

TESTIMONY OF

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MFA INCORPORATED

REPRESENTING

THE AGRICULTURAL RETAILERS ASSOCIATION

AT A HEARING OF THE

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ON

"INHERENTLY SAFER TECHNOLOGY AND CHEMICAL SITE SECURITY"

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INTRODUCTION

I would like to thank Chairman Inhofe and Senator Jeffords for holding this important hearing today. My name is Charlie Cott, Vice President, Plant Foods and Transportation, with MFA Incorporated, a regional farmer cooperative operating and headquartered in the state of Missouri. I am here today to testify on behalf of the Agricultural Retailers Association (ARA), which represents a significant majority of the nation's retail dealers who provide essential agricultural pesticides, fertilizer, seed and other agronomic services to America's farmers. As the only national organization exclusively representing the interests of the agricultural retail and distribution industry, ARA is vitally interested in any federal laws or regulations related to inherently safer technology (IST) requirements that may affect the operation of facilities and chemicals utilized in the nation's agricultural sector. I appreciate the opportunity to testify today on this important issue.

MFA Incorporated is built upon a solid commitment to its farmer/owners to provide quality products and services, embracing honesty in business and offering professional advice that farmers can depend on. MFA Incorporated is a farm supply cooperative established in 1914, and has retail facilities in Missouri, Iowa, Kansas, Oklahoma, and Arkansas. We have approximately 150 full service retail facilities, both company owned and affiliates, and 100 bulk fertilizer plants. Our Board of Directors is made up of our farmer/owners, and they keep us in tune with the needs of our more than 45,000 members. The heart of our operations is our Agri Services Centers providing farmers and ranchers with the products and services they need to do business in today's complex farming environment. I grew up in north central Missouri in Saline County. I graduated from the University of Missouri, Columbia in 1976, and have worked for MFA Incorporated in various capacities since 1977.

OVERVIEW OF AG RETAIL / DISTRIBUTION INDUSTRY

In 2002, there were an estimated 10,586 farm retail outlets in the United States.[1] The overall number of retail outlets is even lower today and has been declining due to a number of factors taking place within the industry: consolidation, increased domestic and global competition, higher operating costs, and low profit margins. ARA members range in size from family-held businesses or farmer cooperatives to large companies with multiple outlets located in many states. A typical retail outlet may have 3 to 5 year-round employees with additional temporary employees added during the busy planting and harvesting seasons. Many of these facilities are located in small, rural communities.

The goods and services that we provide include: seed, crop protection chemicals, fertilizer, crop scouting, soil testing, custom application of pesticides and fertilizers and development of comprehensive nutrient management plans, and state of the art IPM programs. Certified crop advisors (CCA's) are retained on retailer's staff to provide professional guidance and crop input recommendations to farmers and consumers. Retail and distribution facilities are scattered throughout all 50 states and provide important jobs in rural and suburban communities. The food and agriculture production and processing industry contributes substantially to the American economy – accounting for 13 percent of the U.S. gross domestic product and 18 percent of domestic employment.

EXISTING SAFETY REGULATIONS AND INHERENTLY SAFER TECHNOLOGY

Even before the terrorist attacks on September 11, 2001, agricultural retailers have been one of the most heavily regulated industry segments in the country. Many of the products used by the industry are

[1] Doane's *Ag Professional* Magazine, Summer 2003, p.40-41

hazardous materials, which are highly regulated and expensive materials. There are countless federal and state laws and regulations related to the safe handling, transportation and storage of agricultural crop inputs. For example, many agricultural retail facilities that handle and store a threshold amount of listed substances such as ammonia are required to comply with the U.S. Environmental Protection Agency's (EPA) Risk Management Program (RMP)[2]. Under the rule, covered facilities must develop an RMP that describes their chemical accident prevention programs and submit full updates and resubmissions to EPA at least once every five years. The RMP Rule divides regulated facilities into three program focuses according to the level of potential danger they may present to surrounding communities.

