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Responses to Additional Questions for the Record

*of*

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*to the*

U.S. House of Representatives  
Committee on Energy and Commerce  
Subcommittee on Environment

*on*

The Chemical Facility Anti-Terrorism Standards

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1. Your testimony acknowledges the existing CFATS Alternate Security Program or ASP and that firms in your trade association have had good experience using it. Yet, you also testify that you want DHS to give credit for using your trade association's safety and security code.

a. If DHS has already issued an ASP that is being successfully deployed in your industry, what extra element are you seeking that the ASP does not give you?

**Answer:**

The CFATS Alternative Security Program for Chemical Distribution Facilities that NACD developed along with the American Chemistry Council is more of a template a facility can use as an alternative to the DHS Site Security Plan (SSP). It provides a way for facilities to describe their security measures in a narrative format and minimizes the duplication that was a problem with the original DHS SSP. Another advantage of the ASP over the DHS SSP is that it provides an actual plan for personnel reference and training. DHS treats facility ASPs just as they do SSPs. They review each ASP individually and inspect on the same schedule as facilities that use the DHS SSP.

Our objective for an industry recognition program is to create a way to leverage programs such as NACD Responsible Distribution® by giving credit to facilities that participate in these programs.

b. How would this work?

**Answer:**

Under such a recognition program, DHS would create an application and review process to determine eligibility of industry stewardship programs that meet certain performance criteria and provide incentives for participation. DHS would establish specific eligibility criteria and facility performance requirements and would determine program credit incentives. CFATS facilities could then request individually or collectively by their sponsoring organization to participate in the recognition program.

2. Your testimony applauds DHS's operation of the CFATS program and makes oblique references to problems the program had, including a risk assessment and tiering process that was not based on threat or vulnerability levels.

a. Was this methodology ever a concern for you in the past?

**Answer:**

Yes. The initial CSAT process was cumbersome and had many duplicative elements.

b. If yes, how had changes in CSAT 2.0 made a difference for your firm?

**Answer:**

My experience has been that CSAT 2.0, which allows facilities to submit their information and DHS to analyze the material more easily, is much more streamlined and user friendly than the prior version.

3. Where would you say CFATS has made the most improvements over the last four years?

**Answer:**

Following the 2014 four-year reauthorization, DHS was afforded the stability to increase efficiencies in the program while streamlining the information submission process for regulated facilities. In 2016, DHS developed an enhanced risk tiering methodology to identify more accurately high-risk facilities and assign them to appropriate risk tiers. In doing so, DHS notified all facilities with threshold quantities of CFATS chemicals of interest that they must submit new Top Screen surveys to the agency. At the same time, the agency launched CSAT 2.0. DHS implemented the re-tiering process in a timely and efficient manner and is now conducting authorization inspections and compliance inspections of facilities assigned to different tiers as well as newly regulated facilities. CSAT 2.0 is much more user friendly and minimizes the duplication that was a concern in the old DHS Security Vulnerability Assessment and SSP.

4. Recently, there was discussion about removing Tier 4 facilities from the CFATS program.

a. Would you be concerned that taking such a step would encourage DHS to expand the universe for what constitutes a Tier 3 facility, thereby moving former Tier 4 sites in a more heavily regulated category?

**Answer:**

Yes, I would be concerned with taking that step.

b. Why or why not.

**Answer:**

The largest percentage of CFATS-covered facilities are assigned at the Tier 4 level. My concern is that DHS would be hesitant to eliminate such a large percentage of facilities out of the CFATS program and, therefore, DHS would develop new methodology to bring many of those facilities into the CFATS program at the Tier 3 level. This action would likely increase the program requirements for facilities previously at the Tier 4 level.

5. Do you support allowing non-first responders and local elected officials to have access to Chemical Vulnerability Information for their official duties? If not, is it because you believe it is a bad idea to broadly share this information among the public?

**Answer:**

I do not support allowing non-first responders and local elected officials to have access to Chemical-terrorism Vulnerability Information (CVI) unless they have a need to know or obtain and maintain the required security clearances to possess such information. Facilities must protect sensitive information from individuals who might pose a threat to employees, property, or surrounding communities. Sensitive information – such as SSPs/ASPs, worst case scenario discharge data, Chemicals of Interest records, CVI, and tactical response information for emergency personnel – could threaten security if it falls into the wrong hands. The membership roles of local community first responder organizations very often comprise volunteers and change over quite frequently. This would, in my opinion, present an unreasonable risk to the secure information.

6. Is your Local Emergency Planning Commission only comprised of first-responders or the mayor?

**Answer:**

No. The NJ Civilian Defense and Disaster Control Act (N.J.S.A. App. A:9\_33) and NJ Executive Order 161 signed in 1987, require New Jersey LEPCs to include representation from elected and local officials, local media representatives,

local environmental and transportation agencies, and community groups, among others.

7. Some people would like to see workers Federally-required to be part of the creation of a facility's security vulnerability assessment and site security plan.
  - a. Do you think this should be mandated or do you think this interaction is better left to the collect bargaining process between workers and their employer? Why?

**Answer:**

Under the current statute, at least one facility employee and one union representative are required (to the greatest extent practicable) to be involved in the development of an SSP or ASP – so long as these individuals have appropriate training and experience. Due to the sensitive nature of an SSP or ASP, the language in the current statute should not be amended to expand the scope or intent of this provision. The inclusion of additional employees and/or union members in the development of an SSP or ASP should be left to the discretion of facility owners/operators.