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RPTR JOHNSON

EDTR HOFSTAD

PROTECTING AND SECURING CHEMICAL

FACILITIES FROM TERRORIST ATTACKS

WEDNESDAY, SEPTEMBER 11, 2019

House of Representatives,

Subcommittee on Environment and Climate Change,

Committee on Energy and Commerce,

Washington, D.C.

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

Present: Representatives Tonko, Clarke, Peters, Barragan, Blunt Rochester, Soto, DeGette, Schakowsky, Matsui, McNerney, Ruiz, Dingell, Pallone (ex officio), Shimkus, Rodgers, McKinley, Johnson, Long, Flores, Mullin, Carter, Duncan, and Walden (ex officio).

Staff Present: Jacqueline Cohen, Chief Environment Counsel; Adam Fischer, Policy Analyst; Anthony Gutierrez, Professional Staff Member; Rick Kessler, Senior Advisor and Staff Director, Energy and Environment; Brendan Larkin, Policy Coordinator; Mel Peffers, Environment Fellow; Jerry Couri, Minority Deputy Chief Counsel, Environment

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and Climate Change; Peter Kielty, Minority General Counsel; Mary Martin, Minority Chief Counsel, Energy and Environment and Climate Change; Brandon Mooney, Minority Deputy Chief Counsel, Energy; and Brannon Rains, Minority Legislative Clerk.

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Mr. Tonko. The Subcommittee on Environment and Climate Change will now come to order.

I recognize myself for 5 minutes for the purposes of an opening statement.

The events of September 11th transformed how we think about what it means to be safe in our communities. America responded with a national mobilization to confront the threat of future attacks, including the establishment of programs like the one we will consider here today.

We learned a hard lesson that we must always be vigilant and acknowledge that our Federal Government, including this committee, plays a critical role in safeguarding the health and safety of the people working in, living near, and responding to incidents at our Nation's high-risk chemical facilities.

Thank you to our colleagues on the Homeland Security Committee for starting this process. Mr. Richmond and Chairman Thompson's bill, H.R. 3256, the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019, is the basis for today's legislative hearing.

Since 2007, chemical facilities have been regulated to address risks under the Chemical Facility Anti-Terrorism Standards, or CFATS, program that has been implemented by the Department of Homeland Security.

CFATS is an important part of our Nation's counterterrorism efforts to secure high-risk chemical facilities. Under CFATS, around 3,300 manufacturing, handling, and storage facilities must implement risk-based performance standards in some 18 areas.

The program received its first multiyear extension in 2014. And in January of this

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year, Congress acted to extend the program through April of 2020 and prevent a potentially dangerous lapse.

It is my hope that this committee will once again find bipartisan agreement on a multiyear CFATS extension that can be supported by the leadership of both House committees of jurisdiction from both sides of the aisle.

Everyone here understands the importance of a multiyear extension, which would give the program a final measure of certainty and stability, but as Congress considers the CFATS reauthorization, we cannot afford to overlook this opportunity to reinforce what is working well and address what could be improved.

Today, I expect to hear that this program generally enjoys support from chemical manufacturers, distributors, and workers at these sites. But there remain numerous ways in which it could be strengthened. I am open to hearing suggestions, especially those that help ensure workers in local communities are being consulted and participating appropriately in the program and receiving the information they need to stay safe.

I also want to hear from our witnesses how the program can greater incentivize risk reduction, not just risk management. Risk reduction is ultimately the best way to ensure the protection of workers in frontline communities.

With that said, I am skeptical of any change that would create new security gaps by allowing for additional exemptions to the program. We need, instead, to be looking more holistically at the threats facing these facilities. Without question, they are evolving, and not just from terrorism and malicious acts. When it comes to protecting workers, first responders in surrounding communities, safety and resilience are as important as security.

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Chemical fires, explosions, and releases can have serious consequences, regardless of whether an incident was an accident, a natural disaster, or an act of terrorism. We saw in the aftermath of Hurricane Harvey in Texas that extreme weather can be just as big a threat as more traditional security concerns.

The people working at these facilities and living in nearby communities should be able to expect the same measure of protection and risk mitigation. And I hope the appropriate agencies will work to ensure the development of industry guidance to help facilities assess their risks from extreme weather.

September 11, 2001, forever changed how our Nation thinks about security. We have achieved much in the 18 years since, but we cannot rest on our heels or become stagnant in our thinking. Threats to chemical facilities continue to evolve, from cybersecurity to extreme weather events. And the programs that guarantee the safety of workers, first responders, and frontline communities must also evolve to meet these threats.

Thank you to Mr. Wulf for appearing before the subcommittee once again, and I also welcome our witnesses on the second panel.

With that, I look forward to today's discussion, and I yield back.

The chair now recognizes the ranker of the subcommittee, Representative Shimkus of Illinois.

[The prepared statement of Mr. Tonko follows:]

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Mr. Shimkus. Thank you, Mr. Chairman, for the time.

Today, the subcommittee will not only check in on the progress of the Chemical Facility Anti-Terrorism Standards program, commonly known as CFATS, at the Department of Homeland Security 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 of 2006, was a continuation of congressional efforts since the terror attacks that occurred 18 years ago today. The program, then referred to as Section 550, surgically and directly addressed gaps in Federal law regarding terrorism and 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 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 than 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 the issues he and the Government Accountability Office found in the CFATS program, under his watch tremendous progress has been made towards correcting those

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programs, reinvigorating morale, improving communication, and reviving the confidence in the CFATS program.

My congratulations to you.

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

That 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-terrorism programs for their unique circumstances.

I am also concerned about the precedent for 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 this 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

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the legislation acts as if the mistakes were correcting the risk formula to make it more consistent.

More significantly, I am concerned that this legislation rolls back essential protection and vulnerability information that would create a roadmap 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 support this bill when it gets marked up.

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

With that, Mr. Chairman, I yield back my time.

[The prepared statement of Mr. Shimkus follows:]

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Mr. Tonko. The gentleman yields back.

The chair now recognizes Representative Pallone, chairman of the full committee, for 5 minutes for his opening statement.

The Chairman. Thank you, Chairman Tonko.

Today, on the 18th anniversary of the September 11th terrorist attacks, we are here to discuss important security legislation that could help prevent another attack.

We will never forget 9/11 and its longstanding impacts on families, first responders, and our Nation as a whole. The lessons we learned in the days and years after 9/11 should inform our efforts to strengthen the Chemical Facility Anti-Terrorism Standards program, otherwise known as CFATS. And this program provides critical national security protections by requiring chemical facilities that are high-risk terrorist targets to assess and address their vulnerabilities.

High-risk chemical facilities hold large stores of industrial chemicals that pose a safety and security risk to the American people if they are released or detonated. A recent report found that more than 134 million Americans live in the vulnerability zones around chemical facilities. That is more than one-third of Americans. And the communities most at risk are disproportionately low-income communities and communities of color.

And, unfortunately, the threats to these facilities are only increasing as climate change makes extreme weather more and more common, and CFATS-regulated facilities have been impacted by hurricanes, floods, and wildfires, putting us all at risk.

So I have been an advocate for increased safety and security at our Nation's chemical facilities for many years, well before the CFATS program was established in

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2006. My home State of New Jersey, which has a high population density, also has a large number of chemical facilities, so the consequences of lax security could be devastating there. And that is why New Jersey led the way on chemical plant security, adopting requirements for the assessment of so-called inherently safer technology and adopting mandatory security standards before the Federal program was in place.

Earlier this year, the CFATS program came close to lapsing. Despite the importance of the program and support on both sides of the aisle, the authorization came within 10 days of expiring during the Trump government shutdown. A bill in the Senate also sought to seriously weaken the program with changes, including an ill-advised exemption for explosives.

Fortunately, Ranking Member Walden and I were able to work with our colleagues on the Homeland Security Committee to extend the program through April of 2020 without these misguided changes. So now we have the opportunity to strengthen and improve the program, and I look forward to continuing to work in a bipartisan fashion to move the legislation forward again.

It is critical that we get this done. Three major chemical incidents this year -- one in Crosby, Texas, another in La Porte, Texas, and a third in south Philadelphia -- underscore the need to do more.

H.R. 3256, the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019, would extend the authorization for this important program and make some welcome improvements.

The bill would strengthen the role of workers at covered facilities and improve reporting to Congress. It would require the Department of Homeland Security to verify information submitted by a covered facility before using it to lower that facility's risk tier.

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And it would eliminate the worrisome Expedited Approval Program.

So I look forward to hearing from the stakeholders today about these and other improvements that can be made to the program. And I hope we can continue to work together to ensure the security of these facilities and protect the surrounding communities.

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I don't think anyone wants the time, so I will yield back, Mr. Chairman.

[The prepared statement of the chairman follows:]

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Mr. Tonko. The gentleman yields back.

The chair now recognizes Representative Walden, the ranking member of the full committee, for 5 minutes for his opening statement.

Mr. Walden. Good morning, Mr. Chairman, and thank you for holding this really important hearing and your dedication to this issue.

And I want to thank my colleague, the chairman of the full committee, for the work we did last Congress and the work that we are going to do in a bipartisan way this Congress. So thank you for that.

On this day of 9/11, we should also remember our freedom is never free and never can be taken for granted. And that is kind of -- that event led us to this bill.

I remember being at a table much like this one -- it was older and scratched up, because they have remodeled the building, but -- after 9/11 when we had one of those discussions. And I remember we were talking about community right to know and how everything was posted on websites about where all the worst things were so your first responders would know, and then we realized that was a roadmap for the terrorists. And everything changed on that day in the way we approach these issues and how to protect and secure. And I will never forget some of those discussions about how things have changed.

So we know CFATS was then created after that terrorist attack on 9/11. And at that time, Congress examined Federal authority to address theft and diversion and terrorism at chemical facilities and found the existing accident prevention and process safety laws were insufficient and inappropriate to tackle these concerns.

Congress decided a separate and distinct body of law and requirements were

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needed to secure these facilities and that, leaving the Clean Air Act to address general safety and accident concerns that might affect air quality, Congress used CFATS to fill the legal gaps for addressing those intentional acts that compromise the security of this critical infrastructure sector.

So CFATS was not intended to be your garden-variety regulatory program. CFATS not only covers huge chemical and petrochemical complexes but also racetracks and, importantly in our region, with my friend from Washington, wineries and breweries, universities and colleges, and hospitals and other healthcare providers.

Due to the scope of the program and the fact that each facility faces different security challenges and to avoid overlapping with other Federal programs, CFATS was designed to foster collaboration between the government and the regulated parties. And this collaboration and compliance leads to facilities that are actually more secure. So it is a partnership.

I mentioned at the start of our hearing last fall that the CFATS program had to overcome some tough years. Our subcommittee received testimony that day from the Government Accountability Office and other stakeholders that the Department spent 4 years correcting the program, including updating its application of the Department risk criteria, the decisions under CFATS.

CFATS must provide value to taxpayers, the Federal Government, and the facilities that could fall victim to intentional attacks. And to do that, I believe the program improvements must be sustainable and they must be reliable. For this reason, I am skeptical of making major changes to the program that would either dilute or divert the Department from its statutory mission or replicate authorities that other Federal agencies have been given by Congress.

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Mr. Chairman, I know we are here to discuss legislation that keeps CFATS authority from expiring this coming April, and we should not have this anti-terrorism program expire, period. I understand the Homeland Security Committee marked up this bill 12 weeks ago, and it passed on a straight party-line vote with no Republicans supporting it, but I also understand they have not formally reported their bill.

Our committee has been overseeing this program since its inception, and today continues the Energy and Commerce Committee's work. So I look forward to working with you, Mr. Chairman, and the full committee chairman to see where we can strike a bipartisan agreement that works for the country.

So I want to welcome our witnesses for being here today and thank you all for sharing your views.

And with that, Mr. Chairman, I will yield back the balance of my time. And as a disclaimer, we have a second subcommittee hearing going on simultaneously, so I must depart for that one. But thank you for holding this hearing. We look forward to working with you in good faith.

[The prepared statement of Mr. Walden follows:]

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Mr. Tonko. Well, thank you very much.

The gentleman yields back.

The chair would like to remind members that, pursuant to committee rules, all members' written opening statements shall be made part of the record.

[The statements follow:]

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Mr. Tonko. I now introduce our sole witness for our first panel, Mr. David Wulf, Acting Deputy Assistant Secretary for Infrastructure Protection at the Department of Homeland Security.

Thank you, Secretary Wulf, for joining us. We appreciate your time and your ideas and thoughts on the legislation.

Before we begin, I would like to explain the lighting system. In front of you are a series of lights. The light will initially be green at the start of your opening statement. The light will turn yellow when you have 1 minute remaining. Please begin to wrap up your testimony at that point. The light will turn red when your time expires.

So, at this time, the chair will recognize Mr. Wulf for 5 minutes to provide his opening statement.

Secretary Wulf?

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**STATEMENT OF DAVID WULF, ACTING DEPUTY ASSISTANT SECRETARY FOR  
INFRASTRUCTURE PROTECTION, DEPARTMENT OF HOMELAND SECURITY**

Mr. Wulf. Thank you. Thank you so much, Mr. Chairman, Ranking Member Shimkus, and other members of the committee.

I really do appreciate the opportunity to be here today to provide an update on the progress the Chemical Facility Anti-Terrorism Standards program, or CFATS, continues to make in fostering security at America's highest-risk chemical facilities.

So, recognizing that we are here today on September 11th and recalling the devastating terrorist attacks carried out on the state 18 years ago, it is important to note that, as a Nation, we have made much progress in securing America's critical infrastructure.

Of course, we can never let our guard down, however, which is precisely why we come to work every day at the Department of Homeland Security and in our new Cybersecurity and Infrastructure Security Agency focused on securing today and defending tomorrow.

And with respect specifically to the CFATS program, a program that remains squarely focused on securing high-risk facilities and preventing acts of chemical terrorism, the same holds true.

So it is no secret that the CFATS program faced some significant challenges in its early years. In 2012 and 2013, as we were laying the foundation for key improvements, I did come before this committee and I emphasized the importance of long-term authorization for this critical national security program. And I am very grateful for the

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leadership the committee demonstrated in securing the 4-year CFATS authorization that was signed into law in December of 2014. And I am grateful, as well, for your role in attaining the 15-month extension of that authorization through April of 2020 that was enacted earlier this year. So I am appreciative that the committee is again working to ensure a continuing long-term authorization of CFATS.

So the stability that was ushered in with long-term authorization has absolutely driven unprecedented progress as our team has worked with the CFATS-covered facilities to make America's high-risk chemical infrastructure a truly hard target. With literally tens of thousands of security measures having been put into place at high-risk chemical facilities across the Nation, these facilities have achieved, on average, a 55-percent increase in their security posture as a direct result of CFATS.

The stability afforded by long-term authorization has facilitated our planning and execution of important programmatic improvements, a few of which I will detail in a moment, while it has also afforded regulated industry stakeholders with the certainty they deserved as they planned for and made capital investments in CFATS-related security measures.

Later today, you will have the opportunity to hear directly from industry and other stakeholders about their experience with CFATS. The gains I have just noted would not have been possible without the commitment and hard work of companies across the Nation that have put CFATS-focused security measures and, in many cases -- have put those measures in place and, in many cases, have provided important feedback and ideas that have helped us to improve our processes and our effectiveness.

Many of those stakeholders are here in the room today. I appreciate their presence. And I am looking forward to the perspectives that will be shared by the next

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panel.

And, of course, I do want to acknowledge our very hardworking CFATS team, 250 folks here in Washington and across the Nation, who have built a truly world-class program and who are laser-focused on securing America's high-risk chemical infrastructure.

So about those programmatic improvements I mentioned, what have we been doing to make CFATS even stronger as we have enjoyed the stability of long-term authorization? We have improved processes, eliminated bottlenecks, and seen unprecedented progress in the pace of inspections and in the review of facility site security plans, eliminating a backlog of security plan reviews 6 years ahead of earlier GAO projections.

We have developed and launched an improved risk-assessment methodology. We have implemented the CFATS Personnel Surety Program, affording CFATS-covered facilities the ability to ensure that individuals with access to critical assets have been vetted for terrorist ties. And we have dramatically reduced burden across our stakeholder community.

And while the stability afforded by long-term authorization has yielded all of this progress over the past 4 or 5 years, we are not done yet, and continued long-term authorization will be absolutely critical to ensuring that we are able to focus on driving even more effective and even more efficient approaches to fostering chemical security.

