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## The Texas Fertilizer Explosion Cries Out for Justice

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By Peter Dreier and Donald Cohen, June 2, 2013



Almost everyone in America knows the names of the two young terrorists responsible for the April 15 Boston Marathon bombings, but few can identify the owner of the fertilizer plant that exploded in West, Texas two days later. The media, along with government regulators and law enforcement agencies, poured much more time and resources into finding the two Tsarnaev brothers than they did in investigating Donald Adair.

Why isn't the American public calling for the arrest and trial of Adair, the owner of the West Fertilizer Company in West, Texas? The explosion there on April 17 killed 14 people, left 200 others with injuries (including burns, lacerations, and broken bones), flattened houses and a 50-unit apartment building, destroyed a nursing home, damaged a local school, and left a crater 93 feet by 10 feet.

The explosion was so devastating that investigators, almost two months after the incident, are unable to definitively determine the exact cause of the explosion.

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Adair lives five miles from West and attends a local church. He also owns Adair Grain (the parent company of West Fertilizer) and Adair Farms, including about 5,000 acres of cropland and grassland in the area, worth several million dollars. But while Adair might be a folksy local businessman who rescued the failing fertilizer plant, all the evidence points to the fact that he didn't do enough to protect his employees and the surrounding community at risk.

After 9/11 companies like Adair's were [required to inform the government](http://www.reuters.com/article/2013/04/20/us-usa-explosion-regulation-idUSBRE93I09N20130420) of chemicals that could be used in terrorist attacks. West Fertilizer stored large quantities of anhydrous ammonia and ammonium nitrate, in the middle of a small town. The company allegedly [failed to tell the Department of Homeland Security](http://www.bloomberg.com/news/2013-04-29/texas-blast-recalls-chemical-safety-bill-sunk-by-business-lobby.html) that it was storing 270 tons of ammonium nitrate (the same chemical that Tim McVeigh used to bomb the Oklahoma city federal building in 1995, which left 168 people dead) as required by law.

The U.S. Pipeline and Hazardous Materials Safety Administration [fined the factory in 1985](http://www.csmonitor.com/USA/2013/0420/Why-did-West-Texas-build-homes-and-a-school-next-to-a-time-bomb/%a28page%29/2) for mishandling storage of anhydrous ammonia. In 2011, the same agency cited the firm for ["not having a security plan"](http://www.dallasnews.com/news/west-explosion/headlines/20130418-west-blast-follows-years-of-state-federal-agencies-overlooking-danger-potential.cce) and for improperly planning to transport anhydrous ammonia and issued a fine of \$5,250.

The federal EPA last inspected the plant in 2006 [and assessed a fine of \\$2,300](http://www.csmonitor.com/Commentary/Opinion/2013/0429/Smoking-gun-in-West-Texas-fertilizer-blast-lack-of-government-oversight) for failing to update a risk management plan.

The company responded in 2011 with an updated but misleading plan, stating that its chemicals did not pose a risk or fire or explosion, and claiming that the "worse-case scenario" was a 10-minute release of gas or a leak from a broken house, neither of them harmful to humans.

The company also reported [contradictory information to state agencies](http://www.click2houston.com/news/west-texas-explosion-who-knew-what/-/1735978/19885484/-/item/0/-/rbg0diz/-/index.html). It filed reports with the Department of State Health Services that it had not stored ammonium nitrate on site until 2012. Yet it reported to the Texas Commission on Environmental Quality that it had a "maximum annual through put" of 2,400 tons, or 4.8 million pounds of ammonium nitrate after the department found that it was operating without a permit.

Donald Adair ran a small fertilizer company that stored tons of highly explosive ammonium nitrate, failed to follow government safety guidelines and shirked his basic responsibility to prevent a foreseeable, preventable and tragic disaster.

Adair shares that responsibility with others. Corporate lobby groups have consistently opposed common sense safeguards for our food, consumer products, environment, drugs, and workplaces. They've spent billions of dollars in campaign contributions, lobbyists and donations to conservative think tanks and front groups to oppose and weaken these and other safety laws and gut the budgets of government agencies set up to enforce them. Their resistance delayed life-saving protections for decades in some cases.

The chemical industry has been one of the most effective lobby groups in this regard. In the 1970s, for example, the industry lobbied Congress to prohibit OSHA from regularly inspecting workplaces with fewer than 10 employees in industries with low reported injury rates. Fertilizer plants are included on the list of exempted industries. This may be why OSHA hadn't inspected the West Fertilizer plant since 1985.

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The chemical industry opposed a 1981 OSHA "hazard communication" rule requiring employers to label toxic chemicals used by workers on the job. The common sense rules would have put "virtually unmanageable burdens on small manufacturers," according to Ralph Engel, who was representing the Chemical Specialties Manufacturers Association at that time. Engel claimed that "workers would be just as safe without this regulation." It's hard to imagine workers able to take proper precautions when they don't know about the dangers of the poisons they work with.

The chemical industry successfully delayed federal "right to know" legislation requiring disclosure of toxic chemicals to workers and nearby communities until a 1984 gas leak at a Union Carbide factory in Bhopal, India exposed 500,00 people to toxic gas that killed nearly 4,000 and disabled many more. The disaster created public demand for action that overwhelmed industry opposition and led to the Emergency Planning and Community Right to Know Act of 1986. Eugene Humphrey, representing the Organic Chemical Manufacturers Association, testified before Congress that disclosing the existence of dangerous chemicals would burden small business and wouldn't "significantly improve the protection of human health or the environment."

