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**U.S. ENVIRONMENTAL PROTECTION AGENCY**

**BEFORE THE**

**COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS**

**AND THE COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS**

**UNITED STATES SENATE**

**December 11, 2014**

Good morning Chairman Boxer, Chairman Casey and members of the Committees, I am Mathy Stanislaus, Assistant Administrator for the U.S Environmental Protection Agency's Office of Solid Waste and Emergency Response. Thank you for the opportunity to testify today on efforts to implement the commitments made in the May 2014 Report for the President, *Actions to Improve Chemical Safety and Security – A Shared Commitment*. This Administration recognizes the terrible loss suffered by families and communities as a result of chemical accidents and releases and we are committed to working collaboratively with first responders, facility owners and operators, state, local and tribal partners and organizations and associations with an interest in improving chemical facility safety and security.

In the aftermath of the tragic West, Texas facility explosion, the President issued Executive Order 13650 - *Improving Chemical Facility Safety and Security* on August 1, 2013. The EO directed the Department of Homeland Security (DHS), the Environmental Protection Agency (EPA), the Department of Labor (DOL), the Department of Justice (DOJ), the Department of

Agriculture (USDA), and the Department of Transportation (DOT) to establish a Chemical Facility Safety and Security Working Group to improve chemical facility safety and security in coordination with a broad cross-section of stakeholders including: state regulators; state, local, and tribal emergency responders; chemical facility owners and operators; and local and tribal communities. The Report for the President summarizing Working Group progress, findings and lessons learned, and priority next steps is available at: www.osha.gov/chemicalexecutiveorder/.

The chemical release at the DuPont facility in La Porte, Texas on November 15th of this year that resulted in the deaths of four employees, serves as a tragic reminder that we must remain committed to working with a broad range of stakeholders to continue improving chemical facility safety and security. It also motivates us to continue an aggressive pace as we move forward in implementing the federal Working Group Action Plan. My testimony provides a brief overview of the wide-ranging actions underway and those that have already been completed as we work together in partnership with all levels of government, emergency planners, first responders and industry to work to prevent, prepare for, and respond to chemical emergencies.

One of the initial actions taken to improve chemical facility safety focused on addressing concerns related to the storage of ammonium nitrate and compliance with federal regulations. On August 30, 2013, the EPA, the Occupational Safety and Health Administration (OSHA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) released a chemical advisory that provides information to communities, workers, first responders and commercial sectors on the hazards of ammonium nitrate storage, handling, and management. To further bolster these efforts, in February 2014, Assistant Secretary of Labor for Occupational Safety and Health, Dr. David Michaels, signed a letter that was circulated by agricultural trade associations to provide

more than 7,000 employers with legal requirements and best practice recommendations for safely storing and handling ammonium nitrate.

**Outreach Efforts and Incorporating Stakeholder Feedback**

Stakeholder feedback and public comment have been, and will continue to be, crucial to implementation of the Executive Order and the Working Group Action Plan. It is the local perspective – community residents, state and local responders and preparedness officials working with local facility managers – who are critical to ongoing safety at chemical facilities. As described in the Report for the President, the Working Group gained valuable insights from people who have worked at facilities, lived near them, and contributed to their community's emergency planning and preparedness. As part of the Working Group effort to engage with stakeholders, 12 public listening sessions were held throughout the country to solicit comments, best practices, and suggestions from stakeholders. More than 1,000 individuals attended the listening sessions and more than 800 additional people participated by conference call. Participants representing more than 25 states provided input into the EO process.

The Working Group heard concerns from local and tribal responders and community members about the accessibility of information. We heard about the challenges of managing all of the information provided under the various laws/regulations, the difficulty in understanding how each chemical is regulated, and how to properly respond to an emergency involving specific chemicals. Community members stated they were unaware of potential hazards prior to an emergency and voiced concerns about errors in communication post-response about when it is "safe" to move back home and use local resources, such as drinking water. States also attested to

the need to share information with the community while still balancing what information could be revealed to the general public.

First responders and Local Emergency Planning Committees (LEPCs) face a dual challenge of planning and communicating with facilities to properly prepare for emergencies, and with communities to inform residents of potential dangers, what to do in an emergency, and when to declare an area safe after an emergency. LEPCs need to identify the location of key receptors (e.g., schools, parks, and water intakes) which could be affected by chemical releases from nearby facilities, and plan for appropriate emergency response.

There are also areas where industry and the response community share common concerns. Industry representatives acknowledged that communications with LEPCs and first responders are critical to proper preparedness in the community and that the federal government should assist in education, outreach, and training. LEPCs, first responders, and facility representatives reported inconsistent participation in LEPCs and in communications with first responders. Industry encouraged the Working Group to clarify roles and responsibilities between agencies, strengthen enforcement, and develop guidance to assist facilities to navigate and comply with the myriad of regulations. Most labor organizations and individual workers support modernizing and clarifying process safety regulations as well. Further, industry encouraged the Working Group to develop innovative ways to leverage existing industry association programs to increase chemical facility safety and security. Additional information regarding the listening sessions is available on the Working Group's website cited earlier.

