

COMMENTS ON US CHEMICAL SAFETY BOARD PROPOSED ACTION ON RECOMMENDATION CONCERNING AMERICAN CHEMISTRY COUNCIL ACTION ON REACTIVE CHEMICAL HAZARDS

April 19, 2016, Washington, DC

Change to Win appreciates the opportunity to present our views on the CSB's proposed status change for Recommendation 2001-01-H-9, stating that American Chemistry Council (ACC) should: "Develop and implement a program for reporting reactive incidents that includes the sharing of relevant safety knowledge and lessons learned with your membership, the public, and government to improve safety system performance and prevent future incidents."

We urge the Board to reject the proposed change in Recommendation 2001-01-H-9, and to leave it as "Open."

This Recommendation was adopted in 2002 as part of the CSB's landmark Report on Reactive Chemical Hazards and the gaps in the OSHA Process Safety Management and EPA Risk Management Plan standards.

We support the Board's work to maintain attention to these critically-important improvements in OSHA's most important standard on safety in the chemical industry. However, as the representative of many workers whose jobs and communities are daily threatened by the continuing and negligent mishandling of reactive chemicals in thousands of chemical processing operations around the nation, we strongly oppose any weakening of this important Recommendation.

Our concern about the severe dangers with reactive chemicals is longstanding. However, in April 1995, the horrific incident at the Napp Technologies Company in Lodi, NJ brought the concerns of both workers and the Labor Department into sharp focus. The Napp incident, discussed in detail in the 2002 CSB Report, demonstrated the glaring weakness from the PSM standard's exemption of reactive chemicals. In response, multiple trade unions petitioned OSHA to close the PSM loophole for reactives. And following both OSHA's dropping the issue from its Regulatory Agenda in the early days of the Bush Administrations as well as the Board's 2002 Report, we refiled the Petition along with detailed recommendations for a proposed standard. All to no avail, at least until the West Texas disaster finally prompted the President to order OSHA and EPA to do so (and, presumably, OMB/OIRA to cooperate with that directive).

It is worth noting that the Napp incident was also instrumental in the creation of the Board itself. OSHA and EPA attempted to do a joint investigation of the incident. That investigation was roundly criticized when released in 1997. At the time, Sen. Frank Lautenberg (D-NJ) was pressing the President to fully fund the CSB, which had lain dormant since its authorization in

the 1991 Clean Air Act amendments. With the glare of public and Congressional attention on the weakness of the joint investigation, the White House relented and allowed the Board to finally come alive.¹ The Board should consider this particular history in its consideration of any actions related to reactive chemicals.

ACC and NACD opposition to effective and essential regulatory improvements on reactives

At the time of this Recommendation and the other essential Recommendations in the 2002 Reactive Chemicals report, both the ACC and the National Association of Chemical Distributors opposed any changes in the regulatory status quo which could effectively close the mistaken exemption for reactives in the original PSM standard – despite both the overwhelming evidence of the need for strict regulation of reactives and the devastating consequences of the agencies’ failure to regulate them. As the ACC said in its specific response to the draft Staff version of the Reactives Recommendations:

“The Council believes it will be very difficult to develop a program that attempts to deal with the issue of reactive chemistry hazards in a detailed, prescriptive manner. While the solution may be as simple as ‘don’t mix these materials together,’ the issues can quickly become very complex. We are not recommending the development of such a program at this time; however, if such a program is needed in the future, it should be founded on performance-based systems … [including] use of chemical testing only as an adjunct to the performance-based program, not as the starting point....”²

The NACD also opposed any effective expansion of the public regulatory framework in 2002:

“...adding more chemicals to OSHA’s PSM list is not the solution. Merely taking a regulatory approach to solve this problem would take years to achieve. A short-term solution should include more thorough research by the CSB’s investigative team in collaboration with industry and technical experts.”³

See the attached chronology of industry opposition, political interference and OSHA/EPA malfeasance which has resulted in the continuing failure of the PSM and RMP rules to directly and realistically address reactive chemical hazards.

¹ Rick Weiss, “Report on N.J. Blast Revives a Debate; Clinton to Decide on Funding For Chemical Safety Board,” Washington Post, Oct. 23, 1997: “The report, by a new Environmental Protection Agency/Occupational Safety and Health Administration joint program, has political significance beyond the usual public safety role of such documents. That is because it comes a week before President Clinton must decide whether to use his line-item veto power to nix funding for an independent chemical safety board, which would investigate accidents such as Lodi. The administration has said it has faith in the EPA/OSHA program, which has been cutting its teeth on the Lodi report for two years. But critics, including labor leaders, environmental groups and a growing number of members of Congress, have said they would rather fund the Chemical Safety and Hazard Investigation Board, an independent panel modeled after the National Transportation Safety Board that looks into plane and train crashes.”

² Letter from D. Kellogg and B. Shanks, ACC, to CSB Lead Investigator John Murphy, June 28, 2002.

³ Comments of NACD President James Kolstadt on CSB draft Reactives report, June 28, 2002.

Both the ACC and NACD continue to oppose any significant change in the regulatory framework. While not as explicit as its opposition in 2002, the ACC continues to support the continuation of only the existing regulatory framework:

“We fully support the role of the government in overseeing safety and security through the numerous federal programs in place that regulate the operation of chemical facilities, and we believe that agencies should have the appropriate tools to effectively train its field inspectors, educate the regulated community and enforce existing regulations.”⁴

Likewise, NACD continues to support only the most limited improvements in the regulatory framework – completely ignoring the glaring gaps in the regulation of reactive chemicals. In its official response to the President’s announcement of the Executive Order, NACD could only offer the following improvements in the status quo that led directly to the West Texas disaster:

“The President's "Executive Order on Improving Chemical Facility Safety and Security", released last week highlights essential elements in the field of safety and security, namely effective communication and coordination among all stakeholders....

