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3 HIF034.180

4 EVALUATING INTERNAL OPERATION AND IMPLEMENTATION OF THE  
5 CHEMICAL FACILITY ANTI-TERRORISM STANDARDS PROGRAM (CFATS) BY  
6 THE DEPARTMENT OF HOMELAND SECURITY  
7 FRIDAY, FEBRUARY 3, 2012  
8 House of Representatives,  
9 Subcommittee on Environment and the Economy  
10 Committee on Energy and Commerce  
11 Washington, D.C.

12 The Subcommittee met, pursuant to call, at 9:33 a.m., in  
13 Room 2123 of the Rayburn House Office Building, Hon. John  
14 Shimkus [Chairman of the Subcommittee] presiding.

15 Members present: Representatives Shimkus, Murphy,  
16 Pitts, Bass, Latta, Harper, Cassidy, Gardner, Barton, Walden,  
17 Green, Butterfield, Barrow, Pallone, Capps, Dingell, Waxman,  
18 and Markey.

19           Staff present: Charlotte Baker, Press Secretary; Anita  
20 Bradley, Senior Policy Advisor to Chairman Emeritus; Jerry  
21 Couri, Professional Staff Member, Environment; Andy  
22 Duberstein, Assistant Press Secretary; Dave McCarthy, Chief  
23 Counsel, Environment and the Economy; Andrew Powaleny,  
24 Assistant Press Secretary; Chris Sarley, Policy Coordinator,  
25 Environment and the Economy; Peter Spencer, Professional  
26 Staff Member, Oversight; Jacqueline Cohen, Democratic  
27 Counsel; Greg Dotson, Democratic Energy and Environment Staff  
28 Director; and Caitlin Haberman, Democratic Policy Analyst.

|  
29           Mr. {Shimkus.} The Subcommittee will now come to order.  
30 We would like to welcome our panel, and I would like to begin  
31 with an opening statement.

32           In my time serving in Congress, I have learned, as often  
33 times is the case, that the initial problem isn't as big a  
34 deal to people as a poor explanation of a problem can be.  
35 Further, cover-ups are the best hope of people who know they  
36 are in the wrong and the worst move for those who get found  
37 out. People who try to hide problems or minimize their  
38 existence usually face a swifter and more ferocious  
39 corrective response from Congress and the public than if they  
40 had simply come clean.

41           It is with great surprise and disappointment that I read  
42 the internal memorandum about the operation of the division  
43 implementing the Chemical Facility Anti-Terrorism Standards  
44 Act (CFATS) and its program at the Department of Homeland  
45 Security.

46           I, for one, have historically been a strong supporter of  
47 this program. I believe the statute is sound and the  
48 regulations reasonable. In fact, the Anderson Memo calls for  
49 only one legislative change: long-term extension of the  
50 program.

51           The CFATS program was not meant to be another EPA-style

52 program designed to fine people or a bureaucratic back door  
53 to over regulate chemicals. CFATS was meant to be a  
54 collaborative effort to secure "high risk" facilities with  
55 facility appropriate measures based upon the risks presented.  
56 Congressional intent was that cooperation would get  
57 facilities into compliance; we did not intend to increase  
58 Federal revenues through enforcement actions. I hope DHS is  
59 not looking to abandon our original intent.

60 Last March, I acknowledged CFATS was a work in progress,  
61 but I felt security was being enhanced and significant public  
62 and private investments were being made to implement the  
63 program. I still believe security at facilities with  
64 chemicals is much better today than before Congress gave DHS  
65 this first ever regulatory authority. Unfortunately, my  
66 confidence in DHS and the substantial amount Congress has  
67 given to it is not nearly as strong.

68 Someone compared CFATS to an unmanned police car  
69 positioned at the side of the highway. It wards off  
70 speeders, but not much else. We need to be reassured that  
71 DHS's CFATS program has a plan and intends to focus solely on  
72 correcting its internal problems, implementing the CFATS  
73 program as drafted in law, and not suggesting the CFATS  
74 program should take on any other additional responsibilities.  
75 I mean, they better first do the responsibilities designed

76 under law than to take on additional ones, such as drinking  
77 water or IST issues.

78 CFATS is an appropriate component of this Subcommittee's  
79 jurisdiction, and the days of matador oversight of this  
80 program are over. I urge all members of this Committee to  
81 join me in that effort.

82 As a fellow U.S. military officer, I have tremendous  
83 respect for Undersecretary Beers' service to this country.  
84 That said, he and I have been taught that there are only  
85 three acceptable responses when questioned by an officer:  
86 ``yes, sir;'' ``no, sir;'' and ``no excuse, sir;'' or ``sir,  
87 I don't understand.'' Four. I expect no less than that  
88 today.

89 I want to welcome Undersecretary Beers and Deputy  
90 Director Wulf, who along with Director Penny Anderson showed  
91 great courage with the frankness of the internal memo. Mr.  
92 Wulf, both of you should know that the Committee takes very  
93 seriously any evidence of undue pressure, influence,  
94 intimidation or retaliation whatsoever, because of your  
95 testimony today while we continue to investigate these  
96 important issues. In other words, we really do appreciate  
97 this internal memo. I think it has been very, very helpful  
98 and we want to ensure those who came forward are not  
99 penalized for that. Please let my Committee Staff know right

100 away if you have any concerns. Retaliation and intimidation  
101 of Congressional witnesses is illegal and will not be  
102 tolerated.

103         Mr. Beers, I trust you will ensure that you are in  
104 agreement with me that no retaliation should be tolerated,  
105 and we will hold you and any other White House officials  
106 accountable to that.

107         [The prepared statement of Mr. Shimkus follows:]

108 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
109           Mr. {Shimkus.} With that, I now yield to the  
110 distinguished ranking member from Texas, Mr. Green, for 5  
111 minutes for the purpose of offering his opening statement.

112           Mr. {Green.} Thank you, Mr. Chairman, for holding the  
113 hearing today.

114           Undersecretary Beers requested an internal memo on the  
115 status of the CFATS program and recommendations for  
116 improvement in the summer of 2011. This memo was delivered  
117 to Mr. Beers in November of 2011, and it leaked to the media  
118 and detailed in a story on December the 23rd, 2011. I must  
119 say, when I read the internal memo, I was surprised and  
120 dismayed by the level of dysfunction and the lack of progress  
121 with in the CFATS program. I am also amazed that during this  
122 time, the Subcommittee discussed CFATS program this year  
123 during our work on H.R. 908, the Full Invitation of the  
124 Chemical Facility Anti-Terrorism Standards Act. We were  
125 simply unaware of the severity of the situation within DHS  
126 and the CFATS program. The portion of the internal memo as  
127 related to challenges to implementing these priorities--I  
128 won't go into all the details, but it seems to me the root of  
129 the problem lies with the fact that DHS has hired people that  
130 are unqualified for their positions and was prohibited from  
131 hiring appropriate and qualified individuals, and they had no

132 training program to help those folks who were unqualified.  
133 These inappropriate hires, along with a lack of proper  
134 training of the employees, has forced DHS to instead of  
135 reassigning inappropriate employees, rely on contractors to  
136 do work that should be done by the Agency.

137         The internal memo outlines several priorities of the  
138 program, including the process for the review of the site's  
139 security plans. Unfortunately, at the time of the memo, DHS  
140 had received 4,200 site security plans and not a single plan  
141 was approved.

142         I know that DHS is working to clear up all the Tier 1  
143 facilities, but it has been 6 years since the program was  
144 enacted and we haven't even cleared the low level facilities.  
145 They divine how to conduct compliance inspections and  
146 preparing staff to do the inspections. To date, DHS has  
147 conducted not a single compliance inspection. Not that any  
148 of my industries that I represent along the Houston Ship  
149 channel are looking for an inspector to come knocking on the  
150 door, but they are--they have been working to comply and they  
151 have made substantial private investment. In some cases, we  
152 actually were able to see grants through DHS for Homeland  
153 Security protection and our plant protection.

154         But I must say that this proposal reinforces problems  
155 identified in the internal memo, which mostly revolve around

156 the fact that DHS is constantly making things more  
157 complicated than they need to be, and not relying on existing  
158 systems, such as the TWIC card, to work. What I am speaking  
159 about is developing the personnel assurity programs. DHS  
160 transmitted a new personnel assurity program to OMB, and I  
161 have some concerns about this problem--this proposal, and  
162 will discuss that later. One, because at earlier hearings in  
163 this Subcommittee, I felt like I had some assurances that the  
164 TWIC card would be used as a standard ID for someone working  
165 whether it be in waterside or land-based industry under  
166 CFATS. My concern is additional personal security programs  
167 will make the duplication of the CFATS. So that is one thing  
168 our Committee needs to look at.

169         Last year at the Subcommittee hearing, I asked  
170 Undersecretary Beers if the Department intended to integrate  
171 TWIC into the personnel assurity program and I received a  
172 positive response, and yet, the proposal does not make clear  
173 that TWIC is an acceptable background check. Quite frankly,  
174 now is not the time for DHS to go reinventing the wheel when  
175 implementing the personnel assurity program. The memo also  
176 includes the Agency's planned response, including a plan of  
177 action for 85 items.

178         I look forward to hearing from the witnesses today to  
179 confirm, but I believe several of the action items haven't

180 initiated or completed. To say the least, I am disheartened  
181 by the lack of progress in the CFATS program, which seems to  
182 stem directly from lack of appropriately assigned and trained  
183 employees and serious lack of moral in the program, which  
184 seems to stem from the fact that no one constantly knows if  
185 the program will be reauthorized by Congress. Chemical  
186 facility security is surely important to the protection of  
187 our public health, and particularly in the district I  
188 represent. I represent the Houston ship channel, which is  
189 the heart of the PETRA chemical complex that stretches from  
190 the Texas Gulf Coast and produces more products essential to  
191 modern life. It is also the largest PETRA chemical complex  
192 in the country. I can't stress how important the success of  
193 CFATS is to my constituents who are the employees and live in  
194 the communities that surround these facilities. They deserve  
195 the best security standards possible to prevent the act of  
196 terrorism on U.S. soil.

197       Our role today is to listen to our witnesses and get a  
198 better understanding of the problem, and see how Congress can  
199 assist. The Agency recommends several legislative fixes, and  
200 I am hoping we have--we on the Committee can work together  
201 and find a compromise on how to assist DHS, after hearing  
202 their suggestions and hearing from our stakeholders. The  
203 program is too important to our national security to be this

204 much in distress.

205 Mr. Chairman, thank you for the time and I yield back.

206 [The prepared statement of Mr. Green follows:]

207 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
208 Mr. {Shimkus.} Gentleman yields back his time.

209 The chair now looks to the--to my colleagues on the  
210 right, if anyone would like time for an opening statement.  
211 Hearing none, the chair would like to recognize the ranking  
212 member of the Full Committee, Mr. Waxman, for 5 minutes.

213 Mr. {Waxman.} Thank you, Mr. Chairman, for calling on  
214 me, and more importantly, for holding this hearing to examine  
215 the implementation by the Department of Homeland Security of  
216 the Chemical Facility Anti-Terrorism program or standards.  
217 The letters have been made into a shorthand called CFATS.

218 This program is intended to address the threat of  
219 terrorism to the Nation's chemical facilities. We will hear  
220 testimony about its successes, but we are also going to hear  
221 about the program's many challenges.

222 The CFATS program was established in 2006. Now, almost  
223 6 years later, it is clear that implementation has stumbled  
224 because of serious challenges and limitations in the program.  
225 Undersecretary Beers will testify about a detailed report  
226 that he received in November of last year. This report takes  
227 the form of a memorandum, and DHS also provided it to the  
228 Committee. It paints a stark picture of this program.  
229 According to this memorandum, the program has been plagued by  
230 personnel issues, budget issues, and statutory limitations.

231 The challenges described in the memo are serious and they  
232 must be addressed.

233 Department of Homeland Security has a plan to address  
234 the identified problems, and that plan deserves our careful  
235 scrutiny. This is a crucially important effort and we must  
236 get it right.

