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Testimony before the

**HOUSE COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND
INTERNATIONAL RELATIONS**

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1000 Beaver Grade Road
Moon Township, PA 15108**

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Good morning. My name is Marty Durbin, and I am the Security Team Leader for the American Chemistry Council (ACC). I thank you for this opportunity to speak today on behalf of the Council's members on the important subject of security in the business of chemistry, a critical sector of America's infrastructure.

The 140 members of the American Chemistry Council manufacture essential life-saving products critical to homeland security and life-enhancing everyday items that keep the economy moving. Our products are critical to daily life and crucial to efforts to combat the war on terrorism. We are essential to making Kevlar vests, night vision goggles and stealth aircraft possible. The products we manufacture are essential to the things that make modern life possible, from plastics to pharmaceuticals, from cars to clothing. And the products of chemistry are so critical in so many aspects of American life, including keeping our drinking water safe, supporting agriculture, spurring medical innovations to prevent and treat disease.

The ACC represents the leading companies in the U.S. chemical manufacturing industry, an industry which is the largest exporting sector in the economy (\$91 billion), employs one million people in America alone, with \$460 billion in sales. In addition, the U.S. chemical industry has the largest share of knowledge workers of any industry, and it is the largest private industry investor in Research and Development.

Mr. Chairman, you have asked us to address voluntary actions the chemical industry has taken to address security, and to assess the federal government's roles and programs in this area. I welcome the opportunity to highlight three things for you and the committee: 1) the leadership role ACC members have taken to further ensure the safety and security of their products, their facilities, and the communities in which they operate and the effective partnerships we are building with all levels of government, first responders, and law enforcement; 2) the great strides the federal government has taken in the last year to assure the security of the chemical sector; and 3) the progress and

challenges remaining, including the need for national legislation to provide an appropriate federal government oversight role over chemical sector security.

I. ACC's Leadership Role in Enhancing the Security of the Chemical Sector

Safety and security have been primary concerns of ACC members since long before September 11, 2001. However, the attacks on America that day forced every part of America's critical infrastructure to reevaluate security preparedness. Our member companies did not wait for government direction following September 11th. Building on the ethic of stewardship embodied in our trademark Responsible Care® program – now in its 16th year – our members acted swiftly, adopting an aggressive plan to further enhance security for our facilities, our communities, and our products – ACC's Responsible Care® Security Code.

Through the Security Code, ACC members are making serious commitments to enhance security, including security against a potential terrorist attack at plant sites, with customers and suppliers throughout the supply chain, and through cyber systems. Implementation of this Security Code according to a strict timeline is mandatory for all members of the American Chemistry Council.

Long before September 11, 2001, the chemical industry was working on facility security guidelines. But the tragic events of that day hastened the completion of facility, transportation and cyber security guidelines designed to help companies continuously improve their security at plant sites and throughout their businesses. The Security Code emphasizes that security is a shared responsibility requiring actions by others as well, such as suppliers and government agencies in order to be effective. By working with state and local governments, federal agencies like the Department of Homeland Security (DHS), law enforcement, and first responders, ACC members are developing relationships with key partners to strengthen the security of the nation's chemical sector.

How the ACC Responsible Care® Security Code Works

- **Prioritization and Assessment of Sites.** Companies prioritized their plant sites into one of four tiers based on three factors – potential consequences of a successful attack, difficulty of an attack, and attractiveness of the target – with Tier 1 sites being the highest priority for immediate security assessment. Once prioritized, Security Vulnerability Assessments were performed at all ACC-member facilities by the end of last year. ACC members were required to use rigorous methodologies developed by Sandia National Laboratories, the Center for Chemical Process Safety (part of the American Institute of Chemical Engineers) or an equivalently rigorous and robust method.
- **Implementation of Security Measures.** Once vulnerability assessments were completed, companies began implementing security measures commensurate with the vulnerabilities identified in the assessments. (See attachment-1 for representative enhancements.)
- **Protecting Information and Cyber-Security.** Protecting information and information systems is a critical component of a sound security management system and an essential part of the Security Code. This includes evaluating potential vulnerabilities in facility process control systems as well as corporate information technology systems and taking appropriate measures to address vulnerabilities identified.
- **Training, Drills and Guidance.** Emergency preparedness remains a hallmark of Responsible Care® implementation. For over 20 years, ACC member facilities have worked closely with one another and local responders to develop local emergency response and mutual assistance plans. Those existing response plans and relationships form an invaluable basis for the next generation of security response plans and the training and joint drills that are critical for local readiness. Training is not limited to responders, however, all facility employees will receive training in security awareness and reporting procedures. The eyes of our employees are invaluable safety assets and will likewise become invaluable security assets.
- **Communications, Dialogue and Information Exchange.** Communications with stakeholders is an important part of the Security Code. This dialogue and information exchange on appropriate security issues, balanced with safeguards for sensitive information, helps employees, contractors, communities, customers, suppliers, service providers and government officials and agencies be partners in enhancing security.
- **Response to Security Threats and Incidents.** Companies are to evaluate, respond, report and communicate security threats as appropriate. Facilities develop security programs that can be increased at higher threat levels and address factors such as access control, restricted areas, cargo handling, and monitoring.
- **Independent Third-Party Verification.** Companies will undergo an independent third-party verification at chemical operating facilities with potential off-site impacts.

