

STATEMENT OF WILLIAM B. BUCKNER,
PRESIDENT AND CHIEF EXECUTIVE OFFICER OF BAYER CROPSCIENCE, LP

INTRODUCTION

My name is Bill Buckner, and I am the President and Chief Executive Officer of Bayer CropScience, LP (“CropScience”). With me today is Nick Crosby, who is the Vice President for Institute Site Operations and the top company official at our manufacturing facility in Institute, West Virginia. CropScience is one of the world’s leading innovative crop science companies in the areas of crop protection, non-agricultural pest control, seeds and plant biotechnology. As an innovative and research-based company, we are committed to delivering an outstanding range of products and extensive service backup for modern, sustainable agriculture and for non-agricultural applications.

On August 28, 2008, we had a tragic accident at our Institute facility that claimed the lives of two colleagues at our site. This tragedy continues to remind us that the safety of our employees, neighbors, and community is and must remain our highest priority.

Over the past seven months, we have been working with several agencies to examine this incident, to learn from it, and to improve our performance. We also have been conducting our own investigation into both the causes of the incident and our response. We have received feedback from many in our community about our public communications relating to the incident. We feel strongly that our emergency responders did a tremendous job under difficult circumstances in responding to the incident and followed the communications protocols set forth in our region’s emergency response plan.

After the fact, however, we realized that our communications in the initial minutes after the incident, while well-intentioned, inadvertently created confusion and concern. Many members of our community, who understandably became concerned upon hearing a loud

explosion and seeing a large fire either directly or on television, did not receive immediate reassurance that they were not in danger.

In addition to taking steps to prevent such an incident from happening again, since the incident we have taken several specific actions to improve our emergency communications. For example, we have implemented new procedures for communicating with our region's emergency response center, Metro 911, installed dedicated methods of communication with Metro 911, hired a new emergency services leader to work with Metro 911 and other first responders in the region, and provided new real-time chemical monitoring technology to Metro 911.

I. CROPSCIENCE HAS BUILT UPON OUR EMERGENCY RESPONSE TO THE AUGUST 28th INCIDENT.

At approximately 10:30 p.m. on August 28, 2008, a residue treatment tank in an insecticide production unit at the Institute facility ruptured due to over-pressurization, causing an explosion and fire that led to the deaths of two of our employees. Our Institute facility maintains a emergency brigade on-site that has been specifically trained and equipped to respond to chemical fires. Our brigade immediately responded and did a tremendous job in bringing the fire under control. The on-scene incident commander determined that the fire should be allowed to continue to burn in a controlled manner in order to consume the chemicals involved in the incident. During the incident, ongoing monitoring showed no potentially harmful chemicals being released off-site. Local fire companies also responded and provided assistance.

Our public communications for emergencies at the Institute facility are intended to follow the Kanawha Putnam Emergency Planning Committee's emergency management plan ("KPEPC plan"). The KPEPC plan was the result of extensive coordination among many interested parties, including the various first responders in the Kanawha Valley, facilities like Institute, and the community's emergency response center, Metro 911. In the aftermath of the incident, we

believed that our initial emergency communications followed the protocols in the KPEPC plan. For example, within roughly 45 minutes of the explosion, we had established communication between our Emergency Operations Center (“EOC”) and Metro 911 to ensure the timely and accurate flow of information between the Institute facility and the community. In addition to communicating with Metro 911 by phone, CropScience sent a representative from the Institute facility to Metro 911’s site who was in direct communication with our EOC. Metro 911 also sent two of their representatives to Institute’s EOC and was directly receiving information from the Fire Chief of the Institute community’s Fire Department, who was in direct contact with our Incident Commander’s team.

For these reasons, we were initially surprised when we later received criticism from our Metro 911 counterparts and others in our community regarding our communications relating to the incident. These criticisms chiefly centered around the communications in the first few minutes after the explosion—specifically, our initial reliance on landline communications that became overloaded with calls and impeded our ability to reach Metro 911, and statements to Metro 911 by the security guard at the Main Gate of our facility that he could not tell them the location of the explosion within the facility. To be clear, at no time was our security guard instructed to withhold any information from Metro 911. In fact, the guard reached Metro 911 within four minutes of the explosion and provided information to Metro 911 that was consistent with the protocols specified in the KPEPC plan for incidents at an industrial facility. In addition, shortly after these initial communications difficulties, we had activated our EOC and opened several additional direct methods of communication between our EOC and Metro 911, so that the guard was no longer the primary means of transmitting information to Metro 911. There was criticism for not reporting the location of the explosion during the initial calls to Metro 911, but

the Fire Chief of the Institute Fire Department has reported that Metro 911 was aware of the location of the explosion and reported it to him at the time that his Fire Department was dispatched to our facility, just minutes after the explosion occurred. Nevertheless, we recognize the fact that the initial statements from the security guard at our Main Gate, while well-intentioned, contributed to an atmosphere of confusion that our emergency response plan is intended to prevent. Many members of our community, upon hearing a loud explosion and seeing a large fire on television or across the Kanawha River, did not receive immediate reassurance that they were not in danger.

