

Senator Robert Menendez
Testimony
Senate Environment and Public Works Committee
Subcommittee on Transportation Safety, Infrastructure Security, and Water Quality
“The Importance of State and Local Authorities in Ensuring Chemical Plant Security”
March 19, 2007

Mr. Chairman,

Thank you for the invitation to appear before you today on this critical issue. I am pleased that we have a strong commitment from our New Jersey congressional delegation to address serious concerns facing our state’s ability to regulate chemical security, and that our senior senator has made this such a forefront issue. I have been proud to join you in your efforts on chemical security and I thank you for holding this hearing.

Today, we are not far from the area that many of us from New Jersey know has been deemed the “most two dangerous miles” in America by the FBI. Here, at Rutgers Law School in Newark, we sit within five miles of the Kuehne plant in South Kearny, in a range that would without question be devastated by an attack at that facility. This is not a new reality. For those of us here, who have long worked to improve the security of the critical infrastructure in our state, these are the scenarios we have worked furiously to avoid. For residents of New Jersey, many who have grown up in the shadows of chemical plants, down the road from port container shipyards, or in the backyards of railroad lines that transport hazardous materials, these are the type of threats have had to grapple with on a daily basis.

In New Jersey, we are acutely aware of the risks we face. Not only did we experience the horror and the impact of September 11th, not only do we live across the river from a site that is a constant reminder of what we are up against, but we have are own risks that are unique to New Jersey. Nowhere else in the country are densely populated areas sandwiched between a multitude of wide-ranging threats, including a major international airport, the largest seaport on the east coast, proximity to the nation’s largest metropolis, and all within a tight cluster of chemical plants. So, when it comes to our security, the bottom line is, no one knows what we need better than our state.

And that is the key distinction over which we are currently locked in a battle with the Department of Homeland Security. The Department's assumption that it can and should preempt chemical security measures at the state level should be, at a minimum, alarming to New Jerseyans. The Department's proposed regulations would not just jeopardize the progress we are making here in New Jersey to ensure our plants are secure and our communities are safe – it would take us backwards. The proposed rules would fail to cover many dangerous chemical facilities unique to the state. They wouldn't push chemical makers to switch to less dangerous technology or materials, something New Jersey has already been doing. The fact is, we are the only state that has acted to enact such strict protections and provide enforceable standards. So, instead of working to come up with regulations that could supersede the progress we have made and preempt future attempts to tighten our regulations, I would hope they would use New Jersey as an example, and build off the steps we have taken.

More than five years after September 11th, the fact that the federal government has not led the way to secure our chemical plants is nothing short of a failure. Instead, our local police departments, our state legislatures, and communities, are leading the charge. If there was anything we learned from September 11th, it was that we will not always be able to pre-conceive the nature of an attack or imagine what could be used as a weapon against us. What was once inconceivable – that commercial planes we use every day could become deadly weapons of mass destruction – changed our world forever. Yet, we refuse to come to terms with a stark reality: the terrorists are creative and are working every day to find a new vulnerability to exploit. At a minimum, we have to be at least as creative as they are.

Meanwhile, we have yet to see any innovative approach from DHS on chemical security. This latest development from the Department is concerning not just because it calls into question the future of New Jersey's chemical security, but because it signals the Department is on the wrong track. Instead of looking ahead to develop creative ways to secure our plants, the Department has put forward a proposal that threatens to undermine our own protections.

We will not, and should not, be at the whim of an agency that has yet to prove it grasps the gravity and the urgency of securing our chemical plants. New Jersey needs the flexibility to enforce its own, tougher standards. I think I speak for all of us on this panel that we will not give up until we ensure that New Jersey's right is upheld and that our security will not be compromised. The stakes are simply too high.