

## **Attachment – Additional Questions for the Record**

### **The Honorable Earl L. “Buddy” Carter**

#### **1. The final RMP rule has requirements for third-party audits.**

##### **a. Do you have concerns about the availability of third-party auditors that are appropriately qualified?**

Yes, I am very concerned that there will be a shortage of qualified third-party auditors, for two reasons. First, the final rule has prescriptive requirements that only permit individuals with certain qualifications to serve as third-party auditors. These requirements limit the pool of individuals that can be utilized to perform audits. Second, the qualification requirements for these auditors do not take into account that facilities have nuanced and technical RMP processes that not all credentialed engineers are qualified to audit. Even without the credentialing requirements in this rule, it can be difficult to find anyone who understands these processes well enough to serve as an auditor. When adding the prescriptive requirements of who can serve as an auditor in the rule, this becomes an excessively difficult task. This is particularly frustrating as EPA has the authority to serve as third-party auditors, removing the need for an external auditor requirement.

##### **b. Do you see an advantage to having this review required if you already must do a Safer Technology and Alternatives Analysis (STAA) that is legally enforceable, particularly if you must formally rebut any recommendations you decline?**

I do not believe that facilities that are already required to undergo Safer Technology and Alternatives Analysis (STAA) will receive any benefit from additional third-party audit requirements. Both STAAs and third-party audits will involve comprehensive examinations of facility processes, with STAAs being even more intensive. As noted in the question, STAA

requirements require facilities to formally rebut declined recommendations and can require certain recommendations be adopted. A requirement for both a STAA and a third-party audit would be unnecessarily duplicative.

**2. Please clarify whether you and other industry stakeholders support the Chemical Facility Anti-Terrorism Standards (CFATS) program?**

Hawkins, the Alliance for Chemical Distribution, and a vast coalition of stakeholders in the Chemical and Critical Infrastructure industries support the CFATS program and have strongly advocated for its reinstatement. I spoke about the importance of the program at an informal roundtable convened by the House Committee on Homeland Security on May 24, 2023, and was extremely disappointed when the U.S. Senate failed to renew the program. Since the CFATS program's expiration, ACD has vocally supported every effort to bring the program back online. Most recently, ACD along with the American Chemistry Council, American Fuel & Petrochemical Manufacturers, and North America's Building Trades Union wrote to Speaker Johnson and Minority Leader Jeffries expressing our support for the inclusion of Congresswoman Laurel Lee's amendment to the National Defense Authorization Act to reestablish the CFATS program. In addition to ACD and other members of the CFATS Coalition voicing their support for the CFATS program, other stakeholders such as the National Sheriff's Association, the Chemical Sector Coordinating Council, the Emergency Services Sector Coordinating Council, the National Gas Council, United Steelworkers, and the American Federation of Government Employees have all penned letters to Congress urging the reinstatement of the CFATS program.

**a. With CFATS expired, should EPA have a role in security?**

There is no question that the expiration of CFATS has left chemical facilities more vulnerable to attacks or other acts taken by individuals with malicious intent. In the absence of this program, I think it would be a mistake for an agency other than the Department of Homeland Security (DHS) to adopt another program in its place as DHS already has the expertise, personnel, and resources to protect chemical facilities. EPA does not have the statutory authority to run a chemical security program like CFATS, and the RMP Rule should not be fashioned to serve as a Band-Aid for the expiration of CFATS. Attempting to fill the gap left by CFATS

with the RMP Rule could interfere with the reauthorization of CFATS, a program proven to be successful, or the future establishment of another program led by DHS to protect chemical facilities.

In addition, through the RMP rule's extreme public information sharing requirements and the publication of the Risk Management Public Data Tool through which anyone with an internet connection can access and download sensitive information on high-risk chemical facilities, EPA has clearly demonstrated that security is not a priority for the agency. Moreover, this shows that EPA does not appreciate the security risks of making this kind of information widely accessible, which makes me concerned with the potential of EPA being responsible for security.

For these reasons, I am strongly opposed to EPA overtaking DHS' authority in overseeing chemical security programs. DHS is a security-based agency attuned to new and varied outside threats unique to chemical facilities. EPA does not have access to that knowledge or the expertise to develop counterterrorism measures. Shifting this responsibility to EPA would be a grave mistake.