NACD is encouraged that one of the directives in the Executive Order is better coordination of federal chemical regulations. A unified, streamlined approach to reporting, inspections, and enforcement would ... simplify the process for the regulated community and federal agencies alike....”

In considering any actions or positions from the ACC, NACD or other corporate stakeholders in the debate on reactive chemical hazards, the Board must take into account this history of industry non-cooperation. The chemical industry has continued its implacable opposition to the very core recommendations that Board made to OSHA and EPA to come to grips with the reactive chemicals crisis in 2002 – a crisis that unfortunately still deserves that description 15 years later. Had ACC taken a different approach and supported the Board’s core Recommendations for a protective PSM/RMP rules, its failure to fully comply with Recommendation 2001-01-H-9 might be excusable in 2015. Were OSHA to have imposed the urgently-needed reporting requirement for employers to share their incident information gathered under PSM, there would be no need for ACC to impose such a requirement itself on its members. But as the record shows, the chemical industry repeatedly used its political power to stop OSHA and EPA from complying with the Board core Recommendations. The Board should not reward now their intransigence by blessing a half-hearted, ineffective version of Recommendation 2001-01-H-9.

ACC has failed to require self-reporting of reactive incidents to government agencies or the public

The ACC’s intransigence in opposing a regulatory mandate for reporting reactive chemical incidents is clear, as the statements above indicate.

However, the ACC has still supported the voluntary sharing of information between the industry and the government and the public. For instance, in 2002, the ACC’s comments to the Board on the draft Report included the following position:

⁴ ACC press release on Executive Order, August 2, 2013.

“The chemistry business could support a central repository of information on reactive chemistry. Databases, when properly designed and configured, can provide a valuable source for information on reactive chemistry, but only if the information is accurate, up-to-date, and easy to search, sort and report. A single steward and uniform data entry standards are critical to its success. This would seem to be a good opportunity for cooperation between Government, Industry, and Academia.”⁵

Since then, however, despite the repeated occurrences of severe incidents arising from the mishandling of reactive chemicals in production, processing and distribution operations, the ACC member companies have utterly failed to themselves provide that information to the government or the public. In this light, it appears that the industry is contradicting the stance it took in 2002, and continues to hide the available evidence of the on-going problems with reactive chemicals.

That evidence is precisely the kind which lead to improved independent oversight of the approach and practices by the different industry sectors – an oversight and regulatory role which only the government and the public can play. Absent such external involvement, necessarily based in part on the industry’s own incident reporting, we will continue to suffer more of the obvious problems – so clearly identified in the 2002 Report and Recommendations – with the expected and tragic results.

As we stated at the CSB’s stakeholder meeting on the PSM standard in July, 2013, those Recommendations are as important and relevant now as they were in 2002. The catastrophe in West Texas conclusively demonstrated the urgency of closing the loopholes on Reactive chemicals in the basic OSHA and EPA regulations on chemical factories and storage facilities, as Chairman Moure-Eraso clearly stated in his 2013 testimony to the Senate Committee on the Environment and Public Works.⁶

The fault for that continuing gap is not solely one of failure by OSHA and EPA. In 2010, during a webchat on the Regulatory Agenda, Ass’t. Labor Secretary David Michaels stated the following in response to a question from a reporter about the failure to respond to the 2009 Congressional request for action on reactive hazards and the PSM standard:

“Reactive hazards are of great concern to OSHA. Unfortunately, there are a large number of other major priorities on the regulatory agenda at the current time and our resource constraints make it impossible to add reactive hazards at this time. Meanwhile, we are planning to address reactive hazards through a compliance directive.”⁷

[OSHA never issued the Compliance Directive dealing with reactive chemical hazards either.]

⁵ Letter from D. Kellogg and B. Shanks, ACC, to CSB Lead Investigator John Murphy, June 28, 2002.

⁶ The Board’s 2009 Recommendation of the incident at the T2 Laboratories also noted the severity of reactive chemical hazards.

⁷ OSHA Webchat on Regulatory Agenda, April 26, 2010, at 1:36pm.

It is simply unacceptable that the Office of Management and Budget would have allowed OSHA to be forestalled from dealing with such a critically-important protection, merely because of shortage of funds. Standard-setting is among the smaller parts of OSHA's entire budget, and a few million dollars to support such a rulemaking would make no difference to the Administration's budget priorities.

We are relieved that OSHA has recently worked diligently to revise the PSM standard. But we are deeply saddened and enraged that it only happened after the Ammonium Nitrate explosion in West, TX. The people of West Texas have paid a huge price for the continuing failure of the Labor Department, EPA, the Office of Information and Regulatory Affairs and the Office of Management and Budget to fix this problem. We hope that they will be the last, but we fear that the reactive chemical hazards lurking throughout our nation will inflict their toll on many more communities in the future until the gaps are closed.

Respectfully Submitted,

/s/

Eric Frumin, Health and Safety Director

Attachments:

1. Chronology of events related to PSM exclusion of reactive chemical hazards
2. Washington Post, Oct. 9 and 23, 1997, concerning joint OSHA/EPA investigation and creation of Chemical Safety Board.

BACKGROUND TIMELINE AND MATERIALS ON REACTIVE CHEMICAL HAZARDS

1995: Labor unions petitioned OSHA to take action on reactive chemicals hazards by closing loopholes in "Process Safety Management Standard" (PSM), following reactive chemical incident at Napp Technologies in Lodi, N.J. that killed five people.

