

Statement

of

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before the

U.S. Senate
Committee on Homeland Security and Governmental Affairs

on

The Chemical Facility Anti-Terrorism Standards

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Good Morning, Chairman Johnson, Ranking Member McCaskill, and distinguished members of the Committee. My name is Randall Eppli, and I am president and CEO of Columbus Chemical Industries, Inc. (CCI), a chemical distribution company headquartered in Columbus, Wisconsin. I want to thank you for allowing me to participate in this important roundtable and am pleased to provide input on the Chemical Facility Anti-Terrorism Standards (CFATS) program.

About Columbus Chemical Industries, Inc; (CCI).

Columbus Chemical Industries is a 40-year-old, family owned manufacturer and distributor of specialty performance chemical solutions for numerous industries including Semiconductor wafer chip production, medical device manufacturing, pharmaceutical production and for various industrial applications. CCI's 70-person team serves customers throughout North America, Europe and Asia from its facilities in Columbus, Wisconsin and Phoenix, Arizona.

CCI has been an active member of the National Association of Chemical Distributors (NACD) for 25 years. NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. NACD added a specific Security Code, which encompasses many CFATS regulations, to Responsible Distribution that consolidated many prior security requirements and enhanced others. These requirements apply to all NACD members, including those who do not have facilities subject to CFATS.

Columbus Chemical Industries, Inc. Supports Long-Term Reauthorization of CFATS

CCI supports a long-term reauthorization of CFATS. I believe the CFATS program has made the chemical industry and our nation much more secure. Since the program's establishment in 2007, the industry has invested significant capital and training resources towards enhanced or augmented security measures at our facilities. While these resources did not necessarily assist in growing business, they were nonetheless important to ensure the security of my company, our employees, and the community.

The Need for CFATS in Light of Threat Environment

Evaluating and enhancing our security procedures based on the input of the experienced Department of Homeland Security (DHS) personnel has undoubtedly been beneficial to my company. However, I do believe it is possible the program could be administered with less of an administrative and financial burden on industry, especially small businesses.



While it is true that in the program's first few years there were some growing pains, DHS was able to make improvements to run the CFATS program more efficiently by listening to those in chemical distribution. Many of the objectives of the Risk Based Performance Standards (RBPS) are already integral to the operations of the chemical industry, including complying with other regulatory agencies (such as the Drug Enforcement Administration), industry association standards (such as NACD Responsible Distribution®), insurance recommendations, and experience with good chemical management practices. However, there are still areas in which DHS could improve, such as clarifying what chemical facilities are expected to do in response to announced increased threat levels. The ongoing supply of chemicals and associated services is critical in times of emergency, therefore simply ceasing operations is not a viable option for businesses during times of higher risk.

Overall Experience with the CFATS Process Through DHS

From the beginning, DHS generally took a non-adversarial, consultative, and reasonable approach in implementing the CFATS regulations. Examples include achieving the intent of the RBPS, and the preparation of Site Security Plans (SSPs) and Alternate Security Plans (ASPs). That same approach has remained throughout the entirety of the program. While the initial process was burdened with cumbersome, confusing, and inefficient paperwork, this aspect of the program has improved over time. However, it should be noted that the process for SSP and ASP revisions and updates remains challenging for distributors. This is something we are anxious to continue to work with DHS to resolve.

It has been our experience that DHS staff, in both the field and at headquarters, have generally been knowledgeable, professional, and courteous. Additionally, DHS typically arranges their site visits in advance, unlike many other government agencies.

Recommendations for Improving the Process

Adjudication of Background Checks

Clarification on the adjudication of background checks is needed regarding:

- Exactly what background checks are required.
- What results for new job applicants are grounds for denying employment or otherwise restricting the applicant's employment opportunities.
- If actions that employers may take regarding the results of background checks conform with government and company requirements or initiatives aimed at hiring ex-offenders, former addicts, etc.
- What actions employers are expected to take based on the results on background checks for legacy employees.



In light of the clarifications cited above, laws need to include provisions protecting employers from liability for the actions they take, or do not take, in good faith based on the criminal background checks. The current situation is ambiguous.

Recognition for Participation in Industry Program

I support the consideration of incorporating, in whole or in part, verified industry-standard programs, such as NACD Responsible Distribution®, into the evaluation of whether a facility has met the intent of the applicable RBPS. NACD members and others, such as ACC members who participate in Responsible Care, have made a strong commitment to operate their facilities safely and securely. Recognizing these responsible companies through simple measures like less frequent inspections would allow DHS to prioritize resources to concentrate on the "outliers" or bad actors who don't participate in these programs that may pose a greater security risk to themselves or the population at large.