Now, as we look toward the future, I do think it is important to note that CFATS regulatory coverage is targeted to the Nation's highest-risk chemical facilities, a universe that currently is composed of approximately 3,300 facilities. And while CFATS has contributed to effectively hardening these high-risk facilities against the prospect of

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terrorist attack, we have actually received top-screen reports, the reports that are filed by companies to initiate the DHS risk-assessment process, from more than 30,000 additional facilities. And while we have determined that these additional facilities do not present a high risk of terrorism, they nonetheless maintain inventories of CFATS chemicals of interest, the very sorts of chemicals that are viewed as attractive by our adversaries and that are used in attacks around the globe.

So, while these facilities are not considered high-risk under CFATS, they aren't no-risk facilities. And it is for this reason that we would very much like to work with this committee and the Congress on a path toward authorizing our chemical security inspectors to work with these facilities, completely at the option of the individual facility, on a voluntary, nonregulatory basis.

And this is a point that is important to emphasize. We would like our inspectors to be able to share their expertise with these facilities, to provide assistance, and to offer consultation on security measures, not to extend CFATS regulation to these facilities. In our view, this is an important next step to build upon the culture of chemical security that CFATS has fostered.

Now, as we are all too aware, the threat of chemical terrorism remains a real and a very relevant one. Around the globe, our adversaries continue to seek, acquire, and use in attacks chemicals of the sort that trigger coverage under CFATS, and the threat stream continues to reflect that chemical facilities themselves remain an attractive target for terrorists.

I can tell you with certainty that the work we are doing as an extended chemical security community is making a real difference in protecting our Nation. And having had the opportunity to work with my counterparts in other nations, I can tell you that what

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we are doing here in the United States through CFATS, the culture of chemical security you have helped us to build with your support for long-term CFATS authorization is absolutely the envy of the world.

With its targeted focus on the highest-risk facilities, with its 18 comprehensive risk-based performance standards addressing physical, cyber, and insider threats, and with its nonprescriptive, flexible approach to regulation, CFATS is well-suited to enhancing security across the very diverse landscape of high-risk chemical facilities.

So I would like to again thank this committee and your topnotch staff for your leadership on CFATS authorization, for your patience with my extended statement as well. We are fond of saying that chemical security is a shared commitment. And not unlike the role of our industry and other stakeholders and the role of our very talented DHS team, the role of Congress in shaping and authorizing CFATS for the long term has been hugely important. And looking forward very much to working further with you as we drive toward a truly long-term reauthorization.

So thank you so much. I look forward to the dialogue here today.

[The prepared statement of Mr. Wulf follows:]

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Mr. Tonko. Thank you, Mr. Wulf. And we recognize the rather quick pace that you set, so we didn't want to stop that flow. So thank you so much, and thank you again for joining us this morning.

We have concluded opening statements from our first panel. We now will move to member questions. Each member will have 5 minutes to ask questions of our witness. I will start by recognizing myself for 5 minutes.

So, Mr. Wulf, again, thank you for joining us.

Does the administration support a multiyear extension of the CFATS program?

Mr. Wulf. We absolutely do.

Mr. Tonko. And I mentioned in my opening statement the importance of going beyond risk management to promote actual risk reduction at these sites.

The American Institute of Chemical Engineers' Center for Chemical Process Safety, which includes technical experts from chemical and oil companies, has produced risk-reduction guidance to promote measures that minimize, substitute, moderate, or simplify hazardous processes.

It seems to me that there is a growing acknowledgment, including by industry, of the importance of and opportunities for risk reduction as an essential component of site security. This might include actions like consolidating chemicals into fewer sites, substituting chemicals for less hazardous alternatives, and reducing the quantity of a chemical held on-site.

Do you believe these are potentially effective measures to reduce risk?

Mr. Wulf. I do. And I believe that CFATS has effectively reduced risk. And, in fact, I think one of the success stories out of CFATS is the fact that upwards of 3,000

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facilities over the course of the program's history have made risk-based decisions to either reduce their quantities of CFATS chemicals of interest, eliminate those quantities, move to just-in-time delivery, change their processes such that they are no longer considered high-risk. So my belief is that CFATS kind of organically promotes those sorts of risk decisions.

Mr. Tonko. Now, do you believe that additional risk-reduction measures should be given significant consideration by facilities working to meet CFATS obligations?

Mr. Wulf. I certainly think it is a good thing for facilities to be considering risk. I think CFATS does provide a very solid framework for doing exactly that across 18 risk-based performance standards that kind of form the core of the program.

Mr. Tonko. Okay.

And, right now, these types of risk-reduction measures are a potential option for some facilities, and I believe sites have taken these types of actions to fulfill CFATS requirements. Currently, how does the Department actively encourage facilities to implement risk-reduction measures?

Mr. Wulf. So our inspectors, throughout the CFATS process, work directly -- as do many of our headquarters expert staff -- work directly with facilities as they think through how to address the 18 risk-based performance standards, so standards that cover an array of different risk-reduction measures -- measures designed to deter, detect, delay a terrorist attack; measures focused on cybersecurity; measures focused on insider threat, background checks; measures focused on response and training and exercises.

So we consult. As facilities develop their site security plans, we go back and forth, recognizing, as the ranking member noted, that the CFATS community is a very diverse group, so it is not a one-size-fits-all solution from facility to facility. So we go



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back and forth, work with facilities as they determine which measures are most appropriate for them, to the point at which they are determined to meet the intent of each of the 18 risk-based performance standards.

Mr. Tonko. Now, you listed an array of potential risk-reduction opportunities. Do you believe any one of those holds the most promise for additional work?

Mr. Wulf. Well, I think the beauty, in many ways, of the CFATS framework is that it is nonprescriptive and it is flexible. So I think it really depends on the facility, you know, which area or areas are in need of most focus. And we are able, within the CFATS framework, to work with those facilities to address, you know, which area or areas need that focus on a case-by-case basis.

Mr. Tonko. Thank you.

And while preserving flexibility in the program, can more be done to ensure a facility is implementing or, at the very least, assessing potential risk-reduction measures as part of their site security plans?

Mr. Wulf. Well, I think a lot is being done already. And CFATS is very much already focused at those highest-risk facilities on working with the owners and operators and the security professionals on-site at those facilities and in those companies to reduce risk across those 18 risk-based performance standards.

Mr. Tonko. Well, we thank you for your testimony and your appearing before the subcommittee today.

The chair will now recognize Mr. Shimkus, subcommittee ranking member, for 5 minutes to ask questions.

Mr. Shimkus. Thank you, Mr. Chairman.

Again, Mr. Wulf, thanks for being here.

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And to my colleagues on the subcommittee, this is really an important issue. It is driven from the terrorist attack. And many of us have in our districts facilities, chemical facilities. So the balance is making sure that they are protected as much as possible.

And I think our concern -- and I think we all acknowledge the fact that we want to get as long-term a reauthorization as we can. And I want to thank the chairman and the ranking member for their work in scratching, really, to get whatever it was, 18 months. We have a problem with the Senate on this issue, and I think the due diligence for us doing this right could help us overcome that.

Having said that, we want to continue to appreciate what is working and make sure that we don't, our position would be, put too much on the plate, that we start losing sight of the real goal and objective. And I really plead with my colleagues on the other side to help us find that narrow path so that we can be really united as we address and fight with the Senate for the long-term authorization.

So, as a regulatory program with enforceable requirements, would IST-like requirements -- the inherently safer technology debate, which we have had in this committee numerous times -- be easy to understand and enforce?

Mr. Wulf. I think as a prescriptive regulatory standard, it would not be a simple thing to do.

Mr. Shimkus. And I think I raised this question maybe last time or in the numerous times we have been able to meet, and I don't think we have gotten an answer back. How many of the facilities that have gone through this evaluation have just decided to close?

Mr. Wulf. I don't know that I have that number, but, you know --

Mr. Shimkus. Have been there many?

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Mr. Wulf. There have been facilities that have closed. I am not certain that was as a direct result of CFATS. In fact, I am pretty certain not as a direct result of CFATS.

Mr. Shimkus. Okay. I mean -- and we will mention it with the other panel. See, cost-benefit analysis, risk, additional costs, current markets -- it is really tough to say what causes a sector to decide to close and to move. But that is a balance that we need to continue to address, with focus on safety, but if -- I mean, we just want to be careful that we don't drive some good manufacturing in relatively safe areas in rural America out of rural America.

Let me go to ask about your intense effort to realign your risk methodology. How difficult was that to do? And proposals for changes, would that be as difficult to redo?

Mr. Wulf. And I appreciate that question. And we did, I think as you know, undertake a very intensive effort to retool our risk-tiering methodology.

So kicked off in the 2013 timeframe with an extensive peer review. We brought together an expert panel composed of experts from across academia, government partner agencies, and industry to take a comprehensive look at our risk-tiering methodology, which at the time was pretty narrowly focused on the potential consequences of a terrorist attack and less so on vulnerabilities and threats.

So, after 18 months or so, that peer-review panel came back with a series of very solid recommendations. And we set about working with a second external tiering review panel, similarly composed across those communities, to bounce ideas off of for building a new and improved risk-tiering methodology that fully accounts for all relevant elements of risk. And that is exactly what we did when we set about re-tiering the

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universe of facilities. So, beginning to end, it was about a 5-year process.

Mr. Shimkus. Yeah. So thanks. Let me make sure I put this in the record, that this relationship with DHS is because we are focused on security, and we want to put that -- make sure that is on the table.

And just for my colleagues, the initial roll-out of this program was a little tumultuous and challenging and with the GAO report, and that caused us to really get involved in looking deeply at this. And, again, Mr. Wulf was able to help right the ship, and we thank him for that.

And, with that, Mr. Chairman, I yield back my time.

Mr. Tonko. The gentleman yields back.

The chair now recognizes Representative Peters for 5 minutes.

Mr. Peters. Thank you, Mr. Chairman.

And thank you, Mr. Wulf, for being here today.

I note there are about 3,400 chemical facilities in the United States; 350 are in California; 3 are in San Diego. And of the 3,400, 3,321 are high-risk. And so I think that there is a general consensus that this is a program that needs to be reupped. I think that that is pretty clear, so that is a big step.

Are you familiar with the particular bill that came out of Homeland Security? Are you familiar with that draft?

Mr. Wulf. I am a little bit familiar with it, yeah.

Mr. Peters. Does the administration or do you personally have issues with that bill that you would like to see changed, or are you okay with it, do you think?

Mr. Wulf. So I think what we are concerned most about is that we achieve a long-term authorization for the program, as you noted. And that bill would afford us a

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5-year period of authorization.

You know, I am happy to discuss individual proposals in the bill here today, but, you know, from our perspective, getting to that long-term authorization is the absolute highest priority.

Mr. Peters. Yeah. And so 5 years is a good number of years, you think?

Mr. Wulf. I feel like maybe a zero is missing.

Mr. Peters. Okay, 0.5.

Mr. Wulf. But 5 is a good start.

Mr. Peters. Okay. Thank you.

Mr. Wulf. Five is a good start.

Mr. Peters. I get it. Okay. Well, that is helpful, actually.

Let me just ask you a specific question. On the next panel, one of the people who will be appearing is Mr. John Paul Smith from the United Steelworkers. I want to read you a quote and see if you have an issue with this.

Reauthorization "should include a requirement for CFATS facilities to generate, document, and effectively transmit actionable chemical and process information to first responders, including employees and their union representatives at self-responding facilities. DHS should also be required to generate, distribute, and make publicly available the practices facilities have used to tier out or tier down in the program. This information-sharing is critical to ensure that risks are not just being shifted and so that other facilities can use those lessons across the industry to reduce risks and hazards."

Do you have an opinion or anything you want to say about that? Is that something you agree with, disagree with, or is not important to the administration?

Mr. Wulf. Yeah, I think, broadly speaking, with respect to information-sharing,

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this is a security-focused program, so we need to strike the -- continue to strike the correct balance between ensuring that we are able to share information with those who have a need to know that information -- so law enforcement, first responders, emergency planners who are charged with protecting our communities -- and ensuring that we don't provide a roadmap, that we don't --

Mr. Peters. Right.

Mr. Wulf. -- distribute information so widely that it does become available to those who would seek to do us harm.

You know, that list of folks with whom information should be shared also includes employees with a security background who can contribute to the development of a facility site security plan.

With respect to the sharing of best practices across the universe of chemical facilities, I think that is a good thing. It is, you know, certainly something we can talk some more about and work toward. But best practices that have been put in place by companies under CFATS to improve security, we absolutely want to share those to the greatest extent possible with other chemical facilities.

Mr. Peters. Great.

And as far as today, you don't have particular objections or suggestions for this draft bill to accommodate those concerns? Or do you?

Mr. Wulf. Well, I think we are in a good place, actually, already, as is, with the program with respect to being able to, you know, continue with that appropriate balance between sharing of information and protecting sensitive information from the prying eyes of our adversaries, and already, certainly, have authority to share information across the community of chemical facilities.

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Mr. Peters. Great.

Anything else you would like to tell us about this draft before we hear from the next panel?

Mr. Wulf. Fifty years would be --

Mr. Peters. Fifty years? Okay. Awesome.

Okay. Thank you very much. I yield back.

Mr. Tonko. The gentleman yields back.

The chair now recognizes Representative McKinley for 5 minutes.

Mr. McKinley. Sorry. I didn't realize that I was going to precede her.

What I would like to know is, firstly, have there been any incidents since this has been put in place, challenges to the system that have been caught as a result of a risk assessment?

Mr. Wulf. Terrorist attacks?

Mr. McKinley. Yeah, terrorist attacks, yes.

Mr. Wulf. No. I mean, I firmly believe that the CFATS program has effectively hardened those 3,300 high-risk facilities as targets. So, no, we have not seen a terrorist attack.

Mr. McKinley. Okay.

Secondly, apparently, we have 21 high-risk facilities in West Virginia. Are any of those in tier 1 or tier 2?

Mr. Wulf. I would have to get that information back to you, but my initial inclination would be to say yes.

Mr. McKinley. Your -- would be what?

Mr. Wulf. I believe so, but I will have to confirm that.

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Mr. McKinley. That is what I have been given the impression, that we may have some that would fall into that category.

One of the concerns that I share with this is that this area, in northern West Virginia particularly, is embarking on quite a petrochemical complex of buildings and industries that is going to be popping up as a result of the shale gas and the location of the cracker facility in Monaca, Pennsylvania, and possibly one in Ohio. So we are seeing there is going to be a quite an influx of businesses that are going to be in the chemical business in northern West Virginia.

I am curious to see the advantage of making a change at this point in how this works if it has been successful to date. That is what I am trying to understand, the value. What do you think is behind having this -- other than extending -- I would like to see it extended -- but making changes to the program. Can you share with us the value in making the changes?

Mr. Wulf. You know, I do think that CFATS provides a very solid framework now. It is a flexible framework, so we are able to stay ahead of the continually evolving threat curve.

I do very much appreciate the work that has been done in the Committee on Homeland Security. You know, we see that bill as a very important first step toward long-term reauthorization. But that remains, you know, our key goal, is ensuring that long-term reauthorization.

Mr. McKinley. So you have -- and I think I picked up enough from your testimony and some of the responses some of the others have said, that sharing this data, does that put it more at risk, by putting this information out?

Mr. Wulf. Sharing sensitive --



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Mr. McKinley. Because we all know that -- any of us have sat in on enough briefings, we know people are hacking into our systems, they are paying attention to what we are talking about. If we start identifying and sharing information back and forth, that means that information is going to be exposed to the bad actors who are around the world. So help me a little bit understanding the value of why we want to make that change.

Mr. Wulf. Yeah. So I think we would not like to see much, if any, change on the information-sharing front. We want to retain the flexibility to have that balance, to be able to share information with those who have a need to know, who are charged with protecting our communities, but to ensure that we keep that sensitive information -- and that is the reason we have within CFATS a chemical terrorism vulnerability information protection regime -- to keep that sensitive information away from the eyes of our adversaries.

Mr. McKinley. But you don't have a problem, necessarily, with the whistleblower aspect of it, strengthening the whistleblower concept?

Mr. Wulf. I think we have whistleblower provisions already --

Mr. McKinley. Maybe tightening it up, you know, the concept --

Mr. Wulf. I think we are very much, you know, open to opportunities to tighten up the whistleblower language.

Mr. McKinley. So where --

Mr. Wulf. And I would say, too -- I am sorry -- there are other things for which additional tweaks might be helpful: the ability to execute a petition process, to more effectively be able to look at products that might pose less risk and to potentially let them out of the program --

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Mr. McKinley. Could you share some of that information with us, as to how we might tweak this, if you think that -- other than what you have already testified to?