2000: OSHA responded by adding this issue to OSHA's "Regulatory Agenda." – admitting the seriousness of the problem, and promising to fix it. [see *OSHA announcement in Federal Register, 4/24/2000;* <http://www.gpo.gov/fdsys/pkg/GPO-UA-2000-04-24/html/GPO-UA-2000-04-24-11.htm>]

2002: OSHA leaders appointed by President Bush eliminate the PSM revisions from OSHA's Regulatory Agenda. [see articles by William Dawson, Center for Public Integrity, 4/11/02 and 5/15/2002:
<http://www.publicintegrity.org/2002/04/11/3198/bush-administration-kills-safety-regulation-opposed-donors>
<http://www.publicintegrity.org/2002/05/15/3190/federal-board-concludes-current-chemical-regulations-are-inadequate>

2002: CSB formally issues Recommendation that OSHA change the PSM and RMP standards to cover reactive chemicals. [CSB [Report No. 2001-01-H](#), issued October, 2002]

2003: Broad coalition of labor unions refile their petition to OSHA requesting coverage of reactives under the PSM standard; it is supported by an equally broad coalition of environmental organizations, who also call upon EPA to "take prompt action to prevent harm to communities and the environment."

2004: CSB says OSHA's failure to act on CSB recommendation was "unacceptable". [see correspondence between CSB Chair Carolyn Merritt and OSHA Director John Henshaw:
<http://www.csb.gov/UserFiles/file/CSB-OSHACorrespondence.pdf>

2002 – 2006: CSB reports to US Senate 249 reactive incidents in this period, which killed three people, injured 220 people, and resulted in the requested evacuation of over 24,000 people. [see attached excerpt letter from CSB Board Member William Wright to Sen Barbara Boxer, Chair, Senate Committee on Env. And Pub. Works., 09/04/07].

Media investigations subsequent to 2002 revealed that the chemical industry had donated substantial sums to the Bush election campaign. Industry officials included the proposed OSHA standards on a "hit list" of 57 regulations targeted by business groups, which was solicited on behalf of Bush White House budget officials. [see attached article by Tom Brune, Newsday, 10/10/04]

2010: In response to both media questions about Spring 2010 Regulatory Agenda and a 2009 Congressional request to close the loophole in PSM for reactive chemicals, OSHA director David Michaels said "Unfortunately, there are a large number of other major priorities on the regulatory agenda at the current time and our resource constraints make it impossible to add reactive hazards at this time. Meanwhile, we are planning to address reactive hazards through a compliance directive."
([April 26, 2010 DOL Webchat on Regulatory Agenda](#))

US Chemical Safety Hazard and Investigation Board
Letter to Sens. Barbara Boxer and James Inhofe
Sept. 4, 2007

QUESTIONS FOR THE RECORD, following Carolyn Merritt testimony at July 10, 2007 hearing of Senate Committee on Environment and Public Works.

[EXCERPT ON REACTIVE CHEMICALS]

Questions from: Senator Frank R. Lautenberg

1. How many accidents involving reactive chemicals have occurred since 2002, according to the CSB's records, and how many has the CSB investigated?

The CSB's screening data include approximately 249 accidents that involved uncontrolled chemical reactions from July 2001 to December 2006.¹ During that period, the CSB investigated 12 reactive accidents, shown in the table below.

Date	Type	Location	Impact
1/16/2002	Toxic release	Georgia Pacific, Pennington, AL	2 killed, 8 injured
4/25/2002	Explosion	Kaltech Industries, New York, NY	36 injured
10/13/2002	Explosion	First Chemical, Pascagoula, MS	3 injured, public shelter
12/11/2002	Toxic release	Environmental Enterprises, Cincinnati, OH	1 seriously injured
1/2/2003	Explosion	Catalyst Systems, Gnadenthalen, OH	1 injured
2/7/2003	Explosion	Technic Inc., Cranston, RI	1 seriously injured, 12 evacuated
9/21/2003	Explosion	Isotec, Miami Township, OH	1 injured, >2000 evacuated
11/17/2003	Toxic release	DPC Enterprises, Glendale, AZ	7200 evacuated
1/11/2004	Explosion	Huntsman Petrochemical, Port Neches, TX	2 injured
4/12/2004	Toxic release	MFG Chemical, Dalton, GA	155 injured, >200 families evacuated
1/31/2006	Explosion	Synthron, Morganton, NC	1 killed, 14 injured
10/5/2006	Fire	EQ Industrial Services, Apex, NC	17,000 asked to evacuate

Newsday (New York)

October 10, 2004

Erasing The RULES; Rule Reversal; Many federal agencies are being run by industry veterans on a mission to scale back regulation

BY TOM BRUNE. WASHINGTON BUREAU

With the final presidential debate Wednesday turning to domestic issues, Newsday today begins a five-part series detailing how President George W. Bush has given many top administration posts to executives and industry advocates, as part of an effort to curtail regulations and to loosen the reins on federal contracts to the private sector. On Thursday the series looks at how Democratic presidential nominee John Kerry stands on some of the same issues and at who might benefit from a Kerry administration.

First of a series

WASHINGTON

Five minutes after an operator drained a chemical runoff pit at a paper mill in Pennington, Ala., an invisible deadly cloud of hydrogen sulfide seeped out of the sewer, killing two nearby workers and injuring eight others.

The cloud resulted from an unplanned chemical reaction, created when the drained pool of spilled NaSH, a chemical used to pulp wood, unexpectedly mixed with sulfuric acid that had been added to the sewer to control acidity.

And it added another tragedy to the scores of reactive chemical accidents at workplaces - resulting in toxic releases, fires or explosions - that have killed more than 100 workers and caused hundreds of millions of dollars in damages since 1980, according to the U.S. Chemical Safety and Hazard Investigation Board.

The problem is so grave that in 2002, the year of the paper mill deaths, the Chemical Safety Board recommended that federal regulators revise a key safety regulation on chemical process management to require companies to take steps to prevent a broader range of unintended chemical reactions.

