

**Subcommittee on Environment and Climate Change  
Hearing on  
“Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019”  
September 11, 2019**

**Mr. Matthew Fridley  
Corporate Manager of Safety, Health, and Security  
Brenntag North America, Inc.**

**The Honorable John Shimkus (R-IL)**

1. How are facilities coordinating with or otherwise sharing information with emergency responders and state and local government officials?

**RESPONSE: LEPC, TIER II, etc.**

**At Brenntag, we are required to communicate with and invite local fire and police departments to our facilities per Department of Homeland Security (DHS) Chemical Facility Anti-Terrorism Standards (CFATS) program regulations, as well as be active members of the Local Emergency Planning Committees per National Association of Chemical Distributors’ (NACD) Responsible Distribution or American Chemistry Council’s (ACC) Responsible Care certifications. Additionally, Brenntag works closely with many of our facilities’ local emergency responders to conduct live full-scale exercises. The last full-scale exercise Brenntag conducted was in the Southwest, in which a suspicious package was placed on-site and our facility activated its internal emergency response plan. At this exercise, Brenntag hosted numerous local emergency response agencies on-site, including the local bomb and arson unit, Federal Bureau of Investigation (FBI), Transportation Security Administration, and DHS inspectors. Moreover, Brenntag invited the facility’s local member of the U.S. House of Representatives and/or the member’s staff to attend the full-scale exercise to provide them the opportunity to receive a first-hand view of how the industry is working with the emergency response community. Unfortunately, neither the representative nor the staff attended the event.**

- a. Should persons getting access to Chemical Vulnerability Information (CVI) have both a need to know and be trained in handling CVI?

**RESPONSE:**

**Yes. If the information is CVI and specifically discusses a facility's security program, any persons getting access to CVI should require both a need to know and be trained in handling CVI. If members of the emergency response community are simply interested in familiarizing themselves with our facilities by touring a site in their locality, I do not believe those requirements would be necessary because they would not be gaining access to CVI.**

- b. In addition to CFATS, are there other federal laws that require facility owners and operators to share information with first responders? I am referring to the Toxic Substances Control Act, CERCLA and Toxic Release Inventory reporting, the Emergency Planning and Community Right to Know Act, and the Clean Air Act's accidental release program.

**RESPONSE:**

- **EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 304: Emergency Notification**
- **EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 311: Safety Data Sheets (SDSs)**
- **EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 312: Tier I, II**
- **EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 313: Toxic Release Inventory (TRI)**
- **EPA Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 103: Release Reporting**
- **EPA Clean Air Act: Risk Management Program**
- **EPA Toxic Substances Control Act (TSCA): Chemical Data Reporting**
- **DOT Hazardous Materials Regulations: Emergency Response and Release Reporting**
- **OSHA Hazard Communication Standard**
- **OSHA Hazardous Waste Operations and Emergency Response (HAZWOPER) Standard**
- **OSHA Process Safety Management (PSM) Standard**

**Additionally, I believe the above information is confusing to many first responders because of the multiple formats and various mechanisms facilities must use to communicate that information. For those reasons, I believe facility operators and government agencies need to provide the information in one format to afford the first responders the clarity they need during an emergency.**

- c. Is it true the biggest difference between CFATS and those other laws I just mentioned is that CFATS requires creation and production of documents about how the chemicals are protected from theft or diversion?

**RESPONSE:**

**Correct. The other reporting regulations are specifically intended to communicate what hazards a facility has on-site so the emergency responders are best equipped to know how to respond to an event (spill, fire, etc.). The CFATS program is correctly intended to communicate with DHS how certain high-risk facilities are protecting those products from terrorist acts.**

**The purpose of the CFATS program in comparison to the other laws mentioned above is completely different.**

- d. Would it concern you if this information was being shared more broadly than it is now?

**RESPONSE:**  
**Absolutely.**

- i. How so?

**RESPONSE:**

**If the information is shared publicly, what would be the point to have a security plan? A facility's security information is a blueprint for how a facility protects its employees, the facility, and the surrounding communities. If this were to become common public knowledge, then the risk facilities face against acts of terrorism would increase immensely.**

- ii. What about as it relates to risks to the facility and the surrounding community?

