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THE CHEMICAL FACILITY ANTI-TERRORISM

STANDARDS PROGRAM: A PROGRESS REPORT

TUESDAY, SEPTEMBER 11, 2012

House of Representatives,

Subcommittee on Environment and Economy,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 10:00 a.m., in Room 2322, Rayburn House Office Building, Hon. John Shimkus [chairman of the subcommittee] presiding.

Present: Representatives Shimkus, Murphy, Latta, Cassidy, Gardner, Barton, Upton (ex officio), Green, Butterfield, Barrow, and Waxman (ex officio).

Also Present: Representative Pompeo.

Staff Present: Nick Abraham, Legislative Clerk; Charlotte Baker, Press Secretary; Sean Bonyun, Communications Director; Matt

Bravo, Professional Staff Member; Jerry Couri, Senior Environmental Policy Advisor; David McCarthy, Chief Counsel, Environment and Economy; Andrew Powaleny, Deputy Press Secretary; Chris Sarley, Policy Coordinator, Environment and Economy; Brett Scott, Staff Assistant; Jacqueline Cohen, Minority Counsel; Greg Dotson, Minority Staff Director, Environment and Economy; Elizabeth Letter, Minority Assistant Press Secretary; Karen Lightfoot, Minority Communications Director; and Stephen Salsbury, Minority Staff Assistant.

Mr. Shimkus. The subcommittee will come to order. And we would ask our guests to come on in and sit down and close the doors, and we will welcome our first panel.

I have an opening statement which I will read in part and hopefully then get unanimous consent to submit for the record.

I have been thinking about CFATS for a long time, since the last hearing, and how long it has taken and the past problems, et cetera, et cetera, et cetera. We all know the story.

You know, the Illinois State flag has a banner underneath it that says "State sovereignty, national unity." And I think part of our debate is, here at the national level, are States still sovereign? And how do we address national unity issues like homeland security and the like? And I think this is a perfect program that, if done properly, we can move in a direction.

What do we need on security? As many of you know, I have a military background. I served in West Germany during the old days. I understand security, I understand perimeters, I understand threats, not as well as those who are involved more deeply today.

But we want folks to have perimeter security. We would like the national government to provide assistance in identifying insecure facilities or placement of chemicals and operations and stuff. As I said, assistance, not the threats, not the mandates.

And then we do need to address the personal assurance issues about who is involved in working around what type of materials.

I think that really encompasses my view of CFATS. How can we work

together so that we are all better off? I think we still have a ways to go. I know we are making progress since the last hearing, but I think there are still issues to address.

And I know that there are some issues about why today, and was this planned, and was there politics behind today. At least that is what the rumors were from staff. And, first of all, no, this is the last full week here. We have to get through this.

But the second point I would say, how do you best honor those on a day like today than to address the threats of today? I think we do more, if we are really concerned about the threats posed, to continue to address our issues of safety and security on today. I think that is how you better honor folks, by moving forward.

So whatever debates and statements on that is, I don't really have a dog in that fight, and I could really care less what people think on that.

After the last hearing on this issue, I know testimony is going to be that we have implemented -- or DHS has implemented 59 of its 95 corrective actions. We will want to ask, where we are at on the other 36?

I will address questions on the permanent branch chiefs. I do think having people in positions for a period of time is probably an important thing for continuity and for process. I have a national forest in my congressional district. My relationships with the manager and the forest and all the stakeholders are much better when the same person is there over a couple years versus swapping them out

every 6 months or every year. And I think that is true probably at any Federal agency. My staffers who deal with constituent service are much better having continued to do that work over years versus having them doing different things.

We need to also address how do we move forward in a more transparent and open system and process. I think that is an issue, also, of the last hearing.

So I look forward to the hearing. I think it is very, very important.

Just for my colleagues who have shown up, Mr. Beers has agreed to waive his opening statement so that we can move questions after we get through ours because of the time constraints with the ceremony and your early departure. And we appreciate that.

So, with that, I am going to yield back the balance of my time and yield to the ranking member, Mr. Green, for 5 minutes.

[The prepared statement of Mr. Shimkus follows:]

******** COMMITTEE INSERT ********

Mr. Green. Thank you, Mr. Chairman, for holding this hearing today. And I don't know if it is special timing, but I think the reason we have chemical security is because of 9/11 and the concern we have about our major industrial facilities.

I want to welcome both of our panels.

This important issue -- I am glad to see our subcommittee continue oversight of this critical program. I represent the Houston Ship Channel area, which is the largest petrochemical complex in the country. I cannot stress how important the success of the CFATS program is to my constituents who are the employees and live in the communities that surround the facilities. They deserve the best security standards possible to prevent acts of terrorism on U.S. soil.

Secretary Beers, you did not testify under the best circumstances last February, but I hear that you have some positive things to report this time around. And I appreciate that things are starting to move, but we cannot ignore that it has been 6 years since this program was enacted and we are still not close to being there yet. It is time to get these plants inspected and approved, and I hope that you have a deadline for doing so to report to us this morning.

That said, it is Congress' job to make sure you have the resources to do this. I understand that the House appropriators significantly cut your budget. With movement finally happening in the last few months, now is not the time to limit resources. And I encourage my colleagues not to set us back now.

I want to end by talking about a subject that is of prime

importance to me, and that is personnel surety. Developing and implementing a personnel surety program that relies on existing government credential systems, like the TWIC, would reduce a burden on DHS and the workers at these facilities and the industry.

Secretary Beers, last year I asked if the Department intended to integrate TWIC in the personnel security program. You gave me a positive response, and yet the proposal you sent to the OMB did not make it clear that TWIC is an acceptable background check. I am pleased that you rescinded the proposal in July, but understand that you will resubmit a revised personnel security program in the coming months. I hope today that you will definitely commit to allowing the Transport Worker Identification Card, or TWIC, to be used without caveats for workers or industries.

We will soon be reissuing thousands and thousands of TWIC cards because they are expiring, including mine expires in June of next year. I have spent so much time on plant sites in my district. At the Port of Houston, we have over 250,000 employees who use a TWIC card every day to get to work -- 250,000. Multiply that across the country. There is no reason to reinvent the wheel. We need to fix TWIC and use it as the standard card.

I regret Congress has still not passed a CFATS authorization. I still believe that a lot of problems with the CFATS program stems directly from not having a permanent authorization with direction from Congress. Chemical facilities security is extremely important to the protection of public health and safety throughout the U.S.,

particularly in our congressional district. There is no reason we should not act on this issue.

And I look forward to the testimony of our witnesses. And thank you, Mr. Chairman. I yield back my time.

Mr. Shimkus. The gentleman yields back his time.

[The prepared statement of Mr. Green follows:]

******** COMMITTEE INSERT ********

Mr. Shimkus. The chair recognizes the chairman of the full committee, Mr. Upton, for 5 minutes.

Mr. Upton. Well, thank you, Mr. Chairman. I am going to ask that my full statement be made part of the record.

Mr. Shimkus. Without objection.

Mr. Upton. I just want to say, 6 months ago we authorized CFATS. We were very conscious that the next terrorism incursion could come from within -- a chemical plant instead of on board an airplane.

And those of us who were here in D.C. 11 years ago remember well every single minute of that day. And I, for one, made a promise that we should do everything that we can to make sure that that moment doesn't occur again in this Nation. We have to honor the victims and their loved ones by working together to ensure that such an attack can never happen again. And I support Chairman Shimkus and all that he is doing to make sure that, in fact, we are better safeguarded as a nation.

And I yield back my time.

Mr. Shimkus. The gentleman yields back his time.

[The prepared statement the chairman follows:]

******** COMMITTEE INSERT ********

Mr. Shimkus. With that, seeing no other Members here authorized for an opening statement, the chair now recognizes himself.

First of all, as stated earlier, both Mr. Beers and Ms. Berrick, both have agreed to waive their opening statements so we can go right to questions. We appreciate that.

[The prepared statement of Mr. Beers follows:]

******** INSERT 1-1 ********

[The prepared statement of Ms. Berrick follows:]

******** INSERT 1-2 ********

QUESTIONING OF THE HON. RAND BEERS, UNDER SECRETARY, NATIONAL PROTECTION AND PROGRAMS DIRECTORATE, U.S. DEPARTMENT OF HOMELAND SECURITY, ACCOMPANIED BY DAVID WULF, DEPUTY DIRECTOR, INFRASTRUCTURE SECURITY COMPLIANCE DIVISION, OFFICE OF INFRASTRUCTURE PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY; AND CATHLEEN BERRICK, MANAGING DIRECTOR, HOMELAND SECURITY AND JUSTICE TEAM, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. Shimkus. And so I will start.

Mr. Beers, it is my understanding from your Web site that you have one facility that is approved under the program. And of that one, what is its plan on personnel assurance?

Mr. Beers. Sir, we have now two plans that have been approved. Those approvals are conditional pending the completion of the response to Risk-Based Performance Standard 12, which is the personnel surety standard. So we are working actively now to reintroduce the request to OMB for the collection program that we need to move forward.

But let me say three things about that.

Mr. Shimkus. Quickly.

Mr. Beers. First, Ranking Member Green, TWIC will be included in that.

We will also have the opportunity for entire companies and service providers to be able to submit for their entire companies. And they will be authorized to go to any plant that they go to that is covered

by this program.

And, thirdly, we are going to work this program heavily with industry to make sure that we move as quickly as possible, but recognizing their needs, as well.

Mr. Shimkus. You understand my concern. If we have two that are approved and we still don't have the personnel assurance issue, it is hard for me to understand how we say it is conditionally approved without the whole ball game -- a standard being reached across the board. I know we want to send positive signals, but we don't want to send false signals, either, that we are better off and we have a full program.

Do you want to respond, Mr. Beers?

Mr. Beers. Sir, I totally agree with you that we don't want to leave any security requirement not fulfilled. But it was our view that the conditional authorization process, because of the slowness with which we were getting the necessary personnel surety questions answered, meant that we believe that we ought to move forward with the conditional authorization and catch up as quickly as possible with the personnel assurance.

Mr. Shimkus. Okay.

Let me move to the -- the last hearing, we also had an issue because all facilities were placed into the same tier. So we had a big debate about, how do we get risk tiering, and what is the methodology, and let's make sure we have the proper people doing that.

And my understanding is, risk tiering is a formula; is that

correct?

Mr. Beers. Yes, sir.

Mr. Shimkus. We have a formula to do that. And what comprises the formula?

Mr. Beers. Sir, there are a series of factors that are involved in that formula. First of all, we --

Mr. Shimkus. We have to go quickly.

Mr. Beers. The --

Mr. Shimkus. How about if I just help out here? Threat times vulnerability times consequence is the risk factor, correct?

Mr. Beers. That is the essential equation, and then each of those has elements has sub-elements within it.

Mr. Shimkus. So let me ask about, how do you -- I don't claim to be a great mathematician, but I understand formulas and I understand constants and I understand variables. One of our concerns is that vulnerability you have as a constant versus a variable, and that concerns us in the formula.

In fact, I would like to go to the GAO. Did you know that, in this formula, that for that issue of vulnerability, that vulnerability is listed as a constant and not a variable?

Ms. Berrick. We do know that, Chairman, and we are looking at that right now.

