

**Testimony of
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before the
House Subcommittee on Environment and the Economy
on
The Chemical Facility Anti-Terrorism Standards Program – A Progress
Report
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Washington, DC**

Chairman Shimkus, Ranking Member Green and members of the Committee, thank you for the opportunity to testify today on the important issue of chemical safety and security. My name is Anna Fendley. 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 industrial chemicals.

I am here today, on the eleventh anniversary of the September 11th attacks, to talk about the critical and unfulfilled need for comprehensive chemical security protections for workers and citizens who are put at risk by working in or living near the nation’s chemical facilities.

There were promises and hopes that the Chemical Facility Anti-Terrorism Standards Program (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 or an accidental release that could be equally devastating.

Most notable for our members are several gaps in CFATS’s 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 because those facilities are covered by the Public Health Security and Bio-terrorism Preparedness and Response Act of 2002. It also exempts port facilities on navigable waters

which are covered by the Maritime Transportation Security Act (MTSA) of 2002. Many of those port facilities are oil refineries where our USW members work in the vicinity of small towns and major US cities like Houston, Philadelphia, Los Angeles and San Francisco. Other facilities that fall outside of CFATs are those under the jurisdiction of the US 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 union members of rail cars 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, leaving large numbers of Americans in danger.

Additionally CFATS explicitly prohibits the requirement of any “particular security measure,” 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 refuse to even do the minimum required. Some companies have shifted to safer processes or reduced their inventory of hazardous chemicals so they are no longer listed as high risk. These include high profile companies like Clorox, which switched from chlorine gas to the safer liquid bleach. It also includes smaller facilities where our USW members make paper, aluminum, glass, and other products. But many companies will never even look into innovating with safer chemical processes without a legal requirement to do so. Those are the facilities that put American workers and their families at risk during a terrorist attack.

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 (TWIC) issued by the Transportation Security Administration, which is part of the Department of Homeland Security but separate from the office that oversees CFATS. 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 as we remember those who were killed in the terrorist attacks on September 11th and stand ready to work with you to improve chemical plant safety and security.