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West explosion highlights need for regulatory oversight

Legislature should create agency that protects workers
By Thomas O. McGarity | May 2, 2013 | Updated: May 2, 2013 6:46pm

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In the wake of the April 17 fertilizer plant explosion in West that killed 15 and injured around 200, many Texans wanted to know who had responsibility for ensuring that up to 270 tons of ammonium nitrate were stored properly so as to prevent such catastrophes. Surely some governmental agency was charged with protecting workers, neighbors and first responders from the risks posed by explosive chemicals.

At a recent legislative hearing, we were reminded that several agencies had responsibilities for various aspects of the storage and processing of chemicals at the plant. But no state agency had the authority to address the risks that manifested themselves in the **West Fertilizer Co.** explosion.

That should come as no surprise, because Texas prides itself on its "friendly" regulatory climate for business. Indeed, within a week after the West explosion, Gov. **Rick Perry** was in Illinois attempting to lure its businesses to Texas, where they would not be subject to so many "burdensome" regulations.

What might come as a sad surprise to the families in West who lost their homes and loved ones is the conclusion of the chairman of the **House Homeland Security and Public Safety Committee**. Rep. **Joe Pickett**, D-El Paso, proclaimed that "the state of Texas is in good shape" when it comes to regulatory programs designed to protect its citizens from future explosions. Therefore, he didn't see the need for "any major changes."

One agency that didn't testify at the hearings was the **Texas Occupational Safety and Health Commission**. That is because there is no such agency. Unlike most states, Texas has decided that it does not need a program to protect the safety and health of its workers. We leave that up to the free market. After all, companies will have to pay higher wages to persuade workers to labor in unsafe workplaces, so they have an incentive to protect their workers. Of course, it doesn't work that way in the real world where workers are unaware of the risks and are offered wages on a take-it-or-leave-it basis.

The federal **Occupational Safety and Health Administration** has an obligation to protect workers in states that decline to do so. But OSHA has been so decimated by 30 years of attacks from the **U.S. Chamber of Commerce** and business-funded think tanks that it can inspect a Texas facility only once every 98 years. It did inspect the West plant once, almost 30 years ago.

If Texas had an occupational safety agency in place, its primary concern would have been for the safety of workers in the plant. That concern would have alerted it to the risks posed by the ammonium nitrate. And the steps taken to reduce those risks would have protected the entire community of West, not just the workers.

When it comes to protecting public health and safety from threats posed by unsafe fertilizer plants in rural areas and equally dangerous industrial operations in major cities, Texas politicians have adopted a Wild West attitude that gives Texas businesses great freedom to innovate and grow the economy. But the Legislature and the governor have been less concerned about ensuring that these companies exercise that freedom in a responsible manner and are held accountable when they don't.

In a regulatory environment in which companies have virtually unchecked economic freedom but not enough responsibility and accountability, the inevitable result is a series of crises like the West explosion.

Horrible as they are, these predictable crises provide an opportunity for legislatures to re-examine the balance

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between economic freedom and corporate responsibility and accountability. The [Texas Legislature](#) could go a long way toward restoring that balance by creating an agency to protect the safety and health of the working people of this state. But that will take political leaders with the courage to recognize that Texas is not in "good shape" when it comes to protecting its citizens from irresponsible companies that subject their workers and neighbors to unacceptable risks.

McGarity, a University of Texas law professor, is a member scholar of the Center for Progressive Reform and author of "Freedom to Harm: The Lasting Legacy of the Laissez Faire Revival."

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By Thomas O. McGarity

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