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Thomas McGarity, Texas Perspectives: Federal rules to prevent another deadly West blast now at risk

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THOMAS MCGARITY Texas Perspectives

Congress may soon prevent the Environmental Protection Agency from enforcing a recently finalized rule aimed at preventing chemical explosions such as the one that killed 15 people, sent 260 to the hospital and devastated the town of West, Texas, in April 2013. This news should be of great concern to anyone who lives or works near a wide variety of facilities that use or store chemicals that can cause devastating damage when they leak or explode.

In 2013, President Obama signed an executive order that, among other things, instructed the EPA to expand its risk-management program to address risks of explosions and chemical releases posed by storage facilities such as the fertilizer and blending plant that blew up in West. That program requires facilities that use dangerous chemicals to write and enforce plans to reduce the risk of leaks and explosions and to protect emergency responders from death and injury.

After spending 2½ years studying the matter, the EPA finalized a regulation that expanded the coverage of the risk-management program, tightened its accident prevention provisions and enhanced emergency preparedness to ensure better coordination between chemical facilities and local officials. But the chemical industry opposed the changes, and the House Freedom Caucus placed it on its list of regulations that should be scrapped during the first 100 days of the Donald Trump administration.

The problem for the rule's supporters is that it was not finalized until Jan. 13, 2017, and it is therefore subject to a veto by Congress and President Trump under the little-known Congressional Review Act (CRA) of 1996. That statute requires agencies to submit every regulation to Congress for review. Congress then has 60 days to pass a joint resolution disapproving the regulation. If Congress passes a joint resolution and the president signs it, the regulation dies.

The act provides "fast-track" procedures that allow joint resolutions to sail through

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Congress without any hearings, and floor debate in the Senate is limited to 10 hours. This means that they are filibuster-proof.

The bottom line is the current Congress has ample time to kill the protective changes to the EPA's risk-management program if it wants to. And given Trump's recent promise to eliminate 75 percent of existing federal regulations, it is a good bet that he would sign a joint resolution preventing the EPA from issuing a new one.

It gets worse. Once Congress has passed a joint resolution of disapproval, the agency may not promote a new regulation that is "substantially the same" as the one it disapproved unless Congress subsequently passes a new law specifically authorizing the regulation.

This means that if Congress passes and Trump signs much-needed changes to the EPA's outdated regulations, which failed to prevent the tragic deaths of emergency responders in West, the EPA will not be able to update those regulations in a similar fashion until a perennially gridlocked Congress tells it to do so.


The one saving grace for the risk-management program revisions is that it can take up to 10 days for the Senate to pass a joint resolution. Because floor time is precious, this means that the Senate leadership will be willing to take up only a few CRA joint resolutions.

The Republican leadership of both houses of Congress has prioritized Congressional Review Act joint resolutions during the next few weeks. In fact, Republican House Majority Leader Kevin McCarthy recently promised that Congress would use it to repeal as many regulations as possible. The chemical industry is vigorously lobbying Congress to void the risk-management revisions and Rep. Markwayne Mullin of Oklahoma has already drafted a joint resolution to do just that.

Unless congressional leaders hear from their constituents that the revisions are needed to protect residents of small towns and large cities from explosions such as the West catastrophe and toxic chemical releases, a good chance exists that Trump and the newly elected Republican-controlled Congress will repeal the added protections that Obama ordered in 2013, and that it will be impossible for a future EPA to resurrect them.

This is not what voters had in mind last November.

Thomas McGarity is a professor of law at The University of Texas at Austin and a board member of the Center for Progressive Reform.

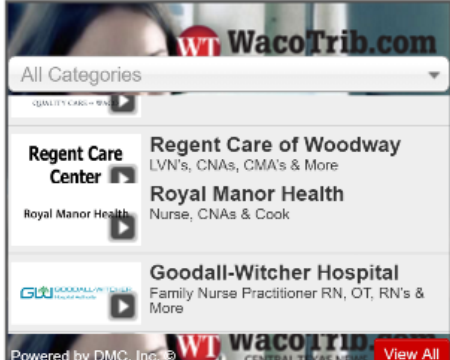


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