

CHEMICAL REACTION

DESPITE TERRORISM THREAT, CHEMICAL INDUSTRY SUCCEEDS IN BLOCKING FEDERAL SECURITY REGULATIONS

Despite growing concerns that U.S. chemical plants could be targets for terrorists, the chemical industry has successfully blocked any legislation or other federal efforts to mandate more stringent security regulations for chemical manufacturers and companies that store and use hazardous chemicals. The American Chemistry Council (ACC), the chemical industry's main trade group, led the fight against more regulation. Chemical interests' long history of generous political contributions assisted them in their fight against federal regulation. Since 1995, the ACC and its member companies have given more than \$50 million in political contributions to federal candidates and political parties. In addition, the ACC alone has spent more than \$30 million lobbying Congress and federal officials over the past six years.

The chemical industry has been able to evade federal regulation despite long-standing evidence that chemical plants are a prime target for terrorists and pose a significant security risk:

- In a 1999 report, well before the September 11 attacks in 2001, the federal Agency for Toxic Substances and Disease Registry (ATSDR), part of the U.S. Department of Health and Human Services (HHS), warned that "security at chemical plants ranged from fair to very poor." The report observed that industrial chemicals "have been used by terrorists as improvised explosives, incendiaries and poisons in several recent incidents. ... [T]hey have rapid, highly visible impacts on health, they are accessible; and they can be dispersed by smoke, gas clouds, or food and medicine distribution networks."
- Following the September 11 attacks, the Environmental Protection Agency (EPA) reported that at least 123 chemical plants across the country each contained enough toxic chemicals to kill or injure one million persons if a facility were attacked by terrorists. Another 750 plants have enough chemicals to kill or injure at least 100,000 people in an attack.

- In a separate assessment issued in October 2001, Army Surgeon General Lt. Gen. James B. Peake estimated that a terrorist attack launched on a chemical plant located in a densely populated area could cause as many as 2.4 million fatalities or injuries. And plants are located near large population centers. One of the most vulnerable areas, according to a chemical trade publication, is a stretch of the New Jersey Turnpike near Newark Liberty International Airport. An attack there, while endangering residents' lives and health, could also force the shutdown of the turnpike, Amtrak's Northeast Corridor and the airport.

The first legislative effort to secure the nation's chemical facilities and stockpiles from terrorist attack began just six weeks after the September 11 attacks. On October 31, 2001, Senator Jon Corzine (D-NJ) introduced the Chemical Security Act of 2001. The bill's aim was to make the approximately 15,000 sites across the country where hazardous chemicals are produced or stored more secure from a terrorist attack. The bill would have:

- Given the EPA one year to issue regulations that designated "high-priority" chemicals "based on the severity of the threat posed by an accidental release or criminal release from the chemical sources;"
- Required chemical companies to determine the vulnerability of their facilities to a terrorist attack, identify hazards that could be caused by a chemical release, and develop a prevention and response plan that incorporated the results of those assessments. Those businesses that failed to meet the bill's mandates could have been fined up to \$25,000 per day for each violation,
- And required chemical manufacturers, utilities, water treatment plant operators, and the owners of any facilities where hazardous chemicals were produced or stored -- not only to increase security but also to replace hazardous chemicals with chemicals that would cause less damage if the target of a terrorist attack. In certain cases, chemical safety would have required, in the words of the legislation, "changing production methods and processes and employing inherently safer technologies in the manufacture, transport and use of chemicals."

When he introduced his bill in October 2001, Corzine pointed out the lack of any mandatory federal security standards for chemical plants. “We need to do a better job safeguarding our communities from terrorism,” Corzine said.

On July 25, 2002, Corzine’s bill, supported by Committee Chair Senator James Jeffords (I-VT), was approved unanimously in the Senate Environment and Public Works Committee. As the Corzine bill was moving through Congress, the EPA, on a parallel track, was considering whether to enforce chemical security regulations under the Clean Air Act, which would have required chemical companies to identify security problems in manufacturing and storing hazardous chemicals and come up with a plan to make their plants safer.

But the Corzine bill – although strongly supported by environmental and public health groups -- never made it to the floor of the Senate, and Corzine was not able to add his bill to legislation creating a federal homeland security department. The EPA also backed away from imposing any regulations to better protect the public from terrorism at chemical plants.