Most agricultural retailers fall under the RMP's Program 2 Requirements, which generally are processes of low complexity and do not typically involve chemical reactions. Program 2 RMP requirements for retailers include written operating and maintenance procedures; training; mechanical integrity, compliance audits, incidence investigations and employee participation. They also conduct hazard assessments, which include analyses of worst-case and alternative release scenarios; establish emergency response programs that include plans to inform the public and emergency response organizations about the chemicals onsite and their health effects and strategies to coordinate those plans with the community; and report steps taken to prevent incidents that can release dangerous chemicals. Program 2 RMP reporting requirements are less stringent than Program 3 RMP requirements, which are usually for higher risk chemical facilities and involve complex chemical processing operations. The prevention program requirements for Program 3 are very similar to those of the OSHA Process Safety Management (PSM) requirements.

The Federal Insecticide Fungicide and Rodenticide Act[3] (FIFRA) continues to be the basis of EPA regulations covering agricultural pesticides. Sections of the code cover handling, labeling, crop tolerance requirements, precautionary statements, environmental protection issues, worker protection standards, storage requirements, transportation regulations and considerations, product use, and lots more issues designed to protect the public and all workers.

The Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) formulates, issues and revises Hazardous Materials Regulations (HMR) under the Federal Hazardous Materials Transportation Laws. The HMR issued by the DOT cover hazardous materials definitions and classifications, hazard communications, shipper and carrier operations, training and security requirements, and packaging and container specifications. Agricultural retailers and distributors are required to comply with many of these DOT regulations.

As an industry, we have done a good job of educating and training employees to judiciously handle hazardous materials and to make sure they remain in the hands of authorized personnel. Employees of agricultural retailers and distributors complete numerous training and certification programs that help ensure hazardous materials are being stored and handled with proper care. An employer at an agricultural retail facility is responsible that their employees comply with several regulatory requirements such as: 1) Commercial Applicator Certification; 2) DOT Hazmat training for hauling

[2] Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7); Final Rule; 40 CFR Part 68

[3] 7 U.S.C. s/s 136 et seq. (1996)

hazardous materials such as anhydrous ammonia, ammonia nitrate and other certain agricultural chemicals; 3) Worker Protection Standard training; 4) OSHA Standards such as Worker Right to Know, Lockout / Tagout, Confined Space Entry, Personal Protective Equipment, etc.; 5) Random drug and alcohol testing; 5) Commercial Drivers Licenses and Hazardous Material Certification; and Restricted Use Pesticide recordkeeping.

Because existing regulations are working, ARA does not believe the federal government should mandate the use of ISTs or alternative approaches for chemical processing, which is extremely complex, and which differs from company to company. Our industry would support common-sense chemical security regulations that recognize the needs of America's agricultural industry. ARA is working closely with the U.S. Department of Homeland Security (DHS) and the Senate Homeland Security and Governmental Affairs Committee on this very matter. However, we do strongly oppose efforts by anti-chemical activist groups that are attempting to tie new IST mandates to chemical facility security legislation. If an IST mandate was put in place for the nation's agricultural industry it could jeopardize the availability of lower-cost sources of plant nutrient products or certain agricultural pesticides used by farmers and ranchers. It will also hurt our ability to compete with growing threats from countries such as Brazil and China. It is estimated that 96 percent of the world's consumers reside outside the United States. According to the USDA Economic Research Service (ERS), the U.S. agricultural trade surplus for 2006 is estimated to be only $1 billion compared to a $21 billion surplus in 1997. This change is being caused by increased international competition and higher operating costs for our farmers and ranchers due to more regulations and higher input costs, primarily due to higher fuel and fertilizer costs.

ARA believes it is important for Congress to oppose legislative proposals such as S. 2486 sponsored by Senators Frank Lautenberg (D-NJ) and Barrack Obama (D-IL) that according to Senator Lautenberg would "require every chemical facility in the nation to adopt inherently safer technology." IST is not a security issue and relates to process safety decisions that should be left to the safety experts that help manage these facilities. We strongly agree with concerns expressed by DHS Secretary Chertoff that his agency not move from a security based focus into broader environmental objectives that are unrelated to security. We also agree with Senate Homeland Security and Governmental Affairs Committee Chairman Susan Collins that the Lautenberg-Obama approach "would impose costly, intrusive, and burdensome mandates that take the wrong approach to homeland security" and that "process engineering decisions are best left to the private sector." We appreciate Chairman Collins efforts to work with our industry on chemical site security issues where we have serious concerns such as the IST issue. We were pleased last week when an IST mandate amendment offered last week during committee consideration of the "Chemical Facilities Anti-Terrorism Act of 2005" (S. 2145) was soundly defeated.

