Interstate 610 U.S. 59, right by the Galleria.

1839 I know that's not CFATS, but my point is those chemicals
1840 are all over our roads, and that's just ammonia going through
1841 -- going by traffic.

1842 It's been talked about, some of the issues with the
1843 Crosby fire during Hurricane Harvey. I want to talk about
1844 cyber attacks, because the bad guys now are adjusting to
1845 attack us through cyberspace.

1846 What happened at Crosby was a failure of the backup
1847 system. They had backup power but they didn't test enough.
1848 They fired up for maybe a minute or two -- hey, it's working.

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1849 It had to work.

1850 It didn't. And as you know, the chemical -- once you
1851 lost control of the process it was going to come through and
1852 have an emission.

1853 And so terrorists could easily hack into there and open
1854 up those things, do exactly what they did -- what nature did.
1855 So how is CFATS adapting to terror attacks through
1856 cyberspace?

1857 Mr. Wulf. Yes, you're absolutely right. Cyber attacks
1858 -- very significant threat vector. You know, chemical
1859 facilities, you know, vary in the level to which cyber
1860 systems are integrated with their industrial control systems,
1861 with their process systems, and, for that matter, with their
1862 security systems.

1863 But there certainly exists a decent population of
1864 facilities where those systems are very much integrated and
1865 so one of our risk-based performance standards -- and I think
1866 this was in place before -- you know, before any folks were
1867 thinking about cybersecurity -- one of the 18 risk-based
1868 performance standards under CFATS focuses specifically on
1869 cybersecurity.

1870 Mr. Olson. All right. Good.

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1871 Mr. Wulf. So we have trained a large number of our
1872 inspectors to work with facilities that have the fuller
1873 integration of cyber systems with their industrial control
1874 systems.

1875 We have cyber experts on our staff at headquarters who
1876 review those facility site security plans and provide
1877 guidance to the inspectors in the -- in the field.

1878 You know, we ask facilities to put in place sound
1879 cybersecurity practices or other site security things -- a
1880 very important part of our program.

1881 Mr. Olson. Thank you. That is music to my ears.

1882 More of a softball question for you. As you noted,
1883 CFATS was authorized a little over one decade ago. Looking
1884 back, could you talk about the single biggest lesson learned
1885 that you've had the first years of the program? What's one
1886 thing you've learned over those first couple years?

1887 Mr. Wulf. So I think the most important thing is that,
1888 you know, it takes a community to secure America's chemical
1889 infrastructure -- that it's not something we can do alone and
1890 it's not something we can do without the feedback of our --
1891 of our industry stakeholders.

1892 So, you know, the importance of transparency, the

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1893 importance of openness, the importance of a -- you know, a
1894 community wide approach.

1895 A shared commitment to chemical security is absolutely
1896 key and I think as a result we have seen a great deal of buy-
1897 in and a great deal of commitment across our community of
1898 owners and operators of high-risk chemical facilities.

1899 Mr. Olson. Thank you. That brings up the next question
1900 and that is domestic community. How about international
1901 community?

1902 I mean, as you note in your opening statement, the
1903 threats we have seen in our homeland have spiked up following
1904 attacks -- terrorist attacks overseas.

1905 NATO and our allies in Europe are dealing with these
1906 attacks every single day as are allies all across the world.
1907 Can you discuss how our CFATS program compares with their
1908 programs and are we exchanging data with NATO, with other
1909 countries? Are they exchanging with us? Are we working
1910 together to address this problem?

1911 Mr. Wulf. That's a great question, and we are
1912 prioritizing international outreach. So I actually have the
1913 privilege of chairing a G-7 global partnership working group
1914 on chemical security.

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1915 We are -- we are engaging with our European Union
1916 partners and a number of other nations to sort of share best
1917 practices, to compare notes on chemical security.

1918 I will tell you that, you know, what we are doing here
1919 is in many, many ways the envy of the -- of the world --
1920 significantly more comprehensive.

1921 You know, they -- there is a large threat out there.
1922 You know, we have been relatively privileged not to have, you
1923 know, as many chemical-focused attacks. But no question, you
1924 know, adversaries around the world continue to seek out and
1925 to use in attacks chemicals of exactly the sort that trigger
1926 coverage under CFATS.

1927 So, you know, we need to remain vigilant. There are
1928 other approaches to securing certain chemicals, in
1929 particular, IED precursor chemicals. In Europe, that seemed
1930 to be making some headway. I think we want to learn from our
1931 colleagues over there what is working as we think through
1932 potentially new approaches at the -- at the point of sale to
1933 high threat IED precursor chemicals, whether, you know, of a
1934 voluntary or a regulatory nature and that's probably another
1935 hearing for another day. But we learn a lot from our
1936 international colleagues and I think they learn a lot from

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1937 us.

1938 Mr. Olson. I thank you. So my time is expired.

1939 A final closing comment -- you always have a standing
1940 invitation to come to Houston, Texas, see all that stuff with
1941 your own eyes. Also, enjoy the best barbecue at the Swinging
1942 Door in Fort Bend County and also the best Mexican breakfast
1943 at Bob's Taco Station in Rosenberg, Texas.

1944 Mr. Wulf. Okay. What was the first one? I want to
1945 make --

1946 Mr. McKinley. Okay.

1947 Mr. Olson. The Swinging Door -- Swinging Door. That's
1948 in Richmond. Bob's Taco Station is in Rosenberg.

1949 Mr. Wulf. All right. We are down there quite a bit so
1950 I will --

1951 Mr. Olson. Yield back.

1952 [Laughter.]

1953 Mr. McKinley. Thank you.

1954 Mr. Olson. Thank you, Chairman.

1955 Mr. McKinley. The chair now recognizes the very patient
1956 member from Georgia, Mr. Carter, for his five minutes.

1957 Mr. Carter. Well, it's certainly going to be hard to
1958 follow that but I'll do my best.

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1959 Thank you, Mr. Wulf, for being here. I appreciate it.

1960 I want to echo the comments of the chair of the full
1961 committee. Just from listening to you, it appears that you
1962 have a firm grasp of this and have a handle on it and I
1963 appreciate that. That's good to know.

1964 I wanted to ask you, it appears that improvements have
1965 been made in the program as it's gone along, and from what I
1966 understand in some of my reading that since the
1967 implementation of CFATS the GAO makes a number of
1968 recommendations that appear to have improved the program, and
1969 I just wanted to ask you specifically about two things --
1970 vulnerability and economic consequences. Those two things
1971 are of concern to me and I just wanted to ask have you --
1972 have you changed your overview of these two things,
1973 particularly of economic consequences? Or the management of
1974 the program -- have you tried to address this at all?

1975 Because I believe that GAO had noted that that was one
1976 thing that was not taken into consideration enough and that
1977 was the economic consequences.

1978 Mr. Wulf. That's exactly right. So GAO made a number
1979 of recommendations related to tiering and, you know, we have
1980 taken them all very much to heart in developing our new and

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1981 improved risk tiering methodology which does take a more
1982 comprehensive -- a significantly more comprehensive approach
1983 to addressing all relevant elements of risk to include
1984 consequence, vulnerability as well, looking at the sort of
1985 inherent vulnerabilities associated with facilities on a
1986 facility by facility basis -- things like, you know, how
1987 chemicals are stored, the types of containers, among many
1988 other things, and threat.

1989 With respect to economic consequences, we have studied
1990 this very hard in response to the -- in response to the
1991 recommendation and I think just makes sense to have done that
1992 -- done that anyway.

1993 You know, our ultimate conclusion was that the
1994 threshold, which is actually a classified threshold for
1995 significant economic consequences to the nation from an
1996 attack on a specific chemical facility is a pretty high one.

1997 And so, you know, it was -- it was based on a review of
1998 the facilities in our program. They were not facilities that
1999 -- you know, on which an attack would move the needle from a
2000 risk tiering perspective with respect to economic
2001 consequences.

2002 So it is not included in our tiering methodology right

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2003 now but we have the resources. We have the knowledge from
2004 the study to include it as needed if we get to a point where
2005 economic consequences are, potentially, significant enough
2006 from one attack on a single facility.

