TEXAS HOUSE OF REPRESENTATIVES

HOUSE COMMITTEE ON HOMELAND SECURITY & PUBLIC SAFETY

SPECIAL REPORT, PART 1
REGARDING THE MAY 1ST HEARING ON THE WEST, TEXAS DISASTER
MAY 2013

A REPORT TO THE
HOUSE OF REPRESENTATIVES
83RD TEXAS LEGISLATURE

JOE C. PICKETT
CHAIRMAN

COMMITTEE CLERK
MARIANN H. MORELOCK

ASSISTANT CLERK
JW GALLOWAY

GENERAL COUNSEL
MATTHEW A. HARRIGER

Introduction

On April 17, 2013, a fire in West, Texas at Adair Green Inc. d/b/a West Fertilizer Co. (the "West Plant") resulted in a lethal explosion, devastating that community. Although multiple state and federal investigations are ongoing, including a criminal investigation by the Texas Rangers, the House Committee on Homeland Security and Public Safety (the HSPS Committee) has begun collecting information about the manner in which the West Plant and similar facilities are regulated and monitored. On May 1, 2013 the HSPS Committee heard testimony from multiple state agencies[1] on their respective roles, if any, in investigation of the West Plant fire and explosion, and more generally, their role overseeing such chemical facilities. The purpose of the hearing was to learn about the current investigation and the state resources that monitor facilities like the West Plant and the risks posed by such facilities. A broader purpose of the hearing was to begin assessing what, if anything, can be done to prevent future, similar disasters. Summarized within are the HSPS Committee's findings thus far.

1 Department of Public Safety (DPS); State Fire Marshal's Office (SFMO); Texas Department of Insurance (TDI); Department of State Health Services (DSHS); Office of the Texas State Chemist (State Chemist); Texas Commission on Environmental Quality (TCEQ); and Texas Department of Agriculture (TDA).

Investigation status

The investigation is currently ongoing, and State Fire Marshal Chris Connealy has indicated it will take one or two weeks beyond the original target date of May 10.[2] To date, the investigation has revealed the origin of the fire was in the fertilizer and seed building.[3] Thus far, the following causes related to the initial fire have been eliminated: weather, natural, anhydrous ammonium, the railcar containing ammonium nitrate, and a fire within the ammonium nitrate bin.[4] Additionally, water used during the firefighting activities did not contribute to the cause of the explosion.[5]

Investigators are combing through the 14.9-acre blast site, collecting items that exploded out of the plant and sifting through all the soil. At the HSPS Committee hearing on May 1, 2013, Fire Marshal Connealy testified there are 28 state and federal agencies participating in the investigation. The federal Bureau of Alcohol, Tobacco, and Firearms, for example, has already spent $500,000 on the investigation and expects to spend another $500,000.

Basic facts about the West Plant and similar facilities in Texas

According to TCEQ records, the West Plant was built in 1962, and DSHS records indicate it blended and stored seven chemicals in reportable quantities, including ammonium nitrate and anhydrous ammonia. On February 26, 2013, the West Plant reported to DSHS for the first time that it held ammonium nitrate in Tier II reportable quantities during 2012.

Using industry classification codes,[6] the West Plant classified itself as a mixing only, fertilizer manufacturer (meaning it did not manufacture raw fertilizer ingredients). Although DSHS's data shows there are a total of 41 facilities in Texas with the same code designation as the West Plant,[7] it also shows there are 125 facilities that store ammonium nitrate. According to the State Chemist's records, there are 115 facilities in Texas that are permitted to distribute ammonium nitrate. According to DPS Director Steve McCraw, however, there are 1,105 facilities in Texas with fertilizers and ammonium nitrate onsite.

