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April 25, 2013

SENT VIA FACSIMILE TO (202) 512-7919

The Honorable Gene L. Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Dodaro:

The Occupational Safety and Health Administration (OSHA) is tasked with protecting the nation's workers by setting safety and health standards and enforcing employers' compliance with those standards; however, OSHA lacks permitting authority. The Environmental Protection Agency (EPA) and state environmental agencies license and inspect hazardous materials processing and storage facilities to protect the public from environmental hazards. Other agencies, such as the Department of Homeland Security, are responsible for ensuring the security of certain flammable, toxic or explosive chemicals. This letter asks GAO to assess regulatory gaps that leaves workers and nearby communities inadequately protected.

The April 17, 2013 fire and explosion at the West Chemical fertilizer plant in West, Texas, which took the lives of 14 first responders and residents and injured more than 200, stored and distributed ammonium nitrate fertilizer and anhydrous ammonia. The explosion was measured at the equivalent of a 2.1 magnitude seismic event. Ammonium nitrate was the primary material used in the 1995 Oklahoma City bombing that killed 168 people at a federal office building.

With fewer than ten employees, the West chemical plant had not been inspected by OSHA since 1985. OSHA has 103 inspectors spread across the state of Texas, and the average establishment in that state is inspected approximately only once every 139 years. Moreover, this facility may have been exempted from OSHA enforcement oversight due to an appropriations rider that generally exempts those establishments with ten or fewer employees which are within an industry classification where the injury and illness rates are below the national average, except where there is a fatality, multiple hospitalizations or an employee complaint.

EPA inspected the plant in 2006 and found several deficiencies, including not timely filing a risk management plan; questions have been raised about its completeness. The fact that the Texas plant was located across the street from a middle school, a large apartment complex, and a nursing home, and near a high school makes it particularly worrisome that it was not being

inspected more frequently by OSHA or the EPA. Had the middle school been in session, many more could have perished due to the extensive damage to that building.

We are also concerned that such an explosion may be possible at similar facilities across the nation, and that other workers and the communities may not be adequately protected. According to the Fertilizer Institute more than 40 plants exist throughout the U.S. that produce fertilizer, including some that produce anhydrous ammonia. In addition, there are over 6,000 retail facilities such as the one in West, Texas that store, blend and distribute such materials.

Beyond this recent explosion involving a retail distribution facility, catastrophic explosions have occurred at ammonium nitrate production plants. The Terra Industries ammonium nitrate plant in Sergeant Bluff, Iowa exploded after an equipment malfunction on December 13, 1994, killing four and injuring 18. Some 3,000 residents of Iowa and Nebraska were evacuated. Ammonia gas wafted off the site for six days, according to new reports.

Accordingly, we ask that GAO evaluate the gaps in the oversight of facilities that distribute, blend and store ammonia-related fertilizers.

With regards to OSHA:

- 1) Was this fertilizer plant exempted from “programmed” OSHA inspections pursuant to the appropriations rider discussed above?
- 2) With regards to facilities with 10 or fewer employees, are industry-wide injury and illness rates an appropriate basis for exempting those facilities which have potential for catastrophic explosions from highly hazardous materials? What approaches could be used to ensure that such facilities do not remain exempt?
- 3) Was this facility exempted from OSHA’s special emphasis program for chemical facilities? What were the reasons for this exemption, and does this include EPA’s ranking of this facility under its Risk Management Program?
- 4) Was this retail facility exempted from federal OSHA’s process safety management standard that would otherwise cover anhydrous ammonia? Do any state-run OSHA programs cover retail facilities under their process safety management requirements?
- 5) Was this facility, which was built in the 1960’s, grandfathered with respect to OSHA standards covering anhydrous ammonia and related equipment?
- 6) Please estimate the number and types of fertilizer facilities that are exempted from regular inspections and enforcement due to regulatory gaps identified above or that would otherwise apply.

With regards to EPA:

- 1) At present, ammonium nitrate fertilizer is not one of the chemicals that facilities have to report under the EPA's risk management plan (RMP) program, because it is not listed as a

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toxic air pollutant. How many facilities are exempted from this disclosure pursuant to the RMP?

With regards to both agencies, we ask that GAO:

- 1) Compare how the Health and Safety Executive in the United Kingdom addresses the hazards of ammonium nitrate fertilizer and anhydrous ammonia compared with the process employed by the United States.
- 2) Assess whether there are opportunities for EPA and OSHA/state-run OSHA programs to better coordinate with each other, and other relevant state or federal agencies, in providing oversight to prevent fires and explosions at fertilizer facilities, and that facilities plan adequate responses for the genuinely worst-case scenarios.

Additionally, we seek a comprehensive accounting of the numbers and types of fertilizer storage and distribution facilities in the U.S.; the number and average frequency of inspections of such facilities conducted by OSHA and EPA (or state programs); and whether there are recommendations by the Chemical Safety Board to prevent such accidents, and whether such recommendations have been implemented.

We appreciate your assistance with this request. Please direct your staff to coordinate GAO's work with Richard Miller, Committee on Education and the Workforce at (202) 225-3725 and Tracey Roberts, Office of Representative Joe Courtney at (202) 225-2076.

Sincerely,



GEORGE MILLER
Senior Democratic Member



JOE COURTNEY
Senior Democratic Member
Subcommittee on Workforce Protections

Cc: Hon. John Kline, Chairman, Committee on Education and the Workforce
Hon. Tim Walberg, Chairman, Subcommittee on Workforce Protections