

TESTIMONY OF MATHY STANISLAUS
ASSISTANT ADMINISTRATOR
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
March 6, 2014

Good morning Chairman Boxer and members of the Committee, 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 behalf of the Tri-Chair agencies that lead the Federal Working Group established under Presidential Executive Order (EO) 13650. President Obama and the federal departments and agencies that make up the Working Group recognize the terrible loss suffered by families and communities as a result of chemical accidents and releases and we are committed to working collaboratively with facility owners and operators, state, local and tribal partners and organizations and associations with an interest in improving chemical facility safety and security. My testimony describes the progress being made by the federal Working Group departments and agencies to implement the EO.

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 directs 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.

One of the initial actions taken after issuance of the EO, was the development and August 30, 2013 release by EPA, the Occupational Safety and Health Administration (OSHA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) of a chemical advisory that provides information to communities, workers, first responders and commercial sectors on the hazards of ammonium nitrate storage, handling, and management. We plan to update this advisory based upon feedback we have received from stakeholders. Further, in February of 2014, Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels signed a letter that is being circulated by agricultural trade associations provide more than 7,000 employers with legal requirements and best practice recommendations for safely storing and handling ammonium nitrate. In addition, in January of 2014, EPA issued an Interim Chemical Accident Prevention Advisory for natural gas processing plants that store and process liquefied petroleum gas (LPG) to help raise industry awareness of current codes and standards that apply to these facilities. Meeting applicable codes and standards will help facilities achieve a level of protectiveness recognized in the industry as representing good engineering practice. Another Working Group effort underway is the work by DHS and EPA to compare the Chemical Facility Anti-Terrorism Standard (CFATS) 'Top Screen' database and the Risk Management Plan (RMP) database to determine if the CFATS database includes facilities that should have also reported under the RMP chemical accident prevention program. As a result, EPA transmitted notification letters to hundreds of facilities requesting information to help determine whether the facility is subject to requirements to implement a risk management program requiring submittal of a risk

management plan. Similar action was taken to identify potential CFATS outliers against the RMP database.

The Working Group also launched a pilot program in August of 2013, in New York and New Jersey to evaluate best practices and test innovative methods for interagency collaboration on chemical facility safety and security. Under the pilot program, the Working Group is formulating an understanding of chemical facility risk in that region, ensuring that local responders have access to key information and evaluating processes and protocols for information sharing. The pilot is also working to improve coordination of inspections by sharing inspection schedules, cross-training inspectors, and supporting inter-agency referrals of possible regulatory non-compliance as we work toward the development of a unified federal approach for identifying and responding to risks identified in chemical facilities.

FY 2015 President's Budget Request

The Clean Air Act requires the EPA to conduct audits and inspections at RMP facilities to ensure their compliance with applicable regulations. The EPA has identified approximately 13,000 RMP facilities nationwide. These facilities represent the largest identified stockpiles of highly toxic and flammable industrial chemicals in the United States. Of these, approximately 1,900 facilities have been designated as "high-risk" based upon their accident history, or extremely large quantity of chemicals on site, or proximity to large residential populations.

The FY 2015 Budget requests \$27.5 million, an increase of \$12.5 million from FY 2014 Congressional funding levels, for EPA support for state and local prevention and preparedness efforts. As part of agency FY 2015 priorities, the EPA will expand its prevention and response activities for risks at chemical facilities in fulfilling the EO to improve the safety and security of

chemical facilities. The EPA will expand support for local communities through the development of tools and technical support. This includes enhancing the CAMEO system to include development of a web app that provides easy accessibility for SERCs and LEPCs. This effort can also include developing, as appropriate: updates, alerts, advisories and other materials for regulated facilities, states, LEPCs, and emergency responders to assist them in preparing for chemical accidents and reducing chemical risks.

The EPA also plans to initiate a grant program with \$1.5 million in the FY 2015 budget request to assist local planners and first responders to facilitate the use of risk information available to them 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. A mechanism for data sharing with other federal agencies is planned for development, including identifying and implementing a process for comparing and analyzing various Federal databases of regulated chemical facilities in order to identify those facilities which have not complied with the federal regulations. This will augment additional efforts being done under the EO, including further aligning federal resources for local emergency response organizations.

In addition, the EPA plans to implement improvements to agency RMP and EPCRA programs. This could include developing and revising guidance and policies to better implement the RMP and EPCRA programs and potential clarifications or revisions to RMP regulations to improve facility prevention programs and reduce chemical risks to the community.

