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GOP, Chamber of Commerce and Fox News: Did They Play a Role in the Fertilizer Plant Deaths?

By: Art Levine – April 26, 2013

In his oration Thursday remembering the 15 people killed by the explosion of the fertilizer plant in West, Texas last week, President Obama said, "We give thanks for the courage, and the compassion, and the incredible grace of the people of West." But there was a complete absence of such courage and compassion exhibited by the multitude of state and federal oversight agencies that failed to take common-sense steps to prevent this and other recent industrial disasters. In fact, they have been hobbled by a successful 35-year war of deregulation led by the Chamber of Commerce, the GOP, conservative think tanks, and in recent decades by Rush Limbaugh and Fox News, all aided by their allies in Congress, a leading regulatory expert contends.

"Because of their consistent opposition to anything that OSHA or the EPA does, they bear much of the responsibility for this and other tragedies," says University of Texas Law Professor Thomas McGarity, a Member Scholar with the Center for Progressive Reform and author of a comprehensive new book, *Freedom to Harm: The Lasting Legacy of the Laissez Faire Revival*. The combination of an overwhelming anti-regulation, anti-tax conservative media, think-tank and business lobbying assault has essentially "debilitated" the nation's regulatory system designed to protect consumers, workers, investors and the environment --including what McGarity calls the "hollowed out" regulatory agencies run by the Obama administration. (A spokesman for the Chamber of Commerce declined to respond to McGarity's critique.)

The evidence is now overwhelming that lax enforcement -- the facility was only inspected once by OSHA in the plant's 51-year-history, in 1985 -- was abetted by the seven state and Federal agencies that looked the other way or failed to see its 270 tons of potentially explosive ammonium nitrate. That's the same chemical used by Timothy McVeigh to blow up the federal building in Oklahoma City. Thanks to strong reporting by *The Huffington Post*, *The New York Times*, *Bloomberg News*, *Mother Jones*, and *In These Times* labor reporter Mike Elk, among others, we've learned a lot in the last week about the dysfunctional, pseudo-regulation by uncoordinated state and federal agencies. That, in turn, created the regulatory climate that made last week's plant explosion almost inevitable.

Of course, it's disturbing now to learn of OSHA's failures, that the EPA was blocked by Congress and the Bush administration from regulating chemical plants and that plant officials didn't tell federal agencies that their facility had flammable or explosive materials. In fact, the Department of Homeland Security (DHS) was apparently unaware that the plant even existed or that it was stockpiling 270 tons of ammonium nitrate -- more than 1,350 times the threshold mandated for reporting such chemicals. The GAO

has been asked by Democratic lawmakers to look into these "oversight gaps" at the West Fertilizer Company and other similar facilities.

The parent company of the fertilizer plant is also being sued for negligence by a single mom who was injured while her apartment was destroyed, as well as by insurance companies and local businesses.

These sort of regulatory failure led to tragic results in West, Texas and in numerous earlier disasters, such as the explosion at the Upper Big Branch Mine in West Virginia that killed 29 people. But for many of the nation's business leaders, lobbyists and their right-wing media cheerleaders, it also may be seen, by some of their critics, as a job well done.

Clueless government oversight isn't due primarily to fecklessness and laziness on the part of state and federal regulators, but, rather, it's the product of a deliberate conservative effort over the years to block agencies from doing their jobs and ensuring that there's no meaningful enforcement.

As McGarity points out, "This lack of attention to the safety of our workplaces and neighborhoods is no accident. It is the predictable result of a concerted attack on the regulatory programs that Congress has enacted over the years to protect the public from irresponsible corporate misconduct."

For instance, as Celeste Monforton, a former OSHA official and an assistant research professor at George Washington University, says, "OSHA has been chronically underfunded nearly since its inception. It's the agency allegedly responsible for workplace safety, but its budget only allows for one inspection of each of the workplaces it oversees every 100 years. When things go wrong, people say, 'Where's OSHA?,' but what do you expect?"