Mr. Wulf. Yeah. Absolutely.

Mr. McKinley. If you could get that to our office, I would like to take a look at that.

Mr. Wulf. Absolutely.

And, you know, on that front, as well -- and I noted in my opening statement the ability to be able to use our chemical security inspectors not only to implement the regulation with respect to those highest-risk facilities -- and I think that continuing narrow focus for CFATS is important -- but to be able to work on a voluntary basis with those other 30,000 facilities would be helpful to us as well.

Mr. McKinley. Thank you very much. I look forward to getting the list, if you could, of the ones in West Virginia.

I yield back.

Mr. Tonko. The gentleman yields back.

The chair now recognizes Representative Blunt Rochester for 5 minutes.

Ms. Blunt Rochester. Thank you, Mr. Chairman.

And thank you to all of the witnesses today.

It is such an important day. I had to step out to meet with representatives from our Delaware VFW. And I think all of us can remember where we were on September 11th. I was head of State personnel for the State of Delaware at the time, so there was a lot of concern about what would happen to employees. There was a lot of concern about communities and schools and Dover Air Force Base. And I am reminded of how important the role of Congress is and how important your role is in ensuring that

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Americans are protected. It means something, and especially today.

And so I have a few questions, just a few.

One, you mentioned getting rid of the backlog for inspections. Can you talk a little bit about that, what you did, how you did it?

Mr. Wulf. Yeah. So I appreciate that question.

We, at one point, had a very significant backlog of facility site security plan reviews and approvals. GAO projected that it would take us up to 9 years to eliminate that backlog. So that was during the early days of the program. We were getting our legs under us. We had some process issues.

We rolled up our sleeves. We have a great team within the program. We retrained our workforce. We eliminated bottlenecks. And we were able to eliminate that backlog nearly 6 years ahead of those earlier GAO projections.

Ms. Blunt Rochester. So you had the right amount of resources in terms of dollars. You had the right workforce. You didn't have any challenges there. And do you foresee any as you move forward?

Mr. Wulf. Yeah, we have a very highly qualified workforce. We have enjoyed and continue to enjoy great support from within the Department.

Ms. Blunt Rochester. My second set of questions are really just related to, in your testimony, I didn't see much about engagement of local communities. And even, like, relatively minor release of chemicals from tampering could have an effect on communities, serious ramifications, especially for vulnerable populations or hospitals or senior homes.

Can you describe or detail the work that you at DHS currently do to bring community and stakeholders into the process?

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Mr. Wulf. Sure. I am glad to, and I appreciate that question as well.

Certainly the reason that CFATS exists is to protect our communities, to protect the American public from the threat of terrorist attack on facilities that might cause a release of a chemical into a surrounding facility or the theft or diversion of a chemical to be deployed in an attack offsite, away from the facility.

And so we absolutely prioritize getting information to those who are charged with protecting those communities, so law enforcement, first responders, emergency planners. We have done extensive outreach with local emergency planning committees to ensure that they are aware of the CFATS program and, again, to share with cleared members of those communities, those who do have that need to know, sensitive information on CFATS facilities.

Ms. Blunt Rochester. I think that is part of the challenge, is defining need to know and who needs to know. And you talked about the shared commitment, and I know you just referenced many stakeholders. But one of my questions is, how do you balance that, not just the need to know for law enforcement but community advocates?

And could you tell us if you have any plans to increase those in affected communities in the planning process?

Mr. Wulf. Yeah. So we certainly include within the realm of those who have a need to know emergency planners who plan on behalf of those local jurisdictions for emergencies. And within the CFATS program, within our 18 risk-based performance standards, we have one, RBPS 9, focused on response.

And with respect to release facilities, facilities that pose a threat of release of a chemical into the surrounding community, one of the requirements we place on covered facilities is a requirement to reach out to local communities, to members of the public, to

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ensure that they have awareness of shelter-in-place protocols and that sort of thing. So I think that is an important way in which we engage the community within CFATS.

Ms. Blunt Rochester. I am currently working on legislation that will focus on community notification, and so we would love to follow up on this conversation.

You know, we talk about need to know, and I think it is really important to drill down deeper. Some of the testimony that may be coming later references the fact that sometimes communities are confused and things are not clear to them. And so I think, as we move forward, if we can have some dialogue about that.

And I thank you.

And I yield back my time.

Mr. Tonko. The gentlelady yields back.

The chair now recognizes Representative Johnson for 5 minutes.

Mr. Johnson. Thank you, Mr. Chairman.

And, Mr. Wulf, thank you for being here again today to talk about this very important program. You know, it is imperative that we all understand this program and especially understand the impact that the proposed changes in H.R. 3256 will have on CFATS. We can't produce a bill that creates unintended consequences. Nobody wants to do that. So your participation is very much appreciated.

A topic at our last CFATS hearing was improving training for compliance inspections and enforcement. Can you briefly tell us what steps DHS has taken to improve in this area?

Mr. Wulf. Sure, and I am glad to. I appreciate the question.

So we very highly prioritize training for our workforce. We continue to operate, you know, a robust training program that includes basic training for all of our new

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inspectors. It includes advanced training for our inspector cadre on topics such as cybersecurity, on topics such as the Personnel Surety Program.

And, more recently, we have initiated -- or we have established a corps of senior inspectors across the country. So these are folks who are in place to provide not only on-the-job training for our inspectors, to serve in sort of a mentorship role, but to focus on building and ensuring that we have a consistent approach as we work with facilities across the country.

And on that front, as well, we have recently established an audit program. So we are internally looking at our own actions, we are auditing our inspections, we are generating best practices to share among and across our inspector corps, and, you know, identifying areas where we may need some improvement.

Mr. Johnson. Okay. All right.

Does DHS have minimum qualification requirements for inspectors to demonstrate their knowledge and understanding of the facilities they encounter and relevant guidance on enforceable requirements?

Mr. Wulf. Absolutely we do. So those inspectors, you know, need to get through the basic and advanced training. There are exams at the end of the training. There are basic requirements to be selected, to become a chemical security inspector.

And, you know, we have, as a result, a very talented workforce. We have folks with vast experience across military, law enforcement, chemical industry --

Mr. Johnson. Yeah. Let's dig into that a little bit, because we have talked about training, but what types of professional development exists for these auditors and inspectors to stay proficient on industry, you know, new developments and that kind of stuff?

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Mr. Wulf. So there is that on-the-job training, that sort of internal training. But we ensure that our inspectors are active members of relevant associations and have access to those resources.

So I, earlier this week, was at the annual Global Security Exchange put on by the American Society of Industrial Security. So we have membership for all our inspectors in that organization. They are all part of the local chapters, able to be part of that network and able to be plugged in and to stay on the leading edge of evolving --

Mr. Johnson. Are there continuing education requirements or anything like that? Do you require them to go to any kind of seminars in their specific areas of concentration?

Mr. Wulf. Yeah. We manage that internally. So we --

Mr. Johnson. Okay.

Mr. Wulf. -- develop training on, for instance, advanced cybersecurity and require that members who have the sort of certification to engage with the more complex cyber cases --

Mr. Johnson. Okay. All right.

And I know this has been touched on a little bit already. You know, some people argue that greater public sharing of chemical vulnerability information is necessary for communities to be better protected.

And I know you know that CVI is used to protect information developed under CFATS regulations that relate to vulnerabilities of high-risk chemical facilities that possess chemicals of interest for terrorist attacks.

So, Mr. Wulf, is it wise to have CVI publicly available?

Mr. Wulf. No, I do not believe it makes good sense from a security perspective

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to have CVI information, most sensitive information about high-risk chemical facilities available to members of the general public.

Mr. Johnson. Okay. All right.

Mr. Chairman, I yield back an entire 8 seconds.

Mr. Tonko. The gentleman yields back.

The chair now recognizes the chair of the full committee, Representative Pallone, for 5 minutes.

The Chairman. Thank you, Chairman Tonko.

The CFATS program is different from other regulatory programs overseen by this subcommittee, and it is different because it is implemented by your department rather than the EPA and because it does not have the same public recognition as landmark environmental laws that protect the public from contaminants in our air, our drinking water, our soil. And while this program is just as important to keeping the public safe, it is far less accessible and transparent to the public than other programs.

And when we reauthorized the program in 2014, the law included a requirement that the Department prepare an outreach implementation plan for stakeholder engagement. You published an outreach plan for fiscal year 2019, so I wanted to ask a few questions about that.

First, how have you engaged workers and their representatives under the outreach plan? And what mechanisms are in place to ensure that employees play a role in the implementation of CFATS?



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[11:00 a.m.]

Mr. Wulf. So I appreciate that. We certainly, as we conduct outreach -- and we very much prioritize outreach to all of our stakeholder communities. We think awareness of the CFATS program is very important to its success. We include in that outreach, efforts to maintain open lines of communication with labor organizations at the national level. And on a facility-by-facility basis, you know, we require that facilities, as noted in the existing legislation, to the greatest extent practical, engage employees with relevant security-focused expertise in developing their site security plans, and that certainly includes employees of bargaining units with the relevant expertise at those facilities.

So, as our inspectors go out and conduct inspections at those facilities, compliance inspections at those facilities, they are talking to employees; they are talking to members of the relevant bargaining unit about their role in the security plan, about their role in the facility's security --

The Chairman. And what about community groups and community members around the regulated facilities, does the Department engage them as well?

Mr. Wulf. So we do. And we -- within CFATS and with respect to facilities that pose a threat of release, as I mentioned a little earlier, we require facilities to do that community outreach to discuss things such as shelter-in-place protocols. And, you know, we are engaged. I have personally participated in community meetings with members of the community who live in areas close to CFATS-covered facilities. And, you know, we strive to be as open and transparent as we possibly can be, recognizing, of

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course, that this is a security-focused program and we want to strike the right balance between sharing information with those who have that need to know and keeping that information away from those who would do us harm.

The Chairman. I have got to get to the climate issue, but can I just ask about Native American Tribes, are they involved in developing and implementing CFATS?

Mr. Wulf. Yeah. Absolutely. And one thing I neglected to mention in my response is that we have very much prioritized outreach to local emergency planning committees, so more than 800 of those committees in the last year and, as well, Tribal emergency response commissions. So absolutely included in that mix and, you know, very important that we get the word out about CFATS to those communities.

The Chairman. I mean, obviously I want to make sure all stakeholder voices are heard, and I find it -- it bothers me when the Department talks about the stakeholders but seems to be referring to the regulated facilities because we do have to hear from the public. So I appreciate what you said.

I just wanted to spend a minute on the serious concerns posed by these facilities because of climate change and increasing extreme weather. Can you tell me how many CFATS facilities approximately are vulnerable to extreme weather events?

Mr. Wulf. I think you could argue that, you know, that we are all potentially vulnerable to weather events.

The Chairman. Okay. And when Hurricane Harvey struck Houston, historic flooding impacted chemical facilities across that region. At one facility, the Arkema plant in Crosby, the flooding disabled all the control measures in place to contain their dangerous chemicals because they all depended on backup generators below the water line. Can you tell me how many CFATS facilities approximately have evaluated how their

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security systems would fare in an extreme weather event and then, I guess, also how many facilities have provisions in their site security plans to ensure that their target chemicals remain secure even in extreme weather?

Mr. Wulf. Yeah.

The Chairman. You only got about half a minute.

Mr. Wulf. I will take my best shot at it.

The Chairman. All right.

Mr. Wulf. You know, so CFATS, which is focused, I think appropriately, on the security of high-risk chemical facilities, you know, includes provisions to ensure that security systems are appropriately redundant, that there does exist backup power for, say, closed-circuit TV cameras and other security systems. So I would say that, you know, all of our CFATS-covered facilities have had that discussion and have put in place those sorts of redundancies, that, although put in place for the CFATS antiterrorism, security-focused purpose, have ancillary benefits when there is a weather event.

The Chairman. All right, thank you.

Mr. Wulf. Of course.

The Chairman. Thank you, Mr. Chairman.

Mr. Tonko. The chairman yields back.

The chair now recognizes Representative Duncan for 5 minutes.

Mr. Duncan. Thank you, Mr. Chairman.

Back in 2014, when the CFATS was authorized by Congress, I sat on the Homeland Security Committee, so I remember the debates back then. Also, sitting here, listening to the conversations this morning, on the 18th anniversary of the 9/11 terrorist attacks on our country, I can't help but think about why the Department of Homeland Security

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was stood up in the first place, and that was because we had a lot of agencies at the Federal Government working independently, sharing -- or not sharing -- information, stovepiping of that information, protecting their turf, their fiefdoms, and so we decided to put the security concerns of our Nation into one department, the Department of Homeland Security, to focus on areas that need to be protected and hedged against terrorist attacks of the future. I think protecting our chemical facilities that could be vulnerable to terrorist attacks is important. We talk with a lot of chemical companies in our State about these issues and did back in the early 2011, 2012, 2013, 2014, before CFATS was passed.

Mr. Wulf, I think there is an importance of maintaining a focus on site security. EPA plays a role when there is a chemical spill. OSHA plays a role when there are work-site accidents or sets forth guidelines for the protection of the employees at facilities around the country. That is their role. That is their mission -- safety and hazard protection in the workplace and environmental protection if there is a chemical spill or the possibility of a chemical spill, putting guidelines in place to keep railcars or chemical facilities, 55-gallon drums from being subject to spills and contaminating the environment.

The Department of Homeland Security has a mission, and that is to keep me and you, my fellow Americans, safe from terrorist attacks. That is their role. That is why they were stood up. But now you want to bring two more agencies into that role, and I am fearful that we have gotten away from the lessons learned after 9/11. And that is, this stovepiping of information, the failure to share information between agencies because of turf battles. Come on, folks; 18 years ago, we learned these lessons. We are going to talk about climate change with regarding to chemical safety. My gosh, we

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are talking about keeping us safe from terrorist attacks.

Mr. Wulf, I appreciate you being here, your perspective. From your perspective at DHS, why is it so important to avoid diluting the CFATS program's mission?

Mr. Wulf. And I appreciate the question. And, you know, we feel it is important to retain a focus on security. That is our mission at the Department of Homeland Security.

Mr. Duncan. You are not trying to protect your turf at Homeland Security, are you?

Mr. Wulf. We are not.

Mr. Duncan. You are trying to protect Americans?

Mr. Wulf. Absolutely right. It is an antiterrorism program. The threat is as real and as relevant as it ever has been. It is as high as it has ever been from a chemical-terrorism perspective. It continues to evolve into, you know, realms such as unmanned aircraft systems, cyber attacks, and insider threat, and beyond, and I feel as though we do need to maintain, within the CFATS program, a laser focus on security. And with CFATS, we are talking about America's highest risk chemical facilities. It is a targeted program, I think appropriately so, and it has been a successful program, so we do not want to take our eye off that ball.

Mr. Duncan. I appreciate that. How is further expanding the program into environmental and worker space -- safety space deviating from the CFATS mission?

Mr. Wulf. So CFATS is a security program. So the 18 risk-based performance standards are focused on securing facilities against terrorist attacks. As I noted a few minutes ago, there are ancillary benefits in the -- you know, in terms of reducing risk in weather scenarios, but, you know, our 150 chemical security inspectors are security

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professionals. They are trained and well equipped to work with facilities to put in place security measures, and that is what our program is here to do. It is a small program, but it is a successful one.

Mr. Duncan. Yeah, well, I thank you for that. And I just urge us to keep our eye on the ball and understand, again, why the Homeland Security Agency was stood up -- to protect us against terrorist attacks, not to protect us against chemical spills, accidents in the workplace, whatever. We have agencies to deal with that. This is about protecting the chemical facilities from terrorist attacks. We are reminded on the 18-year anniversary of 9/11, we ought to keep our eye on the ball to keep America safe. With that, I yield back.

Mr. Tonko. The gentleman yields back.

The chair now recognizes Representative Soto for 5 minutes, please.

Mr. Soto. Thank you, Mr. Chairman.

Acting Deputy Assistant Director Wulf, how far along are we on securing our chemical facilities since the beginning of 2007 through now?

Mr. Wulf. We are well along, and I think in a very good place. As discussed earlier, we eliminated that backlog of site security plan reviews and approvals, and we are very much in sort of steady state for the programs. So the vast majority of inspections we are conducting across the country are the post site security plan approval, compliance inspection variety of inspections, and I will say those inspections are going well. You know, on occasion, issues are noted, but they are typically very quickly resolved. We have tremendous commitment. We have tremendous buy-in across our industry stakeholder community, and I can tell you absolutely, those high-risk chemical facilities, those 3,300 or so, are hardened against terrorist attack.

