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Chemical Manufacturers Elude Crackdown on Toxic Materials

Sen. Corzine Pushed for Rules to Reduce Terror Threats, but Political Wind Shifted

By **JACOB M. SCHLESINGER** and **THADDEUS HERRICK**
Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON -- In the wake of Sept. 11, 2001, the nation's leaders considered drastic measures to combat terrorism. High on their list: Prod the chemical industry to cut production of its most toxic materials.

Government files listed more than 100 factories where a terrorist attack could create a poisonous cloud that would kill or sicken more than a million people. Lawmakers proposed legislation authorizing the Attorney General to order factories near big cities to bolster security immediately. Defiant executives could be jailed. In 2002, a Senate committee unanimously passed a tough bill.

Then the campaign bogged down. A smart, well-timed lobbying drive by the chemical industry played a role. So did a pronounced shift in the debate over homeland security. For months after the terrorist attacks, the impassioned desire to protect Americans led even a Republican administration to crack down on important industries. Once those emotions subsided, Washington reverted to the traditional partisan debate over how deeply government should be involved in the market. Congress is once again weighing chemical security this year, but any law that passes will be much more business-friendly than first envisioned.

It's not that the terrorist threat has disappeared. Tuesday, the Department of Homeland Security raised its color-coded assessment of the risk of an attack to orange, the second-highest level on the scale. But many policy makers now seem more

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COMPANIES

Dow Jones, [Reuters](#)

[Dow Chemical Co. \(DOW\)](#)

PRICE	31.47
CHANGE	0.62
U.S. dollars	5/20

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PRICE	70.40
CHANGE	0.83
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comfortable with voluntary industry responses, such as the chemical industry's code urging companies to beef up security whenever the government raises the threat level.

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"Liberals wanted to use the tragedy of Sept. 11 as an excuse to regulate more," says Oklahoma Sen. James Inhofe, the lead Republican legislator on chemical security.

The tone was very different immediately after Sept. 11. Republicans and Democrats worked together to identify the country's most vulnerable targets and decide how to protect them. Beyond airlines, Congress acted to secure ports, drinking water and food.

Chemicals also drew instant attention. Within two months of the terrorist attacks, Sen. Jon Corzine, a New Jersey Democrat, introduced the Chemical Security Act. The bill was designed to give the government new powers to track chemicals from production through transportation to storage by users. Mr. Corzine said he had concluded during his frequent flights to Newark that the unguarded oil tanks and refineries he saw below were as vulnerable to air attack as the Pentagon had been.

These early discussions of chemical security were based on an assumption that manufacturers wouldn't do enough without strong government direction. Backers of the legislation also asserted that it wasn't sufficient for companies simply to add guards and build higher fences. The government, they said, should pressure chemical makers and customers to move away from making or using certain products that could cause the greatest destruction, so long as the costs weren't extreme.

Some state and local governments already had tried that approach. A 1999 Contra Costa County, Calif., ordinance, for instance, led refiners such as [ChevronTexaco](#) Corp. and [Tesoro Petroleum](#) Corp. to replace chlorine with alternative disinfectants and ammonia with a safer, water-based substitute.

The roots of this "inherently safer technology" concept lay in the environmental movement. For two decades, activists had pushed to phase out hazardous compounds, from a failed campaign to make paper companies "chlorine free by '93" to modest successes prodding makers of toys, medical devices and cars to stop using polyvinyl chloride, a type of plastic.

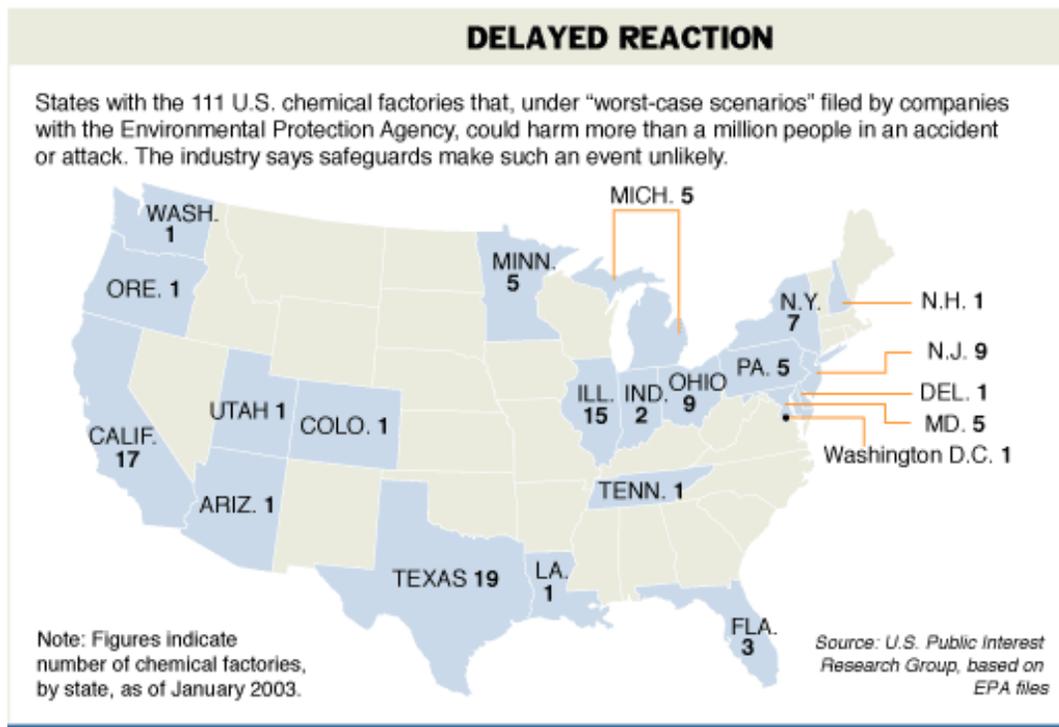
Those campaigns were aimed at reducing pollution and limiting the danger of accidents such as the 1984 Union Carbide Corp. disaster, which killed more than 3,000 in Bhopal, India. In the spring of 2001, Greenpeace sailed its Arctic Sunrise ship on the Mississippi River for a "Bhopals on the Bayou" tour of chemical plants that the group said could be vulnerable to similar catastrophes.

