

Statement for the Record
Lawrence Stanton, Deputy Director, Risk Management Division,
Office of Infrastructure Protection, Department of Homeland Security
before the
Transportation Safety, Infrastructure Security and Water Quality Subcommittee of the
Committee on Environment and Public Works
United States Senate
March 19, 2007

Thank you Chairman Lautenberg, Ranking Member Vitter, and Members of the Committee. It is a pleasure to appear before you today to discuss “the Importance of State and Local Authorities in Ensuring Chemical Plant Security.” Open dialogue between security partners is a key element in advancing the security of our nation, and I appreciate this opportunity to address you. Securing the Chemical Sector is a large job that will extend beyond the reaches of the Federal government. It must be a national program that includes all levels of government, industry and even the public. Integrated and effective partnerships among all partners, Federal, state, local, and private are essential to some of the most critical infrastructures in our country, chemical facilities.

DHS’ vision for the chemical sector is to have an economically competitive industry that has achieved a sustainable security posture, by effectively reducing vulnerabilities and consequences of attack to acceptable levels, using risk-based assessments, industry best practices, and a comprehensive information sharing environment between industry and government.

Before discussing some of the Departments work and achievements in the chemical sector, I pause to make a few notes concerning the legislation authorizing DHS to regulate facilities within the chemical sector. Since 9/11, there have been several congressional hearings and legislation introduced on chemical security, and then late last fall, the Department was pleased to have Congress enact legislation in this area. Even before we have an opportunity to implement this law, however, there are already threats of having the program delayed yet again.

I am referring to a provision that is currently in the House Emergency Supplemental Appropriations bill. Among other problems, the provision imposes new requirements that would delay the implementation of this important regulatory program at a time when the Administration is scheduled to issue an interim final rule within weeks. The provision would also weaken the Department’s ability to protect from disclosure information transmitted to the Department for regulatory purposes—information that would, if in our enemies’ hands, provide information about how to attack chemical facilities and foil existing defenses. Furthermore, the provision removes the restriction that the Department has the sole ability to enforce the provision, potentially resulting in lawsuits that might even further delay this important program. Finally, the provision would force DHS to reject any site security plan that does not meet State and local standards, which could put the Department in the position of imposing Federal fines on a facility that does not meet State and local regulatory standards. We urge Congress to remove the problematic provisions from the House Emergency Supplemental Appropriations bill.

This hearing comes at an important moment for chemical security. This is not just because of the new federal regulations for chemical facility security which we will soon promulgate, but because voluntary cooperative efforts between the public and private sectors are beginning to bear fruit. Let me give you some examples of these voluntary efforts. One of the more important efforts we have been working on is the National Infrastructure Protection Plan (NIPP) which was issued in June 2006. The NIPP improves protection of Critical Infrastructure and Key Resources (CI/KR) by setting forth the risk management framework guiding national CI/KR protection activities across all sectors. Improving protection in the most cost effective manner requires cooperation between the owners and all levels of government, and the NIPP clearly defines roles and responsibilities among all partners.

Under the NIPP, each sector has developed a Sector-Specific Plan, or SSP, which details how the NIPP will be implemented in that specific sector. The Chemical SSP is a great example of the public/private partnership we are trying to foster working together to improve security at chemical facilities. It establishes goals, objectives, and metrics that address the full spectrum of protection activities including awareness, prevention, protection, response, and recovery. As with the other SSPs, the plan is in final clearance. We look forward to the chemical sector continuing to set a strong example in implementing cooperative strategies that cost effectively use government and industry resources to ensure all of our CI/KR continue to operate economically and safely.

The Chemical SSP describes many of the programs in which the chemical sector is voluntarily cooperating with DHS to protect and ensure the resiliency of its assets and manufacturing capabilities. In many cases, industry, through the Chemical Sector Coordinating Council (SCC), has actually partnered with DHS to develop these initiatives. Some examples of these voluntary efforts are:

Site Assistance Visits (SAVs) are designed to facilitate vulnerability identification and discussion between the Federal government and owners/operators of CI/KR in the field. 41 SAVs have been conducted in the chemical sector.