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Tens of thousands of security measures have been put into place at those facilities, and on average, a CFATS-covered facility has increased security to the tune of 55 percent from the point at which the facility enters into the program to the point at which I sign their site security plan approval, and they enter into that regular cycle of compliance inspection activity.

Mr. Soto. So, just so we are clear, all major chemical facilities in the Nation now are under this purview and are being maintained and get continual inspections?

Mr. Wulf. So CFATS is a targeted program, and I think that is appropriate. We are focused on the highest risk facilities. So about 30,000 facilities across the country have recognized that they have threshold quantities of CFATS chemicals of interest and have submitted what we call a Top-Screen report to initiate the risk-assessment process through which we determine which facilities are at high risk.

So about 10 percent of facilities are determined by us to be at high risk of terrorist attack or exploitation. We have put those facilities into risk tiers, tiers 1 through 4, highest of the high risk, to lowest of the high risk but still high risk. And it is with those facilities that we work to develop site security plans and to put them through the regular cycle of compliance inspection activity.

I noted earlier that we have those other 30,000 facilities out there. We would like very much to work with those facilities as well on a voluntary basis, you know, at those facilities' complete option, not on a regulatory basis, not extending the regulatory requirements to those facilities, but being able to lend a helping hand, to consult on potential security measures, to consult regarding potential vulnerabilities. So I think that is an important next step for us, from a chemical security perspective. But we are in a very good place with respect to those high-risk chemical facilities.

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Mr. Soto. In the proposed legislation, subsection F, it requires the Department of Homeland Security to share more information with State and local emergency officials. And, you know, it has been 18 years since the 9/11 terrorist attacks. I have a first responder who was -- Vivian Rodriguez, in my own office who was there responding to that. We have a lot of retired NYPD in central Florida. I think that shouldn't surprise anybody. I have heard firsthand that they were told that the air was safe after the attack, and we saw obviously a large loss of life because government agencies said that all first responders were safe during the cleanup. So, with this, with the current law and with the new proposals, Homeland Security and other agencies responsible, should a chemical facility, God forbid, be attacked, they would be working with our local officials to let them know whether the air was safe, let them know whether the water around and under the facilities were safe, so we won't have this happen again. Is that fair to say given the current law and the reforms in this bill?

Mr. Wulf. So, you know, my sense is that those are areas within the domain of our friends at EPA.

Mr. Soto. But Homeland is supposed to be the point on a lot of these things, so you would be working with the EPA. So would this bill help make sure that our first responders and others would be told if the air wasn't safe to breathe or other aspects, given that you all are there to coordinate when we have a terrorist attack among the agencies?

Mr. Wulf. Yeah, I would have to take a closer look at the bill. My sense is that it doesn't contain provisions that would do that, with respect to our security-focused antiterrorism program, but I will say that within the CFATS program, we continue to prioritize that outreach, we continue to prioritize sharing of information about



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CFATS-covered facilities with those community -- with those emergency planners, with law enforcement, with first responders who are charged with protecting the public.

Mr. Soto. Well, obviously, we never want that to happen again, so a big issue, we hope to hear back from you soon on that.

Mr. Tonko. The gentleman yields back.

The chair now recognizes Representative Rodgers for 5 minutes, please.

Mrs. Rodgers. Thank you, Mr. Chairman. I want to thank both the panels for being here today.

Securing our critical infrastructure from terror attacks is vital, and we are especially reminded of that today, on this important anniversary, 9/11. The CFATS program has been instrumental in ensuring chemical facilities at risk of terror attacks are protected. As we consider reauthorization of this crucial program, I am interested in making sure we are particularly focused on ensuring DHS can effectively implement its core mission under this program -- protecting our vulnerable chemical infrastructure from acts of terrorism and intentional attacks.

Mr. Wulf, last June, you appeared before us for 3 hours to discuss DHS' efforts to correct the CFATS program-identified deficiencies. Have any new program deficiencies been discovered, and what are you doing about them?

Mr. Wulf. Thank you for the question. So, recently, well, within the last couple of years, GAO conducted a comprehensive review of the CFATS program. It had only a couple of recommendations, noting broadly that the program has been successful, that we have made -- had made significant, significant improvements and really were clicking on all cylinders. The couple of recommendations focused on defining metrics for success, how we could measure the effectiveness of the program and the reduction in

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vulnerability of facilities.

And we took that on and we are able now to measure the extent of improvement in a facility's security posture over the course of the program, and that is that 55 percent average improvement in security at CFATS-covered facilities.

The second finding was focused on outreach to local emergency planning committees, and we undertook to redouble our outreach efforts in those regards, reaching to more than 800 LEPCs across the country, and actually hit within the last year or so local emergency planning committees for all counties that have five or more CFATS-covered facilities, and over the course of the program's history, literally thousands and thousands of outreach engagements with local emergency planning committees.

No other deficiencies have been identified. As noted, we have addressed, confronted head-on areas where we thought improvement was necessary. We retooled that risk-tiering methodology. We eliminated that site security plan review and approval backlog. We are in steady state for the program. We are conducting inspections that are going well.

The facilities covered under our program are really and truly hard targets and owes very much to the hard work not only of our dedicated team, but companies across the country that have embraced the program and that have put in place CFATS-focused security measures.

Mrs. Rodgers. Thank you. So what type of quality control has been established to catch these problems earlier on in the future?

Mr. Wulf. One of the things we have done is to put in place an internal audit program. So we are sending some of our own senior personnel along on inspections to audit them and to identify where issue -- you know, in the event issues arise, in the event

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there are things we can be doing better, to address those, and to identify where things are going well, and to ensure that we are able to foster consistency on a national basis across our 10 regions so that facilities in California experience a CFATS inspection the same way as facilities in New York. So we have done that. We have put in place a cadre of senior inspectors who are also charged with, on a day-to-day basis, ensuring that we are acting consistently across the country and providing on-the-job training to our inspectors to ensure that the latest and greatest in terms of program guidance, policy guidance, is disseminated and taken in across our workforce.

Mrs. Rodgers. Okay. Earlier this year, Congress narrowly avoided having the authority for the entire CFATS program disappear. Previously, the CFATS program had been operating on a 4-year authorization. What is the difference between managing a program with a very short authorization and one with a longer lead time?

Mr. Wulf. Thank you. I guess I have done both, and I will say that when we are on a short-term situation -- and you could argue that this 15-month extension is sort of that -- our team spends a lot more time up here with you all, focusing on getting long-term reauthorization. But, substantively, long-term authorization offers us a stability that is so important for moving the program forward. You know, it is the stability that enables us to make improvements, that has enabled us to do things like enhance the risk-tiering methodology and eliminate that backlog and put in place online systems that reduce burden, among many, many other things. It provides certainty for our industry stakeholders as they think about making capital investments in security. It sends a message to those who might seek to avoid their obligations under CFATS, that the program isn't going anywhere, that it is here to stay, and it is super helpful from a morale standpoint in terms of our ability to recruit and retain the best and the brightest.

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Mrs. Rodgers. Super. Thank you. Thank you for your leadership.

Mr. Wulf. Of course, and I thank you.

Mr. Tonko. The gentlelady yields back. The chair now recognizes Representative Ruiz for 5 minutes, please.

Mr. Ruiz. Thank you very much, Mr. Chairman, for holding this hearing on such an important topic.

Mr. Wulf, in your testimony you talked about the rapidly changing threat environment that sensitive chemical facilities are facing. One unique aspect of that changing landscape I would like to touch on is cybersecurity. You see, we think of threats in terms of physical attacks, leakage, thefts, assaults, vandalism, but in the digital age that we live in, bad actors armed with a keyboard can cause extremely high levels of damage or act as an accomplice to those who may be seeking to gain access to harmful chemicals. Can you give me the worst-case scenarios in one of these facilities where a cybersecurity vulnerability manipulation attack, and what can it pose to the facility and to the surrounding communities?

Mr. Wulf. Yeah. I mean, I suppose that in the worst-case scenario, where a facility has cyber systems that are, you know, pretty fully integrated with its industrial control systems, with its chemical process systems, that a, you know, cyber attacker could work to manipulate those processes potentially causing a release of chemicals. You know, where cyber systems are integrated with business process systems, you know, a cyber attack could seek to divert a shipment of chemicals or something along those lines.

Mr. Ruiz. In the required reporting of vulnerability assessments in site security plans, is cybersecurity specifically a reporting requirement for those facilities?

Mr. Wulf. It is. Cybersecurity comprises one of our 18 risk-based performance

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standards. The CFATS program, I think, was very much out front with respect to cyber security. Our risk-based performance standard 8 is focused on cyber. Our inspectors engage in discussion during inspections and in the process of working with facilities as they develop their site security plans --

Mr. Ruiz. One of the biggest concerns that we have as a Nation is a lack of cybersecurity experts to fill those spots. There are studies that have shown that we have a cybersecurity shortage in the workforce, and so we are looking into ways that we can help beef that up.

Let me talk to you about another issue that has been mentioned by Ranking Member Pallone in terms of consulting with the surrounding communities. The majority of these locations are around communities, like you said, that are minority or underserved, and there is a quote here from the Environmental Protection Agency that says, catastrophic accidents at chemical facilities, historically about 150 each year, can result in fatalities, serious injuries, evacuations, and other harm to health and human health. We heard earlier that 134,000 people live around those areas. This is particularly concerning to me because this is an environmental-justice issue.

So you mentioned earlier that you consult with surrounding communities. I would like to go a little more specific in that. How do you do it? How do you decide with which community, when, how frequent, and with who do you consult with? Give me an example.

Mr. Wulf. Yeah. So an example would be any one of the thousands of outreach engagements we have held with --

Mr. Ruiz. What are those outreach engagements? Is it a newspaper article? How do you engage specifically?

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Mr. Wulf. So it will be plugging into a, you know, in person, to a local emergency planning committee meeting and talking there to --

Mr. Ruiz. Like with who? Because oftentimes in these underresourced communities, rural areas, they don't have the technical assistance. So who exactly are you reaching out to? Are you reaching out to the city mayor? Are you reaching out to the environmental justice community stakeholders? Who exactly and how are you doing it? See, the problem is that we have learned from different examples that the Federal Government oftentimes has a check-the-box kind of attitude, where if they send a letter to somebody that might not have actual connections with the community, they have checked the box and say we have engaged. But we are trying to redefine what meaningful engagement, meaningful consultation is, so that communities actually have a voice and a say and a participation to help you mitigate risks. And, also, if there is a risk, who is responsible for cleaning it up? Is there any provision where the community can go to the chemical facilities and ask for compensation for the environmental or health damage that can result from these leaks, potential leaks?

Mr. Wulf. Yeah, so I would say there is a lot to unpack there, but we certainly do not pursue a check-the-box approach to outreach engagement with communities and local emergency planning committees in particular. So we send inspectors who work in those communities, who work in those regions to engage personally. And those LEPCs can include not only emergency responders from the community, law enforcement, and other, but members of the public as well, the news media in some instances. So we are out there in person, and we have made that a very high priority.

Mr. Ruiz. At the next panel we have some environmental justice stakeholders, and I am curious to see what they say about that as well. Thank you.

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Mr. Wulf. Of course.

Mr. Tonko. The gentleman yields back.

The chair now recognizes Representative Flores for 5 minutes, please.

Mr. Flores. Thank you, Mr. Chairman.

Chairman Tonko and leader Shimkus, we appreciate you holding this important hearing today.

Mr. Wulf, thank you for appearing again today and welcome back to the committee.

Reauthorizing CFATS is important to me and to my district, which includes the community of West, Texas. Since our last hearing in June of 2018, I am pleased to report that we were able to extend CFATS through April 2020, ensuring that the program does not expire as we work on a long-term solution. And as you have heard earlier, I am among the group that has strong concerns regarding the recent partisan bill that came out of the Homeland Security Committee. That said, I am hopeful that we can still work together to find consensus on a bipartisan bill that can also pass the Senate and be sent to President Trump's desk for signature. I would like to thank all of the witnesses on both panels for providing their perspectives.

Mr. Wulf, questions about the personnel surety or the identity-verification processes against the terrorist screening base have constantly been an issue with CFATS. Now that you have finished with the highest risk, high-risk facilities, or tiers 1 and 2, DHS is now implementing these requests at the tier 3 and tier 4 facilities. How is this new universe of facilities different than the highest risk facilities in terms of sizes and challenges?

Mr. Wulf. So I appreciate that question, and I would say the biggest difference is

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in the size of the population. So tier 1 and 2 facilities with which we have worked over the last 3 years to implement terrorist-ties vetting, pose about 10 percent of our regulated population. But the other 90 percent falls within tiers 3 and 4. So that is about 3,000 additional facilities with which we will be working over the next 3 years to ensure that -- and I think this is important -- that they know and have the assurance that those who have access to their facilities, to those high-risk chemical facilities and the critical assets on those facilities, have been vetted for terrorist ties.

Mr. Flores. Okay. As you know, you had to get through the tier 1 and 2 facilities and a backlog build-up. You were able to resolve the backlog with respect to personnel surety verification. How does DHS intend to expand the personnel surety process to the tier 3 and tier 4 facilities without developing another critical backlog?

Mr. Wulf. Our plan is to do this incrementally, to do sort of a -- to take a phased approach, and to work with between 80 and 85 companies -- and 85 facilities on a monthly basis to talk them through their options for complying with the terrorist-ties vetting piece of our personnel surety risk-based performance standard. We have the capability to do this. We have the capacity to do this. We anticipate working through the tier 3 and 4 facilities within the next 3 years.

Mr. Flores. Let's assume that the worst case developed, and we hope -- all of us hope it doesn't. And I know you will be committed to not having this happen. But let's assume that a big backlog did develop. What accommodations should be made to avoid jeopardizing the entire CFATS program if that backlog develops for the tier 3 and tier 4 facilities?

Mr. Wulf. Well, I think that in going in a phased fashion, we will avoid the prospect of a backlog. But if we were to find ourselves with a backlog, we could -- we



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would have the flexibility to ratchet back a little bit, but I am very confident we will not get a backlog in the personnel surety arena. And we are going to work with facilities, you know, those 80 to 85 a month. We are going to be sensitive to the operational needs of facilities, particularly where we have companies that have multiple CFATS-covered facilities. We don't want to hit them all at the same time with these requirements. So we have and expect to continue to work very successfully and cooperatively with the facilities as we move through the personnel surety process.

Mr. Flores. Okay. In an industrial-accident context, the EPA is required to consider worst-case scenarios from a community, health, and welfare perspective. When looking at CFATS for tourism purposes, how does DHS evaluate the communities surrounding high-risk facilities like schools, hospitals, and population density?

Mr. Wulf. So we look at the entirety of the surrounding population. We model that based on potential directions of prospective plumes of released chemicals. We evaluate it with respect to daytime and nighttime populations, and that certainly includes those who are found in schools, those folks who are in hospitals.

Mr. Flores. Okay. Thank you for your important feedback, and I yield back the balance of my time.

Mr. Tonko. The gentleman yields back.

The chair now recognizes the Representative from Michigan, Representative Dingell, for 5 minutes, please.

Mrs. Dingell. Thank you, Chairman Tonko, and I thank you for having this hearing today.

And, Mr. Wulf, I thank you for your work, because it really is very important, and I do hope we are able to find some bipartisan common ground on this. And it is

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particularly fitting that we are doing this on 9/11. And I come from Michigan, which actually my district has a number of those chemical facilities or borders on them, and I suspect I am probably one of the only people that -- it was 2001, but earlier that year that I had a funeral in Riverview, had the explosion, and we went through an evacuation. So I remember the fear in that community -- and it was an accident. I don't even know if you are familiar with it.

So Michigan is one of the States that has got a lot of chemical facilities, and we have been hit hard by the PFAS contamination, so I am going to focus on that today. And I have got questions about the use of these chemicals in what we are doing to notify people in the area, and how quickly are we developing other replacements. I have spent a lot of time on this in the last month during the August recess talking to people, and it is clear when you have high-intensity fires, et cetera, that PFAS right now, foam, is one of the things that can deal with it the most effectively, but are there other things that are available? When the Intercontinental Terminals Company facility caught fire in Deer Park, Texas, in March of this year, PFAS firefighting foams were used to stop the blazes. When the EPA tested the nearby Galveston Bay, they found PFAS contamination at about a thousand times higher than it is currently allowed in drinking water. And while the ITC facility is not a DH facility -- it is a maritime transportation security facility -- it is emblematic of the larger concerns around chemical facility safety and the use of inter -- foam, an emerging contaminant we have been talking about on PFAS. So, Mr. Wulf, I wanted to know what you have done to update your instructions to CFATS participants to limit the use of PFAS foams to fight fires at covered facilities, and are there alternatives, and are we moving fast enough to develop safe and effective alternatives?

