

TESTIMONY OF

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on the subject of

**CHEMICAL SECURITY:
ASSESSING PROGRESS AND CHARTING A PATH FORWARD**

before the

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS

UNITED STATES SENATE

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Chairman Lieberman, Ranking Member Collins and Members of the Committee, I am Dr. Darius Sivin, a Legislative Representative for the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW). The UAW represents over one million active and retired workers. I have been serving as a legislative representative for the UAW since November, 2007. Before that, I worked in the UAW Health and Safety Department as an industrial hygienist.

The UAW appreciates the opportunity to testify at this hearing on "Chemical Security: Assessing Progress and Charting a Path Forward." The UAW and more than 50 partners in a coalition of labor, public interest, public health and environmental organizations strongly believe that the existing Chemical Facility Anti-Terrorism Standard (CFATS) is inadequate. In our judgment, the path forward should be a comprehensive chemical security bill at least as strong as the legislation passed by the House last year, the "Chemical and Water Security Act of 2009" (H.R. 2868). We urge this Committee and the entire Senate to act promptly to approve such legislation.

Importance of Chemical Security

The Department of Homeland Security (DHS) has identified approximately 6,000 high risk U.S. chemical facilities and classified them into four tiers. This number does not include any drinking water or wastewater facilities, which are explicitly excluded from CFATS by its authorizing legislation. According to a 2009 Congressional Research Service review of Environmental Protection Agency (EPA) data¹, almost 100 U.S. chemical plants each put 1 million or more people at risk. Union members are concerned that their workplaces and communities are not adequately protected from deadly terrorist attacks on chemical facilities and drinking water systems. Employees are the ones who will get hurt first and worst in the case of an attack.

The UAW represents workers at more than 15 facilities that are required to file EPA risk management plans (RMPs), and are therefore potentially covered by chemical security legislation. These include a chemical manufacturer in Adrian, MI and a wastewater facility in Detroit, both of which use chlorine gas by the rail car. Because so many of our members live and work in the vulnerability zone of the Detroit wastewater facility, which includes over 2 million people, we take no comfort in the fact that Detroit has recently been a terrorist target. We are encouraged by the fact that eleven wastewater treatment facilities in Michigan have already converted from chlorine gas to ultraviolet light or liquid chlorine bleach. It is likely that the Detroit facility can do the same.

¹ Shea DA (2009). Memorandum to Honorable Edward Markey Re: RMP Facilities in the United States as of December 2009. Washington DC: Congressional Research Service.

Other UAW-represented facilities that are required to file RMPs include:

- a pigment facility in St. Louis, MO where an attack could expose up to 88 thousand people to anhydrous ammonia:
- a brewery in Trenton, OH, where an attack could expose over nine thousand people to anhydrous ammonia: and
- a plumbing fixture manufacturer in Searcy, AR, where an attack could expose over 9, 500 people to anhydrous ammonia.

Water Facilities

The UAW believes that water facilities should be covered by chemical security legislation. In 2006, the Government Accountability Office reported that two thirds of large U.S. wastewater facilities use a disinfectant other than chlorine gas or plan to switch away from chlorine gas². An April, 2007 report by The Center for American Progress (CAP) indicated that, between 1999 and 2007, at least six drinking water and 19 wastewater facilities that had previously used chlorine gas by the railcar switched to a less hazardous disinfectant, such as liquid bleach or ultraviolet light. As a result, about 26 million people in nearby communities and millions more along rail delivery routes were no longer threatened by chlorine gas from these facilities. CAP reported that the cost of converting from the use of chlorine gas was typically no more than \$1.50 per ratepayer per year and often much less. According to the same report, 24 drinking water and 13 wastewater facilities still used rail shipments of chlorine gas, posing a potential danger to more than 25 million Americans living nearby, and millions more near railways that deliver the chlorine gas³. In our judgment, the low cost of conversion and the large number of people who would be protected by eliminating the possibility of chlorine gas releases argue strongly for the inclusion of drinking water and wastewater facilities in comprehensive chemical security legislation.