Emergency-management authorities

Federal and state law impose reporting requirements on facilities using or storing hazardous chemicals. The reporting requirements stem from the federal Emergency Planning and Community Right-to-Know Act[8] (EPCRA) of 1986, and the Texas Community Right-to-Know Acts[9] of 1993. The EPCRA was designed to assist states and local governments in developing

2 *See* State Fire Marshal Fact Sheet, May 6, 2013.
3 *Id.*
4 *Id.*
5 *Id.*
6 North American Industry Classification System ("NAICS"). NAICS is the standard used by statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the business economy.
7 See Appendix A.
8 *See generally* 42 U.S.C. 116.
9 Tex. Health & Safety Code Ann. Chs. 505–507.

emergency response plans by requiring states to establish state emergency response commissions (SERCs) and the appointment of local emergency planning committees (LEPCs). Before the EPCRA was enacted, however, Texas had already passed the Texas Disaster Act of 1975, which included EPCRA-like provisions.[10] The EPCRA was also designed to improve community access to information about hazardous chemicals, and it put in place reporting requirements for facilities that store hazardous chemicals or extremely hazardous substances. Texas enacted the EPCRA's reporting requirements by passing three Texas Community Right-to-Know Acts, which, although substantially similar, are applicable to different types of facilities.[11]

Texas's SERC consists of multiple state agencies,[12] but the SERC's day-to-day operations are overseen by the Texas Department of Emergency Management (TDEM), a division of DPS. Under the EPCRA, the SERC must also "supervise and coordinate the activities" of the LEPCs.[13]

Mayors and county judges are largely vested with authority to manage local disasters.[14] Texas law requires certain local officials with emergency management responsibilities to complete an emergency-management-training course provided or approved by TDEM.[15] Every county and city must have an emergency-management plan, but some counties and cities may or may not rely on their LEPC to develop these plans. Both counties and cities can form a LEPC, but most of Texas's 270 LEPCs are formed on the county level. Counties can have more than one LEPC (Harris County has 17) or counties can share a LEPC (like Randall and Potter Counties). The role of a LEPC is to form a partnership between local government and industry as a resource for enhancing hazardous materials recognition and preparedness. Local governments are responsible for the integration of hazmat planning and response within their jurisdiction. This includes: ensuring the local hazard analysis adequately addresses hazmat incidents; incorporating planning for hazmat incidents into the local emergency management plan and annexes; assessing capabilities and developing hazmat response capability using local resources, mutual aid, and contractors; training responders; and exercising the plan.

On the subject of hazardous chemicals, DSHS is more of an information repository than a safety-regulation agency. DSHS administers the reporting requirements of the community right-to-know laws in the Texas Tier II Chemical Reporting Program, which is a statewide inventory of hazardous chemical reports called Tier II Reports. Tier II Reports are discussed in more detail below, but generally they contain data on hazardous chemicals stored at reporting facilities. LEPCs and other local-emergency managers can use Tier II data to plan response strategies within their communities. Tier II data can also be used by emergency response personnel, such as fire fighters and healthcare providers, to help protect first responders and the community

10 *See generally* Tex. Gov't Code Ann. Ch. 418.
11 *See* Tex. Health & Safety Code Ann. Ch. 505 (Manufacturing Facilities); Ch. 506 (Public Employer); and Ch. 507 (Non-Manufacturing Facilities). Texas law requires public employers to comply with the Community Right to Know Act, but there is no such requirement in the federal EPCRA.
12 See Appendix B for a chart of the state agencies that are a member of the SERC.
13 42 U.S.C. § 11001(a).
14 *See* 37 Tex. Admin. Code §§ 7.23, 7.26 (2013) (Tex. Dep't of Pub. Safety, Local Planning Required).
15 *See* Tex. Gov't Code Ann. § 418.005 ("This section applies only to an elected law enforcement officer or county judge, or an appointed public officer of the state or of a political subdivision, who has management or supervisory responsibilities and: (1) whose position description, job duties, or assignment includes emergency management responsibilities; or (2) who plays a role in emergency preparedness, response, or recovery.").

during a hazardous chemical emergency. Citizens may request and receive copies of the Tier II reports from DSHS, as well as custom reports generated from the electronic Tier II data.