The Comprehensive Review (CR) program, a non-regulatory exploration of potential threats in the terrorist environment, brings together a Federal interagency team, facility owner/operators, industry representatives, and community emergency services organizations. The first Chemical Sector CR was conducted in Detroit in February 2006. By August 2007, CRs will be conducted in five additional regions including Chicago, Houston, Los Angeles, Northern New Jersey, and Lower Delaware River. CRs have identified many improvements—many of them low- or no-cost—that can be implemented by CI/KR owners/operators, as well as longer term strategies and potential improvements that can be implemented with a mix of government and private sector resources.

The Buffer Zone Protection Program (BZPP) is a targeted grant program designed to assist local law enforcement in enhancing CI/KR protection across the country. In FY 2006, grant funding was increased from \$50,000 per site to \$189,000 per site for 185 sites in all sectors. For FY 2004/2005 248 BZPP reports for chemical facilities were submitted to DHS, which are eligible for a total of \$12,600,000. For FY 2006, three chemical reports have been submitted out of a

total of 46 eligible chemical facilities which are eligible for a total of \$10,316,000. For FY 2007 a total of 100 chemical sites are eligible for BZPP funding of \$19,865,000. To date, 394 chemical facilities have been eligible for a total of \$42,781,000 under the BZP Program. Additionally in FY 06, there was a \$25 million dollar Chemical BZPP to enhance state and local jurisdiction's ability to protect and secure identified Chemical Sector CI/KR regions. The Chemical BZPP program is a sector-specific effort designed to be a companion to the Chemical Sector CR initiative.

The Homeland Security Threat and Risk Analysis Center (HITRAC) is working hard to ensure the timeliness and content of the threat information provided to this sector. HITRAC works to provide valuable threat information themselves or via other invited members of the Intelligence Community through written products and periodic classified threat briefings to cleared industry representatives in the chemical sector. In addition, HITRAC provides scheduled unclassified teleconference briefings on threat information based on private-sector reporting, as well as law enforcement and other sources.

The Homeland Security Information Network (HSIN) is providing an increasing amount of timely information to users in a secure online format. Recent information that we have posted on HSIN includes information on the January 17th train derailment and fire involving chemicals in Kentucky, reports on recent incidents in Iraq involving chlorine, and Quarterly Suspicious Activity Analyses which provide information on incidents and threats of concern to the private sector. These Quarterly reports are based primarily on private-sector reports, and represent the value of public-private cooperation.

As I mentioned earlier, the Fiscal Year 2007 Homeland Security Appropriations Act directed DHS to develop and implement a regulatory framework for high risk chemical facilities. Section 550 of the Act gave DHS authority to require high-risk chemical facilities to complete vulnerability assessments, develop site security plans, and implement protective measures necessary to meet DHS-defined performance standards. The Act gives us six months from the date the President signed the Bill, or until April 4, 2007, to promulgate interim final regulations implementing this authority.

In December 2006, DHS released an Advanced Notice of Rulemaking (ANRM) on the Chemical Facility Anti-terrorism Standards, containing draft regulations and seeking public comment on those regulations and some of the central issues surrounding them. Comments were due to DHS by February 7, 2007.

Through the comment period, DHS received over 1300 pages of comments from over 106 separate submitters, which I am sure includes some of you. DHS is reviewing and considering these comments as the text of the interim final regulation is refined and finalized. A cursory review of these comments shows preemption, information protection, adjudications, and inherently safer technology as issues upon which numerous comments have been provided. We really appreciated all of the input and perspectives offered by Members of Congress, State and local jurisdictions, and industry. As the interim final rule is still being drafted, I can speak to some of the main principal and aspects of the program that we outlined in the Notice.

First, let me stress that this will be a security focused regulatory regime that takes into consideration other existing authorities, such as the Environmental Protection Agency's Risk Management Program, the Department of Transportation's Hazardous Materials Lists, the Chemical Weapons Convention, and others. Looking at these other authorities, DHS has identified five security issues to be addressed as part of its program. Those are:

Release – quantities of toxic, flammable or explosive chemicals or materials the DHS believes have the potential for significant adverse consequences for human life or health if released from a facility.

Theft or Diversion – chemicals or materials DHS believes have the potential, if stolen or diverted during shipment, to be used as weapons or easily converted into weapons using simple chemistry, equipment or techniques in order to create significant adverse consequences for human life or health.