A “SWIFT AND STRONG” CAMPAIGN TO KILL THE CORZINE BILL

Caught off guard by the unanimous committee approval of the Corzine bill in July, and Corzine’s stated intent to include the legislation in a bill creating a federal homeland security department, the chemical industry

Top Soft Money* And PAC Donors From The American Chemistry Council And Its Members To National Party Committees And Federal Candidates		
<i>January 1, 1995 Through June 30, 2002</i>		
<u>Donor</u>		<u>Total</u>
BP Amoco		\$5,152,416
Eli Lilly & Co		4,265,277
General Electric Co/ GE Plastics		4,171,024
ExxonMobil Corp/ ExxonMobil Chemical Co		3,963,945
Chevron Texaco Corp/ Chevron Phillips Chemical Co		3,949,572
Dow Chemical Co		2,082,525
Occidental Petroleum Corp/ Occidental Chemical Corp		1,846,450
Georgia-Pacific Corp/ Georgia-Pacific Resins		1,734,950
American Chemistry Council		1,642,329
Ashland Inc		1,578,193

** Totals include contributions from executives and/or affiliates.*

swung into action to oppose the bill, in a response an industry publication called “swift and strong.”

ACC members were concerned that Corzine’s bill would force them to substitute hazardous chemicals with less toxic ones, or further yet, change their manufacturing processes. As Congress left town in August 2002 for its summer recess, more than two dozen trade associations led by the ACC – a coalition that included, among others, the American Petroleum Institute, the National Association of Manufacturers and the U.S. Chamber of Commerce – began their work to kill Corzine’s bill or any homeland security bill that included Corzine’s legislation. They were joined by groups of chemical consumers, including the American Farm Bureau Federation and the Small Business Survival Committee. “Basically, the American Chemistry Council and the API were sort of ringleaders in the lobbying effort,” said a congressional aide.

ARGUING AGAINST “STALINESQUE” REGULATIONS

During the August recess, the groups began flooding senators’ offices with calls and letters, asking them not to support the Corzine bill. The ACC claimed that its own chemical security code – which was mandatory for its members – would lead to tighter chemical security than would Corzine’s bill. The ACC, joined by other business groups, ran ads in Capitol Hill publications and op-ed pieces in newspapers repeating the same message: Voluntary security measures would work better for the chemical industry than the mandatory measures required by the Corzine bill. The groups also contended that new regulation would be implemented more slowly than the chemical industry’s existing code.

The industry also opposed language in the bill calling for safer technologies; saying it would effectively give “new authority to allow government micromanagement in mandating substitutions of all processes and substances.” And the National Propane Gas Association had a one-word criticism of the bill: “Stalinesque.”

Conservative think tanks provided additional ammunition to critics opposed to the bill. The Heritage Foundation charged that supporters of Corzine’s bill were not interested in fighting terrorism, but “have a different agenda: taking a large step toward their goal of a chemical-free world.” Angela Logomasini of the Competitive Enterprise Institute wrote that Corzine’s bill was “designed to serve a radical environmental agenda that targets chemicals.” Amy Ridenour of the National Center for Public Policy Research charged that Corzine had “embraced the

environmental movement's cardinal doctrine that all so-called 'toxic' chemicals are inherently bad and should be phased out as quickly as possible." She contended that Corzine was "ready to carry on" a "jihad against chemical companies."

Industry groups also were adamantly opposed to the Corzine legislation for another reason: It would give the EPA the authority to oversee chemical security measures. Chemical, agricultural, petroleum, mining, trucking, and utility trade groups signed on to an ad with the headline: "When you need medical help, you call a doctor. When you need to fix faulty wiring, you call an electrician. So wouldn't you ask the Department of Homeland Security to oversee the security of our nation's critical infrastructure?"

Writing to members of Congress, industry groups made the same point, warning that the Corzine bill "would splinter security responsibility away from the Department of Homeland Security and grant the Environmental Protection Agency extensive new authority that may be detrimental to advancing our nation's critical infrastructure security."

The business groups' wariness of the EPA also seemed to stem from a fear that the agency would be too tough on them. "Our experience with the EPA is you give them an inch, they take 10,000 miles," the farm bureau's Rebeckah Freeman told Gannett News Service.

But Corzine said his bill wasn't about environmental protection. "This is a safety and public protection initiative that is no different than making sure people don't take guns on airplanes."

And environmentalists offered counter-arguments to the industry's objections.

Assailing the adequacy of the industry's self-imposed safety code, The Working Group on Community Right-to-Know pointed out that the code contained neither standards nor timelines, and was in any event not enforceable. Environmental supporters of Corzine's bill also pointed out that the ACC's voluntary code only covered about 1,000 plants – a fraction of the 15,000 sites vulnerable to chemical terrorism the bill intended to address.

