

**Statement of the Honorable John Shimkus  
Republican Leader, Subcommittee on Environment and Climate Change  
Hearing on H.R. 3256, the “Protecting and Securing Chemical Facilities Act”  
September 11, 2019**

*“As Prepared for Delivery”*

Thank you, Mr. Chairman for yielding me this time.

Today, the Subcommittee will not only check in on the progress of the Chemical Facilities Anti-Terrorism Standards Program at the Department of Homeland Security (DHS), but also review legislation introduced to both save the program’s authority from expiring as well as make significant changes to the program.

The CFATS program, which Congress first authorized in the fall 2006, was a continuation of congressional efforts since the terror attacks that occurred eighteen years ago today. This law – then referred to as section 550 -- surgically and directly address gaps in Federal law regarding terrorism or other intentional acts against high-risk facilities due to their use or possession of chemicals of concern at levels of concern. The core of this new security-focused law was a process where DHS issued risk-based performance standards that required vulnerability assessments and site security plans by covered facilities. Most importantly, to avoid overlapping with other Federal programs, CFATS was designed to foster collaboration between the government and regulated parties.

Unfortunately, the early years of CFATS program implementation were marked with several growing pains, some more hurtful than others. No one knows that more that our witness from the Department of Homeland Security, David

Wulf. I said last June that his commitment and longevity with the program make him the Cal Ripken of CFATS – and I think others would agree with me.

Last June, we learned that Mr. Wulf not only set many remedial goals to address issues he and the Government Accountability Office found in the CFATS program; under his watch, tremendous progress was made towards correcting those problems, reinvigorating morale, improving communication, and reviving confidence in the CFATS program. I think today's CFATS has earned an extension of its program authority.

That's great, but Congress needs to ensure that the CFATS program is a success because it is a success and not just because of the leadership of one or two people -- after Mr. Ripken retired, his team took 10 years to recover to a competitive position. Given that stopping terrorism is CFATS's job, we should not assume stability after so much change to correct this program's problems.

This is why I don't believe that CFATS needs to expand its mission. I am concerned by provisions in H.R. 3256 that either provide DHS authority to offer CFATS to unregulated facilities or require study of those facilities exempted from CFATS – facilities exempted because Congress gave them their own anti-terror programs for their unique circumstances.

I am also concerned about the precedent of layering specific requirements onto site security plan approval, no matter how well-meaning, when meeting the Risk Based Performance Standards already accomplishes those requirements.

A third thing that bothers me in the legislation is the redefinition of "risk" for the CFATS program and the directive to deploy that new definition. The existing definition of risk for CFATS – vulnerability, threat, consequence -- is based on GAO recommendations and the National Infrastructure Protection

Program. One of the biggest problems DHS had to rectify is that the CFATS program used an incomplete definition of risk that discounted vulnerability and placed more facilities into the program and at higher risk categories. DHS spent years undoing this mess, but the legislation acts as if the mistake was correcting the risk formula to make it more consistent.

Most significantly, I am quite concerned that this legislation rolls back essential protection of vulnerability information that would create a road map for terrorists. There are multiple Federal laws that require disclosure of information to the public and first responders for any number of reasons. The difference between this bill and those laws is that CFATS information is NOT focused on pollution or accidents, but how a high-risk chemical is being protected from theft or intentional detonation. First responders and local officials already have access to this information if they have a need to know and are trained in handling it. Making this information public will cause material physical and economic harm to these facilities and their communities.

My misgivings aside, I look forward to receiving language from you, Mr. Chairman, and meaningfully working with my colleagues to a good place where we can all support this bill when it gets marked up.

I want to thank our witnesses for being with us today and I look forward to a meaningful dialogue with them.

With that, I yield back the balance of my time.