The Working Group continues to actively incorporate community feedback into our efforts when possible. Since the August 2013 Executive Order was issued, we have engaged in more than 70

meetings and events across the country involving more than 4,000 members of state and local governments, community leaders, first responders and industry sectors. The most recent webinar was conducted on November 10, 2014, with more than 300 participants and an additional 400 participants via phone.

In a series of workshops conducted in five states located in EPA Region 6, local community residents, along with environmental and other public interest organizations repeated concerns about understanding chemical facility information. During the workshops, two of the most common issues raised by local officials regarding areas where state and federal agencies can provide support were: (1) helping to ensure that local responders have both information on chemicals present at an incident, as well as the properties, hazards, and response actions for those chemicals; and (2) the need to work with local and industry officials to ensure responders are appropriately trained to respond to chemical incidents.

Based upon input from public listening sessions, meetings with stakeholder groups, webinars, and feedback submitted to the federal departments and agencies, the EPA is addressing actions and commitments in the Report for the President to support local planning, preparedness, communications, and response and to improve stakeholder coordination.

**Strengthening Community Planning and Preparedness**

As noted throughout the Working Group's consultation with stakeholders, effective emergency planning occurs at the state and local level, with State Emergency Response Commissions (SERCs), LEPCs, and Tribal Emergency Response Commissions (TERCs) and Tribal Emergency Planning Committees (TEPCs) providing a formal prevention and preparedness engagement structure. Strong working relationships between stakeholders such as facility

owners and operators, state, local, tribal partners, emergency planners and responders, and communities, is a necessary part of this structure and helps support coordinated chemical facility safety and security efforts.

In implementing their responsibilities, LEPCs and TECPs are challenged by limited resources. The EPA's resources provide support for local communities through the development of tools and technical support. The FY 2015 President's Budget requesested additional resources to support state and local prevention and preparedness efforts. This would include piloting a grant program to assist local planners and first responders to facilitate the use of risk information to plan for all potential chemical risks from the facility, to work and maintain a dialogue with the facilities to reduce the risks, and to communicate to the public what to do if an accident occurs.

To address the needs identified by LEPCs and SERCs, the EPA is taking a number of steps to strengthen and further support the state and local infrastructure and ensure stakeholder involvement in the process. The EPA held 32 workshops for LEPCs throughout Texas, Arkansas, Louisiana, Oklahoma, and New Mexico to reinforce their authorities, roles, and responsibilities under the Emergency Planning and Community Right to Know Act (EPCRA) and identify barriers to meeting their requirement for developing and implementing a local emergency response plan. These workshops were well received and attended by 1,340 representatives of local, state, and federal government, as well as industry. A report which addresses lessons learned will be shared with other regions and states.

Another issue consistently raised by SERCs and LEPCs was the need for training. The EPA is moving forward on developing online EPCRA training modules for SERCs/TERCs and LEPCs/TEPCs. This training is intended to reinforce their authorities and roles to meet their

responsibilities under EPCRA for the development and implementation of local emergency response plans, and is on schedule for completion by June 6, 2015. In addition, EPA is working to update, and revise as necessary, planning and response guidance materials for SERCs and LEPCs. This will help ensure SERCs/TERCs and LEPCs/TEPCs have the latest information in a format that allows them to share and exchange among themselves and with other organizations and stakeholders.

In order to respond to requests from SERCs and TERCs for assistance in clarifying EPCRA responsibilities to support emergency preparedness and planning efforts, the EPA is also developing factsheets for SERCs/TERCs and LEPCs/TEPCs and industry to assist them in understanding and meeting their responsibilities under EPCRA. Further, the EPA established an email list-serve to provide monthly Working Group updates to SERCs/TERCs to keep them informed about upcoming conference/meetings, new guidance and other materials, and other EO-related information they will be receiving.

The EPA continues to upgrade its Computer-Aided Management of Emergency Operations (CAMEO) suite of applications, available online to emergency planners, first responders, and the general public. These upgrades will help emergency planners and first responders to access, store, and evaluate critical chemical facility and multi-agency regulatory data and information for developing emergency plans. Additional enhancements to CAMEO will expand analytical capability for LEPCs/TEPCs and promote information sharing. These enhancements include: ensuring that emergency planners and first responders have chemical and regulatory information on all Chemical Facility Anti-Terrorism Standard (CFATS) regulated facilities; adding new data fields to ensure that LEPCs integrate all available chemical facility information into their local CAMEO database, and developing and providing a complete web-based version of CAMEO that

states can host on their own servers. This allows LEPCs an online method of accessing the state Tier II facility/chemical data and allows facilities to report online.

**Enhancing Federal Operational Coordination**

Addressing chemical safety is a shared commitment. Federal, state, local, tribal, and territorial governments, regional entities, industry, non-profit organizations, and communities all comprise important stakeholders. Communicating and coordinating across this diverse landscape requires an integrated effort to ensure activities are executed effectively and efficiently. To facilitate this, the Working Group, working with existing structures, established a process for sustaining stakeholder coordination, including the establishment of a Chemical Facility Safety and Security National Working Group and Chemical Facility Safety and Security Regional Working Groups co-chaired by the EPA, DOL, DHS supported by the National Response Team and Regional Response Teams (NRT/RRTs). These groups are coordinating closely with Government Coordinating Councils (GCCs) and Sector Coordinating Councils (SCCs) from a variety of sectors.