Uninformed anti-chemical groups have been pushing for an IST mandate long before September 11, 2001. Congress should be very careful about how it handles this issue. A March 2003 General Accounting Office (GAO) report [4] found that ISTs could result in shifting, rather than reducing, the risk of terrorist attacks. In that report, GAO stated, "reducing the amount of chemicals stored may shift the risk onto the transportation sector as reliance on rail or truck shipments increases." Availability of lower-cost sources of plant nutrient products or certain pesticides used by farmers could be at risk under an IST or other alternative approaches mandate. As this committee should be aware, the EPA already monitors IST technologies when reviewing agricultural pesticides for new section 3 registrations and

[4] GAO-03-439 Homeland Security: Voluntary Initiatives Are Under Way at Chemical Facilities, but the Extent of Security Preparedness is Unknown, March 2003, p. 29

during the re-registration process. It also considers agricultural pesticides for fast track registration that it deems the product safer for use. A new IST approach or mandate would set up a duplicative effort that is not needed and potentially opens the door for anti-chemical groups to file lawsuits against the industry. Agricultural retailers and their farmer customers cannot afford the loss of essential crop input products, new expensive federal mandates or defending against frivolous lawsuits.

If MFA was forced to recommend less effective pest management products or less efficient plant nutrient products to our farmer customers, the net results would be lower yields, less quality, less farm revenue, and markets shifting to foreign countries. Would you buy a wormy apple, a scared tomato, or rotten grapes? Of course not, and neither will other American consumers; but that is what you can expect if an IST mandate becomes law.

In addition, our nation is making a strong effort to become more energy independent and less dependent on foreign sources of energy. ARA is a supporter of federal policies that promote the use of renewable fuels and serves as a member of the 25 x `25 Ag Energy Working group, whose goal is for farms, ranches, forests, and other working lands to provide 25 percent of the United States' energy needs from renewable sources by 2025. For example, corn is a major component in the manufacture of ethanol, a clean-burning, renewable, domestically produced fuel. According to the Renewable Fuels Association (RFA), ethanol production is the third largest use of U.S. corn, utilizing a record 1.43 billion bushels of corn in 2005. The state of Missouri ranks ninth in total corn production in the U.S. Corn is Missouri's second largest crop in production, producing nearly 300 million bushels of corn annually. If an IST mandate became law, it could force the use of less efficient fertilizer for corn crops, which in turn would directly impact crop yields. According to ethanolfacts.com, one bushel of corn yields about 2.8 gallons of ethanol. A reduction of one bushel per acre in corn production would reduce Missouri net farm income by $5 million. It would also mean that there would be less corn available to produce ethanol and hinder the nation's efforts to become more energy independent.

ARA believes that Congress should not go to such extremes as actually picking winners and losers in the crop protection and plant nutrient industry. This is an issue best left up to the market place and consumers.

CONCLUSION

ARA and our members strongly support the war on terrorism and are committed to do our part to address security related concerns. As an industry we have already made great strides, but we believe it is important to have commonsense, workable regulations in effect that do not place unreasonable and unnecessary IST mandates on the industry. America's agricultural industry is currently faced with high fuel, fertilizer and transportation costs. It is also important to note that about 80 percent of U.S. counties were declared disaster or contiguous disaster counties last year due to devastating hurricanes, fires, floods, excessive moisture and severe drought. With the current state of the domestic and international agricultural markets and uncertainties facing America's agricultural industry, now is not the time for Congress to try to place further burdens on farmers and ranchers by limiting their product choices, increasing their input costs, and impacting their crop yields. This type of federal policy could help further drive many within agriculture out of business and increase our dependence on foreign sources of food and fiber, similar to what we now face with foreign oil.

Thank you for considering ARA's views. We appreciate Chairman Inhofe's interest and support on this important issue. We welcome the opportunity to provide further input to the committee on the issue of IST and address any security gaps that may exist within the industry. ARA stands ready to work with Congress on the development of a chemical site security legislation that adequately reflects the needs of America's agricultural industry and our rural economy. As we face these challenges, we can only accomplish what needs to be done if we work together.