Back then, terrorism wasn't the primary focus. The environmentalists sometimes played down the terror threat when industry complained that Greenpeace was courting attacks by spotlighting potential hazards.

But soon after the Sept. 11 attacks, the activists made terrorism the new centerpiece of their old crusade. That fall, Rena Steinzor of the Natural Resources Defense Council told Congress: "Human error ... killed several thousand people in Bhopal. What price will we pay for deliberate sabotage at such a facility?"

The logic won influential converts. Mr. Corzine's legislation set as one goal "reducing usage and storage of chemicals by changing production methods and processes." President Bush's Environmental Protection Agency drafted its own bill -- for internal administration debate -- with similar goals.

From the start, critics said the Corzine bill would put "government in the position of making business decisions," as New Hampshire Republican Sen. Bob Smith complained at a November 2001 hearing. In the hope of getting the bill through Congress, Mr. Corzine responded to Republican and industry complaints by slashing the list of chemicals to be regulated from several thousand to 120. He also dropped plans to oversee rail cars that transport chemicals, concentrating instead just on factories making them.



But Sen. Corzine clung to his core principles of strong government standards, including a federal role pushing "inherently safer technologies." With Sept. 11 memories still fresh, Sen. Corzine figured few politicians would oppose any homeland security

measure. Under his proposal, companies would have to file reports to the government showing how they were at least exploring the use of less-toxic products or manufacturing processes; if regulators weren't satisfied, they could order companies to take specific steps.

Last July 25, the Senate Environment and Public Works Committee voted on the Corzine bill. Conservatives still had concerns. Sen. Inhofe, the Oklahoma Republican, complained about "a new army of EPA officials." But he praised Sen. Corzine's compromises and expressed confidence that an accord could be worked out.

The bill passed 19-0. There seemed to be enough momentum to win full Congressional approval when legislators returned from the August recess.

The chemical industry's two big lobbying groups -- the American Chemistry Council, or ACC, and the American Petroleum Institute, or API -- had lain low, thinking the bill might get lost amid the welter of homeland-security legislation. But the unanimous committee vote set off alarms in a slumping industry wary of new regulatory costs. Chemical makers were especially worried about the prospect of regulators demanding "inherently safer technologies."

Chemical companies aren't very enthusiastic about the Contra Costa County experiment, for example. [Dow Chemical](#) Co. says it can replace chlorine only on a limited basis. The chemical accounts for a third of Dow's annual revenue and has a huge array of uses, including pharmaceuticals and crop protection.

"It's not just what it would cost Dow," says spokeswoman Terri McNeill. "It's what it would cost society."

While lawmakers went on vacation, the chemical lobby went to work. The ACC and the API called on other business groups to gin up broad-based resistance. When the new coalition met at the API's Washington offices in early August, Kendra Martin, the petroleum institute's director of security, says she asked them: "Are you aware of the Chemical Security Act and how onerous it might be?" On Aug. 29, 30 groups -- from truckers to paint makers -- signed a letter to all senators urging them to oppose the legislation.

Prodded by the Fertilizer Institute, farm lobbyists wrote a letter expressing concern about a ban on "chemicals responsibly used and needed by agriculture" such as ammonia, a vital ingredient in fertilizers. The 3,700-member National Propane Gas Association generated 8,500 letters warning of the demise of the

backyard gas grill. The Chlorine Chemistry Council raised the specter of massive economic disruption, calculating in position papers that "chlorine products and their derivatives account for 45% of the nation's gross domestic product."

The Corzine bill didn't actually call for banning any of those materials, but opponents nevertheless warned of unintended consequences.

