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Roundtable on
Sensibly Reforming the Chemical Facility Anti-Terrorism Standards Program

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Thank you, Chairman Johnson, Ranking Member Peters and members of the committee for holding this important roundtable and for the opportunity to participate. I am here today representing the International Chemical Workers Union Council (ICWUC) of the United Food and Commercial Workers International Union (UFCW). The ICWUC was founded in 1944 and represents approximately 20,000 chemical workers in 32 states. In 1996, we merged with the 1.3 million-member UFCW and this mutually beneficial partnership continues to serve our members well today. It is my honor to appear before you to address the security and safety of our members who work in chemical plants and the security of these facilities.

ICWUC strongly supports a multi-year authorization of the Chemical Facilities Anti-Terrorism Standards (CFATS) program with certain essential changes.

About the International Chemical Workers Union Council
The ICWUC has been active for decades in promoting strong and effective health and safety standards in the hazardous chemical facilities where our members work. Workers and their union representatives have a vested interested in safe worksites. The ICWUC supports chemical security and safety standards and laws to protect our members, the facilities they work at and the public.

UFCW chemical workers work in many different manufacturing industries including petroleum and coal products, fertilizers, pharmaceuticals, pesticides and other agricultural chemical smelters and refineries, as well as, natural gas distribution, nuclear weapon production and power plants. Our members work with extremely hazardous substances and have a vested interest in the safe operation of their facilities for their own health, for their coworkers' health and for their communities' well-being.

Our members handle many of the hazardous materials in CFATS Appendix A. Specifically, we unload tanker and railcars that contain hazardous materials, monitor large storage tanks filled with these substances, move the storage tanks within our facilities, manage the control rooms that monitor and operate reactor vessels, and load the containers for shipment off site. The vast majority of the time, the handling of chemicals is done safely, but when there is a release, we respond in a range of roles including onsite

response teams.

Past incidents remind us of the danger that these chemicals pose. Examples of the tragic impact of the release of Appendix A hazardous materials include an incident in 2014, where four people were overcome by the massive release of methyl mercaptan in Houston, Texas or the rupture of a full chlorine tanker car in West Virginia that luckily did not kill anyone.[1] The site of one of ICWUC's most tragic loss of lives was at the Thiokol facility near Woodbine, Georgia, which manufactured magnesium trip flares for the U.S. Army during the Vietnam War. On February 3, 1971, the Thiokol facility was evacuated after several small fires broke out inside the plant which caused the flares to ignite. Horribly, the evacuation distance was not sufficient, and 27 workers were killed when the plant blew up. The Thiokol explosion led to a better understanding of the full danger of the materials in that plant and what a safe evacuation distance should be. Thankfully there has not been a terrorist attack on a chemical facility to date, but there is much that can be learned from unintentional incidents. Chemical safety is a very serious issue that we are familiar with and the workers at chemical facilities want to do everything possible to prevent these types of events whether from terrorism or other causes.

Unions have a proud history of fighting for the right to a safe workplace and for the basic right for workers to return home after a day on the job as healthy as when they left. Unions have made sure their members are educated and trained on the safety and health hazards they face on the job. Union negotiators bargain over health and safety contract language, actively participate in the investigation and identification of health and safety hazards and testify in support of legislation which strengthens workplace security. Unions are actively involved in making our workplaces safer. It is therefore an honor for me to appear before you to address the security and safety of our members who work in chemical plants and the security of these facilities.

As to my background, I have over three decades of experience investigating occupational health hazards for the National Institute for Occupational Safety and Health (NIOSH), as the Director of Health and Safety for the Molders Union and the Chemical Workers Union and currently as the Director of the ICWUC Training Center in Cincinnati, Ohio. I am participating today in my capacity as a representative of the ICWUC Health and Safety Department.

In my remarks, I will address the following elements that are crucial to the security of chemical plants:

1) worker involvement in security plans,
2) effective training requirements,
3) strong whistleblower protections, and
4) successful practices.

About CFATS

In 2007, the Department of Homeland Security (DHS) established the CFATS program to

[1] https://www.ntsb.gov/investigations/AccidentReports/Reports/HZM1901.pdf

identify and assess the security risk posed by facilities that contain hazardous chemicals that could be used by terrorists to inflict mass casualties or harm surrounding populations. DHS approves facility security plans and inspects high-risk facilities to ensure that the facilities are compliant with required security measures and procedures.

