



Testimony

James S. Frederick, Assistant Director

Health, Safety and Environment

**United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied
Industrial and Service Workers International Union (USW)**

Before the Subcommittee on Environment and the Economy;

Committee on Energy and Commerce;

Congress of the United States

House of Representatives

**Hearing – “H.R. 908, a bill to extend the authority of the
Secretary of Homeland Security to maintain the Chemical Facility
Anti-Terrorism Standards Program”**

March 31, 2011

Mr. Chairman and members of the Subcommittee:

Thank you for the opportunity to appear before you this morning to discuss the United Steelworkers (USW) union views on H.R. 908, **Full Implementation of the Chemical Facility Anti-Terrorism Standards Act**. The USW appreciates the opportunities to share our views with the Subcommittee on the important aspects of this issue and how H.R. 908, if passed, will extend the Department of Homeland Security (DHS) Chemical Facility Anti-Terrorism Standards (CFATS).

My name is Jim Frederick. I am a member of the United Steelworkers, and the assistant director of the Union's Health, Safety and Environment Department in Pittsburgh, Pennsylvania. I have spent my 20 year career identifying and addressing workplace health and safety hazards; responding to and investigating worker deaths, injuries and illnesses; assisting local unions with health and safety improvements; and developing and delivering worker health, safety and environmental education programs.

The full name of our union is the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO, CLC. As the largest industrial union in North America, we represent a total of 1.2 million active and retired members in the United States, Canada and the Caribbean. More than 125,000 of these members work in more than 800 chemical industry workplaces. Many of these are small workplaces and some are small businesses.

The USW involvement with chemical plant security started long before the original promulgation of the Chemical Facility Anti-Terrorism Standards in 2007 or the September 11, 2001 terrorist attacks on the United States. Our union has always been actively engaged and involved with our employers, communities, regulators, and legislators to improve workplace safety for our members as well as their families and the community.

As part of a broad coalition, the USW believes that legislation must be passed to improve chemical industry workplace safety and security, not just to extend the existing interim measures that generated CFATS final rule. We believe that this is absolutely necessary to properly protect the communities that our members and their neighbors live and work. We believe the problems with CFATS include the following.

1. CFATS prohibits the DHS from requiring any specific *security measure*.
2. CFATS fails to develop the use of *smart security* -- safer and more secure chemical processes that can cost-effectively prevent terrorists from triggering chemical disasters.
3. CFATS explicitly exempts thousands of chemical and port facilities, including approximately 2,400 water treatment facilities and more than 400 facilities on navigable waters, including the majority of oil refineries.

4. CFATS fails to involve knowledgeable employees in the development of vulnerability assessments and security plans, or protect employees from excessive background checks.
5. CFATS denies the public the information needed to ensure an effective, accountable program.
6. CFATS fails to address the current pervasive problem of risk shifting, such as when companies shift chemical hazards to unguarded locations such as rail sidings.

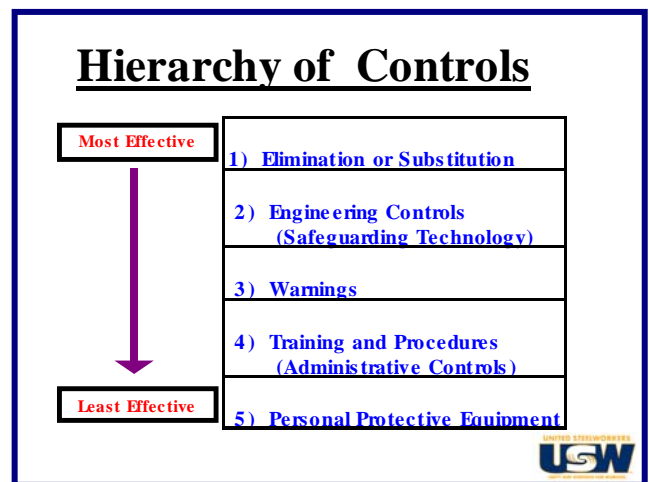
Specific Security Measures - CFATS prohibits the DHS from requiring any specific *security measure*.

H.R. 908 would extend the prohibition for the DHS Secretary from denying approval for a site security plan based on the presence or absence of a particular security measure. The performance based standards will continue to allow employers to determine how they comply with the rules. Performance standards often result in cost and productivity taking precedence over safety. Performance standards also typically equate to less regulator oversight. Less regulator oversight may provide an opening for employers to underestimate the potential worst case scenario when calculating the safety and security protections.

An example of this is sometimes seen in chemical storage areas or tank farms at a chemical plant or oil refinery where retaining dikes are constructed to keep unexpected releases of chemicals from escaping to the environment beyond the tank farm. However, the retaining dikes are often in disrepair or are not engineered to retain the proper volume of chemicals in the tank farm.

Smart Security - CFATS fails to develop the use of *smart security* -- safer and more secure chemical processes that can cost-effectively prevent terrorists from triggering chemical disasters.

When unions train workers and others to correct hazards in our workplaces we focus on the use of the hierarchy of controls. The hierarchy of controls instructs us that the most effective way to control a hazard from causing an injury is to eliminate it or substitute it with something less hazardous.



Legislation and standards addressing chemical plant security should utilize the same hierarchy principles to recognize and encourage the elimination or reduction of hazardous materials when possible and the use of substitution with less hazardous components.

Safer processes may not be feasible in some circumstances, but they should at least be considered in a security plan. Many safety measures may be possible without expensive redesign or new equipment. Safer fuels or process solvents can be substituted for more dangerous ones. The storage of highly hazardous chemicals can be reduced. Since 1999, more than 500 facilities have used *smart security* to eliminate risks and create communities that are less vulnerable to harm. 500 is an impressive number of facilities, but many, many more need specific guidance from legislation and regulation to implement such changes.

