Testimony of
James Frederick
United Steelworkers
before the
US Senate Committee on Environment and Public Works
on
Preventing Potential Chemical Threats and Improving Safety: Oversight of the President's Executive Order on Improving Chemical Facility Safety and Security
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Chairman Boxer, Ranking Member Vitter and members of the Committee, thank you for the opportunity to testify today. My name is Jim Frederick. I am here on behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union – USW for short. We represent 850,000 workers in the sectors I just mentioned and many others, including the majority of unionized workers in the chemical industry and hundreds of thousands of men and women whose workplaces use and store large quantities of industrial chemicals.

A massive explosion nearly a year ago at the West Fertilizer Company's storage and distribution facility in West, TX killed fifteen people and injured hundreds more. The blast also destroyed a nursing home, an apartment complex, schools and private homes. This incident has brought acute national attention to the vulnerabilities in our communities. As devastating as the West explosion was, the potential for much worse is present at other facilities across the country.

Our members are well aware of the hazards and the potential for widespread damage to critical infrastructure and the communities where they work and live. USW members are the highly-skilled and highly-trained workers who operate and maintain chemical facilities. They would be hurt first and worst when employers and regulations do not do enough to prevent catastrophic releases and explosions. It is for this reason that our union strongly supports President Obama's Executive Order 13650 on Improving Chemical Facility Safety and Security.[1]

The Executive Order (EO) set up a Working Group to improve operational coordination with state and local partners; enhance federal agency coordination and information sharing; modernize policies, regulations and standards; and work with stakeholders to identify best practices. The Working Group is co-chaired by the Department of Homeland Security (DHS), the Environmental Protection Agency (EPA), and the Department of Labor (DOL), more specifically the Occupational Safety & Health Administration (OSHA). This testimony today will address the four goals and the implementation of the EO:

1. Improve operational coordination with state and local partners;
2. Enhance federal agency coordination and information sharing;
3. Modernize policies, regulations and standards;
4. Work with stakeholders to identify best practices; and
5. Implementation of the executive order.

[1] http://www.whitehouse.gov/the-press-office/2013/08/01/executive-order-improving-chemical-facility-safety-and-security

1. Improve operational coordination with state and local partners

Federal agencies should share best practices about interacting with communities and local emergency responders. The EO's pilot project in New York and New Jersey provides a unique opportunity for the agencies to implement lessons learned and new ways of coordinating with each other and with state and local partners. For example, agencies and emergency responders should implement best practices for communicating during an incident to avoid reported complications during previous incidents in which responding agencies were operating on different radio frequencies. The pilot project is an opportunity for EPA and the other agencies involved in the Working Group really make a difference on-the-ground on a facility-by-facility basis. USW has encouraged EPA, who is the lead agency for the pilot project, to provide periodic updates on the pilot project to the public and to fully incorporate the successes of the pilot project into the full spectrum of the Working Group's responsibilities.

The agencies can also look into how industry should interact with the communities and local emergency responders around their facilities. For example, companies are required to interact with communities and local emergency response departments through the EPA's Risk Management Plan (RMP). This is not the same requirement under OSHA's Process Safety Management Standard (PSM). All facilities should be communicating with outside emergency responders about the layout of the facility, the hazardous materials on site and their location as well as the health effects from the materials. They should also be aware of all potential scenarios, as the typical chemical facility incident is rarely a single scenario event.

2. Enhance federal agency coordination and information sharing

Our members' experiences have demonstrated the importance of federal agency coordination and information sharing. At one facility where the local union identified health and safety hazards, three agencies were approached and each one passed responsibility to the next. It took much time and effort for an adequate response, which left the community at risk far longer than was necessary if the agencies had collaborated. USW has encouraged the agencies involved in the Working Group to evaluate and improve the way they communicate both at the federal level and the local level. We strongly support cross-training and joint inspections to more efficiently and effectively address chemical hazards at facilities.

Already this Executive Order has resulted in information sharing that will protect communities and workers. At a House Homeland Security Subcommittee hearing last week, DHS indicated that 3000 facilities were identified as not complying with their responsibilities under CFATS after the DHS Chemical Facility Anti-Terrorism (CFATS) database and EPA RMP database were cross-referenced.[2] DHS has contacted those facilities, but much work remains to be done to ensure that they comply with the law to minimize the risk of a terror attack under CFATS.

3. Modernize policies, regulations and standards

[2] http://homeland.house.gov/hearing/subcommittee-hearing-chemical-facility-anti-terrorism-standards-authorization-and

The EO Working Group has a document out for public comment until the end of the month to gather public input on policy, regulation, and standards modernization. This is an important step in gathering information to preventing chemical disasters. In addition to gathering public input to modernize policies, regulations and standards, the EO Working Group should look to other agencies in federal and state government. We strongly recommend that the Working Group consider recommendations made by the US Chemical Safety Board (CSB), California Governor Brown's Interagency Working Group on Refinery Safety, and the New Jersey Department of Environmental Protection, who have all been leaders in preventing, not just responding to incidents at chemical facilities.