237 In some ways, the odds have always been stacked against  
238 this program. This program was created by a provision not  
239 authorized by this Committee, but a rider on an  
240 appropriations bill. The program was not established with  
241 carefully crafted legislation that defined its mission and  
242 forged a vision for its implementation. It did not have  
243 adequate enforcement authorities, enforceable deadlines, or  
244 clear procedures for approving or disapproving site security  
245 plans. It never even had an authorization. And in some  
246 ways, it is fortunate that we have learned of these problems  
247 when we have, because this Committee can now return to this  
248 issue and do the hard work of understanding where the  
249 problems are and determining how to fix them. It is stunning  
250 to realize that this Committee of Congress, which has  
251 jurisdiction over this issue, reported legislation that  
252 simply rubber-stamped the current program for 7 additional  
253 years. We didn't really know how the program was working.  
254 We didn't give it any guidance. We didn't do our job, and

255 that legislation needs to be revisited in light of this new  
256 information.

257 I look forward to the testimony of Undersecretary Beers  
258 and learning more about the Department's efforts to get this  
259 program on track. The Department can take constructive  
260 actions, but it can only do so much. They cannot address  
261 shortcomings in the underlying statute. That task falls to  
262 us as the Committee of jurisdiction and the Committee that  
263 should have been involved in crafting the original provision.  
264 That is a responsibility we must take very seriously.

265 I hope today's hearing will be part of an ongoing effort  
266 by this Committee to address these serious challenges facing  
267 our chemical facility security program. This is an important  
268 issue. It deserves our attention.

269 In the last Congress, when I was chairman of the  
270 Committee, we were working on a bipartisan basis. We brought  
271 in all the stakeholders to craft legislation to authorize the  
272 program. It was a major undertaking. We brought in  
273 industry, we brought in labor, we brought in everybody else  
274 that had a concern about this issue. We were consulting  
275 everyone throughout the process. That is the kind of type of  
276 undertaking we should begin anew, because what we saw this  
277 last year was not a furtherance of examination of the  
278 program, but simply saying oh, it is already in effect for 6

279 years. We will continue it down the road and we hope it will  
280 do a good job. We have got more work to do than just sending  
281 our best wishes for the long period of authorization without  
282 doing a thorough examination to figure out how we can make  
283 this program work the way we intended it to and the way it  
284 must to protect the security of the American people.

285 Thank you, Mr. Chairman. I yield back the time.

286 [The prepared statement of Mr. Waxman follows:]

287 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
288           Mr. {Shimkus.} And I thank you, Mr. Waxman, for your  
289 statement.

290           I would like to yield, with the permission of the  
291 Committee, to Mr. Barton for 5 minutes, but before I do, I  
292 would just like to say, based upon my opening statement, I  
293 think Mr. Waxman's response was pretty much what I said.  
294 When problems are hid, you are going to face a swifter and  
295 more ferocious corrective response by Congress, and that is  
296 really part of that concern. I would also say, we did have a  
297 hearing prior to the markup of that bill where Department of  
298 Homeland Security said things were going well. Obviously--  
299 and industry. And obviously, that is not the case either.

300           So with that, I would like to yield 5 minutes to the  
301 Chairman Emeritus, Mr. Barton.

302           Mr. {Barton.} Thank you, Mr. Chairman. I am not sure I  
303 will take that time, and if I don't, I am happy to yield it  
304 to anybody else that you wish it to be yielded to. I do  
305 appreciate you for holding this hearing, you and Mr. Green,  
306 on the Chemical Facility Anti-Terrorism Standard Program,  
307 which has the acronym CFATS.

308           Back in March of last year, we discussed the concerns  
309 and dissatisfaction that the program had not met its goals.  
310 This program was set up to serve and protect the companies

311 and the general public against the potential threat of  
312 terrorist activity. I was chairman of this Committee back in  
313 the 109th Congress, and one of the authors of the Chemical  
314 Facility Anti-Terrorism Standard Act that was included as  
315 Section 550 of the Department of Homeland Security's  
316 appropriation act for 2007.

317       The intent was very clear. It was for the safety of the  
318 Nation's businesses and its citizens against the threat of  
319 terrorism in these types of facilities. I understand that  
320 the program has got many facets and that the orchestration of  
321 a thorough implementation plan at an expedited pace could  
322 have challenges. What I don't seem to understand is how the  
323 Undersecretary could be so unaware for so long of so many of  
324 the internal problems. Why have employees been hired in  
325 managerial positions who don't have the skill set to fulfill  
326 their jobs? Why has it taken 3 years to start addressing the  
327 internal managerial staff training and implementation  
328 problems? The industry has invested billions of dollars to  
329 upgrade security to meet the CFATS requirements. This is  
330 beyond disappointing. You have totally mismanaged this  
331 program, Mr. Undersecretary. We have spent about \$90 million  
332 a year, and we have no well-developed direction and no plan.

333       It is my understanding that you have received over 4,200  
334 site security plans to date, but not even one has been

335 approved. Now, we have our differences on this Committee and  
336 this Subcommittee, and there were differences between the  
337 Democrats and Republicans when this bill was put into law,  
338 but there is nobody, no one, regardless of political  
339 affiliation that says if you receive 4,200 site security  
340 plans, you don't even get one approved? Not one? I mean,  
341 when I read that a couple of days ago, I was just astounded.  
342 Your own national protection and programs directorate have  
343 prevented you from hiring personnel with the experience and  
344 qualifications to review these programs and to conduct the  
345 compliance inspection. You have allowed the hiring of  
346 inappropriate staff and have not taken control of your own  
347 infrastructure security compliance division to fix this  
348 problem, and it has been 3 years. The administration of the  
349 CFATS program must be fixed immediately to provide stability  
350 to the program and regulatory assurance to thousands of  
351 covered facilities, many of whom are members of the Society  
352 of Chemical Manufacturing and Affiliates Alliance, SOCMA.  
353 They have invested heavily in security measures over the past  
354 5 years to attempt to be in compliance.

355 I have to say one good thing. Your office has been open  
356 and candid and transparent in providing the internal  
357 memoranda for Committee staff to review. That is one  
358 positive checkmark in your column. Having said that,

359 everything else is in the negative and everything else is  
360 black. It is time to get this thing done. If you can't do  
361 it, resign. If there are things that need to be fixed, tell  
362 us and we will try to do it. I think Mr. Waxman's opening  
363 statement was very good, as was Mr. Shimkus's, which I wasn't  
364 here to hear, but I did read.

365 With that, Mr. Chairman, I have got a minute left if you  
366 want me to yield it.

367 [The prepared statement of Mr. Barton follows:]

368 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
369           Mr. {Shimkus.} Let me reclaim that time and look to  
370 Chairman Emeritus Dingell to see if he would like to use the  
371 remainder of your time.

372           Mr. {Dingell.} Most briefly, Mr. Chairman. Thank you.

373           I want to welcome our two witnesses and our panels  
374 today, Secretary Beers and Mr. Wulf, and I want to commend  
375 you for having this hearing. I want to note that it is being  
376 conducted in a bipartisan fashion, something which merits  
377 high praise around this place. Having said that, I look  
378 forward to the results of the hearing today. I would note  
379 that I have a number of these facilities in my district, and  
380 when they let go, as one did not long back, it causes lots of  
381 excitement and can cause significant numbers of casualties  
382 and enormous hardships on the communities in which the  
383 facility might exist. So your labors and your leadership,  
384 Mr. Chairman, are much appreciated and I look forward to the  
385 hearing going forward in the spirit in which it has begun,  
386 and in the hopes that we will be able to see to it that we  
387 get these programs of widely differing character under  
388 different agencies in the point where they are pulling  
389 together and working together to accomplish the great purpose  
390 of seeing to it that we have safety and security for the  
391 country.

392 Thank you, Mr. Chairman.

393 [The prepared statement of Mr. Dingell follows:]

394 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
395 Mr. {Shimkus.} Thank you, Mr. Dingell.

396 With that, the chair calls forward today's witnesses,  
397 the Honorable Rand Beers, the Undersecretary of National  
398 Protection and Programs Directorate at the Department of  
399 Homeland Security, and Mr. David M. Wulf, who is Deputy  
400 Director of Infrastructure Security Compliance Division,  
401 Office of Infrastructure Protection, National Protection and  
402 Programs Directorate at the U.S. Department of Homeland  
403 Security.

404 As you know--excuse me. As you know, the testimony that  
405 you are about to give is subject to Title 18, Section 1001 of  
406 the United States Code. When holding an investigative  
407 hearing, this Committee has the practice of taking testimony  
408 under oath. Do you have any objection to testifying under  
409 oath?

410 The chair then advises you that under the rules of the  
411 House and the rules of the Committee, you are entitled to be  
412 advised by counsel. Do you desire to be advised by counsel  
413 during your testimony today?

414 In that case, if you would please rise and raise your  
415 right hand, I will swear you in.

416 [Witnesses sworn]

417 Mr. {Shimkus.} You may now be seated, and it is my

418 understanding that the only opening statement will be given  
419 by you, Mr. Secretary, and Mr. Wulf is here to answer  
420 questions with regard to the internal? They are both going  
421 to give it, okay. Change in direction from last night, so  
422 Mr. Beers, if you would then--you are recognized for 5  
423 minutes to give your opening statement.

|  
424 ^TESTIMONY OF THE HONORABLE RAND BEERS, UNDERSECRETARY,  
425 NATIONAL PROTECTION AND PROGRAMS DIRECTORATE, U.S. DEPARTMENT  
426 OF HOMELAND SECURITY; AND DAVID M. WULF, DEPUTY DIRECTOR,  
427 INFRASTRUCTURE SECURITY COMPLIANCE DIVISION, OFFICE OF  
428 INFRASTRUCTURE PROTECTION, NATIONAL PROTECTION AND PROGRAMS  
429 DIRECTORATE, U.S. DEPARTMENT OF HOMELAND SECURITY

|  
430 ^TESTIMONY OF RAND BEERS

431 } Mr. {Beers.} Thank you, Chairman Shimkus and Ranking  
432 Member Green, and distinguished members of this Committee. I  
433 am pleased to be here before you today to discuss the  
434 Department of Homeland Security's efforts to regulate the  
435 security of high-risk chemical facilities under the Chemical  
436 Facility Anti-Terrorism Standards Act.

437 As you all are aware, the Department's current statutory  
438 authority to implement CFATS came about, as mentioned  
439 earlier, in Section 550 of the fiscal year 2007  
440 appropriations act, and it has been amended recently to  
441 extend that authorization until October 4 of 2012. I believe  
442 strongly in the CFATS program, and I welcome the opportunity  
443 to continue to work with this Committee, with the Congress,  
444 and levels of government and the private sector to further

445 improve this vital national security program.

446         Since the inception of CFATS, we have issued a basic  
447 rule, we have defined chemicals of interest, we have jointly  
448 conducted two surveys with industry to define the facilities  
449 that have a substantial enough quantity of chemicals that  
450 caused them to be determined could be at high risk. After  
451 receiving the initial submissions from more than 40,000  
452 facilities that might potentially be under the program, we  
453 have narrowed that down now to about 4,500 covered  
454 facilities. And in the process of doing that, more than  
455 1,600 facilities which would have fallen under the program  
456 and 700 facilities--1,600 facilities have totally removed  
457 their chemicals of interest and 700 have reduced them to the  
458 point that they are no longer under the program. So I think  
459 we can say that these actions represent some of the successes  
460 have happened with respect to this program and the adoption  
461 of the regulation. So I think we can say that there has been  
462 a reduction in risk throughout the Nation, and that the  
463 Nation has correspondingly been made more secure.

464         The Department has done much work over the past few  
465 years to establish and implement this unprecedented program,  
466 but as the report suggests and as we acknowledge, CFATS still  
467 has a number of challenges to address. In recognition of  
468 this and upon the arrival of Penny Anderson and David Wulf, I

469 asked both of them to provide for my consideration the views  
470 on the successes and challenges of the program. Candid,  
471 honest assessments and challenges to the program. These  
472 kinds of assessments are extraordinarily valuable tools that  
473 we need in order to evaluate progress and to determine where  
474 improvement is needed. Furthermore, in an unprecedented  
475 program like CFATS, course corrections are to be expected and  
476 ongoing decisions will need to be made.

