



Testimony

Of

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before the

**House Subcommittee on Environment and Climate
Change**

On

Chemical Facility Anti-Terrorism Standards Program

September 11, 2019

Chairman Tonko, Ranking Member Shimkus and members of the committee, thank you for the opportunity to testify today. I am here on behalf of the United Steelworkers International Union (USW). Our union is the largest industrial union in North America, representing approximately 850,000 members across many sectors, including the majority of unionized workers in the chemical industry. Before coming to Washington, I worked in this sector for a little more than ten years and then as a police officer for four years, where I received basic homeland security training.

In the very southern tip of Illinois, near the confluence of the Ohio and Mississippi rivers, sits a uranium conversion facility where I was fortunate to earn for my family and serve the local union in several capacities, including chairing the Health and Safety Committee. This facility, currently idled, processes uranium later used in nuclear fuel. The facility housed large quantities of very dangerous chemicals including hydrofluoric acid, sulfuric acid, liquid hydrogen, and potassium hydroxide. A release or explosion at the facility would have obvious catastrophic consequences. Worst case scenario models accounted for an affected radius from the plant that included several small towns and cities. The facility is not covered by CFATS because it is regulated, in part, by the Nuclear Regulatory Commission, but the NRC does not regulate the areas of the plant where the vast majority of these chemicals are stored. Post 9/11, the NRC did issue a site security order and included the chemical storage in the “restricted area” of the plant, meaning everything inside the fence line. The security order, however, did not require employee involvement so the people most familiar working with the chemicals on site were not involved with the site security plan.

Recently, the U.S. Chemical Safety Board (CSB) issued a new safety digest on the importance of worker participation to prevent chemical incidents. The digest notes that lack of worker participation was a factor in several major chemical incidents investigated by the CSB. In each of the four incidents cited in the study, worker concerns were not addressed properly by management. It cites these lessons learned and makes recommendations related to worker involvement and preventing catastrophic incidents.¹

On top of the lack of employee involvement at my former occupation, the facility would store tank cars of one of the most toxic deadly acids on the planet just outside the fence line on a rail spur, less than 50 yards from a US Highway and less than a mile from people's homes. On any given day on my way to work I would drive past over a half million pounds of liquid anhydrous hydrofluoric acid sitting next to the highway unattended and under secured. CFATS does not cover storage outside a facility's fence line, so companies are able to shift the risks and avoid compliance by storing their chemicals in railcars on small rail yards or tanker trucks on empty lots just outside the facility boundary. We urge Congress to work with the Department of Homeland Security (DHS) to continually review and prevent loopholes or gaps in security.

As Congress considers reauthorization of this program, there are a number of important provisions that should be included in the bill to ensure that workers and communities are protected and treated fairly:

1. **Worker awareness of CFATS:** Most of the people I worked with had never heard of CFATS. Our union makes an effort to educate our members, provides training in

¹ https://www.csb.gov/assets/1/6/worker_safety_digest.pdf

addition to what they receive from employers, and has an annual Health, Safety and Environment conference. Even with additional education and training, we have concerns that the CFATS program is widely unknown to our members and, even more so, to workers at non-organized facilities that do not have the benefit of the additional resources the union provides. Our union and others have tried, since the passage of the 2014 authorization bill, to address this issue with the Department, but meaningful progress has not been made. This is one issue that can be addressed by Congress requiring, as an initial step, a worksite poster at CFATS facilities and additional worker participation.

2. **Worker involvement in CFATS:** I know from my experience that every day our members manufacture, mix, transfer, and store the most toxic and dangerous chemicals in the world. The knowledge and experience they have with these chemicals are invaluable. We know, as much or more than anyone, the hazards associated with the substances we handle and the potential for damage to critical infrastructure along with injury and loss of lives. It is crucial that CFATS include clear language requiring worker involvement in the site security plan, and that workers are able to choose the person to best represent them. That representative should be provided with the facility information necessary to contribute and participate throughout all phases of security planning and implementation and accompany DHS compliance officers during CFATS inspections. Particularly at union facilities, it is important that DHS has a mechanism to ensure that the company is informing and involving the bargaining agent for the employees. While Congress included some

worker participation language in the 2014 authorization bill, our union is not aware of any actual worker participation at facilities in CFATS related processes as a result of the language. We applauded the bipartisan recognition of the importance of workers in 2014, but the implementation of that law has shown that Congress must include stronger worker participation provisions in this reauthorization legislation.

