

Written Statement of

**Timothy J. Scott
Chief Security Officer and Corporate Director
Emergency Services and Security
The Dow Chemical Company**

Representing

The American Chemistry Council

To the

**United States House of Representatives
Subcommittee on Environment and the Economy**

On

**“The Chemical Facility Anti-Terrorism Standards (CFATS) Program: A Progress
Update.”**

**Oversight Hearing on Thursday, March 14, 2013
10:00 a.m., 2322 Rayburn**

Security Is a Top Priority for the Chemical Industry

The American Chemistry Council (ACC) represents the leading chemical companies that produce essential products critical to everyday life. The business of chemistry is a critical aspect of our nation's economy since it employs more than 780,000 Americans and touches more than 96 percent of all manufactured goods.

Because of our critical role in the economy, our commitment to our customers and shareholders and our responsibility to our neighboring communities, safety and security remain a top priority. In 2001, ACC members adopted an aggressive voluntary security program, the Responsible Care[®] Security Code (RCSC). RCSC is a comprehensive program that covers physical and cybersecurity vulnerabilities and requires ACC members to perform a thorough assessment of its security risks, to identify vulnerabilities and to implement appropriate protective measures throughout their value chain. Responsible Care implementation is mandatory for all ACC members, and its implementation is verified by independent, credentialed third-party auditors.

The RCSC has been a model for state-level chemical security programs in New Jersey, New York and Maryland, and the U. S. Coast Guard recognized it as an approved alternative security plan for compliance with the Maritime Transportation Security Act (MTSA). To date, ACC members have invested over \$11 billion in security enhancements under the auspices of the RCSC and in compliance with MTSA and CFATS regulatory programs.

DHS and Industry Have Made Significant Strides to Enhance Chemical Security

ACC believes that CFATS has had a positive impact on enhancing security, and we support full implementation of the program. Under CFATS, the Department of Homeland Security (DHS) has analyzed nearly 40,000 chemical facilities across the United States, identifying more than 7,000 facilities as potentially high-risk chemical facilities. Since then nearly 3,000 facilities have lowered their potential security risks by making operational changes that reduced or eliminated onsite chemical inventories. As a result, the CFATS regulated community currently includes approximately 4,500 facilities across the nation.

While DHS has faced some challenges implementing the CFATS program, these challenges are not insurmountable. Since the release of the DHS internal memo, the agency has made progress on implementing the action items and putting in place a workable management structure that will enable an effective CFATS implementation process. The industry has seen considerably increased inspection activity, improved quality of inspections and expedited authorizations. Key management positions have been filled with permanent, qualified professionals who have regulatory program experience. DHS has reengaged the public/private sector security partnership that was so valuable early in the program and is now providing an opportunity to make additional strides as we work together in securing the nation's chemical infrastructure.

Alternative Security Programs Offer a Valuable Opportunity

In December 2012, ACC published the Alternative Security Program (ASP) Guidance Document and Template, which are available to the regulated community for free on our website at: <http://www.americanchemistry.com/Policy/Security>. This initiative was the result of a yearlong effort in cooperation with DHS aimed at providing a set of compliance guidelines for the CFATS community on

developing an effective ASP. The ASP Guidance Document and Template provides helpful guidance on how to create an effective security plan for submission to DHS that clearly demonstrates a facility's compliance with the 18 Risk Based Performance Standards (RBPS), while providing an operational plan that can be used by site security personnel as well as DHS inspectors during an audit. This ASP approach offers an effective alternative to the existing Sector-Specific Plans (SSP) process, which has been identified as one of the significant roadblocks in moving CFATS approvals forward.

In a letter from David Wulf, DHS Director of the Infrastructure Security Compliance Division, he commends the work of ACC and our members in developing this important document and our decision to make them broadly available to the regulated community. Further, DHS states, "ASPs will undoubtedly be an important part of the CFATS program's continued forward progress."

The ASP initiative is an excellent example of how an effective public/private security partnership can create smart regulatory solutions that will benefit both the regulated community and DHS, while ensuring the security and safety of our infrastructure, our workers and our communities.

While DHS has made progress in moving the CFATS program forward, more needs to be done. DHS's authority to accept ASPs is an opportunity to expand on this initial work and develop effective compliance options that will help accelerate CFATS implementation, while ensuring the quality of the program. Existing industry security programs, such as the RCSC, should be recognized by DHS under their ASP authority as meeting initial hurdles for authorization, thus streamlining and prioritizing reviews. Industry sector ASPs could be created and approved by DHS and would cover a broad swath of the CFATS-regulated community, thus improving efficiency and expediting approvals. Clearly, given the future challenges facing DHS, particularly with processing the mountain of lower-tier sites, we need to develop innovative solutions to ensure chemical security across the country in a timely fashion.