Stakeholder Outreach

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 persons have attended the listening sessions and more than 800 additional persons participated by conference call. The listening sessions were held in Texas City, Texas; Springfield, Illinois; Orlando, Florida; Sacramento and Los Angeles, California; Houston, Texas; Baton Rouge, Louisiana; Newark, New Jersey; and two in Washington DC. A broad cross section of stakeholders have attended and participated in the listening sessions. These include first responders such as firefighters from Commerce, California and police officers from Houston, Texas, state and local government officials representing cities such as Baltimore, Maryland and Los Angeles, California, environmental, community, and labor organizations such as the US Public Interest Research Group, the Houston Sierra Club, the Sacramento Environmental Working Group, the Louisiana Bucket Brigade, and the United Steel Workers, and industry and commercial sector representatives such as Chevron Phillips, Ashland Chemical, the Louisiana Chemical Association, Society of Chemical Manufacturers and Affiliates; Missouri Agribusiness Association, Institute of Makers of Explosives, , and the American Chemistry Council.

Information on the listening sessions can be found on the Working Group web page, a one-stop location that provides information and accepts comments from interested parties and can be accessed at www.osha.gov/chemicalexecutiveorder. Stakeholders can also submit written comments through email at eo.chemical@hq.dhs.gov or via the regulations.gov website (<http://www.regulations.gov/#!docketDetail;D=DHS-2013-0075>).

In addition to the listening sessions, three web-based community webinars have been held. EPA used its Technical Assistance Services for Communities (TASC) program to provide an additional option for engagement with community and other stakeholders. The webinars have

provided communities information about the Working Group effort and provided participants information about how to submit comments on the EO.

Coordination with State, Local, and Tribal Partners

Hazardous chemicals are located in many types of facilities and areas. It is important that communities know where hazardous chemicals are used and stored; how to assess the risks associated with those chemicals; and help ensure community preparedness for accidents or incidents that may occur. Many facility owners and operators rely on local resources for emergency preparedness and response, including first responders, emergency medical services, and hazardous materials response teams. Strong working relationships between stakeholders such as facility owners and operators, state, local, tribal partners, emergency responders, and communities, help support coordinated chemical safety and security efforts. To that end, the EO directed the Working Group to develop a plan to support and further enable efforts by Federal regulators and stakeholders to work together to improve chemical safety and security.

Based upon input from public listening sessions, meetings with stakeholder groups, webinars, and feedback submitted to the Federal agencies, the Working Group has proposed actions to support local planning, preparedness, communications, and response and improve stakeholder coordination in six key categories:

Expand engagement of the chemical regulated community in the local emergency planning process.

- Improve training and protection for first responders, including a comprehensive implementation and compliance strategy for Hazardous Waste Operations and Emergency Response regulations.

- Provide further technical assistance to State Emergency Response Commissions (SERCs), Tribal Emergency Response Commission (TERCs), Local Emergency Planning Committees (LEPCs), and Tribal Emergency Planning Committees (TEPCs) preparedness activities.
- Identify and coordinate federal funding sources for LEPCs and TERCs to sustain planning activities.
- Increase use of electronic reporting and data management.
- Improve public participation in LEPC emergency response planning and access to information about chemical facility risks.

The Working Group will further evaluate and refine the recommended action steps as it obtains feedback and additional information from stakeholder groups, assesses resources, and prioritizes activities. The Working Group will incorporate final actions into the comprehensive, integrated standard operating procedures for a unified approach for identifying and responding to chemical facility risks.

Expand Engagement of the Regulated Community in the Local Emergency Planning Process

While representatives from chemical facilities are involved in emergency-planning activities of some LEPCs, feedback received during listening sessions indicates that industry participation is not a consistent practice across the country and broader involvement across industry in this regard is needed. To improve participation in the local emergency planning process, the Working Group is evaluating a number of short and longer term actions items.

Short-term actions include:

- During Authorization and Compliance Inspections of Chemical Facility Anti-Terrorism Standards (CFATS) covered facilities, inspectors will continue to verify that emergency plans for security incidents are developed and coordinated with local law enforcement and first responders as required.
- As appropriate, expand Regional Response Teams (RRT) to include industry members to support and enhance communication during the emergency planning process.
- DHS, EPA, and OSHA will develop and disseminate additional guidance for industry members, explaining their role and responsibilities in community planning and facility safety and security. In addition, a national electronic newsletter will be established for federally regulated industry to improve education and information outreach for the regulated community.
- Develop and assess options for reviving the Federal Integrated Contingency Plan (ICP), or “One Plan” guidance facility reporting form to decrease duplication and streamline information. The “One-Plan” is an integrated contingency plan that allows a facility to comply with multiple Federal planning requirements by consolidating them into one functional emergency response plan.
- Develop guidance for LEPCs and TEPCs to engage facility owners and operators in the community emergency planning process and explain their authority under the Emergency Planning and Community Right-To-Know Act (EPCRA), including their

authority to conduct on-site inspection and collect specific location information on hazardous chemicals.