But the Bush administration's director of the Occupational Safety and Health Administration, a veteran chemical company safety executive named John Henshaw, has so far declined to do so.

Instead, OSHA has formed a cooperative partnership that it calls an "alliance" with the chemical industry to highlight the issue and now urges companies to voluntarily follow a manual on dealing with reactive chemicals that OSHA has posted on its Web site.

"We think that's a better approach than going through a lengthy rule-making process," said Henshaw, who said he thinks it's unclear how a rule can be crafted. "Over the long haul, we can do it more effectively this way."

Henshaw's decision reflects the approach of the Bush administration, an approach it calls "smarter regulation," which emphasizes fewer new rules, examination of existing ones and the coaxing of companies to voluntarily comply with safety standards.

Appointments from industry

And Henshaw represents an important facet of the Bush administration: he is one of the scores of corporate or industry officials, or their lobbyists and advocates, appointed to political jobs, high and low, across the executive branch.

Nearly half - 47 percent - of the Bush administration's 400 top-level Senate-confirmed appointees to cabinet departments came from corporations, law and lobbying firms, or business consulting, a Newsday analysis found.

That gives business and industry a much greater influence than it had in the Clinton administration - just more than a third, or 34 percent, of President Bill Clinton's appointees came from corporate, law and lobbying, or business backgrounds.

But the extent of those appointments by Bush represents more than just the expected tilt toward business by a Republican administration.

The Bush administration has given key regulatory jobs to executives like Henshaw, representatives of the same companies that face regulation, Newsday found. At the Agriculture Department, which manages the national forest system, a former lobbyist for the timber industry is now an undersecretary and at the Food and Drug Administration a former tobacco and drug company lawyer is the general counsel.

Those appointments raise the question of whether public authority ought to be dominated by private interests, said Harvard University ethics professor Kenneth Winston.

Yet experts agree that the appointments violate no laws and breach no ethics guidelines, which are narrowly drawn to address specific personal gain at the expense of the public.

Instead, the experts say, the appointments cast in sharp relief the priorities of a presidential administration, because personnel is policy. In rolling back a wide variety of

new or proposed rules, Bush appointees are achieving what they view as an important goal of eliminating burdensome regulation and freeing companies to grow.

At the same time, however, some of the changes undo, weaken or forestall requirements to protect the environment or improve safety and health in the market and workplace, sparking sharp criticism from consumer and liberal advocacy groups.

"What has been different about the Bush administration is that the people who are on the receiving end of regulation now have control of regulations," said Gary Bass, executive director of OMB Watch, which monitors regulation and the Office of Management and Budget.

"It's the proverbial slogan we have used," he said, "You don't want to have a fox guarding the henhouse."

Reduced regulation goal

More of Bush's business appointees tend to be from heavily regulated industries, such as manufacturing or energy, than Clinton's who tended to be from financial and high-tech firms, the appointee analysis found. That, experts say, makes Bush appointees more likely to seek reduced regulation.

Critics charge the Bush administration is gutting or stalling needed government regulation, such as the revised standard on reactive chemicals, as a way of helping businesses that back Republicans more than Democrats.

Others, particularly those in organized labor, complain that the Bush administration has virtually shut them out, giving a one-sided tilt to companies, corporations and businesses at the expense of working people.

The Bush administration defends its appointees, calling them highly qualified individuals who make decisions based on the American people's best interests while abiding by strict legal and ethical guidelines.

Chad Kolton, an OMB spokesman, said appointees with business backgrounds bring expertise to the job, but he acknowledged they also bring management views. "That doesn't mean they are entirely against regulation," he said.

The Bush administration seeks to ensure that the benefits of regulation outweigh the costs, he said.

"Our primary interest is making sure health and safety are protected," Kolton said. "We are focused on results and look to achieve the results in the way that provides the most flexibility and economic growth."

Blaming what it calls "an explosion of new federal rules and paperwork" over the past 20 years that has inhibited job growth, the administration says it has cut new rules by 75 percent and is targeting 100 existing rules for streamlining.

An early signal

The first congressional act signed by Bush as president was a repeal of a mandatory standard on ergonomics, which had sought to address hundreds of thousands of repetitive motion injuries a year.

Organized labor and others hailed the regulation as an important safeguard for the more than half a million workers injured each year, creating \$9 billion in benefits at a cost of \$4.5 billion. Industry groups complained the regulation would cost business more than \$100 billion for questionable results.

A tougher OMB under Bush in its first year kicked backed 22 new major rules to the agencies for reconsideration, effectively killing half of them, and agencies withdrew dozens of proposals in early stages of the rule-making process.

The administration approved 58 anti-terrorism or security rules after the Sept. 11 attacks, but OMB reports a drop in other new economically significant "social regulations" - rules issued to provide benefits like cleaner air but with a significant cost.

The Bush administration issued 18 new major social regulations in fiscal years 2002 and 2003 combined, according to OMB reports. The Clinton administration approved more than 20 social regulations a year from 1996 to 2000.

Some new Bush rules have been controversial. This year, the Republican-controlled House and Senate voted to repeal a new Bush rule on overtime that the administration said would extend overtime benefits to an additional 1 million workers but that critics said would cut it for 6 million employees.

Other new Bush regulations have been aimed at changing protections of the environment - allowing mountain-top mining, snowmobiles in national parks and greater emissions from power plants.

And under Bush, OSHA has so far published no new regulations that the government classifies as "economically significant," that is costing or saving society \$100 million or more. That's a first for a presidential term in the OSHA's 24-year history. OSHA issued nine of those rules under Clinton and 10 under Bush's father, an OMB Watch study found.

Similar to Reagan

An expert on political appointments and the federal government said the Bush administration is more like the administration of Ronald Reagan, who as a candidate vowed to eliminate OSHA, than the administration of George H.W. Bush.