This process will verify that companies have implemented the physical site security measures to which they have committed.

- **Continuous Improvement.** Extending continuous performance improvement guidelines beyond environment, health and safety, the Security Code includes planning, establishment of goals and objectives, monitoring of progress and performance, analysis of trends and development and implementation of corrective actions.
- **Timing of the Security Code.** Responsible Care companies must implement security enhancements at the highest priority sites by December 31, 2003. Security enhancements at all sites are to be implemented by December 31, 2004. Implementation of the full Code for sites, transportation and cyber is due by June 30, 2005. Timing for security vulnerability assessments, security enhancements and verifications are below. (Attachment 2)

Our members' efforts are not limited to facility security. ACC members are also obligated to perform vulnerability assessments and implement countermeasures regarding their value chain (suppliers/distribution partners/customers) and cyber systems (process control and other information technology.) Every employee involved in the transportation of hazardous materials is required by federal regulation to undergo specific training relating to safety and security. Chemical companies have augmented those requirements with their own transportation security practices that build on existing safety training. ACC member companies and their partners in related industries – including railway and trucking companies – actively reach out to local communities, law enforcement agencies, and first responders to provide security and safety training, conferences, and other educational programs.

ACC's Security Code has been called a model program by Secretary Ridge. In its report last March, the GAO praised the efforts our industry has taken: "To its credit, the chemical industry, led by its industry associations, has undertaken a number of voluntary initiatives to increase security at facilities. For example, the ACC, whose members own or operate 1,000, or about 7 percent, of the facilities...[handling large quantities of hazardous materials in the country]... requires its members to conduct vulnerability assessments and implement security improvements."¹

¹GAO, "Homeland Security: Voluntary Initiatives Are Under Way at Chemical Facilities, but the Extent of Security Preparedness is Unknown" (GAO-03-439, March 2003) at "Highlights."

More recently, the U.S. Coast Guard recognized the Responsible Care[®] Security Code as an Alternative Security Program (RCSC - ASP) under the Maritime Transportation Security Act (MTSA) for purposes of fulfilling facility security regulatory requirements under 33 CFR 105. The Responsible Care[®] Security Code was the first alternative security program the Coast Guard has approved for facilities; most others have been for vessels. In addition, the State of New Jersey has recognized the Code as a “best practice” for chemical facility security, and is working on a “Memorandum of Agreement” that recognizes the Responsible Care[®] Security Code as an alternative to a regulatory regime. In addition, the City of Baltimore adopted a security ordinance that recognizes the Responsible Care[®] Security Code as an alternative means of compliance.

The President’s *National Strategy for the Physical Protection of Critical Infrastructures and Key Assets* (February 2003) not only recognized the chemical industry’s vital contributions to America’s economy and lifestyle, but emphasized the crucial need for “meaningful information sharing” between the federal government and the private sector owners and operators of critical infrastructure. ACC and its member companies are working in partnership with federal security and law enforcement agencies to ensure that threat warnings are communicated clearly and quickly to chemical companies, carriers, and customers so that appropriate action may be taken. We keep DHS well-informed about the security measures our member companies implement at different threat levels, so DHS has an increasingly accurate picture of our security preparedness. And we have established secure procedures for reporting suspicious activities to DHS. These initiatives were formalized in an agreement between the federal government and ACC in April 2002 when the Chemical Sector Information Sharing and Analysis Center (ISAC) was established, allowing for two-way direct communication of threat information and incident reports between DHS and the hundreds of ISAC participants.