2007 Mr. Carter. Let me ask you just a couple of simple
2008 questions, if you will. How do you determine who is to
2009 comply? Is that incumbent upon the business itself or do you
2010 determine that or what?

2011 Mr. Wulf. Yes. So the way the process works is that
2012 facilities that have holdings of one or more of our 320
2013 chemicals of interest that are in the regulation identify --
2014 sort of self-identify if they have those chemical holdings at
2015 or above the specified threshold or at or above the specified
2016 concentration.

2017 They submit to us what we call a top-screen, so basic
2018 information about the facility, about the chemical holdings,
2019 and we run that through our risk tiering methodology and make
2020 a determination as to whether the facility, based on the
2021 totality of the circumstances of its facility, of its
2022 chemical holdings, of its location as relevant -- whether
2023 it's in an urban or rural area, whether that facility is at
2024 high risk of terrorist attack or exploitation, and if it is -

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2025 - and about 10 percent of the facilities that submit this
2026 paperwork to us ultimately are determined to be high risk --
2027 if a facility is issued that determination we then issue it a
2028 risk tier.

2029 So it's placed in one of our four risk tiers and then
2030 embarks upon the process of collaborating with us as it
2031 develops a site security plan that's ultimately approved and
2032 then entering into the regular cycle of compliance --

2033 Mr. Carter. So it is incumbent upon the business to
2034 initiate it?

2035 Mr. Wulf. It is.

2036 Mr. Carter. Okay.

2037 Mr. Wulf. But we prioritize getting the word out about
2038 those reporting obligations because the community of those
2039 who hold chemicals is very diverse.

2040 Mr. Carter. I see. Right.

2041 Mr. Wulf. So it's not only the traditional chemical
2042 manufacturers.

2043 Mr. Carter. Well, very quickly, because I want to get
2044 this in. I have two major seaports in my district.

2045 That seems like that's -- that would be a bugaboo to try
2046 to really have an overview of that --

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2047 Mr. Wulf. Yes. No, that's --

2048 Mr. Carter. -- of everything that's going through
2049 those ports.

2050 Mr. Wulf. Yes. There is a lot of chemical
2051 infrastructure on the water at the -- at the ports. Our
2052 friends at the Coast Guard have the responsibility actually -
2053 -

2054 Mr. Carter. Okay.

2055 Mr. Wulf. -- for managing that. So facilities that
2056 are regulated by the Coast Guard are specifically exempted
2057 from CFATS.

2058 Mr. Carter. Right.

2059 Mr. Wulf. So we work very closely with the Coast Guard.

2060 Mr. Carter. Good. Thank you very much.

2061 Mr. Wulf. Absolutely.

2062 Mr. Carter. And I yield back.

2063 Mr. McKinley. Thank you very much.

2064 Now, if I could, you've been -- you've been going here
2065 almost two-plus hours on this thing. But let me just
2066 conclude with one question, if I could -- the privilege of
2067 the chair.

2068 I want to clarify your answer to Congressman Johnson

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2069 about the listing of items on Appendix 1, because I've spoken
2070 to several chemical manufacturers in our district and they
2071 claim that the -- on Appendix 1 is this designation of high
2072 priority chemicals -- you understand that.

2073 They claim the existing statute is silent over whether
2074 or not the response -- whether it's subject to notice in
2075 rulemaking versus the sole discretion of DHS.

2076 I thought you said that it had to go through notice in
2077 rulemaking. I just want for the record -- for the record you
2078 saying it does go under --

2079 Mr. Wulf. Yes. So it is -- yes. It is -- it is part
2080 of our regulation and so I have a crack team of lawyers who
2081 tell me that as a result of its status in the regulation it
2082 is subject to notice and comment rulemaking pursuant to the
2083 administrative procedures.

2084 Mr. McKinley. So these manufacturers maybe are just
2085 mistaken where they think it's silent?

2086 Mr. Wulf. Yes. It may not be explicitly addressed in
2087 the -- in the statute but there are other -- you know, other
2088 legal frameworks that apply to it.

2089 Mr. McKinley. Okay. Thank you very much. Thank you.

2090 Mr. Wulf. Absolutely.

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2091 Mr. McKinley. Seeing that there are no further members
2092 wishing to participate and ask questions, I'd like to thank
2093 our witness again for being here today.

2094 And with that, we will end the first panel.

2095 Mr. Wulf. Thank you so much.

2096 [Pause.]

2097 Mr. McKinley. So if we could, we call up the second
2098 panel now -- and your placards.

2099 [Pause.]

2100 Okay. We want to thank our witnesses for being here
2101 today, as we went through the first -- many of you just went
2102 through the first panel and so we begin the second panel so -
2103 - and your taking the time to testify before this
2104 subcommittee.

2105 Today's witnesses will have the opportunity to give
2106 opening statements followed by a round of questions from the
2107 members that are present.

2108 Our second panel today -- for today's hearing includes
2109 Chris Currie, director of the Emergency Management National
2110 Preparedness and Critical Infrastructure Protection, Homeland
2111 Security, and the Justice Team in the U.S. Government
2112 Accountability Office; Mr. Brown, president and CEO of Brown

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2113 Chemical Company; we also have Mike Wilson, national director
2114 for occupational and environmental health in BlueGreen
2115 Alliance; Mr. Roberts, principal of Chemical Security Group,
2116 LLC; and Mr. Conrad -- James Conrad, the principal of Conrad
2117 Law and Policy Council on behalf of the Society of Chemical
2118 Manufacturers and Affiliates; and lastly, Yvette Arellano --
2119 did I pronounce that properly -- Arellano -- the policy
2120 research and grassroots advocate of the Texas Environmental
2121 Justice and Advocacy Services.

2122 So we appreciate you. The committee -- subcommittee
2123 appreciates all of you for being here today and the patience
2124 of working with us on this, and we will begin the panel
2125 discussion with Mr. Currie for his opening statement of five
2126 minutes.

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2127 STATEMENTS OF CHRIS P. CURRIE, DIRECTOR, EMERGENCY
2128 MANAGEMENT, NATIONAL PREPAREDNESS, AND CRITICAL
2129 INFRASTRUCTURE PROTECTION, HOMELAND SECURITY AND JUSTICE
2130 TEAM, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; DOUG BROWN,
2131 PRESIDENT AND COO, BROWN CHEMICAL COMPANY; DR. MIKE WILSON,
2132 NATIONAL DIRECTOR, OCCUPATIONAL AND ENVIRONMENTAL HEALTH,
2133 BLUEGREEN ALLIANCE; STEVE ROBERTS, PRINCIPAL, CHEMICAL
2134 SECURITY GROUP, LLC; JAMES CONRAD, PRINCIPAL, CONRAD LAW AND
2135 POLICY COUNSEL, ON BEHALF OF SOCIETY OF CHEMICAL
2136 MANUFACTURERS AND AFFILIATES; YVETTE ARELLANO, POLICY
2137 RESEARCH AND GRASSROOTS ADVOCATE, TEXAS ENVIRONMENTAL JUSTICE
2138 ADVOCACY SERVICES

2139
2140 STATEMENT OF CHRIS P. CURRIE

2141
2142 Mr. Currie. Thank you, Mr. Chairman, Ranking Member
2143 Tonko, other members of the committee that are here.

2144 I think this hearing is really well-timed. CFATS is
2145 over 10 years old. We have spent almost a billion dollars of
2146 taxpayer money implementing it, getting it up and running,
2147 and industry has spent its own dollars doing the same thing.

2148 GAO has been assessing this program for almost a decade,

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2149 and I want to be clear that, you know, we have no position on
2150 reauthorization. That's a decision for Congress.

2151 Our jobs, as always, is to help you make those decisions
2152 with information on how well programs like this are working.
2153 In that regard, it's no secret that this program has had
2154 challenges.

2155 Today, after numerous GAO recommendations and heavy
2156 oversight by Congress, CFATS has addressed many of the
2157 management challenges it faced early on. I think DHS
2158 deserves a lot of credit for that. I think Congress deserves
2159 a lot of credit for the oversight.