Sen. Corzine insisted that his bill was about homeland security, not environmentalism. The push for less-toxic chemicals would make manufacturing plants less-tempting, destructive targets, he argued. But the idea was closely associated with the green movement. So the chemical industry was able to shift the debate away from whether companies could reduce the risks of terrorist attacks and onto their critics.

Seaver Sowers, a lobbyist at the Agricultural Retailers Association, says he made sure to tell members and legislators that Greenpeace backed the Corzine bill. The Ohio Chemistry Technology Council rallied companies to contact the state's senators to offset an "aggressive grassroots campaign" by "Greenpeace, the Sierra Club, and other environmental activist groups."

When Congress returned in early September, bipartisan support for the legislation unraveled. Seven Republican senators who had voted for the bill in committee now issued a statement saying the proposal "misses the mark." They declared: "We feel compelled to offer amendments to address concerns ... that have arisen from scores of stakeholders."

Bush aides, too, had grown cool to the stricter rules. White House economic officials argued that the private sector would fix many of the security gaps exposed by Sept. 11 more quickly and efficiently than regulators could. These officials cited a new "Security Code" drafted by the ACC and announced under the press-release headline: "Chemical Industry Commits to Mandatory Enhanced Security."

The plan's details were fuzzy. Its "mandatory" steps included pledges to conduct "internal audit and continuous improvement processes," but they avoided giving companies detailed instructions on how to carry those out. The trade group urged companies to consider safer technologies but didn't want the government involved.

Administration officials thought the ACC guidelines showed the free market repairing itself. "It was very reassuring, very refreshing that such significant economic players recognized they should do something to minimize the risk," says Tom Ridge, the homeland security secretary.

The federal government took no action on chemical security in 2002. The issue wouldn't die, though. Early this year, as fears spread of terrorist retaliation for the Iraq war, an FBI bulletin warned that "al Qaeda operatives" may "launch conventional attacks against the U.S. nuclear/chemical-industrial infrastructure."

Greenpeace has continued to taunt the industry by penetrating factory defenses. Two activists paddled a kayak alongside the docks just south of Houston where Dow Chemical loads and unloads chemicals. A Dow spokeswoman says the company works closely with authorities, including the U.S. Coast Guard, to ensure security.

Companies have struggled to balance security and profits. DuPont Co. says that since Sept. 11 it has spent \$20 million to bolster security, but the company is hesitant to undertake much more. "There is an endless amount of money we can spend on security," Charles O. Holliday Jr., DuPont's chief executive officer, says in an interview. "The question is: How do we have enough security and stay competitive?"

Critics worry that many companies are more focused on the latter. Some of these critics, including Greenpeace, cite as one example an Atofina Chemicals Inc. plant in Houston's working-class east side just off Interstate 10. The plant makes chemicals for pesticides, pharmaceuticals and rubber, with carbon disulfide as a byproduct. A carbon disulfide leak could cause headaches, unconsciousness or even death for 1.2 million

people within a 16-mile radius, according to company filings with the EPA.

Plant manager Wendal Turley says his company, a subsidiary of France's [Total](#) SA, has closed gaps in the surrounding chain-link fence and expanded a closed-circuit-television monitoring system. But Mr. Turley says there's no cost-effective way to replace his toxic chemicals with "inherently safer" ones. He hasn't hired more guards. Train cars carrying as much as 192,000 pounds of carbon disulfide sit at times in a rail yard outside the plant gates. The tracks run across the plant's driveway, also outside the gate. "When it leaves the plant, it's kind of out of our control," Mr. Turley says.

With continuing concerns about chemical security, there's still strong bipartisan support for some kind of legislation. The ACC itself has issued a statement endorsing new federal rules. But the Republican Senate takeover in last year's elections -- aided by \$5.5 million in chemical industry donations -- means that Sen. Corzine's approach is all but dead. To make sure, about 20 industry leaders, including top executives of Exxon Mobil Chemical Co. and Occidental Chemical Corp., spent a day last month on Capitol Hill meeting legislators, according to the ACC.

The industry message: Many companies are doing the right thing, and the proper role for government is to make sure all companies follow the industry standards -- but to meddle as little as possible in them.

The debate now focuses on legislation drafted in April by the White House and Sen. Inhofe, the new chairman of the Senate Environment and Public Works committee. This version would remove the EPA from control, giving authority instead to the Department of Homeland Security. The new version also would give companies more credit for actions taken on their own. It would give the government little, if any, authority to promote inherently safer technologies. While Mr. Inhofe has been pushing for a committee vote this month, attempts to get broad bipartisan support so far have failed.

Even if a bill does pass the Senate, action now appears highly unlikely in the House, where conservative Republicans have even greater control. "I think what the administration and private sector have done so far appears to be adequate," says Texas Republican Rep. Joe Barton, chairman of a key subcommittee handling the issue. "I don't personally see a need for legislation of any kind."

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