

Ranking Member Yvette D. Clarke (D-NY) Opening Statement

Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies

“West Fertilizer, Off the Grid: The Problem of Unidentified Chemical Facilities”

Thursday, August 1, 2013, 10 a.m.

Two hours after a fertilizer plant exploded in West around sunset on a Wednesday, on April 17th, much of the town 18 miles north of Waco resembled a war zone. Some people were missing. Hundreds more were rushed off to area hospitals. Homes burned, others threatened to collapse. The Texas Department of Public Safety spokesman D.L. Wilson offered this grim but accurate assessment of the devastation many saw via TV: “Massive . . . just like Iraq, just like the Murrah Building in Oklahoma City.”

The explosion destroyed an apartment complex and nursing home that sat within a few hundred yards, a nearby unoccupied elementary school was severely damaged, walls and roofs of homes and businesses within a half-mile of the plant cracked, and windows even further.

There are no federal setback guidelines or requirements to separate extremely hazardous substances from surrounding populations, such as schools, houses, nursing homes, apartments, and businesses, *based on a worst-case scenario*.

I have been told at least 800,000 people across the United States live near hundreds of sites that store large amounts of potentially explosive ammonium nitrate, hundreds of schools, hospitals and churches, as well as hundreds of thousands of households, also sit near the sites. Nationally, at least 12 ammonium-nitrate facilities have 10,000 or more people living within a mile, according to a Reuters analysis of hazardous-chemical storage data maintained by 29 states.

Complaints about the DHS CFATS program have recently focused on the fact that facilities that *should* be reporting to CFATS are not being contacted about their required reporting duty under the program. The program has also come under scrutiny about the slow pace of inspecting and approving site security plans, or SSP’s.

A faster pace in the CFATS inspection and review process could have produced more tangible results in reducing vulnerabilities and consequences of a successful terrorist attack on a facility, and it could have also been a help for community emergency preparation for all-hazards events, such as the apparent industrial accident we are examining today. It seems to me they are intertwined.

However, the current rush to approve SSPs in today’s CFATS program may not build confidence among the public. When airline passengers face a flight delay they are frustrated, and they complain, but they also don’t want the flight rushed onto the runway at the expense of safety.

The tragic events in West, Texas, may bring into sharper focus the issue of how we as a country protect our citizens from not only the threat of a terrorist attack on facilities that store explosive chemicals, but how we identify and classify these types of facilities to begin with. Will these methods be enough to protect hundreds of thousands of people living within chemical facility vulnerability zones? And will it help local emergency-planning committees prepare for events like the one West, Texas?

As one of our witnesses will testify today, and it is just common sense, that an engaged and informed public is a vigilant public. Citizens, first responders, medical professionals, plant workers, and local officials all need to be

better informed about local chemical security and safety information, in order to be prepared for all types of emergencies.

We do know that West Fertilizer did report the possession and storage of ammonium nitrate to the State Emergency Response Commission, or SERC. This was done under the Emergency Planning and Community Right-to-Know Act, or EPCRA. The SERC in Texas apparently maintains Tier II reports in an electronic format, which is important to remember.

I want to find out if The Department of Homeland Security did or did not compare their list of CFATS top-screen facilities to the Emergency Planning and Community Right-to-Know reports held electronically by each state, a relatively simple procedure that might have helped identify facilities that failed, like West, to conduct a top-screen under CFATS.

It would seem to me that DHS should have a Memorandum of Understanding with each state for routine electronic access to EPCRA data in that state. But I'm looking for answers, and I hope someone on the panels will be able to tell us today.

These questions, at the core of today's hearing, naturally produce other questions, like -- what technological or business practice changes have enabled operating facilities that have submitted top-screens, to tier out of CFATS? I have been told there are apparently some 3,000 formerly tiered facilities, which are now considered less attractive terrorist targets and no longer of interest to DHS. Is there a specific development, technological or procedural, that encourages facilities to tier out? I'd like to learn more about that.

Another feature that I have learned about is that West Fertilizer seemingly lacked adequate liability insurance. While not a requirement in the CFATS program, companies that hold extremely hazardous substances and maintain liability insurance commensurate with a worst-case scenario would provide an incentive for companies to use methods that reduce potential consequences. This is just standard business practice, nothing earthshattering.

Another Critical Infrastructure piece involved in this tragic event is rail transportation. West Fertilizer apparently received shipments of ammonium nitrate by rail. Under common carrier obligations, do shippers of extremely hazardous substances, and rail carriers, routinely carry enough insurance to cover liability associated with a worst-case release or explosion? I will be interested to find out.

Federal, state, and local interagency planning and cooperation maybe the key to finding solutions to prevent events like West, Texas from happening, whatever the cause. DHS must step up to the plate on security, and find ways to identify outliers, and retool efforts to assess risk-based vulnerabilities.

Other agencies, like EPA, already have authorities under the Clean Air Act to incorporate methods to reduce consequences into their Risk Management Plans, and I understand the White House chemical security interagency group is working on this issue; it will be helpful to find out what the President's Executive Order, released this morning, will actually do.