Extending CFATS is Inadequate: Comprehensive Legislation is Necessary

The UAW and more than 50 other labor, public interest, public health and environmental organizations have endorsed comprehensive chemical security

² Government Accountability Office. (GAO, 2006). *Securing Wastewater Facilities: Utilities Have Made Important Upgrades, but Further improvements to Key System Components May be Limited by Costs and Other Constraints*. Washington DC: GAO <http://www.gao.gov/new.items/d06390.pdf> (Accessed Feb 25,2010)

³ Orum P. (2007). *Toxic Trains and the Terrorist Threat How Water Utilities Can Get Chlorine Gas Off the Rails and Out of American Communities*. Washington DC: Center for American Progress. http://www.americanprogress.org/issues/2007/04/chemical_security_report.html (Accessed Feb 25, 2010)

legislation. We oppose a mere extension of the existing Chemical Facility Anti-Terrorism Standard (CFATS) for several reasons:

1. The authorizing statute (Public Law 109-295, Section 550) exempts more than 2500 water treatment facilities, some of which put major cities, such as Detroit, at risk. These facilities need to be covered.
2. Under Section 550, DHS may not disapprove a site security plan based on the presence or absence of a particular measure. This means that the Department cannot even require a facility to assess methods to reduce the consequences of an attack. It also would be very difficult for DHS to disapprove of a plan that indicates that a surveillance camera would be placed in a gaping hole in fence rather than fixing it. To disapprove of the plan, DHS would have to prove that the camera did not achieve the same level of "performance" as fixing the fence.
3. Although background checks are one of the CFATS performance standards, CFATS provides no redress procedure for an employee who poses no security risk, but who suffers an adverse employment decision due to erroneous or irrelevant information arising from a background check. In contrast, H.R. 2868 limits the kinds of information that could be used to justify an adverse employment decision. It also provides procedures for seeking redress if adverse decisions result from erroneous or irrelevant information.
4. Section 550 fails to recognize that the success of any government security program requires the public to have enough information to hold the government accountable. Excessive secrecy does not increase security. Instead, it simply provides cover for officials who may be failing to live up to their responsibilities. Although it would be dangerous to make public information concerning specific vulnerabilities of specific facilities, it is still important to provide the public with enough information to make an evaluation as to whether the government is adequately carrying out its duties. The strong information protection provisions of Section 550 are not adequately balanced with any obligations on the part of DHS to disclose what kinds of enforcement activity it is or is not engaging in. The impact on security of such a duty to disclose could only be beneficial.

It has been argued that, despite its flaws, CFATS should not be replaced by comprehensive chemical security legislation because this supposedly would force facilities to redo work they had already done or strand investments they had already made. This argument simply ignores the fact that H.R. 2868 was intentionally written to build seamlessly on the existing CFATS standard. The House bill adds some requirements to the existing standard, but it does not change the form or substance of compliance. Work that has already been done to comply with the existing standard will not have to be redone. Marty Durbin,

Vice President for Federal Affairs of the American Chemistry Council (ACC) acknowledged this in his congressional testimony of October 1, 2009, when he stated:

We're pleased to see the legislation reflect many of the security measures that will be implemented under CFATS, and we appreciate the efforts made to minimize duplication of effort by facilities that have already acted or will take further action under the program⁴.

Thus, the UAW believes that passage by the Senate of a bill similar to H.R. 2868 would provide continuity and permanence to the CFATS program. It would not be disruptive.

The UAW and our coalition partners support comprehensive chemical security legislation at least as strong as H.R. 2868 that would fix the problems we have identified with CFATS. Such legislation should:

- Cover water facilities;
- Require assessments of methods to reduce the consequences of an attack at all tiered facilities, and allow DHS to require implementation of such methods, under specific conditions, at the highest risk facilities, while providing funding for implementation;
- Provide for employee training in chemical security and allow for participation by employees and their representatives in facility inspections and in the development and implementation of security vulnerability assessments and site security plans; and
- Provide citizens with enough information to determine whether the government is adequately protecting their security and provide citizens with procedures for holding the government accountable.

Process that led to passage of H.R. 2868

The UAW and our coalition partners welcomed the passage of H.R. 2868 as a compromise measure that would improve protection for our members and their families and communities. I would like to thank the American Chemistry Council (ACC) for the constructive role it played in the passage of that bill. The ACC's spirit of compromise was reflected in both congressional testimony and in a letter to Chairman Waxman. On October 1, 2009, Marty Durbin, Vice President for

⁴ Durbin M. (2009). *Statement of Marty Durbin Vice President, Federal Affairs American Chemistry Council before the United States House of Representatives Energy and Commerce Subcommittee on Energy and the Environment Legislative Hearing on H.R. 2868 "The Chemical Facility Antiterrorism Act of 2009"* http://energycommerce.house.gov/Press_111/20091001/durbin_testimony.pdf (Accessed Feb 25, 2010)

Federal Affairs of the ACC, stated the following to the House Committee on Energy and Commerce:

I would like to acknowledge the willingness of this committee to seek our input, and both to consider and understand our viewpoint. We have had constructive discussions that I hope will continue as we work together and the legislation progresses...⁵

In a letter to Chairman Waxman, dated October 20, 2009, Cal Dooley, President and CEO of the ACC, stated: "The Chemical Facility Anti-Terrorism Act of 2009, HR 2868, is the appropriate vehicle for ensuring a permanent CFATS program." He further stated: "the manager's amendment reflects several months of serious, constructive dialog that has, I believe, resulted in important improvements to H.R. 2868." He went on to praise changes that made the bill more to ACC's liking in the areas of employee participation and training, inspections, harmonization of the Maritime Transportation Security Act (MTSA) with CFATS and civil suits. The UAW and our coalition partners were pleased with the spirit of compromise shown by the ACC in the process that led to the passage of the H.R. 2868. In that spirit of compromise, we endorsed the bill even though it did not include everything we would have liked in government accountability, implementation of methods to reduce the consequences of an attack and worker protections. We look forward to working with the ACC in that same spirit of compromise as chemical security legislation is considered by the Senate.

Protecting Jobs

The UAW is confident that that there is no threat to jobs from the provisions in H.R. 2868 that provide for implementation, under specified conditions, of a facility's own proposed methods to reduce the potential consequences of a terrorist attack. A European study of a broader category of technological changes that includes safer and more secure technologies found that these changes had no significant impact on employment. The *San Francisco Chronicle* reported that Clorox plans to switch from chlorine gas to high strength bleach in its household bleach manufacturing process in seven U.S. facilities. The company expects no impact on jobs⁶. A Schweitzer-Mauduit paper mill in New Jersey converted from using rail cars of chlorine gas to generating chlorine dioxide on site. No jobs were lost as a result of this conversion⁷. In contrast, jobs can be lost when disasters strike facilities, whether intentionally or unintentionally caused. On July 7, 2009 the Delco Times, a Philadelphia area newspaper, reported that 40-50 jobs will be lost because Sunoco has decided not to rebuild

⁵ *Ibid.*

⁶ Brown S. (2009) "Clorox to make changes at bleach plants." *San Francisco Chronicle*. <http://sanfrancisco.bizjournals.com/sanfrancisco/stories/2009/11/02/daily17.html> (Accessed Feb 25, 21010)

⁷ Patel D Engler R and Coyle D. (2008). *Still at Risk: Protecting New Jersey Jobs, Families, and Hometowns From Toxic Chemical Disasters*. Trenton: New Jersey Work Environment Council. <http://www.niwec.org/PDF/Sti1I%20at%20Risk%20Repo~10200ct%202008.pdf>

an ethylene unit that was damaged in an explosion that took place on May 17, 2009⁸.

If there are exceptional cases in which implementation of methods to reduce the consequences of an attack would threaten jobs at a particular facility, the language in H.R. 2868 prevents implementation. An October 30, 2009 letter to the House, signed by the UAW and five other unions, including the United Steelworkers, who represent more chemical workers than any other union, and the International Chemical Workers Union Council, states the following:

In our judgment, the legislation adequately protects jobs by requiring DHS to show that implementation of security plans "would not significantly and demonstrably impair the ability of the owner or operator of the covered chemical facility to continue the business of the facility at its location.

Moreover, the implementation provisions of the bill apply to only a small number of facilities, all of which have the opportunity to appeal. A November 5, 2009 letter urging Representatives to vote for final passage of H.R. 2868 without weakening amendments was signed by Louisiana Congressman Charlie Melancon and four of his colleagues from the Blue Dog Coalition. That letter says:

DHS has estimated that these provisions will apply to less than 3 percent of all facilities under the regulations, or about 100-200 facilities. The legislation also provides a robust technical appeals process for chemical facilities that disagree with this determination. The Energy and Commerce Committee developed this provision using considerable input from the largest chemical industry association, the American Chemistry Council.

In conclusion, the UAW believes that now is the time to ensure the security of our chemical and water facilities, as well as that of the Americans who work in them and live near them. The existing CFATS regulations are inadequate. It is imperative that Congress move forward on true chemical and water security. We strongly urge this Committee and the entire Senate to approve a support comprehensive chemical security bill at least as strong as H.R. 2868. We look forward to working with the Members of this Committee on this important issue. Thank you.

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⁸ http://www.delcotimes.com/articles/2009/07/07/opinion/doc4a5328eat27dd959040_181.txt (Accessed July 20, 2009)