According to DPS, the phases of emergency management are mitigation, preparedness, response, and recovery, and each phase should be considered in developing an emergency-management plan. DPS, however, does not have authority to impose or enforce safe-storage or reporting requirements on chemical facilities. DPS does have a Suspicious Activity Reporting program in its Intelligence and Counter Terrorism Division, which acts as a "trip wire" insofar as suspicious activity can be relayed through this program. For example, a fertilizer retailer could report an individual who acquires large amounts of ammonium nitrate or any other hazardous substance for no apparent reason.

The State Chemist's main function is to facilitate commerce by ensuring fertilizer products manufactured and distributed in Texas are properly composed of the ingredients on their label. Commercial fertilizer manufacturers and distributors must register with, and obtain a permit from, the State Chemist. The State Chemist annually inspects permitted facilities before renewing a permit. The State Chemist's inspectors are agriculturalists, not chemists. Although the annual inspections are focused mainly on matters of quality control and labeling of fertilizer, the State Chemist inspectors also ensure facilities are securely storing ammonium nitrate. Texas law requires anyone engaged in the sale of ammonium nitrate to take steps to secure the ammonium nitrate at their facility against vandalism, theft, or other unauthorized access, including: (1) ensuring that a storage facility is fenced or otherwise enclosed and locked when unattended; (2) inspecting a storage facility daily for signs of vandalism and to verify its structural integrity; and (3) establishing and maintaining ongoing inventory control procedures for the ammonium nitrate.[16] Permitted facilities must comply with these requirements to renew their annual permits, but if a State Chemist inspector identifies a safety violation, no law or rule requires it be reported to local authorities.

TCEQ's main purpose at the blast site is to mitigate any offsite environmental impacts from the explosion. TCEQ immediately sent employees to the blast site on the night of the explosion in West, Texas. The West Plant had TCEQ permits for anhydrous ammonia and bulk material handling. Before issuing the West Plant's TCEQ permit, extra steps had to be taken because it was located within 3,000 feet of a school or nursing home.

TDA Deputy Commissioner Drew DeBerry testified that his agency does not have a specific role in regulating fertilizer facilities. TDA's oversight of the West Plant consisted mainly of a registered a truck scale and various pesticide applicators and storage facilities.

Hazardous chemical reporting requirements

When "hazardous chemicals" or "extremely hazardous substances" are present at a facility in certain threshold amounts, the community right-to-know laws require the facility to compile and maintain a Tier II Report containing information about the chemicals and substances.[17] There are currently 67,396 reporting facilities in Texas,[18] approximately 60% of

16 Tex. Agric. Code Ann. § 63.153.
17 *See* Tex. Health & Safety Code Ann. §§ 505.006(a), 506.006(a), 507.006(a).

which are facilities storing crude oil in battery tanks. Tier II Reports must be filed annually with DSHS, and the facility must give a copy of the report to the local fire department having jurisdiction over the facility and the appropriate LEPC.[19] If a facility begins storing a new chemical, it must update its Tier II Report within 90 days. Generally, Tier II Reports must also be made directly available to the public upon request.[20] Texas law relies on the federal definitions of "hazardous chemical" and "extremely hazardous substance."[21]

Extremely hazardous substances present at a facility in amounts of 500 pounds or more also trigger the Tier II reporting requirement. Extremely hazardous substances include any substance listed by the Environmental Protection Agency (EPA) in appendices A and B of 40 C.F.R. part 355.[22] Ammonium nitrate is not listed as an extremely hazardous substance, but chlorine is.

Hazardous chemicals present at a facility in amounts of 10,000 pounds or more trigger the Tier II reporting requirement. Hazardous chemicals include any chemical classified by the Occupational Safety and Health Administration (OSHA) as a "physical hazard or a health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified."[23] Ammonium nitrate, for example, is classified as a hazardous chemical. A hazardous chemical is a product that, when shipped, requires the inclusion of a Material Safety Data Sheet (MSDS), pursuant to OSHA's Hazard Communication Standard (29 C.F.R. 1910.1200(c)). DSHS applies OSHA's definition of "hazardous chemical" on a case-by-case basis to determine which products must be included in a Tier II Report. Technically, there is no "list" of all reportable hazardous chemicals because approximately 650,000 products might require a MSDS, new products are invented every day that might meet OSHA's definition of a "hazardous chemical," and there is no standardized system for naming hazardous chemical products. As such, the "list" is extremely large and ever-changing. Moreover, many product manufacturers choose to publish a MSDS for all of their products, regardless of their hazard classification under the OSHA Hazard Communication Standard. Similarly, facilities filing Tier II Reports may choose to err on the side of caution and report any chemicals for which they receive a MSDS. So a manufacturer's issuance of a MSDS, or a facility's reporting of a chemical, does not necessarily mean the chemical product is classified by OSHA as a hazardous chemical.