Sabotage or Contamination – chemicals or materials which produce large amounts of toxic by inhalation gas when spilled in water and that DHS believes, if sabotaged or contaminated, have the potential to create significant adverse consequences for human life or health during transit or at a point of destination.

Government Mission Criticality – chemicals materials, or facilities, the loss of which DHS believes could create significant adverse consequences for national security or the ability of the government to deliver essential services.

Economic Criticality – chemicals, materials or facilities the loss of which DHS believes could create significant adverse consequences for the national or a regional economy.

To implement the regulations, DHS must define the regulated community, or determine which facilities are “high risk”. To facilitate this, DHS has developed a screening tool called the Chemical Security Assessment Tool (CSAT). The CSAT employs an easy-to-use, online consequence-based Top Screen tool. CSAT builds upon the foundational assessment tool developed with industry referred to as the Risk Analysis and Management for Critical Asset Protection, or RAMCAP. Under the DHS proposal, those facilities that are initially designated high-risk must complete the online CSAT Security Vulnerability Assessment (SVA) which will factor into a final determination of a facility's risk level for purposes of the regulatory regime.

Using the results of the CSAT tools, all high risk facilities will be placed into risk-based tiers. While all high-risk facilities will be required to develop site security plans addressing their vulnerabilities, the security measures needed to meet the performance standards, as well as its inspection cycle and other regulatory requirements will be based upon each facility's tier level. The performance standards are intended to address the facility's relationships with local jurisdictions, the ability to delay an adversary until a response by local authorities, response capabilities in the community, and emergency planning with local authorities. Thus, the performance standards take into consideration, and are intended to validate, the essential role that local authorities play in facility and community security.

The higher a facility's risk tier, the more robust the security measures they will need to incorporate, and the more frequent and rigorous their inspections will be. Inspections will both validate the adequacy of a facility's site security plan, as well as verify the implementation of the measures identified therein.

Training of the inspectors is taking place this month in Louisville, Kentucky. A large component of this training is being conducted on site at chemical facilities that have volunteered to participate. DHS is also finalizing the IT tools, guidance documents, procedure manuals, and other materials necessary to be ready for the launch of the regulatory program on April 4, 2007. Presently, the CSAT Top Screen has been developed and is going through final preparation.. DHS will be using a phased approach in implementing the regulations, with implementation at the highest risk facilities beginning in an expedited manner, and implementation at lower-risk facilities occurring in a sequential fashion.

For our initial operating capability carrying through the end of this calendar year, we have identified a number of facilities that we believe will land clearly in the highest risk tier. Once the Interim Final Rule is published, we intend to begin working with those facilities in a partnership to perform the initial screening and vulnerability assessment, provide assistance in the drafting of the Site Security Plan, and conduct an initial inspection. We intend this to be a learning experience for us, our Inspectors in particular, and for industry, and what we learn will shape further implementation of the program, and help us ensure consistency in our approach across the Nation.

Finally, let me just note that Chemical regulatory authority is an issue that has been worked on for a long time, and was the subject of several hearings and bills introduced by the 109th Congress. The Department had reached the conclusion that the existing patchwork of authorities did not permit us to regulate the industry effectively and ensure the security of these facilities. Finally, late last fall, the Fiscal Year 2007 Homeland Security Appropriations Act gave the Department the authority to regulate the security of high risk chemical plants nationwide. As we have said all along, and have incorporated into the proposed interim final rule, the following core principles must guide and regulatory approach:

First, we recognize that not all facilities present the same level of risk, and that the most scrutiny should be focused on those that, if attacked, could endanger the greatest number of lives, have the greatest economic impact or present other very significant risks. There are certainly many chemical facilities in the country that pose relatively low risk.

Second, facility security should be based on reasonable, clear, and equitable performance standards. The Department is developing enforceable performance standards based on the types and severity of potential risks posed by terrorists and natural disasters, and facilities should have the flexibility to select among appropriate site-specific security measures that will effectively address those risks.

Third, we recognize the progress many responsible companies have made to date. Many companies have made significant capital investments in security since 9/11 and we should build

on that progress. We will do that through implementation of the regulations, and by continuing all of the voluntary efforts.

Thank you for your attention and I would be happy to answer any questions you may have at this time.