**RESPONSE:**

**If the inventory of facilities becomes more public, it would provide a virtual shopping list and/or set of targets for someone who wants to acquire those materials for malicious purposes. I agree with the notion that the emergency response agencies need this information, but I would caution against communicating the amounts and products these facilities store to the general public.**

2. Some have argued that DHS should be required to verify information submitted by a CFATS-covered chemical facility before lowering that facility's high-risk tiering or removing them from the program.

- a. Do you think this is necessary?

**RESPONSE:**

**I have no issues with DHS verifying submitted information by a CFATS-covered chemical facility prior to lowering high-risk tiering or removing them from the CFATS program. This approach would keep everyone on the same level.**

- b. Should DHS be required to verify information before increasing a facility's tier?

**RESPONSE:**

**Yes, same as above.**

3. H.R. 3256 removes the factor of “practicality,” making it an absolute requirement that CFATS facility owners and operators consult with their employees on vulnerability assessments and site security plans. In addition, the legislation compels those consultations to recordkeeping rules and insists that DHS base approval of a site security plan on the level of employee participation and input – rather than meeting the risk-based performance standards.

- a. Is there a general rule to how facility owners and operators interface with their employees on this kind of thing (i.e. collective bargaining)?

**RESPONSE:**

**Yes. At Brenntag, we consult with numerous employees to develop our site security plan (SSP) program (regardless of union representation). Brenntag bases decisions of employee involvement and engagement on which employee(s) possess(es) the relevant knowledge of the specific issue area that is being filled out. Brenntag does not engage only one person for the entire SSP, as one person will not have all the information or a need to know that information. As an example, Brenntag will not ask the operator about cybersecurity, just as we would not ask our cybersecurity person about operations. We simply cannot develop good working SSP without others' involvement.**

- b. Do you think “impracticable” consultations should be forced upon owners and operators?

**RESPONSE:**

**Absolutely not. It does nothing to assist in strengthening the security program.**

- c. What is the practical effect of an absolute mandate of this kind on smaller facilities and facilities with contentious labor situations?

**RESPONSE:**

**My belief is an absolute mandate of this kind on smaller facilities, as well as facilities with contentious labor situations, will only further an already contentious situation. It is important to note the intentionally nonprescriptive nature of the CFATS program regulation. This nonprescriptive approach allows each CFATS-covered facility – which can differ vastly from site to site – the ability to determine what decisions are best for them to meet regulatory requirements. There are many ways for a facility to meet a standard, and if we implement this process it will not allow for the facility to decide what is best based on the situation and budget.**

- d. Should any outside consultant have a familiarity with the plant, a need to know CVI information, and be CVI-trained in order to participate in any consultation like this?

**RESPONSE:**

**Absolutely. Anyone who participates in developing SSP should all be held to the same standards of protecting this vital information. I would be hard-pressed including someone who is not an employee from my facilities in the process of developing SSP.**

4. H.R. 3256 contains provisions that require the CFATS program to cull actions taken by facilities to reduce their threats, anonymize the data, and make it public.
  - a. Are you concerned that a performance-based program that is supposed to be technology and practice neutral is now issuing standard of care suggestions advocating specific technologies or actions?

**RESPONSE:**

**Yes. The CFATS program has been nonprescriptive, allowing the industry to decide what is best for each individual facility. There is no one-size-fits-all approach to security and with issuing standards of care on a specific technology. Issuing standard of care suggestions advocating specific technologies or actions will lead to more confusion and a weakening of a facility's security program.**

- b. What would be the legal implication of such an effort by DHS on your facilities?

**RESPONSE:**

**Efforts such as these to the CFATS program would be a huge financial cost to everyone. The industry has already spent millions of dollars on programs that we believed met DHS standards and were given DHS's approval. If the industry must go back and rework programs to fit into a box, we would have a very hard time doing so.**

5. H.R. 3256 permits DHS to establish a voluntary program for non-CFATS-regulated facilities to address potential chemical security risks. What are your thoughts on such a provision?

**RESPONSE:**

**Personally, I do not have any issues with a voluntary program, if the voluntary best practices do not become legislative later. Brenntag already utilizes these voluntary activities through our Responsible Distribution/Responsible Care program, and this would be a great opportunity to leverage those programs within NACD, ACC, etc. to start working with DHS on ways to incorporate those best practices into this voluntary program.**

6. How do you differentiate between what is safety and what is security?

**RESPONSE:**

**Safety is regulated by OSHA. Security is a DHS program. It is very clear and easy to understand.**

- a. Why is that distinction important for CFATS?