2160 I'd like to summarize just some of our past work and
2161 where DHS is in addressing the recommendations. First, just
2162 identifying facilities originally that could have been
2163 subject to this regulation was daunting and a huge challenge.

2164 In 2014, we identified, through our own work, chemical
2165 facilities that were not required -- were not reporting
2166 ammonium nitrate holdings, for example, to DHS as they were
2167 required to do.

2168 We recommended the DHS work with EPA, other agencies,
2169 and states to better share their separate data sources to
2170 close this gap. Since then, DHS implemented this

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2171 recommendation and identified 1,000 additional facilities
2172 that should have complied with CFATS.

2173 Assessing facility risk levels, as was discussed a lot
2174 on the first panel, and improving site security plans has
2175 also been a complicated process.

2176 Specifically, we recommended that DHS improve its
2177 process for assessing facility risk, or tiering, as was
2178 mentioned, and have this process peer reviewed, and DHS has
2179 taken steps to address these issues as well.

2180 DHS also eliminated the backlog for reviewing and
2181 approving facility site plans, which at one point we
2182 estimated to be seven to nine years long.

2183 More recently, DHS overhauled and streamlined its tools
2184 for gathering information from facilities and assessing the
2185 risk and, according to most industry officials and facilities
2186 we have talked to so far, the new tool is much easier to use
2187 and understand.

2188 As of June 2008, DHS told us they've processed hearing
2189 results for all but 226 facilities nationwide. Compliance
2190 inspections are also a critical piece of the program. These
2191 inspections ensure that facilities are implementing and
2192 maintaining the security measures in their plans.

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2193 In our 2015 report, at that time DHS had only done 83 of
2194 these inspections. They recently told us the number is now
2195 up to over 3,500, and this is promising, but DHS still hasn't
2196 fully implemented our recommendation to establish a final
2197 procedure for conducting these inspections.

2198 They have one in draft that they are using and they tell
2199 us they expect to finalize that later this year. However,
2200 just fixing past problems is not enough to declare victory.
2201 Now it's an important time, I think, to shift our mind set
2202 from establishing the functional components of a regulatory
2203 program to questions about what do we expect from CFATS in
2204 the future.

2205 Many of these will be addressed in the report we plan to
2206 issue next month. First, it's critical that the CFATS
2207 program be able to measure over time how risk and
2208 vulnerability are actually being reduced and not just focus
2209 on outputs like inspection numbers.

2210 In the past, we have found weakness in how the program
2211 measures performance and we continue to assess their progress
2212 in this area.

2213 Second, the program must evolve and can't be static.
2214 New security threats such as cyber have to be constantly

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2215 considered. Also, the program is in a unique position to
2216 help the industry by communicating these threats and best
2217 practices.

2218 Further, a balance must be struck between sharing
2219 information and protecting security. For example, recently
2220 deadly incidents show how important it is that first
2221 responders know what they are responding to at these
2222 facilities and how to address it.

2223 We are assessing these and other issues in our ongoing
2224 work and, as I mentioned, we expect a report out on those
2225 specific things next month.

2226 This concludes my statement and I look forward to the
2227 discussion.

2228 [The prepared statement of Mr. Currie follows:]

2229

2230 *****INSERT 4*****

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2231 Mr. McKinley. Thank you, Mr. Currie.

2232 And now the chair recognizes Mr. Brown for his five

2233 minutes.

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2234 STATEMENT OF DOUG BROWN

2235

2236 Mr. Brown. Good morning, Vice Chairman McKinley, and
2237 Ranking Member Tonko, and members of the subcommittee.

2238 My name is Doug Brown and I am president and CEO of
2239 Brown Chemical, a chemical distributor based in Oakland, New
2240 Jersey. I am also the current chairman of the National
2241 Association of Chemical Distributors -- NACD.

2242 I thank you for holding this important hearing today on
2243 the Chemical Facility Anti-Terrorism Standards program and I
2244 am pleased to provide testimony.

2245 Brown Chemical was founded in 1936. It is a fourth
2246 generation family-owned and operated business with 14
2247 employees. We operate facilities in Oakland and Patterson,
2248 New Jersey.

2249 Brown Chemical direct sells, distributes, or packages
2250 over 350 products to approximately 400 customers in 41
2251 states. We've been practising NACD's responsible
2252 distribution since its inception in 1991 when it became
2253 mandatory for all association members.

2254 This comprehensive program addresses environmental,
2255 health, safety, and security risks. Members companies are

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2256 third-party verified to ensure the highest quality of
2257 performance in these areas.

2258 While security has always been an inherent element of
2259 responsible distribution, after the September 11 terrorist
2260 attacks NACD specifically added security elements to the
2261 program and the association continues to enhance these
2262 requirements.

2263 In 2013, NACD added a specific security code to
2264 responsible distribution and consolidated many prior
2265 requirements and improved others.

2266 Brown Chemical supports a long-term reauthorization of
2267 CFATS. I believe the CFATS program has made the chemical
2268 industry in our nation more secure.

2269 Since the program's establishment in 2007, the industry
2270 has invested significant capital and training resources for
2271 its enhanced security measures at our facilities.

2272 While these investments did not help grow my business,
2273 they nonetheless ensured the security of my company, our
2274 employees, and the community.

2275 It is undeniable there were growing pains in the first
2276 few years of CFATS. The Department of Homeland Security has
2277 worked hard to address these issues and has made substantial

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2278 improvements to run the program more efficiently.

2279 One reason for the success of the CFATS program is the
2280 fact that DHS has taken the time to truly learn about the
2281 diversity of the chemical industry and work with companies on
2282 security measures that meet the CFATS risk-based performance
2283 standards.

2284 DHS has taken a collaborative common sense approach in
2285 implementing the program while providing flexibility to each
2286 unique chemical facility in doing so.

2287 The clear objective of the CFATS program is to help
2288 facilities be more secure while not taking a punitive
2289 approach. DHS has excelled in outreach to the industry in
2290 three key ways: by publishing numerous fact sheets and
2291 lessons learned documents, by interacting with facility
2292 owners and operators during the chemical sector security
2293 summits and other industry meetings, and always making
2294 inspectors and headquarters personnel available to talk
2295 through issues and answer questions.

2296 The 2014 reauthorization of the CFATS program, which,
2297 for the first time provided CFATS a multi-year authorization,
2298 further enhanced security efforts by providing regulatory
2299 certainty to both industry and DHS.

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2300 This stability allowed DHS to increase efficiencies in
2301 the program while streamlining the information submission
2302 process for regulated facilities.

2303 I believe the CFATS program is strong and needs minimal
2304 change. One priority I can recommend is to require that any
2305 changes to the Appendix A chemicals of interest list remain
2306 subject to notice and comment rulemaking.

2307 Changes to the COI list could have major impacts on my
2308 business operations and security investments. Changes may be
2309 needed upon discovery of new threat information. But it is
2310 important for regulated companies like mine to be able to
2311 provide information to DHS and explain the impacts of any
2312 proposed changes.

2313 I also support the creation of a program under which DHS
2314 would recognize companies that meet certain criteria such as
2315 participation and an environmental health, safety, and
2316 security program like responsible distribution.

2317 By acknowledging responsible distributors through
2318 measures like less frequent inspections, DHS would then be
2319 able to prioritize resources on the noncompliant outliers
2320 that may pose a greater security risk.

2321 Brown Chemical supports the CFATS program and looks

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2322 forward to working with the subcommittee on legislation to
2323 reauthorize this important regulation. A multi-year
2324 reauthorization of CFATS will provide the certainty needed to
2325 enhance the security of my chemical facilities and our
2326 nation.

2327 On behalf of Brown Chemical, I appreciate this
2328 opportunity to present our views on this important issue and
2329 I look forward to your questions.

2330 [The prepared statement of Mr. Brown follows:]

2331

2332 *****INSERT 5*****

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2333 Mr. McKinley. Thank you, Mr. Brown.

2334 And then next on the panel, Mr. Wilson with BlueGreen

2335 Alliance -- your opening statement, please.

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2336 STATEMENT OF DR. MIKE WILSON

2337

2338 Mr. Wilson. Thank you, Mr. Chairman, Ranking Member
2339 Tonko, and distinguished members.

2340 My name is Michael Wilson. I am the national director
2341 for occupational and environmental health at the BlueGreen
2342 Alliance.