Mr. Wulf. Yeah, so I appreciate that question, and I think certainly a significant

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concern. You know, I think that is something I am going to have to take back and reach back to you upon.

Mrs. Dingell. I think that is really important. So, as you are doing this, do you know if you have got a -- DHS has a plan to phase out firefighting foams as part of your site security plans?

Mr. Wulf. I am going to have to get back to you on that as well.

Mrs. Dingell. So let me keep asking questions that I -- this is just real because I mean, I am living -- Michigan has got more contaminated PFAS sites than any State. Quite frankly, I don't think we know whether we have got more than anybody, or we have tested more than any other State. So I suspect we are going to start to see this in a lot of other States. We just know about it.

But when a chemical security inspector enters a facility for compliance, are they looking for or documenting how much PFAS chemicals are at the facility?

Mr. Wulf. So those inspectors -- and I appreciate the question -- are looking across an array of risk-based performance standards and assessing the extent to which a facility is complying with the security measures it has promised to put into place within its site security plan. And those include measures related to incident response. So to the extent specific chemicals are used in that response, they would be looking at that.

Mrs. Dingell. So, when you get back to me, is there a way to use safer chemicals or chemicals in lower thresholds and limit the need for PFAS firefighting foams? And are you working with the Department of Defense, who has contributed to this, to also develop those foams? I know you got to get back to me. But at the end of your testimony -- and I have only got 25 seconds -- you say DHS is focused on ways to enhance and evolve the CFATS program. You also say you are taking a deep dive into efficiency

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and enhancements to CFATS. Does that include PFAS chemicals?

Mr. Wulf. You know, it is not something that we have looked at, but --

Mrs. Dingell. I am out of time, but if you lived in Michigan, and the one that I lived through, the spill closed, but I still have -- my down rivers have lots of facilities. So we care, and so does -- my whole district does but in different ways. So thank you for the work you do, but this one matters, too. Thank you.

Mr. Tonko. The gentlelady yields back.

The chair now recognizes Representative Carter for 5 minutes, please.

Mr. Carter. Thank you, Mr. Chairman.

And thank you, Mr. Wulf, for being here, this is extremely important. We appreciate your participation in this.

I have had the opportunity during our August break, to visit a number of the chemical manufacturers in my district, and I have been very impressed. All of them are cooperative. They get it. They understand. They want to do what is right. What they don't want is just unnecessary changes that aren't really going to increase safety but instead just increase costs. And I noticed during your testimony that one of the things that you said was that, since you started the program, that there has been a dramatic improvement in the pace of inspections and reviews and approval. How has DHS done this? How have you been able to make this work?

Mr. Wulf. So, you know, I appreciate that question. We rolled up our sleeves. We looked at areas where we had bottlenecks in processes. We looked at areas where we felt as though we could do more to train our workforce, and we got to work. And I will say that a big part of being able to do that was that we enjoyed, beginning in December of 2014, the stability that came along with long-term authorization of the

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program. Before that point, we were sort of going from fiscal year to fiscal year through the appropriations process or, worse, from continuing resolution to continuing resolution. We didn't know whether, in the event of a funding hiatus, a government shutdown, whether the program would cease to exist for a period of time. So that was really no way to operate, but the stability that long-term authorization has afforded has really enabled us to make those key improvements.

Mr. Carter. It is my understanding that you had a GAO audit and that this led you to make some changes in your efforts, and I was just -- and also in risk-reduction metric, as well as enhancing outreach to local emergency planners. How have you done that?

Mr. Wulf. So, with respect to the metric, we have dug in and built a methodology through which we can assess the level of security at the beginning of a facility's entrance into the CFATS program, and the level of security increase that it has achieved at the point at which we get to approving the facility site security plan. And on average, facilities have shown a 55-percent increase in security between those two periods.

With respect to outreach, to local emergency planning committees, that has always been a priority of ours. We have redoubled our efforts over the last year or so and have personally engaged upwards of 800 separate, local emergency planning committees that represent the highest concentration counties -- of counties with the largest number of CFATS facilities found in them.

Mr. Carter. Would you describe your relationship working with the businesses as being good? I mean, do you feel like they are cooperating, feel like they are receptive?

Mr. Wulf. Yes, I absolutely would. You will hear from a couple of our industry

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stakeholders on the next panel. Industry, writ large, has embraced this program, has worked with us to help improve the program over the years. We could not -- we could not accomplish the chemical security mission without that level of commitment.

Mr. Carter. Okay. In my last minute and a half, I want to ask you specifically about some things related to my district. I represent the entire coast of Georgia, including two major seaports. Tell me what you would do differently, if anything, in the way of safety in the seaports, particularly when they are transferring the chemicals, if they are shipping them or if they are bringing them in, importing them?

Mr. Wulf. Yeah. So that is a good question, and we work closely with our friends in the U.S. Coast Guard who implement something called the Maritime Transportation Security Administration Program. So facilities that are on the water are regulated, from a security standpoint, by the Coast Guard, but sometimes there are facilities that are co-located. There may be a CFATS-covered facility that is in the midst of a MTSA facility regulated by the Coast Guard. And so we work hand-in-hand with the Coast Guard captain of the port to harmonize our activities in those areas and ensure that everything is covered from a security standpoint.

Mr. Carter. Okay. So it is the Coast Guard's responsibility when it gets to the port. What about the transportation from the port to the end user?

Mr. Wulf. So, if it is at a fixed facility, if it is sitting at a chemical distribution facility, for example, that facility will fall under, generally speaking -- unless it sits on the water -- the CFATS program, and we will work with that facility. Among the risk-based performance standards, among the security measures that will be in place will be measures related to the shipping and receiving of CFATS chemicals of interest. So we will work with those facilities as they put in place those measures. We will inspect

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against those measures when we go out for compliance inspections.

Mr. Carter. Absolutely. Thank you very much, and I yield back.

Mr. Tonka. The gentleman yields back.

The chair now recognizes the Representative from Colorado, Representative DeGette, for 5 minutes, please.

Ms. DeGette. Thank you so much, Mr. Chairman, and I am so happy you are having this hearing.

We have had a number of investigative hearings about the risk of chemicals over the years, and so looking at this legislation, it is really important. And I am glad to be here.

Mr. Wulf, I wanted to ask you about some of the facilities that are reporting. The EPA says that my home district -- I am like many of the members here; I have an urban district with a lot of facilities that manage hazardous material in Denver. And the EPA says Denver has 27 facilities that are managing enough hazardous material to be required to complete risk-management plans under the Clean Air Act, and it has 21 facilities that manage enough hazardous chemicals to be reporting under the Toxic Release Inventory. But Department of Homeland Security staff told my staff yesterday that only three facilities in my district are deemed high enough risk to be subject to the chemical facility anti-terrorist standards that are the subject of this hearing. So I am wondering if you can tell me what the difference is, why we would have all these facilities that have to have this other reporting, but yet only three that DHS has determined to be at a high enough risk.

Mr. Wulf. Yeah, no, I appreciate that question. So CFATS is a security-focused program, and it is focused on the highest risk facilities --

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Ms. DeGette. Right, I know that.

Mr. Wulf. -- and our antiterrorism security program, you know, means those facilities that, based on a number of different factors, are at the highest risk of terrorist attack or exploitation. So it may relate to the types and quantities and/or concentrations of the chemicals that may be of more or less interest to potential terrorists, adversaries. It may relate to the location of the facility in relation to populated areas. Those are a variety of the factors.

Ms. DeGette. I mean, I know what the standards are, but I guess my question is, do you know -- I mean, you may not know specifically about the first congressional district of Colorado. But does your agency review all of these other facilities that have these kinds of chemicals that have to do the reporting to determine whether they do meet that threshold or not?

Mr. Wulf. So, yeah, the sort of entry point for CFATS is the requirement to file a Top-Screen to initiate that risk-assessment process. So, you know, more than 30,000 facilities have initiated the process because they have one or more of our CFATS chemicals of interest at or above the threshold quantities or concentrations. And so, you know, we have tiered as being at high risk of terrorist attack or exploitation about 10 percent of those facilities. So it is very conceivable that some of those other facilities are among those 30,000 facilities that have --

Ms. DeGette. Right. They probably are.

Mr. Wulf. -- have filed Top-Screens.

Ms. DeGette. So they have been reviewed by your agency is what you are saying?

Mr. Wulf. Yes. We --



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Ms. DeGette. Okay. So --

Mr. Wulf. Likely, if they have threshold quantities of CFATS chemicals, it is likely that they have submitted a Top-Screen.

Ms. DeGette. So the other thing is the DHS people wouldn't tell us which three facilities were listed. Is there some reason for that?

Mr. Wulf. So, you know, certainly we strive to balance, you know, balance things on the information-sharing front, but I think we certainly can make that information available to you, yeah.

Ms. DeGette. Because what I am looking at is, in the First Congressional District, which, as I say, we have a lot of chemical facilities. You know, you have to balance between secrecy so that terrorists don't find out about it. You know, so I have to -- they will find out so the public knows what is in their neighborhood, and that is why I asked the question.

Mr. Wulf. Yeah, it is a balance.

Ms. DeGette. Okay. All right. So they will let me know.

Now, is it true that some facilities have minimized the inherent risk of their operations, for example, by reducing the storage of hazardous materials to the point where they are no longer considered high risk?

Mr. Wulf. It is true that thousands of facilities over the course of the CFATS program's history have reduced their holdings of CFATS chemicals of interest.

Ms. DeGette. And that would be in the public interest, I would think.

Mr. Wulf. We view that as a success of the program.

Ms. DeGette. Okay, great. Thank you.

Thank you very much, Mr. Chairman. I yield back.

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Mr. Tonko. The gentlelady yields back.

And we now recognize the Representative from Illinois, Representative Schakowsky, for 5 minutes, please.

Ms. Schakowsky. Thank you. Thank you so much.

I want to thank the chairman for calling this hearing, and also, Mr. Wulf, I want to thank you for returning to talk to our committee, especially on this day, on 9/11, about these critical programs. I also want to thank you for coming to Illinois last summer to present at DHS chem security talk that was held in Chicago, and at that event, you spoke about the importance of the CFATS program and the importance of taking the program on the road. And so I wanted to just ask you a bit about those sessions. First, are those sessions ongoing? Is DHS continuing to travel the country to bring important information -- that is how we viewed it -- about the CFATS program to people where they live?

Mr. Wulf. Absolutely, we are. And I appreciate the comment on the chemical security talks we held last year, one of those events in Chicago, one in Oakland, as well as one in Philadelphia. This year, we held a larger forum chemical security summit in New Orleans, and it is great to bring the entire extended chemical security community together to share information about CFATS, to discuss sort of hot topics, policy updates, those sorts of things, and certainly best practices for securing chemical facilities. So it absolutely continues to be a priority.

And on less of a big-splash level, we continue to prioritize getting out to local emergency planning committees, getting out to State-level industry associations to spread the word about the program and ensure that companies with facilities that have threshold quantities of CFATS-covered chemicals of interest know that they need to

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report those to us.

Ms. Schakowsky. Well, first of all, I wish you fun in New Orleans. I was just there for a conference. Had a ball. Anyway --

Mr. Wulf. It is a pretty fun spot.

Ms. Schakowsky. -- second -- yeah -- are there any efforts -- when you think about stakeholders, are there any efforts to make sure that some of the labor unions are involved in these sessions at all?

Mr. Wulf. Yes. We have a good relationship with the labor unions. You know, we certainly reach out across all stakeholder communities, and, you know, we hope that they will be part of sessions such as chemical security talks.

Ms. Schakowsky. Right. I think it is absolutely essential that these stakeholders have a role in ensuring the security of individual facilities and would like to ask a few questions about the experience of workers. So what requirements are currently in place to ensure that employees have a role in the development of site security plans at covered facilities?

Mr. Wulf. I appreciate that question, and I think employees now are very much involved in the development of site security plans. I think specifically -- and I think this is appropriate -- employees who have security-related expertise or roles in the security process. The current, you know, the current state of play is that there is a requirement that facilities, to the greatest extent practicable, involve employees in the development of site security plans, employees with that relevant security-focused expertise, and that would include employees at facilities that are covered by bargaining units, collective bargaining units.

Ms. Schakowsky. I think it is so important because it can differ from facility to

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facility, and the workers really know what is going on. Do you know if, are the workers allowed to pick their own representative when opportunities arise for worker input?

Mr. Wulf. I believe the situation is that, you know, the facility security officer determines which employees are best positioned to provide meaningful input to the development of a site security plan.

Ms. Schakowsky. Now, this is going to sound like a silly question. Do all employees at CFATS facilities know they work at a CFATS facility?

Mr. Wulf. So, you know, again, that is kind of where we get to the balanced -- striking the appropriate balance between sharing information with those who have a need to know it, and keeping sensitive information from those who might not have a need to know. So, at a CFATS-covered facility, all employees will be part of mandated training and exercise programs so that they are aware of how to deal with security at --

Ms. Schakowsky. And who to go to, right?

Mr. Wulf. Oh, yeah.

Ms. Schakowsky. Okay. Great. Thanks. My time is up. I appreciate you very much.

Mr. Wulf. Oh, thank you so much.

Mr. Tonko. The gentlelady yields back. Excuse me.

The chair now recognizes the Representative from New York, Representative Clarke, for 5 minutes, please.

Ms. Clarke. I thank you, Mr. Chairman, and I thank our Ranking Member Shimkus for convening this important hearing on how we can protect our workers and communities from the risk associated with hazardous chemical facilities. As a Member

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of Congress who sits on both the Energy and Commerce and Homeland Security Committees, this legislation is particularly important to me. Adding further significance is the fact that today is also the 18th anniversary of one of the most tragic days in our Nation's past, a day that me and my fellow New Yorkers still hold fresh in our memories.

Chemical facilities throughout our Nation, which serve a range of important functions, also pose many unique risks to our communities. It is our duty in Congress to ensure that the proper protections are in place to keep our constituents safe. While a major focus of the CFATS program is to safeguard chemical facilities against acts of terrorism, it is also imperative that we consider the multiple risks that the climate crisis presents to these facilities, their workers, and surrounding communities. Many CFATS facilities are situated in areas that are highly vulnerable to natural disasters. This is especially concerning when you consider the fact that climate change is already increasing the frequency and severity of extreme weather events, including major storms and floods.

Further concerning, although not so surprising, is the fact that low-income communities and communities of color are disproportionately located near these facilities, and, consequently, we are at greater risk of harm from potential disasters. Therefore, as we seek to better safeguard CFATS facilities from all risk, climate and otherwise, it is also important that we recognize this reality and ensure the vulnerable communities who are most impacted by these risks are also present at the table so that they can have a meaningful say in protecting their own futures.

Mr. Wulf, thank you for being here today to offer testimony on this matter. According to the EPA's Toxic Release Inventory, there are currently 408 chemical facilities in and around Brooklyn, New York, that handle toxic chemicals, and you don't need to

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look too closely into a map -- or at a map to realize that many of these facilities are located within or adjacent to high-risk flood areas. So can you please describe some of the major risks that CFATS facilities and their surrounding communities face due to flooding and severe storms?

Mr. Wulf. And I appreciate the question, appreciate the support for the CFATS program. Of course, CFATS is an antiterrorism program, focused on security, but weather events certainly pose a threat to all manner of facilities as well. And though I think it is important that we retain within the CFATS program our laser focus on antiterrorism and on enhancing security at facilities that are at high-risk of terrorist attack or exploitation, the measures that facilities put into place, redundant -- you know, redundant systems, emergency power to enhance their security, can have additional benefits in the weather-related realm.

Ms. Clarke. I think it was the Houston storm that we saw a horrible incident with a chemical facility. Have we learned anything from that event?

Mr. Wulf. So, you know, what we -- we do engage, in the event of a weather scenario, with our CFATS-covered facilities. We are in frequent, in constant communication with those facilities to assess their status, to talk about whether they have any unmet needs, and I will say that, you know, those facilities are very -- certainly very security aware, certainly very risk aware. And actually the recent hurricane scenario, Hurricane Dorian, we were in contact with one of our facilities in Florida that determined to make a risk-informed decision to move a railcar of potentially toxic-release chemicals off of an island and to an inland location.