Lastly, another opportunity for efficiency that could easily be implemented is the "corporate audit." Corporate audits cover those risk-based performance standards in which many facilities operate under a single corporate procedure or set of guidelines. Cybersecurity and site security escalation processes are two common examples. Current CFATS inspections often have inspectors getting the same corporate answer, site-by-site, instead addressing the issue once, unnecessarily expanding the length of a site inspection and the associated resources.

DHS Should Expedite an Effective Personnel Surety Program

Since DHS withdrew its personnel surety proposal from the Office of Management and Budget (OMB) this past summer, DHS has done a commendable job in reaching out to stakeholders and incorporating many of their ideas to help streamline the proposal and reduce the burden on the regulated community. By leveraging existing programs, such as the Transportation Worker Identification Credential (TWIC), and by allowing for corporate and third-party submissions for vetting against the Terrorist Screening Database (TSDB), a significant reporting burden will be minimized while maintaining the integrity of the program.

However, despite this progress, DHS does not currently have a workable Personnel Surety Program (PSP) program in place, resulting in no security plans being completely authorized or approved. This deficiency is a significant issue that must be addressed to ensure that all high-risk chemical facilities are safe, secure and fully comply with CFATS.

The goal of PSP is to ensure that personnel who have access to sensitive areas of high-risk chemical facilities are trustworthy and do not pose a security risk to the facility, to its workers or to members of the surrounding community. However, the current PSP proposal does not provide appropriate personnel assurance since DHS does not provide adequate notification to the facility that a person has been properly cleared prior to their entry to sensitive areas within a covered facility. This approach is counter to the core mission of the CFATS program and could needlessly put a facility and the surrounding community at risk. It is crucial, therefore, that such personnel are properly evaluated against the TSDB and are cleared *prior* to being granted access to such sensitive areas. Therefore, DHS must provide proper and timely notification to the facility that such persons have been assessed and are cleared for access *prior* to entry.

The CFATS Program Would Greatly Benefit from Improved Transparency

Each CFATS-covered facility receives a risk-based tier designation that is based on an analysis of the type and quantities of CFATS covered chemicals, or Chemicals of Interest (COI), and potential security risks such as theft or intentional release. In its final tiering determination letter, each facility is given a tier ranking between 1 through 4, with Tier 1 being the highest risk and Tier 4 being the lowest risk associated with its COI and potential security issues. However, other tiering factors such as local threat information are not shared with the facility. In some cases, some ACC members have questioned their tier assignment either because it does not mesh with the onsite security assessment or it is inconsistent with other similar covered facilities managed by the same company. However, when engaging DHS on their tier assignment, the typical response is that it is “classified.”

ACC believes that DHS should be more transparent about all factors related to a covered facility’s risk-based tiering, even if it needs to be at the classified level. The security manager at the site has the ultimate responsibility for the safety and security of its operations, and he or she also has the authority to make informed risk mitigation and security investment decisions. ACC believes that this issue is at the core of an effective security partnership. ACC strongly recommends that DHS improve the transparency of its risk-based tier determinations with the local security managers, by request, even if it has to be in a classified setting.

ACC Supports the CFATS Regulatory Program

DHS has created a solid regulatory framework under CFATS. This comprehensive federal regulatory program requires high-risk chemical facilities to register with DHS (Top Screen), conduct a thorough site security assessment and implement protective measures that comply with 18 risk based performance standards. These standards provide a solid, technical foundation for addressing a covered facility’s security measures such as perimeter security, access control, personnel surety and cybersecurity. To meet the RBPS, covered facilities select from an array of security risk reduction measures that are appropriate for their site-specific circumstances and achieve the requisite level of performance. DHS inspectors conduct thorough site assessments and work with the facility to ensure security and compliance with regulatory requirements. For ACC members, this assessment is exactly what a strong regulatory approach must do - ***set a high bar through performance-based standards and then hold facilities accountable***. The CFATS approach allows facilities to utilize a full range of potential security enhancements depending on local site conditions and risk thus maximizing their potential effectiveness.

Congress Should Continue to Support the CFATS Program

DHS leadership has demonstrated a commitment to working through the current issues and working with stakeholders to improve the implementation of the CFATS program. ACC urges Congress to provide the agency with sufficient resources to properly handle the workload and to ensure that chemical facility security is implemented in a timely fashion. Eventually we hope that Congress will provide DHS permanent statutory authority for the CFATS program, thus providing regulatory certainty and operational stability that is necessary for capital investments to be appropriately planned and budgeted. These improvements will also ensure that long-term security decisions can be made without concern as to whether the regulatory landscape under the CFATS program will be altered.