Answering industry complaints about the EPA handling chemical security, the Natural Resources Defense Council (NRDC) and other environmental groups contended that the EPA already had a legislative mandate under the Clean Air Act to prevent the release of dangerous chemicals. And, environmental groups noted, the EPA already was a functioning agency with experience in the management and evaluation of hazardous chemicals. "The threat of chemical terrorism is immediate, so the policy response also needs to be immediate," the U.S. Public

Interest Research Group (USPIRG) stated in its study, *Protecting Our Hometowns: Preventing Chemical Terrorism in America*.

And in a September 10 letter to President George Bush and Members of the Senate, a coalition of groups including the American Public Health Association, the Friends of the Earth, Physicians for Social Responsibility, the United Steelworkers of America, and the League of Conservation Voters, expressed their strong support for the Corzine bill, insisting that the legislation was right in designating the EPA as the appropriate agency to handle security oversight. The letter noted that the President's own Homeland Security strategy "identifies EPA as the primary agency responsible for addressing the security of this sector. ... Historically, legally and administratively, EPA is responsible for addressing these issues."

Environmental advocates also charged that the industry's resistance to the idea of switching to less toxic chemicals or safer processes was compromising public safety. The Chemical Security Act "would be the only piece of the Senate homeland security bill ... that attempts to address the vulnerability of the U.S. chemical industry to terrorism," said Rick Hind, the legislative director of the Greenpeace Toxics Campaign. "If a chemical plant can convert to a safer chemical or process, it can no longer be turned into a weapon of mass destruction, making the daunting task of guarding thousands of similar facilities irrelevant."

ACC'S FORMIDABLE MONEY AND INFLUENCE

Chemical interests' long history of generous political contributions assisted them in their fight against federal regulation. According to a Common Cause analysis of Federal Election Commission records, the ACC and its member companies, which include chemical giants and major oil companies, have given more than \$50 million from 1995 through June 2002 – \$26.4 million in unlimited soft money donations to political parties and \$24.5 million in contributions to federal candidates through political action committees. In the eighteen months between January 2001 and the end of June 2002 alone, ACC member companies gave more than \$10.3 million, including \$5.5 million in unlimited soft money donations to the political parties. And during July, August, and September 2002, when the industry was actively fighting the Corzine bill, these companies gave at least \$1.3 million in additional PAC contributions.

While Republicans received the vast majority of the money – 75.8 percent of the total since 1995 – Democrats still received significant contributions – more than \$12.2 million during that

Soft Money And PAC Donations From The American Chemistry Council And Members To National Party Committees And Federal Candidates <i>January 1, 1995 Through June 30, 2002</i>			
<u>Party</u>	<u>Soft*</u>	<u>PAC</u>	<u>Total</u>
Democrats	\$6,260,779	\$5,987,241	\$12,248,020
Republicans	20,090,848	18,497,287	38,588,135
Total	\$26,351,627	\$24,525,528	\$50,877,155

**Totals include contributions from executives and/or affiliates.*

same period. During the first 18 months of the 2001-2002 election cycle alone, ACC and its members gave more than \$2.5 million in political contributions to Democrats.

In addition, the ACC has spent \$30.2 million lobbying Congress and federal

officials since 1996, the first year that federal lobbying expenditures were required to be publicly disclosed.

The ACC has spent \$4.4 million on lobbying during an 18-month period ending June 30, 2002, the last date for which federal lobbying reports are available.

Also helping the industry's cause were the political connections of Fred Webber, ACC's president for a decade, until he retired from the position in late 2002. Webber, a former Labor and Treasury Department official in the Nixon and Ford administrations, was one of President George W. Bush's "Pioneers" who agreed to raise \$100,000 for Bush's 2000 presidential campaign. According to *National Journal*, Webber was instrumental in recruiting more than 25 chemical industry executives to be Bush fundraisers. Webber's experience with Bush dates back to the President's days as governor of Texas, which has more chemical plants than any other state. "We like Bush because of his evenhandedness, his grasp of the issues," a chemical industry executive told *The Washington Post*. "We see him as someone we can work with."