Workers Must Be Involved in Chemical Plant Security

CFATS inspectors, workers, labor representatives and company representatives all need to be involved in protecting our chemical infrastructure. Chemical workers have direct, current knowledge and experience of plant operations that is invaluable in solving site specific problems. Chemical workers know first-hand how a plant works, what chemicals are used, how those chemicals react to one another, their facilities' weaknesses and the most recent operational changes. We also know if backup systems will work when the power goes out. We know the exact location of the CFATS hazardous materials and we know if training is effective. All these responsibilities make chemical workers the first and best line of defense.

We believe employee involvement in the drafting, implementation and evaluation of plants' chemical security plans is crucial. It is important that workers' expertise – the same expertise that operates these plants everyday – be utilized. Including chemical workers in this process will enhance facility security and protection. We believe the facility's operator should document recommendations received from employees in their site security plans, certify that there has been worker input into the site security plan, and share employee recommendations with inspectors.

Workers should be involved in chemical facility security because our onsite responders are the first people to respond to catastrophic events. At many sites, there is a joint labor management response team that is usually the first on the scene to an incident. The experiences and knowledge of workers is important when considering how to prevent or plan for future incidents. These workers should be talking with CFATS inspectors and sharing their knowledge along with management.

Workers should also be protected from any type of retaliation on the part of employers for full involvement in workplace safety and health, and chemical plant security efforts. Any barriers to involvement, such as discipline for reporting incidents or talking with CFATS inspectors should be identified and removed.

I'd love to tell you about what takes place during a CFATS inspection, but we don't know since we are not informed of these visits. Right now, the law allows discretion on the part of inspectors as to whether workers and the union are advised of an inspection. We know of very few locals or members that have been involved in inspections, and this means an important stakeholder and their valuable information may be excluded from the process.

Concerns about interfering in the labor management relationship should not be a barrier to greater chemical plant security. Federal agencies including the Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA),

NIOSH, the U.S. Chemical Safety Board and the Environmental Protection Agency (EPA) all have procedures to work with both management and labor during their inspections. In my experience as NIOSH staff and working with OSHA and the CSB, these federal procedures work efficiently and balance the needs of workers, employers and site security. By not involving labor in these inspections, DHS is relying on management's information and has de-facto taken a side.

Workers need to know their basic CFATS rights. One way to inform and include workers is to require a CFATS breakroom poster in all chemical facilities that submitted a Top Screen survey. The poster could include basic facts about CFATS and contact information like OSHA break room posters.

Effective training for all workers at covered areas in CFATS tiered facilities

Key to effective worksite security is good training for everyone about their roles and responsibilities and drills for proper response and evacuation. For over 30 years my union has run training programs and collected data on how much training our members received. OSHA's Hazard Communication Standard is the primary OSHA standard requiring training on hazardous chemicals, and the requirement is minimal. Workers are trained when they initially assigned to a job, and then again if new chemicals are introduced. Other than this initial training, workers often do not receive further training on hazardous chemicals. According to data collected by our union, we found that from 2017 to 2018 over 80% of workers who attended ICWUC training had no training in the last year in nine of the ten key worker safety areas. The nine areas not trained on were: Engineering Controls, Air Monitoring, Decontamination, Toxic Effects, Emergency Response Procedures, OSHA Regulations, Plugging and Patching, Selection of Protective Clothing or Respirators. The government and companies must increase the amount and type of training for all workers inside of CFATS covered plants.

Effective training requires training materials that are easily understood, and that are targeted to the audience using the materials. An example of good training materials is those developed by the state of New Jersey which has taken a strong interest in the security of their chemical plants. The state has devoted a considerable amount of time and effort over the last 30 years to developing clear resources on these key issues. The New Jersey training materials cover many of the CFATS substances.

Implementing good training is not easy. One facility that I reviewed was trying to implement the right procedures but after careful review, I realized that all the drills were taking place on the first shift because that is when the salaried employees worked. The facility has three shifts and operates continuously, so only a fraction of the workers were being drilled for these types of events.