2343 On behalf of our organization, our national labor and
2344 environmental partners, and the millions of members and
2345 supporters they represent, I want to thank you for convening
2346 the hearing today and for your interest in chemical safety
2347 and security.

2348 I am familiar with the risks of industrial hazards
2349 because I had the privilege of working for 13 years as a
2350 professional firefighter, paramedic, and EMT, during which
2351 time I responded to about 10,000 emergency calls.

2352 I worked in a city with heavy industry centered around
2353 agriculture, so there were many facilities that used chlorine
2354 and ammonia and other agricultural chemicals.

2355 Responding to an incident at one of these facilities
2356 meant grappling with a lot of uncertainty because the
2357 facilities weren't required to invite us in and involve us in

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2358 planning or training for an emergency.

2359 In general, I would say they relied on us if they had an
2360 emergency but they were reluctant to help us improve the
2361 safety and effectiveness of our response. Without a doubt,
2362 emergency response is a necessary aspect of chemical safety
2363 and security.

2364 But it's an indicator of a failure. It's a measure of
2365 last resort where thoughtful planning and prevention have
2366 broken down.

2367 EPA reported this year that most serious chemical
2368 accidents are preventable if the necessary precautions and
2369 actions are taken and yet serious industrial chemical
2370 accidents continue to occur every two and a half days across
2371 our nation.

2372 Last year, EPA estimated that about 177 million
2373 Americans live close enough to an industrial facility to be
2374 affected by a chemical accident and that these risks fall
2375 disproportionately on low-income and minority communities.

2376 CFATS responds to this problem by requiring companies to
2377 surround dangerous chemicals with security measures and yet,
2378 as many experts have noted, these measures require continual
2379 updating to thwart the efforts of a motivated actor.

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2380 Perhaps it is in response to this challenge with
2381 security measures that thousands of facilities seem to be
2382 shifting to prevention strategies.

2383 DHS noted last year that companies reported taking
2384 action to prevent risks on about 250 dangerous chemicals by
2385 replacing those chemicals with safer ones, reducing the
2386 quantities held on site, or switching to less concentrated
2387 formulations.

2388 If DHS is confident in the veracity of these claims,
2389 these actions do more than manage risks. They actually
2390 reduce the risk footprint, and in this way they provide
2391 protection not only from an intentional attack but also from
2392 an extreme weather event, earthquake, power outage, or
2393 mechanical failure risks that we've heard from several
2394 members today.

2395 On the other hand, there are about 3,400 facilities that
2396 have remained in the CFATS high-risk tier and which pose a
2397 substantial risk to workers and communities.

2398 Changes to the CFATS program are needed to reward the
2399 leaders and move the laggards up. CFATS could be
2400 strengthened with updated requirements in four areas: one,
2401 risk management; two, risk prevention; three, meaningful

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2402 participation by rank and file worker representatives; and
2403 four, emergency response.

2404 The state of California, the third largest refining
2405 state in the country, adopted these approaches last year in a
2406 sweeping new refinery safety regulation, which was motivated
2407 by a large flammable vapor explosion at the Richmond Chevron
2408 refinery.

2409 That incident created a 100 square meter vapor cloud
2410 that ignited and endangered the lives of 19 workers and
2411 caused some 15,000 people down wind of the plant to seek
2412 medical attention.

2413 California's comprehensive new regulation is informed by
2414 the industry's own best engineering and management practices
2415 developed over the last 20 years and largely shifts from a
2416 risk management to risk prevention framework.

2417 While California is improving the safety of refineries
2418 in communities, however, U.S. EPA is proposing to
2419 substantially weaken the federal chemical disaster rule by
2420 rolling back most of its key provisions, including all 10 of
2421 its prevention requirements.

2422 These changes will endanger the lives of my former co-
2423 workers in the U.S. Fire Service. They will endanger workers

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2424 and millions of community members and their families who live
2425 around our nation's chemical facilities. The chemical
2426 disaster rule should be retained in its original form, not
2427 weakened or delayed, as the administration has proposed.

2428 We can and must prevent chemical accidents. I urge you
2429 to use the reauthorization of CFATS as an opportunity to
2430 strengthen the program. The results would be fewer
2431 explosions, fewer injuries and deaths, and a far more
2432 resilient industrial infrastructure.

2433 In closing, I would like to thank you again for this
2434 hearing and for granting me the opportunity to appear, and I
2435 will be happy to answer any questions.

2436 Thank you.

2437 [The prepared statement of Mr. Wilson follows:]

2438

2439 *****INSERT 6*****

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2440 Mr. Harper. [Presiding.] Thank you, Dr. Wilson.

2441 The chair will now recognize Mr. Roberts for the
2442 purposes of an opening statement. You're recognized for five
2443 minutes.

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2444 STATEMENT OF STEVE ROBERTS

2445

2446 Mr. Roberts. Thank you. Good afternoon, Mr. Chairman,
2447 Ranking Member Tonko, and other distinguished members of the
2448 subcommittee.

2449 As a security consultant and lawyer, I've been fortunate
2450 to participate and work in the CFATS program from the very
2451 beginning since 2007, more than 11 years ago now, and have
2452 seen during that time and have participated in countless --
2453 dozens of refineries, chemical plants, paint and coating
2454 manufacturers, agricultural facilities, aerospace and defense
2455 -- a range of CFATS facilities that Mr. Wulf spoke about
2456 earlier in this testimony.

2457 Against this backdrop, I am pleased to offer the
2458 following comments for the committee's consideration: first,
2459 reauthorize CFATS for multiple years; second, further enhance
2460 the transparency of the risk tiering process; third, update
2461 the CFATS rulemaking process; and fourth, ensure that there
2462 is greater consistency among inspectors and the inspection
2463 process.

2464 First, reauthorize CFATS. When the first standalone
2465 CFATS legislation was introduced four years ago, we find

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2466 ourselves back now at the same time, as that legislation
2467 nears the end of its life.

2468 I can certainly say that industry needs the certainty of
2469 CFATS and reauthorization of CFATS to continue to make its
2470 investments in the program and continue to implement the
2471 program.

2472 I think DHS also needs the certainty of CFATS to ensure
2473 its long-term viability of programmatic changes.

2474 Second, with respect to transparency and risk
2475 determination process, which we've heard about quite a bit
2476 today, ISCD has certainly improved the transparency of its
2477 risk process.

2478 They have done many things to help the regulated
2479 community understand why they may be tiered or not tiered,
2480 and includes things like webinars, fact sheets, and the like.

2481 Most significantly -- and I think it goes -- and the
2482 agency should get a lot of credit -- you are willing to call
2483 up the agency and have a so-called technical consultation,
2484 essentially asking why am I tiered -- is there something that
2485 I could do -- is there something I need to know -- is there
2486 something that's correct or perhaps incorrect in this
2487 process.

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2488 And while often that doesn't change the needle, unless
2489 there was some kind of error omission, the mere process of
2490 being able to have that conversation with the agency is very
2491 helpful and welcome.

2492 That sort of dialogue was not allowed -- was not
2493 permitted -- was not welcome many years ago at the beginning
2494 of the CFATS program and I think the current leadership has a
2495 lot to do with that and should be recognized.

2496 That's not to suggest that I or the facilities for which
2497 I work always agree with the process. In fact, many times,
2498 especially with respect to the most recent CSAT 2.0
2499 resteering process, companies have said to me, why am I
2500 tiered -- can I appeal that tiering decision -- and the
2501 answer is no. The regulation does not provide for any kind
2502 of appeal mechanism.

2503 In fact, allowing a straight appeal would probably
2504 swallow the regulation. DHS would spend all of its time on
2505 appeals and not being able to articulate and move forward
2506 with the program. So I don't think a straight appeal would
2507 be appropriate.