**RESPONSE:**

**It is extremely important for the CFATS program. Safety is regulated by a variety of organizations (OSHA, DOT, EPA) and if this (security) standard starts to regulate the safety aspect, you will inevitably start to have duplicative and conflicting regulations — further adding to the industry’s confusion on how to manage it. This standard must maintain its security focus and allow the other agencies to focus on their core competencies.**

- b. With other federal and state agencies covering those areas, do you think it is wise for CFATS to engage in safety-related activities?

**RESPONSE:**

**Absolutely not! DHS’s focus as an agency is not safety, just as OSHA’s focus as an agency is not security.**

7. As a general matter, do you think it is wise to make compliance with specific subclasses of risk-based security standards a predicate for approval of a site security plan?

**RESPONSE:**

**All the subclasses do nothing to help secure our facilities or community. The focus should stay on the Risk Based Performance Standards that are specific to the security of the Chemicals of Interest (COI) and facilities.**

8. CFATS recently updated its risk methodology to incorporate all the elements of risk contained in the National Infrastructure Protection Plan definition of risk: vulnerability, threat, and consequence.

- a. H.R. 3256 seeks to have this methodology redefined. Is this a good idea?

**RESPONSE:**

**I am against any changes to the methodology that would alter the process and cause retiering. Only a few short years ago, DHS updated the tiering methodology that caused many facilities to be retiered. Thus, it required those facilities to update their SSP with additional security capital being spent and past security investment to be unnecessary, outdated or obsolete. We must stop moving the goal line on the industry.**

- b. What is the practical effect of changing the definition of risk and why would it be a bad idea?

**RESPONSE:**

**Any changes to the methodology that would potentially lead to another round of re-tiering would have a huge negative economic impact on the industry.**

9. Some people suggest Local Emergency Planning Commissions should have access to CVI. How does CFATS currently address informing state and local governments, including law enforcement and first responders about CVI?

**RESPONSE:**

**This question would be better answered by DHS regarding how they currently provide this CVI information to law enforcement and first responders — namely, through the Infrastructure Protection (IP) Gateway, which is operated by DHS and not accessible to regulated facilities.**

- a. Why is it important for people receiving CVI to have a need to know and be CVI-trained?

**RESPONSE:**

**It is critical that everyone who has access has a CVI. Proper CVI approval and training is the only way to maintain and control our nation's facilities' security programs. Without these conditions and controls in place, no one would have any idea who possesses the information.**

10. There has been discussion at the hearing about eliminating or downsizing chemicals in manufacturing plants, changing processes, or keeping stocks off-site.

- a. Please speak to the risk tradeoffs this presents?

**RESPONSE:**

**The obvious benefit for safety and security is the ability to eliminate or downsize the need for a certain chemical. The issue in my industry is that we are directly impacted by our customers' needs. As a distributor, we have little influence over our customers' process or demand. We must have the products and quantities that they need to operate, or we lose business. We do work with our customers offering solutions for alternatives, but we must be able to provide our customers what they want when they need it to meet their business needs. We have been able to consolidate inventory to locations that make business sense. Nevertheless, there is a safety/security tradeoff for having larger stockpiles of chemicals in a certain area, as well as transporting these chemicals over the road more frequently and in larger**

**quantities.**

- b. Will this make you facility more secure from theft and diversion?

**RESPONSE:**

**The elimination of certain chemicals could have a benefit from a theft/diversion standpoint. However, again, our business is directly tied to our customers' needs and requirements. So, if we have more than one COI that is a theft/diversion chemical we could be subject to DHS CFATS requirements for more than one COI that is a theft/diversion risk. We do have processes that review our customers' needs to our stocking level. We do not store large quantities of chemicals without having a business to which to sell those products. Inventory is money, and we do not want to have our dollars tied up in something that we are not going to sell.**

- c. How will requirements like this affect just-in-time deliveries and American manufacturing overall?

**RESPONSE:**

**As a chemical distributor, we are the warehouse that supplies product in a just-in-time fashion. Chemical distributors supply our customers on demand; thus, we must keep certain quantities available to supply the manufacturing industry. This process shifts the safety/security away from the manufacturing industry and puts more of a burden on the distribution industry.**