In a similar vein, the state's pro-industry Texas Commission on Environmental Quality (TCEQ) is the agency charged with implementing not only loophole-laden state laws, but, through grants from the EPA, weakly enforced federal environmental laws, including the Clean Air Act. In practice, despite existing federal laws allowing it to monitor plants with dangerous chemicals, the agency generally hasn't bothered to try.

Indeed, on a sales mission to Illinois to lure industries to Texas with its loose regulatory climate, Governor Rick Perry insisted this week that his state's oversight agencies couldn't have prevented the explosion in the fertilizer plant.

On top of that, the AP reported: "Bryan Shaw, chairman of the Texas Commission on Environmental Quality, said he did not believe that more environmental regulations would have prevented the blast. Shaw told AP that he believes the final investigation will show that anhydrous ammonia, which his agency regulates and the plant stored, was not responsible for the explosion." Of course, Shaw's disingenuous statement failed to mention that the chemical responsible for the explosion was the 270 tons of ammonium nitrate, which his agency did have the general authority to regulate under a variety of federal laws empowering it.

Yet the state environmental agency claims, when it's convenient to do so, that it simply

lacks the authority to take action regarding the risky, potentially explosive ammonium nitrate at plants like the one in West, Texas.

"That's baloney. The people running the agencies in Texas are political appointees who don't know what's going on here," says Neil Carman, the clean air director of the Texas chapter of the Sierra Club and a former inspector for the Texas environmental agency. "They've got 3,000 employees, they're supposed to be the super-EPA of Texas, so what the hell are they doing?"

Indeed, he notes that after the BP explosion in Texas City that killed 15 workers and injured 170 people in 2005, the EPA and its Texas counterpart both used their Clean Air Act's enforcement authority. They were joined by OSHA and Justice Department in several civil and criminal legal actions that led to settlements imposing \$187 million in penalties against BP's Texas City refinery. The state and federal environmental agencies also forced safety reforms on the company under the Clean Air Act's under-used but sweeping "General Duty" clause to better protect employees and the public from hazardous chemicals.

But they have almost never been willing to invoke that authority against the powerful petro-chemical industry (and its fertilizer plant allies) *before* disaster occurs by requiring safer practices. The industry's lobbyists successfully worked during the Bush administration to sabotage strong regulations and legislative oversight, aided by Dick Cheney's son-in-law, Philip Perry, a top administration attorney at OMB and DHS, as I chronicled for *The Washington Monthly* in 2007.

In July of last year, environmental, labor and public interest groups petitioned the EPA to use its existing authority under the "General Duty" clause and other sections of the Clean Air Act to "prevent chemical facility disasters."

Yet, as *Bloomberg News* noted in a powerful editorial:

What's frustrating is that there are cost-effective ways to improve safety. Utilities have stopped using dangerous chlorine gas to sterilize water and started using ultraviolet light instead. Bleach makers have reduced their need to move huge quantities of chlorine gas by train by spreading production among smaller centers.

Although many of the bigger chemical companies have initiated these changes, hundreds of smaller ones, such as the West Fertilizer Co., require government urging.

Last July, a collection of environmental groups, labor unions and public-health advocates petitioned the EPA to use its authority to institute new rules that would drive companies to make a choice: use safer chemicals, use fewer dangerous ones or take measures to keep the public safe. In West, Texas, presumably, such rules could have led the fertilizer plant to improve fire safety, disperse its chemical stores, move some distance from the town or all of the above.

Nine months later, the EPA still hasn't responded to the petition.

Rick Hind, the legislative director of Greenpeace, notes that despite vague EPA promises that some action would be taken after the election, "Nothing happened. They claim they're working on it, but we haven't seen any homework or paper on it." What's needed now by EPA, he says, without requiring any further Congressional approval, is "prevention-oriented action to prevent these disasters." Yet in a similar way, the EPA is backpedaling on President Obama's promise, in the absence of Congressional action on climate change, to have the agency move ahead on new rules for carbon dioxide emissions from power plants.