477         In late November of 2011, a detailed report was hand  
478 delivered to me. It is important to note that in addition to  
479 the referenced challenges, the report also proposed for my  
480 consideration a charted path that will address those  
481 challenges. Specifically, the report included an action plan  
482 with detailed recommendations for addressing the issues  
483 identified, and we have shared those recommendations with  
484 this Committee. Since my receipt of this report, each of the  
485 nearly 100 items in the action plan have been assigned to a  
486 member of the program's senior leadership team and I have  
487 already seen progress on these issues. For accountability  
488 planning tracking purposes, the members of the leadership  
489 team have been asked to provide milestones and a schedule for  
490 completion of each task assigned to them. The program's  
491 acting chief of staff will monitor that progress. In  
492 addition, program leadership now meets with my principal

493 deputy undersecretary, Suzanne Spalding, at least once a week  
494 to provide status updates to this program.

495         Mr. Chairman, let me assure you, there will be no  
496 retaliation to the people who wrote this report who have  
497 served me and you and this Nation by frankly telling us where  
498 we had challenges and what we need to do about it, nor will I  
499 tolerate any retaliation between me and the office director  
500 and her deputy. You have my pledge on that and I expect to  
501 be held accountable to that issue.

502         The Department does take its responsibilities for CFATS  
503 and the Nation's security seriously, and we are going to move  
504 forward both quickly and strategically to address the  
505 challenges before us. Again, we believe that CFATS is making  
506 the Nation safer and we are dedicated to its success. We  
507 will make the necessary course directions to improve the  
508 program to protect the Nation.

509         Thank you for holding this important hearing, and I will  
510 be happy to answer any of your questions.

511         [The prepared statement of Mr. Beers follows:]

512         \*\*\*\*\* INSERT 1 \*\*\*\*\*

|

513 Mr. {Shimkus.} Thank you.

514 Now I would like to recognize Mr. Wulf for 5 minutes.

515 There might be a button. There you go.

|  
516 ^TESTIMONY OF DAVID M. WULF

517 } Mr. {Wulf.} I would also like to thank the members of  
518 the Committee for the opportunity to testify before you  
519 today.

520 In July of last year, Penny Anderson and I assumed our  
521 positions as deputy and deputy--director and deputy director,  
522 respectively, of the Infrastructure Security Compliance  
523 Division, or ISCD, the division within NPPD that manages the  
524 CFATS program. In response to the Undersecretary's request  
525 that we provide a fresh perspective on the program, Penny and  
526 I produced an internal assessment of what we see to be the  
527 essential priorities, challenges, and action items necessary  
528 to the success of the program. Both Penny and I feel  
529 strongly that while the challenges we have identified are not  
530 insignificant, they also are not insurmountable. I welcome  
531 the opportunity to answer any questions you might have on the  
532 background and context behind the challenges we cited, but I  
533 would also like to echo the Undersecretary's focus on the  
534 action items.

535 We have already made tangible progress in addressing  
536 some of the challenges in the report. One issue identified  
537 in the report is ISCD's ability to complete facility's site

538 security plans--site security plan reviews in a consistent,  
539 reasonable, and timely fashion. To help overcome past  
540 difficulties in meeting this challenge, ISCD is utilizing an  
541 interim review process that allows the Department to  
542 authorize Tier 1 facility plans in a more effective and  
543 timely manner. Using this interim approach, over the past  
544 few months ISCD has been able to more than quadruple the  
545 number of conditionally authorized plans. Specifically,  
546 throughout all of 2010 and through November 28, 2011, we had  
547 conditionally authorized 10 site security plans. In the  
548 subsequent 2 months leading up to January 23 of this year, we  
549 conditionally authorized an additional 43 Tier 1 site  
550 security plans. ISCD expects to complete our review of all  
551 Tier 1 site security plans and to notify the facility's of  
552 ISCD's decisions on those plans within the coming months.  
553 ISCD also expects to begin issuing authorizations to Tier 2  
554 facilities during fiscal year 2012. While this interim  
555 review process is underway, we are also working on an even  
556 more efficient long-term approach to site security plan  
557 reviews for facilities in Tiers 2, 3, and 4.

558         This is one example of how we have identified  
559 programmatic issues such as the lack of an efficient site  
560 security review process and found workable solutions to  
561 ensure near-term improvements and progress, as well as the

562 long-term success of CFATS. While not every action item will  
563 have a near-term or simple solution, what I can tell you is  
564 that I am very proud to represent the hardworking men and  
565 women of the CFATS program and I am confident in our ability  
566 to address these challenges together.

567 I welcome your questions and look forward to working  
568 together to further the success of this important national  
569 security program.

570 [The prepared statement of Mr. Wulf follows:]

571 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
572 Mr. {Shimkus.} Thank you, Mr. Wulf. What I would ask--  
573 I am looking also at the staff, I don't think we have a copy  
574 of that and some members may want to refer to that, so if I  
575 can get staff to grab a copy of that and get it copied so  
576 that we can distribute it, because we did have the  
577 Undersecretary's opening testimony for the record.

578 With that, I would like to recognize myself for 5  
579 minutes to begin questions. I am going to bounce around a  
580 little bit, but the first one, we are in a very fiscally  
581 constrained environment, Undersecretary, as you understand,  
582 and with the challenges that are going to occur to our  
583 military, 45 billion to 90 billion a year that could be cut,  
584 we at the national level are going to be looking for  
585 everywhere we can go to try to adjust dollars so that we can  
586 meet the needs of the primary role of some of the Federal  
587 Government's operations.

588 So let me start with just this whole--this budget type  
589 question. The Anderson-Wulf memo states on page 15 that ISCD  
590 lacks a system for tracking the usage of consumable supplies  
591 which creates an environment for fraud, waste, and abuse.  
592 Our concern is this not an IG or GAO saying that, this is a  
593 program manager describing their own program. How can a  
594 member of Congress choose to fund a program that is so self-

595 described?

596           Mr. {Beers.} Let me begin the answer to that question  
597 and turn to my colleague here. The report notes these  
598 deficiencies in the program. We had asked for a management  
599 review of the program in December of last year. That program  
600 review was completed while this particular report was being  
601 prepared and was incorporated into the report, and the  
602 comments that you see are part of an effort by management at  
603 the most senior level--that means me--asking to make sure  
604 that, in fact, this program was working properly.

605           I want to turn to Mr. Wulf now to talk about what we are  
606 going to do about these findings.

607           Mr. {Wulf.} I would just add that, you know, we did not  
608 find any actual indication of fraud, waste, or abuse with  
609 regard to the purchase and tracking of supplies. We found  
610 that a system was not in place, and it is something we have  
611 already moved forward to address. We--

612           Mr. {Shimkus.} Let me reclaim my time, and I--we know  
613 there are action items. We are going to move forward. But  
614 that is obviously a major concern that the--that we are going  
615 to have to deal with, not just the Committee ourselves but  
616 our colleagues in this whole debate. So we will go ahead and  
617 file this. I do appreciate the fact that you in July brought  
618 Ms. Anderson and Mr. Wulf on board.

619 I guess a question would be since you have been on  
620 board, Undersecretary, since June 19, 2009. What took you so  
621 long to have an overview of this program?

622 Mr. {Beers.} The initial indications of concern  
623 surfaced in the following year. Prior to that, I had  
624 definitely had the sense that the program was an evolving  
625 program, that changes were being made, but they were being  
626 made in due course with appropriate diligence by the program  
627 managers. In July of 2010, I discovered a discrepancy in the  
628 way that people were being paid within the program, and moved  
629 at that point to correct it. In the fall of 2010, we posted  
630 an announcement to--

631 Mr. {Shimkus.} And let me--not to be disrespectful,  
632 just to move to another question, because the timeline is  
633 kind of important for us because you testified before us  
634 March 31 of 2011 and statements were made. Again, that is--  
635 my comments back to Mr. Waxman was, you know, we were given a  
636 pretty good signal that things were going well. There were  
637 small problems but nothing major.

638 One of the questions I asked you was about the high risk  
639 tiering process and the reasons for a drop in the number of  
640 those facilities tiered. This is--at that time, I was not  
641 aware of any mis-tiering problem. Were you?

642 Mr. {Beers.} No, I was not, sir.

643 Mr. {Shimkus.} And that is--if not, when did you first  
644 learn about the tiering problem?

645 Mr. {Beers.} I first learned about the tiering problem  
646 in the beginning of June of this last year.

647 Mr. {Shimkus.} Was it the earliest time, to your  
648 knowledge, that DHS personnel discovered that some facilities  
649 have been mis-tiered was the month that you had given? Was  
650 there--in other words, were there other folks within the  
651 Department that knew that this tiering process was all messed  
652 up?

653 Mr. {Beers.} There was an indication in May of 2010  
654 that there might be a problem with respect to tiering. The  
655 individuals within the office looked at the problem and felt  
656 that they had resolved the problem and informed people up the  
657 chain of command. I did not know that there was a problem at  
658 that point in time. I was not informed of that, and the  
659 program went forward from there.

660 In 2011, with a new acting director of the office, he  
661 asked for a review of the program and he discovered that--or  
662 rediscovered this discrepancy issue and asked for a much  
663 deeper dive into that. That deeper dive is what resulted in  
664 the problem being identified to the assistant secretary and  
665 immediately to me. And that was in June of 2011.

666 Mr. {Shimkus.} And my time is expired. Just so we can

667 move forward, we are going to continue--obviously we are  
668 going to have to continue to do oversight over this process  
669 and I hope, if there is any relevant activities that folks  
670 within--under your office that have not been doing their job,  
671 that through the legal process of removal that some people  
672 can be held accountable, because I do think there are  
673 probably--if there wasn't waste, fraud and abuse, there may  
674 have been. There may be theft and that would be helpful to  
675 understand that the government can correct bad actors.

676 Now I would like to recognize Mr. Green for 5 minutes.

677 Mr. {Green.} Thank you, Mr. Chairman. Secretary Beers,  
678 thank you for being here.

679 As I said in my opening statement, it seems like the  
680 problems with--for the last 6 years is the inability to hire  
681 quality individuals and the lack of morale. I think some of  
682 that comes from having year to year reauthorization. Mr.  
683 Wulf said in his statement, but I apologize, none of us have  
684 a copy of your statement, Mr. Wulf, what has been done since  
685 the memo was released or since mid-December or since it was  
686 released on the 23rd, there has been some action that has  
687 been done that we haven't heard about except this morning.

688 Mr. Beers, do you know Mr. Wulf's statement about some  
689 of the things that have been done in the last month or so?

690 Mr. {Beers.} Yes, I do, sir. I want to start this

691 response, but I also want Mr. Wulf to respond as well. We  
692 have looked at the training issues that were identified in  
693 the report. We have removed the impediment for hiring  
694 training officers within the program so that that can go  
695 forward, and we have begun to look at the training  
696 requirements in order to take the people who were hired who  
697 may not have adequate training for that position that they  
698 are in. But lastly, the other thing that we need to focus on  
699 here is we have to define what it is we, in fact, expect from  
700 our inspectors when they are doing the final site  
701 authorization inspections and when they are doing compliance  
702 inspections. David?

703       Mr. {Wulf.} I would add that, you know, we are very  
704 excited about the progress we have made in the past couple of  
705 months on the review of the Tier 1 site security plans. I  
706 believe the progress we have made in that regard and the  
707 statistics I mentioned are included in the written testimony  
708 as well.

709       We have a very aggressive plan to move forward with the  
710 review of the site security plans and to conduct outreach and  
711 to get into the reviews of the lower--

712       Mr. {Green.} Okay. I know you gave some hard numbers.  
713 I only have 5 minutes; in fact, it is down to 3 now almost.

714       You gave some hard numbers on what has been done in the

715 last 30 days. Could you reiterate that?

716 Mr. {Wulf.} Absolutely. We started 2 months ago with  
717 10 Tier 1 site security plans that had been authorized. We  
718 are now at 53.