2508 But some further -- something more formal than a
2509 technical consultation but less -- something less than a

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2510 formal appeal would certainly help facilities to understand
2511 is there something they can do, especially on the consequence
2512 side of the house, for release sites -- for sites that have
2513 release flammable or toxic inhalation hazard materials -- to
2514 bring that risk down, re-file a top-screen, and perhaps get a
2515 different result. Right now, we are not able to effectively
2516 do that beyond the technical consultation.

2517 Third, the rulemaking process -- as we've noted today,
2518 CFATS has been around for now 11 years. The regulations have
2519 not changed one word in that 11-year period, and whether it
2520 be Appendix A or other key aspects of the rule, in order to
2521 change that rule, to update it, to align it to certain
2522 things, that process would need to go through the rulemaking
2523 process.

2524 DHS started that process in the fall of 2014 -- the
2525 summer of 2014 through an advanced notice of proposed
2526 rulemaking. But that process has now stalled. If we take a
2527 look at the current rulemaking agenda for the Department of
2528 Homeland Security just published recently, we now see CFATS
2529 has been moved to the list of long-term actions.

2530 I would urge the committee to suggest, to require that
2531 rulemaking occur so we can update the program necessarily in

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2532 very material ways that need to occur for both, in my view,
2533 industry and for DHS.

2534 Fourth, as we've heard a little bit and including from
2535 Mr. Currie, ISCD should opt to make authorization inspections
2536 -- compliance inspections more consistent, more uniform --
2537 ensure that the same level of knowledge, of rigor, of
2538 completeness of those processes.

2539 ISCD has done a lot towards that and I certainly think -
2540 - and have worked with many of these inspectors -- they are
2541 professional, they are courteous, they are very easy going
2542 many times and friendly.

2543 However, that does not always translate into the same
2544 process from site to site, from region to region, even within
2545 the same region. That inconsistency sometimes and lack of --
2546 differences in knowledge, understanding the actual tools that
2547 DHS uses, the CSAT process, the different approaches to how
2548 an inspection actually occurs -- the level of detail or lack
2549 thereof -- is a ongoing source of frustration for many
2550 businesses, many companies, especially those that operate
2551 facilities from region to region and very clearly see and
2552 question why we see so many differences boots on the ground
2553 among the inspection team.

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2554 DHS has recognized that. We hear from them that they
2555 are going to take steps and are taking steps, as the GAO has
2556 also recognized, to improve and enhance that process, going
2557 forward.

2558 But I think more is needed. I think further training is
2559 needed -- minimum standards and better consistency
2560 horizontally between the regions and vertically between
2561 headquarters and the regions themselves.

2562 So with that, I appreciate the opportunity to testify,
2563 holding this important hearing, and be pleased to answer any
2564 questions you may have.

2565 [The prepared statement of Mr. Roberts follows:]

2566

2567 *****INSERT 7*****

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2568 Mr. Harper. Thank you, Mr. Roberts. We appreciate
2569 that.

2570 And Mr. Conrad, we'll now recognize you for five minutes
2571 for the purposes of an opening statement.

2572 Thank you.

2573 Mr. Conrad, could you pull that microphone around in
2574 front of you a little bit? Thank you.

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2575 STATEMENT OF JAMES CONRAD

2576

2577 Mr. Conrad. The button. There we go.

2578 For over a decade, I have been counsel to the Society
2579 for Chemical Manufacturers and Affiliates, the only U.S.-
2580 based trade association dedicated solely to the specialty and
2581 fine chemical industry.

2582 For the previous 14 years, I was an in-house lawyer at
2583 the American Chemistry Council and so I've been working on
2584 chemical facility security since before 9/11 and I've been
2585 continuously involved in the CFATS process since it was first
2586 enacted in 2006.

2587 I've also chaired the ABA's administrative law and
2588 regulatory practice section. I am pleased to be able to
2589 provide today with SOCMA's perspective on CFATS.

2590 CFATS protects high-risk chemical facilities and their
2591 surrounding communities by ensuring that security measures
2592 are in place to reduce the risk of successful terrorist acts.

2593 More than half of SOCMA's 115 manufacturing members are
2594 regulated under the program. We strongly supported and we
2595 urge Congress to reauthorize the program now before its
2596 authorization expires this coming January.

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2597 A one-year reauthorization, however, is not desirable
2598 because regulatory certainty is crucial to business planning.
2599 Complying with CFATS is expensive and time consuming,
2600 especially for small businesses. SOCMA's members want the
2601 program to be consistent and predictable, and a multi-year
2602 reauthorization would give them that assurance.

2603 Through the years, the CFATS program has undergone
2604 dramatic changes. The early years were a significant
2605 challenge for everyone, but the program has vastly improved
2606 under the direction of Deputy Assistant Secretary Wulf, whose
2607 earlier accomplishments gave Congress the confidence to
2608 reauthorize CFATS for four years in 2014.

2609 SOCMA believes that the program's continued progress is
2610 directly attributable to Mr. Wulf's leadership and justifies
2611 another reauthorization for a comparable period of years.

2612 The most significant recent improvement in CFATS is
2613 Version 2.0 of the Chemical Security Assessment Tool, or
2614 CSAT. The original CSAT process was clunky and difficult to
2615 use, took significant amounts of time and resources to
2616 complete.

2617 The number-one recommendation of SOCMA's CFATS comments
2618 in 2014 was that DHS fix it, and DHS has now done that

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2619 dramatically, and our members uniformly report that it's much
2620 easier to use and far less resource intensive while still
2621 giving DHS the information it needs.

2622 This improvement is extremely important for SOCMA
2623 members, 70 percent of which are small businesses. Most of
2624 these businesses cannot afford to have dedicated regulatory
2625 compliance staff nor can they hire -- afford to hire
2626 consultants to do the job for them.

2627 While I've thus far applauded DHS's efforts, SOCMA does
2628 have some concerns. It first relates to how DHS tiers or
2629 assigns risk levels to facilities based on their CSAT
2630 submissions.

2631 When Congress reauthorized CFATS, it instructed DHS to,
2632 quote, "share with the owner or operator of a covered
2633 chemical facility any information that the owner or operator
2634 needs to comply with this section."

2635 Congress could revise this language to create a clearer
2636 obligation for DHS to share with the facility the exact
2637 reason for its tier assignment. That would help them
2638 understand how they could lower their risk tiers.

2639 The second concern is the personnel surety program.
2640 Currently, PSP only applies to tier one and two facilities,

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2641 but DHS is considering applying it to tiers three and four.

2642 SOCMA believes this is premature. These facilities, by
2643 definition, pose lower risks and the PSP program continues to
2644 impose burdens in terms of time and delay.

2645 SOCMA believes DHS should work with the Department of
2646 Justice and the FBI to rigorously assess both what risks are
2647 avoided and what costs are imposed by the process, and we
2648 think such a multi-agency review is necessary before we
2649 expand it further.

2650 We also believe CFATS should recognize voluntary
2651 industry programs that enhance the safety and security of
2652 hazardous chemicals and thus complement what the CFATS
2653 program does.

2654 The leading chemical industry trade associations have
2655 organized and implementing demanding stewardship initiatives
2656 such as SOCMA's ChemStewards to manage and improve
2657 environmental health, safety, and security performance -- a
2658 public-private partnership that leveraged these industry
2659 stewardship programs like ChemStewards to benefit both
2660 chemical facilities and the public.

2661 And then last, I will emphasize a point that's been made
2662 before about the continuing importance to use rulemaking in

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2663 amending Appendix A, and I will agree with Director Wulf.

2664 Currently, the Administrative Procedure Act requires
2665 Appendix A to be changed through rulemaking because it's
2666 already part of the rule, and so that will continue to be the
2667 case, unless that were to be changed by this -- by new
2668 legislation, which we would not support because it's
2669 important for facilities to be able to get the information to
2670 the DHS that it needs to understand them.

2671 The bottom line is that CFATS is working and working far
2672 more successfully and efficiently than a lot of other
2673 regulatory programs.

2674 CFATS inspectors generally interact well with facilities
2675 and the agency has an effective compliance assistance
2676 program. Facilities are more secure and the public is safer
2677 today because of this program.

2678 Congress should reauthorize it to maintain that
2679 progress.

2680 Thank you.

2681 [The prepared statement of Mr. Conrad follows:]

2682

2683 *****INSERT 8*****

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2684 Mr. Harper. Thank you, Mr. Conrad.

