



# Thomas O. McGarity: The rise and quick fall of the West tragedy's EPA rule

THOMAS O. MCGARITY Guest columnist Dec 7, 2019

Last month, the Trump administration dealt the final blow to Environmental Protection Agency regulations issued at the end of the Obama administration to protect neighbors of chemical companies from releases of highly toxic chemicals and explosions of the sort that killed 15 people and destroyed or damaged 150 buildings in West, Texas.

Reacting to the West tragedy, President Obama in August 2013 issued an executive order directing three federal agencies to come up with a plan to improve safety and security regulations for facilities that manufacture, store and distribute toxic and explosive chemicals. The EPA responded with modest new requirements for the 12,500 facilities in the country that keep extremely toxic substances in amounts greater than specified quantities. Under the new rules, companies had to let the public know what chemicals they were holding and report releases of those substances. The regulations encouraged facilities to share basic risk information with the public, but they also gave them a great deal of discretion in determining what information to disclose.

Further, companies suffering a catastrophic release or a near miss had to conduct a “root-cause analysis” to determine what went wrong. And owners of very high-hazard facilities had to conduct a safer-technology and alternatives analysis and evaluate the practicability of employing “inherently safer technology” (for example, by using safer chemicals). The regulations

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also contained some emergency response enhancements aimed at ensuring better coordination between high-hazard facilities and emergency responders, including field exercises every 10 years.

The chemical industry was not at all pleased with the new safeguards. So when the Trump administration came to town, the American Chemistry Council, the industry's chief lobbying organization, persuaded newly appointed EPA Administrator Scott Pruitt to delay the regulation's effective date for two years to give the Trump administration an opportunity to dismantle it. A federal court, however, held in August 2018 that the extension was arbitrary and the regulations went into effect without any significant adverse impact on the industry.

Nevertheless, the EPA proceeded to rewrite the regulations to address industry concerns. In the final version, published on Nov. 21 of this year, the EPA significantly weakened the regulations by eliminating the obligations to inform the public of risky chemicals that would be released in the event of an accident, to explore the possibility of using inherently safer technologies in high-hazard facilities and to conduct root-cause analyses after major leaks. In short, the Trump administration ripped the very heart out of the Obama administration's regulations.

The chemical industry is delighted with this outcome, but people living near major petrochemical companies and chemical-storage facilities may sleep less easily knowing that the agency that is supposed to protect them is more concerned about freeing the chemical industry from complying with sensible regulations.

The rest of us should be troubled that this is only the most recent of dozens of efforts by the Trump administration to roll back protections we rely on the federal government to provide. The Trump EPA replaced the Obama

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administration's stringent Clean Power Plan to reduce greenhouse gases from power plants with a weak rule that will do far less to forestall climate change. The Trump Department of Transportation withdrew the Obama administration's regulation requiring "high-hazard" trains hauling 70 or more cars filled with oil or ethanol to install better brakes. And the Trump Department of the Interior even weakened the blowout prevention rule that the Obama administration put into place to prevent another BP/Deepwater Horizon oil-spill disaster. The list goes on and on.

The West tragedy, unprecedented wildfires and the Deepwater Horizon spill were wake-up calls to which the previous administration responded with new protections for our health, safety and environment. The fire and multiple explosions that erupted at a chemical plant in Port Neches on Nov. 27, displacing tens of thousands of Texas coastal residents, only confirm the legitimacy of such concerns, including the merit of what should be bracing regulatory deterrents. The EPA deemed the Port Neches chemical plant a high-priority violator for more than two years. Even now, fires still burn there and residents grow more and more inflamed.

Sadly, the current administration is not just sleeping on the job; it is doing everything in its power to undo past progress in the service of a simplistic (and unfounded) belief that unfettered markets are good and that health and safety regulations are bad. As the 2020 elections approach, many issues will be on the agenda. The fate of the regulatory programs that protect us from irresponsible but powerful companies should be high on the list.

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