719 Mr. {Green.} Okay, and that is the only hard number  
720 that you gave in your testimony? Like I said, we don't have  
721 your testimony and it is hard to go over something outside--

722 Mr. {Wulf.} Absolutely, absolutely. So we have done--  
723 we have authorized 43 or conditionally authorized 43  
724 additional Tier 1 site security plans.

725 Mr. {Green.} Okay, and--

726 Mr. {Beers.} All those were taken from my testimony.  
727 Those facts are all in my written testimony.

728 Mr. {Green.} Okay, but was that based on actually site  
729 visits or is that from what has been provided by the  
730 companies?

731 Mr. {Wulf.} That is based on what has been provided by  
732 the companies, in some instances following compliance  
733 assistance visits conducted on the sites by our chemical  
734 security.

735 Mr. {Green.} Okay, let me get to another issue I have  
736 talked about. I mentioned about the personal security  
737 program which was submitted on June 14 of last year by OMB  
738 and listed as the third priority in the DHS memo. I am aware

739 that we need to screen individuals against the terrorist  
740 screening database. As the proposed personnel security  
741 program would require each facility to submit background  
742 information on all existing personnel within 60 or 90 days  
743 upon implementation for existing personnel, any new  
744 unescorted individuals will not be classified as personnel  
745 will need, if they have a TWIC card, their information  
746 submitted to DHS within 24 or 48 hours.

747 In the real world, we went through a big roll out of the  
748 TWIC card a few years ago, and it was not as smooth as we  
749 would have liked. In fact, I think there are 260,000 TWIC  
750 cards issued in our district in the port of Houston. And so  
751 when you are going to overlay it with a personal security  
752 requirement, what did the TWIC card not cover that you think  
753 we need now under the personnel assurance? Because I am  
754 concerned about reinventing the wheel, even though like I  
755 said, it wasn't--the wheel didn't run too well earlier, but  
756 it is running pretty well now.

757 Mr. {Beers.} Sir, let me clear up some perhaps  
758 misunderstanding of the way we intend to use the TWIC card.  
759 We will accept the TWIC card as a proof of a background  
760 check. We would like to know the names of the individuals  
761 who come onto the site who have TWIC cards in order to  
762 determine that the TWIC card is, in fact, still valid, but

763 anybody who possesses a TWIC card, that will be the standard-  
764 -that will be an acceptable standard, and anybody who might  
765 have access to getting a TWIC card can do so to use that in  
766 lieu of any other background check.

767 Mr. {Green.} Okay. I want to make sure that is what  
768 was submitted, because I have some concern about that.  
769 Sometimes what we hear and what even passes in law doesn't  
770 get to the final stage. Was that submitted that the TWIC  
771 card would be the ID when submitted to OMB?

772 Mr. {Beers.} David?

773 Mr. {Wulf.} The leveraging of TWIC and other existing  
774 credentials is part of the--was part of the information  
775 collected and was submitted to OMB.

776 Mr. {Green.} Well, I would feel comfortable seeing in  
777 writing what you said, Secretary Beers, about the TWIC card  
778 because again, we have thousands literally, I don't know how  
779 many hundreds of thousands around the country that we don't  
780 want to also have a breakdown in redoing something. And I  
781 know working with the industry and the bargaining units and  
782 everything else is something that ought to be important.

783 And I know I am over my time, Mr. Chairman. I have a  
784 number of other questions I would like to submit if we don't  
785 have time today.

786 Mr. {Shimkus.} Without objection, I thank my colleague

787 and I would like now to recognize Mr. Murphy from  
788 Pennsylvania, the vice chairman of the Committee, for 5  
789 minutes.

790 Mr. {Murphy.} Thank you, Mr. Chairman.

791 Secretary Beers, the memo states that CFATS must build  
792 on--in its ability to critically evaluate itself and conduct  
793 mid- and long-range planning. So to that end, let me ask for  
794 your candid responses. Why was this not done until now?

795 Mr. {Beers.} I beg your pardon? By whom, sir?

796 Mr. {Murphy.} Why was some of this not done until now  
797 in terms of really evaluating itself? Was there anything  
798 that stood in the way of delaying this kind of self-  
799 evaluation?

800 Mr. {Beers.} No, sir, there wasn't anything that  
801 prevented it. As I indicated to the--earlier, we have had  
802 several reviews. This is the most extensive one which we  
803 have asked for, but we have had several reviews over the  
804 course of the program since I became the undersecretary.

805 Mr. {Murphy.} Let me--just for clarification, who sets  
806 the CFATS goals and objectives for each year? Who is  
807 responsible for that?

808 Mr. {Beers.} I am sorry, sir?

809 Mr. {Murphy.} Who sets the CFATS goals and objectives  
810 for each year? Who is responsible for doing that?

811 Mr. {Beers.} Sir, the program directors provide those  
812 goals. They go up the chain of command to the assistant  
813 secretary and on to me. Ultimately, I am responsible for  
814 them.

815 Mr. {Murphy.} Are those public information, in terms of  
816 those annual goals and objectives?

817 Mr. {Beers.} I will have to check, sir. I don't know  
818 whether that is public information.

819 Mr. {Murphy.} Okay, and how do you measure those goals  
820 and objectives? Is that something you have in terms of  
821 internal documentation of how you review those?

822 Mr. {Beers.} Sir, let me ask David Wulf to answer that.

823 Mr. {Wulf.} There are established performance metrics  
824 that we prepare and send up the appropriate chains. The  
825 performance is measured with respect to things such as  
826 numbers of inspections conducted, percentage of inspections  
827 conducted as compared to the totality of the regulated  
828 community.

829 Mr. {Murphy.} Well clearly from the evaluations, things  
830 that you are talking about--and I add my comments to the  
831 chairman's in terms of we appreciate getting your candor on  
832 these. But in addition is who would like know, are these  
833 factors--are these evaluations somehow factored into employee  
834 compensation, such as raises or bonuses?

835 Mr. {Beers.} Sir, as a general matter with respect to  
836 the entirety of NPPD performances factored into the issue of  
837 bonuses or promotions, Dave, do you want to add anything  
838 specifically?

839 Mr. {Wulf.} I would echo the Undersecretary's  
840 sentiments. Meeting our performance goals is and will be a  
841 significant measure for us in assessing allocation of  
842 bonuses.

843 Mr. {Murphy.} Do you know if any of the CFATS employees  
844 or superiors received a bonus since 2009?

845 Mr. {Wulf.} I am sorry, sir, could you repeat that?

846 Mr. {Murphy.} Do you know if any of the CFATS employees  
847 or supervisors or superiors received any bonus since 2009?

848 Mr. {Wulf.} I don't have that information. We could--

849 Mr. {Murphy.} Would you let--it may be helpful to this  
850 Committee if you would let us know in conjunction with some  
851 of the information given. We would appreciate that.

852 Let me also say, the Anderson-Wulf memo that you have  
853 states that employees felt uncomfortable delivering bad news  
854 to superiors. So to what extent does the failure to inform  
855 you caused by this chill work environment, and who chilled  
856 the environment that--was it you, someone else? Who in the  
857 chain of command had that effect? Secretary Beers?

858 Mr. {Beers.} Sir, let me start in answering that. I

859 have said as a management principle based on my 40 years in  
860 government that I appreciate hearing bad news and I don't  
861 want to hear bad news from anybody else. This particular  
862 issue has been used as a teaching moment by me for the  
863 entirety of my workforce, because no one, no one should feel  
864 that they can't tell me bad news, because bad news is usually  
865 something that we can do something about, and if we don't  
866 hear it, we can't do anything about it. I can't speak to the  
867 culture within the office that--and the words in the report,  
868 but I want you to understand that to all of the people who  
869 work for me, I say that time and again. I am perfectly  
870 prepared to hear bad news, and I really don't want to hear  
871 from somebody outside the organization.

872       Mr. {Murphy.} As a Navy officer, I admire a Marine  
873 officer saying that. I recall the former chairman of the  
874 Joint Chiefs of Staff, Admiral Mullen, saying that as he  
875 climbed the chain of command the food got better and the news  
876 got better, too. Unfortunately, it is important to have that  
877 bad news coming up.

878       So are you confident now that you are getting full  
879 accurate information, full disclosures on CFATS information?

880       Mr. {Beers.} Sir, I have complete confidence in Penny  
881 and David making sure that that information comes to me, and  
882 they know that I want to hear it and they know that I want to

883 fix problems that they surface to me to the extent that I  
884 have the power to fix it, so yes.

885 Mr. {Murphy.} Mr. Chairman, I am over my time. Could I  
886 ask Mr. Wulf to give an answer to the same question?

887 Mr. {Shimkus.} Yes.

888 Mr. {Wulf.} Sir, I can confirm that Director Anderson  
889 and I received the message the Undersecretary was just  
890 discussing that he wants the bad news within the first week  
891 or two of our arrival on the job, and that is very much the  
892 spirit in which this report was written for him. Yeah,  
893 within the organization I can't necessarily speak to how the  
894 culture evolved, but I can tell you that Penny and I have  
895 gone to great lengths to create a culture of transparency, a  
896 culture in which our employees are not afraid to raise issues  
897 that they view as problems. We have an open door policy. We  
898 have all hands on meetings on a regular basis, and we have  
899 made it clear that we don't tolerate repression of concerns  
900 that folks may wish to bring up.

901 Mr. {Murphy.} Thank you very much, Mr. Chairman, I  
902 yield back.

903 Mr. {Shimkus.} Let me, before I yield to the Chairman  
904 Emeritus, Mr. Dingell, let me ask unanimous consent for 5  
905 days for members of the Subcommittee to submit opening  
906 statements for the record. Without objection, so ordered.

907 Now I would like to recognize Mr. Dingell for 5 minutes.  
908 Mr. {Dingell.} Mr. Chairman, thank you for your  
909 courtesy.

910 Secretary Beers, why did you commission a top to bottom  
911 study of this program?

912 Mr. {Beers.} Sir, when it became evident to me that  
913 one, we had a re-tiering issue that was brought to my  
914 attention in June, and that we had had an issue about  
915 locality pay and we had had a slowness in terms of the  
916 approval of site security plans, that I needed to make sure  
917 that the new management which we had brought in to take over  
918 the program and make sure that it was running solidly brought  
919 their full attention to giving me as accurate a picture as  
920 possible in this program.

921 As I said earlier, we had already commissioned a  
922 management study which was completed during the time that the  
923 report was prepared, and that was part of the report as well.  
924 So the final request of Penny Anderson and David Wulf was the  
925 result of an increasing concern on my part that the program  
926 was not running well.

927 Mr. {Dingell.} Thank you, Mr. Secretary.

928 Now, is Department of Homeland Security working to  
929 engage the industry in helping to get this program  
930 successfully implemented? Yes or no.

931 Mr. {Beers.} Absolutely yes.

932 Mr. {Dingell.} Mr. Secretary, I know there has been  
933 some controversy recently regarding some misclassified  
934 facilities. Can you assure me and the members of this  
935 Subcommittee that you have properly addressed this issue and  
936 that you have correctly identified high-risk facilities?  
937 Please answer yes or no.

938 Mr. {Beers.} Yes.

939 Mr. {Dingell.} Now these questions to Mr. Wulf.

940 Mr. Wulf, as your internal memo points out, there have  
941 been a number of challenges in implementing this program. Do  
942 you believe that the program is fixable? Yes or no.

943 Mr. {Wulf.} Yes.

944 Mr. {Dingell.} You do agree or believe it is?

945 Mr. {Wulf.} Absolutely.

946 Mr. {Dingell.} Thank you.

947 What are the top two or three things that need to be  
948 addressed to bring this about, in your opinion? The top two  
949 or three things.

950 Mr. {Wulf.} I would say the SSP, the site security plan  
951 review process, which we have already begun to move forward  
952 considerably over the last 2 months, and preparing our  
953 inspectors and our--the rest of our team to move forward and  
954 conduct authorization and compliance inspections.