Exemptions of too many at-risk workplaces - CFATS explicitly exempts thousands of chemical and port facilities, including approximately 2,400 water treatment facilities and more than 400 facilities on navigable waters, including the majority of oil refineries.

These exemptions include facilities regulated by the Safe Drinking Water Act and the Federal Water Pollution Control Act, the Maritime Transportation Security Act of 2002, facilities owned or operated by the Department of Defense, Department of Energy or facilities regulated by the Nuclear Regulatory Commission. Many of these facilities are located in close proximity to cities. It is expected that the safety of these facilities is covered by other requirements; however, this leaves a gap for employers, workers and

communities that should be closed by including these facilities in the scope of chemical plant security regulations.

Worker Involvement - CFATS fails to involve knowledgeable employees in the development of vulnerability assessments and security plans, or protect employees from excessive background checks.

The CFATS final rule lacks requirements to ensure that chemical plant workers and their Unions' are involved in developing Security Vulnerability Assessments and Site Security Plans. The DHS has suggested that facilities may involve employees in their security efforts. Some would contend that this provides employers with the flexibility to voluntarily invite worker and union participation. The problem is that too many employers choose not to volunteer.

Our experience has been that in cases of other relevant regulations, such as many of the Occupational Safety and Health Administration's (OSHA) standards, the government encourages employees and employee representatives to be engaged and involved in the process to assess and address unsafe conditions and hazards. Time and time again, this inclusion has been beneficial to the employer and regulator alike.

Workers are the best source to identify vulnerable hazards and often have much more hands-on worksite experience to recommend solutions. The USW has performed

training with workers (and managers) from many of our chemical industry local unions. Through exercises such as hazard mapping we have demonstrated the value of worker experience in identification of unsafe conditions in the workplaces.

Workers will always be the first line of defense and the eyes, ears and noses of chemical facilities. Workers are in a unique position to identify and prevent potential facility vulnerabilities. They understand just where an intruder might enter a plant; the effectiveness of workplace security measures; the location of hazardous materials; whether the facility is sufficiently staffed with trained personnel; if backup control systems properly operate; as well as other potential risks. Because of their concerns about workplace safety and health, they routinely point out hazards to their employer. Workers also are often required to respond during emergencies, and in doing so, function as the first line of defense against a disaster. Workers and their unions are vital participants in plant safety and security. The failure to formally involve employees in developing vulnerability assessments and security plans ignores one of the most vital, available and cost-effective resources to employers.

To be fully effective, worker participation must be supported by strong and effective whistleblower protection. This will ensure that workers are encouraged to participate and confident in their ability to inform employers of issues of concern.

Prior bills that emerged from the committees of jurisdiction in the House and Senate (H.R.5695 and S.2145) both contained worker participation and whistleblower protections. Other jurisdictions have also dealt with this issue. The State of New Jersey's Toxic Catastrophe Prevention Act, [\(N.J.S.A. 13:1K-19 et seq.\)](#) and New Jersey Department of Environmental Protection Administrative Order 2005-05 establishes procedures for participation by employees and their representatives. Any DHS legislation should include a requirement for worker and union involvement in all facets of the operations.

Conducting background checks on current, long-term employees of a high risk facility is unlikely to identify a potential terrorist. Workers' right to privacy could be violated by such an order in an attempt to identify that which is extremely unlikely. Resources by all involved, employers, workers, unions and DHS will be needlessly expended in compliance with background check requirements. DHS should also provide a means for workers to appeal mistakes in background checks before losing their employment.

Public Access to Information - CFATS denies the public the information needed to ensure an effective, accountable program.

Workers and the public must have the right to know what risks they face. The right to information of workers including site plans that have already been guaranteed by previous legislation must be maintained. There is no question that some information

should be protected from public disclosure. The public must be allowed to know what chemicals are on a site, but specific process and storage information may need to be confidential. Community residents are vital in the process to assist in reducing risk, but they need to know basic information in order to do so. Such information is also necessary for effective emergency planning, and to protect vulnerable populations in communities.

Excessive secrecy does not increase security. Instead, it may provide cover for officials who may not be complying with the requirements.

Risk Shifting - CFATS fails to address the current problem of risk shifting, such as when companies shift chemical hazards to unguarded locations such as rail sidings.

Risk shifting takes place continually in many workplaces. There are several reasons that this practice occurs, but the results are always the same. The community is at increased risk of exposure to a release of hazardous materials or of a terrorist obtaining these materials. In one recent example at a USW represented workplace, railcars of hydrofluoric acid are being stored off site property on rail sidings. The railcars are located near residential areas in the community. A release from one or more of these would be devastating to the residents close by and for a large area of the surrounding communities. Chemical plant security legislation can fully eliminate risk shifting by banning the practice legislatively and in subsequent regulation.

Summary

The USW believes that legislation must be passed to improve chemical industry workplace safety and security that includes the items listed below, not just to extend the existing interim measures that generated CFATS final rule. We believe that this is absolutely necessary to properly protect communities. Legislation should achieve the following:

- Require facilities that pose the greatest risk to assess safer chemical processes and conditionally require the use of safer chemical processes where feasible and commercially available, and includes a technical appeals process to challenge DHS decisions;
- Provide resources to assist facilities to use safer and more secure processes;
- Require worker involvement in the development of security plans and provide protections for whistleblowers and limit background check abuses; and,
- Preserve state authority to establish stronger security standards;

On behalf of the USW membership and their communities, thank you for the opportunity to testify this morning.