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Mr. Chairman and members of the Subcommittee, I greatly appreciate the invitation to testify before you regarding lessons learned from the investigations of the Chemical Safety Board (CSB) and potential opportunities for increasing safety and environmental protection. My testimony today will focus on these issues from the perspective of the men and women trying to prevent chemical accidents, prepare for those that do occur and protect the lives of first responders in their communities.

NASTTPO is a national organization of state emergency response commissions, local emergency planning committees, tribes, facilities and the other parties interested in the principles of the Emergency Planning and Community Right-to-Know Act. EPCRA is not a command and control program. Instead it creates the opportunity for communities, working together, to gather and use chemical accident risk related information to improve community safety through accident prevention and preparedness for those accidents that may happen. It creates a transparency designed to avoid situations where emergency systems are inadequate or fail, and where first responders are put at risk from a lack of knowledge about the hazards presented.

I applaud the CSB for their efforts. In the last few years their recommendations focused on local preparedness, the use of local emergency planning committees (LEPCs), and enhancing the relationships within communities to prevent and prepare for accidents have been correct and extremely useful. Their adoption of video reconstruction to communicate the results of investigations has also been extremely beneficial to those at the local level.

For the reasons explained later in my testimony, CSB has supplanted EPA as the primary source of accident prevention and community preparedness leadership and initiatives even though EPA has regulatory ownership of both primary statutory programs that create the structure of these efforts.

My view and the view of many is that chemical accident prevention and preparedness begins with a good analysis of what has gone wrong in the past and how the facility/community could have cooperated and better prepared. Accident prevention and community preparedness is not the responsibility of a single person or entity. It is the shared responsibility of facilities and the communities in which the chemicals are made and/or used. The CSB has done an increasingly excellent job of analyzing these incidents and communicating potential improvements to all involved.

Certainly every business has the obligation to operate safely. The tragedy of Texas City makes it clear that as facility complexity increases the burden of safe operation must be take even more seriously. At the same time every community has the obligation to be prepared for the chemical accidents that may happen. A business cannot operate safely without understanding the nature of the community around it and the skills or information that community can bring to the accident prevention process. Likewise, a community cannot prepare without seeking out information on chemicals and processes from the businesses in the area they seek to protect.

The CSB understands these principles and has incorporated them into its analysis of accidents. Several recent reports and alerts prepared by the CSB have reenforced the mutual obligations of everyone in a community and, in the process, greatly advanced the cause of both chemical accident prevention and preparedness. Over the last several years, the materials being prepared by the CSB are the most relevant and useful available from any federal agency.

I will digress for a moment to explain further why this is so and why the CSB should not be essentially alone in these efforts. There is a very great difference between perception and reality in this arena. The facilities experiencing chemical accidents in most communities are not large. Normally they are chemical users rather than manufacturers and they lack detailed awareness of the risks of the chemicals they use. The responders in these communities are routinely volunteers and they likewise lack detailed awareness of the risks of the chemicals in their communities. The LEPCs are poorly funded, if at all, and consist of people that while vitally interested in the safety of their communities, lack detailed training and awareness of chemical hazards.

My comment here is not about money. In fact, when it comes to smaller communities money is indeed the root of all evil and actually detracts from preparedness. People that would normally be preparing plans and evaluating risks instead find themselves filling out a never-ending cycle of grant applications and report forms.

The greatest risk from chemicals in most communities is the "routine" chemical accident. Whether it is a traffic wreck or improper mixture or use of a chemical product, the local responders and planners constantly struggle with the risks presented and the appropriate response. Their world is frequently about emergency response rather than anticipation and about dealing with the consequences of an accident rather than prevention.

One could easily ask how this could be so given the vast amount of money flowing out of the Department of Homeland Security. Those grants have mostly gone to equipment not training. They have not been focused on the hazards of the "routine" chemical accident, but upon the more remote hazards of intentional releases. This money has not gone to chemical accident prevention.

As many small communities get little of this money, they are left in the worst of all situations. They have been left behind in preparedness and even awareness efforts by the distraction of chasing the money. If they have received money they now have equipment that is likely of little utility in the most common incidents yet diverts resources for maintenance and operation away from the traditional tasks of training and planning.

This is in part why CSB investigations, including early ones such as the Herrig Brothers Farm propane explosion in 1999, recent ones such as the MFG Chemicals Inc., Dalton GA, and ones in progress like the EQ Hazardous Waste facility explosions are so very useful. These investigations, along with others, point out how outcomes could change with more community cooperation and the use of local emergency planning committees to evaluate risks and preparedness. In the MFG Chemicals investigation CSB very correctly noted that the existence of better community planning, through an LEPC, and closer cooperation with the facility might well have prevented many injuries.

It is tragic, however, that many of the recommendations coming from that incident and other accident reports have been ignored. In my view that is because of a lack of leadership flowing from the federal agencies with regulatory authority. Federal agencies have a great deal of influence on the behavior of state and local governments as well as businesses even outside of typical regulatory programs. One would think that a CSB investigation containing recommendations for any entity in the sphere of a regulatory program they administer would be a trigger for action.