Simplification of the Change Process

To simplify the process of making non-substantive revisions, I recommend allowing the designated company to directly access their SSPs and ASPs to revise items such as personnel assignments, titles, phone numbers, etc. Doing so will reduce the burden and time companies and their employees spend contacting DHS personnel to make these minor edits.

While calls and emails placed to DHS's CFATS helpline regarding changes to SSPs and ASPs are generally acknowledged quickly, responses to these questions can sometimes take considerably longer and may be too ambiguous to be useful. A quicker response rate and clear guidance by DHS personnel in answering inquiries would ensure timely and accurate solutions for regulated companies. Rapid and frequent changes in product offerings, procurement, and inventory are core to the business of many chemical distribution companies. Prompt accommodation regarding DHS documents is needed for new Chemicals of Interest (COI) or newly increased Screening Threshold Quantities (STQ) for existing COI. In most cases the existing facility infrastructure and procedures will suffice for meeting the intent of the RBPS.

Cybersecurity Requirements

CCI takes a comprehensive, broad-spectrum approach to securing our chemicals from cyber-attacks. We have found these defenses cannot be purely electronic based. Some of our cyber vulnerability controls are cyber in nature, while others are designed to address some of the potential vulnerabilities inherent in increasingly autonomous cyber business procedures.

Although our order receipt/processing/fulfillment/payment systems are increasingly efficient, we have intentionally incorporated "hard breaks" into the system. These hard breaks include a requirement for a minimum of two people from different departments to review the transaction and then take specific



action to enable it to continue. A transaction cannot be consummated without direct human intervention, and the system also makes it infeasible for a single person to execute an entire transaction.

CCI maintains a near real-time ERP inventory management system (Chempax C/S™) to closely monitor physical inventory and quickly identify discrepancies. Especially for more sensitive items (DHS, DEA, TTB, etc.), the electronic inventory is periodically verified using direct physical inventory. Additionally, CCI employs a cybersecurity consultant to establish and monitor a range of proven security protocols, both system-wide and for individual users, and to conduct system and individual penetration tests.

CCI avoids circumvention of our electronic systems by not allowing cash transactions; not allowing shipments to other than pre-verified, bona-fide businesses; not allowing product pickups by anyone other than authorized commercial chemical carriers with applicable pre-clearance; maintaining close inspection of shipping papers prior to release of an order; and physical inspections of transport vehicles before they are released. All CCI personnel involved with the transaction, from customer service receiving an order to the material handlers loading a shipment into a truck, are authorized to stop the transaction if they feel anything is troublesome.

Duplicative Regulations with Other Regulatory Agencies

Contingency and Analogous Plans

While each agency has a particular focus and certain subject-specific nuance, multiple agencies and programs require contingency plans/procedures, which entail multiple, often duplicative elements. These include DHS (CFATS/RBPS); DOT; EPA (RCRA - hazardous waste); EPA (Risk Management Plan (RMP)); WDNR (Off-Site Facility Plan); OSHA (Process Safety Management Plan (PSM)); DEA (especially for List 1 chemicals); FDA (especially the Food Safety Modernization Act (FSMA)).

Government agencies performing compliance inspections have sometimes required separate, comprehensive contingency plans for their particular agency program, even while acknowledging that such separate plans may be redundant with other agency plans. A single master contingency plan, with appropriate sections and nuance, would be much more efficient and, more importantly, effective in meeting the intent of a contingency plan. Further, there are real security/confidentiality concerns, and inevitable jurisdictional conflicts, with multiple agency personnel delving into a chemical company's contingency plans.

Furthermore, NACD Responsible Distribution requirements also include contingency plans and procedures, with third-party verifications (audits). Insurance carriers generally require a company have a special type of contingency plan, a Business Continuity Plan (BCP). These plans are often as



comprehensive as the contingency plans required by government agencies, and often have much more applicability and effectiveness in real-world situations.

Conclusion

That said, as the threat environment is long-term, so too should the authorization of the CFATS program. CCI supports CFATS and looks forward to working with the subcommittee on legislation to reauthorize this important security regulation in the coming weeks and months. A multi-year reauthorization of CFATS would provide needed certainty and enhance the security of chemical facilities and our nation. Both industry and DHS need reasonable predictability. On behalf of Columbus Chemical Industries, Inc.,

I appreciate this opportunity to present our views on this important issue. I look forward to your questions.