One of the main accomplishments of the Chemical Facility Safety and Security National Working Group and Chemical Facility Safety and Security Regional Working Groups is the development and ongoing implementation of Standard Operating Procedures (SOPs) at the regional level to unify and improve operational coordination among federal, state, tribal, and local governments for identifying, communicating, and responding to risks at chemical facilities. In August of 2013, a pilot program was launched in New York and New Jersey to evaluate best practices and test innovative methods for interagency collaboration on chemical facility safety and security. The pilot program brought together all levels of government with the first

responder community, along with other stakeholders to identify actions for improving chemical facility safety and security. The discussions and work conducted have led to coordinated work in the field and the sharing of critical information and data. The resulting SOPs and lessons learned from the pilot program have helped to advance chemical safety. Specifically, the pilot enhanced areas of risk management by increasing local access to high-risk facility information to support more effective emergency planning and response; improving the sharing of inspection information to inform LEPC emergency planning; and identifying chemical facility points of contact to support local emergency response. Additionally, the pilot facilitated a better understanding of the information needs of first responders and communities before and during a chemical release, and SOPs have been established to develop and share best practices on sharing EPRCA Tier II and other critical information to first responders, and developing procedures to take advantage of existing drills and exercise opportunities to support and test existing LEPC contingency plans.

**Improving Data Management**

Federal agencies collect important information to address chemical facility safety and security. However, as multiple regulatory programs evolved over several decades, incorporated technologies and data collection requirements developed independently of one another. This has led to varying formats and management of the data which do not fully support interagency compliance analysis. In order to improve data sharing among federal departments and agencies used to identify potentially noncompliant facilities, the EPA and DHS adopted new procedures to identify facilities that, based on their required filings, could possess threshold levels of CFATS Chemicals of Interest but have not yet filed required Top-Screen information with DHS or a required Risk Management Plan (RMP) with EPA.

Another key step to assist federal departments and agencies in identifying non-compliant facilities and/or other potential compliance issues is linking data from multiple agencies. The EPA's Facility Registry Service (FRS) integrates facility data from nearly 90 different federal and state systems, allowing users to compare facilities between systems, including chemical data and compliance history. The FRS has been updated to include facilities that complete a DHS Top-Screen submission for CFATS, which allows federal departments and agencies to identify: (1) facilities that are covered by multiple federal regulatory entities, and (2) potentially non-compliant facilities, often referred to as outliers.

Additionally, the EPA's Substance Registry Services (SRS) assists facilities housing chemical substances to determine their regulatory requirements by providing information about chemical substances tracked or regulated by the EPA or other sources. The SRS has been updated to include CFATS and Process Safety Management (PSM)-covered substances, which allows facilities to be informed about potential regulatory coverage under PSM and CFATS in addition to other EPA regulatory programs.

DHS and EPA also initiated a process to compare the CFATS 'Top Screen' database and the RMP database to determine if the CFATS database included facilities that should have also reported under the RMP chemical accident prevention program. As a result of this effort, the EPA contacted hundreds of facilities to request information and visited some facilities to help determine whether the facility meets criteria to implement a risk management program requiring submittal of a risk management plan. Following this extensive review, only 13 non-filing facilities were identified, indicating that the vast majority of covered facilities are reporting under the RMP program.

## Modernizing Policies and Regulations

The RMP regulation has been effective in helping to prevent and mitigate chemical facility incidents in the United States and protecting human health and the environment from chemical risks and hazards. However, major incidents highlight the importance of reviewing and evaluating current practices and regulatory requirements and applying lessons learned to continuously advance process safety management. In order to gather the information necessary to proceed with regulatory modernization of RMP and retain close coordination with OSHA on its implementation of the PSM standard, the EPA published a Request for Information (RFI) on July 29, 2014. The RFI sought public input on 19 process safety and risk management issues relevant to the RMP regulations. The public comment period closed on October 29, 2014, and the EPA is reviewing nearly 100,000 comments received.

Guidance and outreach programs to help industry understand process safety and security requirements and best practices are an integral part of the comprehensive approach to chemical facility safety and security. Along these lines, the agency continues to meet with industry and industry associations to discuss how they can assist in ensuring that facilities meet their responsibilities under EPCRA and comply with EPCRA and RMP regulations. Additionally, the EPA is working with trade associations to provide their members with chemical safety information and to share best practices.

## Conclusion

The EPA and the Working Group will continue to work toward improving chemical facility safety and security with a focus on assisting local communities. In addition, the EPA will continue to help ensure that facilities handling hazardous chemicals take actions to help prevent

chemical accidents, and also serve as a catalyst so that facilities, first responders, emergency planners, state and local governments and communities work together to prepare for and respond to chemical facility releases. EPA will continue to provide Congressional and public updates regarding further progress on our efforts to improve chemical facility safety.