USW strongly supports the Working Group using this opportunity to develop and promote the use of safer chemical processes. As a member of the Coalition to Prevent Chemical Disasters[3], we have been strong advocates for a shift towards inherently safer technologies in order to protect workers and communities. In 2012 our coalition petitioned the EPA to exercise its authority under Section 112(r) of the Clean Air Act to prevent chemical facility disasters through the use of safer chemical processes.[4] We have not yet received a formal response to the petition. And the USW recently issued a report titled *A Risk Too Great* about the ability of oil refineries to switch away from using deadly hydrofluoric acid and towards safer chemicals and processes.[5]

DHS,[6] EPA[7] and the CSB[8] have all highlighted the effectiveness of assessing and, where feasible, implementing safer alternatives at high risk facilities. Some companies have shifted to safer processes or reduced their inventory of hazardous chemicals so they are no longer listed as high risk. In fact, according to a report from DHS to the Coalition to Prevent Chemical Disasters, since the inception of the CFATS program nearly 1300 facilities have completely removed their Chemicals of Interest and approximately 600 no longer possess a Chemical of Interest at the threshold that requires submission of a Top-Screen to DHS. But many companies will never even look into innovating with safer chemical processes without a legal requirement to do so. We strongly support assessing and, where feasible, implementing safer chemical processes and urge the Working Group to address this issue.

Despite the effectiveness of safer chemical processes, they may take time to implement at all facilities; and we should update other regulations and policies in the meantime. For example, the agencies should look into harmonizing the lists of chemicals that are covered under each agency's policies. The EPA's Risk Management Program (RMP) list of Regulated Toxic Substances contains 77 toxic chemicals and 63 flammable substances. OSHA's Process Safety Management (PSM) Programs lists 137 chemicals considered Highly Hazardous, Toxic or Reactive. Currently, too many dangerous chemicals are not listed and therefore are not reportable under RMP. An example of one such chemical is 1,2-Butadiene. While its close cousin, 1,3-Butadiene, is reportable under EPCRA 313 (TRI) and by definition, under the Process Safety Management standard, it is not listed as an RMP chemical. Additionally, the Working Group

[3] http://preventchemicaldisasters.org/
[4] https://www.documentcloud.org/documents/404584-petition-to-epa-to-prevent-chem-disasters-filed.html
[5] http://assets.usw.org/resources/hse/pdf/A-Risk-Too-Great.pdf
[6] http://www.dhs.gov/news/2011/03/30/written-testimony-nppd-house-committee-energy-and-commerce-hearing-titled-hr-908
[7] http://www.epa.gov/ocir/hearings/testimony/111_2009_2010/2010_0728_ccd.pdf
[8] http://www.nytimes.com/2014/01/29/opinion/the-next-accident-awaits.html?smid=pl-share&_r=0

agencies should include explosive hazards on the lists of chemicals they cover. This simple and common-sense requirement would have helped prevent the devastation in West, TX last April.

USW applauds OSHA's efforts to begin the process of updating the PSM standard through a request for information put out late last year. The PSM standard is broken. It is a performance-based standard, so it tells an employer what they need to do but leaves how they do it up to each company. While this is necessary to a degree due to variations in facilities, we typically see employers getting by on past practices that were appropriate when they were implemented but that are now outdated. USW will be submitting recommendations on how to update the standard in response to OSHA's request for information. We urge EPA to engage in a similar information gathering process to update the RMP standard.

4. Work with stakeholders to identify best practices.

Workers who operate and maintain chemical facilities should be seen as assets to chemical facility safety; and workers should be involved in a meaningful way in all aspects of planning for, preventing, and responding to an accidental release or incident. When federal agencies inspect facilities, representatives of the workers should be included in all parts of the inspection. Both OSHA[9] and EPA[10] have policies that could be used and expanded for all agencies that are involved. Workers should be involved in communicating with local first responders about the hazards at the facilities and the actions that should be taken in the event of an emergency. And finally, workers need to be protected by strong whistleblower language should they report problems or inadequacies that may contribute to the risk of a chemical disaster.

5. Implementation of the Executive Order

The Executive Order included an ambitious timeline that included a status report to President Obama with an original deadline of May 6, 2014. The Working Group has cited the government shutdown last fall as the reason that deadlines have been extended by 30 days. The USW is disappointed that the work of the agencies has slowed, and we continue to urge the agencies to meet their deadlines.

Throughout the implementation of the Executive Order, USW has urged the Working Group to continue to hear and incorporate stakeholder and public input. We were pleased that the Working Group responded to stakeholder input early in the process and began scheduling listening sessions and webinars during evening hours to accommodate those who cannot attend during daytime hours. We hope that the Working Group will continue to support a transparent process that utilizes input from a wide variety of stakeholders as the agencies work to better protect workers and communities from catastrophic chemical incidents.

Thank you again for the opportunity to testify today.

[9] https://www.osha.gov/Firm_osha_data/100006.html
[10] http://www.epa.gov/compliance/resources/policies/monitoring/caa/caa112r-rmpguide.pdf