There also was some criticism relating to a perceived delay in our recommendation of a Shelter-in-Place (“SIP”) for certain of our neighboring communities.¹ There was no delay in ordering the SIP. Upon evaluating the situation immediately after the explosion, our incident commander determined that a SIP was not warranted in the circumstances. Approximately 45 minutes later, however, the incident commander observed that the fire was heating up nearby storage bins and, as a precautionary measure, recommended a SIP for two neighboring communities. Our EOC reported the incident commander’s SIP recommendation to Metro 911 within two minutes. After the incident, however, some members of our community assumed incorrectly that there had been a 45-minute delay in recommending a SIP. This is not the case: our recommendation that Metro 911 order a SIP was because of developments that occurred 45 minutes after the explosion, not because of the explosion itself.² Again, however, we recognize that the communications problems at our Main Gate may have contributed to this misimpression.

¹ The Institute facility can recommend a SIP to Metro 911, but the facility cannot order one.

² We also received some criticism relating to road closures that certain law enforcement officials ordered immediately after the explosion. We had no role in those decisions.

The effects of the August 28th incident go well beyond simply understanding and preventing the causes of the explosion, for us, our neighbors and the local community. That is why, in addition to taking actions to improve operational safety at our site, we have taken many significant actions to improve emergency communications with our community. For example:

- We have established new procedures for communicating with Metro 911;
- We have established multiple dedicated methods of communication with Metro 911, including a hotline from Institute's dedicated EOC facility to the Community's EOC as well as communication links by radio to avoid overloaded phone lines;
- We have hired an Emergency Services Leader to enhance our coordination and emergency communications with Metro 911 and the community; and
- We are equipping Metro 911 with the "SAFER" system, which is the same real-time, computer-based system for monitoring and modeling chemical dispersions that we use in our EOC.
- We also have intensified our long-time practice of dialogue and outreach to our neighbors, nearby organizations, civic officials and other stakeholders. This has included continued discussions with our neighbors at the monthly meetings of our Community Improvement Council.
- In addition, we will be attending the public meeting held by the Chemical Safety and Hazard Investigation Board ("CSB" or "Board") on April 23, 2009, where there will be a discussion of the incident and our emergency communications. We have cooperated, and will continue to cooperate, with

the Chemical Safety Board and this Subcommittee in connection with the events of August 28, 2008.

- We will support the “15 minute rule” proposed by our Governor, Joe Manchin, to require timely notification of future incidents of this nature.
- We also support the recent proposal by Metro 911 to order a Shelter-In-Place as a precautionary measure if Metro 911 does not have sufficient information to evaluate the risks to the community within 10 minutes after a similar incident.

Obviously, improving our incident response starts with preventing incidents in the first place. For that reason, in addition to our communications-related improvements, CropScience has taken a number of steps to prevent another incident like the one that happened on August 28th. CropScience conducted an extensive internal investigation that identified multiple factors leading to this incident. Based on the findings, we have implemented a number of measures—including safety improvements, additional operational procedures and safeguards, and an extensive training and compliance regime—to ensure that this kind of incident cannot occur again.

II. SENSITIVE SECURITY INFORMATION.

There have been several reports about the Chemical Safety Board’s investigation to the effect that CropScience used the law protecting sensitive security information (“SSI”) to restrict the scope of the CSB’s investigation.

CropScience acknowledges that in January 2009, there were some in company management who initially thought that the Maritime Transportation Security Act of 2002, 46 U.S.C. Chapter 701 (“the Act”), could be used to refuse to provide information to the CSB

about issues regarding Methyl isocyanate (“MIC”) beyond those related to the MIC day storage tank in the unit involved in the incident. We admit that.

Here is the background. On January 15, 2009, during the course of interviews of Institute employees, CSB investigators asked questions not only regarding the MIC “day storage tank” and its related transfer piping in the unit of the Institute facility where the August 28, 2008 explosion occurred, but also about several other matters relating to MIC, including the company’s inventory amounts and protective measures, and alternate technologies for MIC. At that time, the company pointed out to CSB investigators that MIC is the primary and integral building block of virtually all of the company’s insecticide units at Institute, and that public discussions and CSB recommendations about alternate technologies and inventory amounts would be a sensitive matter for the company. The company nevertheless offered to make a presentation to the CSB about MIC production and discussed the need for confidentiality because of Homeland Security issues.

This exchange prompted a review of the Act, and resulted in the initial views by some at CropScience that the Act could be used to withhold certain information regarding MIC. This was the first time that CropScience had ever considered the issue of sensitive security information in the context of a federal or state investigation, and it is our understanding that it was also the first time that the CSB and the Coast Guard had confronted these complex issues in this context as well. The company proceeded to contact U.S. Coast Guard officials to inquire whether the requested additional information regarding MIC was in fact SSI, which might discourage the CSB from even seeking this information and limit the CSB’s inquiry to the Methomyl unit where the explosion occurred.

