

Bayer CropScience Explosion – August 28, 2008

Institute, West Virginia

Failure to Communicate

West Virginia Department of Environmental Protection
Homeland Security and Emergency Response

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The explosion at the Institute, West Virginia Bayer facility which shook the entire area and eventually claimed two lives was a tragic accident the effects of which were compounded by lack of communication about the conditions inside the plant by the on-site command team and a nearly complete failure of the Incident Command System (ICS) as a result of that failure. Perhaps of greater consequence is the later attempt to stifle the report of the Chemical Safety Board by citing the Maritime Transportation Security Act's provisions regarding port security plans which, in and of itself, is yet another communication failure.

The Maritime Transportation Security Act of 2002 (MTSA) is legislation which seeks to improve security at America's ports through a number of measures but the requirement pertinent to this investigation is that which mandates the preparation of maritime transportation security plans. This requirement has become an issue in this instance because the law states that "information developed under this chapter is not required to be disclosed to the public." It is under this language that Bayer has sought to block the findings of the Chemical Safety Board. Bayer is able to make this assertion because of the broad definition of facility in the act which includes "any facility of any kind" on waters subject to the jurisdiction of the law.

The relevant definition does not present a problem when normal port facilities which deal only with the loading and unloading of various cargos are considered. When facilities such as chemical plants or other manufacturing facilities whose major emphasis is the manufacturing of goods rather than the shipping of goods are included wholesale under this definition, vast areas over which the Coast Guard has no expertise or experience are suddenly covered by a protective veil which other concerned agencies as well as the public are prohibited from lifting. Manufacturing processes, chemical storage and transfer methods and many other physical and administrative functions which have nothing at all to do with the shipping or the port portion of the facility are now potentially under the purview of an agency which, through no fault of its own, is now expected to make decisions in areas far outside of its mission.

The Bayer CropScience facility uses many dangerous chemicals such as chlorine, phosgene and methyl isocyanate in many of its processes. In fact, most large manufacturing facilities use some

dangerous material or equipment. Nearly all major industries in West Virginia are on navigable waterways that are under the jurisdiction of the MTSA. Conceivably, all such chemicals and processes could be concealed using the MTSA. I do believe that the Coast Guard made a wise decision in the case at hand in allowing all information except the times when the methyl isocyanate tank is filled to be disclosed; but I will argue that, in spite of their skills, they are not the proper agency to be making decisions regarding chemical processes or other activities far removed from the port setting.

As a member of the State Emergency Response Commission (SERC) with the responsibility for implementing the Emergency Planning and Community Right-to-Know Act (EPCRA), I believe that allowing the MTSA to be read as Bayer proposes would cripple provisions of this act. EPCRA mandates that local emergency planning committees write plans to address all potential emergency situations at chemical plants and that critical information be provided by the facility to the emergency response committee. This information would not be available if the Bayer's reading of the Maritime Transportation Security Act is validated.

A final but critical note on the MTSA is that the language that Bayer has used to attempt to prevent the CSB's findings to be revealed to the public is that the language is not prohibitive at all but instead is permissive. The act states that facilities "are not required to be disclosed"; it does not prohibit such disclosure. In other words, even if the definition of facility is broadly interpreted and the entire plant is covered, Bayer could still release the information developed under the MTSA if it wanted to. The choice of whether or not to be a good corporate citizen is Bayer's.

ICS is a federally mandated management system for dealing with the response to emergency situations. It is designed to be flexible and scalable so that incidents of any size from traffic accidents to terror attacks can be managed by the same system. And it works when used appropriately. A lack of critical information from the facility to the responders caused the system to fail and highlighted a flaw in the system that needs to be recognized and addressed by the response community.

Initial notification of the explosion and also later communications were handled by guards at the front gate who were given a minimum of information. More than an hour after the explosion, responders were still trying to find out what unit(s) was involved. Repeated calls to the plant were answered by the guards who refused to divulge additional information. A command post was set up inside the plant that was comprised only of Bayer employees (although later a single county representative was admitted). When the local volunteer fire department arrived, their fire chief, also a Bayer employee, set up a second command center at the main gate to the facility. A third command center was set up nearby at a local park where the rest of the responders including police agencies, transportation officials, ambulance authority members, my agency and others were located. Although a Bayer employee was sent to the third command center mentioned above, this person professed ignorance of what was going on in the plant.

Due to the lack of reliable information coming from the in-plant command center, responders resorted to calling friends and relatives who were working in the plant on their cell phones to try to get accurate information on the status of the incident. It wasn't until after 1:00 a.m. on the morning of August 29th, 2009 that plant officials came to the third command center to officially brief responders on the situation in the plant. During the three hour since the explosion, responders were left guessing about what steps they should be taking to protect both themselves and the public. Reassurances from within the plant that all was going well rang hollow when a giant fire could be seen raging. The result was panic in the local community, confusion in the ranks of responders and a well-earned distrust of the facility.

It wasn't until after 3:00 a.m. on the 29th that state officials, myself included, were granted admittance to the plant and even then, only after a confrontation and then not to the actual command center. It wasn't until nearly 5:00a.m. that we were able to visit the stricken unit and make our own determinations about the safety of the general public; more than six and one-half hour after the explosion.

This situation could have been avoided. Competent implementation of the ICS would have avoided the majority of the problems encountered during this emergency. All emergency responders are trained to a greater or lesser degree depending upon their role. Depending upon the type and size of an incident, the system provides for multiple subsidiary command locations, public information officers, health and safety divisions and other well-known, well-trained components that needed to be implemented but weren't. Information needed to be flowing from the command center but wasn't. Resources needed to be marshaled but weren't.

Where does the blame lie? Squarely on the shoulders of Bayer CropScience. Failure to provide adequate, accurate information to responders was a problem from the onset of the incident until several hours into it. Failure to provide access to the facility command center prolonged community and responder concerns about the welfare of the community at large. Failure to competently implement the ICS resulted in three separate "command centers"; none of which had all the right resources to correctly address the problem. All of the resources needed to respond competently to such an accident were present at one of the command centers yet there was no attempt to coordinate or even use these resources.

The explosion at the Bayer CropScience facility was a terrible accident. Whether or not it could have been avoided is grist for another mill. What is indisputable is that the response to the accident was unacceptable and that the company is responsible for that failure.