I think the specifics of this are for official use only. But to talk about this at an unclassified level, we found a similar -- we look at how DHS calculates risk scores across the Department as a part of

a number of our reviews. We found a similar problem in how they calculate risk for a major grant program and, in fact, recommended that they not hold vulnerability constant. DHS implemented that recommendation in the last grant cycle and varied it.

So we have cited that as a concern in past work.

Mr. Shimkus. And the point being, two similar facilities -- one in downtown Manhattan; one outside Olney, Illinois -- two very different risk portfolios. And so that is why we would argue that there should be a variable aspect on that formula.

And from last time, how do you move a facility through the site security process, approve SSPs, inspect, et cetera, when there is no personnel surety plan that assures a facility manager that no one in the plant is on the terrorist watch list? It is kind of going back to the previous question.

Mr. Beers. Sir, there is more to the site security plan than simply the individuals involved, which is not to say that that is not a very significant and important part. So the question is, what are the other security provisions within the plan that we and they can record and review and inspect?

Mr. Shimkus. Thank you. My time is expired, because I want to keep this going, and I appreciate that response.

I would just say that, in chemical facilities, probably the biggest threat would be someone internally being able to get inside the facility and know the facility. So of all of the threats, that is probably the biggest one, I would venture to guess.

So, with that, I would yield to the ranking member, Mr. Green, for 5 minutes.

Mr. Green. Thank you, Mr. Chairman.

Secretary Beers, as of 2 days ago, the Tier 1 site plans reviewed or authorized were 73, and 2 that were approved.

What does "conditionally authorized" mean? Does that mean that they can continue to operate? Or is there --

Mr. Beers. That means that they can move forward with implementation of the site security plan elements that were approved, and that we come back when we have a personnel surety program that we have agreed on and implement those.

But let me just make one point with respect to personnel surety. It is not that this government has been quiet or inattentive to looking at insider threats within this area. FBI, which we work in partnership with, has a very robust program of looking for threats within the country and ensuring that they are being inspected. This program would be an additional program to the excellent work that the FBI is doing on a daily basis.

Mr. Green. How long does it take to get a plan from conditionally approved to approved?

Mr. Beers. That is going to depend, sir, on when the personnel surety risk-based performance standards -- excuse me -- when we agree on what the standards are that they are supposed to meet.

So, right now, we are looking at publishing the request for information in the next 30 days and collecting that information over

a 60-day period, and then going forward with our proposal to OMB.

Mr. Green. You mentioned that as of July the 16th, in your statement, ISCD has resumed authorization inspections on Tier 1 facilities. How many inspections, on the average, are you conducting a month?

Mr. Beers. David, do you want to answer that question?

Mr. Wulf. We have a total of about 10 inspections scheduled during the month of September. We anticipate continuing to increase the pace of inspections going forward. So I think, you know, you will see hundreds of inspections occurring over the course of the next year.

Mr. Green. Okay. At that rate, how long do you think it will take to get to all those sites that are awaiting inspection? A year?

Mr. Wulf. Well, the sites that are awaiting inspection are those that have received their authorization, and right now those are 73 sites. Several of those have already been inspected. We have conducted a total of 19 authorization inspections to this point. The remainder of those 73 and additional ones that we anticipate authorizing over the next months will certainly be inspected in the next year.

Mr. Green. And I would hope folks are moving into the conditional authorization, so that group will be expanding, I assume.

Mr. Wulf. Yes, the numbers of finally approved SSPs will certainly be, you know, continuing to grow.

Mr. Green. Given the current status of the SSP tool, has DHS explored how to better use the authority, use alternative security

plans to help expedite the CFATS approval process?

Mr. Beers. Yes, sir. That is an important element of our efforts. We have been working with the American Chemical Council. We have run a pilot program with an alternative security plan with them and are hoping to issue some guidance for the members of that council to be able to use the alternative security plan. We are also working with agricultural industries, looking at the same possibility.

Mr. Green. Okay. Well, I appreciate you being willing to use similar credential programs like TWIC. The Federal Government really doesn't need to reinvent the wheel. TWIC is not perfect, believe me, as I learned when it was rolled out and we will see as we do the reissuing of them. But we need to learn from that and have one ID, whether you are on water side or on land side, your facility.

The internal DHS memo leaked to the press last year articulated programmatic breakdowns, serious deficiencies. What is the timeline for the full implementation of the 91 recommendations for improving the CFATS program?

Mr. Beers. Sir, with respect to all 95 now of those, some of them are going to go on over a longer period of time, but we are moving as quickly as possible. We have, since we submitted the testimony, the written testimony with the September 4 deadline, increased the number of items that have been completed.

And, David, I don't want to speak to the precise number, but when would you say we would be up in the 80s?

Mr. Wulf. I would say we will be in the 80s by the end of the

calendar year, most likely.

Mr. Green. Okay.

Mr. Chairman, I am out of time, and I have one question on the site security plan I would like to submit and hear the answer. And I appreciate you all for getting back to us.

Mr. Shimkus. Thank you. Without objection.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Shimkus. The chair recognizes the vice chair of the subcommittee, Mr. Murphy, for 5 minutes.

Mr. Murphy. Thank you, Mr. Chairman.

And thank you to our witnesses today.

I just want to verify. So the number of site security plans that have been approved is two?

Mr. Wulf. Two, sir.

Mr. Murphy. You got the funding in 2006 to go forward on this; am I correct?

Mr. Beers. Excuse me?

Mr. Murphy. The funding came forth to start these inspections in 2006; is that correct? 2007? It was a few years ago?

Mr. Beers. I don't know whether it came forward in -- the authorization occurred then.

Mr. Murphy. Authorization, okay.

Mr. Beers. But we have not been in a position to actually finally approve them, really, until this summer, in part because of the management problems that have been revealed and in part because as we have gone forward with the program we have learned a whole lot. And the whole lot that we have learned has also created the appreciation that it was more complicated than it was originally thought to be at the beginning of the program.

Mr. Murphy. So how long have you been getting the money, and how much money is it you have been receiving to do this, then?

Mr. Beers. I believe the total amount of money that we have

received is slightly under $500 million.

David?

Mr. Wulf. Yeah, I think on the order of $400 million, $450 million.

Mr. Murphy. Wow. And we still have, what, over 4,000 plans to review?

Mr. Beers. We have about 4,400 plans to review. We have 4,433 facilities that have been designated or have preliminary designations as being in the high-risk category.

Mr. Murphy. So we hope this goes better because, otherwise, you are at the rate of approving them all within a few centuries, and we wanted to help you speed that up.

You have said that the inspectors weren't well-trained and there was a number of problems. How many inspectors are trained now?

Mr. Beers. All the inspectors that we have. The number is over 100. A hundred and fourteen, I believe, is the actual number. And that training about doing the inspections was completed during the month of July.

Mr. Murphy. And they are all qualified to do the inspections?

Mr. Beers. Yes, sir.

Mr. Murphy. How many inspectors are needed to do each plan?

Mr. Beers. We have a planned workforce that is in -- David, about 120-something overall?

Mr. Wulf. Yes, yeah, we do. And that will encompass ammonium nitrate inspections when that program comes on line.

Mr. Murphy. But, I mean, how many people do you need for doing each one?

Mr. Wulf. It varies depending on the size and scope of the facility, but, you know, I would say anywhere from two to three, four, five.

Mr. Murphy. So I am still looking here at -- you have about $2 million per person there to do this, and you need two or three to do each one. Using those kinds of numbers and those figures, when do you anticipate you will even reach the halfway point with these inspections?

Mr. Wulf. We anticipate within the next year that we will have, you know, authorized, conducted inspections. And if all goes well with the site security plans, we will have approved close to 300 plans.

Mr. Murphy. That still leaves us 3,500 or so to do, and that is -- I mean, I know you are concerned, and we are too. I am trying to find ways we can help you.

Mr. Shimkus. Would the gentleman yield for 1 second?

Mr. Murphy. Yes.

Mr. Shimkus. What I would weigh in is, that is why we need to properly tier the facilities. And that is why this debate that is going on about alternative security plans are very, very important, so that we use the plans that are already established out there in industry which are trying to do the same thing, for the most part, and work together versus against each other.

Mr. Murphy. Precisely. No, no, I want to work together. I am

just trying to find out if there are specific recommendations of things you need from us to facilitate that in moving forward. Because we know you want to be accurate, and we know you want to do this in a way that protects public safety and works with the things that industry has found.

And so I am wondering, in the process of going through, are you finding ways in this that, in addition to the people that you have approved for the inspections, which the chairman was mentioning, within the industry, can facilitate that and actually speed up this process in a way that helps too? Is there something that we can learn from that?

Mr. Beers. Sir, that is in large measure what we are about right now, which is to ensure that the people are trained, to ensure that the review process to get the plans to the authorization stage so that we can send out the inspectors to do that moves more quickly and more efficiently than it has in the past.

And I think that the record since the review process to make the internal reviews go faster has shown an increase. I think that the inspection plan training has increased the number of inspections. So I think we are moving at a rate that is going to be increasing.

But I have to say here, sir, it will not help us if the House Appropriations Committee appropriation level for this program, which cut $40 million --

Mr. Murphy. If I might add, I know oftentimes when I am visiting businesses, they are very concerned that government seems to come in,

work against them, doesn't ask them for their assistance. And I would like to echo what the chairman said, that, I mean, these are people who also care about their communities, their families, their workers. And I hope that you do talk with them and see what you can learn from so many of these companies because they do want to facilitate and move this forward.

And I yield back. Thank you.

Mr. Shimkus. The gentleman yields back his time.

It is tough to argue dollars and cents when we have a track record of millions of dollars per individual. So I wouldn't go down that route, Mr. Beers.

The chair would now recognize my colleague from North Carolina, Mr. Butterfield, for 5 minutes.

Mr. Butterfield. Let me thank you very much, Mr. Chairman, and certainly thank the three witnesses for coming forward today with your testimony.

I am going to not take up the entire 5 minutes, but I do want to ask Secretary Beers and possibly Mr. Wulf a very short question.

I am told that the Department has a hotline for whistleblowers. That is what my staff tells me, that there is now in place a hotline for whistleblowers and that anyone can call that hotline with security concerns.

Department employees have whistleblower protections, but what protections, if any, cover facility employees and even the general public? Mr. Beers, can you help me with that?

Mr. Beers. I am going to turn to David to answer the question about the hotline.

But it is certainly our view that we solicit both from within the Department of Homeland Security and from the private sector and from citizens any indication of issues that we ought to pay attention to.

The protection involved there will be that we will provide anonymity if anonymity is requested. That is a basic policy of hotlines, if that is what the person wants. So if it is from an employee of the company, we will keep that --

Mr. Butterfield. What about downstream at the facilities?

Mr. Beers. Yes.

Mr. Butterfield. The same thing with the facilities?

Mr. Beers. Yes. I mean, insofar as they tell us. We are not going to reveal the names of the individuals who gave us that information if they want their identity protected.

Mr. Butterfield. And the same with the general public?

Mr. Beers. And the same for the general public, yes, sir.

Mr. Butterfield. All right.

Mr. Wulf. And we do maintain, as the Under Secretary noted, a tip line, a CFATS-focused tip line, so members of the public, facility personnel can call in and report concerns, can report information about facilities that may, you know, benefit from being part of the CFATS program.

Mr. Butterfield. All right.