Ms. Clarke. Let me ask, do you work with FEMA and EPA to coordinate your programs that deal with chemical facility management? And given the administration's

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proposed rollbacks to EPA's risk-management program, do you believe that the CFATS program can and should incorporate measures to enable more first responder, community, and worker engagement, that will help the facilities better prepare for and protect against natural disaster threats or chemical incidents?

Mr. Wulf. Yeah, so I think we continue to prioritize within the CFATS program today that outreach and engagement with the first responder communities, having been in person -- not myself -- but our team to over 800 local emergency planning committees over the course of the past year. So that certainly continues to be a priority. And, you know, certainly remain in contact and coordination with our counterparts at EPA and FEMA.

Ms. Clarke. Very well. Thank you very much for your response today.

I yield back, Mr. Chairman.

Mr. Tonko. The gentlelady yields back. That concludes our first panel.

I would like to thank Mr. Wulf for joining us today. Mr. Wulf, I ask that you respond promptly to any questions for the record that you receive from our members following this hearing. At this time, I ask that staff prepare the witness table such that we may begin our second panel shortly.

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RPTR JOHNSON

EDTR SECKMAN

[12:04 p.m.]

Mr. Tonko. Okay. We will resume with the second panel now to share their thoughts.

We will now hear from four witnesses. We will start with my left, with Mr. John Paul Smith, legislative representative for United Steel Workers.

Thank you for joining us.

Next to him we have Ms. Michelle Roberts, national co-coordinator of the Environmental Justice Health Alliance.

Thank you, Ms. Roberts.

And next to Ms. Roberts, we have Mr. Scott Whelchel, chief security officer and global director of emergency services and security for Dow Chemical Company on behalf of the American Chemistry Council.

Thank you, Mr. Whelchel.

And, finally, Mr. Matthew Fridley, cooperate manager of safety, health, and security, Brenntag North America, Inc., on behalf of National Association of Chemical Distributors.

We want to thank our witnesses for joining us today. We look forward to your testimony.

At this time, the chair will now recognize each witness to present 5 minutes' worth of opening statements.

Before we begin, I would like to explain the lighting system. In front of you is a series of lights. The light will initially be green at the start of your opening statement.



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The light will turn yellow when you have 1 minute remaining. Please begin to wrap up your testimony at that point. The light will turn red when your time has expired.

So, Mr. Smith, you may start. You have 5 minutes, please.

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**STATEMENTS OF JOHN PAUL SMITH, LEGISLATIVE REPRESENTATIVE, UNITED STEELWORKERS (USW); MICHELE ROBERTS, NATIONAL CO-COORDINATOR, ENVIRONMENTAL JUSTICE HEALTH ALLIANCE (EJHA); SCOTT WHELCHER, CHIEF SECURITY OFFICER AND GLOBAL DIRECTOR OF EMERGENCY SERVICES AND SECURITY, DOW, ON BEHALF OF AMERICAN CHEMISTRY COUNCIL; AND MATTHEW FRIDLEY, CORPORATE MANAGER OF SAFETY, HEALTH, AND SECURITY, BRENNTAG NORTH AMERICA, INC., ON BEHALF OF NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS.**

**STATEMENT OF JOHN PAUL SMITH**

Mr. Smith. Chairman Tonko, Ranking Member Shimkus, and members of the committee, thank you for the opportunity to testify today. I am here on behalf of the United Steel Workers International Union. Our union is the largest industrial union in North America and represents the majority of unionized workers in the chemistry industry.

Before coming to Washington, I worked in this sector for a little more than 10 years and then as a police officer for 4, where I received from basic homeland security training.

In the very southern tip of Illinois, near the confluence of the Ohio and Mississippi Rivers, sits a uranium conversion facility where I was fortunate to earn for my family and serve the local union in several capacities, including chairing the Health and Safety Committee.

This facility, currently idled, processes uranium later used in nuclear fuel. The

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facility housed large quantities of very dangerous chemicals, including hydrofluoric acid, sulfuric acid, liquid hydrogen, and potassium hydroxide. A release at the facility would have obvious catastrophic consequences. Worst-case-scenario models accounted for an affected radius that included several small towns and cities.

The facility is not covered by CFATS because it is regulated in part by the Nuclear Regulatory Commission. But the NRC does not regulate the areas of the plant where the vast majority of these chemicals are stored. Post-9/11, the NRC did issue a site security order and included the chemical storage in the restricted area of the plant, meaning everything inside the fenceline. The security order, however, did not require employee involvement, so the people most familiar working with the chemicals did not participate in the site security plan.

Most of the people I worked with have never heard of CFATS. Our union makes an effort to educate our members, provides training in addition to what they receive from employers, and has an annual health, safety, and environment conference that convenes as we speak.

Even with additional training and education, we have concerns that the CFATS program is widely unknown to our members and even more so to workers at nonorganized facilities that do not have the benefit of the additional resources the union provides.

We have tried to address this issue with the Department, but meaningful progress has not been made. This is one issue that can be addressed by Congress by requiring, as an initial step, a worksite poster at CFATS facilities and additional worker participation.

I know from my experience that every day our members manufacture and handle the most toxic and dangerous chemicals in the world. The knowledge and experience

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they have of these chemicals are invaluable. We know as much or more than anyone the hazards associated with these substances and the potential for damage to critical infrastructure, along with injury and loss of lives.

It is crucial that the CFATS include language requiring worker involvement in the site security plan and that workers are able to choose the person to best represent them. That representative should participate throughout all phases of security planning, implementation, and inspections.

Our members are tasked with dealing with minor accidental chemical releases, fires, and explosions on a more regular basis than most realize and with large-scale events, like the explosion and fire that happened on June 21st of this year, near HF Unit at the Philadelphia Energy Solutions refinery in south Philadelphia, where their quick, skilled actions saved the community from disaster.

Whether from unintentional incidents or intentional terroristic threats, our members know the security of the facilities they work in is of grave importance. Many of the refineries like PES, where our members work and live, that fall under the jurisdiction of the Marine Transportation Security Act, are exempted from the CFATS program.

We ask for the removal of that exemption and oppose any new exemptions. We are concerned about legislative proposals that exempt large categories of facilities and chemicals, such as explosives and mixtures.

Our union supports stronger language for whistleblower protections with a provision for remedy in the bill reauthorization. Notifying workers that are at a CFATS facility and have whistleblower protection should be a priority. Having a remedy process makes workers more comfortable reporting violations.

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The legislation should also encourage facilities to employ industry practices that reduce risk and eliminate hazards. There are facilities that have instituted controls that have inherently reduced risks, and those lessons should be shared for implementation across the industry.

Reducing or eliminating hazards has a far greater effect on protecting workers and communities and target reduction than adding fences, cameras, and guards. It is critical that relevant information be shared with local first responders, local officials, and unions. Workers in the public are important stakeholders in preventing and responding to incidents.

Our union opposes any legislation that takes the industry down a path of self-regulation. Congress has the opportunity to strengthen the security of our country's chemical facilities and make workers in our community safer by closing some of the gaps of the CFATS program and making sure the working people at these facilities have a voice that is heard.

Once again, thank you for the opportunity to testify.

[The prepared statement of Mr. Smith follows:]

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Mr. Tonko. Thank you so much, Mr. Smith.

And next we will hear from Ms. Roberts. You have 5 minutes, please.

#### **STATEMENT OF MICHELE ROBERTS**

Ms. Roberts. Thank you. Dear members --

Mr. Tonko. Ms. Roberts, can you just -- yeah.

Ms. Roberts. Sorry. My mic was not on.

Can you hear me now?

Thank you very much for having the opportunity to present before you today. It is very important because today I stand for the many communities that many people don't see, those who live in the shadows of these facilities.

My name is Michele Roberts. I am the national co-coordinator of the Environmental Justice Health Alliance for Chemical Policy Reform. EJHA is what we refer ourselves to be. I am equally an environmental scientist.

EJHA is a national collective of grassroots groups throughout the country working to achieve environmental and economic justice.

As recent industrial disasters in Wisconsin, as you heard, Texas, and others, Pennsylvania, illustrate, a major industrial chemical release, fire, or explosion can injure workers, endanger communities, and cause the abrupt closure of important industrial facilities.

While those specific incidents were not terrorism related, they show the serious vulnerability of facilities located in communities around the country. CFATS is a critical

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program to defend against these incidents. Reauthorizing CFATS represents an important opportunity to strengthen its effectiveness.

The existing statute must be improved in several areas. To name a few examples, it should include water treatment and maritime facilities, include clear protections against cybersecurity threats, and require that the Department of Homeland Security verify statements submitted by facilities that claim to no longer fall within the jurisdiction of CFATS.

In addition to those points, I refer you to a letter that we submitted to the committee from a coalition of health worker, environmental justice, and allied organizations by BlueGreen Alliance on August 23rd, 2019.

More broadly, environmental justice communities like those affiliated with EJHA have issues with the following areas of the current insufficient CFATS program. Frankly, the entire CFATS program is secretive and confusing. Even experienced advocates are sometimes unsure about aspects of CFATS. Because it is impossible to know for sure what facilities are even required to participate in CFATS, it is impossible for community members or advocates to fully understand the level of danger, planning, preparedness, or the lack thereof, et cetera, in their neighborhoods.

The best way to guess that a facility might be a CFATS facility is if it is an RMP, Risk Management Program facility, but that is not a sure thing.

The emergence of new technologies and cybersecurity threats, coupled with this administration's attacks on the other foundational policies and programs that protect workers and communities from catastrophic events at hazardous facilities, means that a really strong and important CFATS bill and program are more important now than ever.

The CFATS program is absolutely critical to protect the financial interests of these

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facilities, as well as the health and safety of their workers and the surrounding communities, particularly in the light of the total failure of the EPA's Risk Management Program to do so.

Further, we need CFATS program to reduce and eliminate potential terrorists. We need best practices information, and lessons learned should be shared and used to guide the standard setting for other similar facilities. We need CFATS program should account for overburdened communities and vulnerable populations. The CFATS program and site planning decisions absolutely must be more inclusive of and transparent to workers at CFATS facilities.

EJHA strongly supported and advocated for the 2017 modest, most deeply important improvements to the RMP rule. While the improvements didn't go far enough to be fully protective, they added critical elements that EPA is now trying to roll back.

Though not the subject of this particular hearing, we need each of the members of this committee to join us in strongly calling for EPA to fully implement the 2017 improvements of the Risk Management Program and additionally strengthen the CFATS program for those folks who I said languish in the shadows, the ones you don't see, until an explosion occurs. And then, unfortunately, we are seeing traumatized folks, who, by the way, are living in trauma daily not knowing who is actually thinking about them should there be explosion.

Thank you very much. We need a more protective bill for our people and for workers.

Thank you.

[The prepared statement of Ms. Roberts follows:]



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Mr. Tonko. You are welcome. Thank you, Ms. Roberts.

And now we will hear from Mr. Whelchel for 5 minutes, please. And welcome.

#### **STATEMENT OF SCOTT WHELCHEL**

Mr. Whelchel. Good afternoon, Chairman Tonko, Ranking Member Shimkus, and distinguished members of the committee.

My name is Scott Whelchel. I am chief security officer and global director of emergency services and security for Dow, a material science company headquartered in Midland, Michigan.

In addition to my role at Dow, I am currently vice chair of the Chemical Sector Coordinating Council. Prior to joining Dow, I had the privilege of serving as homeland security and emergency preparedness director for St. Charles Parish, Louisiana, a community with a nuclear power facility and over 20 other industrial sites.

In St. Charles, industry and government work together in an all-hazards and whole community approach to emergency management. While in this role, I was honored to be elected by my peers to serve as president of the Louisiana Emergency Preparedness Association.

I am also a member of the Security Committee of the American Chemistry Council, on whose behalf I am testifying today. And I hope to bring both the private and public sector perspectives to the discussion.

I want to thank you for allowing me to participate in this important hearing, especially on this solemn occasion of 9/11, and I am pleased to provide important input

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on the CFATS program.

Since its inception, CFATS has made many programmatic improvements. These include improved site security inspectors and inspections, risk-assessment processes, the security plan authorization process, and its collaboration with the regulated community and others.

CFATS inspectors' levels of expertise has vastly improved, and the program demonstrates broad consistency across regions in the application of that expertise.

CFATS has an effective model of centralized management and decentralized execution, which allows for headquarters and the compliance branch to resolve any confusion stemming from the variability and the interpretation of the CFATS performance standards. This consistency has brought trust.

CFATS and the regulated community have not benefited from the uncertainty stemming from short-term reauthorization. Longer authorization periods provide important stability for covered facilities to effectively plan for security investments as well as enabling DHS to more efficiently and effectively manage their program.

Given this, the ACC and its member companies see the value and the need for periodic congressional oversight and would not support permanent reauthorization.

It has been said that failures in security happen at the seams, the seams of people, processes, and policy. Given that, security risk is a function of threat, vulnerability, and consequence, it takes both industry and government and others to work together on each of the factors in this equation.

Therefore, it is imperative that DHS remains as transparent as possible regarding the specific factors driving the risk and resulting risk tier levels at facilities. CFATS should embrace the post-9/11 philosophy of need to know but responsibility to share.

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Having spent over 20 years in the intelligence community, I fully understand both sides of this equation and recognize the challenges inherent in sharing information that is sensitive or classified.

In that same spirit, industry must share all relevant information needed for comprehensive emergency planning with local emergency managers and response agencies. Not only is this already addressed in the CFATS risk-based performance standards, it is best covered by safety regulations overseen by the EPA and OSHA.

But even with those drivers, information sharing is only one step in the cycle. It is incumbent not only on industry to share but for emergency management officials to drive integrated planning, coupled with implementation of comprehensive and inclusive exercise and training strategies, to compliment the hazard awareness that comes with that information sharing.

In St. Charles Parish, both government and industry adhered to a set of mutually supporting obligations. As we sit here today, local and State emergency planners and other agencies receive chemical inventory data. This data in many States is available in digital form and can be immediately uploaded by those State and local agencies into CAMEO, or Computer Aided Management of Emergency Operations, to facilitate enhanced emergency planning efforts.

The CFATS program has made our industry, our communities, and our country more secure. CFATS will grow stronger by adopting the improvements outlined in the written testimony provided and through continued engagement of this committee to ensure the CFATS program stays on track.

The long-term security of our Nation is a goal and a commitment that we all share.

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On behalf of both the American Chemistry Council and Dow, I appreciate this opportunity to present our views on this important issue. I look forward to your questions.

[The prepared statement of Mr. Whelchel follows:]

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Mr. Tonko. Thank you, Mr. Whelchel.

And, finally, we will hear from Mr. Fridley. Welcome. And you are recognized for 5 minutes, please.

#### **STATEMENT OF MATTHEW FRIDLEY**

Mr. Fridley. Thank you, sir.

Good afternoon, Chairman Tonko, Ranking Member Shimkus, and distinguished members of the committee.

My name is Matthew Fridley, and I am the safety, health, and security manager for Brenntag North America, a chemical distribution company headquartered in Reading, Pennsylvania.

In addition to my role at Brenntag North America, I am currently the chair of the Chemical Sector Coordinating Council. The Coordinating Council has a strong working partnership in both the private and public sectors to develop industry practice and to build culture in safety and security.

I am also the vice chair of the Regulatory Affairs and Security Committee for the National Association of Chemical Distributors, on whose behalf I am testifying today.

I thank you for allowing me to participate in this important hearing today, and I am pleased to provide input on the Chemical Facility Anti-Terrorism Standard.

Brenntag is currently the largest chemical distributor globally and the second largest chemical distributor in the United States. Brenntag North America operates over 180 facilities, employs over 5,100 people.

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Brenntag has been an active member of the NACD for over 35 years. We have been participating in NACD's Responsible Distribution Program since its inception in 1991. This comprehensive program addresses environmental, health, safety, and security risks. Member companies are third-party verified to ensure quality and performance.

While security has always been an inherent element of the Responsible Distribution after the 9/11 terrorist attacks, NACD added specific security elements to the program, and the association continues to enhance these requirements.

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 that do not have facilities subject to the CFATS regulation.

NACD and Brenntag support a long-term reauthorization to the CFATS. I believe the CFATS program has made the chemical industry in our Nation much more secure. From the time of the program's establishment in 2007, the industry has invested significant capital in training resources towards enhanced security measures at our facilities.

In fact, Brenntag is one of most regulated companies under CFATS, knows the importance of this program better than most. While these resources did not necessarily assist us in growing business, they were nonetheless important to ensure the security of our company, our employees, and community.

