



JAN 19 2007

Mr. Don Holmstrom
Investigator
US Chemical Safety and Hazard Investigation Board
2175 K Street, NW, Suite 400
Washington, DC 20037

Dear Mr. Holmstrom:

This letter constitutes OSHA's response to your July 17, 2006 interrogatories and records request. The Solicitor's Office will respond to Chris Warner's letter to Howard Radzely, Solicitor of Labor, dated November 16, 2006.

Your letter refers to the CSB's ongoing investigation of the March 23, 2005, explosions and fire at the BP Texas City oil refinery. As you know, and in accord with the Memorandum of Understanding between our agencies, OSHA has cooperated fully with that investigation, and has provided the CSB with extensive information about the Texas City refinery, and the conditions there.

Your July 17 letter, however, does not ask for information about the 2005 Texas City explosion and fire. Instead, it primarily requests extensive information on internal OSHA operations relating to overall enforcement of the Process Safety Management (PSM) Standard, 29 CFR 1910.119, especially OSHA's program quality verification (PQV) inspections and the OSHA personnel involved in those inspections. Specifically, you request material related to: 1) OSHA's plans for scheduling PQV inspections, including specific targeting information, for all plans from 1995 to 2005; 2) any internal evaluations of those plans; 3) detailed information about every single PQV inspection conducted pursuant to those plans, as well as access to OSHA's Office of Statistics to obtain even more detailed data; and 4) the names and qualifications, including education and experience, of every OSHA Compliance Safety and Health Officer (CSHO) assigned to conduct PSM and PQV inspections.

This request is a departure from prior CSB practice and addresses issues that are committed to the exclusive discretion of the Secretary of Labor. The Clean Air Act Amendments of 1990 (CAAA), Public Law 101-549, November 15, 1990, which created the CSB, authorize the CSB to propose "corrective steps to make chemical production, processing, handling and storage as safe and free from risk of injury as is possible and [to] include in such reports proposed rules or orders

which should be issued by . . . the Secretary of Labor under the Occupational Safety and Health Act to prevent or minimize the consequences of any release . . ." (emphasis supplied). The CAAA contains no indication that the CSB is authorized to provide oversight of OSHA's internal operations.

The Senate Report to the CAAA, which comprises virtually the entire legislative history relevant to the CSB, also explains that the CSB was intended to function "as an organizational stimulus to an appropriate amount of regulatory activity." CAAA, Senate Report No. 101-228, December 20, 1989 ("Senate Report").¹ This was described as an appropriate alternative to having Congress enact specific statutory requirements for "accident prevention" regulations, a course of action the report recognized "might be counterproductive." *Ibid.* This focus on accident prevention is consistent with the OSH Act, which authorizes OSHA to promulgate standards that are "reasonably necessary or appropriate to provide safe or healthful employment and places of employment," and places the duties to comply with OSHA standards and to provide a safe workplace with the employer. 29 USC 652(8); 654(a).

Consistent with this Congressional intent, the CSB has historically focused its investigations on an analysis of the specific causes of accidental releases, and on identifying potential gaps in OSHA standards that may have contributed to those causes. CSB's recommendations have suggested filling those gaps or issuing interpretative guidance to clarify the application of existing OSHA standards. We believe this focus on advising OSHA how its standards can best be formulated or explained to prevent or mitigate accidental releases is appropriate.

In contrast, OSHA's internal operations and resource allocations do not appear to be within the scope of authorized CSB recommendations. Moreover, because the CSB is only authorized to address a discrete subset of the hazards within OSHA's responsibility, the CSB could not rationally consider how OSHA's PSM enforcement strategy and resource allocation fits into OSHA's total enforcement program. In accord with established Federal law, OSHA's enforcement strategy is committed entirely to OSHA's discretion.

The information in request numbers 6 and 18 does not relate to internal OSHA operations; however, OSHA does not have any of the requested documents

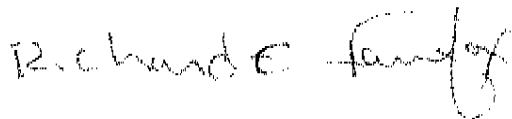
¹ The Senate Report refers only to regulatory activity by the EPA, because the version of the statute under consideration at the time the report was prepared did not mention OSHA or the Secretary of Labor. OSHA was added later, with the CSB having authority to make the same type of recommendations to both agencies.

available at this time. The files relating to the Texas City inspection referred to in request 6 have been destroyed pursuant to OSHA's record retention policies. Request 18 seeks the type of information about workplace injury and illness rates that OSHA normally calculates when performing a programmed inspection. OSHA uses those rates to decide how comprehensive an inspection to perform. The inspections referred to in this request, however, all occurred in response to catastrophic events, so OSHA would have conducted comprehensive investigations regardless of the facilities' injury and illness rates; therefore it may not have looked at the logs or recorded the injury and illness rates during those investigations. In addition, we note that two of the accidents involved occurred in state plan states (California and Washington), and likely were not investigated by Federal OSHA. Nonetheless, we have requested that any relevant files responsive to this request be retrieved from the Federal Archives, and we will provide the requested documents if they exist.

OSHA is declining to provide the records and information in the remaining records requests and the interrogatories for the reasons explained above. In addition, I note that even if it were appropriate for OSHA to provide some of these documents, pursuant to Federal record retention policies the majority of the records you request either have been destroyed or are otherwise unavailable.

OSHA remains committed to continued cooperation with CSB, as called for by the CAAA and the 1998 MOU. We recognize that Congress has given both OSHA and the CSB important functions to perform, and that both agencies have roles in protecting the safety and health of employees who may be exposed to chemical releases. We look forward to working with the CSB to achieve this goal.

Sincerely,



Richard E. Fairfax, Director
Directorate of Enforcement Programs