More than 2,700 facilities have eliminated or reduced holdings

of dangerous chemicals, so they are no longer considered high-risk facilities. How does DHS ensure those facilities do not increase the amount of those chemicals in their inventory at a later date?

Mr. Beers. David?

Mr. Wulf. Well, those facilities -- and, you know, if I can mention, you know, that is one of the many successes that we view in the CFATS program to this point. And there is a pretty significant list of things that America has received for its investment in CFATS.

But with regard to those facilities, having been part of the program, having gone through the initial Top-Screen, they are made aware of their obligation when they bring into the facility chemicals above the screening threshold quantity that are on the list of 322 chemicals of interest, their obligation to report that to us. So they are fully aware of that and, you know, meet those obligations. So facilities come back into the program, as well.

Mr. Butterfield. Okay.

And now to the managing director, the Department of Homeland Security Infrastructure Security Compliance Division completed 21 of 94 items from its action plan between June and September of this year. And prior to that, the Department had only completed 38 items.

Is DHS now completing the 94-item action plan at a faster rate than the GAO anticipated?

Ms. Berrick. I think they are making good process on the action plan. They demonstrated their commitment. They are actively tracking it. We had some suggestions to provide some additional

details on the plan, which they have incorporated.

The one thing I would mention about the action plan, I think it is a very good first step. However, you know, to address these issues that were highlighted in the management memo is going to take leadership, sustained leadership, support over the long term.

Some of these action plans are designed to develop plans to, you know, implement a program -- for example, a framework to create a quality division. While that is very important, the actual execution of this quality division, how they oversee this process, is really what is going to be critical.

So we think it is a very good first step, but it is going to require long-term and sustained leadership support to refine these actions, update them as needed, and make sure that they execute on the plans that they have put in place.

Mr. Butterfield. All right.

And I will end where I began, with Mr. Beers or Mr. Wulf. You mentioned that 73 facilities have authorized or have conditionally authorized Tier 1 security plans. Are there any additional steps those facilities must complete before inspection and approval?

Mr. Beers. No, sir. That means that they are ready for inspection. The ones that haven't been authorized or conditionally authorized either need to provide more data or we need to have a better understanding of the data that they did provide.

Mr. Butterfield. Do the steps vary across facilities?

Mr. Beers. Excuse me?

Mr. Butterfield. Do the final steps vary across the different facilities?

Mr. Beers. Well, no facility is necessarily the same, so what they need to do in order to meet the Risk-Based Performance Standards may be different for each facility, which means that there is no automatic template, when you look at a response, that either it is "yes" or "no." You have to look at what they actually said with respect to that particular performance standard and make sure that it matches what the performance standard lays out.

Mr. Shimkus. The gentleman's time has expired.

Mr. Butterfield. Thank you, Mr. Chairman.

Mr. Shimkus. The chair now recognizes the gentleman from Colorado, Mr. Gardner, for 5 minutes.

Mr. Gardner. Thank you, Mr. Chairman.

And thank you to the witnesses for joining us today.

Mr. Beers, I want to ask a couple of questions to follow up on a committee hearing we had February 3rd, 2012. I want to read the transcript from about 30 seconds' worth of our conversation.

I started the conversation by asking about the Anderson Wulf memorandum and said:

Mr. Gardner: "So the inspector general has looked into this?"

And your response was, "The inspector general has access to these reports, yes, sir, but this was not done by --"

And I stated, "Have you had conversations with the inspector general?"

Mr. Beers: "With respect to this report?"

"Yes."

Mr. Beers: "I can't speak to that. I have not personally had that conversation."

And I followed up with, "But he has this memorandum?"

Your response to that was, "As with all these kinds of reports, yes, they are available."

"They are available, or he has them? I mean, you have sent it to him?"

Your response was, "I will have to confirm that, sir."

And so, Mr. Beers, to follow up with that, you never did get back to me or to the committee to confirm that you had given the Anderson memo to the inspector general, did you?

Mr. Beers. Yes, sir.

Mr. Gardner. You got back to us?

Mr. Beers. I am sorry, I am not certain that we got back to you. But, yes, they have it.

Mr. Gardner. Okay. But I don't think you got back to me. I certainly never received the information. You didn't get back to this committee.

But it was after this committee hearing, it was after the February 3rd committee hearing, when the inspector general had watched the broadcast of our interaction, and it was more than a month after it was all over the national news and 2 months after you received the memorandum that the IG called you to obtain the memorandum. Is that

correct?

Mr. Beers. We had a conversation immediately after this hearing, yes, sir.

Mr. Gardner. And when did he get the report then?

Mr. Beers. I can't say the specific day on which he got it.

Mr. Gardner. It was 2 month after the conversation.

And, again, you didn't give it to him right away after the committee hearing. After that conversation, did you give it to him right away? Surely you remember that.

Mr. Beers. I did not personally give it to him. I asked my staff that it be given to him immediately, per the conversation that he and I had.

Mr. Gardner. And staff was directed to immediately give it to him?

Mr. Beers. Yes, sir.

Mr. Gardner. And the memorandum, though, didn't go out until May. Is that correct?

Mr. Beers. Sir, I don't have that information.

Mr. Gardner. Do you have staff here that could answer that?

Mr. Beers. David?

Mr. Wulf. I don't believe I can answer that, sir.

Mr. Gardner. And so, here is the problem that I have. And that is why I would ask you for the full story here.

How many times have you ever communicated with either Richard Skinner or Charles Edwards, in their respective positions as inspector

general at DHS or the acting inspector general, or anyone else from the DHS Inspector General Office about the CFATS program?

Mr. Beers. I have talked to Mr. Edwards on at least, I want to say -- I am positive that I have spoken to him on at least three occasions. And I could have had other conversations with him beyond that, but I don't recall.

Mr. Gardner. And were those conversations started by you, or were they initiated by -- who initiated those conversations?

Mr. Beers. In one case, it was him. In the other cases, it was me.

Mr. Gardner. And so, you know, have you discussed the conduct of an audit inspection or investigation of the CFATS program? Was that the purpose of the conversation?

Mr. Beers. We had a conversation about that, yes.

Mr. Gardner. And that was a conversation that you started or that they started?

Mr. Beers. I believe that was one that I started.

Mr. Gardner. And have you or anyone in NPPD, IP, or ISCD ever suggested that the Homeland Security inspector general come in and look at the problems being encountered by CFATS?

Mr. Beers. Sir, as a result of that round of hearings, a Member of Congress requested the IG to come in and look at it. When --

Mr. Gardner. But you never?

Mr. Beers. When he and I had the conversation about the management report, I did not request that he come in and look at it,

but I certainly said we are open to anything that you believe is appropriate to looking at this program.

Mr. Gardner. And so the recommendations by -- so nobody, again, nobody in NPPD, IP, or ISCD ever suggested that?

Mr. Beers. To?

Mr. Gardner. To come in and look at the problems being encountered by CFATS. That was all a Member of Congress that suggested that.

Mr. Beers. There was a discussion in the fall of 2010 as to whether or not the inspector general should be invited to conduct a management review, which would have required us to pay them to hire an outside consultant to conduct that review. When we looked at --

Mr. Gardner. And that was a suggestion that they had made?

Mr. Beers. Excuse me?

Mr. Gardner. That was a suggestion that somebody in one of the --

Mr. Beers. That was a suggestion that Assistant Secretary Todd Keil made in a memo --

Mr. Gardner. And so what did you do with that recommendation?

Mr. Beers. Excuse me?

Mr. Gardner. What did you do with that recommendation?

Mr. Beers. We sat down in senior leadership, including Assistant Secretary Keil, and decided that we could perform that particular review within Office of Compliance and Security, which exists within NPPD but not within IP, and that we could do it more quickly and we could do it without an additional cost to the program.

And that report was done and delivered in September of 2011 and became part of the management review that Penny Anderson and David Wulf undertook. The results are in that effort.

Mr. Gardner. So just to follow up, with this most recent February 3rd hearing, the revelations in the Anderson-Wulf memo, did anyone -- I will follow up again -- did anyone in NPPD, IP, or ISCD ever suggest to you that DHS IG come in and look at the problems being encountered?

Mr. Beers. After that hearing, no.

Mr. Shimkus. The gentleman's time has expired.

Mr. Barrow, do you seek recognition?

The chair now recognizes the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. Latta. Thank you, Mr. Chairman.

And thank you very much for coming in today to testify again before the committee.

Mr. Beers, let me ask, could you inform us of the misuse of government-owned vehicles by the Washington-based headquarters personnel?

Mr. Beers. I am sorry, sir? Could you repeat --

Mr. Latta. Could you inform us about any misuse of government-owned vehicles by Washington-based headquarters personnel?

Mr. Beers. Sir, I do not have an indication of that kind of misuse. We did look at that issue.

David, do you want to add to that?

Mr. Wulf. There were, before Ms. Anderson and I came into the

division, vehicles that were housed at our headquarters location. Before we arrived, those vehicles had been removed. So I don't have -- we don't have -- we didn't have any indication that the vehicles had been misused. But, you know, we believed their presence at headquarters was not necessary for the --

Mr. Latta. Okay. When you say "removed," could you explain? When you say "removed," were they removed to another government agency? What happened to them?

Mr. Wulf. I believe -- and I wasn't there at the time -- that they were pushed out to our field force.

Mr. Latta. Okay. But were the records kept on those vehicles prior to that time as to where they were going, like mileage records, odometer statements, gas records, et cetera?

Mr. Wulf. I don't know that.

Mr. Latta. Is there a way to get those records?

Mr. Beers. Sir, I want to acknowledge, that is one of the management problems that we discovered, that there was inadequate recordkeeping. And that is one of the deficiencies that we have corrected.

Mr. Latta. Okay. But I think what we need to have in the committee, though, is we should have the -- you know, if we could request that information. And if you have to go back and find those records -- because, again, it would seem to me that if it is a government vehicle, and when you have those government vehicles out there, that, you know, you have the odometer statements. And, also, there would

be, you know, gas records and things like that. They would have to be filled up; they would have to have some service. There would have to be different records out there.

So I think it is very important for the committee to get that information from you all so we can start with that point, as to know exactly where those vehicles were and if they were misused. So that is one of the things we would like to do.

And let me ask, just to follow up again -- maybe you just mentioned it -- when did you all become aware of that problem with those vehicles? When you said you came in and those vehicles were removed, when were you all aware of it?

Mr. Beers. David, fill in if I am not precise on this.

But my understanding is that that came out in the management review that was done by our Office of Compliance and Security. So the detail about the lack of records and oversight was finally reported in September of 2011, made available to David and Penny Anderson for incorporation in their report.

Mr. Latta. Let me ask, was any of this turned over to the IG for investigation?

Mr. Beers. No, sir, that was not turned over to the IG. The report itself said that there was a lack of recordkeeping but that there was not an indication of waste, fraud, and abuse associated with that. "Not an indication" -- not saying that it wasn't, but it was not indicated.

Mr. Latta. Okay. And, again, how many vehicles are we talking

about in total?

Mr. Wulf. I would have to get that back to you.

Mr. Latta. Could we get that back from you, then? We would appreciate that information.

Mr. Wulf. A relatively small number, I believe.

Four to six vehicles?

Mr. Beers. That is what my staff is telling me, four to six vehicles.

Mr. Latta. Okay.