Now some liberal states, cities and environmental groups are threatening to sue over the agency's inaction, the Hill newspaper reported earlier this month. One knowledgeable agency observer speculates on the EPA's failure to take action on either climate change or stiffer regulation of chemical facilities: "They're gun shy," he says. "They've been shot down so often, and they're afraid of what the industry is going to say."

Despite President Obama's stirring rhetoric on everything from climate change to the tragic loss of innocent lives in West, Texas, he hasn't done much to ensure that the regulatory agencies he oversees actually save and protect lives by enforcing existing laws or pushing for new oversight authority. McGarity notes, despite some short-lived increases in funding in some agencies, that OSHA, for instance, hasn't issued a single major new regulation since 2001.

As a result of such lax oversight, labor activists still must set aside this week as Worker's Memorial Week to remember, as occupational safety writer Liz Borowski notes, the nearly 5,000 workers who are killed in the job each year. In addition, according to the AFL-CIO in its annual Death on the Job report, an estimated 50,000 people die from occupational diseases each year. "We could do a lot better," says Tom O'Connor, the executive director of the National Council for Occupational Safety and Health. "Thirteen people a day die on the job in so-called routine accidents, the vast majority of which are preventable -- about the same number of people who were killed at the Texas plant." The rate of fatal work injuries in the U.S. has remained roughly the same since the Obama administration took office.

But OSHA, while still failing to stem the tide of workplace deaths, isn't even ready to answer basic questions about its regulatory history with the Texas plant or its authority over it. When I asked, for example, whether the facility was exempted from certain oversight obligations because it had less than 10 employees, the spokespeople declined to answer directly. Instead, they provided a few generic statements by email and declined to be interviewed. Their response included some cut-and-paste palaver:

OSHA, an agency under the U.S. Department of Labor umbrella, covers more than 7 million worksites in the U.S. Federal OSHA, along with its state partners, have approximately 2,000 inspectors nationwide for between 7 and 8 million workplaces. Federal OSHA, under current funding levels, is able to conduct around 40,000 inspections per year, both programmed (targeted) and unprogrammed (ie: resulting from referral, complaint, fatality, etc). Texas is under Federal OSHA and has about 103 inspectors in the state.

Nobody is really sure whether the facility was exempted from certain OSHA enforcement actions because it had less than 10 employees, including OSHA officials themselves. *AsProPublica* reported: "The plant also may have been exempt from some inspections as

a small employer. *An OSHA spokesman told ProPublica that the agency would be investigating whether the plant had such an exemption.* (Emphasis added.) They've only had 28 years to figure that out since the last inspection, which led to a \$30 fine for the "serious violation" of improperly storing anhydrous ammonia, a potentially flammable gas also used as a commercial fertilizer.

In his book, McGarity dubs the Obama's administration oversight efforts as a limited "patch-and-repair" response to decades of under-funding and roadblocks thrown in the way of regulatory agencies.

Between 2006 and 2011, he argues, there was a confluence of horrifying illustrations of regulatory failure, including the Wall Street-led financial meltdown, the Deepwater Horizon disaster, and the Upper Big Branch mine calamity that were comparable to the failures that led to the New Deal and the regulatory reforms of the 1960s and 1970s. And until the 2010 mid-term results, the Democrats had, at least in theory, a super-majority in the Senate and control of all branches of government. "The stars lined up," he says, but we didn't get fundamental changes to the continuing *laissez-faire* political environment.

But it's not necessarily President Obama's fault. "Franklin Roosevelt didn't face anything like this," McGarity says. "There wasn't a Heritage Foundation and a Cato Institute and thousands of lobbyists," he points out, let alone Fox News, "all very coordinated with talking points."