2685 The chair will now recognize Ms. Arellano for five
2686 minutes for the purposes of an opening statement.

2687 Welcome.

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2688 STATEMENT OF YVETTE ARELLANO

2689

2690 Ms. Arellano. Thank you, Chairs and Ranking Members, of
2691 the Energy and Commerce Committee and Subcommittee on the
2692 Environment.

2693 Thank you for this opportunity to speak on the proposed
2694 rule to roll back and eliminate critical protections for my
2695 community in Houston Texas that are part of EPA's 2017
2696 chemical disaster rule.

2697 I am disappointed that the EPA and its rulemaking has
2698 chosen to only hold one hearing in Washington, D.C., making
2699 it difficult for voices like those in my community to be
2700 heard.

2701 But I am relieved that I can bring my experience to this
2702 hearing. My name is Yvette Arellano. I am here on behalf of
2703 Texas Environmental Justice Advocacy Services.

2704 We are a nonprofit working to educate and mobilize our
2705 community in southeast Houston, including Manchester and the
2706 surrounding neighborhoods, which have high concentrations of
2707 chemical facilities.

2708 The EPA is required to regulate effectively under the
2709 risk management plan and CFATS. This exposes our communities

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2710 which include significant communities of color and low-income
2711 families to more toxic air, pollution, and disproportionate
2712 harm from chemical disasters.

2713 As illustrated too well from Hurricane Harvey, too often
2714 we experience a toxic flood on top of the threats we already
2715 face from hurricanes and heavy rains. That comes on top of
2716 disparate health and safety impacts we already face around
2717 the year because EPA refuses to do its job to protect us from
2718 the frequent toxic releases and pollution these facilities
2719 send across the fence line into our communities.

2720 At Hartman Park, which is right across the street from
2721 the Valero refinery, communities painted a mural reflecting
2722 that nearly every child that plays in the park is in the
2723 shadow of a nearby chemical facility -- a far cry from what
2724 people at this hearing see out of their window in Capitol
2725 Hill and D.C.

2726 Communities in Manchester never know which incident
2727 requires evacuation or sheltering in place. We hear the
2728 sirens go off. I heard the sirens go off, or alarms go off,
2729 for a vote and that sent my stress levels high.

2730 People live in constant fear of releases or incidences
2731 while their children are playing outside. In hurricane

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2732 seasons, it's bad enough that families have to prepare for
2733 their lights to go out and ensuring that they have enough
2734 food and water.

2735 No one should have to shelter in place due to a
2736 hurricane as toxic chemicals flood their homes, wondering
2737 what to do if facilities down the street will have a
2738 catastrophic explosion, chemical fire, chemical release, as
2739 what happened in our community and neighborhoods during
2740 Harvey. People deserve the right to know the information
2741 necessary to make informed decisions for them and their
2742 families.

2743 The chemical disaster rule contains important safeguards
2744 that would help communities like mine and across the country
2745 with common sense provisions, most importantly, for our
2746 already over exposed communities.

2747 We need this fully effective right now and we need to
2748 require facilities to take action to prevent fires,
2749 explosions, and disasters including by ensuring they actually
2750 look for safer ways to operate before a disaster starts. It
2751 also would have increased the availability of basic
2752 information we need to know, like chemical safety data sheets
2753 and emergency response contacts so communities can try to

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2754 find ways to protect ourselves if a serious incident happens.

2755 Community members should get the information from each
2756 incident they're exposed to without delay and it's essential
2757 for facilities to do real incident investigation reports that
2758 they cannot ignore in planning to prevent future problems.

2759 I want to highlight that the rule finalized in early
2760 2019 and came afterward by the EPA and after over a hundred
2761 groups working with TEJAS called for action, starting in
2762 2011, as disasters were happening across the country and
2763 people in Washington, D.C. didn't seem to pay attention.

2764 It also provided for a better coordination through
2765 sharing information first responders need and assuring
2766 practice notification and exercises happen to prepare without
2767 delay.

2768 EPA cannot justify repealing all of the prevention and
2769 weakening other important requirements and it has refused to
2770 face the fact that it's taking away protections meant to save
2771 lives and prevent harm, especially to communities like ours,
2772 right across the fence line from chemical facilities.

2773 These rollbacks don't come without community costs as
2774 fires, toxic releases across the country on this
2775 administration's watch, especially Arkema -- the Arkema

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2776 explosion in Crosby after Hurricane Harvey, demonstrated.

2777 A lack of information puts the surrounding community and
2778 first responders in jeopardy. First responders on the scene
2779 had to be evacuated and received medical treatment for
2780 inhaling dangerous chemicals from the blast.

2781 Community members are still dealing with the aftermath
2782 of chemical debris which is visible on their lawns and cars.
2783 The Valero refinery and other nearby facilities released a
2784 spike of benzene and other toxic chemicals. But most of
2785 these were missed because EPA and states turned off or moved
2786 most of the air monitors.

2787 I urge this committee to consider the impacts on your
2788 neighbors, on our neighbors, our families, without critical
2789 protections like those in the chemical disaster rule and ask
2790 you to call on President Trump and the administration and
2791 Administrator Pruitt to drop the hazardous plan that the EPA
2792 is considering which would revoke lifesaving protections for
2793 communities across the country, preventing children and
2794 vulnerable communities from chemical disasters.

2795 The way EPA originally found was necessary should not be
2796 a partisan issue and we call on Congress and EPA to protect
2797 communities, not chemical companies.

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2798 Communities across the country remain in harm's way and
2799 especially -- this is especially scary as we drive around
2800 Houston with billboards saying hurricane season has begun --
2801 be prepared.

2802 [The prepared statement of Ms. Arellano follows:]

2803

2804 *****COMMITTEE INSERT 9*****

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2805 Mr. Harper. Your time has expired. I apologize.

2806 We'll give you opportunity during the questioning.

2807 Thank you very much.

2808 It's now time for the members to ask questions. I want
2809 to thank each of you for your appearance here and for your
2810 insight and the experience that you bring.

2811 And Mr. Roberts, I would like to ask you a question
2812 first. We've from GAO that one of the challenges faced by
2813 DHS with the implementation of CFATS is compliance
2814 enforcement.

2815 Your written testimony points out that there's
2816 inconsistency with inspections and enforcement from region to
2817 region. Can you elaborate some on that and perhaps give us
2818 some suggestions on how to correct that?

2819 Mr. Roberts. Certainly. So there is -- let me
2820 emphasize again the inspectors are, with almost without fail,
2821 are extremely helpful.

2822 They're friendly, professional, but there continues to
2823 be a lack of, it seems, consistent knowledge in various areas
2824 of the program, including the specific way the regulation
2825 itself may work -- the confusion oftentimes between what
2826 regulation is and implementing guidance.

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2827 As we know, CFATS is a risk-based performance standard.
2828 That means that DHS can't prescribe the particularly security
2829 measure a facility must implement or may not -- or does not
2830 need to implement for plan approval, and we've had many
2831 instances over the years, especially as DHS has upticked,
2832 obviously, it's compliance inspections in the last few years
2833 where the specific manner and nature of those inspections
2834 simply is not the same region to region and even within the
2835 same region.

2836 Some of that may go back to training. Some of it may go
2837 back to the prior biases or lack thereof of the inspector who
2838 may come from a prior federal background.

2839 Some of that goes to, on a positive side, with
2840 familiarity of an inspector with the site so they may not
2841 feel the need to continue to go very deeply sometimes.

2842 But the way a particular inspector assesses things seems
2843 to lack any real consistency from site to site, region to
2844 region.

2845 Mr. Harper. And I appreciate the way you have
2846 elaborated on that. So is this a -- is this a training issue
2847 that we are talking about or is it just something that,
2848 because of the different experiences, we can't correct?

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2849 Mr. Roberts. No, I think it absolutely is a couple of
2850 things. One is training -- training around the actual rule -
2851 - training around the CSAT portal -- how it works.