And, Under Secretary, you were aware of the unsatisfactory condition of the SSP process before you testified back in March of last year and in 2012. Is that correct, that you were aware of that?

Mr. Beers. I was aware that we were not moving at a pace that we had previously told you we should be moving at, yes, sir. And I indicated that I was disappointed in that and that I had hoped that we would move more rapidly on that.

Mr. Latta. Okay. And I am sorry, did say that you brought those problems and that information to the committee at that time?

Mr. Beers. Sir, which hearing are we talking about now?

Mr. Latta. The March 2011 or the February 2012 hearing?

Mr. Beers. So, at the March 2011 hearing, I believe I acknowledged that we had not achieved the objectives of getting the site security plans authorized at the rate that I had previously been told we would complete those plans, and that I had hoped -- and I am now talking 2011 -- that we would be in a position to move forward on

that. That was, unfortunately, not an accurate statement at that time either.

Mr. Shimkus. The gentleman's time has expired.

Mr. Latta. My time has expired, and I yield back.

Mr. Shimkus. I would encourage my colleagues who want to go to the memorial service to head on down to the rotunda. We are going to finish with Butch Cassidy for 5 minutes, and then we will tell how we are going to operate after that.

So the gentleman from Louisiana is recognized for 5 minutes.

Dr. Cassidy. Hello, gentlemen.

I have a lot of petrochemical plants in my State, and my workers and my communities are at risk. And I have to say that when I speak of dysfunction in Washington, you all are case number one. I say that not to be mean but just to kind of observe.

In the report that was the internal report that kind of broke this open, there are statements such as, "Legacy employees are doing a tremendous amount of work, while I see others sitting at their desk not contributing."

Those folks who are not contributing, are they still with the agency or have they been released?

Mr. Beers. David, would you answer that?

Mr. Wulf. Yeah, we have made a concerted effort to ensure that all members of our team are contributing to the program. And part of what we have done, as we have moved forward, kind of, toward a realignment of the organization, is to ensure that we can achieve a

greater fit between the individual employees and the position in which --

Dr. Cassidy. Has anybody been released? Because the document suggested that some that were hired were totally inappropriately -- had skill sets and attitudes that were totally inappropriate to their job description, making it sound more as not something that required some adjustment, but required, frankly, rehiring.

Has anybody been released?

Mr. Wulf. No one has been released, but, you know --

Dr. Cassidy. Can I just keep on going then?

They also, in that same report, said that not only had you not done any inspections, you had not developed a process to inspect. An incredible indictment.

Are we to believe that you now have a process to inspect?

Mr. Beers. Yes, sir. We have retrained all of the inspectors that are currently on board. We completed that process in July --

Dr. Cassidy. Now -- I am sorry, just because we have limited time. I apologize to interrupt.

It also said that because of your union contracts and your necessity to bargain even on minutia, even on things to bring into compliance with government policy, that it was anticipated that this could take weeks, months, it implied years, in order to actually implement the policy changes necessary to do an effective inspection.

What has happened with that?

Mr. Beers. Sir, we have worked with the unions, and I think we

have a productive and expedited process to have those items that are required to be reviewed by the union so that they move swiftly.

But I want to turn to David, who has been managing this on a day-to-day.

Mr. Wulf. And if I can just add, sir, that the point that we are trying to make in the "challenges" memo was that, at the early stage in which this program found itself, the presence of a union added an additional layer of complexity. But, you know, I am glad to report that we have developed a very strong relationship with our bargaining unit and that --

Dr. Cassidy. But no one has been released, and it is so clear throughout here that there was a problem with -- it was a problem not just of form but also of who was hired. That tells me, you guys, your credibility, frankly, is a little weak. I apologize.

But here, for example -- again, I am reading from your internal document -- a large number of inspectors, quote, "were hired who have unrealistic expectations and the wrong skill set or mindset to do the work of a regulatory inspector; who are located in geographic areas that do not make sense or aligned to the mission; who, for example, seek law enforcement authority as opposed to work, using the uniform as a symbol of identity and authority rather than a tool to be used."

I mean, that suggests to me that it wasn't just a tweaking, a little improvement of the bonding with the union, but there were people hired who were inappropriate to the position to which they were hired. I can give further examples of that. The fact that you tell me that,

no, we haven't really released anybody, we have just reassigned them, tells me you haven't been serious about what you are doing.

Mr. Wulf. I think we have come a long way in building the culture of the organization and building the regulatory compliance organization. And we have, you know, some very professional, extraordinarily talented folks throughout our team. They come from a variety of backgrounds --

Dr. Cassidy. Okay. So, "some" -- this is plural -- "some are simply unsuited for supervision, treating employees in an unfair, unprofessional, or disrespectful manner. Others are uninformed about their responsibilities as a supervisor to manage employee issues."

This is your internal document. And yet what I am hearing from you is, no, we haven't really released anybody, but we are working on it. Frankly, that doesn't help your credibility.

Mr. Beers. Sir, some of the thoughts behind that statement were that individuals were hired into positions that they weren't adequately trained and, from a baseline resume review, didn't have the background for.

Dr. Cassidy. I am out of time --

Mr. Beers. What we have done is go through the process of training, go through the process of moving those individuals to more appropriate positions that are cast against their qualifications.

Dr. Cassidy. Has anybody had a reduction in pay? Because another thing was, "An excess number of highly graded personnel are serving in positions that do not contribute to the mission at a level

commensurate with their pay grades." Has anybody taken a decrease in pay?

Mr. Beers. That is where I say we are moving people to more appropriate positions.

But let me ask David to clarify.

Mr. Wulf. And we have made a lot of process over the past year. I mean, that report was put together about a year ago, and we have put into place a variety of things, including training for supervisors. We have --

Dr. Cassidy. If I am a taxpayer and if I see something that smacks of cronyism, per your report, the obvious question is, am I getting more bang for my taxpayer buck?

Has anybody taken a cut in pay?

Mr. Wulf. We have people in positions for which they are more suited. And we have put into place, you know, an open and transparent process.

Dr. Cassidy. I will take that as a "no." We are out of time. I apologize.

Mr. Shimkus. The gentleman is yielding back his time.

I guess the big point is, if you can't do the small things, how can the country, the localities, the taxpayers, the public interest groups, expect us to do the big things? And that line of questioning, I think, just highlights that.

The chair wants to announce that he wishes to recess this hearing so Members and interested persons can go to the 9/11 service at the

Capitol.

With no objection, Mr. Beers is excused from the first panel.

Mr. Beers, will you commit to provide full and accurate responses to written questions within 10 days of their submission?

Mr. Beers. Yes, sir.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Shimkus. And that is a request from both sides.

When we return, we will have Mr. Wulf and Ms. Berrick continue answering some questions, if that is okay with you all.

The committee stands in recess until 11:45.

[Recess.]

RPTS BINGHAM

DCMN HOFSTAD

[11:50 a.m.]

Mr. Shimkus. I would like to call the hearing back to order.

Again, we want to thank you for your patience and for giving us an opportunity to join our colleagues out on the east steps of the Capitol. It is always a memorable time and usually very short because on September 11th, that it was a short event in which we gathered. So I think those of us who were here remember that with a lot of emotions, as Americans do. And that is why I think what we are doing here today is still important and relevant.

So, with that, I would like to recognize myself, which would be a second round of questions, for 5 minutes.

Ms. Berrick, CBS originally reported on problems with the CFATS program. The report showed a video clip of the Under Secretary of the National Protection and Programs Directorate, during which he called the CFATS program a "tremendous success to date."

Would GAO characterize the program the same way?

Ms. Berrick. No, Mr. Chairman, not based on the work we have done to date.

And I think what is going to dictate whether or not it is successful is whether it is able to execute its mission. And I think they are still in the early phases of positioning themselves to be able to do that.

Mr. Shimkus. And, following up on your response, should they still be in the early stages?

Ms. Berrick. You know, comparing them to other regulatory programs across DHS, I think it is certainly taking them longer to get CFATS up and running. For example, comparing them to the Coast Guard, who also had to set up a regulatory regime at the ports when the Maritime and Transportation Security Act was passed, the Coast Guard got it up and running probably in a year and a half, although the Coast Guard did have personnel in place and an infrastructure, so they were better equipped to get up to speed earlier.

TSA may be a better comparison since that was a new organization and they were setting up a new regulatory regime. It took TSA, I think, several years, looking across both their regulatory and voluntary programs, and they also had some challenges but not to the degree that CFATS has had.

I think part of this could also be contributed to the standards that inspectors are assessing against. And CFATS is performance-based, which are broader, whereas at TSA the standards tended to be more specific, and that could be, in some respects, easier to establish a framework to assess against those specific standards.

So some differences, but looking across the Department, it has taken CFATS longer to get up and running.

Mr. Shimkus. Well, I think it was last year when I had an inspector just come visit and kind of do an open-office-hour type of thing. And he was well-intentioned, wanted to do the right thing, but

really was really lacking any guidance. So I think they were going around visiting facilities but really having no idea what they were checking for and why they were checking for it. And it kind of saddened me just because he really wanted to do the right thing but there was really a lack of guidance. And this was last year, last August, so not this past August.

I understand that GAO has placed DHS on its high-risk list due to management challenges facing the Department. And we are talking about the whole Department of Homeland Security. To what extent have these management challenges had an impact on the NPPD's ability to manage the CFATS program?

Ms. Berrick. You know, I think CFATS is an example of those management challenges that we talk about in the high-risk area.

We placed DHS on the high-risk list in 2003 after it was created because we found that they didn't have the rigor and procedures and oversight over their core management functions, and this is acquisition management, financial management, information technology, and human capital management.

And what we were finding is, because of not having the discipline in these management areas, it was having a negative effect on DHS's ability to implement its mission. So there were a number of programs that weren't meeting performance expectations, cost more than what they were supposed to cost, were taking longer to field, because of these management challenges.

I think CFATS is an example of this. For example, in the human

capital area, we have talked throughout the Department about DHS's challenges and bringing people with the needed skills and abilities on board to fill critical positions. They have had challenges in doing that.

In the information technology area, you know, CFATS has an information technology tool to solicit input from the facilities to look at their site security plans and vulnerability assessments. The tool has some challenges, which were identified in the internal memo, mainly that it provides a lot of data but not in a real user-friendly format to read. So that is an example of an IT challenge.

I think the Department as a whole has recognized these management problems. They have some good strategies in place to address them, but they are in the relatively early stages of doing that.

Mr. Shimkus. So DHS is in the high-risk; CFATS is probably their number-one problem of concern. I think it goes back to the issue of, if you can't get the small things right, how do people trust you to do the big things in this issue? So we appreciate your analysis.

And my final question: Given the seriousness and multitude of problems CFATS is facing, particularly with respect to conducting its mission, would it be viable to consider, quote/unquote, "standing down" the program for some period of time so that these issues can be addressed before attempting to move forward with this regulatory mission?

And to put it in another way, it is like trying to build a car while you are racing the car.

Ms. Berrick. Right.

Mr. Shimkus. Could we get a better return on investment and a more timely process getting it right before it deployed? Do you understand the question?

Ms. Berrick. Yes, I do. Thank you Mr. Chairman.

You know, I think that is something DHS would have to consider, weighing that against the need to field a program to address existing security vulnerabilities.