**b. Could RMP fill the security void left by the expiration of CFATS?**

EPA programs such as RMP could *attempt* to fill the security void left by the expiration of CFATS, but any action taken to this effect would undoubtedly be less successful than the CFATS program or any comparable efforts led by DHS. EPA is not an agency with a security background or jurisdiction and security programs are not part of its mission or competency. Again, as demonstrated by the RMP rule's extreme information sharing requirements and the publication of the Risk Management Public Data Tool, it is clear that security is not a priority for EPA and the agency is not adept at appreciating security risks facing chemical facilities. Allowing security provisions in EPA chemical regulations, such as RMP, would result in new programs that will likely be onerous and difficult to comply with for businesses (to be inferred from previous EPA programs) while not being as effective as a program led by an agency where security is a major focus and has been since its inception.

In addition to these new provisions likely being onerous, I also fear that any attempt by EPA to fill the security void left by the expiration of CFATS would lead to reluctance of other, more security-adept, agencies from undertaking such regulations. Instead of EPA, DHS should take the lead on filling the security void left by the expiration of CFATS as it has a wealth of experts and resources within the agency along with a proven track record of successfully leading critical infrastructure security programs.

### **The Honorable Dan Crenshaw**

- 1. When EPA finalizes a new rule like this with hundreds of millions of dollars of compliance costs, what effect does that have on the price of products like food, energy, and medicine?**

There is no question that new regulations such as the RMP rule with high compliance costs contribute to inflationary costs on downstream products, ultimately being passed on to consumers. The businesses subject to these kinds of regulations typically do not have the substantial amount of money needed to comply readily available, making it necessary to raise prices. The effect of this on products such as food, energy, and medicine can be significant, especially with a rule like RMP because of the ubiquity of RMP-regulated chemicals in each of those sectors and the American economy as a whole. These chemicals are building blocks for a myriad of consumer products used every day. If the regulatory costs of producing and distributing essential chemicals increases, the costs of all of the products they go into will undoubtedly increase as well.

- 2. Are you worried that under this rule facilities may be forced to adopt alternatives that render facilities or processes unprofitable? If so, are you concerned that these facilities may close down operations, putting people out of jobs?**

Yes, I am very concerned that the new Safer Technology Alternatives Analysis (STAA) requirements will make certain processes no longer financially viable. This is because the final RMP rule prohibits facilities from taking profitability into

account when evaluating whether a STAA recommendation should be adopted. This will inevitably force facilities to decide between adopting STAA recommendations for a process that makes it unprofitable or ceasing to have that process in place at the facility to avoid economic hardship. With many facilities operating under thin margins I am concerned that this would cause processes to be shut down, which is very worrying when considering how many chemical processes are necessary to create building blocks to end products in virtually all commercial sectors. Also, as alluded to in your question, shuttering these processes will also result in layoffs for the workers who were responsible for these operations. Additionally, even if facilities continue these processes at a loss, it is likely that layoffs will also occur as facilities will be forced to find ways to minimize losses caused by implementing the new STAA recommendations.

**3. There are also security concerns with this new rule. Under this new rule the EPA has dramatically expanded access to sensitive information about exactly what chemicals are stored and how a facility might respond in the event of an accident. Can you provide some context for why this information was previously not widely shared to anyone with an internet connection?**

This information was not widely shared previously for two reasons. First, the information is sensitive, including the chemicals used in a facility, the processes used in the facility, details of their emergency response plan, and the exact longitude and latitude of the facility's location. Having this information so widely available is a grave security concern as many of these chemicals can be dangerous on their own or when mixed with others. Now bad actors have this wealth of information readily available, regardless of where they are located. These exact concerns are why the Chemical Anti-Terrorism Standards were passed by Congress, to establish a security system to protect chemical facilities and ensure bad actors cannot weaponize hazardous chemicals that are necessary to our daily lives.

Secondly, this information has not been widely shared previously because there is no need. There was already a system in place to allow individuals who can verify their identity and intent to view similar information. In addition, the Emergency Planning and Community Right to Know Act provides a mechanism to ensure that those who have a need to know, including first responders, can access it. Local Emergency Planning Committees (LEPCs) are privy to this information and are

permitted to share it with community members. Also, in areas where LEPCs are not active, EPA has reading rooms across the country that allow for this information to be viewed securely.