955 Mr. {Dingell.} Now what progress have you and the  
956 Department made in addressing these issues?

957 Mr. {Wulf.} We have quadrupled the number of Tier 1  
958 site security plans that we have conditionally authorized  
959 just over the last 2 months. We have commissioned an  
960 inspector tools working group as well to develop the standard  
961 operating procedures, other policies, and to determine what  
962 tools our inspectors will need as we move forward to the next  
963 stages of this program to actually conduct authorization  
964 inspections and to get into the regular cycle of compliance  
965 inspections moving forward.

966 Mr. {Dingell.} Thank you, Mr. Chairman. You will note  
967 I returned 1 minute and 27 seconds. Thank you.

968 Mr. {Shimkus.} Thank you, Mr. Dingell.

969 Now I would like to recognize the gentleman from New  
970 Hampshire, Mr. Bass, for 5 minutes.

971 Mr. {Bass.} Thank you very much, Mr. Chairman.

972 I am not as familiar with the substance of this program  
973 and its history and so forth. I don't have a lot of  
974 facilities in my area. I am, however, very concerned about  
975 this memo. We have oversight responsibility, and to some  
976 extent, we are as vulnerable, if you will, to criticism for  
977 failure to be--to perform adequate oversight and be vigilant  
978 about the use or abuse or alleged abuse of taxpayer's funds.

979 And that is why this memo is bipartisan, because we all know  
980 that we have a responsibility to make sure that the  
981 government is run well.

982 I am also a businessman, and have over my life hired and  
983 fired people to do things. I don't like to fire people, but  
984 it happens. Mr. Beers, if you were in my position, looking  
985 at this report, would you consider yourself to have done a  
986 good job on your role to date?

987 Mr. {Beers.} Sir, as I have said publically before, I  
988 hold myself responsible for this--these sets of problems, and  
989 I am committed to fixing them.

990 Mr. {Bass.} If you were your own boss, would you keep  
991 you on the job?

992 Mr. {Beers.} I can't answer that question, sir.

993 Mr. {Bass.} I mean, do you--have you considered the  
994 possibility this might not be the right role for you, and it  
995 might be time for you to step aside? Mr. Barton referred to  
996 it in his opening statement.

997 Mr. {Beers.} Sir, I consider that every day I work for  
998 the Federal Government. I swore an oath of office on at  
999 least three occasions to protect and defend the Constitution  
1000 of the United States, and I believe in that. And if I  
1001 believe I can't do the job, then I will walk away from it as  
1002 I have done before.

1003 Mr. {Bass.} Do you think it is unusual to have an  
1004 action memo that for all intents and purposes, you are not  
1005 really disputing, with 70 different recommendations, a lot of  
1006 which are noted in progress? You also noted in your  
1007 testimony or answered a question a minute ago that you could  
1008 address these issues ``to the extent that I have the power to  
1009 fix it.'' Do you have the power to fix these--all of these  
1010 problems?

1011 Mr. {Beers.} As far as the issues within this  
1012 particular action plan, yes.

1013 Mr. {Bass.} So would you--

1014 Mr. {Beers.} But with respect to Mr. Green's comment  
1015 about TWIC cards, no, I can't make the TWIC card be broader  
1016 than the current authorization of the TWIC card, which means  
1017 that you have to be a transportation worker.

1018 Mr. {Bass.} All right. Well, Mr. Beers, this is a  
1019 disturbing memo. We appreciate the fact that it has come to  
1020 our attention, and I certainly hope that we--that you  
1021 understand that most of us haven't seen anything like--this  
1022 is a very unusual and unusually poorly run agency. If it is  
1023 not going to--if at any time you believe that you are not the  
1024 right person to turn this troubled agency around, that maybe  
1025 there ought to be a different managing structure.

1026 So having made that point, I think--I hope that the

1027 Committee will carefully watch the progress in this action  
1028 plan, because the American taxpayers are not going to stand  
1029 for this kind of alleged or perceived incompetence in  
1030 management for this very important agency to our Nation's  
1031 security.

1032 Mr. {Shimkus.} Would the gentleman yield to me--

1033 Mr. {Bass.} Yes, sir.

1034 Mr. {Shimkus.} --for the remainder of your time?

1035 I want to follow up on this. We really got to get a  
1036 handle on this card issue, and we would like for you to  
1037 provide us your legal opinion of why you cannot deal with  
1038 this TWIC card. We think you can. We, and that is the  
1039 Energy and Commerce Committee, have been in discussions with  
1040 Homeland Security for months trying to resolve this. We  
1041 think it is within your jurisdiction and if it is not, we  
1042 would like to see the legal reasoning why it is not so that  
1043 we can change the law. We think it is within your power now,  
1044 and I think my friend, Mr. Green, would be very pleased if we  
1045 can get a handle on this. So help--work with us. This is an  
1046 issue, again, that was brought up in the March--in March of  
1047 last year's hearing that we thought we were moving in some  
1048 direction, and there have been multiple consultations with  
1049 Homeland Security, and we are not any further than we were in  
1050 March of 2011.

1051 I would like to yield to my colleague.

1052 Mr. {Green.} If the chairman would yield? I know we  
1053 went through this last year, and because the TWIC card is  
1054 under Department of Transportation and Coast Guard, I know  
1055 there is an issue with Homeland Security. I just don't want  
1056 to reinvent the wheel, because so many times those same  
1057 workers that work on the dockside are also at an inland  
1058 plant. And so that is why I would hope with interagency  
1059 agreement, although in 908 earlier this year our Committee  
1060 passed, we gave that authorization there language, but it  
1061 hasn't passed and hadn't passed the Senate, so we need to  
1062 work on it.

1063 Mr. {Shimkus.} And reclaiming the time, I would just  
1064 say that Coast Guard is under Department of Homeland  
1065 Security. This should not be difficult to do.

1066 Now I would like to recognize Mr. Pallone, my colleague  
1067 from New Jersey, for 5 minutes.

1068 Mr. {Pallone.} Thank you, Mr. Chairman.

1069 We are here this morning to discuss issues facing the  
1070 Chemical Facility Anti-Terrorism Standards, or CFATS,  
1071 program, and we are talking about this leaked DHS internal  
1072 memo from 2011 that clearly shows that DHS faces serious  
1073 implementation problems with the CFATS program, most notably  
1074 that the Department has received 4,200 site security plans

1075 but has yet to approve a single one. The CFATS program was  
1076 enacted as a rider to the 2007 Homeland Security  
1077 appropriations bill in order to give Congress time to enact  
1078 comprehensive legislation, and we did just that in the 111th  
1079 Congress by passing H.R. 2868 in the House. That bill  
1080 provided a comprehensive security program to protect  
1081 Americans living near these facilities, but unfortunately the  
1082 Senate did not take it up.

1083 I am not here to claim that H.R. 2868 would have  
1084 magically fixed all the problems outlined in the DHS memo,  
1085 but it certainly provided a much stronger framework to  
1086 protect the more than 100 million Americans that live in the  
1087 danger zone of a chemical disaster.

1088 Last May, this Committee had the opportunity once again  
1089 to exercise its jurisdiction and set forth a full  
1090 authorization of this program to replace the vague and  
1091 inadequate CFATS program enacted in 2007. Unfortunately, the  
1092 Committee decided not to address shortfalls with the CFATS  
1093 program, and just moved a simple extension of the current  
1094 law.

1095 Mr. Chairman, in New Jersey we have the unfortunate  
1096 combination of both a large number of chemical facilities and  
1097 a high population density, so the consequences of  
1098 insufficient security are dire. I regret that this Committee

1099 has not taken a more proactive approach to securing these  
1100 facilities, and I will continue to push for a more  
1101 comprehensive security program to ensure the safety of my  
1102 constituents living in the shadow of these facilities.

1103         Now to questions. The November 2011 DHS report begins  
1104 to explain why nearly 5 years after these regulations went  
1105 into effect, not a single site security plan has been  
1106 approved. It reveals that this Committee was rash, in my  
1107 opinion, in passing legislation to rubber stamp the program  
1108 for 7 years without investigating or addressing the program's  
1109 shortcomings. Many of us have heard from those in the  
1110 business community that the CFATS program is still strong and  
1111 that businesses have done everything that they are required  
1112 to do under the program. According to industry  
1113 representatives, we should be comforted to know that  
1114 companies have acted prudently and are prepared for  
1115 compliance inspections, should the Department ever begin to  
1116 conduct them.

1117         I hope this is true, but our national security is  
1118 inherently a governmental function. Many members of this  
1119 Committee have worked for years to establish a robust  
1120 regulatory structure for chemical facility security, and none  
1121 should be satisfied with the suggestion that approvals and  
1122 inspections are insignificant or that the role of the

1123 Department in this program is insignificant.

1124 Now Undersecretary Beers, do you think that the  
1125 Department of Homeland Security should play a role in  
1126 ensuring that our chemical facilities are secure?

1127 Mr. {Beers.} Sir, I strongly believe that the  
1128 Department has a role and that the office that is tasked with  
1129 doing that can play that role.

1130 Mr. {Pallone.} Do you think that the Department must  
1131 play a role? I mean, do you think that it is absolutely  
1132 necessary that they play a role?

1133 Mr. {Beers.} I am sorry, sir?

1134 Mr. {Pallone.} Do you think that the Department must  
1135 play a role, that it is absolutely crucial that they play a  
1136 role?

1137 Mr. {Beers.} I think that the original intent of the  
1138 Act is absolutely appropriate, and yes, the Department must  
1139 play a role.

1140 Mr. {Pallone.} Would you say that site security plan  
1141 approvals and compliance inspections are necessary and  
1142 important to ensure chemical facility security?

1143 Mr. {Beers.} I think that they are absolutely essential  
1144 to making this program work effectively.

1145 Mr. {Pallone.} Well, I mean, I agree with everything  
1146 you have said, and I think the failure of the Department to

1147 complete security plan approvals and compliance inspections  
1148 is a very serious issue. I am glad to see that the  
1149 Department is treating it as such, and I welcome the  
1150 opportunity to work together towards a strong and effective  
1151 program.

1152 But I guess the point I am really trying to make here is  
1153 that this Committee has a responsibility to put together an  
1154 appropriate comprehensive authorization bill, and not simply  
1155 rely on this paragraph or whatever it is, I mean, it is like  
1156 this long, in an appropriations bill that really doesn't give  
1157 you sufficient guidance or mandates or inspection or  
1158 enforcement capability to do what you have to do. So I am  
1159 not--I understand that there are all kinds of problems with  
1160 the Department, but I think a big part of the problem is that  
1161 you never had a comprehensive authorization bill to tell you  
1162 what to do and to give you the authority what to do. I mean,  
1163 we could sit here all day and talk about how bad you are, and  
1164 you know, there certainly are problems, but I think that it  
1165 is our responsibility to do something more comprehensive to  
1166 provide the guidance, Mr. Chairman. That is my only point.  
1167 Thank you.

1168 Mr. {Shimkus.} The gentleman yields back his time.

1169 The chair now recognizes the gentleman from Ohio, Mr.  
1170 Latta, for 5 minutes.

1171 Mr. {Latta.} Thank you, Mr. Chairman, and gentlemen,  
1172 thanks very much for being here today. We have such short  
1173 little time to ask all these questions, but if I could,  
1174 first, is it my understanding and am I correct in hearing  
1175 that we spent about--\$480 million has been appropriated for  
1176 the program since its inception? Is that correct?

1177 Mr. {Beers.} Yes, sir, I believe that is the right  
1178 number. I can give you the exact number if you want.

1179 Mr. {Latta.} Okay, but that is a ballpark. Thank you.

1180 And as Chairman Emeritus Dingell does, he is very good  
1181 at getting his rifling in on his questions, yes or no, but  
1182 one thing I want to go back to is the question about working  
1183 with industry. You said that you are working with industry,  
1184 but you know, as we--reading the report that came through and  
1185 looking at the site security plan that, you know, again as  
1186 has been said a little bit earlier, that we have received--  
1187 that you have received about 4,200 SSP submissions and that  
1188 none have been approved.

1189 Did you ever hear from industry during this timeframe  
1190 that gee, what is going on? These things have been submitted  
1191 but we are never hearing back from the Department.