You know, there is an example in DHS's history where they did just that. They were working to field a program called Secure Flight, which was a high-priority program within the Department that compared the matching of passenger information against terrorist watch lists for airline passengers. Air carriers used to have that function. The 9/11 Commission recommended that DHS take over that function from carriers.

Well, DHS tried to field this program for several years. Five years into it, they weren't able to field a successful program, and so they did just what you mentioned. They actually stood down the program. They went back and instilled some rigor in the acquisition that wasn't there before. They were making sure that they were preparing appropriate documentation. And they did that for a year. And then when they turned the switch on and moved forward, they ended up fielding a successful program.

So even though there was a delay when they did stand down the program, ultimately they probably saved time, in that they were able to address those problems they had, finish that, and then focus on

implementing the program. So I think it is something worth thinking about.

Mr. Shimkus. Time, effort, energy, frustration, all of the above. And I would agree, I think I am going through the secure TSA thing now. It just popped up; I wasn't given much warning. And all of a sudden, I can go in a different lane. So it is pretty nice.

The chair now recognizes the ranking member, Mr. Green, for 5 minutes.

Mr. Green. Thank you, Mr. Chairman.

In June of this year, the House passed an appropriations bill for the Department of Homeland Security that cut funding for CFATS in half.

Mr. Wulf, what impact would cutting your budget in half, on the CFATS program, what impact would it have?

Mr. Wulf. That proposed cut would have a pretty major impact on our ability to move the program forward at, you know, what is really a critical time for the program.

You know, we have made a great deal of progress in our action plan. You know, we have, in essence, taken a bit of an operational pause over the past several months. We are now at the point where we have conducted the training. We have developed a streamlined site security plan review process. We have our inspectors out, having recommenced authorization inspections. We have turned an important corner in the program. And a cut, as the House Appropriations Committee has proposed, would force some very, very difficult choices.

We would have a limited ability to pursue needed improvements to

the site security plan tool and the Top-Screen and SBA tool, something we are moving forward with in partnership with our industry stakeholders. We would have limited ability to continue implementing the action plan. We have made a considerable amount of progress in that implementation process, having completed 67 of the 95 action items.

It would essentially cut the legs out from under us when we have turned an important corner, when we do expect and anticipate and have already begun to see a heightened pace of site security plan authorizations, approvals, and facility inspections.

Mr. Green. Well, and I am sure you understand the frustration after 6 years and funding and funding and that frustration. But we are seeing some improvement now, and to cut the funding and still expect results is just not going to happen. And so I don't know what the continuing resolution we will vote on this week has for the 6 months, but I would hope it would be something that would give you the resources to do your job.

Mr. Wulf, the site security plan process is a key link to your ability to effectively review and approve plans. Have you made progress with improving this vital tool so that the covered facilities have clear instruction on information DHS needs?

Mr. Wulf. Yeah, we have, in fact. We, over the past several months, having learned many lessons ourselves as we went through the site security plan reviews at our headquarters, have been out kind of piggybacking on events that industry associations have been holding

across the country, to get the word out to facilities about how they can provide the detail that will enable us to get more efficiently and effectively through the review of the site security plans and get to authorization and approval in a more streamlined fashion.

You know, at the same time, we are kicking off the SSP tool focus groups, working groups, with industry to continue to try to improve that tool to make it more user-friendly, both to the facilities and to our reviewers, and also continuing to work with industry on the alternative security program templates.

Mr. Green. Well, I am glad you are bringing in the regulated community because, again, I have huge numbers of those in our district. And we have a particular group that I work with a lot, the East Harris County Manufacturers, made up of oil refiners, chemical plants, service companies. And that is one of the issues, when I talk to them, that they want to be part of the solution instead of just being told what to do. And sometimes the Federal Government is known for giving instructions that don't work on the ground.

Mr. Wulf. Yeah.

Mr. Green. And so I am glad you are bringing them in.

Ms. Berrick, the GAO has done extensive work on the need for strong security at chemical facilities going back as far as 2003. Can you describe the risk posed by these facilities?

Ms. Berrick. There is a risk posed by these facilities, the details of which are classified. We will be happy to come up and brief you and your staff separately on that. But there is a risk, according

to DHS's threat assessment.

Mr. Green. I have no doubt that there is a risk. In fact, I have companies that produce ammonia, that we ship ammonia, all sorts of volatile chemicals. That is just the nature of our district. It is important to have an effective government program, though, that ensures chemical facilities are protected from a terrorist attack. Is that correct?

Ms. Berrick. According to DHS's threat assessments, they have identified a need for such a program.

Mr. Green. And, you know, there are things that are happening in the last 6 years, even though the oversight may not be there, or what we need. Because I know, both through the FBI working with local law enforcement and our plant security, I have seen them there, our local special agent in charge has told me they have been on every plant site, in fact, probably, by now, a number of times, to be able to work with the folks who actually work there and produce these products that our country needs.

Mr. Chairman, I know I am over time, so thank you.

Mr. Shimkus. The gentleman yields back his time.

The chair now recognizes the gentleman from Louisiana, Mr. Cassidy, 5 minutes.

Dr. Cassidy. Mr. Wulf, again, I am a physician. I know if you continue to have the same inputs, you should expect the same output. So all my questions go back to that initial report as to the inputs of your process, which obviously have been lacking.

And, by the way, when you haven't laid off anybody and yet we have an internal report showing that some of the people are sitting at their desk are doing nothing, but you continue to maintain you need the same amount of money, I am wondering why we are giving you any because, frankly, the public trust is not being met by your actions. That is just my perspective and as a counterpoint to what Mr. Green said.

Ms. Berrick, in the internal report, it said that the database CHEMS was the wrong database. "It does appear the database can be modified to meet needs but requires a substantial amount of redefining requirements, reworking protocols, codes, et cetera, calling into question the funding spent to date," going back to funding.

Is the database now adequate?

Ms. Berrick. It is not, according to the office and based on the work we have done to date.

It does provide some value because it is a tool to collect the needed information for CFATS to assess. However, it is not very user-friendly. Outputs are oftentimes data dumps that are difficult to sift through, especially when you are looking at something as complex as what CFATS is looking at.

So there are identified challenges that CFATS has identified themselves and are working to try to address, but it is going to take time and money to, I think, make those revisions to the system.

Dr. Cassidy. Okay. Time and money to make that revision, and yet somehow we are going to be back on track certifying plants. And I don't want this to be mean, but I am supposed to be providing oversight

for the American taxpayer, who, if she knew what was going on, would just be furious.

Ms. Berrick, it said in the internal report that ISCD does not have an established records management system to document, development, and maintenance of necessary historical documentation related to programs owned by the division. Has that now been corrected?

Ms. Berrick. I don't know if that has been a closed action item or not. I believe it is in progress. Maybe Mr. Wulf has the current status.

Mr. Wulf. Yeah, it is in progress. And we are keeping records very, very extensively and thoroughly. It is a high priority and something we take very seriously, as the remainder of the action items, as well, on which we have made a significant amount of progress on.

Dr. Cassidy. So, yes or no, do you have an established records management system now?

Mr. Wulf. We do.

Ms. Berrick. If I could mention, Mr. Cassidy, GAO has ongoing work looking in more detail at CFATS' ability to meet its mission. We will be reporting on those results early next year, including looking at the records retention issue.

Dr. Cassidy. Okay. That would be great.

Budget: Our lack of focus and vision has resulted in problems, how we spend our money, how we are managing these funds -- for example, buying first responder equipment such as hazmat suits when, as a

regulatory entity, we do not have a first-responder role.

Ms. Berrick, has that been corrected?

Ms. Berrick. I do not know, Mr. Cassidy.

Dr. Cassidy. Mr. Wulf?

Mr. Wulf. Yes, it absolutely has. In the early days of the program, there were course corrections. There was some thought -- and this was before my time -- that the chemical security inspectors would have a response role. As the program evolved and as it became clear that they would not, that equipment was repurposed within the Department.

Dr. Cassidy. Are we still paying more than $20,000 per year for professional memberships in ASIS that are unnecessary, et cetera?

Mr. Wulf. We are not taking paying for those memberships anymore.

Dr. Cassidy. And now, it says, ISCD lacks -- again, internal document -- lacks a system for tracking the usage of consumable supplies, which creates an environment for fraud, waste, and abuse to exist.

Has that, Ms. Berrick, now been established?

Ms. Berrick. I am sorry, I don't know the current status of that item.

Dr. Cassidy. Mr. Wulf?

Mr. Wulf. Yes, we are track tracking those supplies.

Dr. Cassidy. Okay.

Now, I could go on, but I think we are making the point. There

seems to be substantial amounts of really critical things which have to be addressed. And in an ongoing basis, we are keeping people employed who, again, your internal documentation suggests are the inappropriate person for their roles.

Build a case why we should give you more money.

Mr. Wulf. Well, as I have said, we have made a significance amount of progress. I think with regard to --

Dr. Cassidy. Now, I am a physician, and I teach. So when a medical student -- and I say this not to be abusive, and I apologize if I come across this way. But if somebody tells me "significant" -- "significant" is one of those loosey-goosey words that may or may not have significance.

It certainly would move the ball from here to there, but if this is threshold at which you can actually accomplish a mission -- where are you relative to getting to the threshold where you can actually accomplish your mission? Sure, you may have made significant progress, but you may have this incredible gap between where you are now and the threshold at which you can actually accomplish your mission.

Actually, Ms. Berrick, where would you guess they are?

Ms. Berrick. I think they are in their early stages. They are still setting up a framework to position themselves --

Dr. Cassidy. Are we 10 percent of the way there? A hundred percent? Fifty percent? Sixty percent?

Ms. Berrick. If I had to put a guess, an educated guess percentage, you know, maybe 25 percent.

Dr. Cassidy. Can you give us a timeframe in terms of years at which they will reach the threshold of being able to accomplish their mission?

Ms. Berrick. You know, all the actions under way have different timelines. We have been told that it -- CFATS is estimating it could up take up to 3 years to complete compliance inspections once they review the site security plans.

Dr. Cassidy. But we don't even have a database yet which can be easily used in order to support that initial site -- so the 3 years was after the threshold is met?

Ms. Berrick. Three years from today is the estimate that they provided us. And, again, we are going to continue to review this as a part of our ongoing work. And I think early next year we will be positioned to provide you details on where we think they are in terms of this continuum of progress.

Dr. Cassidy. Okay. Thank you.

I yield back.

Mr. Shimkus. Mr. Wulf, do you want to respond?

Mr. Wulf. Yeah, I mean, I would love to.

We are, I believe, accomplishing our mission. The CFATS program has accomplished a great deal over the course of its existence. You know, the 2,700 facilities that have removed or reduced their chemicals of interest; you know, the 7,800 security vulnerability assessments that have been completed and reviewed by our staff; the more than 3,000 compliance assistance visits and other outreach visits that our

inspectors have conducted have laid important groundwork.

We are at the point where we are seeing a heightened pace of reviews of site security plans. Within the last week, we have authorized, myself along with Assistant Secretary Durkovich, have authorized 10 additional plans and approved our first 2 site security plans.

We are going to be moving this program forward. And, you know, I am very pleased to say that, you know, I have had, as have the rest of our team in ISCD, a tremendous amount of support within the organization. There is a tremendous amount of commitment for getting this job done.

