

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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July 16, 2018

Mr. Dave Wulf  
Acting Deputy Assistant Secretary, Infrastructure Protection  
U.S. Department of Homeland Security  
245 Murray Lane, S.W.  
Washington, DC 20528

Dear Mr. Wulf:

Thank you for appearing before the Subcommittee on Environment on June 14, 2018, to testify at the hearing entitled "The Chemical Facilities Anti-Terrorism Standards Program (CFATS) – A Progress Report."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. Also attached are Member requests made during the hearing. To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Monday, July 30, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to [kelly.collins@mail.house.gov](mailto:kelly.collins@mail.house.gov).

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

Sincerely,



John Shimkus  
Chairman  
Subcommittee on Environment

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

Attachments

## **Attachment 1—Additional Questions for the Record**

### **The Honorable John Shimkus**

In 1998, pursuant to Presidential Decision Directive 63 on Critical Infrastructure Protection, the Environmental Protection Agency (EPA) has served as the designated agency for the water supply sector.

In 2000, EPA established a partnership with the Association of Metropolitan Water Agencies (AMWA) and American Water Works Association (AWWA) to jointly undertake measures to safeguard water supplies from terrorist acts. AWWA's Research Foundation contracted with the Department of Energy's Sandia National Laboratory to develop a vulnerability assessment tool for water systems (as an extension of methodology for assessing federal dams). EPA supported a project with the Sandia Lab to pilot test the physical vulnerability assessment tool and develop a cyber vulnerability assessment tool. This effort took on added importance after September 11, 2001.

On June 12, 2002, President George W. Bush signed into Public Law 107-188, the Public Health Security and Bioterrorism Prevention and Preparedness Act. Title IV of this Act established requirements on drinking water systems to conduct vulnerability assessments and create emergency response plans to prevent intentional acts to introduce biological, chemical, or radiological contamination into public water supplies. An Information Sharing and Analysis Center supported by an EPA grant became operational under AMWA's leadership in December 2002, allowing for dissemination of alerts to drinking water utilities about potential threats or vulnerabilities to the integrity of their operations that have been detected and viable resolutions to problems.

On December 17, 2003, President George W. Bush issued Homeland Security Presidential Directive 7. This directive, issued 11 months after the creation of the Department of Homeland Security (DHS) and 22 months after DHS's predecessor, the Office of Homeland Security, established EPA as the Sector Specific Agency for drinking water systems because this sector possessed "unique characteristics and operating models." Subsequent presidential directives have affirmed this designation and responsibility for the security of the sector, including the latest one, Presidential Policy Directive 21 from February 12, 2013, relating to Critical Infrastructure and Resilience.

When Congress, in 2006, established the Chemical Facility Anti-Terrorism Standards (CFATS) program in section 550 of Public Law 109-295, Congress recognized this would be the first regulatory authority DHS would be given on its own -- rather than inherit from legacy agencies -- and that CFATS should not cover security at facilities already subject to another regime. In the case of drinking water, Congress not only understood that facilities were subject to Title IV of Public Law 107-188, but that chemicals were an integral part of disinfecting pathogens and the public health dimension of drinking water made a chemical control program - focused on only the security dimension of the plant -- an ill-suited replacement for the needs of this sector. For this reason, Congress has routinely rejected calls to make drinking water systems subject to CFATS or substitute DHS for EPA as the sector specific lead.

1. Has there been a successful terrorist attack at a drinking water facility with EPA as the lead agency for this sector?
2. Is EPA incapable of carrying out congressional or executive branch requirements?
3. Past Subcommittee hearings have demonstrated how DHS has struggled with getting CFATS up and running since its inception in 2006. Currently, DHS regulates 3,556 facilities under CFATS. Adding just those drinking water utilities serving more than 10,000 persons would more than double CFATS's coverage universe by more than 4,100.
  - a. Please state how DHS would manage a CFATS program of nearly double its size that has public health and engineering questions that must be managed daily?
  - b. How long would DHS need to ramp up to be in technically proficient enough to competently execute security reviews and inspections at these unique facilities under CFATS?
  - c. Recognizing that -- due to practical and policy considerations -- previous presidential directives and congressional enactments have consistently placed the lead for drinking water system security with EPA and DHS providing support to EPA, please state why that was the wrong position for those administrations and congresses to take?
4. Is CFATS tiering objective if DHS personnel can override it?
5. Mr. Wulf, your written testimony notes that all facilities with holdings of chemicals of interest have been asked to resubmit information to inform a risk-assessment using the new methodology. Has the tiering for any of these facilities changed because of the new methodology?
  - a. What has been the reaction by the regulated stakeholders to the new methodology?
6. Over the last 11 years, how has CFATS impacted the security of Appendix A chemicals at facilities containing them above threshold levels?
7. As you know, personnel surety is an issue that never seems to go away. Your testimony mentioned that DHS is preparing to address personnel surety for Tier 3 and 4 sites. Recognizing that Tier 3 and 4 sites do not pose as high a risk as Tier 1 and 2 sites -- suggesting they need a littler touch -- how is DHS applying this principle in thinking about PSP regulations at Tier 3 and 4 sites?
8. You were asked, due to existing regulations but the Bureau of Alcohol Tobacco and Firearms and the Department of Transportation, about whether a statutory exemption from CFATS was warranted for facilities manufacturing explosives. You stated that there was a great deal of overlap between ATF and CFATS, but that you would be concerned that gaps would exist for precursor chemicals if such a statutory exemption was granted by Congress.

- a. Under Section 3(d) of Executive Order 13777, DHS was required to identify regulations that could be modified to reduce unnecessary regulatory burden, including instances of duplication. In addition, CFATS gives DHS the ability to permit compliance with approved alternate security programs to satisfy some or all CFATS requirements.
- b. Has DHS taken action pursuant to Executive Order 13777 or under Alternate Security Program provisions in the Homeland Security Act to eliminate the duplication between CFATS and ATF while at the same time permit CFATS to cover articulated gaps in law for precursor chemicals? If not, why not?

**The Honorable Paul Tonko**

1. What is the current process to add, remove, or modify a chemical of interest on the Appendix A list?
2. How many chemicals of interest have been added, removed, and modified on the Appendix A list in each year since the program's creation?

## **Attachment 2 – Member Requests for the Record**

*During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.*

### **The Honorable Paul Tonko**

1. There are very different security and regulatory regimes at nuclear facilities, federal facilities, and other sites that received exemptions. But in the past, DHS has expressed concerns over the gaps created by these exemptions. A number of years ago, DHS testified that the administration's position to support closing security gap at drinking water facilities, is that still the administration's position?
2. Does the administration still support maintaining EPA as the lead agency for drinking water and waste water facility security with the DHS supporting EPA's efforts?

### **The Honorable Diana DeGette**

1. Does DHS have specific recommendations for providing a secure power supply under CFATS?