"Bush II has drawn more on Reagan than on Bush I," said Paul Light, a New York University public service professor and senior fellow at the Brookings Institution. "His father really represented a more moderate wing of the party. On the regulatory front, Bush II represents the Reagan revolution."

Reagan and his top officials were confrontational in their approach to regulation, appointing people openly hostile to the mission of the regulatory agencies as regulators - they threatened to abolish OSHA, slashed budgets and cut enforcement.

Bush and his top officials, however, are much less confrontational, Light said. But they may be even more effective. They have succeeded in penetrating rule-making and enforcement, from the top-line review at OMB to the field level, where even career workers get calls from the White House, Light said.

"This is a very well-oiled administrative machine, and it's very controlling," Light said, explaining that White House political director Karl Rove and others have unusual influence over the rest of government. "Chiefs of staff of each of the [cabinet] secretaries have a weekly telephone conference with Karl Rove over what's happening in their departments."

No hope of change

Jim Gannon has very little hope that OSHA will do anything about reactive chemicals.

In 1995, Gannon was burned on his arms, legs and face when the Napp Technologies Inc., plant exploded after the improper mixing of chemicals, killing five, injuring dozens and leaving a crater in downtown Lodi, N.J.

Gannon has since moved to Florida, but said he still hasn't recovered. At age 44, he said he can't work because of his injuries and said that he's homeless.

"The whole thing was not supposed to explode," he said. "So what do you do now? I don't expect nothing. Because obviously nobody's going to do nothing."

After Lodi, six labor unions filed a petition with OSHA requesting an emergency revision of the 1992 Process Safety Management standard for reactive chemical management, seeking application of the regulation requiring a 14-element safety program that covers 131 distinct chemicals with toxic or reactive properties to a broader list of chemicals.

Eric Frumin, health and safety director for the Union of Needletrades, Industrial and Textile Employees, which represented 70 workers at the Napp plant, remains bitter about the company and the fact that workers still face dangers they shouldn't have to.

"These are not accidents anymore," he said. "They are predictable. We have the means technically and organizationally to control the risk of unintended chemical reactions."

Deadly unintentional chemical reactions can occur when a chemical reacts to heat or impact, a chemical or chemical mixture begins an out-of-control reaction, or two incompatible chemicals mix, resulting in a toxic cloud or explosive reaction.

Companies can control these reactions by identifying their chemicals, evaluating potential hazards, and training managers and staff on how to handle chemicals to avoid inadvertent reactions. These steps are outlined in the existing safety regulation, but only for the most hazardous chemicals.

Frumin and others say the federal regulation must be expanded to force companies to pay attention to the potential hazards of other chemicals, especially those companies that do the bare minimum on safety to maximize profit.

The Chemical Manufacturers Association, a trade group that has changed its name to the American Chemistry Council, and the American Petroleum Institute opposed added regulation.

The two groups said expansion of the current standard would greatly increase costs without substantial benefits. The council now is "test driving" a flow chart that explains steps for managers to follow while evaluating reactive chemicals, said council safety specialist Dorothy Kellogg.

OSHA did not act immediately on the unions' petition. But it finally placed the standard revision on the Clinton administration's last regulatory agenda.

In December 2001, under the new Bush administration, however, OSHA withdrew it, saying it had other priorities.

Bush set those priorities by replacing Labor Secretary Alexis Hermann, a Democratic activist and advocate for women and minorities, with Elaine Chao, a fellow at the conservative Heritage Foundation and wife of Republican Sen. Mitch McConnell of Kentucky.

Chao tapped Steven Law, executive director of the Republican National Senatorial Committee, as chief of staff, and he assembled Labor's management team. Law is now the department's deputy secretary.

Under Chao, the number of discretionary lower-level political appointees like special advisers and confidential aides at Labor doubled to 90, personnel records show.

No labor appointees

The team recruited heavily from industry and conservative think tanks. None of the Bush political appointees at Labor come from organized labor. Three of Clinton's appointees came directly from unions.

In her first regulatory report, Chao wrote she had set a new course: "In general, [the Labor Department] will try to help employees and employers meet their needs in a cooperative fashion, with a minimum of rulemaking."

At OSHA, a target of lobbyists seeking relief for businesses from regulation, the administration named Henshaw, an executive at the chemical company Astaris Inc., as director and steel-industry lobbyist and former Republican House aide Gary Visscher as his deputy.

OSHA has moved forward on just one economically significant rule - lowering permissible exposure to hexavalent chromium, which can cause lung cancer - but only because a federal appeals court ordered it to meet a Jan. 18, 2006 deadline.

OSHA officials said reduced rule-making has not affected attaining results, as the workplace fatality rate hit a low of 4 per 100,000 workers in 2002.

Records, however, show the rate has been dropping steadily since 1994, and data released last month show the fatality rate steady but number of deaths slightly up in 2003.

Henshaw declined to speak on the record. Visscher defended OSHA's work.

"It is true that the regulatory agenda looked like it had fewer items," said Visscher. "That does not mean the agency was working on fewer items."

He said many of the proposals pared from the agenda were low priority and not likely to go anywhere. The agenda now reflects more realistically rules that will be completed, he said.

Among those proposals was the revision of the regulation compelling companies to follow the reactive chemical Process Safety Management standard. The Chemical Safety Board has set out to raise its priority level.

Evaluating the rules

Created by Congress in 1990 following Union Carbide's accidental toxic chemical release that killed thousands in Bhopal, India, the independent board is charged with evaluating OSHA and EPA rules and investigating chemical accidents.