We are accomplishing the mission. In terms of percentages, we put into place that corrective action plan last fall; we are 70 percent done with that. You know, not that we are ever going to be completely done. We are going to continue forward -- I am sorry, sir.

Mr. Shimkus. I appreciate your passion in defending the program. You can understand why my colleague, his frustration.

Mr. Wulf. Sure.

Mr. Shimkus. And we all want to move this together.

In talking with my ranking member, two things: He wants to make sure we put on record that, obviously, our oversight is not going to end, so we will just keep monitoring this. And I think for both of us, for the defense of the program, and for the giving due preference and diligence to our taxpayers, I think it is the right course of action, to make sure that we finish this and we have a program that we can defend

publicly.

Also, without objection, I would like to pose one other question, just because we were talking about budgets. The President is supposed to lay out, hopefully, sequestration issues Friday. Sequestration, 50 percent of that comes out of defense and homeland security, national defense issues.

Have you all heard -- and I know that you have a small program within Homeland Security. But I would venture to say that whatever budget that the House has proposed that might address funding, sequestration might do even more.

Have you guys even talked about what effect sequestration might have to the CFATS program?

Mr. Wulf. I have not been part of those discussions.

Mr. Shimkus. And we await the President's disclosing what he may or may not do.

Seeing no other Members asking for time, we would like to thank you for coming back, making sure that we could get the second round. It was very important for all of us. And we would like to dismiss you and empanel the second panel. So, with that, thank you very much.

Mr. Wulf. Thank you.

Mr. Shimkus. We also want to thank you all for coming.

The way I operate is I am going to introduce you all, like, right off the bat, and then we will go for 5-minute opening statements.

We also ask unanimous consent that all members of the subcommittee have 5 days to forward questions to you all, too. And, without

objection, so ordered.

On the second panel, we have Mr. Timothy Scott, chief security officer of Dow Chemical Company. We also have Mr. Matthew Leary, corporate EHS&S manager, Pilot Chemical Company. We have Ms. Anna Fendley, United Steelworkers, Health, Safety, and Environment Department; and Mr. Paul Orum on his own behalf.

So, with that, we appreciate you attending. You all have 5 minutes for an opening statement. Your full statement will be submitted for the record. I did review them, scanned them, all last night. And so I appreciate the efforts you made on that behalf.

And, with that, we will begin with Mr. Scott for 5 minutes.

STATEMENTS OF TIMOTHY J. SCOTT, CHIEF SECURITY OFFICER, THE DOW CHEMICAL COMPANY; MATTHEW J. LEARY, CORPORATE EHS&S MANAGER, PILOT CHEMICAL COMPANY; ANNA FENDLEY, HEALTH, SAFETY, AND ENVIRONMENT DEPARTMENT, UNITED STEELWORKERS; AND PAUL ORUM, BLUE GREEN CHEMICAL SECURITY COALITION, INDEPENDENT CONSULTANT TO THE CENTER FOR AMERICAN PROGRESS

STATEMENT OF TIMOTHY J. SCOTT

Mr. Scott. Chairman Shimkus, Ranking Member Green, and members of the subcommittee, my name is Tim Scott, and I am the chief security officer for The Dow Chemical Company. I am speaking today on behalf of Dow and the American Chemical Council, and I will focus on four points.

First, the chemical industry and DHS have a common goal of improving the security profile of the chemical sector, reducing the risk of attack or the use of chemicals as a weapon, and minimizing the impact of the potential threats on our country.

Second, the chemical industry and DHS have made some progress using both voluntary industry initiatives and collaborative efforts to clarify and meet performance standards.

Third, the concerns associated with the implementation of the Chemical Facilities Anti-Terrorism Standards and internal DHS management issues are real. It is promising to hear that improvements

are being made in both areas. In spite of these distractions, industry has made progress.

And, lastly, we need to build on this progress to achieve an efficient, integrated, and sustainable security plan for the chemical industry and our country. It is time to move on and, in fact, accelerate our efforts.

The CFATS concept is fundamentally sound. DHS established Risk-Based Performance Standards, flexibility for the regulated companies to apply customized security solutions for each unique site and situation, and DHS final approval and review for compliance. That is the goal: to set expectations, meet those standards, and, by doing so, reduce the vulnerability and risk of our chemical sector.

Too often, we fixate on the methods used to achieve the goal instead of the goal itself. No one method addresses every site or every situation, but we are making progress.

The concept of alternative security plans offer an excellent opportunity for a thorough but expeditious review and approval process of the site security plans at many CFATS-regulated facilities, especially those in the lower-tiered sites and companies that have multiple regulated sites.

DHS recently completed a pilot test of an ACC-developed alternative security plan, and it proved to be a worthwhile exercise for both industry and DHS -- an excellent example of an open and collaborative effort to improve and expedite the process. Members of the ACC implemented the Responsible Care Security Code in 2002. And

over the past decade, ACC members have spent nearly $10 billion on security enhancements.

The code is a requirement for membership and is included in independent, third-party audits of the Responsible Care Management System. Recognition of the value of such voluntary industry initiatives is being considered as another possible means of fast-tracking reviews of site security plans.

The next generation of the DHS site security plan tool is being developed and will be both easier and more efficient for industry and a more valuable and usable source of information for DHS. Progress has been made, but there are still some hurdles to overcome.

Personnel surety is critical to any security program, and most companies had background checks and programs in place well before the creation of DHS. Screening against the terrorist database is a welcome addition to the performance standards and is, as it should be, a government responsibility.

CFATS is closing this gap, but this is an area where we can use your help. By design, CFATS allows the flexibility to address each performance standard using the method best suited to each particular site and situation. The personnel surety program and performance standards should be no exception.

There are many readily available government-approved options that would fully comply with this standard, and there is no valid reason to limit the options. In the case of the personnel surety standard, however, DHS management has not demonstrated the flexibility that is

integral to and authorized by CFATS.

Also in the area of the terrorist database screening, there is one concept in which all security managers agree: We should know that a person can pass this screening before we issue an entry card and let a potential threat in the gate. And we should keep any potential threat out of the site. That is a pretty basic security concept, but it is not clear that DHS management is in agreement with this important point, and that is a cause for significant concern.

There is definitely room for improvement in the implementation of the Chemical Facilities Anti-Terrorism Standards, but the necessary corrections can be made and success can be achieved. Success demands constancy of purpose, commitment, and collaboration. ACC member companies are committed. We should not return to square one with DHS or change course in midstream. We should strengthen collaboration and increase the pace to build an efficient, integrated, and sustainable chemical security process for our country.

Thank you.

Mr. Shimkus. Thank you, sir.

[The prepared statement of Mr. Scott follows:]

******** INSERT 2-1 ********

Mr. Shimkus. I would now like to recognize Mr. Leary for 5 minutes.

STATEMENT OF MATTHEW J. LEARY

Mr. Leary. Good afternoon, Chairman Shimkus, Ranking Member Green, and members of the subcommittee. My name is Matt Leary, and I am both corporate security officer as well as the environment, health, and safety manager for Pilot Chemical Company in Cincinnati, Ohio.

I am pleased to provide this testimony on behalf of the Society of Chemical Manufacturers and Affiliates regarding how the Department of Homeland Security has been implementing the Chemical Facility Anti-Terrorism Standards and what that has meant for Pilot's two covered facilities.

Pilot Chemical is a small, privately held company celebrating its 60th anniversary on the 19th of this month. We specialize in alkylation, sulfonation, and sulfation, which are used to manufacture detergents. We have only 200 employees. We have four facilities, two of which are subject to CFATS.

Maintaining the security of our facilities has always been a priority for SOCMA members like Pilot. After the tragic events of 9/11, which occurred 11 years ago today, SOCMA members did not wait for new government regulations before researching, investing in, and implementing additional and far-reaching facilities security measures to address these new threats. However, there were no uniform Federal

standards for measuring and implementing these security improvements across industry. CFATS standardized that process.

Definitively, DHS's Chemical Facility Anti-Terrorism Standards work. DHS listened to the private sector in developing a regulatory framework that is risk-based and preserves the ability for security professionals to make investments in measures that suit their specific facilities but that also provides robust performance standards and imposes strict penalties for noncompliance.

But that does not mean that the CFATS experience has been easy for regulated companies, especially small ones like Pilot.

In several respects, the manner in which DHS has implemented the regulations has imposed substantial uncertainties and costs on companies. I recognize that DHS has been building out the program at the very same time it has been implementing it. Nonetheless, I am confident that DHS could have substantially reduced these uncertainties and costs if they had implemented the program more quickly and confidently. They still could.

An ongoing challenge for Pilot has been the unwillingness of DHS to give us useful guidance on how to comply with the risk-based performance standards that are at the heart of CFATS. DHS staff said they cannot give us clear guidance because the CFATS statute prohibits DHS from requiring facilities to implement specific security measures.

That is ridiculous, however. The statute's prohibition on requiring particular security measures doesn't prevent DHS staff from saying security measure X is one way to meet RBPS Y at tier level Z.

It is not the only way, and we are certainly open to discussing other ways.

If DHS staff were willing to offer nonexclusive safe harbors to those seeking feedback, companies like Pilot that are looking for clear compliance guidelines would be able to obtain it.

The other reason we believe DHS has been unwilling to give clear guidance is described on page 10 of the Anderson-Wulf memo, which says, "There exists within the cadre of SSP reviewers a reluctance to recommend good enough SSPs for authorization or conditional authorization out of fear that the leadership has a zero-tolerance philosophy toward mistakes and out of a lack of clarity regarding expectations."

DHS needs to make clear to staff that they are expected to use their judgment to make decisions and that management will not punish them for doing so.

Another issue of concern to Pilot has been DHS's misguided personnel surety proposal. Last year, DHS announced its intent to establish a Web-based application that would require facility owners and operators to submit personally identifying information about current and prospective employees, as well as contractor and visitor personnel seeking access to a plant.

Our industry has expressed serious reservations about the logistical nightmares that this proposal could lead to, given the heavy presence of contractors at chemical sites, especially during plant-wide maintenance turnarounds. DHS has been open to discussing

alternative approaches, and the industry has proposed both interim and long-term alternatives that could involve reliance on existing Federal vetting programs, mechanisms by which contractor and visitor employees could submit information regarding their own employees, and ultimately a universal Federal security credential that would supersede all others.

Many smaller companies like Pilot would benefit from leveraging existing processes for vetting individuals that we feel meet the intent of the standards. DHS's prior proposal would unnecessarily limit the number of options open to regulated facilities for complying with RBPS 12. Resolving this challenge expeditiously would free up ISCD resources to focus on the more pressing task of approving SSPs and initiating compliance inspections.

As I have testified today, the CFATS framework is sound, but DHS's implementation has been flawed. We have seen progress made by the Department under the recent management of Deputy Under Secretary Suzanne Spaulding and ISCD Director David Wulf. To help ensure further progress is made, however, DHS must not drift away from the spirit of the public-private partnership on chemical security that it has so often hailed as the keystone of the CFATS program.

I appreciate this opportunity to testify before you today and look forward to your questions.

Mr. Shimkus. Thank you, sir.

[The prepared statement of Mr. Leary follows:]

******** INSERT 2-2 ********

Mr. Shimkus. The chair now recognizes Ms. Fendley for 5 minutes.