Onsite-inspection authority and risk-management analyses

On the local level, fire marshals have authority to inspect chemical facilities. However, the only state agency identified at the May 1 hearing with employees physically visiting and inspecting chemical-storage facilities on an annual basis was the State Chemist. DSHS can inspect a Tier II reporting facility if it does not comply with the reporting requirements, but the

---

18 This figure does not include retail facilities because end-product fertilizer is exempted from the reporting requirements.
19 Tex. Health & Safety Code Ann. §§ 505.006(c), 506.006(c), 507.006(c).
20 *See id.* at §§ 505.007, 506.007. The requirement of direct access to information for citizens is not included in Chapter 507 of the Health and Safety Code, which is the Community Right-to-Know Act governing nonmanufacturing facilities. *See id.* at § 507.001–.013.
21 *See id.* at § 505.004(9), (13).
22 40 C.F.R. § 370.66.
23 29 C.F.R. § 1910.1200(c).

inspection is limited to reporting matters. TCEQ inspects a facility when a complaint is filed; otherwise it uses a "risk-based approach" to decide whether to inspect a facility.

TDI Commissioner Eleanor Kitzman suggested at the May 1 hearing that insurers' risk-management departments, LEPCs, and local fire marshals might be best positioned to perform risk-management analyses of facilities storing hazardous chemicals. Commissioner Kitzman stated that although the West Plant carried certain insurance, "it has absolutely no relationship to the risk that was involved here." She explained that chemical facilities are not required to carry insurance for the type of explosion risks involved in this incident.

Preliminary observations

The public's awareness of Local Emergency Planning Committees and the role LEPCs play in developing emergency-management plans with local communities is critical. There does not appear to be any state agency with authority to inspect chemical facilities for safety concerns. Although the State Chemist inspects commercial fertilizer manufacturers and distributors for compliance with the statutorily required storage procedures for ammonium nitrate, these requirements are focused on *securing* ammonium nitrate from vandalism, theft, and unauthorized access—they are not focused on *preventing* fires or explosions.

Local fire departments can inspect chemical facilities within their jurisdiction and enforce any applicable safety requirements, however, there may not be any safety requirements enforceable by the local fire department. There is no state fire code, and local fire and building codes do not extend beyond their municipal jurisdiction. Thus, facilities located outside of a municipality may not be subject to any fire or building codes. In these cases, the only prevention-centric, safety regulations are imposed by the EPA or OSHA, but again, there does not appear to be any state agency with authority to enforce those regulations.

In conclusion, even though the required Tier II Reports include thousands of substances identified as hazardous by the EPA and OSHA, Texas might be better served by identifying those substances that are catastrophic in nature or have the potential for mass destruction, like ammonium nitrate in West, Texas—so that additional preventative measures may be taken.

