

Statement of

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**on behalf of The Dow Chemical Company and
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before the

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Committee on Homeland Security and
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“Chemical Security: Assessing Progress and
Charting a Path Forward”**

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1. Security is one of the Chemical Industry's Top Priorities

The American Chemistry Council (ACC) represents the leading chemical companies in the United States who produce the essential products critical to everyday life. The business of chemistry is a critical aspect of our nation's economy; employing more than 800,000 Americans and producing more than 19 percent of the world's chemical products. In fact, more than 96% of all manufactured goods are directly touched by the business of chemistry. ACC members provide the chemistry used to produce life saving medications and medical devices; the body armor used by our men and women in the military and law enforcement; the light weight components for vehicles that help improve gas mileage; the energy saving building insulation and windows; silicon for solar panels and the durable, and light weight wind turbine blades that help provide green energy to name but a few.

Because of our critical role in the economy and our responsibility to our communities, security continues to be a top priority for ACC members. In 2001, our members voluntarily adopted an aggressive security program that became the Responsible Care[®] Security Code (RCSC). Responsible Care implementation is mandatory for all members of the ACC and is regularly reviewed by independent, credentialed third-party auditors. The RCSC is a comprehensive security program that addresses both physical and cyber security vulnerabilities, which requires ACC members to perform a comprehensive assessment of its security risks and to implement appropriate protective measures throughout a company's value chain. The RCSC has been a model for state-level chemical security regulatory programs in New Jersey, New York and Maryland and was deemed equivalent to the U. S. Coast Guard's Maritime Transportation Security Act (MTSA). To date, ACC members have invested over \$8 billion dollars in security enhancements under the auspices of the RCSC and in compliance with CFATS.

2. DHS and Industry Have Made Significant Progress Toward Increased Chemical Facility Security.

On April 9, 2007 the U. S. Department of Homeland Security published the "Chemical Facilities Anti-terrorism Standards," (CFATS). This comprehensive Federal regulatory program requires high-risk chemical facilities to register with DHS (Top Screen), conduct a thorough site security assessment and implement protective measures that comply with 18 risk based performance standards (RBPS). The RBPSs identify the specific areas for which a covered facility's security posture will be examined such as perimeter security, access control, personnel surety and cyber. To meet the RBPSs, covered facilities can select security programs or processes they deem appropriate for their site-specific circumstances so long as they achieve the requisite level of performance in each area.

Since CFATS became effective in June 2007, DHS has reviewed nearly 38,000 Top-Screen submissions and has notified more than 7,000 facilities of their high-risk designations and preliminary tiers. As a result, the number of high risk chemical facilities has been reduced by nearly 1000 facilities. According to DHS, this reduction has been due largely to the voluntary material modifications that have lowered or even eliminated the use and storage of hazardous chemicals onsite, thus lowering their risk profile and increasing the safety to our communities. This clearly demonstrates that CFATS is working and should be fully supported.

Of those remaining, DHS has assigned final tiers to 3507 facilities including 225 Tier 1 sites, 515 Tier 2 sites, 1064 Tier 3 sites and 1703 Tier 4 sites. Each of these sites is in the process of reviewing their site security plans. DHS inspectors have begun to conduct preliminary inspections of Tier 1 facilities. And DHS will begin the first wave of compliance inspections in the

first quarter of 2010. These inspections are designed to verify that facilities are doing what they said they would do and that the protective measures meet the established performance level commensurate with their level of risk.

For ACC members, this is exactly what a strong regulatory approach must do - ***set a high bar through performance-based standards and then hold facilities accountable***. The approach taken by CFATS allows facilities to utilize a full range of potential security enhancements depending on local site conditions and risk thus maximizing their potential effectiveness.

CFATS is a robust, comprehensive and demanding chemical security regulatory program. It will require significant additional investment from ACC member company facilities deemed “high risk.”

3. Congress Must Provide DHS with Sufficient Resources to Protect Chemical Facilities and Make CFATS Permanent

DHS staff has demonstrated outstanding commitment and effort to effectively and expeditiously implement the current CFATS program. ACC urges Congress to continue to provide the agency with the necessary resources to handle the workload and to ensure that chemical facility security is properly implemented in a timely manner. We were therefore pleased to see that Congress approved the DHS 2010 budget request and provided a one-year extension for CFATS to November 2010. While this extension is helpful, we encourage Congress to provide permanence to the CFATS program, ensuring certainty and providing stability so the industry can continue to move forward making security investments.

4. ACC Supports Effective Chemical Facility Security Regulations.

On February 4th, Senator Collins (R-Me) introduced a bipartisan bill to extend the current CFATS regulations for five years. Titled “Continuing Chemical Facilities Antiterrorism Security Act of 2010”, S. 2996 would give DHS sufficient time to fully implement standards that it developed in 2007. ACC supports that objective and this bi-partisan legislation. S.2996 will go a long way to provide certainty and to ensure that this country continues to benefit from the security measures in place, while recognizing the significant efforts currently underway.

Under the current CFATS program thousands of facilities across the U. S. are taking significant steps to secure their sites against a terrorist attack. DHS and industry are working diligently to implement CFATS as effectively and as fast as possible. DHS personnel have conducted reviews of site-specific vulnerability information and are assisting facilities as they develop site security plans. DHS is in the process of visiting the regulated sites to review and approve their security plans. This will include assessing how each facility has addressed the applicable risk based performance standards which is a complex, site-specific, evaluation.

5. Inherently Safer Technologies

We believe that it is unnecessary and inadvisable for Congress to provide DHS the authority to mandate prescriptive chemical process changes by including an IST provision within the CFATS regulatory program. Through the use of Risk Based Performance Standards, CFATS has demonstrated that it drives facilities to consider all possible risk-reduction options, including inherently safer approaches, when developing a site security plan. The highest risk facilities subject to CFATS face significant capital investments to implement enhancements, thus providing the incentive for the facility to consider all such risk reduction options in order to move into a lower risk based tier, or potentially out of the program. While you can't mandate

innovation, CFATS already provides the incentives to unleash the ingenuity, expertise and resources of the chemical industry. Congress should not abandon a strategy that employs performance-based security standards that recognizes the need for site-specific solutions and that holds facilities accountable, while avoiding the potential for risk shifting.

6. Should water systems be covered under CFATS?

Safety and security should be a top priority for every facility that produces stores or uses chemicals. If Congress expands the sectors covered by either CFATS or a separate initiative, ACC believes that the regulatory approach should be consistent across sectors. Security programs should be performance-based and implemented to address the specific needs and circumstances of each individual facility. The use of chlorine to help provide safe drinking water is widely recognized as one of the most important public health advances in history. In the early 20th century, tens of thousands people died each year of water-borne diseases such as cholera and typhoid fever. Drinking water chlorination and filtration have helped to virtually eliminate these diseases in the U.S. As with other applications of chemistry, any security standards for the water sector must focus on reducing overall security risks without compromising the essential services that these facilities provide.

In Conclusion

We agree that our shared priority is to enhance security at chemical sites nationwide. ACC members have invested \$8 billion in security enhancements including both physical and cyber security protections through the RCSC and the chemical industry are covered by the one of most comprehensive Federal regulatory programs in existence. The members of ACC and the chemical industry are committed to continuing an aggressive approach to safeguarding America's chemical facilities. It is in this spirit, we are offering our assistance to continue to work with the DHS and members of Congress in support of our shared mission.