STATEMENT OF ANNA FENDLEY

Ms. Fendley. Thank you. Chairman Shimkus, Ranking Member Green, and members of the committee, thank you for the opportunity to be here today.

I represent the Health, Safety, and Environment Department for the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union -- "USW" for short. We represent 850,000 workers in the sectors I just mentioned and many others, including the majority of unionized workers in the chemical industry and hundreds of thousands of men and women whose workplaces use and store large quantities of industrial chemicals.

I am here today on the 11th anniversary of the September 11th attacks to talk about the critical and unfulfilled need for comprehensive chemical security protections for workers and citizens.

There were promises and hopes that CFATS would protect American citizens when it was enacted as a temporary measure before a more comprehensive program could be passed. And some security measures have been implemented under CFATS. But CFATS is not and never will be the comprehensive program that we need to protect against an unforeseen terrorist attack.

Most notable for our members are several gaps in CFATS

jurisdiction that leave millions of Americans and American infrastructure at risk. CFATS exempts thousands of water-treatment facilities containing poisonous chlorine gas and other chemicals. It also exempts port facilities on navigable waters which are covered by the Maritime Transportation Security Act.

Many of those port facilities are oil refineries, where our USW members work in the vicinity of small towns and major U.S. cities like Houston, Philadelphia, Los Angeles, and San Francisco. Other facilities that fall outside of CFATS are those under the jurisdiction of the U.S. Coast Guard, the Department of Energy, the Department of Defense, and the Nuclear Regulatory Commission.

CFATS also does not cover chemicals shipped or stored outside the fence line in nearby rail yards or elsewhere that may have little or no security measures. It does not prohibit the shifting of these risks from one location to another. I have seen pictures and gotten accounts from our members of railcars full of hazardous chemicals parked for days outside the fence line, within yards of a busy road, near homes and other businesses.

Employers may engage in this form of risk-shifting to be taken off the list of high-risk facilities, or risk-shifting could be an established practice, occurring for years, because workers and management simply do not recognize the hazard and the potential for a criminal act. Under CFATS, there is no way of knowing if and how these risks are being shifted.

Additionally, CFATS explicitly prohibits the requirement of any

particular security measures, such as safer chemical processes. My colleagues and I work with employers every day. Many take safety measures that go above and beyond, but there are always some that will only do the minimum required by law and, as we all know, some who won't even do that.

Some companies have shifted to safer processes or reduced their inventory of hazardous chemicals. These facilities include where our USW members make paper, aluminum, glass, and other products. But many companies will never even look at innovating without a legal requirement to do so.

Another important deficiency of CFATS is the lack of a meaningful role for workers in chemical security. Workers who operate and maintain facilities know the most about what needs to be done to reduce vulnerability and protect against a terrorist attack. However, under CFATS, background checks done by employers or third parties may be used against workers or be full of inaccuracies due to errors in reporting. CFATS also is lacking in its provisions for an appropriate appeal process when errors made in background checks improperly exclude workers.

Employer background checks allow for a risk of releasing personal information and may also result in duplication of effort when many workers at high-risk sites already must acquire a Transportation Worker Identification Credential, a TWIC, issued by the TSA, which is part of DHS but separate from the CFATS office. TWIC requires background checks, and TSA safeguards personal information.

Workers across this country, those who would be hurt first and worst during an attack, need stronger comprehensive chemical security legislation that is effectively implemented. Congress can no longer simply oversee implementation of a measure that was intended as temporary. Action is needed to legislate a comprehensive chemical security program that addresses the gaps in CFATS that leave millions of American workers and their families at risk. You, Mr. Chairman, and your committee could take action to make these improvements.

Thank you again for the opportunity to testify today.

Mr. Shimkus. Thank you very much.

[The prepared statement of Ms. Fendley follows:]

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Mr. Shimkus. And, Mr. Orum, you are recognized for 5 minutes. Thanks for joining us.

STATEMENT OF PAUL ORUM

Mr. Orum. Good afternoon. I am Paul Orum. I am pleased to represent the views today important to the Blue Green Chemical Security Coalition, as well as findings from research conducted for the Center for American Progress and others.

I plan to make three main points: one, the chemical security problem is well-known; two, the current program, CFATS, won't, in my view, fix the problem; and, three, Congress should pass comprehensive chemical security legislation.

The chemical security problem is well-known. More than two dozen government agencies and others have warned that industrial chemicals could be intentionally or inadvertently released to cause harm. Many of these resources are listed in my testimony, and for brevity I won't repeat them.

Two, the current temporary Chemical Facility Anti-Terrorism Standards won't fix the problem. The standards lack basic elements of an effective program. CFATS exempts drinking-water facilities, exempts wastewater facilities, exempts many major refineries and terminals and chemical manufacturers that happen to be on navigable waters.

It excludes knowledgeable employees and their representatives

from security planning. It doesn't allow DHS to require companies to fix specific security problems on the ground. It lacks clear deadlines for completion and approval of assessments and plans. It lacks basic government accountability measures, such as regular progress reports.

It doesn't secure chemical supply chains. In my view, it perpetuates uncertainty. And, very importantly, it neglects technological changes that can make chemical facilities less attractive targets.

These flaws are in the law. They are all found in the appropriations rider that created CFATS as a temporary program.

Congress should authorize a comprehensive chemical security program. The last Congress, about 3 years ago, did so after -- the House passed after a lengthy consultation with stakeholders in four congressional committees. This bill would have closed the greatest loopholes while seamlessly incorporating CFATS. It is the responsibility of Congress to authorize a comprehensive program.

In addition, Congress should support, not hinder, existing authority of the U.S. EPA to promote safer technologies under the general duty clause of the Clear Air Act and, likewise, the authority of DHS to promote intrinsically more secure technologies as a security measure under CFATS.

While Congress should close all the chemical security loopholes, I would like to elaborate on two current deficiencies.

First, government accountability. If we spent $500 million on chemical security, it is important for the public to know what the

effort is producing.

The comprehensive program passed in 2009 included government accountability provisions, namely, regular public progress reports to Congress. The reports were to summarize how facilities were complying and lay out the basic scope of the program -- how many facilities, how many plants, how many approved, and so forth. Had these provisions been included in CFATS, the first report to Congress would have been due some 5 years ago, and many challenges would have come to light systematically rather than as a result of leaked internal memoranda.

In my opinion, the program will inevitably lack public credibility if it doesn't require a complete public accounting of facilities and scope and progress.

An effective program should also help companies identify and remove avoidable chemical hazards. Under CFATS, DHS has not developed the removal of unnecessary chemical targets as a security measure.

We know that some 1,600 or more facilities have reportedly removed chemicals of concern and others have dropped below reporting thresholds. While we lack basic public information about these changes, the numbers do suggest that much more than this could be done with a structured program.

Each facility that tiers out of the program is a facility that DHS does not have to oversee. Removing unnecessary targets should be one of the tools in the chemical security toolbox.

Thank you again for the opportunity to testify. Please let me know of any questions or ways that I or my colleagues can be helpful

to the committee.

Mr. Shimkus. Thank you very much.

[The prepared statement of Mr. Orum follows:]

******** INSERT 2-4 ********

Mr. Shimkus. I am going to ask unanimous consent that Mr. Pompeo can sit in. I know there may be another from your side joining us. And then, as per tradition, if members of the subcommittee are done asking their questions, then we will go to other members from the full committee who are joining us.

So, with that, I recognize myself for 5 minutes, and my questions will start with Mr. Scott.

It is my view that CFATS officials are trying to operate a regulatory program like a police program. This brings me to concerns with the personnel surety program, which has been addressed a couple times today already.

As I understand it, the terrorist screening database is operated by the Federal Bureau of Investigation, not DHS. Under another DHS program, the Maritime Transportation Security Act -- we do a lot of acronyms, so I like to read these out -- if someone with a TWIC card gets a hit on the terrorist screening database, the TWIC is automatically deactivated and the facility notified. Minimum DHS interference in that process.

Under CFATS, the program seems to insist that all information be passed through them to the FBI but that the Infrastructure Security Compliance Division cannot let a facility know if a terrorist is working in their plant.

Do you agree with me that DHS is not trying to operate CFATS like it was intended by Congress but more like a policing and response program?

Mr. Scott. Yes, sir. They seem to be gathering information and holding information within DHS instead of sharing in a partnership, as we started out.

So the TWIC program and the background check program, personnel surety is one example of that, where we would be required to submit information to DHS and really never get an answer back. Especially concerning is we don't get an answer back if they do have somebody that is a hit in the terrorist database. We are going to have them -- if they don't tell us, we still have a potential terrorist working in our plant, and that is absolutely crazy.

Mr. Shimkus. And the first panel, as I was talking to Under Secretary Beers and I -- how can you give approval or the wink and nod that a facility has been approved when they really haven't established the personnel surety program in an operation? I would think that would be the number-one concern.

If DHS has no response function, is there a reason why the facility cannot communicate directly with the FBI?

Mr. Scott. No, there is absolutely no reason. In fact, most facilities are going to communicate with their local Joint Terrorism Task Force and the FBI and the local law enforcement. I mean, that is the response agencies for a situation that does occur at your site.

Mr. Shimkus. Has your experience under the MTSA, which is the Maritime Transportation Security Act, led you to believe that it is doable to prevent known terrorists from wandering around a land-based plant?

Mr. Scott. Several of our larger sites are covered under the Maritime Transportation Security Act. And we have a very good relationship, and the Coast Guard is a very strong organization, both on the response side and the enforcement side, and have worked with us very closely because our MTSA sites have the same security upgrades and same security programs as all of our CFATS-covered sites.

Mr. Shimkus. Why do you believe strongly, as some of the panelists do not, that EPA should not be the chemical security agency for the Federal Government?

Mr. Scott. Well, the general duty clause was -- it came to us under the Clean Air Act. It is specifically designed for environmental protection and does a very good job -- EPA does a very good job in that respect. They do not have a lot of expertise in site-security types of programs, and we don't really need to start over with a new agency, to go back to square one and try to do this again.

Mr. Shimkus. Thank you.

Let me turn to Mr. Leary now, because Dow -- monstrous, big; Mr. Leary -- small, hopefully profitable.

You testified that you have limited capital to invest in needs across your plants, not just CFATS-related ones. So what percentage of your capital is being tied up by the poor implementation of the CFATS program?

Mr. Leary. Chairman, I can't really speak to the corporation, but I can, as an example, talk to you about my department's budgetary concerns. And at least in what I have just submitted -- our fiscal

year runs September -- and I think security accounted for over 100 percent of the budget, as compared to everything else that we are tasked to do.

Mr. Shimkus. How do we assure that the real financial needs of your security professionals are taken seriously within the context of CFATS implementation?

Mr. Leary. Chairman, I can only speak for Pilot in this respect. And I am very proud to report to the subcommittee that I have been given more than enough support to do so. And at least from a Pilot perspective, there have been no issues whatsoever in terms of getting support to go ahead and do what we have to do under the standard.

Mr. Shimkus. Thank you.

I have 13 seconds left. I will yield back my time and turn to my ranking member, Mr. Green, for 5 minutes.

Mr. Green. Again, thank you for being here and patient today.

Were you here during the first panel?

Mr. Leary. Uh-huh.

Mr. Green. The question for all of you, including the U.S. Steelworkers, is that the CFATS personnel surety program proposal was recently rescinded and received much criticism from industry and unions. Can you explain what the criticism was? And how did DHS respond to your concerns?