Over the longer term, actions include:

- Evaluate comments received in response to OSHA's Request for Information (RFI) on Process Safety Management and Prevention of Major Chemical Accidents to determine whether to require that facilities must coordinate emergency planning with local emergency response authorities.
- Provide best practices to SERCs, TERCs, LEPCs, and TEPCs on organizational design, staffing, and coordination with key local and facility representatives to increase their effectiveness.
- Consider updating OSHA's regulation 29 CFR 1910.38, Emergency Action Plans, to address requirements to coordinate emergency planning with local emergency-response authorities for workplaces with hazardous substances that pose a substantial threat of release.
- Clarify EPA Risk Management Program (RMP) information requirements to explicitly indicate that facilities can only report as 'non-responders' if local public responders have the means to respond to a facility's regulated substance and agree to respond. Otherwise, the facility must indicate itself as a responder.
- Working through the RRTs and with industry, identify opportunities and schedule chemical response exercises with federally regulated facilities and local emergency responders.

- Identify mechanisms for including LEPCs (including first responders and emergency planners) in Federal safety inspections at regulated facilities.
- Develop protocols for appropriate sharing of facility inspection information and results (while ensuring protection of security and enforcement information) with LEPCs and TEPCs.

Improve Training for First Responders

Stakeholders, particularly local emergency responders, members of the local emergency planning committees, local residents, and facility operators, have noted the lack of a coordinated approach to emergency preparedness and response training. The Working Group is evaluating a number of short term action items.

Short-term actions include:

- Survey existing courses and identify the most up-to-date training requirements for first responders.
- Provide a single, web-based portal on available training for first responders.
- Identify states where volunteers and public employees lack health and safety coverage.

Provide Further Prevention and Preparedness Technical Assistance

Input from state and local stakeholders indicate that LEPCs need assistance in contingency planning activities and analyzing the information received from regulated facilities. To achieve this, the Working Group is evaluating a number of short and longer term action items.

Short-term actions include:

- Develop guidance for LEPCs and TEPCs for developing chemical facility emergency response plans that will promote inclusion of all relevant community stakeholders (emergency responders, community residents and groups, industry etc).
- Establish a “community” via social media to promote information exchange, including lessons learned and best practices, as well as provide information on guidance and outreach materials. Within the “community,” seek opportunities for ‘peer-to-peer’ involvement to leverage experience and best practice applications.
- Work with states to improve SERC and TERC member orientation and training and conduct area/regional LEPC and TEPC workshops to provide technical assistance.
- Revise National Response Team (NRT) guidance on developing and reviewing Hazardous Materials Emergency Plans (NRT-1 and NRT-1a) to improve the development and review of hazardous materials emergency plans.

Over the longer term, actions include:

- Establish a mechanism to send alerts and notifications regarding chemical safety and security to SERCs and TERCs and LEPCs and TEPCs.
- Work with states to assist the SERCs to enhance their role as information sharing (e.g., RMP, CFATS Tier II) organizations and central repositories for training, resources, and program summaries related to chemical facilities.

Identify and Coordinate Funding Sources for LEPCs and TEPCs to Sustain Planning Activities

LEPC and TEPC access to funding for implementing community planning, preparedness, and response programs is not consistent. LEPC access to funding for implementing community planning, preparedness, and response programs is not consistent. Stakeholders have noted that better coordination of federal grant funds and support for mutual aid agreements that would help support coordinated ready access to emergency services, personnel, equipment, and other materials would assist with this need.

The Working Group is evaluating a number of short and longer term action items.

Short-term actions include:

- Federal agencies will identify potential resources (e.g., grants, technical assistance, fee systems, private sector funding) and best/successful practices, and provide that information to LEPCs and TEPCs.
- FEMA will explore modifications to the allowable cost list in the FY 2015 Homeland Security Grant Program Funding Opportunity Announcement to clarify that planning, training, and exercises for chemical facility incidents are eligible as permitted by law.