2852 We've had instances where inspectors would ask a
2853 facility to do something in their top-screen that is not
2854 possible because the top-screen doesn't allow that type of
2855 data to be inputted. So that just shows me that that
2856 particular inspector may not understand how the top-screen
2857 itself works.

2858 Certainly, training of the regulation -- the top-screen
2859 tool, the CSAT suite of tools that Mr. Wulf mentioned --
2860 certainly, the guidance -- difference between guidance and
2861 regulation, and I think, as DHS has indicated, as GAO has
2862 indicated, as DHS has said in other occasions, they are
2863 putting together some more specific directives, some more
2864 specific guidance material for their inspectors.

2865 I think this is one area where actually a checklist
2866 would be helpful in terms of understanding what an inspection
2867 should do, what we should look for, the level and detail an
2868 inspection should occur, site to site, region to region,
2869 regardless of the particular nuances of the facility. There
2870 are some basic things that should occur every time.

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2871 Mr. Harper. Thanks, Mr. Roberts.

2872 Mr. Conrad, if I may ask you -- I know we've had some
2873 that would argue that information from CFATS-regulated
2874 facilities is not available to people who should know it.
2875 What would be your response to that?

2876 Mr. Conrad. I would say that if that's true it's
2877 because the systems we have in place to make that happen
2878 aren't working. There is a statute, the EPCRA -- the
2879 Environmental -- the Emergency Planning and Community Right
2880 to Know Act -- that originated in this committee whose sole
2881 focus is to make sure that state and local emergency planning
2882 bodies and fire departments are provided with all the
2883 information that they need to plan for emergencies of
2884 whatever sort -- natural as well as security related -- and
2885 to be able to respond to them, and the statute is just --
2886 couldn't be clearer that, for example, those facilities shall
2887 promptly provide information necessary for developing and
2888 implementing the emergency plan.

2889 So it's not qualified, and it requires submission of
2890 lists of safety data sheets or the safety data sheets
2891 themselves, inventories of chemicals, or, upon request, the
2892 maximum and average amounts of a chemical on the site, where

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2893 it's stored, how it's stored, and that information, in turn,
2894 can be made available to the public.

2895 And specifically with respect to fire departments, it
2896 says that the owner or operator with the facility shall allow
2897 the fire department to conduct an on-site inspection of the
2898 facility and shall provide to the fire department specific
2899 location information on hazardous chemicals at the facility.

2900 So we think the statute is sound. It may well be
2901 appropriate for this committee to conduct oversight on why it
2902 is the LEPAS perform less -- more or less well in certain
2903 areas. But it certainly -- the CFATS program doesn't
2904 restrict any of that.

2905 To the contrary, the statute that you all passed four
2906 years ago expressly preserves all those sorts of information
2907 disclosure statutes from any effect by a result of the CFATS
2908 program.

2909 In fact, the guidance -- this is the CVI guidance from
2910 DHS from the Bush administration, no less, state -- note,
2911 state, local, and tribal officials including first responders
2912 must have access to any information that is necessary to plan
2913 for and respond to an emergency event at a chemical facility.

2914 It's equally important that this information is

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2915 available in a form that is readily accessible and easily
2916 disseminated. In most cases, a facility can provide this
2917 information that contains all necessary operational and
2918 facility-specific information and excludes CVI.

2919 But then, as Mr. Wulf said, there's a way for sharing
2920 CVI, too. So the systems that -- the legal system, I think,
2921 is sound. It's just a question of whether it's really
2922 working well.

2923 Mr. Harper. Thank you very much, Mr. Conrad.

2924 The chair will now recognize the gentleman from New
2925 York, Mr. Tonko, the ranking member of the subcommittee.

2926 Mr. Tonko.

2927 Mr. Tonko. Thank you, Mr. Chair.

2928 I believe we must acknowledge that the CFATS program is
2929 not comprehensive and that security gaps do indeed exist.

2930 Director Currie, can you give us a sense of the quality
2931 of information given to first responders near CFATS
2932 facilities?

2933 Mr. Currie. Yes, sir.

2934 So actually in our ongoing review that we'll issue a
2935 report on next month we are looking at that very issue and it
2936 relates to what Mr. Conrad is saying.

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2937 He's right that there's never been an assessment of the
2938 process itself under CFATS for how well they're coordinating
2939 with the local emergency planning committees and what they're
2940 providing.

2941 That's exactly what we are looking at. We are digging
2942 into that process to figure out how they're coordinating with
2943 those committees and what information specifically those
2944 committees and first responders are actually getting.

2945 And so, you know, we'll report on that next month.

2946 Mr. Tonko. You will share that with this committee?

2947 Mr. Currie. Yes, sir.

2948 Mr. Tonko. The subcommittee, please.

2949 Have they always had all the information in preparation
2950 necessary to respond to incidents at these facilities?

2951 Mr. Currie. Well, I think one of the things we are
2952 looking at, as we've talked about today, you know, the CFATS
2953 program has only been around 10 years and some of these other
2954 programs have been around much longer.

2955 So, you know, in the early stages of the program that
2956 was not the focus. The focus was getting facilities enrolled
2957 and things like that.

2958 So, you know, this is something that's evolved over

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2959 time. Nobody's really looked at it, and so that's why we are
2960 taking a look at it.

2961 It's an extremely important issue. I mean, these are
2962 life and death situations and it's important they have the
2963 information they need to respond.

2964 Mr. Tonko. Thank you. If first responders do not have
2965 all the necessary information, it makes those security gaps
2966 even worse.

2967 Dr. Wilson, what is your sense on some of the security
2968 gaps in the CFATS program? Do you have any thoughts on the
2969 exemptions that exist in the program?

2970 Mr. Wilson. Sure. I think with regard to exemptions,
2971 we heard earlier around waste water -- waste treatment
2972 nuclear and maritime, and I think it's worth assessing
2973 whether and to what extent security is an element of the
2974 safety programs in those -- in those sectors.

2975 And the reason I say that is that in practice, I think
2976 there's a cultural and operational divide between safety
2977 engineering and security provisions and yet security and
2978 engineering are interrelated.

2979 So good engineering design drives down both safety and
2980 security risks but security is often missing from engineering

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2981 practice.

2982 So last month, the American Institute of Chemical
2983 Engineers -- sorry -- had its conference with a keynote
2984 address by the FBI, and the reason for that appearance by FBI
2985 was to encourage engineers to include security in their scope
2986 of practice rather than relegating it, in a way, to
2987 traditional barriers, monitoring, and response approaches.

2988 And so I think it would be worth evaluating if these
2989 exempted sectors are meeting the CFATS 18 performance
2990 standards and if they're effectively integrating security
2991 into engineering practice.

2992 Mr. Tonko. So, from that, I can assume that first
2993 responders often -- that they may not know exactly what is at
2994 a facility before having to respond to the incident?

2995 Mr. Wilson. It's a -- I would say it's a perennial
2996 problem. Despite the requirements of the Emergency Planning
2997 Community Right to Know Act, there are gaps in information,
2998 in particular in transmitting information to first
2999 responders.

3000 One of the problems with the local emergency planning
3001 committee structure is that the members of those committees
3002 are serving voluntarily and yet there is a lot asked of those

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3003 members.

3004 I served as the state's representative -- the state
3005 Department of Industrial Relations representative -- to our
3006 state emergency response committee in California and saw
3007 firsthand the difficulty that those members of the local
3008 committees -- the challenges that they carried in trying to
3009 implement the requirements of a EPCRA and transmitting
3010 information effectively and so forth.

3011 Mr. Tonko. I have concerns with EPA's recent decisions
3012 around the RMP rule. Can you discuss some of the provisions
3013 that were delayed and what would be rolled back from the
3014 latest RMP proposal?

3015 Mr. Wilson. There are 10 provisions having to do with
3016 incident prevention that are being proposed for removal from
3017 the program, and we could go through and catalog each of
3018 those.

3019 They, I think, are the -- I think are the most
3020 fundamental and most sort of protective aspects of the RMP
3021 that have been -- that have been proposed.