In fact, these sorts of recommendations are part of the impetus behind the community preparedness enhancement efforts of other federal agencies. The Denver Chapter of InfraGard, an FBI created public/private preparedness initiative, is cooperating with the City and County of Denver, the Colorado Emergency Planning Commission, the Colorado Division of Fire Safety, FEMA, the

Business Executives for National Security, and several other not-for-profit entities to create a Colorado Emergency Preparedness Partnership. The first project of this group is identification of privately held assets that might be of value to emergency managers during the time of a disaster.

While CSB made no specific recommendations to EPA in the MFG Chemicals investigation report, there was an enormous opportunity for EPA to exercise its influence and act in a fashion to create change for the better. EPA should have publicized the CSB's findings and used them to invigorate the establishment of LEPCs in areas where they do not exist. Regional EPA offices should have used these recommendations to encourage those states that are behind in these efforts to do more and to praise those states and LEPCs that already do a great deal.

Perhaps EPA's reluctance to exercise leadership is due to the lack of a specific statutory mandate and regulatory program - one for which such action would produce a specific metric. In fact this may be one weakness is CSB's recommendation process in that they tend not to make recommendations in areas outside of specific statutory mandates. I would encourage CSB to make recommendations on policy issues within substantive spheres of influence.

Government accountability is a fine goal, but not all things are directly measured. Fire departments became great in this country not because of their ability to fight fires, but because of their ability to prevent them and nobody asks the question "how many fires did you prevent". I fear that EPA may be tempted not to act because there is no specific and measurable outcome although it is equally absurd to ask the question "how many chemical accidents did you prevent".

As the Chairman and many of the Subcommittee members well know, the Emergency Planning and Community Right-to-Know Act (EPCRA) and Risk Management Plans under §112r of the Clean Air Act, should operate to provide much chemical risk information to communities. These are EPA administered programs and one should expect to see accident prevention and community preparedness leadership coming from that agency. While that historically was the case, since 2001 EPA support for these efforts has waned.

Some examples are appropriate. While CSB has issued five chemical safety alerts in the last 18 months, EPA has not issued one since 2005. In the 5 years of 1997 to 2001 EPA issued some 17 chemical safety alerts. Since 2001 they have issued 4.

The key publications for LEPCs and citizens, such as *Chemicals In Your Community* and *How Safe Am I ? Helping Communities Evaluate Chemical Risks* have not been updated since 1999. A guidance document for tribes was issued in 2002 and is of great use. The guidance document for LEPCs on how to assess the magnitude and risks of hazardous materials in transportation - "commodity flow" - is 15 years old. EPA has issued no guidance to assist LEPCs in compliance with the National Contingency Plan or the National Incident Management System.

This section of my testimony cannot end without noting several good things EPA has done in conjunction with other agencies. They have developed several electronic tools that are quite valuable. One is called CAMEO (Computer Aided Management of Emergency Operations) and Tier II Submit, which allows electronic reporting of EPCRA information to LEPCs, SERCs and fire departments. Several states, tribes and local communities have embraced these and similar programs to enhance information collection and preparedness efforts.

EPA is also a leader in international programs dealing with chemical safety. They have been a prime motive force behind chemical accident prevention and preparedness including the "OECD Guiding

Principles for Chemical Accident Prevention, Preparedness and Response". The principles of community responsibility and cooperation are present extensively in these materials and I cannot imagine why the benefits of these efforts are not translated to our own domestic needs.

In the 2005 chemical safety alert on reactive chemical hazards, EPA states:

> "EPA publishes Alerts to increase awareness of possible hazards. It is important that facilities, SERCs, LEPCs, emergency responders and others review this information and take appropriate steps to minimize risk."

I completely agree and it seems fully appropriate for EPA, as they have regulatory ownership over the programs designed to allow communities to gather this information and develop emergency plans, to be in the lead on this front. That has simply not been the case in the last several years. Obviously I do not know for certain why EPA has been reluctant to show leadership in the accident prevention and community preparedness arena, but it is sad. One only hopes that it is not because it is impossible to answer the question of "how many accidents have been prevented".

EPCRA and §112r Risk Management Plans are not command and control regulatory programs in the classic sense. Permits are not issued and regulatory performance standards are not adopted. These programs are inherently subjective efforts towards chemical accident prevention and improvements in community preparedness. Nonetheless, they do work and work well when local leadership is present. My hope is that EPA regains its understanding that leadership from the federal level is a key element to the success of local leadership. The large picture of events and risks that EPA can communicate and explain serves to broaden the perspective of all involved.

CSB has embraced this fundamental truth and understands that its findings and recommendations have an impact well beyond the community or company involved in the incident being investigated. Such an outcome, was of course, precisely the intent of the founders of the CSB.

EPCRA and the Risk Management Plans of §112r were created with the full memory of catastrophes like Bhopal. The visionaries present at the creation of these programs understood that a community-based accident prevention and preparedness program was not only necessary but represented the only realistic way of protecting communities and first responders. EPA was charged by Congress with nurturing these programs. Since 2001 their efforts have diminished to a small shadow of the efforts of the past.

Quite obviously 2001 changed our perspective on many fronts. Nonetheless, the risk of a chemical accident and the need for community preparedness has not diminished. As CSB has noted in several reports, the failure of communities to have adequate awareness of the hazards present within area facilities and the resulting failure of emergency response systems has contributed to many injuries and the death of first responders. If one speaks to the police chief of Bhopal, as I have, you discover that was precisely his situation on that terrible night in 1984. At the very least EPA should support CSB in its efforts to remind us all of this very basic truth.

Thank you again.