After two years of research on reactive chemicals not covered by OSHA's standard, the board found no consistent set of data, but discovered 167 accidents that took 108 lives at a cost of hundreds of millions of dollars. It found that OSHA's rule had gaps, and in September 2002 the board voted to recommend that OSHA revise the standard to fill the gaps and to set up a database to track incidents.

OSHA did not respond right away, but accidents continued, including seven that resulted in board investigations.

On Feb. 7, 2003, for example, a violent chemical reaction inside a vent collection system set off an explosion and fire at a plating chemicals manufacturing facility in Cranston, R.I., critically injuring one and sending 18 others to the hospital.

On Sept. 21, 2003, a worker was injured at a high-tech biochemical products plant south of Dayton, Ohio, when a nitric oxide leak led to an explosion of a 300-foot tall distillation column, blowing out windows of the main office.

On April 12, 2004, a 4,000-gallon vat overheated and burst a safety valve at a Dalton, Ga., plant, releasing a toxic cloud that sent 180 people to the hospital and killed all animals in a 4-square-mile area.

More than a year after the board's recommendation, in November 2003, Henshaw wrote the board saying he declined to follow its advice because disagreement among experts about which chemicals to include or how to regulate them required OSHA to seek more information from stakeholders, which include chemical companies. In the meantime, OSHA said it would increase outreach to employers and pursue voluntary measures.

OSHA 'unacceptable'

The Chemical Safety Board, led by its Bush-appointed chair Carolyn Merritt, also a chemical company safety executive, in a unanimous vote in February 2004 called OSHA's response "unacceptable."

Merritt said she personally was "disappointed." She noted the board is not part of the Bush administration.

While welcoming OSHA's increased attention to the issue, Merritt said a rule is needed to require companies that do the minimum to meet safety rules.

Board staff point out that the state of New Jersey, which has had other disastrous chemical incidents since the Lodi explosion, last year issued its own regulation to broaden the list of chemicals that must be included in safety planning.

In mid-March, the board began tracking reactive chemical accidents at plants and has logged about two dozen incidents, including a reaction involving ammonium nitrate in August at an aircraft plant in Ferris, Tex., that killed a worker.

Not long after the Chemical Safety Board voted to classify OSHA's rejection of its recommendation as "unacceptable," one of its members retired and the Bush administration moved quickly to fill it.

The White House tapped OSHA's deputy director, Visscher. Visscher is the former vice president of the American Iron and Steel Institute, who for years worked as a Republican staffer who sought to make OSHA more business-friendly.

Democrats blocked confirmation of all of Bush's new executive appointments this summer, but Bush gave Visscher one of his few recess appointments, allowing Visscher to serve until December 2005.

Visscher said the White House asked him to take the new position and he agreed.

The AFL-CIO objected, complaining he lacked the legally required credentials of a background in chemistry or regulation of chemical hazards that the other members have. The AFL-CIO said it also was "deeply concerned that Mr. Visscher's appointment would politicize the Chemical Safety Board's investigations and recommendations."

Visscher said he has ample experience with workplace safety, and said, "I'm not here to politicize the board."

Press aides for Visscher said he had won the support of Ron Hayes, the outspoken founder of a support group for families of workers killed on the job and former member of a federal worker safety board. Hayes confirmed he had written a letter of support for Visscher.

"Gary's a pretty good guy," Hayes said. But Hayes added the Bush administration had placed Visscher on the Chemical Safety Board for a reason.

"What they need is eyes and ears there," Hayes said. "What Bush would like to do is rein them in."

TOMORROW: How some of the FDA's recent decisions have benefitted business

The regulators

David Lauriski

Was a business consultant on mine safety when he was appointed to head the Mine Safety and Health Administration in 2001. Before launching the Utah-based Lauriski and Associates, Lauriski spent 15 years as general manager of Energy West Mining Co. and 14 years at Kaiser Steel Corp.'s Sunnyside Mines.

Gary Visscher

Was vice president at the trade group American Iron and Steel Institute before being named OSHA deputy director in 2001. A longtime GOP House aide on workplace issues, Visscher served from 1997 to 2000 on the OSHA review board. In August, he became a member of the Chemical Safety and Hazard Investigation Board.

John Henshaw

Tapped in 2001 to head the Occupational Safety and Health Administration after a nearly 30-year career as a chemical companies executive. He oversaw environment, safety and health for Astaris LLC, a joint venture of FMC and Solutia Inc., and before that for Monsanto Co. in St. Louis.

Some rule changes

The Bush administration says it has cut new rules by 75 percent and has targeted 100 existing rules for streamlining. Consumer and labor advocacy groups complain the administration has undermined needed health, safety and environmental rules. Below are a sampling of rules that the administration has moved to repeal, withdraw or relax:

Ergonomics requirements: A far-reaching Clinton rule requiring companies to address repetitive motion injuries, affecting more than half a million workers each year, was repealed in 2001 by Congress at the urging of President George W. Bush. OSHA had estimated it would reap \$9 billion benefit at a cost of \$4.5 billion. Industry charged it would cost more than \$100 billion for questionable results. The Labor Department is now developing industry-specific voluntary guidelines.

Requiring greater efficiency: A Clinton regulation requiring home air conditioners to be 30 percent more efficient was eased to 20 percent by the Energy Department in 2002. The higher standard would save consumers \$1 billion by 2020 and reduce need for up to 48 new power plants, advocates said. Industry said higher air conditioner prices would hurt low-income consumers. States and advocates sued and a federal appeals court in January 2004 ruled the Energy Department violated energy law and reinstated the higher standard.

Controlling workplace tuberculosis: A 10-year-old proposed rule that would require employers to provide protection for workers against tuberculosis, the contagious airborne disease, in hospitals, nursing homes, jails and prisons and homeless shelters, was canceled by the Labor Department in 2003. The rule is needed because TB continues to rise in some states and lapses at workplaces continue, proponents said. Industry said overall cases of TB had dropped and guidelines issued by the Centers for Disease Control and Prevention are working.