CAPITOL HILL HELPS THE INDUSTRY

The chemical industry also found powerful allies among some key Republican Senators. When the Corzine bill was first considered by the Senate Environment and Public Works Committee in July 2002, committee member Senator James Inhofe (R-OK) initially offered an industry-friendly amendment to the Corzine bill that would have exempted companies from many federal regulations if they followed industry security guidelines. Inhofe withdrew that proposal, and other industry-supported amendments, and voted for the Corzine bill with the understanding that Corzine and Jeffords would postpone action on the bill until they negotiated with committee Republicans. Corzine had already made changes to make his bill more palatable to Republicans on the energy committee by ensuring that businesses did not have to wait for federal regulations to begin work on security plans. (Businesses were complaining that they had already begun to beef up their security, but if the Congress imposed security mandates on them, they would have to stop these efforts because they would

Total PAC Contributions From The ACC And Members To The Senate Committee On Environment And Public Works – 107th Congress	
<i>January 1, 1995 Through September 30, 2002</i>	
<u>Democrats</u>	<u>Total</u>
Max Baucus (D-MT)	\$104,500
Bob Graham (D-FL)	45,250
Joseph Lieberman (D-CT)	44,050
James Jeffords (I-VT)	33,500
Harry Reid (D-NV)	30,000
Hillary Clinton (D-NY)	17,100
Ron Wyden (D-OR)	14,000
Barbara Boxer (D-CA)	13,500
Thomas Carper (D-DE)	12,180
Jon Corzine (D-NJ)	0
Democratic Total	\$314,080
<u>Republicans</u>	<u>Total</u>
John Warner (R-VA)	\$154,620
George Voinovich (R-OH)	142,067
Christopher Bond (R-MO)	135,700
Robert Smith (R-NH)	123,000
Jim Inhofe (R-OK)	110,400
Arlen Specter (R-PA)	91,113
Michael Crapo (R-ID)	84,750
Ben Nighthorse Campbell (R-CO)	54,647
Lincoln Chafee (R-RI)	35,250
Republican Total	\$931,547
Overall Total	\$1,245,627

not know what the yet-to-be-issued federal regulations would require them to do.)

Corzine's revisions to the bill also recognized that not all plants that produce or store chemicals pose the same risk, so only high-risk plants would be subject to the legislation's most stringent standards, and most accelerated timetable. Writing to his Senate colleagues on September 5, Corzine contended that his "revised bill strikes a good balance between the need to protect Americans from attacks on chemical facilities and the need to minimize regulatory burdens on the industry and to take advantage of existing private sector initiatives."

But some Republicans on the Senate Environment and Public Works Committee were not satisfied. Inhofe, joined by five Republican committee members – Senators Arlen Specter (R-PA), Bob Smith (R-NH), Kit Bond (R-MO), George Voinovich (R-OH), and Mike Crapo (R-ID) – on September 10 wrote a letter to their Senate colleagues, stating that Corzine's chemical security bill "misses the mark" and could "possibly hurt our nation in the process." While acknowledging the discussions with Corzine "have been constructive and are still ongoing," the Senators threw down the gauntlet and stated their opposition to the bill in its present form. The senators argued the bill did not address several issues, including access to information about vulnerable chemical sites and assurances that chemical companies that took early action to secure factories or storage sites would not be penalized. The senators announced that they would offer amendments if Corzine tried to add his bill to the Homeland Security bill.

Senators George Allen (R-VA) and Richard Shelby (R-AL) also each sent letters to Senate leaders Tom Daschle (D-SD) and Trent Lott (R-MS), expressing their concerns with the bill, and echoing the chemical industry's arguments against it. While Corzine's aims were "laudable," Allen wrote, the bill "may not adequately build on" efforts by the chemical industry to improve security. While offering to work with Senate sponsors to continue to modify the proposal, Allen wrote that the bill in its current form "relies on a traditional regulatory scheme that I fear will delay necessary and immediate steps to improve protection against terrorist attacks on our critical chemical infrastructure." Senator Shelby wrote that the Corzine bill "may call into question many of the proactive steps that have been taken by companies thus far."

The eight senators named above who wrote letters criticizing the Corzine bill have received more than \$850,000 in political contributions from ACC member companies from 1995 through September 2002. In addition, ACC members gave more than \$238,000 during that same period to House Energy and Commerce Committee Chair Billy Tauzin (R-LA). Tauzin opposed the Corzine proposal, and that opposition discouraged the introduction of a companion to the Corzine bill in the House.

Both Daschle and Senate Governmental Affairs chairman Joseph Lieberman (D-CT) supported the Corzine bill. But prospects for the Corzine amendment changed as the Democratic Homeland Security bill became mired in a dispute over worker protections in the legislation. The chemical industry benefited from the stalemate.

Industry-driven objections from Republican Senators made it even more difficult for the Corzine amendment to be

added to the Senate version of the Homeland Security Bill – it was one of roughly 300 amendments that had been proposed. And, as it turned out, the Senate Democrats’ Homeland Security bill failed to win the Republican votes necessary to pass.