3. **Gaps in jurisdiction:** Our members are tasked with dealing with minor accidental chemical releases, fires, and explosions on a regular basis and with large scale events, like the recent explosion and fire on June 21st of this year near a hydrofluoric acid unit at the Philadelphia Energy Solutions (PES) refinery in South Philadelphia, where their quick, skilled actions saved the community from disaster.² Whether from unintentional incidents or intentional terroristic threats, our members know the security of the facilities they work in is of grave importance. Many of the refineries where our members work, like PES, are located at ports and fall under the jurisdiction of the Marine Transportation Security Act (MTSA) rather than under CFATS. We support and ask for the removal of that exemption. In addition to the MTSA exemption, there are other gaps in jurisdiction including facilities regulated by the US Coast Guard, Department of Defense, and Department of Energy that are excluded from the program. Also excluded are water supply and waste water treatment facilities. Congress must ensure the security of these chemicals and the safety of our workers and communities by closing jurisdictional gaps that leave some areas

² https://www.inquirer.com/news/philadelphia-refinery-fire-explosion-timeline-hero-rescuers-20190629.html?fbclid=IwAR34CaBjyd4voaDudSxZii_378yfqkU1qR9KQSmivr2MQHn0eJTxDphNfFs

vulnerable. We are concerned about legislative proposals that would exacerbate these problems by exempting large categories of facilities and chemicals, such as explosives and mixtures.

4. **Strengthened whistleblower protections:** Our union supports stronger language for whistleblower protections. While this was included in the 2014 bill, we have learned over the last five years that the provisions Congress passed must be improved. For example, notifying workers that they are at a CFATS facility and have whistleblower protection should be a priority. Also, the current program does not include remedies for workers, contractors, subcontractors, or others who are retaliated against by the owner/operator. These two provisions are fundamental to ensure that those who need to make a report that will protect national security can do so without fear. While we are open to various policy options, we would support strengthening the program as it exists at DHS or turning over the administration of the whistleblower program to the experts in the whistleblower office at the Occupational Safety and Health Administration (OSHA), which administers over twenty whistleblower statutes across the federal government.
5. **Promotion of effective means to prevent chemical incidents:** The CFATS program can be improved by transitioning emphasis from a framework of chemical management to risk reduction. Reducing or eliminating hazards has a far greater effect on protecting workers and communities than adding fences, cameras, and guards. Some of the industry has recognized the value of risk reduction as DHS reports that thousands of high-risk facilities have chosen to meet their CFATS obligations by

implementing risk-reduction measures that include consolidating hazardous chemicals from multiple sites down to one or two sites, using less concentrated or less hazardous forms or chemicals, and reducing the total quantity of hazardous chemicals stored on site.³ But many facilities have not taken these steps to proactively evaluate and implement safer chemical practices that would reduce risk in the event of an intentional or an accidental release. While I was working at the chemical facility, my employer changed one of the processes from using anhydrous ammonia to the much less hazardous aqueous ammonia. This change ultimately made our community, our lives as workers, and our economic security safer by reducing the risk that a release would cause injury and devastate the infrastructure of the facility. We urge Congress to ensure that the CFATS program encourages risk reduction, not just risk management.

- 6. Information sharing and transparency:** For both incident reduction and post incident mitigation, the program needs a better requirement for sharing information. There are cases, like at the facility I worked, where companies rely on local first responders and emergency management to respond to incidents at their facilities. From both my experience working at the plant and as a local first responder, I know first-hand how important it is to have current and necessary information about the chemicals on site, the worst-case scenario, and the emergency response plans for the facility. Any reauthorization should include a requirement for CFATS facilities to generate, document, and effectively transmit actionable chemical and process information to

³ <https://www.dhs.gov/cisa/cfats-monthly-statistics>; <https://www.gao.gov/assets/700/692483.pdf>

first responders, including employees and their union representatives at self-responding facilities. DHS should also be required to generate, distribute, and make publicly available the practices facilities have used to tier out or tier down in the program. This information sharing is critical to ensure that risks are not just being shifted, and so that other facilities can use those lessons across the industry to reduce risks and hazards.

Additionally, we urge Congress to ensure that DHS improves upon its transparency with Congress and stakeholders in the day-to-day implementation of its mandate under CFATS. Congressional oversight and public comments are important checks on the actions of the executive branch. We oppose legislative proposals that would move toward industry self-regulation or limit these checks in other ways.

Congress has the opportunity to strengthen the security of our country's chemical facilities. Closing some of the gaps of the CFATS program will make our communities safer and ensure working people at these facilities have a voice that is heard.

Once again, thank you for the opportunity to testify.