DHS has generally taken a non-adversarial, reasonable approach in implementing the CFATS regulation. DHS has made significant improvements in the program following the program's 2014 reauthorization.

Changes in leadership of the CFATS program help establish a commitment to work

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with the regulated chemical industries, including the Chemical Sector Coordinating Council.

Another reason for the success of the CFATS program is the fact that DHS has taken the time to truly understand the diversity of the chemical industry and work with the regulated community on security measures.

The clear objective of the CFATS program is to help facilities be more secure. While not taking a punitive approach, DHS has excelled in outreach in three key ways. They have published 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 headquarter personnel available to walk and talk through issues or questions.

The program's 2014 reauthorization, which for the first time provided CFATS a multiyear reauthorization, 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.

It is my hope that Congress can pass a long-term reauthorization of the CFATS program. I believe the CFATS is strong and requires minimal change. One priority I can recommend is to require that any changes to the Appendix A Chemicals of Interest List remains subject to rulemaking.

Changes to the COI List could have a major impact on my business operation and security investments. Changes may be needed upon discovery of a new threat information, but it is important for regulated communities like mine to be able to provide information to DHS and explain the impacts on any proposed changes.



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I also support the creation of a program where DHS would recognize companies that meet certain criteria, such as participation in a program like Responsible Distribution. By acknowledging responsible distributors, DHS would then be able to prioritize resources for the noncompliant outliers that may pose a greater security risk.

CFATS is recognized globally as a model chemical security framework worldwide, and DHS frequently responds to requests to work with other governments as they seek to build cultures on chemical security similar to the United States.

As the only Federal program focused solely on facility site security with COIs, this must remain as CFATS program's only purpose.

On June 19th, the House Homeland Security Committee approved H.R. 3256, which will now be considered by this committee. While NACD applauds Congress' commitment to reauthorizing the CFATS program, we are concerned that provisions in H.R. 3256 would jeopardize the integrity of the program. Congress must ensure the CFATS reauthorization legislation only strengthens, not weakens, facility site security.

On behalf of the NACD and Brenntag, I appreciate this opportunity to present our views on this important issue, and I look forward to answering your questions.

[The prepared statement of Mr. Fridley follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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Mr. Tonko. Mr. Fridley, thank you. Thank you to our entire panel.

We have now concluded opening statements with our second panel, and we now move to member questions. And I will start by recognizing myself for 5 minutes.

So, Mr. Frigley and Mr. Whelchel, it seems that good work is being done by industry in terms of seeking to reduce risks. And I fully understand that these types of risk reduction measures might not be possible at every site. But, generally, do you think these types of actions to minimize, substitute, moderate, or simplify hazardous processes are worthy of exploring when a facility is considering how to address security at those individual sites?

Mr. Fridley. Well, we are a chemical distribution company, so our inventory and what we have on site is directly affected by our customers. So we are working with some of our customers on explaining this process. We actually have a Know Your Customer program through the Responsible Distribution program that we go out and we work with those customers so they understand that the chemicals that they may be ordering may be subject to CFATS regulation.

In turn, we will work with them to maybe, is there an alternative to their process? If there is, then that would directly affect my inventory so I wouldn't have to carry as much inventory that I would have at my site.

Mr. Tonko. Mr. Whelchel.

Mr. Whelchel. Yes, sir. I appreciate the question.

And I remember fondly being a part of a chemical -- a CFATS reauthorization -- excuse me -- a CFATS Top-Screen meeting where we were assessing the facility for whether it should be screened in or out of the program.

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And it was during the discussion with the CFATS inspector that they put forth the opportunity to visit risk reduction in the way of changing either the inventory or the concentration or other variables within the COI, and it was very welcomed by the business. And the chemistry was changed, and we were able to make those changes to our chemical processes.

We immediately started to replicate that potential to other sites. And I am pleased to say we did so at multiple sites.

Mr. Tonko. Thank you. And do you believe there could be greater guidance or encouragement from the Department to assess these types of risk-reduction measures as part of the broader security plan?

Mr. Whelchel. I actually believe that the right balance has been struck. So the conversation was initiated initially by CFATS inspectors, but it took our knowledge of chemistry and our ability to look at our processes to carry it the rest of the way.

So I believe the CFATS program is doing the right thing in terms of initiating the action, and then industry then steps in to meet the rest of the way for developing how we do chemical production in a safer way.

Mr. Tonko. Okay. Thank you.

Mr. Fridley, you would concur or --

Mr. Fridley. Yeah, I would absolutely concur with Scott's answer to that.

And the biggest thing, to his point, it is a shared responsibility. You know, we have responsibility as well to educate our customers. And again, it goes back to your Know Your Customer program, which is a staple in our industry.

Mr. Tonko. Thank you.

Ms. Roberts and Mr. Smith, I want to get your thoughts on this because, to my

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mind, working to reduce risks from the outset is likely one of the most important ways to provide meaningful protection for workers in frontline communities.

Can you give us some perspective on what it means to reduce risk for the people you are here to represent?

Mr. Smith. Thank you, Mr. Chairman.

I can give one example, at least the facility I worked at.

They changed one of the processes from using anhydrous ammonia to aqueous ammonia, inherently reducing the risk of release of anhydrous ammonia -- I am sorry -- completely eliminate it from the facility. So removed that target to a much safer technology and also protected the workers at the site.

Mr. Tonko. Thank you.

And Ms. Roberts?

Ms. Roberts. Yes. And just -- also, it is important to understand that many of the communities who live fenceline to these facilities are in housing structures that are not conducive to even sheltering in place, if that be the case.

So it is extremely important for -- to minimize that, of the reduction of risk to communities by, as you heard, minimizing the amount of chemicals stored, the hazard of the chemical that is stored, if indeed there can be a safer substitution that can be utilized.

In addition to that, I know that, as we say, we are not speaking about the climate crisis, but even that in and of itself impacts all of that. So it is extremely important to look at all of the negative externalities that impact these communities and workers.

Mr. Tonko. Thank you. And what barriers might prevent these types of measures from being implemented? Is there a basis towards risk management over reduction?

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Mr. Smith. From my experience, the biggest barrier for a lot of companies is cost. It can be costly to change a process to make it safer. So I think encouragement from the Department to employ practices at these facilities is helpful.

Mr. Tonko. Okay. Ms. Roberts?

Ms. Roberts. I do agree with that. And we are equally experiencing that with cost factor and now movement of industries.

We recently learned that there are industries leaving the Gulf Coast because of the high rates of -- that are attributed to that of the hurricanes, whether it is insurance or replacement. And so some of these industries are now seeking to move into what we are calling chemical valley in West Virginia and thereby placing additional burden on the communities in West Virginia. And so it is creating quite the conundrum for us at this moment.

Mr. Tonko. I thank you.

The chair now recognizes Mr. Shimkus, the subcommittee ranking member, for 5 minutes to ask questions, please.

Mr. Shimkus. Thank you, Mr. Chairman.

I think we have got some agreement that long-term reauthorization of CFATS is important. Would everybody agree with that?

And we heard the first panel, and then this panel, we still struggle with the difficulty between information available versus security of that information, getting it to the proper -- the right people because, in World War II, it was loose lips sink ships, and I think there is that concern. So it is how you balance that for information versus basic security.

And then I think you hear from our side a concern about ensuring that we don't

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duplicate other agencies who are supposed to be doing their work, whether they are -- you know, if the EPA -- if there is a concern that the EPA is not doing risk management aspects, then we ought to kick EPA in the rear-end and do risk management, not give to a security agency that responsibility.

But I think we are close. I mean, I actually -- these have been good hearings.

Let me go to Mr. Whelchel first. You know, because -- in addressing this brief opening statement that I did here on this round of questioning.

We have always had this debate on the personnel surety programs, risk-tiering processes, and that there is a concern that our information is not being shared. I think Mr. Smith kind of recognized that.

Do you believe DHS needs to make changes to improve a regulated facility's awareness of the risk factors?

Mr. Whelchel. I believe in a couple of areas, there is work to do. So I do believe the CFATS program has struck the right balance in looking at need to know and persons that are covered under that need-to-know provision.

Chemical terrorism, vulnerability of information, their CVI is an important component of the program. But to your point on tiering, as an example, what moves a facility from one tier to another once we put the information into CFATS' black box, for lack of a better term? That is still a little bit unknown, right.

Another thing that I think they can do more on information sharing is how do we -- whenever we submit our personal identifying information for 12.4, our personnel surety, where does it go, how long does it sit there prior to actually getting bounced off the TSDB, or terrorism screening database? What does that process look like?

That is important for us to know because, if we are going to limit certain actions at

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the facility as a result of not having those people submitted or not having feedback from the TSDB, then our operations might languish while we are waiting for those processes to have an effect.

And if there is a hit on the TSDB, will we be aware of that? Will we be the partner at the table to help work through that risk potential?

Mr. Shimkus. Great. Thank you.

Mr. Fridley, I am going to lump my two questions together for the sake of time.

You are the head of the Chemical Sector Coordinating Council. Can you kind of briefly explain, what does that mean? And then the followup would be, how do you differentiate between what is safety and what is security? Because that has been part of our debate today.

Mr. Fridley. Well, first, Congressman Shimkus, I want to take a second and thank you for your 24 years of service to the great people of Illinois. As a constituent that lives in your district, you will be greatly missed.

Mr. Shimkus. Thank you.

Mr. Fridley. And wish you well.

Mr. Shimkus. Thank you.

Mr. Fridley. So, to briefly kind of -- I pulled out the actual mission statement for the Sector Council, and if you will allow me, I will read it to you.

The mission of the council is to advance the physical, cybersecurity, emergency preparedness in the national security sector infrastructure. The mission will be accomplished through voluntary actions through the infrastructure owners and operators represented in the council set forth in the Presidential Policy Directive, PPD-21, and related authorities.

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So the Chemical Sector Coordinating Council represents about 15 associations that are voluntarily there to work with and through, in collaboration with DHS, Coast Guard, and the others. And we are doing this right now, as the chemical sector that represents about 25 percent of the GDP. So we are a massive undertaking.

But we are working across cross-sectors. We are starting to do this even more, especially to the national critical workgroup, to talk about some of these issues and interdependencies during natural disasters --

Mr. Shimkus. Okay. Safety versus security. So get that in.

Mr. Fridley. All right. Fantastic. Sorry about that, sir.

So safety versus security. Safety is OSHA; security is DHS. It is very two clear lines. They are very much segmented between the two, and I don't want to confuse the two and lump them together.

Mr. Shimkus. My time has expired. Thank you, Mr. Chairman.

Mr. Tonko. The gentleman yields back.

The chair now recognizes the Representative from Delaware, Ms. Blunt Rochester.

Ms. Blunt Rochester. Thank you, Mr. Chairman.

And, again, thank you to the panel.

I just wanted to follow up on Mr. Shimkus' line of questioning.

First of all, I can hear from the panel and also from Mr. Wulf that there is agreement that the CFATS program needs to continue, needs to continue long term. And, again, this is the perfect day to be having this hearing.

I still am struggling with this conversation about the balance between need to know, security risk, and meaningful engagement.

So I want to flip the table a little bit. Because as Mr. Smith was talking, it was



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interesting, Ms. Schakowsky asked in the last panel -- asked Mr. Wulf about employees and do employees know that they are working for, you know, a company. And I understood you to say that it is -- for some employees, it is widely unknown and that more training and things need to be done. And then as I heard Ms. Roberts talk about the fact that it is sometimes confusing; even people who are experts don't feel like they have the information they need. But then I also heard Mr. Welchel talk about the fact that there has been that right balance struck.

So it appears to me there is sort of like government and industry is good; it is golden. I haven't heard disagreement. But in terms of employees and the community, I don't hear that same thing.

So can Mr. Welchel and Mr. Fridley talk about what you think the community and employees do need to know, and they are not knowing now currently. And if you two could talk about what you think we don't need to know, we need to stay away from that for whatever reason?

Do you get where I am going? I know you know what you need to know. So can we start with Mr. -- and we have got to make it quick because I only have 2 minutes and 59 seconds.

Mr. Fridley. Yeah, absolutely. Great question.

And what we do in our industry, and at least in our facilities, is everybody is trained. Everybody is aware. There is not a person there that is employed at our facilities that are not made aware. And we select certain ones to be able to participate in the development of if they have the knowledge and, you know, the expertise to be able to assist us in those programs.

As far as the community, we are all members of LAPCs. We work with various

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agencies. We bring in those agencies. We do drills together. We review --

Ms. Blunt Rochester. But are there things that they should know and don't know right now?

Mr. Fridley. In my opinion, not in my experience.

Ms. Blunt Rochester. In your opinion, not in your experience. Okay.

Mr. Whelchel.

Mr. Whelchel. Okay. What I will add to that is, I believe there is a responsibility on the part of local emergency management officials to bridge that gap, right? So they are getting a lot of information relative to the safety risk and then target information about any terrorism risk that might be related to chemical facilities in their district or their domain.

Ms. Blunt Rochester. Let me stop you right there, because I get where you are going because I come from a government background.

So it is people are elected, people are appointed, but sometimes the community, or even in a company, they don't get access to the information; it just doesn't get to them.

So I am just curious if you think there are things that people need to know on a basic level that they are not getting information.

Mr. Whelchel. At the risk of underscoring Mr. Fridley's point, general security awareness is a cornerstone of a good security program. So you want to broadly put that security awareness out into the community and to employees. So the See Something, Say Something doesn't just go out to the citizens of the U.S. We then target that message to our employees, and to the extent necessary, to the citizens out in the community as well through the emergency management program.

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Ms. Blunt Rochester. And I only have a minute left. But can I ask Ms. Roberts?

Ms. Roberts. Yes, it is a challenge for us. Because on the local emergency planning commissions, those are great commissions, but oftentimes there is one community representative on that commission, and there are many communities that could be surrounding or -- or within certain facilities.

One of the things that we do with the Environmental Justice Health Alliance, in partnership with other entities, we produced a report, "Who is in Danger? Race, Poverty, and Chemical Disasters," and equally we produced another report, "Life at the Fenceline," and we did so with some of our scientific and other partners because of the fact that the communities needed to have information that they didn't have access to.

Ms. Blunt Rochester. Thank you.

Ms. Roberts. So that is part of the challenge.

Ms. Blunt Rochester. In 7 seconds, Mr. Smith.

Mr. Smith. I can only speak on behalf of workers to this effect. And workers who have went through the security process to be cleared to work in these facilities, it is my belief there is very little they should not know. But I can tell you there is a huge gap in what they should know and what they don't know.

Ms. Blunt Rochester. Got you. Thank you. I yield.

Mr. Tonko. The gentlelady yields back.

The chair now recognizes the Representative from Illinois, Representative Schakowsky, for 5 minutes, please.

Ms. Schakowsky. Thank you so much, Mr. Chairman.

I have looked at the testimony, I want you to know, although I wasn't here in the room, and have a number of questions that I wanted to ask.

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So let me just start with this one. Hold on.

I wanted to ask Ms. Roberts, in your testimony, you mentioned that water treatment -- and you asked -- here, I will read it. The existing statute must improve in several areas. To name a few specific examples, it should include water treatment and marine facilities and on.

So what I wanted to ask you is if you could expand on what you think about the way that water ought to be considered when the investigators go out and look at the plants.

Ms. Roberts. Well, with respect to water treatment facilities, they actually carry -- they include chlorine and other chemicals on site. And so that is the reason why we are asking that those facilities be equally included in the CFATS program.

Oftentimes, yet again, in environmental justice communities, especially, where there again it is -- the disparity is race, then income, many of those communities are home to high-risk facilities as well as water treatment facilities. And so, therefore, there is cumulative impacts of high-risk chemicals that are in these areas.

In addition to that, the maritime facilities, as you heard Representative Dingell earlier speaking to the PFOA issue. These are also challenges that our communities are confronted with.

Ms. Schakowsky. Thank you. Do you feel as if, in general, the communities which you call -- I think people in their shadows, are getting the kind of stakeholder attention that should be given when it comes to these plants and the information that you need?

Ms. Roberts. Unfortunately, no. If the community is involved in -- what do they call it -- the CAP program, the Citizen Advisory Program, they are at the behest of the

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industry and the industry sharing the information that the industry wishes to share.

If they are on a local emergency planning commission, as I said, equally as much, the community -- there is one representative typically on the committee. When communities are seeking to try to find and get more information at times, sometimes they are confronted by Homeland Security and utilize Homeland Security laws against them as they are seeking to try to get more information on what is being stored in and around the facilities that are fenceline to their communities.

