

Requested Item 1: Responsive Record

**Warner, Chris**

**From:** Gombar, Robert [rgombar@mwe.com]  
**Sent:** Friday, March 13, 2009 7:34 PM  
**To:** Warner, Chris  
**Subject:** Bayer CropScience, Institute Plant -- MTSA and Marking SSI  
**Importance:** High  
**Attachments:** WDC99\_1696315\_1.pdf

Dear Mr. Warner,

This e-mail responds to your request regarding the statutory coverage of the Institute Plant for security purposes. The Institute Plant of Bayer CropScience ("BCS"), because of its location adjacent to waters subject to the jurisdiction of the United States, has been informed by the United States Coast Guard that the Plant is regulated by the Maritime Transportation Security Act of 2002, Public Law 107-295 ("MTSA"). According to the U. S. Coast Guard, the Chemical Facility Anti-Terrorism Standards, which were promulgated pursuant to the Department of Homeland Security Appropriations Act of 2007, Public Law 109-295, do not apply to facilities regulated by MTSA. *See* 6 CFR 27.110(b).

Attached is a Log listing those documents previously produced to the CSB that either do or may contain Sensitive Security Information ("SSI"). Responding to the letter from Investigations Supervisor John Vorderbrueggen, PE, of the CSB, BCS requests that the documents listed on the attached Log be made available in one of the CSB's conference rooms on Tuesday morning, March 17, 2009, at 9:00 AM, so that representatives of BCS can mark those portions of the documents containing SSI pursuant to 49 CFR 1520.13. In addition to the documents listed on the attached Log, please also make available for examination and marking by BCS representatives the following information in the CSB's possession as a result of the Agency's investigation of the August 2008 incident at the Institute Plant that was not provided directly by BCS but which may contain BCS SSI: all photographs; all videotapes; all investigation notes, memoranda, and similar documents; all audio tapes, CDs, and similar recording media of interviews conducted during the CSB's investigation; and all transcripts of recordings of interviews conducted during the CSB's investigation.

In light of today's announcement of the CSB's public meeting on April 23, 2009, concerning its investigation of the August 2008 incident, BCS representatives will work at the CSB in the conference room provided for their use from next Tuesday, March 17th, through Friday, March 20th, for as long each day as permitted by the CSB in order to make sure that the documents and other forms of information in the possession of the CSB related to the August 2008 incident are marked in accordance with 49 CFR 1520.13. If it appears that it will be necessary to work on Saturday, March 21st or Sunday, March 22nd, or both days to complete the SSI marking process, the BCS representatives will tell the CSB of this necessity as soon as it becomes known. BCS understands the urgency of Investigations Supervisor Vorderbrueggen's request in light of the April 23rd public meeting, and we will cooperate fully with the CSB to meet his request in a timely and efficient manner.

When the BCS representatives complete the SSI marking process, we will make it clear to the CSB that only those documents, portions of documents, and other forms of information marked by BCS as SSI (as defined in 49 CFR 1520.5) are considered by BCS to contain SSI. We also will provide a letter or log to the CSB specifying the statutory and regulatory basis for BCS' marking of information as containing SSI.

4/15/2009

Original Stationery

If necessary, BCS representatives will be made available to the CSB to discuss any issues regarding the marking of information as containing SSI. BCS representatives also will be made available should it become necessary to resolve any SSI issue in one or more meetings with the United States Coast Guard.

Sincerely,

**Robert C. Gombar, Sr., Esq.**  
Practice Group Leader  
The OSHA, MSHA & Catastrophe Response Group  
**McDermott Will & Emery LLP**  
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Requested Item 3: Responsive Records

**Bayer Meeting with CSB  
4<sup>th</sup> floor conference room**

**Date:** Feb 12, 2008

**Attendees:**

**CSB**

John Bresland  
Bill Wright  
Daniel Horowitz  
Ray Porfiri  
Chris Warner  
John Vorderbrueggen  
Johnnie Banks  
Catherine Corliss  
Lucy Sciallo  
Amy McCormick  
Allen Smith

**Bayer:**

Bob Gumbar – McDermott, Will and Emery  
George Goodridge – Assistant General Counsel, BCS  
Mike Wey – Quality Health, Safety, Env Expertise, BCS  
Eric Conn – McDermott, Will and Emery  
Not Attending Nick Crosby, Plan Manager (ill)

Bob Gumbar:

Issue of security sensitive information  
Bayer's obligation to Coast Guard

- 2 outstanding requests from CSB
  - o Cross plant transfer of MIC from MIC production unit to MOM Unit (*not really, we have this*)
  - o Daily inventory of MIC production Unit
- Bayer has already provided security sensitive information per Coast Guard – *they did not mark submissions as security sensitive.*

Institute is a Maritime MTSA facility

- Not covered under CFATS (Chemical Facility Anti-Terrorism Standards)
  - o Falls under the jurisdiction of the USCG
- 33 CFR, 49 CFR – applicable regs for SSI, MARSEC requirements
- Bayer does a facility vulnerability assessment
  - o Critical assets, potential threats, structural integrity
- Bayer conducts a facility security plan
- Sensitive Security Information (SSI) – for security reasons, this information cannot be shared with the public; governed by USCG; summary of facility vulnerability
  - o Information can be disclosed to CSB as an investigative agency, but CSB cannot share it with others; information must be guarded within the agency; must have an internal security system to keep information