Construction runoff: A proposed rule that would have required an 80 percent reduction in storm water discharges from construction sites was withdrawn by the Environmental Protection Agency earlier this year. Proponents said it was needed to control the 80 million tons of solids construction sites discharge into waterways each year. Industry

said it was not cost-effective, would raise housing costs and hurt construction companies.

Blood tracking, notification: A proposal pending since 1999 to require the tracking of plasma and other blood-derived products from the manufacturer through the distribution network to patients was withdrawn by the Food and Drug Administration this year. Congress in 1996 raised concerns about whether a voluntary notification was sufficient. The FDA did not explain the withdrawal.

A business plan

As part of its emphasis on "smarter regulation," the Bush White House has drawn more of its political appointments from the business and legal sectors than the Clinton administration did.

BUSH ADMINISTRATION

Total appointees 400

Government 36.5%

Lawyers, lobbyists, consultants 25.0%

Business 22.0%

Academics 9.0%

Nonprofit 7.55%

CLINTON ADMINISTRATION

Total appointees 405

Government 44.0%

Lawyers, lobbyists, consultants 22.2%

Business 12.3%

Academics 11.6%

Nonprofit 9.9%

NOTE: The data used to compile the appointments was created with the help of Newsday research Sarah Mueller and librarian Angela Johnson, and interns, Michelle Ahn, Tamara El-Kahoury, Jordan Carleo-Evangelist, Robert Gutsche Jr. Sandra Kim and Melina Vissat.

Report on N.J. Blast Revives a Debate; Clinton to Decide on Funding For Chemical Safety Board

[FINAL Edition]

The Washington Post - Washington, D.C.

Subjects: Chemical industry; Regulatory reform; Reports; Explosions;
Industrial accidents

Author: Weiss, Rick

Date: Oct 23, 1997

Start Page: A.21

Section: A SECTION

Corrections: An article on Thursday's Federal page about a report on the causes of a 1995 chemical plant explosion should have noted that The Occupational Safety and Health Administration and The Environmental Protection Agency are required by an executive order to allow a plant's owners to edit out trade secrets or other confidential business information. (Published 10/29/97)

The Clinton administration Tuesday released its long-awaited report on the causes of a 1995 Lodi, N.J., chemical plant explosion that killed five people, stirring heated debate about the government's ability to investigate industrial accidents.

Administration officials defended the report as evidence that a new federal investigatory authority is working. But critics lambasted the report for not placing blame on individuals responsible for the disaster, and for allowing the plant's owner -- Napp Technologies -- to review a draft of the report and make changes before it was released.

"A kindergarten teacher would do more to find out who broke the cookie jar," fumed Eric Frumin, health and safety director for the Union of Needletrades, Industrial and Textile Employees, which represented 70 workers in the plant.

The report, by a new Environmental Protection Agency/Occupational Safety and Health Administration joint program, has political significance beyond the usual public safety role of such documents. That is because it comes a week before President Clinton must decide whether to use his line-item veto power to nix funding for an independent chemical safety board, which would investigate accidents such as Lodi.

The administration has said it has faith in the EPA/OSHA program, which has been cutting its teeth on the Lodi report for two years. But critics, including labor leaders, environmental groups and a growing number of members of Congress, have said they would rather fund the Chemical Safety and Hazard Investigation Board, an independent panel modeled after the National

Transportation Safety Board that looks into plane and train crashes.

The chemical board exists on paper; it was created by Congress in 1990. But board members were not appointed until Clinton came into office, and funding has so far been absent.

Supporters say an independent board would be more likely to point the finger at regulatory agency shortcomings when necessary. They also note the board's findings would not be admissible in litigation, a factor that might make companies more willing to tell the truth about what happened.

The independent agencies appropriations bill, due to hit Clinton's desk any day, would transfer \$4 million from the EPA to get the chemical board going. The administration has hinted the president may veto that funding in favor of the EPA/OSHA program. But that decision has been on hold, in part to see how the joint program's first big report came out.

Now that it has, the battle has escalated only in volume.

Administration officials said they are proud of the Lodi report, which cites Napp's inadequate analysis of potential hazards, inadequate training, use of inappropriate equipment, inadequate communications, and poor fire brigade training among the root causes of the accident.

"It took longer than we hoped, but I think we've done it fairly successfully," said David Speights, associate director of EPA's chemical emergency preparedness and prevention office.

But critics are furious that the report provides substantially no new information beyond that in an OSHA report in 1995.

"There isn't much in this report that we couldn't have read about in the newspapers two years ago," said Sen. Frank R. Lautenberg (D-N.J.), who lives three miles from the Lodi plant. "The chemical safety board could have completed the investigation quicker and better. A line-item veto of the funding for the safety board would be a disaster."

Others faulted EPA/OSHA for not having the report "peer-reviewed" by an outside panel of experts, as EPA Administrator Carol M. Browner and Labor Secretary Alexis M. Herman previously had suggested to Congress would be appropriate for such reports. The agencies say they intend to get the report peer-reviewed soon.

Mike Marshall, program coordinator for OSHA's chemical accident response team, said that although the report reiterates the basic finding of the 1995

report, it does so in more detail.

"We listed in 1995 a half dozen or so elements that contributed or were deficiencies . . . and in this report we bring some of these things more into the forefront," he said. And although Napp was allowed to make substantial "editorial" changes in the report, he said, the final findings were unaffected by the comments from Napp, which hopes to reopen the plant at a new location in Rhode Island.

EPA and OSHA officials also said that as a result of the investigation they are considering whether changes should be made in their educational and regulatory programs in chemical plants. But Frumin of the needleworkers union said the 1995 OSHA report already concluded that the agencies should consider making those changes.