²GAO, “Homeland Security: Voluntary Initiatives Are Under Way at Chemical Facilities, but the Extent of Security Preparedness is Unknown” (GAO-03-439, March 2003) at “Highlights.”

ACC's ethic of stewardship extends far beyond the boundaries of our facilities. We understand that effective response systems are key to safety and security. ACC members have long recognized that safety and emergency response are shared responsibilities and have a long tradition of coordinated emergency response and mutual assistance networks in communities. Chemical companies have created mutual response networks to bring to bear the best resources available to respond to those incidents. Additionally, our industry has instituted public service programs such as the CHEMTREC[®] and TRANSCAER[®] programs to assist public responders and local communities.

CHEMTREC[®] is a 24-hour-a-day emergency communications center, which has been operated as a public service of the American Chemistry Council since 1971. CHEMTREC[®] provides emergency responders with round-the-clock resources for information and assistance for spills, leaks, fires, explosions and other emergencies involving chemicals and other hazardous materials. CHEMTREC has provided critical information to emergency service workers for incidents ranging from the attacks at both the World Trade Center and the Pentagon to the Columbia space shuttle disaster. The TRANSCAER[®] program, which stands for "Transportation Community Awareness and Emergency Response," is a national effort that links the chemical industry, transportation organizations and local emergency response services. Through a network of regional and state coordinators, the TRANSCAER[®] program works with many local communities to help them better understand the movement of hazardous materials and how to respond to a transportation incident should one occur.

To facilitate exchange of information and lessons learned among industry security professionals, ACC and the Synthetic Organic Chemical Manufacturers Association (SOCMA) co-sponsor an annual 2-day Chemical Security Summit. Over 300 people attended last year's summit to discuss issues ranging from facility vulnerability assessment to cargo security; identifying countermeasures to communicating with the public. The Summit also provides an outstanding opportunity for security vendors to make their products and services known within the chemical sector.

Mr. Chairman, GAO's report last year said that "ACC's efforts are commendable," but, as you can see, we have not been content to rest on our laurels. Our members have continued to push themselves, to strengthen our partnerships with law enforcement and first responders, as well as local, state and federal government, and to meet the ambitious timetable of our Responsible Care[®] Security Code. I'm pleased to report that our members are meeting that timetable. Approximately 120 Tier I facilities completed SVAs by the end of 2002, and since GAO's report came out last March, 372 Tier II, 510 Tier III facilities and 950 Tier IV facilities have all completed SVAs. Tier I facilities were required to complete implementation of their security enhancements by 12/31/03, and those enhancements will be verified by outside third parties by March 31st.

II. The Federal Government Has Made Great Strides in Enhancing Security of the Chemical Sector

As I have indicated, ACC and its members have been working closely with the Department of Homeland Security during its first year of existence. We concurred with GAO's recommendations last year that the federal government should develop "a comprehensive national chemical security strategy that is both practical and cost effective," and that should:

- "Identify high-risk facilities based on factors including the level of threat and collect information on industry security preparedness;
- Specify the roles and responsibilities of each federal agency partnering with the chemical industry;
- Develop appropriate information sharing mechanisms; and
- Develop a legislative proposal, in consultation with industry and other appropriate groups, to require these chemical facilities to expeditiously assess their vulnerability to terrorist attacks and, where necessary, require these facilities to take corrective action."

³ Id. at 27.

Identify High Risk Facilities

Starting in March 2003 DHS partnered with ACC to facilitate visits to member facilities. Information gained from these visits supports the development of targeted DHS and state efforts to provide support and resources to facilities and communities. ACC also worked with the DHS to develop methods for evaluating facilities based on potential physical and economic consequences. And even before the creation of DHS, Coast Guard, State offices of Homeland Security or Counter-Terrorism visited facilities to offer advice on enhancing facility security.

Today, DHS' Protective Security Division and the Coast Guard are actively visiting chemical facilities, reviewing SVAs and security plans, understanding common vulnerabilities and developing plans, in conjunction with local law enforcement and responders, to protect facilities and their communities.

ACC supports the work done by U.S. Customs Service as it developed the Customs-Trade Partnership Against Terrorism to help identify potentially vulnerable or suspect shipments and work with manufacturers and shippers through the value chain – both foreign and domestic – to secure global trade.