Training is also important for the CFATS inspectors. They should be trained on toxic effects, chemical operations, CFATS procedures, Top Screen operation and definition of tiers, effective controls, incompatible substances, relevant guidelines and standards, and methods that reduce the potential consequences of a terrorist attack. Their training should also include knowledge of methods to reduce or remove hazards that could be

attractive targets. It would be extremely valuable to inspectors to know how similar facilities have reduced or removed such hazards. We need to be sure that information received by CFATS inspectors is consistent with the best industry practices and inspection observations.

Whistleblower protections for workers to report problems to CFATS

In addition to routine interactions with inspectors, employees at facilities with hazardous chemicals can play an important role in helping to ensure CFATS compliance by submitting a whistleblower report when they suspect noncompliance. Whistleblowers who disclose wrongdoing at chemical facilities can save lives and help improve public safety and plant security and should not face retaliation.

Regretfully fear is a fact of life at all too many workplaces and jeopardizing one's job by blowing the whistle is a risky thing to do. Workers, who bravely come forward to protect themselves, their co-workers, and communities around the plant, should not fear losing their jobs when they speak out. Whistleblower protection is vital in assuring the free exchange of ideas, improving security and ensuring that effective measures are actually implemented. Workers must have the ability to come forth and communicate program deficiencies without fear of retribution.

DHS is responsible for managing the CFATS whistleblower process and procedures, but DHS lacks processes and procedures to address whistleblower retaliation reports. DHS should develop whistleblower anti-retaliation regulations that allow for at least 90 days to file a complaint, a private right of action and for both employees and worker representatives to file whistleblower anti-retaliation claims. The 90 days should start when the worker learns that they have been discriminated against for bringing up a CFATS related question, rather than when the discrimination initially happened.

CFATS Should Identify and Disseminate Successful Practices

There are many steps and measures that could and should be taken to improve chemical plant safety and security. The U.S. Department of Homeland Security has stated that many "CFATS facilities have either reduced their holdings of high risk chemicals of interest or eliminated them completely, substituting less risky chemicals or have changed their processes and have actually come out of the program and determined to no longer to be high risk."[2] These facilities have substituted less dangerous formulations better designed containers, or various engineering steps, which all can minimize the consequences of an accident or attack at a chemical plant. Unfortunately, there is no report that can be shared with other facilities that spells out the methods to reduce the consequences of a catastrophic release of chemicals from intentional attacks or unintentional disasters.

Although reducing potential consequences may not be feasible in all circumstances, because of technological or economic constraints, steps such as substituting safer solvents or formulations for more dangerous ones can be implemented if companies know about it. The quantities or concentrations can be reduced to below threshold amounts, some

[2]Secretary Wulf's testimony before House Homeland Security Committee on February 27, 2019.

substances can be used in a less dangerous form, alternative processes can be used, chemicals can be used "just in time" (without storage), vulnerable sections can be reinforced, inventory control can be improved, bulk storage can be minimized and maintenance schedules can be reviewed regularly. Many companies have implemented these changes and there is much to be learned from which changes have been the most effective. This information sharing can be done without identifying individual companies or locations.

Incorporating these considerations into site security planning will ensure that covered chemical facilities are aware of the security implications of their production processes and enable the selection of more effective security methods.

Facilities that have successfully reduced their risk have valuable best practices information that should be aggregated and annually released. Facilities have much to learn from each other and aggregated data could be one step.

Conclusion

Although this Committee's mandate is the protection of facilities from terrorist attack, I applaud the recognition that the measures that you are discussing will protect us not only from a terrorist attack, but also minimize the impact of a hazardous material release resulting from a natural disaster or accident. The changes outlined in my testimony will mitigate the consequences and risks of a release regardless of the cause of that release and fulfil CFATS' mandate.

The International Chemical Workers Union Council supports the work of this Committee to ensure the security and safety of our chemical workers, the communities around the facilities and all Americans. We strongly support a multi-year reauthorization of the Chemical Facilities Anti-Terrorism Standards program, hope this authorization will reduce risk, protect workers and communities, prevent a terrorist attack and tragedies like the Thiokol explosion.

On behalf of the ICWUC, I urge you to act now to protect America – to protect all workers and their families – by strengthening and reauthorizing CFATS before it expires next year.

Again, I thank you for your time and would be pleased to answer any questions that you may have.