

**Testimony of Philip J. Crowley**  
**Senior Fellow and Director of Homeland Security**  
**Center for American Progress**  
**Before the House Subcommittee on Transportation Security and Infrastructure**  
**Protection**  
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I am P.J. Crowley. I direct the homeland security program at the Center for American Progress. I am grateful for the opportunity to reflect on the emerging direction of chemical security regulation and its impact on both the public and private sector. I commend the Committee for coming back to this issue early in the process.

More has been done on this issue in the past 10 months than the previous five years, a sign that we now recognize, if belatedly, that chemical security is our most significant infrastructure-related homeland security vulnerability. The framework that is emerging is a reasonable start. However, more needs to be done.

The threat is real, not hypothetical. The conclusions of the National Intelligence Estimate released last week are sobering. Iraq has become a deadly laboratory and we have seen several attacks where presumed Al Qaeda operatives have used chlorine gas tanker trucks as makeshift weapons. If it is happening there, it can happen here.

Our vulnerability is clear. The previous emphasis on voluntary steps did not work. Some made investments in improved security, but there remain too many open gates, unguarded rail sidings and accessible storage containers. A HAZMAT car moving through a major population center provides everything an urban terrorist would want—a weapon, delivery system, and target—all in one place.

The potential consequences are well-known. A successful attack would produce loss of life and injury that would dwarf what occurred on 9/11.

Where are we now? Where do we need to go from here?

First of all, I support what appears to be a very ambitious top-screen process by DHS. Sound judgments require as much information and as broad a perspective as possible. The mere fact that DHS will evaluate a wide range of chemical manufacturers and users should serve as an important catalyst for change. The last thing we should do is narrow its potential impact.

At a conference a couple of weeks ago, a senior executive for a Fortune 500 company suggested that, while security was important to his corporate leadership today, he could not guarantee it would remain so. Studies by the Center for American Progress echo this reality—actions that improve chemical security are feasible and affordable, but the pace of change is inadequate.

The real issue is what DHS will do based on the information it gathers during the top screen. The purpose of government regulation is to broadly impact both perception and behavior to further a common good. The near-term objective should be to use the interim authority that Congress has granted to achieve the maximum possible impact.

One way for DHS to use its authority to maximum effect is to take a system-wide approach to chemical security, as we do with maritime security, for example. DHS should

assess risk across a facility's supply chain, not just inside its fence line. The highest point of risk may be as a HAZMAT car on a freight line that runs through a major city—like Washington, D.C. DHS oversight can create a dynamic that brings the chemical and rail industries together to figure out how to not just manage risk, but actually reduce it. One option should be adoption of more secure alternatives or IST.

Third, we must ensure that DHS has the capacity to properly implement its new authority. In a conference call in April, DHS officials acknowledged that implementation would be handled by a staff of 33 people at headquarters and 40 field representatives, despite the fact that the DHS top screen could involve several thousand chemical facilities. Recall that the Coast Guard, one of the largest entities within the Department, struggled with implementation of the Maritime Transportation Security Act even when used its Coast Guard Auxiliary to help review port facility security plans. An industry of third-party auditors is expected to help with enactment, compliance, and enforcement. Clear lines must be drawn regarding functions that should be performed by government personnel and those that can reasonably be delegated to contractors. DHS cannot watch this unfold from the bleachers. It must be in the game and directly engaged.

Fourth, we have to maintain a sense of urgency about this issue. We are behind. DHS should set an aggressive implementation timeline. We must also keep in mind that DHS will be undergoing its first presidential transition in late 2008. Congress should request a report, including lessons learned and recommendations for permanent legislation, from the current DHS leadership by the fall of next year to ensure continuity.

Finally, Congress should pass legislation by early 2009 that establishes a permanent regulatory framework. A good model is the comprehensive cross-jurisdictional approach that the House followed with legislation implementing the 9/11 Commission recommendations, passed in the first hours of the current session.

The legislation should broaden DHS' authority, in concert with the EPA, to regulate drinking water and water treatment facilities, which are now exempted. It should combine physical security and transportation policies into a comprehensive strategy. It should establish material or process substitution as a key component of a successful security program. The legislation should make clear that federal regulation is a floor, not a ceiling. There is simply no reason that the federal government should preempt states from taking additional measures that can make specific sites even more secure.

For all stakeholders—the federal and state governments and the chemical and rail industries, given the clear threat, vulnerability, and consequence of a chemical attack in this country, we should be focused on how to do more rather than offering reasons to do less.

I look forward to your questions.