In 1992, the Fertilizer Institute, another trade group, successfully lobbied for a "retail exemption" rule (<http://truth-out.org/news/item/16167-retail-exemption-shields-some-fertilizer-facilities-from-stringent-safety-requirements>) that allows facilities storing large amounts of dangerous chemicals to avoid strict OSHA and EPA regulation if they sell more than half of their chemicals to "end users," including farmers. It is possible that West Fertilizer claimed this exemption, even though the amount of anhydrous ammonia stored at the facility would otherwise have required extensive precautions.

In 2009 the chemical industry – joined by major business lobby groups such as the U.S. Chamber of Commerce and the American Farm Bureau – spent \$51 million pressuring Congress to oppose legislation that would have tightened security standards on chemical factories, fertilizer depots and water-treatment plants. The lobbying effort included "mining companies, refiners, paint makers, explosive fabricators and fertilizer plants," according to Bloomberg News. The industry – including such giant firms as Dow Chemical and DuPont -- donated \$34 million to political candidates in the last three elections, two-thirds of which went to Republicans. "If enacted, it could lead to disruption in our nation's food supply," the U.S. Chamber of Commerce and 25 other groups representing companies that mine, refine fuels, mill grains or make fertilizer, wrote in a letter to congressional leaders.

The CEOs of these corporations, and the heads of their corporate industry lobby groups, don't intentionally want to see Americans killed or injured by unsafe workplaces, dangerous consumer products, and unhealthy toxic chemicals that destroy people's health. But by pushing Congress and state governments to weaken safety and health standards, and to slash budgets for inspection and enforcement, they make it inevitable that many Americans will needlessly die, suffer injuries, and ruin their health.

Business lobbies want to be free from government rules. Unfortunately, their freedom leads to tragedy for workers, families and communities.

Texas prides itself on the lack of rules for businesses. It is the only state that doesn't require companies to have workers' compensation insurance. Houston is one of the few cities that have no zoning laws to create buffers between schools, homes and toxic chemical manufacturers. Texas doesn't have a state fire code and prohibits small counties from having local codes allowing fire marshals to inspect and prohibit the storage of highly flammable and explosive chemicals near homes and schools. [According to the New York Times](http://www.nytimes.com/2013/05/10/us/after-plant-explosion-texas-remains-wary-of-regulation.html?_r=0) ([http://www.nytimes.com/2013/05/10/us/after-plant-explosion-texas-remains-wary-of-regulation.html?\\_r=0](http://www.nytimes.com/2013/05/10/us/after-plant-explosion-texas-remains-wary-of-regulation.html?_r=0)), some Texas counties even cite the lack of local fire codes as a reason for companies to move there.

[Texas lawmakers](http://thinkprogress.org/economy/2013/04/30/1940111/chemical-facilities-risk-greater-west-texas/?mobile=nc) (<http://thinkprogress.org/economy/2013/04/30/1940111/chemical-facilities-risk-greater-west-texas/?mobile=nc>) have also recently reduced the budget of the state's environmental agency that oversaw the West plant by \$305 million. Even after the explosion, Texas Governor Rick Perry claimed that more government oversight and more safeguards aren't needed.

The harsh reality is that none of the state or federal agencies has enough budget and staff to routinely inspect and enforce the laws on the books. For example, OSHA's tiny staff of around 2,400 inspectors is spread so thin that it would [take more than 90 years](http://www.csmonitor.com/Commentary/Opinion/2013/0429/Smoking-gun-in-West-Texas-fertilizer-blast-lack-of-government-oversight) (<http://www.csmonitor.com/Commentary/Opinion/2013/0429/Smoking-gun-in-West-Texas-fertilizer-blast-lack-of-government-oversight>) to conduct even cursory inspections of all eligible workplaces in Texas.

We can't depend on government agencies to police every company and workplace to guarantee our safety and health. We have to expect businesses – big and small alike – to obey the law and take every precaution, whether required by government or not, to prevent the kind of needless death and destruction that happened in West, TX. That is both their legal and moral responsibility, the social contract they agree to in order to stay in business and make a profit.

Corporate criminals rarely get caught. But even when they do, they rarely suffer sufficient consequences to deter them or their counterparts from routinely flouting health and safety laws. Even when they are found guilty, the fines are rarely big enough to make them change their ways.

Last year, for example, a serious violation of the federal Occupational Safety and Health Act drew an average penalty of \$2,156. State-level OSHA agencies imposed an average \$974 penalty for a serious violation. The median penalty in fatality cases investigated by federal OSHA was a meager

\$6,625. Corporations view these as just a cost of doing business, not a real deterrent.

Perhaps if corporate executives saw a significant number of their counterparts on the nightly news being handcuffed and sent to jail for violating laws meant to protect workers, consumers, and the environment, they would be more likely to make sure that their companies met the health and safety standards embodied in our laws.

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Ed Smith · Top Commenter · Yes n then some Thanks for a great write-up.

I fully agree with FEMA not footing the bill for the west Fertilizer plant explosion, with TX deregulation and the fact that west Fertilizer plant only had one million in liability insurance and lied repeatedly concerning amounts and types of chemicals stored on-site and the way TX and Perry run the state fast and loose gambling the lives and homes of all TX citizens, I would not pay either.

If TX wants to gamble with deregulation and let its corporations do what ever that want to save money that's fine with me, just don't ask the federal government to bail you out when your gamble blows up in your face.

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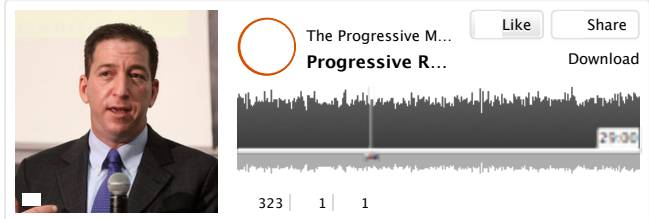
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