Treatment of Information and Public Meeting

- Concern: there will be questions from the public about MIC

- SSI – PNIDs, location of MIC day tank, valving and piping, proximity of tank to process, protection on MIC tanks, photographs
  - Photographs of methanol unit are fine as long as there is no reference to MIC tank
- Bayer has had problems with the media and community concerning MIC; pressure from community to remove all MIC from the facility
- Changes have been made to the day tank to enhance protection – specific details not provided
  - Piping and instrumentation within the blast mat
  - Blast mat strength increase – SSI
- 3 main issues at public meeting – 1) what caused tank to expose, 2) emergency response issue, 3) MIC and its potential involvement in incident
  - CSB should only address issues 1 and 2
  - Potential answers for 3: Bayer minimizes inventory and has multiple layers of protection in their processes, rely on the training of operators, have specific safety procedures in place when using MIC
  - Bayer is undergoing its own internal investigation (as mandated by MTSA/OSHA)
- Information that has been published by news media (in public domain) are not exempt from these regulations – CSB still cannot talk about them in public

#### Bayer CropScience's relationship with other organizations

- Emergency responders – must also go through USCG to get information
- OSHA – does not ask for same information, does not release information to the public

#### Bayer Participation in Panel at Public Meeting

- Would not participate if PCAMIC is involved, most likely will not attend
- Experiences with panels in the past have been negative – generate bad publicity for the company
  - Two extremes: people who want MIC completely removed from facility and people who believe company has MIC use under control
- Format of CSB public meetings
  - Panel: Board Members ask questions of panelists; public does not ask them questions
  - Public Comment: community members are permitted to share comments but cannot ask Board Members questions
- News conference in the morning and public meeting in the evening
- Public meeting still in planning stages – tentatively scheduled for March 19; will review all material with company (similar to CBI review) before public meeting

#### Contact Information for USCG

**James Rocco – Lt Commander of the Coast Guard**  
202-372-1106

- Bayer met with him last week (Wednesday)
- US Coast Guard wants assurance from CSB that they have regulations/protocols in place to keep SSI from public.

Bayer Meeting  
2/12/09  
1:30-2:30 p.m.  
Notes of Daniel Horowitz

For Bayer:

Robert Gombar, Lead Outside Counsel, McDermott Will and Emery  
Eric Conn, McDermott Will and Emery  
George Goodridge, Assistant General Counsel, Bayer  
J. Michael Wey, Director of Quality Health Safety and Environment, Bayer Institute Site

For CSB:

John Bresland, Chairman  
William Wright, Board Member  
John Vorderbrueggen, Lead Investigator  
Chris Warner, General Counsel  
Daniel Horowitz, Director of Congressional, Public, and Board Affairs  
Amy McCormick, Board Assistant  
Ray Porfiri, Deputy General Counsel  
Lucy Sciallo, Investigator  
Johnnie Banks, Investigator  
Catherine Corliss, Investigator

Gombar: Concerns we have with upcoming public meeting – about security-sensitive information the CSB already has – also there are two outstanding document requests from the CSB they have not responded two and will not respond to (cross plant transfer of MIC; site-wide inventory of MIC)

Gombar: Coast Guard regards MIC information as sensitive – Institute is a maritime facility, exempt from CFATS – covered under the Maritime Transportation Security Act – they conduct a vulnerability assessment which is SSI – they met with Lt. Cdr. James Rocco of the Coast Guard “last week” – according to Gombar the Coast Guard wants assurances about the safeguarding of SSI (by the CSB)

Gombar: safety systems and “everything we do to handle MIC safely” is SSI – not just the vulnerability assessment but all associated process hazard analyses, P&ID’s, and other documents are all part of SSI – documents we already have are SSI and can’t be disclosed – the “precise locations” of piping and valves and fill schedules for MIC are SSI

Gombar: there are “external pressures” from the community in the Kanawha Valley

Bresland: to me there are three issues in the case – (1) what caused the explosion, (2) what were the emergency response issues, (3) the role of the MIC tank – not sure if the CSB will deal with the third issue

Bayer: not enthusiastic about participating in the public meeting panel – depends who is on the panel – if People Concerned About MIC is in the panel, Bayer won't participate

Bresland: we will meet with the Coast Guard and hear what their official position is

Thursday, Feb 12, 2009

- Increase team size first, then form a 4<sup>th</sup> team.
- Assessment team
- Rob / John L to quantify number of investigations

1.30pm - Bayer Crop Science

Concerns to public meeting.

- Bob Fenton
- George Footnick, Asst Gen Counsel
- Mike Wey, HSE
- Eric Coon

CSB Requests

- 1) - MIC transfer, non daily inventory
- 2) MIC day tank - security sensitive information - Gas Coast Guard  
SSI - not disclosable

How do protect SSI at the CSB

Requested Item 6: Responsive Record

**From:** Bresland, John  
**To:** Wright, William; Wark, William; Visscher, Gary  
**Cc:** Horowitz, Daniel; Vorderbrueggen, John; Warner, Chris; McCormick, Amy; Hall, Rob; Holmstrom, Don  
**Subject:** Bayer Public Meeting  
**Date:** Monday, March 02, 2009 8:03:10 AM

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Gary, Bill and Bill:

I have decided to proceed with the interim Bayer public meeting in Charleston, West Virginia and I have asked John Vorderbrueggen to plan on a meeting early in April. This will give his Bayer team sufficient time to continue with their investigation and prepare a presentation dealing with the status of the three main aspects of the incident:

- 1) the reason for the explosion in the methomyl tank
- 2) the emergency response issues
- 3) the appropriateness of the location of the MIC day tank

When we decide on the date and location we will make an appropriate public announcement.

John

John Bresland  
Chairman  
U.S. Chemical Safety Board  
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Washington  
DC 20037  
Tel. 202 261 7600