1192 Mr. {Beers.} Yes, we did receive inquiries from the  
1193 industry about when they were going to be approved.

1194 Mr. {Latta.} Do you know how many inquiries you have

1195 been receiving?

1196 Mr. {Beers.} I don't have that information at the tip  
1197 of my fingers, sir.

1198 Mr. {Latta.} Do you know when you might have received  
1199 the first inquiry?

1200 Mr. {Beers.} Excuse me?

1201 Mr. {Latta.} Do you know when you might have received  
1202 the first inquiry from industry as to when they might have  
1203 these approved?

1204 Mr. {Beers.} No, I can't tell you precisely when, but I  
1205 can get you that information.

1206 Mr. {Latta.} Okay, because again, going back to the  
1207 earlier testimony that when you are looking at, you know,  
1208 those 5-1/2 years since the enactment of CFATS, and that is  
1209 also the stats of the statute itself, and 4-1/2 years since  
1210 the final rule. It kind of--I really would like to find out  
1211 when these--the industry that was being regulated was finding  
1212 out if they were or not being approved, because you know,  
1213 there is quite a timeframe there.

1214 Let me go to the other thing that Mr. Wulf had brought  
1215 up a little bit earlier saying that, you know, there is going  
1216 to be an--and I am sorry, again, I don't have it in front of  
1217 me but I just kind of wrote it down--saying that you are  
1218 going to have an open door policy and not afraid to raise

1219 issues. The reason I bring this up is I was a county  
1220 commissioner for 6 years, years back, and we had about 1,100  
1221 employees in the county. We regulated all kinds of things.  
1222 We had a lot of different departments. It wasn't unusual for  
1223 an employee that worked in one of those departments that  
1224 served underneath the Board of Commissioners to bypass their  
1225 supervisors and call me at home, or being from, you know, a  
1226 county of 125,000, they would run into you at the county  
1227 fair, they would talk to you at the grocery store, or they  
1228 would say can I talk to you someplace else? Did you all get  
1229 any contact from anybody at any time saying gee, I would like  
1230 to talk to you about something that we think there is  
1231 something wrong going on with the program?

1232 Mr. {Beers.} Sir, on this particular program, yes, and  
1233 that is part of the reason that some of the efforts in order  
1234 to investigate problems took place in the past.

1235 With respect to bypassing the chain of command, in order  
1236 to prevent that particular problem, we in management and I in  
1237 particular have meetings with either individuals or groups of  
1238 people throughout NPPD that are well down in the chain of  
1239 command in order to elicit their thoughts and suggestions so  
1240 that we can improve the program overall.

1241 Mr. {Latta.} Okay, let me ask you this question. Do  
1242 you know when you might have started first getting an

1243 inclination that there was something wrong with people  
1244 contacting you, going--bypassing the chain of command to say,  
1245 you know, there is something really wrong here in personnel  
1246 or the way the program is being run?

1247 Mr. {Beers.} --that I can report to you on is in the--  
1248 excuse me. The first instance that I can report to you that  
1249 this occurred would be in the summer timeframe of 2010 when  
1250 it came to our attention because of a report by an individual  
1251 that there seemed to be a problem with the locality pay. As  
1252 soon as we found out that that was an issue, we took that on  
1253 and went through the process to determine what had gone wrong  
1254 in terms of the appropriate pay to the individuals involved.

1255 Mr. {Latta.} So this would be actions. So the first  
1256 inclination would be a couple of years after the program was  
1257 put in place, would that be correct?

1258 Mr. {Beers.} Yes, sir.

1259 Mr. {Latta.} Okay, thank you.

1260 And just real quick, I know my time is running out, Mr.  
1261 Chairman, but if we could get some of that information back  
1262 because again, you know, I really, really hope that that open  
1263 door policy really does exist and that folks aren't afraid to  
1264 come forward, because this has got to work. Again, when you  
1265 look at the number of--with 4,200 SSPs that have been  
1266 submitted and trying to get these things caught up, it is

1267 very , very important not just for the Department itself, but  
1268 for all those industries out there trying to comply.

1269 And with that, Mr. Chairman, I yield back.

1270 Mr. {Shimkus.} Gentleman yields back his time.

1271 The chair now recognizes the gentleman from Georgia, Mr.  
1272 Barrow, for 5 minutes.

1273 Mr. {Barrow.} I thank the chair. I would like to yield  
1274 my time to the ranking member of the Subcommittee, brother  
1275 Green from Texas.

1276 Mr. {Green.} Thank you. I am going to revisit the  
1277 personnel assurity, but Mr. Wulf--and I appreciate the update  
1278 that you had. I saw your testimony and I am going to  
1279 encourage the chair that maybe two or three months from now,  
1280 we invite you back to enjoy our hospitality again and see how  
1281 far along we are, because this is such an important issue or  
1282 a lot of areas. I know Mr. Pallone and mine, we have  
1283 substantial chemical facilities that are not waterside based.

1284 Let me get back to personnel assurity program, because  
1285 that is something that is sensitive, because I have plenty of  
1286 plants on the water, but also plenty of plants that are not.  
1287 The same company owns them, and often times they transport  
1288 personnel back and forth. My concern is what was submitted  
1289 from the OMB that the OMB did not recognize that the TWIC  
1290 card, from what you said in your testimony, would be used.

1291 And I can understand why something regulated by your agency  
1292 can't apply for a TWIC card. But it seems like in the  
1293 Federal Government we could use the same database. The Coast  
1294 Guard, Department of transportation, the TWIC card, and use  
1295 the same database for the background and the TWIC card would  
1296 be interchangeable.

1297 And my idea, and I can tell you, you know, some of my  
1298 folks are going to be frustrated if they end up having to pay  
1299 another few hundred dollars to get a second card because  
1300 their company transfers them some where and not all companies  
1301 are really nice and they say no, that is part of your  
1302 requirement for the job. You have to have your driver's  
1303 license to drive the company car. So that is my concern.  
1304 The proposed personnel assurity program will require  
1305 facilities to submit background information on all existing  
1306 personnel within 60 or 90 days upon the implementation, and  
1307 any new unescorted individuals who are not classified as  
1308 personnel would need--even if they have a TWIC card, their  
1309 information submitted to DHS 48 hours in advance. Was that  
1310 part of the submittal to OMB, because that doesn't sound like  
1311 you are getting TWIC cards consideration.

1312 Mr. {Beers.} Sir, I believe that is part of the  
1313 submittal to OMB, and what I am trying to convey here is that  
1314 we are looking at all of the opportunities to leverage the

1315 various cards and want very much to go in the direction that  
1316 you want to go.

1317         Mr. {Green.} Okay. Well--and I know there may need to  
1318 be an interagency memorandum to work together, and I know  
1319 sometimes our federal agencies don't like to do that, but we  
1320 have--it is redundant information if we are using the same  
1321 database. And I must don't understand why DHS, as we  
1322 proposed in two separate legislations earlier, harmonized  
1323 TWIC with the leverage and the operational--the background  
1324 checks. Is there a justification or an incident that I am  
1325 not aware of that have existed within the TWIC system that  
1326 would require DHS to go beyond TWIC?

1327         Mr. {Beers.} I am not aware of any, sir.

1328         Mr. {Green.} Okay. And it seems to be--because I try  
1329 and stay pretty close to the ground there with a lot of my  
1330 folks, and I have not heard on. In our area, people may not  
1331 like some of the chemicals that we produce, but they are  
1332 things that we don't--they produce them because somebody  
1333 needs them in our country, and we want to make sure they are  
1334 safely produced both for the people that live around it, but  
1335 the folks on that plane. Every time I talk about the issue  
1336 with DHS, you assure me they incorporate TWIC. I just want  
1337 to make sure it goes forward from that, and I think maybe we  
1338 will even contact OMB and express that concern that don't

1339 reinvent the wheel, even though we have two separate federal  
1340 agencies and hopefully that would come from both agencies,  
1341 including Department of Transportation. They use the same  
1342 database that you have.

1343         Mr. Chairman, I don't have any other questions. I would  
1344 be glad to yield back to my colleague from Georgia, and I  
1345 appreciate his courtesy.

1346         Mr. {Shimkus.} Gentleman from Georgia yields back his  
1347 time. Chair now recognizes the gentleman from Mississippi,  
1348 Mr. Harper, for 5 minutes.

1349         Mr. {Harper.} Thank you, Mr. Chairman, and I certainly  
1350 thank the two of you for being here today, and Mr. Wulf, I  
1351 want to thank you and Ms. Anderson for the work that you have  
1352 done on this. This may come as a shock, but you know, it is  
1353 not always surprising to us to learn that an agency may be  
1354 dysfunctional. So this is not always a surprise.

1355         But we appreciate the candor and no one should ever be  
1356 criticized or subject to anything for being very open, which  
1357 you and Ms. Anderson have done, so I thank you for that. I  
1358 believe that gives us some input.

1359         But I wanted to ask you a few questions, if I may, Mr.  
1360 Wulf?

1361         You know, as I looked through the report, one of the  
1362 things that you spent some time on was the issue of unions

1363 within the organization. Can you tell me when the workforce  
1364 in the division was unionized?

1365 Mr. {Wulf.} I can't give you an exact date on that. It  
1366 was before Ms. Anderson's and I arrival, but I want to say  
1367 spring of last year, maybe March.

1368 Mr. {Harper.} Well let us--can you tell me, does each  
1369 worker have to cast a vote in order for their votes to be  
1370 recorded, as far as do you know how the process works? Non-  
1371 voters are considered voters to unionize, how that is  
1372 counted?

1373 Mr. {Wulf.} I am not completely certain about that  
1374 process.

1375 Mr. {Harper.} Can you get me that information?

1376 Mr. {Wulf.} Absolutely.

1377 Mr. {Harper.} That would be great. Can you tell me how  
1378 many employees there are in the CFATS program, and how many  
1379 are eligible to be represented by government unions, and how  
1380 many affirmatively voted to be represented by unions?

1381 Mr. {Wulf.} I don't have the totals on the voting, and  
1382 I will say, there are approximately--and I don't have the  
1383 exact numbers in front of me--a little more than 200 federal  
1384 employees in the CFATS program. Of those who would be  
1385 eligible for union--or to vote in a union membership, that  
1386 would be our field force, non-supervisory field force, so a

1387 little bit under 100 of those.

1388 Mr. {Harper.} At the time of unionization, were all  
1389 programmatic and accountability measures and job descriptions  
1390 in place that applied to that workforce?

1391 Mr. {Wulf.} As we noted in our report, we are  
1392 continuing to refine the requirements for the sections and--

1393 Mr. {Harper.} Well, explain what--when you started out  
1394 in your report and you said that the presence of the union at  
1395 this stage in the program will have a significant negative  
1396 impact, explain that.

1397 Mr. {Wulf.} I appreciate the opportunity to provide a  
1398 little additional context to that.

1399 Mr. {Harper.} Yes.

1400 Mr. {Wulf.} The report was not intended to be a  
1401 statement concerning whether unions and federal workforce are  
1402 good or bad, but rather a recognition of the fact that this  
1403 is a program that is very much in its emerging stages, and we  
1404 are very much in the midst of putting into place policies and  
1405 procedures for the conduct of inspections, for the operation  
1406 and review of site security plans, and so forth.

1407 So it certainly adds a layer of complexity that wouldn't  
1408 otherwise exist. That said, though, along with the union we  
1409 have very much a shared interest in moving the program  
1410 forward in a collaborative relationship.

1411 Mr. {Harper.} Certainly. We have an overall big  
1412 picture here of an issue of national security that we have  
1413 now kind of gotten bogged down and does it not make it more  
1414 difficult, though, after the unionizations take place to  
1415 implement some of these policies? Are you not already seeing  
1416 that even on the reference that you had to the mileage  
1417 reporting?

1418 Mr. {Wulf.} It does add a layer of complexity, but it  
1419 also, I think, adds voices in the development of policy that  
1420 will allow us to develop more sustainable processes moving  
1421 forward.