They are not seeking to terrorize these industries. They are seeking information so that they can also equally better protect themselves because many of these communities do indeed have high rates of health challenges.

And, again, the infrastructure around their communities, such as the roads, the housing structures, and what-have-you, are not conducive oftentimes to the amount of pollution that they are being --

Ms. Schakowsky. I am going to interrupt you just for a second because I also wanted to deal with the issue of workers.

The last question that I asked of Homeland Security was the question about, do workers even know that they are working at a CFATS facility? And the answer was, well, they get training.

But do you feel, just as communities don't necessarily have all the information, do workers -- are you considered as stakeholders sufficiently?

Mr. Fridley. Yes, ma'am. In my opinion, we train every person; we educate every person that works at our facility that what we have are security measures, you know, what we want, what we expect if they see something suspicious, they get a phone call, suspicious order, anything of that nature. So we are educating those workforces to

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be able to, you know, to report that properly to get that to the right agencies.

Ms. Schakowsky. Okay. Thank you.

I have 10 seconds. Does Steelworkers want to respond at all to that?

Mr. Smith. Thank you, Ms. Schakowsky.

I can tell you, in our experience, most of our members do not know that they work at CFATS facility until after an issue with the program arises.

Just as a very quick example -- and I can followup with specifics -- recently there was a Hill staffer visit to a CFATS covered facility. And on their visit, the local union president was unaware of the program or that the facility was covered by the program.

Ms. Schakowsky. And that is a problem, right?

Mr. Smith. Yes, ma'am.

Ms. Schakowsky. I yield back.

Mr. Tonko. The gentlelady yields back.

The chair now recognizes the Representative from Florida, who just got back, Representative Soto, for 5 minutes.

Mr. Soto. Thank you, Chairman.

Thank you all for coming today.

We had Acting Deputy Assistant Secretary Wulf in before, and we were talking about some of the lessons from 9/11 and the terrorist attacks -- obviously, this is the 18th remembrance of that -- and that we formed the Department of Homeland Security to be sort of the coordinator of all of these other agencies.

So the big question that we ended up talking about was how so many other first responders and other workers worked at Ground Zero and weren't told that the air was poisonous. Obviously, we had to create the 9/11 Fund afterwards and just amended it

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to help out -- I represent an area with a lot of NYPD retirees who worked and were there at the time, including some of my current staff.

So a big issue for me and for everyone on the panel -- and it would be great to hear from each of you -- what role should the Department of Homeland Security play in making sure, as in subsection F of this legislation, that we are sharing more info with State and local emergency officials?

And let's start with -- well, we will go down the list from -- starting with you, Mr. Fridley, and continue on.

Mr. Fridley. Thank you for the question.

And we actually work very well with a lot of the emergency responders, specifically in your State. We did a large full-scale exercise at a joint terrorism task group, DHS, TSA, FBI, bomb and arson. It was a live drill that we actually invited a Congressional Member to that event to witness the interagency working together.

So we do a lot of those things. But to your question on the air quality, that would be more from an EPA standpoint. We would deal with DHS and those other agencies from a security standpoint and let the other agencies handle those points that you pointed out early on your thing.

But we do a lot of outreach. We bring them on our site; we let them play on our site because we have the live -- you know, the processes that they can't simulate somewhere else. So we do a lot of that outreach.

Mr. Soto. Thank you.

Mr. Whelchel.

Mr. Whelchel. Yes, just to add to that a bit. And thank you for the question.

One thing I will point out is, when you look at the cadre of folks that we have

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inside our company that we rely on for emergency response, whether they are in the emergency services and security function or they are operators that come to the incident to help respond, many of those folks are themselves volunteer fire service individuals in the community, reserve deputies in law enforcement, emergency medical technicians, or paramedics. And that is one of the powers that we harness by being able to look at our employee base as members of the community as well.

So there is a very strong focus on the emergency responder and what they bring, whenever they increase the risk to themselves, to help respond to an incident. So we wrap around that any and all measures that need to be taken to protect them, to equip them, to train them, recognizing the fact that they are taking additional risk beyond what the average employee does.

So that is one component, I think, is important to keep in mind.

Mr. Soto. Thank you.

Ms. Roberts, how critical is it to get out to the community and to our first responders the health issues?

Ms. Roberts. It is exceptionally important. And not only first responders, but as you said, that of health care workers and others to be together in the community, to have a complete understanding of the landscape of communities.

One that I can think about right now is the Manchester community of Houston, Texas, where you can't get -- as well as the Mossville community in Louisiana. You cannot get in and out of those community without going over a railroad track. So, if indeed there is an incident, you can actually die on the other side waiting for a railroad track -- for a railcar to be removed. So these are the types of things.

In addition to that, the volunteer firefighters, as much as we love them, are not



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fully and adequately trained to really respond to these situations. And a case in point where -- unfortunately the Congresswoman from Delaware had to leave -- where the Croda plant actually shut down. It was ethylene oxide facility, and the community folks had no idea what was going on. And this was the weekend of Thanksgiving, one of the highest traveled times going back and forth across the Delaware Memorial Bridge. Each side of the bridge had to be shut down for 6 and one half hours.

And so the communities had no idea what was going on, and indeed, as well as some of the local volunteer firefighters. So these are the things that must be shored up, these gaps. We must have that kind of communication.

Mr. Soto. Because my time is limited, Mr. Smith, how important is it for United Steel Workers to be informed right away about health issues, particularly with Homeland being one of the first on the scene?

Mr. Smith. I can tell you after spending years working in a chemical facility on an emergency response team and as a first responder in a municipal police department, that information sharing is both critical and deficient. There is a big gap between those who are formulating that emergency response plan and those who are executing the emergency response plan. And I would like to see the Department work to bridge that gap with the critical information sharing.

Mr. Soto. Just to end -- and thank you, Mr. Chairman, for your flexibility.

I recognize that Homeland Security would work along with EPA, and this would be one of their fundamental issues. But they are there to coordinate the overall response to a terrorism event, and so they would be the first ones on the ground well before the EPA would ever get there.

When we are talking about day 2 or 3 after an event, if there are carcinogens in

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the air, in the water, it is absolutely still the Department of Homeland Security's responsibility, as the coordinator of all of these other agencies, to make sure that our workers in our local communities and our first responders and other local governments are made aware of these things and correct those.

Thank you, Chairman. I yield back.

Mr. Tonko. The gentleman yields back.

The chair now recognizes the gentleman from California, Representative Ruiz, for 5 minutes, please.

Mr. Ruiz. Thank you very much, Mr. Chairman.

I am going to continue my line of questioning from the previous panel.

And for this panel, I would like to talk to -- or ask Ms. Fridley a question.

We know that threats to the security of chemical plants come in different forms, physical in nature, terrorist threats, theft, leaks, whatnot. And I want to bring up the threat of cybersecurity hacks.

So we heard earlier that the potential worst-case scenario, as described by Mr. Wulf, is a cybersecurity attack that, due to the production line, could actually create a scenario where chemicals could be released, just through by somebody in a computer halfway across the globe.

So I want to talk to you about what your assessment of the cybersecurity threats could be in plants, in your plant, for example. And can you give me an example of what you do to address cybersecurity issues.

Mr. Fridley. Thank you for the question.

To your point and exactly what was described is something that we actually took as a threat and we eliminated.

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We have no industrial control --

Mr. Ruiz. When you took as a threat, is that because it was mandatory for you to assess that, or you did it on your own?

Mr. Fridley. It was a joint effort between DHS and our company to be able to look at the specific threats.

Mr. Ruiz. It was a joint effort. But is it through policy that you were forced to do it, or did you guys kind of say, "Hey, this is a good idea"?

Mr. Fridley. Through the assessment, when we were doing our site security plans --

Mr. Ruiz. Okay. That is part of your 18th point, yeah.

Mr. Fridley. Yeah, we identified that as a risk.

So a couple of those things, we eliminated that. We also eliminated anything that --

Mr. Ruiz. When you say "eliminated," what did you do?

Mr. Fridley. We had broken that gap between -- we have nothing on a computer system that controls any process any longer.

Mr. Ruiz. Okay.

Mr. Fridley. So that was one of the big gaps that we identified. We eliminated it. So that way now our biggest threat right now is probably a suspicious order coming in. So we spend a lot of time training our --

Mr. Ruiz. Yeah. And who do you employ to help you with your -- your cybersecurity systems? Do you contract out?

Mr. Fridley. No, sir.

Mr. Ruiz. Is it in-house?

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Mr. Fridley. It is all in-house, and they work --

Mr. Ruiz. Is it difficult to find cybersecurity experts in your area?

Mr. Fridley. We are lucky enough to have --

Mr. Ruiz. A good area?

Mr. Fridley. -- some very, very good people. And they work with the US-CERT on anything, malware, alerts, and different things that come up.

Mr. Ruiz. Okay. Thank you.

Now, I want to talk with Ms. Roberts. Mr. Wulf said that the agency consults with neighboring communities regarding safety and other areas of consideration of that. And we know that the vast majority of these plants are near minority, underserved, and poor communities and that leaks can be catastrophic, depending on the amount of leak and what chemicals. And I know that you are with the national coordinator of the Environmental Justice Health Alliance.

Do you think the Department of Homeland Security should consult with the environmental justice communities or stakeholders before planning, during planning, after an event, to protect chemical facilities against terrorist attacks? And do they do it?

Ms. Roberts. We believe that they should before, during, and after, yes.

Mr. Ruiz. And do they do it?

Ms. Roberts. Do they do it? It depends. Unfortunately, we have just not seen them in our communities, on the communities we serve. Unfortunately, we see them after the fact.

Mr. Ruiz. So you were saying how in every community, they address the first responders or specific people with titles. And I think that is important, obviously.

But, oftentimes, those individuals are headquartered not in those communities,

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especially in rural counties. And so they are headquartered out in the big cities and not there. And so the actual local residents who will be primarily affected by it don't get consulted. Is that what I am hearing from you, like those environmental or organizations within the communities?

Ms. Roberts. Yes. It is oftentimes after the fact. One thing that did happen under the previous administration, communities were indeed engaged. We were starting to try to engage in a process.

Unfortunately, under this administration, it has not been the case.

Mr. Ruiz. I have about a few seconds left.

I just want to mention that I introduced a bill, H.R. 3923, the Environmental Justice Act of 2019, which requires agencies to consider the environmental justice implications of their programs, policies, and activities, such as the Chemical Facility Anti-Terrorism Standards Program, helping ensure that we protect our communities in vulnerable populations and that there is meaningful consultations before decisions are made and even mitigation measures and cleanup measures as well. Because no community should -- there should be no decision about an issue that will affect the health and well-being of a community without the community's input.

Ms. Roberts. That is correct. And thankfully our communities were engaged in the drafting of that bill and so to try to make sure that they were protected by putting that language into that bill. So there was consultation at that point.

Mr. Ruiz. Absolutely. We made sure of that. Thank you.

Mr. Tonko. The gentleman yields back.

The chair now recognizes the very patient Representative from Colorado, Representative DeGette, for 5 minutes, please.

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Ms. DeGette. Thank you so much, Mr. Chairman.

And I want to thank the panel for coming. I watched your testimony in my office, so I have been looking at everything everybody said.

And as I said to Mr. Wulf before, Denver, which is my hometown, is not usually considered a hotspot of chemical industry activity, but we have over two dozen facilities that manufacture, process, or use enough hazardous chemicals that they are required to develop risk management plans under the Clean Air Act.

A lot of those facilities are concentrated near the neighborhoods of Elyria-Swansea and Globeville in north Denver, right next to a big industrial area of Commerce City. These are lower income communities with predominantly Hispanic households.

And the same communities that bear a disproportionate share of the risk of terrorist attacks on chemical facilities also bear a disproportionate share of the pollution that they produce. I think Ms. Roberts can totally agree with that.

And so like Mr. Ruiz and others, I really think that, as well as the safety issue, we are addressing an environmental justice issue here today.

So I wanted to ask you, Ms. Roberts, given the vulnerability of what you call these fenceline communities, how important would you say it is for the neighbors to know about what is going on at these close-by chemical plants?

Ms. Roberts. It is exceptionally important because, with the slightest incident, if there was a release or what-have-you, that magic fence that the communities are told, you know, that will protect them, the magic fence --

Ms. DeGette. Right.

Ms. Roberts. -- it will not hold that incident.

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So, once there is a release, it begins to move. And depending upon the wind velocity and what-have-you, that is how fast or how slow it can move.

Ms. DeGette. Right. And, you know, in these communities I just mentioned, you are right. They are right along the border with this industrial area. And they are residential communities. So, you know, they don't -- the chemicals don't just stop at the city and county of Denver.

Is there something that community engagement can do to encourage a neighboring plant to reduce its vulnerability to attack? And what role does public scrutiny play in that?

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RPTR MOLNAR

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[1:02 p.m.]

Ms. Roberts. There is a lot that community engagement can do, because communities do hold solutions. And there are practical solutions that can be incorporated to make sure that the safety of the community, as well as the worker, and, in addition, the bottom line that many of these industries are really concerned about will all be factored in.

So it is extremely, extremely important for the health and well-being of that neighboring community.

Ms. DeGette. So, you know, this was one of the things that I was talking about with Acting Deputy Assistant Secretary Wulf, is, one of the things that chemical plants can try to do is to reduce the amounts of explosive or toxic chemicals on-site where it is feasible.

Would you agree with that, Ms. Roberts?

Ms. Roberts. Absolutely.

Ms. DeGette. And, Mr. Fridley, what is your view on that? If it is feasible, wouldn't the best result be to reduce those on-site chemicals?

Mr. Fridley. Yeah, from a security standpoint, we are always looking to reduce our threat and whatnot.

But from the EPA standpoint, what you were going with in your first line, we do a lot of different reports. We do the EPA 304, 311, 312, 313, TRI, RNP that you did, CERCLA. So we do a lot of the reporting out so that we are communicating out to those folks or to anybody, for that matter, what the hazards and what the risks are.



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Ms. DeGette. But what they need to know is what is there and what they can do.

Now, Mr. Whelchel, I wanted to ask you the same thing. Would you agree that, if feasible, one of the best ways to reduce the risk is to remove unnecessary chemicals and hazardous substances?

Mr. Whelchel. Thank you for the question. And yes.

And we have actually seen this in practice. So I relayed earlier, during a CFATS inspection, it was communicated from the inspector that there was a potential for us to reduce either the concentration or the quantity of the chemicals that we had on-site. And the business took a look at that and immediately had a high interest in reformulating our processes to be able to do so and then replicated that same process in nonregulated facilities.

Ms. DeGette. Thank you.

Mr. Whelchel. So we absolutely value the ability to reduce our risk.

Ms. DeGette. Great.

Mr. Smith, what is your view of that?

Mr. Smith. I would agree with the rest of the panel. If you can reduce a risk for the facility and the worker, I think it makes things safer and more secure.

Ms. DeGette. Thank you.

Thank you very much, Mr. Chairman. Thanks again for having this hearing. I yield back.

Mr. Tonko. You are welcome.

And the gentlelady yields back.

That, I believe, concludes all who were looking to ask questions of our second

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panel. And I thank all of our witnesses again for joining us at today's hearing.

I remind members that, pursuant to committee rules, they have 10 business days by which to submit additional questions for the record to be answered by our witnesses. And then I ask that each witness respond promptly to any such questions that you may receive.

[The information follows:]

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Mr. Shimkus. Mr. Chairman, before you do that, may I ask for a moment for personal privilege?

Mr. Tonko. Yes, sir.

Mr. Shimkus. I want to recognize my pastor, who just came into the back of the room. He is here to give the invocation, or the prayer, for tomorrow's session. And other than my wife, if you want to know who keeps me on the straight and narrow, it is Pastor Wright.

So thank you for letting me introduce him.

Mr. Tonko. Well, thank you.

And thank you, Pastor, for joining us. And thank you for leading the ranking member in the right way.

Mr. Shimkus. Amen.

Mr. Tonko. We much appreciate it.

So I do request unanimous consent to enter a list of documents into the record. They include a letter from a coalition of organizations providing recommendations for the CFATS reauthorization, a letter from the National Association of SARA Title III Program Officials, a letter from the National Association of Manufacturers, and a letter from the Fertilizer Institute and the Agricultural Retailers Association.

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Without objection, so ordered. So they are entered.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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Mr. Tonko. With that, the subcommittee is adjourned.

[Whereupon, at 1:11 p.m., the subcommittee was adjourned.]