Specify the Roles and Responsibilities of Federal Agencies

Since the GAO report was published, the organizational roles and responsibilities of the federal agencies have become increasingly clear. In December, 2003, the President issued a directive -- *Homeland Security Presidential Directive 7* – clearly defining roles for various federal agencies, and specifically naming DHS as the lead agency for the chemical sector.

Through the Coast Guard's Maritime Transportation Security efforts over 4000 facilities – many of them ACC members – are developing explicit security plans to prevent and address transportation security incidents. All facility and vessel plans are to be in place by June 30 of this year. Individual facility plans will include schedules for employee security training and response drills and exercises. The plans will include explicit actions the facility will take at different MARSEC (threat) levels regarding access control, restricted areas, handling cargo, delivery of

vessel stores and bunkers, monitoring, security incident procedures, and barge fleeting facilities. Even more facilities will participate in the development of and be covered by Area Port Security plans.

Develop Appropriate Information Sharing Mechanisms

Soon after 9/11 the FBI contacted ACC to sponsor and host an “Information Sharing and Analysis Center” between the government and the chemical sector. CHEMTREC stood up the Chemical Sector ISAC in April 2002. The ISAC has 578 participants representing not only ACC members, but other segments of the chemical sector. The Chemical Sector ISAC provides 24-7 capability for the Homeland Security Operations Center (HSOC) to contact the chemical sector as well as the ability for individual members of the ISAC to convey incident or threat information to DHS. Members of the ISAC receive daily intelligence reports from DHS as well as episodic alerts and warnings. DHS also facilitates communications between infrastructure sectors – sectors that are mutually dependent on one another. Building on the success of the Chemical Sector ISAC, ACC is in the process of more formally organizing the Chemical Sector and facilitating a “Chemical Sector Coordinator” contact for DHS.

In addition, DHS recently finalized the Critical Infrastructure Information Act rules, which will provide the necessary protections for sensitive information to enhance information sharing between the private sector, the federal government, and state and local governments. The rules will improve key parties’ understanding of the threats, vulnerabilities and countermeasures affecting their localities, while ensuring that the information cannot fall into the wrong hands.

Communication During Raised Alert Level

While the national terrorist threat level was at “Orange” last December and January, DHS established daily contact with ACC and its member companies to maintain a clear understanding of threats and countermeasures taken. A small group of industry security experts have been available as a resource to DHS 24/7.

Develop a legislative proposal

ACC continues to support federal oversight of chemical security. We realize this is in the best interest of our plant communities, our companies, and our nation. And ACC has repeatedly affirmed its support for responsible legislation.

The members of the ACC fully recognize that strengthening safety and security AND having federal oversight at our facilities is in the best interest of our nation. As such, ACC supports chemical security legislation that will:

- Establish national guidelines for security at chemical facilities;
- Require facilities to conduct vulnerability assessments and implement security plans;
- Provide oversight and inspection authority to the Department of Homeland Security; and
- Create strong enforcement authority to ensure facilities are secure against the threat of terrorism.

In addition to legislation, the following things are essential to our ability to continuously enhance the security of our products, our facilities, our employees and our communities.

We need:

- Improved public/private intelligence sharing regarding threats and vulnerabilities
- Improved Emergency Response coordination and training
- Improved coordination of chemical security initiatives regarding facility, transportation, cyber, and product security within DHS; and
- Agreement on other security needs of the chemical sector, including a common understanding of what constitutes the US chemical sector and its interdependencies with other critical infrastructure sectors.

Conclusion

Security is a responsibility shared by industry and government. ACC members will continue to step up to our security. However, we know we can't do this alone. Our members invested millions of dollars last year to enhance security at their facilities, but unilateral security investment by the private sector is not enough. We need and embrace a more comprehensive and more integrated partnership with our public sector colleagues. Security is not an option for the members of the American Chemistry Council.

The members of the American Chemistry Council will continue to work with law enforcement, first responders, and state and federal regulators to find the best solutions ensuring the security of the essential products and contributions this industry provides to our country. ACC members have demonstrated their commitment and willingness to step up to post 9/11 challenges. But we cannot shoulder the burden alone. We need and embrace a more comprehensive and more integrated partnership with our public sector colleagues. Security is not an option for the members of the American Chemistry Council.

Thank you for the opportunity to testify today. I am happy to answer any questions that you may have at this point.