Said Frumin, "They thought about it in 1995, and they're still thinking about it."

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Chemical Safety Board Lurching Back to Life

[FINAL Edition]

The Washington Post - Washington, D.C.

Subjects: Safety; Chemical spills; Hazardous substances; Investigations

Author: Weiss, Rick

Date: Oct 9, 1997

Start Page: A.21

Section: A SECTION

Like a phoenix rising from the acrid smoke and ashes of a chemical plant explosion, the Chemical Safety and Hazard Investigation Board is fitfully taking to the sky again.

Now the question is whether the investigative board will actually spread its wings and fly -- or quickly go down in flames, the target of a presidential line-item veto.

The chemical safety board was created by Congress in 1990. Modeled after the National Transportation Safety Board that investigates plane and train crashes, its mission is to find the "root causes" of the serious fires, toxic leaks and explosions that occur with some regularity at the nation's chemical and industrial plants.

According to data compiled by the National Environmental Law Center, a chemical accident serious enough to cause injury, death or evacuation occurs about once every day or two in the United States. The Environmental Protection Agency and the Occupational Safety and Health Administration share responsibility for investigating those accidents, and the administrators of those agencies have argued that they are doing a good job.

Congress felt otherwise when it created the chemical board seven years ago. There were concerns, for example, that EPA and OSHA might be less than enthusiastic about pursuing cases in which the agencies themselves might share blame because of inadequate inspections or enforcement.

Moreover, OSHA has in 23 states ceded investigative powers to state programs that do not always have the ability to conduct full-scale investigations -- and may lack the incentive to do so, given the effects such an investigation may have on a local economy dependent on a large plant.

Congress especially liked the fact that the chemical safety board's findings, conclusions and recommendations -- like the NTSB's -- cannot be admitted as evidence or otherwise used in litigation. That kind of confidentiality makes it

more likely that a company will candidly reveal details that will help others take the necessary steps to prevent a repetition of the disaster.

But President George Bush failed to name any members after the authorizing legislation was enacted. And although President Clinton did appoint members in 1994, the administration decided as part of its "reinventing government" program to give the board's responsibilities -- though not its powers -- to a newly formed EPA/OSHA joint commission. The chemical board never got its first penny, and its members are working elsewhere for now.

"I'm a lady in waiting," said Devra Lee Davis, a public health scientist and Clinton appointee to the board.

That might have been the end of the story, except for the tenacity of the board members and an ongoing string of explosions, one of which happened to occur just three miles from the home of Sen. Frank R. Lautenberg (D-N.J.). That April 1995 accident at Napp Technologies Inc. in Lodi, N.J., left six people dead and numerous others injured. More than two years later, the EPA/OSHA team has yet to release a report on what went wrong.

Fed up with the delays, Lautenberg earlier this summer added wording to the VA/HUD and Independent Agencies appropriations bill that would take \$4 million from EPA -- about the same amount the agency now contributes to the EPA/OSHA program -- to get the independent chemical safety board going. The provision survived the House-Senate conference resolving differences in the two chambers' appropriations bills and has gained vocal support from such odd political bedfellows as Rep. Henry A. Waxman (D-Calif.), Sen. Christopher S. Bond (R-Mo.), Sen. Barbara A. Mikulski (D-Md.) and Sen. Ted Stevens (R-Alaska).

The board also has the support of New Jersey's Republican Gov. Christine Todd Whitman, a large collection of labor and environmental groups, and a handful of chemical companies, including Marathon Oil, Shell Martinez Refining and Rohm & Haas Co.

Clinton administration officials, however, are adamant that the government already has the resources to do the job well.

"The Administration believes the EPA/OSHA program is successfully fulfilling its responsibilities to investigate chemical accidents and provide recommendations for their further prevention," wrote White House Chief of Staff Erskine B. Bowles in a July 10 letter.

The Office of Management and Budget also opposes the board. "We think the EPA/OSHA program is working well," said OMB spokesman Lawrence Haas.

In a report to Congress last month, EPA Administrator Carol M. Browner and Labor Secretary Alexis M. Herman described their agencies' accomplishments to date. By December 1996, two years after the joint program was initiated, the agencies had agreed to a "Memorandum of Understanding" as to how they would coordinate their activities. Now they are developing a protocol for how to conduct an investigation.

Meanwhile, they reported, of their investigations into the 11 "most significant" accidents in the past three years, including three conducted under the evolving joint system, one report has been issued.

That may not sound very productive, other administration officials conceded, but the Lodi report is expected out within the next month, and two others have been promised by year's end. They also questioned whether the new chemical board could have done any more in the same amount of time with the same small budget.

"We believe that EPA and OSHA already work effectively together to protect the health of chemical workers and their communities," said EPA spokeswoman Loretta Ucelli. "To duplicate these public health efforts is not a wise expenditure of public funds."

Safety board advocates are unapleased. "If we waited for an EPA/OSHA investigation to tell us why ValuJet crashed, we'd still never know," said Richard Miller, a policy analyst for the Oil, Chemical and Atomic Workers Union. The union represents 90,000 workers, including some who were in a Martinez, Calif., refinery that blew up in January, killing one and injuring 44.

EPA investigators were locked out of the Martinez plant for the first six months after the accident because of jurisdictional squabbles with state OSHA investigators. The chemical safety board's authority would have been unquestioned, Miller said.

Moreover, the Napp investigation itself is long finished and the report's delay appears to be due to legal haggling, Lautenberg said. This leads some to worry that the accident's "root cause" is being negotiated instead of uncovered.

The VA/HUD appropriations bill is expected to hit the president's desk within the next week. Administration sources said the safety board has been earmarked for a possible line-item veto, but that Clinton is undecided on its fate.

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