APPENDIX A

Tier II reporting facilities classified with the same NAICS code as the West Plant					
Facility Name	**City**	**County**	**State**	**Address**	**Zip**
ADAIR GRAIN, INC. DBA WEST FERTILIZER CO.	WEST	McLennan	TX	1471 N. Jerry Mashek Drive	76691
American Plant Food Corporation, Bartlett Branch	Bartlett	Williamson	TX	9901 North Highway 95	76511
American Plant Food Corporation, Buffalo Branch	Buffalo	Leon	TX	1125 East Commerce St.	75831
American Plant Food Corporation, Comanche Branch	Comanche	Comanche	TX	600 FM 1689	76442
American Plant Food Corporation, Fort Worth Branch	Fort Worth	Tarrant	TX	3800 Deen Road	76106
American Plant Food Corporation, Littlefield	Littlefield	Lamb	TX	1857 East Loop 430	79339
American Plant Food Corporation, Main Facility	Galena Park	Harris	TX	903 Mayo Shell Road	77547
American Plant Food Corporation, Millican Branch	Millican	Brazos	TX	22492 FM 2154	77866
American Plant Food Corporation, Nacogdoches	Nacogdoches	Nacogdoches	TX	1809 Bennett Clark Road	75961
American Plant Food Corporation, Paris Branch	Paris	Lamar	TX	1231 Southeast 6th Street	75460
American Plant Food Corporation, Troup Branch	Troup	Smith	TX	600 N Georgia Street	75789
American Plant Food Corporation, Wortham Branch	Wortham	Freestone	TX	816 Colorado Street	76693
Buddy's Plant Plus	Ballinger	Runnels	TX	2022 North Broadway	76821
Bumper Crop Agricultural Services, Inc.	Schulenburg	Fayette	TX	804 Bohlmann Avenue	78956
El Dorado Chemical Company	Annona	Red River	TX	6540 US Hwy 82 East	75550-0167
El Dorado Chemical Company	Athens	Henderson	TX	3560 FM 753	75751-8919
El Dorado Chemical Company	Bryan	Brazos	TX	6232 Hwy 21 West	77806
El Dorado Chemical Company	Cooper	Delta	TX	15820 FR 128	75432-4534
El Dorado Chemical Company	Corsicana	Navarro	TX	100 N. Seventh St.	75151-1097
El Dorado Chemical Company	Dublin	Erath	TX	300 O'Neal	76446-0268

El Dorado Chemical Company	Itasca	Hill	TX	900 South Hill	76055
El Dorado Chemical Company	Marquez	Leon	TX	221 West Main St.	77865
El Dorado Chemical Company	Pittsburg	Camp	TX	204 Fulton	75686-0420
El Dorado Chemical Company	Terrell	Kaufman	TX	500 E. Temple	75160-0189
El Dorado Chemical Company	Trinity	Walker	TX	100 E. Tatom St.	75862
El Dorado Chemical Company	Tyler	Smith	TX	10503 CR490	75706-9366
El Dorado Chemical Company	Whitewright	Grayson	TX	1102 South Bond Street	75491
El Dorado Chemical Company	Elkhart	Anderson	TX	100 Lewis Street	75839
El Dorado Chemical Company	Giddings	Lee	TX	1801 West Austin Street	78942
Gavilon	Victoria	Victoria	TX	779 FM 1432	77905
Lindale Fertilizer, Inc.	Lindale	Smith	TX	19265 U.S. Hwy. 69 N.	75771
Scotts Hyponex # 1036	Huntsville	Walker	TX	1284 State Highway 75N	77340
Scotts Hyponex # 1039	Tyler	Smith	TX	13701 State Highway 31 W	75709
Scotts Hyponex #1032	Cresson	Parker	TX	14200 Cleburne Highway	76035
The LETCO Group, LLC dba Living Earth - DALLAS	Dallas	Dallas	TX	1901 California Crossing	75220
The LETCO Group, LLC dba Living Earth - CRAWFORD	Houston	Harris	TX	5625 Crawford Road	75220
The LETCO Group, LLC dba Living Earth - CUTTEN ROAD	Houston	Harris	TX	12202 Cutten Road	77066
The LETCO Group, LLC dba Living Earth - LEAGUE CITY	Dickinson	Galveston	TX	1000 FM 1266	77539
The LETCO Group, LLC dba Living Earth - MISSOURI CITY	Missouri City	Fort Bend	TX	1503 Industrial Drive	77489
The LETCO Group, LLC dba Living Earth - PINELAND	Pineland	Sabine	TX	871 N US 96 North	75968
The LETCO Group, LLC dba Living Earth - RICHMOND	Richmond	Fort Bend	TX	1700 HWY 90A East	77469

APPENDIX B

State Emergency Response Commission (SERC)