3022 And as I said earlier, one of the reasons I am very
3023 concerned about that is because of the fact that prevention
3024 elements provide protection against multiple threats, and

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3025 we've heard from many members today about not only the threat
3026 of an intentional attack against a facility but the very real
3027 threat of a natural disaster, of an earthquake -- as we are
3028 in California -- of a mechanical failure, and we heard of
3029 power outage and so forth.

3030 And so prevention elements or prevention requirements
3031 drive down that risk footprint in the face of all of those
3032 threats. Those are proposed to be thoroughly removed under
3033 the RMP proposal that we are hearing from the administration.

3034 Mr. Tonko. Thank you, Dr. Wilson.

3035 With that, I yield back.

3036 Mr. Harper. The gentleman yields back.

3037 The chair will now recognize the gentleman from Texas,
3038 Mr. Green, for five minutes.

3039 Mr. Green. Thank you, Mr. Chairman. I want to thank
3040 our panel for being here today.

3041 As I said earlier in our first witness, CFATS was
3042 created because of what happened in West Texas. But as we
3043 found out that -- and I think the last thing I heard that
3044 that was arson and still being investigated -- but our real
3045 challenge is from natural disasters, like you just said --
3046 earthquakes in California, hurricanes and tropical storms in

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3047 the Gulf of Mexico. That's what I would like to focus more
3048 on and see how we can correct it.

3049 The -- I have a district in East Harris County, and Ms.
3050 Arellano is very correct -- Manchester has a chemical plant
3051 on the west side, a tank farm on the north side before the
3052 Houston ship channel, and a refinery to the east side, and on
3053 the south they're covered by railroad tracks.

3054 And that's where Houston literally started back in the
3055 1830s and 1840s. The Manchester area was actually called
3056 Harrisburg before there was a city of Houston.

3057 And so we see a lot of these challenges in urban areas
3058 where industry is literally right next door to people who
3059 have lived there and it's in Manchester for 50 years. I know
3060 two generations at least in that community.

3061 One of the concerns I had was that during our Hurricane
3062 Harvey -- and I guess I should understand that when it was
3063 coming in, our air monitors were shut down.

3064 I've been told that I have probably the most air
3065 monitored district in the country because we have EPA. We
3066 have the city of Houston there they have jurisdiction. We
3067 have the county of Harris with a pollution control agency
3068 and, of course, the state of Texas, and it's not just the air

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3069 monitors but the other issue is that most of the rising water
3070 was literally on the bottom of those plants and refineries
3071 and chemical plants because of the 55 inches of rain in four
3072 days -- how can you do it?

3073 The other problem, though -- and I hope the industry is
3074 listening because we've talked about it -- is that we have
3075 huge tanks that hold product, either crude oil or refined
3076 product, and the way they're filled up is that they have
3077 floating roofs.

3078 The problem is when you get that much water on that
3079 roof, those rooves actually turn and you end up -- whatever
3080 the emissions come from that, but it also can overflow
3081 because of the heavy rain.

3082 So we've got a lot of challenges in our area and to keep
3083 working with it, but we used to have community groups, and I
3084 hardly hear about them anymore -- Manchester, Pasadena, Bay
3085 Town -- the community groups, and I would go to those
3086 meetings sometimes and the industry would come in and sit
3087 down with their neighbors along the fence line, and I am not
3088 so sure those are still going. Is that -- is that still
3089 active in other parts of the country and maybe not in our
3090 area?

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3091 Mr. Wilson. Is that -- is that question to me?

3092 Mr. Green. Yes.

3093 Mr. Wilson. I am not aware of those kinds of meetings
3094 taking place and -- but I, you know, absolutely, you know,
3095 agree with your characterization of the problem.

3096 One of the things that California has done in its
3097 refinery safety regulations has required companies to look at
3098 inherently safer technologies wherever feasible and it has
3099 also required, and I think in the example that you have just
3100 given, risk management strategies that require redundancy and
3101 independence of safeguards to prevent a cascade of failures
3102 so, for example, in the event of a power failure, losing
3103 safeguards, one after the other.

3104 And, you know, of course, you know, California is the
3105 third largest refining state and is, you know, producing jet
3106 fuel and gasoline. It's inherently hazardous, and so we felt
3107 it was important to be very clear about the importance of
3108 introducing and requiring, actually, independence and --

3109 Mr. Green. Let me -- I only have 26 seconds.

3110 Mr. Wilson. Sorry.

3111 Mr. Green. And I agree, because even with the Arkema
3112 problem -- wasn't in our district but the redundancies

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3113 weren't there. In fact, our Harris County district attorney
3114 has launched an investigation into that plant and see why it
3115 didn't.

3116 Ms. Arellano, in your testimony, you talked a lot about
3117 how communities like ours in Houston face additional
3118 challenges during natural disasters due to their proximity to
3119 these plants.

3120 What recommendations would you do for industry to
3121 improve their relationship with community groups and civic
3122 clubs, because I know -- I visit Manchester civic club as
3123 often as I can and, typically, one of our refinery staff is
3124 there to answer questions.

3125 What would -- what are some of the suggestions TEJAS
3126 would tell us that we could do and inform people in the
3127 neighborhood but also, you know, just how we can do this
3128 better?

3129 Because those refineries and chemical plants are
3130 probably not going to move because they've been there for 50
3131 years.

3132 Ms. Arellano. These industry partners, they do come out
3133 to the civic associations. But they talk about scholarships.
3134 They talk about fire, indoor air pollutants. They'll hand

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3135 out fire detectors.

3136 But they won't talk about the latest expansion. They
3137 won't talk about a permit notice they had out -- like the one
3138 they have out that would increase hydrogen cyanide from 52
3139 tons to 512 tons.

3140 They'll go ahead and they'll speak about a backpack
3141 giveaway event but not give any real information. So I would
3142 say having true and real information going between industry
3143 partners and neighboring communities is vital to this
3144 process.

3145 The other thing that I would like people to consider is
3146 a cumulative analysis of the TCQ is supposed to have some
3147 sort of cumulative analysis program.

3148 It's important for us to know exactly the impacts of all
3149 the neighbors. Just like you said, there is Contanda
3150 Chemical, it's 87 CO carbon storage tanks with a capacity of
3151 a thousand to 74,000 barrels of chemical product.

3152 At Valero Refining, it has 164,000 barrels per calendar
3153 day of refining, and then the sulfuric acid plant that's Eco
3154 Services, original Rhodia.

3155 So it's important for us to know the impacts of all of
3156 these aggregated together. RMP facilities have, you know,

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3157 these radiuses.

3158 But we are not accounting for the toxic impacts on the
3159 communities, and adding all that information, to not say that
3160 four facilities are exposing the community to 10 cancer-
3161 causing substances but instead saying this community is
3162 exposed to 40, and taking into account that all of them have
3163 safety hazards and all of them have chemical releases, they
3164 all are exposed to fires and incidences whether it is --
3165 people keep talking about these terrorist attacks but the
3166 communities are exposed to daily toxics.

3167 They're exposed -- they're more frequently exposed to
3168 fires from chemical releases and fugitive emissions than they
3169 are a terror attack.

3170 So I would hope that this committee considers these
3171 everyday problems with community members in the decision to
3172 keep going forward and give people the opportunity to make
3173 their own decisions -- safe ones for them and their families.

3174 Mr. Harper. The gentleman's time has expired.

3175 Seeing that there are no further members wishing to ask
3176 questions, I want to thank each of you for being here today
3177 and for the knowledge and information that you have shared
3178 with us. It's very, very helpful.

NEAL R. GROSS

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3179 Before we conclude, I would like to ask for unanimous
3180 consent to submit the following document for the record -- a
3181 letter from the Chemical Facility Anti-Terrorism Standards
3182 Coalition.

3183 Without objection, so ordered.

3184 [The information follows:]

3185

3186 *****COMMITTEE INSERT 10*****

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3187 Mr. Harper. And pursuant to committee rules, I remind
3188 members that they have 10 business days to submit additional
3189 questions for the record, and should you get any of those
3190 questions I would ask that you submit your responses within
3191 10 days -- 10 business days from the receipt of such
3192 questions.

3193 Without objection, the subcommittee is adjourned.

3194 [Whereupon, at 12:44 p.m., the committee was adjourned.]