Mr. Scott. I will be glad to address that a little bit.

The concern is the burden on industry. You have many sites that, mentioned earlier, have a contractor base that travels along the gulf

coast, for example, during all the shutdowns, and you may have thousands of new employees coming in on a daily basis for a shutdown. And they may show up at The Dow Chemical Company today, and we would have to submit a thousand names. And they may show up tomorrow at one of our neighboring companies, and they will have to submit the same thousand names.

It is a very burdensome process. And they don't recognize any easy solutions that are out there, like a TWIC card from MTSA.

Mr. Green. And I have a Dow facility in my district, not your largest, obviously, not Freeport, but I assume the contractors have their TWIC cards.

Mr. Scott. Most contractors on the gulf coast have a TWIC card and they travel between sites.

Mr. Green. Yeah. Okay.

Any other response to that?

Were the steelworkers brought in? I am glad, you know, the industry -- was the small chemical -- I have to admit, I don't have many small plants in our area; we have big plants. But were the small plant owners also brought in, along with steelworkers?

Mr. Leary. Yeah, I will -- at the recent security summit, put on by SOCMA and I believe cosponsored by DHS, actually Pilot had an opportunity to sit in on a roundtable with DHS regarding just this topic. And I was surprisingly pleased that we were actually asked our opinion. And so I do believe at least they are concerned about our opinions.

Mr. Green. Ms. Fendley?

Ms. Fendley. To my knowledge, we were not brought in. But we are very concerned about the deference to industry, as well, and the lack of an appeals process if there is an error.

Mr. Green. You know, it seems like the testimony from our previous panel said that they were working with the employee groups. Did I mishear that from the earlier panel? That is what I am concerned about. And believe me, we want everybody at the table, you know, about whether it be the industry, small or large, but also the employees involved there.

Maybe that opening went because they announced that they were going to deal with using the TWIC-type application, which I know -- I have lots of steelworkers, I have four of my five refineries and a number of my chemical plants are organized by the steelworkers. And a few years ago, we had problem-solving, because some of my constituents were denied their TWIC card, but then we would find out it was a mistake, and we would work with them on that. And I know, with our renewal coming up now, it is going to be a problem.

But we understand the problem we have. We don't want to reinvent it with another type of surety. And that is what worries me. They ought to base it on whether you are -- and Dow has, at least in my area, they are all waterside, both Freeport and the one on the Houston Ship Channel. But I know you have plants that are not.

And is Pilot covered by it in Cincinnati --

Mr. Leary. No, sir.

Mr. Shimkus. -- the TWIC card?

Mr. Leary. No, sir. It is not. Actually, our knowledge of the TWIC beyond these proceedings and our involvement with SOCMA is somewhat minimal.

Mr. Green. Okay. All right. Well, we will continue to encourage them to bring everybody at the table.

And a question for anyone else on the panel: What would you like to see DHS do to help achieve a more smooth implementation of the CFATS program?

One of the things we have all recognized, there has to be some continuity and real reauthorization. And we haven't seen that, and I don't think we will see that this Congress. But the year-to-year is an issue.

But we also need to make sure -- because my complaint is that the year-to-year, a lot of industries don't want to spend -- they want to make sure what they are doing is going to be compliant with whatever DHS comes out with.

Is that an issue that you all dealt with within your companies?

Mr. Leary. From a Pilot perspective, that is one of the biggest issues, actually. I could easily recount, for much longer than allowed, discussions with our finance director regarding the difficulties in budgeting for securing our facilities. We are very much afraid that we will be looking at an SSP approval and immediately have to expend thousands of dollars.

RPTS DOTZLER

DCMN HOFSTAD

[12:50 p.m.]

Mr. Green. Mr. Scott, one of the concerns I have, because, literally, Dow's facility is back-to-back in my area, along with a lot of other ones, in the testimony that I have read shows that, is there an issue with industry taking chemicals that are produced in our plants and leaving it at unsecured facilities off-plant-site?

You know, that bothers me because, again, I would see, in our district -- and I haven't had any complaints, but I know that is what Ms. Fendley's testimony that is submitted included. And that is a security issue, whether it is made at ABC or Dow or ExxonMobil or anybody else, that some volatile chemicals are not in a secure facility, including a rail yard that has protections off-site.

Mr. Scott. Sir, we have put the same restrictions, the same requirements on our shippers and on the people that -- and I am talking about Dow Chemical now -- but, in general, the ACC member companies. As part of the Responsible Care Code, security is from the production site to the delivery to the customer. So we have a strong security program in place.

And Dow, in particular, we have submitted our site security plans to the DHS Safety Act Office and had the site security plans approved. And our transportation distribution security plans also have certification under the DHS Safety Act Office, which is kind of the

Good Housekeeping seal of approval.

So that whole chain of events takes a significant amount of security. So I think ACC member companies certainly take that into consideration under the Responsible Care Code.

Mr. Green. Okay.

Thank you, Mr. Chairman.

Mr. Shimkus. The gentleman's time has expired.

The chair now recognizes the gentleman from the State of Kansas, Mr. Pompeo, for 5 minutes. Welcome to the subcommittee.

Mr. Pompeo. Thank you, Mr. Chairman, thank you, Mr. Green, for allowing me to participate today. I appreciate it.

Look, Mr. Scott, I have two questions for you that I wanted to come here today and speak about. The first is, in your written testimony, you talked about some of the problems in DHS's program, but you were very clear that the program is fundamentally sound, it is risk-based, it is focused on the right set of priorities, so DHS, in large measure, has it right. And there are things that we can improve on and tweak, but it has largely got it right.

There are some folks who disagree with that. Former EPA Administrator Christie Whitman said that EPA should be the primary agency in charge of chemical security. Greenpeace has said that EPA already has the power under the general duty clause, in their view. There have been folks at EPA who have suggested that, as well.

As someone who has watched EPA in other places do real harm to potentially tens and tens of thousands of jobs across America, that

causes great concern to me.

I have introduced legislation that clarifies what I think is already pretty clear regarding the general duty clause. It would require EPA to complete a rulemaking process before finding any facilities in violation of the general duty clause. And it would clarify EPA's jurisdiction by prohibiting it from regulating chemical security through section 112(r)(1), the general duty clause.

What is your view, Mr. Scott, on the recent calls by the environmental community to try and use the Clean Air Act to regulate chemical security when we already have this enormous apparatus in place?

Mr. Scott. Well, first, we think your legislation is a step in the right direction to clarify roles and responsibilities.

As I mentioned earlier, EPA and the general duty clause came under the Clean Air Act, and EPA is very strong on environmental protection and not as strong in site security, physical security, transportation security -- all the things that come into the supply chain around the chemical industry. So that is not their area of expertise, and that is exactly the reason why chemical security was put under the Department of Homeland Security, the focus on security and all things in addition to chemical security.

So the expertise and the foundation for the CFATS program lies with DHS, not with EPA. So I don't think we should muddy the waters, change in midstream, or even take one step back. We need to move forward with DHS.

Mr. Pompeo. Right. Do you think there is also some risk that, when you have two agencies in, it is contradictory, they present competing demands on entities, and all of a sudden we are in a worse place than we are even today with the challenges DHS is facing? Do you think there is some risk of that, as well?

Mr. Scott. I think if we are going to put an effort in to combine some things, it certainly shouldn't be with DHS and EPA. I would look to continue the harmonization with MTSA and CFATS, Coast Guard and DHS. A lot of the facilities are very similar. A lot of the facilities are already covered by one or the other or sometimes both, and I think they can be harmonized extremely well.

Dow has built our security programs -- whether it is a CFATS site or an MTSA site, we put security in place at the same level. And I think that is the direction we should go if we are going to harmonize.

Mr. Pompeo. Well, thank you. I appreciate that.

Your testimony also strongly supported the use of alternative security programs in CFATS by DHS. How broadly do you think the ASBs should be applied under CFATS? Is it by facility? Or by sector? Do you have a view, does Dow have a view on that?

Mr. Scott. Well, again, it depends on the site. But you could certainly expand an alternative security plan to companies that puts similar security programs in place throughout all of their regulated sites.

So the alternative security plan, the only intent is to give DHS all the information they need to make a decision, improve the security

of the site, and make it easier on the submission of the information to DHS. That is the goal of an alternative security plan.

Mr. Pompeo. I appreciate that.

Last question: Do you think that the ASP provides any less protection for a facility than if the facility were to go through the entire CFATS compliance regime? Or do you think it achieves the same objective?

Mr. Scott. It is the same objective. It is just a different way to submit the site's plan, and it is a more expeditious way to submit the site's plan. So there is no difference in the end result. It is either approved or it is not approved, and the security upgrades are the same.

Mr. Pompeo. Great. Thank you.

Thank you, gentlemen.

I yield back the balance of my time.

Mr. Shimkus. The gentleman yields back his time.

The ranking member has asked unanimous consent to ask one additional question. Mr. Pompeo, you may want to stay around and listen to the answer.

And, without objection, the gentleman is recognized.

Mr. Green. I would just like the panel, if you would give us an opinion. We are having a hearing on Mr. Pompeo's bill. I have some concern, but would you all have any opinion on it? I know it is not on the list.

Mr. Orum. Yes, I do.

Mr. Green. We will go right to left this time.

Mr. Orum. Recall that EPA is the lead agency for security at water and wastewater facilities, which are CFATS-exempt. But also, more generally, for chemical facilities, people in communities don't necessarily make much of a distinction whether it was inadvertent or deliberate if a gas cloud comes to where they are.

When EPA acts to reduce catastrophic hazard potentials under its authorities, it has the secondary benefit of removing terrorist targets. So it is not necessarily so that EPA is acting as a security agency, but it may yet have security benefits.

Mr. Green. Ms. Fendley?

Ms. Fendley. I would agree with Mr. Orum. For workers at these sites, the potential for a terrorist attack and the potential for an accidental release, you know, they would have the same effect. And if EPA can also work to reduce the presence and the quantities of hazardous chemicals on these sites, we are incredibly supportive of that.

Mr. Leary. SOCMA most certainly supports the bill as intended. And I really can't -- I think Mr. Scott said it all in regards to our feelings, as well.

Mr. Scott. I have no disagreement as far as the routine operation of the plant. We don't want an accidental release. We don't want an attack that causes a release.

EPA takes care of the first part. And we do run our plants safely and securely and within EPA guidelines for routine operations. I think

we need the focus on security to really improve the overall security of the sector coming from DHS.

Mr. Green. I have to admit, I have some concern about two Federal agencies dealings with it because we have enough trouble now with DHS doing their job. But, you know, EPA does have statutory authority already on certain things. But I would hope our Federal agencies would work together, instead of you having to jump through two hoops. You at least know that these agencies are on the same page.

Mr. Shimkus. With that -- and I would just weigh in in saying, obviously I don't think the general duty clause has relevance in plant security issues.

So, with that, we appreciate the testimony and the second panel coming.

All members of the subcommittee have 5 days to submit opening statements, have 10 days to submit written questions.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Shimkus. One letter from the American Fuels and Petrochemical Manufacturers is inserted into the record. Without objection, so ordered.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Shimkus. The hearing is now adjourned.

[Whereupon, at 12:54 p.m., the subcommittee was adjourned.]