Over the longer term, actions include:

- Identify models for mutual aid agreements to lend assistance to LEPCs for chemical emergency planning and response activities.
- Develop a compendium of Federal preparedness funding sources to support first responder training and exercises, such as the Pipeline and Hazardous Materials Safety

Administration (PHMSA) Hazardous Materials Grant Program, which includes the Hazardous Material Emergency Preparedness, Hazardous Material Instructor Training, the Supplemental Public Sector Training grants, and the Homeland Security Grant Program.

Increase Use of Electronic Reporting and Data Management

State, local, and tribal officials as well as first responders have noted that local contingency planning and response would be more effective if information provided by chemical facilities was electronically available to officials who need it. The Working Group is evaluating a number of short and longer term action items.

Short-term actions include:

- Work with first-responders to develop guidance on facility specific chemical information needed during an emergency response, ensuring that facilities provide 24-hour contact information and that emergency responders are aware of that information.
- Explore options for making subject matter experts from federal and state government available to assist emergency planners and first responders on accessing and understanding the information provided in various databases.

Over the longer term, actions include:

- Explore further expansion of the Computer-Aided Management of Emergency Operations (CAMEO) software suite to include OSHA information; develop a mobile

device application; and consider additional initiatives to assist LEPCs and TEPCs in planning.

- Develop a web-based version of facility Tier II information submittals to facilitate state development of an internet reporting system, which can be integrated with existing delivery systems, and assist with the accuracy of Tier II information to complement other emergency management portal systems.
- Leverage the DHS Homeland Security Information Network and other information sharing tools and platforms to improve first-responder access to chemical facility security information that is not sensitive but is essential for response planning.

Improve Public Participation in Emergency Response Planning and Access to Information About Chemical Risks.

In some communities, the public may not be notified or be aware of chemical releases nor does it know how best to respond if a chemical accident occurs. This may pose a particular challenge to communities located near multiple chemical facilities. Additionally, in some cases the public does not know about LEPCs or how to participate in the planning and preparedness process.

To help improve public engagement on these issues, the Working Group is evaluating a number of short and longer term action items.

Short-term actions include:

- Develop outreach materials and successful practices describing mechanisms for broadening LEPC membership to groups outside those listed in the EPCRA statute.

- Hold stakeholder training workshops and annual conferences to promote networking and information exchange.

Over the longer term, actions include:

- Include non-government entities that play a role in emergency planning and response around chemical facilities in meetings with SERCs and LEPCs to identify methods of integrating these groups into planning prior to an emergency.
- Develop best practices and/or guidance on successful notification systems and implementing those systems, including reverse 911, sheltering in place, and evacuation.
- Identify mechanisms to address the need to improve public communication on local chemical release risk to the public.

Modernizing Policies, Programs, and Requirements

As the President called for in the EO, the Working Group is considering options to improve chemical facility risk management practices through agency programs, private sector initiatives, government guidance, outreach, standards, and regulations. While EPA believes the EPCRA and RMP regulation, as well as programs operated by DHS, OSHA, and other Federal departments and agencies, made important progress in preventing and mitigating chemical accidents in the United States and protecting communities from chemical hazards, more needs to be done reviewing and evaluating current program and practices, and applying lessons learned to continuously advance chemical facility safety and risk management. For that reason, EPA is seeking public input on potential ways to improve the RMP program and further reduce the

number of chemical accidents within the United States. There are several categories of areas for which EPA has developed potential options have been developed based on information gathered during listening sessions, input from stakeholders, and experiences from implementing the program. These categories to consider include: updating the list of regulated substances; exploring options for further addressing reactive substances, reactivity hazards, and explosive chemical hazards; evaluating the implementation of best practices and lessons learned and identifying ways to use safer alternatives as mechanisms to reduce chemical risk.

The Section-6a stakeholder discussion and comment period, which continues through March 31, 2014, is a critical step in evaluating the feasibility and effectiveness of these options. Feedback on these options will inform a plan for implementing improvements to chemical risk management. This effort does not supersede official or standard processes for agency actions, such as notice and comment rulemaking. The options can be found at:

https://www.osha.gov/chemicalexecutiveorder/Section_6ai_Options_List.html.

OSHA is also seeking public input on modernization of its Process Safety Management (PSM) and related standards, and the comment period on a Request for Information (RFI) remains open until March 31, 2014. Both the RFI and instructions for submitting comments may be found at

<http://www.gpo.gov/fdsys/pkg/FR-2013-12-09/pdf/2013-29197.pdf> .

The Working Group will continue to work toward accomplishing the goals of the EO and remains committed to its mission to improve chemical facility safety and security and will provide congressional and public updates regarding further progress associated with the EO.