1422 Mr. {Harper.} What was it, 16 weeks that you reported  
1423 for the mileage requirements to be done?

1424 Mr. {Wulf.} I believe that was the estimate.

1425 Mr. {Harper.} While I understand the need, everybody  
1426 has got to work together. The fact is that this has caused  
1427 delay, has it not? Why don't I not make you answer that  
1428 question. I think we know.

1429 I appreciate your time, Mr. Wulf, and for you and Ms.  
1430 Anderson to be so candid with your situations. Thank you.

1431 Mr. {Shimkus.} Gentleman yields back his time.

1432 The chair recognizes the gentlelady from California, Ms.  
1433 Capps, for 5 minutes.

1434 Mrs. {Capps.} I thank the chairman for recognizing me,

1435 and I apologize for the state of my voice, but I am feeling  
1436 well. I am pleased to be here and I think you both for your  
1437 testimony.

1438           The internal Homeland Security report from November,  
1439 2011, provides new support for concerns that problems in the  
1440 statutory language creating the CFATS program hindered its  
1441 successful implementation. And of course, we are talking  
1442 about Homeland Security here. According to the report, CFATS  
1443 personnel have not yet determined how to systematically  
1444 review site security plans. Although the Department has set  
1445 up an interim process to try to get these plans reviewed,  
1446 staff are still working to develop a process to be used over  
1447 the long term. Apparently, many initial site security plan  
1448 reviews have to be redone. The November reports states that  
1449 they have been found to be, and this is a quote,  
1450 ``inconsistent with the spirit and intent of the program's  
1451 mandate.''

1452           Mr. Beers, can--would you please elaborate on what the  
1453 report meant when it stated that site security plan reviews  
1454 had not been conducted consistently with the spirit and  
1455 intent of the statutory mandate?

1456           Mr. {Beers.} Madam, I can't specifically speak to the  
1457 reason behind that. I can give you some broader context  
1458 about what happened with respect to the efforts to get site

1459 security plans that, in fact, met the requirement.

1460         As the program was rolled out and as it evolved, the  
1461 guidelines for the information that needed to be provided in  
1462 the site security plans failed to elicit appropriate  
1463 responses from industry. Some of that undoubtedly was or  
1464 could have been done better if the guidelines that we had put  
1465 out had been more clear and some of it was simply on the part  
1466 of industry not providing that information. I don't mean to  
1467 suggest in any way that that was an intentional act, but it  
1468 required us to go back to those particular facilities and ask  
1469 for more information in order to be able to get to a site  
1470 security plan that, in fact, appeared to meet what we needed  
1471 to have in order to have a site security plan. That  
1472 iterative process ended up taking time when those site  
1473 security plans were initially filed, and that is part of what  
1474 I regard as the due diligence that we and industry need to  
1475 undertake together in order to ensure that a plan that is  
1476 finally authorized and approved is a plan that is capable of  
1477 providing the kind of security that you all have charged us  
1478 to build.

1479         But let me turn to Mr. Wulf about the specific comment--  
1480         Mrs. {Capps.} And I wanted--yes, briefly if you would,  
1481 please, so I can go on to another question.

1482         Mr. {Wulf.} About the site security plan review process

1483 specifically?

1484           Mrs. {Capps.} Well, it is just why--I am very concerned  
1485 that these delays have occurred.

1486           Mr. {Wulf.} Yeah, we have taken steps to address those  
1487 through the implementation of our interim review process, and  
1488 as the Undersecretary and I have mentioned, you know, we, in  
1489 the last 2 months, quadrupled the number of SSP--of site  
1490 security plans we have been able to authorize, and I think  
1491 the future is bright moving forward on that path.

1492           Mrs. {Capps.} I thank you for that, you are trying, and  
1493 I appreciate the Department is working to address these  
1494 issues and establish a consistent site security plan review  
1495 process.

1496           I am concerned, however, that flaws in the law make  
1497 ambiguity and consistency in the review process unaffordable.  
1498 I mean, you may have taken care of this one, but it is going  
1499 to pop up again. That is because Section 550 grants  
1500 discretion to the Secretary to approve site security plans  
1501 that fail to meet the risk-based performance standards under  
1502 this program. The law says only that the Secretary may  
1503 disapprove a plan that fails to meet those standards.

1504           As many of this Committee will perhaps recall--I recall  
1505 it well, because I offered an amendment during the markup of  
1506 H.R. 908 that would have changed that word ``may'' to a

1507 ``shall'' to require that site security plans be disapproved  
1508 if they failed to meet performance standards. That word  
1509 ``may'' is what causes the ambiguity and the having to go  
1510 back and re-question, and time is of the essence when we are  
1511 talking about Homeland Security.

1512 So Mr. Beers, back to you again. Do you agree that site  
1513 security plans failing to meet the standards should be  
1514 disapproved?

1515 Mr. {Beers.} Congresswoman, our objective here is to  
1516 get the yes, so the notion of disapproval doesn't necessarily  
1517 accomplish that. The point is, when we say we are not  
1518 prepared to approve it, that is the functional equivalent  
1519 thereof. But what we want to do is have a cooperative  
1520 relationship--

1521 Mrs. {Capps.} Right.

1522 Mr. {Beers.} --with industry in order to say whether or  
1523 not a plan requires more information or more clarification.

1524 Mrs. {Capps.} And industry needs to have this as well.  
1525 May I just finish one sentence?

1526 Mr. {Shimkus.} We are trying to get these in before the  
1527 votes on the Floor.

1528 Mrs. {Capps.} Well, I believe that it should be a  
1529 requirement so that industry is clear about what they need to  
1530 do.

1531 Mr. {Shimkus.} Gentlelady's time is expired.

1532 The chair now recognizes the gentleman from Louisiana,  
1533 Mr. Cassidy, for 5 minutes.

1534 Dr. {Cassidy.} Thank you. The memo is--one, let me  
1535 just commend you for asking it be drawn up. On the other  
1536 hand, obviously it paints a disaster in terms of acquisition,  
1537 inventory management, attitudes, I mean, it is just a total  
1538 indictment. Now, as a guy that represents an area with lots  
1539 of PETRA chemicals, lots of businesses and workers dependent  
1540 upon this, if I concede the argument that your job is  
1541 important for safety, it frankly seems not just an indictment  
1542 of your organization, but it frankly seems to place my  
1543 constituents at risk.

1544 Now that said, how many employees does this particular  
1545 division of DHS have?

1546 Mr. {Wulf.} I want to say 206.

1547 Dr. {Cassidy.} Two hundred and six?

1548 Mr. {Wulf.} I believe so.

1549 Dr. {Cassidy.} Now, this problem seems so endemic. How  
1550 many have been fired? I mean, it seems like an easy target  
1551 because they speak consistently of people being hired because  
1552 they know somebody. People who are--I mean, you list--you  
1553 can almost write somebody's name in here if you only have 206  
1554 people. So clearly, it wasn't how many have been fired. How

1555 many are going to be fired?

1556 Mr. {Beers.} Sir, with respect to the issue about the  
1557 re-tiering--

1558 Dr. {Cassidy.} No, I mean, just a simple question. I  
1559 mean, clearly there is an endemic problem here, and it is  
1560 rife. How many have been fired? It is a pretty simple  
1561 question if you only have 206 employees, and how many do you  
1562 have on the chopping block?

1563 Mr. {Wulf.} Sir, with respect to the leadership of the  
1564 organization, the people who were in the leadership positions  
1565 in the organization--

1566 Dr. {Cassidy.} I only have 3 minutes. Can I have a  
1567 number?

1568 Mr. {Wulf.} --have moved on.

1569 Dr. {Cassidy.} How many?

1570 Mr. {Wulf.} That is two people.

1571 Dr. {Cassidy.} Okay, so two out of 206, one percent,  
1572 and yet we have people here hired, apparently, because they  
1573 know somebody, promoted because they know somebody,  
1574 apparently fudging on their gas reports. We only have two,  
1575 only one percent? It seems like the organization--and I  
1576 don't mean this to be kind of snitty, but I am just amazed  
1577 that we are tolerating this level of incompetence.

1578 Now I am struck. In your document here, you say that--I

1579 am quoting from page nine--`We have yet to approve a site  
1580 security compliance inspection. Moreover, we have not yet  
1581 determined what it will look like. And yet, since this  
1582 report was reported in the news, we have quadrupled the  
1583 number of compliance reports issued.' Is that my  
1584 understanding, or do I understand incorrectly?

1585 Mr. {Wulf.} It is--what we quadrupled is the number of  
1586 site security plans we have conditionally authorized, which  
1587 the step that precedes the conduct of an authorization  
1588 inspection, which then leads to the final approval of a  
1589 facility's site security plan, sir.

1590 Dr. {Cassidy.} Okay. So the indictment of the report  
1591 stands that we are 6 years into this, and we have yet to come  
1592 up with a compliance inspection program. I just don't know  
1593 what to say.

1594 Now, I do know what to say. Clearly, there are ways to  
1595 contract this out. I don't know how you just don't start  
1596 over with this program, but I understand the Coast Guard has  
1597 the authority to use an alternative security program. Can we  
1598 use an alternative security program? I understand, again,  
1599 you have this authorization already. Can we use that now  
1600 since it looks like the current program is so dysfunctional  
1601 to be beyond restitution?

1602 Mr. {Beers.} Sir, the short answer is yes, and I will

1603 let David describe what we have done with respect to that.

1604 Mr. {Wulf.} We do already have some alternative  
1605 security programs that have been submitted by industry  
1606 stakeholders, and we are working very aggressively in  
1607 partnership with our industry stakeholders to develop some  
1608 templates that can be used. We can't prescribe a specific  
1609 template, but we are going to work through some templates  
1610 that will--the hope is allow for more expeditious, speedy  
1611 review and approval of--

1612 Dr. {Cassidy.} But this does not include contracting  
1613 out this function, correct? Can you go to a third party to  
1614 conduct these inspections? I mean, what you describe here is  
1615 a staff which is poorly hired, poorly trained, and has a poor  
1616 attitude and has a sense of law enforcement wanting to clear-  
1617 -be called commander and wear pistols as opposed to actually  
1618 go through and look at something in terms of compliance.

1619 Mr. {Beers.} Sir, compliance inspection is an  
1620 inherently government function. We have to have the people  
1621 who do that be federal employees.

1622 Dr. {Cassidy.} Now it is my understanding, though, that  
1623 the Coast Guard actually has an alternative standard, and  
1624 frankly, Bummerd now has it, the whatever they call the  
1625 offshore for the oil rigs. They have a third party that is  
1626 inspecting oil rigs.

1627 Mr. {Beers.} I can't speak to the Coast Guard, sir. I  
1628 am not aware.

1629 Dr. {Cassidy.} Okay. I have much more to ask.

1630 Mr. {Shimkus.} The gentleman yields--they also have  
1631 some contractors doing TSA function at some of the airports.  
1632 It is worth looking into.

1633 I would like to yield now 5 minutes to the ranking  
1634 member of the Full Committee, Mr. Waxman, for 5 minutes.

1635 Mr. {Waxman.} Thank you, Mr. Chairman.

1636 None of us can be happy about this memo that came out  
1637 last November, telling how poorly this program is serving the  
1638 American public. This is a serious matter. This is a matter  
1639 of national security, possible attacks by terrorists on  
1640 chemical plants. I note that all of us are concerned, not  
1641 just the people here in the Congress, but Mr. Beers and  
1642 others in the Administration. We have a stark and troubling  
1643 picture, but perhaps there is a silver lining, because it  
1644 appears to me that the Department is taking the situation  
1645 clearly.

1646 But I want to talk about Congress's role. It is easy at  
1647 a hearing like this after we get a report of a failure to  
1648 beat up on the people running the program. But Congress has  
1649 a responsibility as well. This program was established in an  
1650 appropriations bill, not a bill that came out of this

1651 Committee. It was a rider on an appropriations bill. Mr.  
1652 Beers, is there a provision in Section 550 that addresses  
1653 personnel hiring?

