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before 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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Good Morning, Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee. My name is Doug Brown, and I am president and CEO of Brown Chemical Company, Inc., a chemical distribution company based in Oakland, New Jersey. I am also the current chairman of the National Association of Chemical Distributors (NACD). I am pleased to provide testimony today on the Chemical Facility Anti-Terrorism Standards (CFATS) program.

About Brown Chemical

Brown Chemical was founded in 1936 in Paterson, New Jersey, and is a fourth-generation family-owned and operated chemical distribution company. Brown Chemical is a regional distributor, with 14 employees. Our corporate headquarters is in Oakland, New Jersey and includes general warehouse space of 46,000 square feet. We also operate a facility in Paterson, New Jersey, which houses bulk storage tanks of approximately 80,000 gallons and multiple packaging lines. Brown direct-sells, distributes or packages over 350 products to approximately 400 customers in 41 states.

Brown Chemical is a member of NACD, an international association of nearly 440 chemical distributors and their supply-chain partners. While chemical distribution is big business, NACD members are predominantly small regional companies, many of which are multi-generational, and family owned like Brown Chemical.

NACD Responsible Distribution[®]

As background, all NACD members, including Brown Chemical, must implement policies and procedures to meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution[®], the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

While security has always been an inherent element of Responsible Distribution, following the terrorist attacks of September 11, 2001, distributors were the first sector of the chemical industry to mandate security measures for its members. NACD continues to assess Responsible Distribution's security measures against current threats. In 2013, NACD added a specific Security Code to Responsible Distribution that consolidated many prior requirements and enhanced others. These requirements apply to all NACD members, including those who do not

have facilities subject to the CFATS regulations. Over the past 16 years, NACD members — both CFATS-regulated and non-CFATS-regulated companies — have made substantial investments to make their facilities more secure.

Brown Chemical Supports Long-Term Reauthorization of CFATS

Brown Chemical supports a long-term reauthorization of CFATS. I believe the CFATS program has made the chemical industry and our nation much more secure. Since the program's establishment in 2007, the industry has invested significant capital and training resources towards enhanced or augmented security measures at our facilities. While these resources did not necessarily assist in growing business, they were nonetheless important to ensure the security of my company, employees, and community.

A Collaborative Approach Has Led to Success

From the beginning, the Department of Homeland Security (DHS) has taken a collaborative, commonsense approach in implementing the CFATS regulations. Despite being dependent on temporary appropriations measures during the first seven years of the program, the agency did a commendable job in writing the regulations and setting up the internal infrastructure to be able to implement and enforce the new standards. It is undeniable there were growing pains in the first few years of CFATS. By listening to and learning about industry, DHS was able to use this information to make improvements to run the program more efficiently.

One reason for the success of the CFATS program is the fact that DHS has taken the time to truly learn about the diversity of the chemical industry and work with companies on security measures that meet the CFATS Risk Based Performance Standards while providing flexibility to each unique chemical facility in doing so. DHS has excelled in outreach to the industry by publishing numerous fact sheets and "lessons learned" documents; interacting with facility owners and operators during the Chemical Sector Security Summits and other industry meetings; and always making inspectors and headquarters personnel available to talk through issues and answer questions.

In addition, DHS worked with NACD and the American Chemistry Council (ACC) to develop a CFATS Alternative Security Program (ASP) Guidance Document and Template to enhance the process for submitting site security plans. The ASP provides DHS with an alternate format to gain clarity about regulated facilities' security measures and how they meet or exceed CFATS

requirements, while simplifying the compliance process and giving facility owners and operators a comprehensive security document to follow. Our firm has not utilized the ASP format, but I am aware of several firms in our trade association that have and have had good experiences in doing so.

The Diverse World of Chemical Facilities - Ensuring Different Industries Are Aware of CFATS Obligations

Following the tragic 2013 West Fertilizer fire and explosion, DHS doubled down on efforts to reach “outliers,” those facilities that may not be aware of their obligations to inform the agency about their possession of chemicals of interest (COI) by filing Top Screens. Because chemical distributors sell COI to so many diverse industries, NACD agreed to assist DHS with this effort by sharing CFATS information with these customers through distribution of a special flyer to voluntarily inform members’ customers about CFATS.

Regulatory Certainty Needed for Efficiency

The “Protecting and Securing Chemical Facilities from Terrorist Attacks Act” of 2014 (P.L. 113-254), which for the first time provided CFATS a multi-year authorization, further enhanced security efforts by providing regulatory certainty to both industry and DHS. This stability allowed DHS to increase efficiencies in the program while streamlining the information submission process for regulated facilities.

For example, in 2016, DHS rolled out an enhanced risk tiering methodology to identify more accurately high-risk facilities and assign them to appropriate risk tiers. 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 version 2.0 of the Chemical Security Assessment Tool (CSAT 2.0), the online portal facilities use to submit Top Screens, Security Vulnerability Assessments, and Site Security Plans/ASPs. 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. DHS completed 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.

CFATS Going Forward

I believe the CFATS program is strong and needs minimal change other than a multi-year reauthorization. One priority I can recommend is to make sure any changes to the Appendix A list of chemicals remain subject to notice and comment rulemaking. Changes to the COI list could have major impacts on many companies' businesses and security investments. While changes may be needed upon discovery of new threat information, it remains important to give the regulated community the opportunity to provide information to the DHS and explain the impacts of any proposed changes.

I would also support the creation of a program under which DHS would recognize companies that meet certain criteria such as participation in an environmental, health, safety, and security program such as Responsible Distribution. NACD members have made a strong commitment to operate their facilities safely and securely. Recognizing such responsible companies through measures such as less frequent inspections would allow DHS to prioritize resources to concentrate on the "outliers" or bad actors that may pose a greater security risk to themselves or the population at large.

Conclusion

Brown Chemical supports the CFATS program and looks forward to working with the subcommittee on legislation to reauthorize this important security regulation in the coming weeks and months. A multi-year reauthorization of CFATS would provide needed certainty and enhance the security of chemical facilities and our nation.

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