Approximately one week later, however, after further review of the Act and its related regulations, the company determined that it could not deny the CSB access to information about MIC, but that the law could be used to prevent the CSB from discussing SSI information publicly. The company learned that it was up to the Coast Guard to determine what could be publicly disclosed. The company continued to have discussions with Coast Guard officials regarding whether the company's understanding of what constituted SSI was correct, and whether such information could be blocked from public disclosure.

There were several reasons why the company sought confidentiality and SSI protection, including legitimate security concerns, the proper scope of the CSB's investigation, and, we frankly admit, the desire to avoid making the controversial chemical MIC part of the public debate regarding the incident. There were, of course, some business reasons that also motivated our desire for confidentiality. These included a desire to limit negative publicity generally about the company or the Institute facility, to avoid public pressure to reduce the volume of MIC that is produced and stored at Institute by changing to alternative technologies, or even calls by some in our community to eliminate MIC production entirely. In any such debate, we believed that because of security concerns, we would have been prevented from a full public defense of our safety and security measures and the multiple layers of protection we employ for our MIC processes. However, we concede that our pursuit of SSI coverage was motivated, in part, by a desire to prevent that public debate from occurring in the first place.

To be clear, however, CropScience did not withhold any information from CSB by claiming that it was sensitive security information. Sensitive security information regarding MIC has been provided to the CSB. We understand that CropScience was obligated to notify the CSB that some of the information that it had already disclosed to the CSB included sensitive

security information that the Act requires be kept confidential. But ultimately, it is up to the Coast Guard and the Transportation Security Administration—not CropScience—to determine whether certain information is or is not SSI, and whether SSI can or cannot be disclosed to persons other than covered persons. We have come under criticism for over-designating materials previously produced to the CSB as SSI, and we fully acknowledge the need for further guidance on what materials should and should not be marked as SSI.

Contrary to some reports, CropScience did *not* ask the CSB to cancel a public hearing—a fact that has since been confirmed publicly by a Board official: “Bayer never requested that the CSB cancel the hearing.” Dan Horowitz, CSB Director of Congressional and Public Relations, BNA Occupational Safety and Health Daily, Mar. 19, 2009. To the contrary, we understand that Coast Guard officials have reviewed CSB’s proposed presentation for the upcoming public meeting on April 23rd, and that the two agencies have resolved any issues relating to SSI in the presentation.

As our experience demonstrates, there is a need for further education and guidance regarding the interplay between the SSI regulations and CSB investigations. We do believe that whatever tension may exist between CSB’s desire to inform the public and the Coast Guard’s mandate to protect homeland security, these two important federal interests can be reconciled. We look forward to the ongoing dialogue between these two agencies and their efforts to balance these important federal interests.

III. CROPSCIENCE EMPLOYS MULTIPLE LAYERS OF PROTECTION FOR ITS METHYL ISOCYANATE OPERATIONS.

Finally, there have been questions raised about whether the chemical Methyl isocyanate (“MIC”) was involved in the August 28, 2008 incident. MIC is a chemical that is used to produce various products that protect food crops. We are not aware of any evidence that MIC

was released during the incident. To the contrary, during the incident, the operators in the affected unit's control room continually monitored the temperature and pressure in the MIC day storage tank that supplies the unit to confirm the incident commander's first-hand observations that the tank was not compromised or in danger of becoming compromised. Our EOC and incident commander also continually monitored the air around the facility and detected no potentially harmful chemical emissions that might threaten the community. Ultimately, these and other important safety measures in place to protect the MIC day storage tank and its related piping functioned as intended.

Some have asked why CropScience continues to use MIC, or why CropScience does not use another type of technology that might manufacture MIC on an as-needed basis at Institute instead of having to store it. MIC is a critical and necessary building block in the manufacture of important insecticides that help protect crops both in the United States and around the world. The Institute facility has manufactured MIC for decades, since well before CropScience acquired the facility in June 2002, and the facility has an impressive safety record relating to MIC. Our MIC safety performance starts with our experienced operators, many of whom have worked at Institute for years, if not a decade or more, and who have received extensive operational and safety training regarding MIC. Most important, however, CropScience, continuing the work previously done at the Institute site, has invested significant time, thought, effort, and financial support into ensuring that we employ robust and safe production strategies for our various production units that use MIC. We have examined alternative technologies for MIC and determined that our process is as safe as those other technologies. Our MIC processes at the Institute facility employ multiple layers of protection that, working together, protect our employees, our neighbors, and our community from a harmful release of MIC. Those layers of

protection worked as intended during the August 28th incident to protect the MIC day storage tank located in the same unit where the explosion occurred. While it is our understanding that the Maritime Transportation Security Act may prevent us from describing many of these layers of protection publicly in detail, we have disclosed them to the Coast Guard, the CSB, the Subcommittee's Staff, and other government officials, and we would welcome the opportunity to discuss them further with the Subcommittee in executive session. Above all, the safety of our employees, neighbors and the community remains our highest priority.

CONCLUSION

In closing, we welcome the opportunity to participate in this hearing. We are proud of our company, our employees, and our community. We stand ready to answer your questions.