Both Democrats and Republicans in the Senate were eager to pass Homeland Security legislation and adjourn. “They were just trying to do it, and get out of Washington,” said Sean Moulton, a senior policy analyst at OMBWatch, a public interest group monitoring the homeland security legislation. Thus, the controversy over the Corzine amendment, generated by the industry objections, doomed any possibility it would be added to the Homeland Security bill.

After the November elections, the House passed a Homeland Security bill, and adjourned. The Senate voted to limit debate on the House-passed version of the bill, and that restricted the opportunity to add amendments. Amending the bill at all would have probably meant that no final law could be passed before the end of the year, since it was not likely the House would

Total PAC Contributions From The ACC And Members to Senators Who Wrote Letters Criticizing The Corzine Bill	
<i>January 1, 1995 Through September 30, 2002</i>	
<u>Senator</u>	<u>Total</u>
George Voinovich (R-OH)	\$142,067
Christopher Bond (R-MO)	135,700
Robert Smith (R-NH)	123,000
Jim Inhofe (R-OK)	110,400
Arlen Specter (R-PA)	91,113
George Allen (R-VA)	88,066
Michael Crapo (R-ID)	84,750
Richard Shelby (R-AL)	84,000
Total	\$859,096

return to Capitol Hill in December to vote on a Senate version of its bill, or to consider a conference report reconciling two different bills. This legislative dilemma curtailed any Senate Democratic effort to add the Corzine proposal to the House-passed Homeland Security bill. Daschle did offer one amendment to the bill – a package of changes designed to undo special interest favors that had been added into the House bill at the last minute – but even that amendment was defeated. Democrats then opted to pass the House bill, as is. The bill’s passage, without the Corzine amendment, marked “a major victory for industry lobbyists,” noted *Chemical Week*.

THE ADMINISTRATION BACKS AWAY FROM REGULATION

The chemical industry had also opposed the EPA’s efforts to impose security mandates, and the White House backed away from this initiative. Indeed, the Administration has even failed to produce a comprehensive assessment of terrorism dangers at chemical plants.

In October 2002, the General Accounting Office, the investigative arm of Congress, stated that the Department of Justice had missed an August 5, 2002 deadline to complete that assessment. The Justice Department’s interim report was completed, behind schedule, in May 2002, but withheld from the public on national security grounds, a decision supported by the chemical industry. Representative John Dingell (D-MI), in a letter to U.S. Attorney General John Ashcroft called the delay on the vulnerability report “inexplicable.”

In a decision *The Washington Post* termed “a victory for major chemical manufacturers,” EPA Administrator Christine Todd Whitman on October 2, 2002 confirmed that the Administration had given up the effort to impose new security regulations on the chemical industry using the EPA’s authority under the Clean Air Act, because of questions in the Administration about whether the EPA had the authority to impose them. (Whitman said she and the Administration would support some future bipartisan legislation to be sponsored by Senator Inhofe that would give oversight of chemical industry security to the Department of Homeland Security instead of the EPA.)

The Administration opted against regulation, despite the pro-regulation position of Whitman and Homeland Security Director Tom Ridge, and despite the fact that internal documents prepared by EPA and Homeland Security senior staff, and obtained by *The Washington Post*, had

questioned the ability of the chemical industry to make its plants safe from terrorism without federal oversight.

“The administration’s decision not to put forward their own chemical security plan and instead wait for some ambiguous, bipartisan bill later looks like political stalling that is likely to lead to further delay on public safety,” charged Jeremiah Baumann, an environmental advocate with the U.S. PIRG.

Baumann said the nation’s continued reliance on chemical producers and users to impose their own security standards poses a significant problem. “This threat is huge. We have a federal role for airports. We have a federal role for water plants. We have a federal role for bioterrorism. It would seem absurd to let this threat be handled on a voluntary basis.”

The Corzine proposal has become part of a larger bill, the Comprehensive Homeland Security Act of 2003, introduced on January 7, 2003 by now-Senate Minority Leader Daschle. But its prospects for passage are doubtful. The Republicans’ majority status in the Senate plays to the chemical industry’s advantage. And that industry can be expected to lobby as vigorously as they did in 2002 to shape – or block – any chemical security bill that emerges in 2003.

METHODOLOGY

Soft money totals are based on national party committee reports of their non-federal accounts from January 1, 1995 through June 30, 2002 filed with the Federal Election Commission. PAC money totals are from data available from the FEC in January 2003.

Contributions from the parent companies of subsidiaries who are members of the American Chemistry Council are included in all totals unless the subsidiary gave the contributions in its own name. In that case, only the contributions of the subsidiary and the soft money donations of subsidiary executives are included in the totals.

ABOUT THE COMMON CAUSE EDUCATION FUND

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