1654 Mr. {Beers.} I am not aware of it, sir.

1655 Mr. {Waxman.} Is there a provision that addresses use  
1656 of travel cards or purchase cards?

1657 Mr. {Beers.} No, sir, I am not aware of that.

1658 Mr. {Waxman.} How about a provision that details how  
1659 inspections are to be conducted?

1660 Mr. {Beers.} No, sir.

1661 Mr. {Waxman.} Is there a provision that explains how  
1662 background checks should be conducted?

1663 Mr. {Beers.} No, sir.

1664 Mr. {Waxman.} Are there any enforceable deadlines in  
1665 this law that is written in the appropriations?

1666 Mr. {Beers.} No, sir.

1667 Mr. {Waxman.} The answers to these questions are all  
1668 no, and the reason is that this Committee never held a  
1669 hearing or conducted a markup on legislation to create this  
1670 program. So the problems we see today were never  
1671 contemplated by this Committee, and no direction was  
1672 provided. Now I understand Mr. Barton said you ought to  
1673 resign, but Mr. Barton was the chair of the Committee at the  
1674 time this law was adopted through an appropriations bill. We

1675 tried to get the people who have a stake in this to work out  
1676 legislation, and the Democrats were intolerant. I was  
1677 chairman. We had the chemical industry and others with us.  
1678 When the Republicans came to power on this Committee, they  
1679 said let us just extend this for 7 years. We will just kick  
1680 this thing down the road for 7 years.

1681 Now one of the proponents of doing that was the chemical  
1682 industry. They were troubled by some of the ideas that we  
1683 would have further inspections and we would have further  
1684 deadlines and we would make sure that things happened, but  
1685 while they participated with us in trying to change the law,  
1686 they said all they wanted to do this last year was extend the  
1687 existing law for 7 years. Now this existing law doesn't have  
1688 much of a requirement on you.

1689 You have established a working group, Mr. Beers, in the  
1690 Department to look at legislative and regulatory changes and  
1691 whether they are necessary, is that correct? Speak into the  
1692 mic and be sure it is on.

1693 Mr. {Beers.} I am sorry. Yes, sir, with respect to the  
1694 entirety of the Department.

1695 Mr. {Waxman.} And the November report identified  
1696 several statutory limitations on the program that limits  
1697 effectiveness and includes a rigid and limited enforcement  
1698 authority. For example, a facility could violate

1699 requirements 20 times and they would--and you wouldn't have  
1700 the authority to take any more action based on repeat  
1701 violations. That means that they can repeat these violations  
1702 over and over again, and you couldn't do anything about it.  
1703 Is that right?

1704 Mr. {Beers.} Sir, that is an element of the report that  
1705 we have looked into as a result of the report. While it is  
1706 true that just on the face of it the answer to that is yes,  
1707 we believe we could use our administrative order authority to  
1708 have some action against--

1709 Mr. {Waxman.} Excuse me, you are going to have to use  
1710 your regulatory authority to do something that should have  
1711 been said in the law by Congress. I hope this working group  
1712 will examine that.

1713 The report calls into question the adequacy of the  
1714 program's performance standards. That memo said ``Without  
1715 testing to evaluate the effectiveness of the performance  
1716 standards, adequacy of the standard often is more a matter of  
1717 opinion or fact.'' Will your working group give us some  
1718 recommendations on that issue?

1719 Mr. {Beers.} Sir, as we come to recommendations, yes,  
1720 we will give those to you. We, as you know, have to go  
1721 through a very formal process.

1722 Mr. {Waxman.} Are you going to examine that issue, I

1723 presume?

1724 Mr. {Beers.} We will.

1725 Mr. {Waxman.} Well Congress should have examined it as  
1726 well.

1727 So my point to you is, well, we are pointing fingers at  
1728 you and you are saying you have excuses and everybody says we  
1729 are going to do better. I think we all have a burden to bear  
1730 in the failure, and Congress didn't do its job and we hoped  
1731 you would have taken up the slack and done the job that  
1732 Congress should have directed you to do, but I think it is  
1733 awfully premature for members of this Committee to try to put  
1734 the whole blame on you and say you ought to quit. Maybe some  
1735 members of Congress ought to quit if we aren't doing our job,  
1736 or be replaced.

1737 I yield back my time.

1738 Mr. {Shimkus.} The gentleman's time is expired.

1739 The chair now recognizes gentleman from Colorado for 5  
1740 minutes, and we are going to try to get this done and then  
1741 adjourn the hearing after he is through. They did just call  
1742 votes.

1743 Mr. {Gardner.} I thank the chairman for the  
1744 recognition, and thank you as well to the witnesses for being  
1745 here today.

1746 When I first read this memo, it was a little bit like

1747 Jerry McGuire meets the Titanic. You have got--just some of  
1748 the words and phrases used in this memo, unnecessary  
1749 expenses, unqualified personnel, unsuited for the work,  
1750 problems with how money spent, foul language, ineffective  
1751 hiring, unauthorized expenses, inappropriate work behavior,  
1752 catastrophic failure, perceived cronyism, favoritism. How  
1753 would you grade your performance on a scale of 1 to 100?

1754 Mr. {Beers.} I think this report is a clear indication  
1755 that the program needs a whole lot of work on it, but I don't  
1756 think it entirely recognizes what we have done, and I am not  
1757 being an apologist, but I do think that it indicates that we  
1758 have some major challenges which we are prepared to address.

1759 Mr. {Gardner.} Unauthorized use of money, problems with  
1760 how money is spent, are criminal activities taking place  
1761 here?

1762 Mr. {Beers.} Sir, those are issues that we are looking  
1763 into. When we discovered them--

1764 Mr. {Gardner.} You are looking into criminal--possible  
1765 criminal activity?

1766 Mr. {Beers.} If that turns out to be the result of  
1767 these reviews, the answer to that, of course, is yes. We  
1768 have an obligation to you and to the American public to do  
1769 that.

1770 Mr. {Gardner.} Do you--I mean, in terms of what you are

1771 facing, what else are we missing from this memo? I mean, is  
1772 this a comprehensive memo or are there other issues that you  
1773 are finding, other issues that need to be addressed?

1774 Mr. {Beers.} Sir, you are asking me to say what the  
1775 unknowns are here. I am not saying that this memo is the  
1776 entirety, and I don't think that David would say that. But  
1777 it does represent a commitment to make sure that we  
1778 understand the problems as we know them and to come up with  
1779 solutions to fix that. David?

1780 Mr. {Wulf.} I would just add that I would echo the  
1781 Undersecretary's sentiments. I would say that the report was  
1782 focused, you know, as it was intended to be, an internal  
1783 candid assessment. It was focused very much on the  
1784 challenges side of the equation. It did not focus as much on  
1785 the program's successes and opportunities. You know, I would  
1786 add, too, that we have a very talented and committed  
1787 workforce within ISCD. We have very committed folks at both  
1788 headquarters and in the field, all eager to move the program  
1789 forward. And I think, as I mentioned earlier, you know, the  
1790 problems we identified in the report are certainly not  
1791 insignificant, but they are by no means insurmountable, and  
1792 we are looking forward. We have a nearly 100 point action  
1793 plan that is in progress. We are meeting on a weekly basis  
1794 with Deputy Undersecretary Spalding to review progress on

1795 those items, and you know, we anticipate continued progress.

1796           Mr. {Gardner.} The report identifies several issues  
1797 with the unionization, the challenges you faced with the  
1798 union. Can you name any other agencies or offices who deal  
1799 in anti-terrorism security, national security, who placed a  
1800 union in the picture before most accountability measures were  
1801 put in place?

1802           Mr. {Wulf.} I am not aware of any, but--

1803           Mr. {Gardner.} Okay. Let us talk a little bit about  
1804 the budget. The memo talks on page 15, and I quote, ``ISCD  
1805 lacks a system for tracking the usage of consumable supplies,  
1806 which creates an environment for fraud, waste, and abuse.''  
1807 This isn't an Inspector General report, it is not the GAO  
1808 saying this. It is the program managers describing their own  
1809 program. So how can a member of Congress choose to fund a  
1810 program that is so self-described?

1811           Mr. {Wulf.} We recognize some administrative  
1812 shortcomings in the tracking of funds, and recognizing, too,  
1813 that this is a relatively new program, relatively new  
1814 organization, we have put into place safeguards relating to  
1815 the receipt of goods. As I mentioned earlier, we didn't  
1816 identify actual fraud, waste, or abuse, just that there were  
1817 additional processes that needed to be put into place to  
1818 ensure that that does not--

1819 Mr. {Beers.} And sir, a point of clarification here.  
1820 That part of the report is actually taken from another review  
1821 that was accomplished during, started before, and finished  
1822 during the period in which they prepared that, and it was our  
1823 own compliance unit that did that, that discovered that.  
1824 They didn't discover any charges to be laid, but they said  
1825 that the procedures were inadequate, as the report correctly  
1826 says.

1827 Mr. {Gardner.} Is there--DHS has an Inspector General,  
1828 correct?

1829 Mr. {Beers.} We have an Inspector General and we have  
1830 also--for the whole department, and we have an office of  
1831 compliance and security within our own NPPD, and that is who  
1832 looked into this issue at the Assistant Secretary and my  
1833 request.

1834 Mr. {Gardner.} So the Inspector General has looked into  
1835 this?

1836 Mr. {Beers.} The Inspector General has access to these  
1837 reports, yes, sir, but this was not done by--

1838 Mr. {Gardner.} Have you had conversations with the  
1839 Inspector General?

1840 Mr. {Beers.} With respect to this report?

1841 Mr. {Gardner.} Yes.

1842 Mr. {Beers.} I can't speak to that. I have not

1843 personally had that conversation.

1844 Mr. {Gardner.} But he has this memorandum?

1845 Mr. {Beers.} As with all of these kinds of reports,  
1846 yes, they are available.

1847 Mr. {Gardner.} They are available or he has them? I  
1848 mean, have you sent it to him?

1849 Mr. {Beers.} I will have to confirm that to you, sir.

1850 Mr. {Gardner.} Thank you. And another question I would  
1851 have, just based on the authorization, would a multi-year  
1852 authorization give you the surety that you need to pursue  
1853 programmatic improvements? Would it be helpful for you to be  
1854 assured that legislatively the program can't change?

1855 Mr. {Beers.} As the report says and as we have said for  
1856 some time, a long-term authorization of this program is  
1857 vital, both to the workforce and to our security partners and  
1858 stakeholders in this program. It gives us a longer term  
1859 stability that a year-to-year unfortunately doesn't provide  
1860 us.

1861 Mr. {Gardner.} On the issue of re-tiering, there are a  
1862 number of sites that were tiered last fall--

1863 Mr. {Shimkus.} I would remind my colleague that we are  
1864 getting close to the votes being already called.

1865 Mr. {Gardner.} I have some additional questions I will  
1866 get over to you. I yield back my time.

1867 Mr. {Shimkus.} Gentleman yields back his time, and I  
1868 appreciate that.

1869 Let me just say in follow-up, I think Mr. Beers  
1870 testified he would like the law to have been made permanent  
1871 at the last--at the March hearing, so--but let me also just  
1872 again thank you, Mr. Beers, for your long career of public  
1873 service. And this is a part of your portfolio, not your  
1874 entire portfolio, Marine Corps officer in Vietnam, foreign  
1875 service, obviously did stuff at the Department of State,  
1876 Middle East, Persian Gulf, internal narcotics and law  
1877 enforcement. We get caught up in the heat of battle. We  
1878 expect you to address these issues and fix them, and that  
1879 will make further hearings go well.

1880 And just in response to my friend, Mr. Waxman, I love  
1881 his founding father quote, ``Where good laws do well, good  
1882 men do better.'' So you can't pass a law for total  
1883 compliance. It is really the people that make things work,  
1884 and I think you are going to get a handle on it. I just wish  
1885 that the people who have left the Department did not get a  
1886 move, but probably would have been held more accountable to  
1887 their activities.

1888 With that, I would like to adjourn this hearing. Thank  
1889 you for your service.

1890 Mr. {Beers.} Thank you.

1891            [Whereupon, at 11:16 a.m., the Subcommittee was  
1892 adjourned.]