

U. S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: CG-0921
Phone: (202) 372-3500
FAX: (202) 372-2311

DEPARTMENT OF HOMELAND SECURITY

U. S. COAST GUARD

STATEMENT OF

**REAR ADMIRAL JAMES WATSON
DIRECTOR OF PREVENTION POLICY**

ON THE

**EXPLOSION AND FIRE AT BAYER CROPSCIENCE (BCS) FACILITY IN
INSTITUTE, WEST VIRGINIA, ON AUGUST 28TH, 2008.**

BEFORE THE

**COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION
U. S. HOUSE OF REPRESENTATIVES**

APRIL 21, 2009

Good afternoon Mr. Chairman and distinguished Members of the Committee, and thank you for the opportunity to provide this testimony on the Coast Guard's role and response related to the explosion and fire at the Bayer CropScience facility in Institute, West Virginia. I am Rear Admiral James Watson, Director of Prevention Policy.

At the outset, I would like to express my sincere condolences to the families, friends, and community of the two plant workers who lost their lives as a result of the explosion and fire. The Coast Guard understands safety as we conduct thousands of maritime safety and casualty investigations each year. As a first responder for maritime environmental emergencies, the Coast Guard understands and appreciates the complexities and hazards faced by first responders at waterfront facilities that handle chemicals and other hazardous materials. We share your concern that Sensitive Security Information (SSI) designations should never be abused to obstruct a safety investigation or to circumvent information disclosure required by the Emergency Planning and Community Right-to-Know Act (EPCRA). We also firmly believe that SSI requirements and EPCRA requirements can coexist for the benefit of the public in the current regulatory framework. I would also like to underscore the Coast Guard's commitment to cooperation with those responsible for investigating this accident in order to prevent such tragedies in the future.

Background and Coast Guard Jurisdiction

As mandated by the Maritime Transportation Security Act of 2002 (MTSA) and in fulfillment of the Coast Guard's regulatory responsibilities under the Port and Waterways Safety Act of 1972 (PWSA), the United States Coast Guard conducts annual safety and security inspections on over 3,200 regulated waterfront facilities. At many of these facilities, oil and chemicals are transferred in bulk as well as in packaged form. Under PWSA and other environmental and safety statutes, the Coast Guard regulates the safety of only a limited area of these facilities, specifically that area designated as the marine transfer area which extends from the vessel/facility interface up to the first valve within the facility's secondary containment. Other federal agencies such as the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), as well as State and local government agencies regulate safety beyond the marine transfer area.

The Coast Guard regulates the security of the MTSA-portion of the facility which extends beyond the traditional marine transportation-related portion of the facility and includes areas that are contiguous, adjacent and under common owner or operators extending to the furthest security perimeter. Coast Guard facility inspectors conduct required annual security inspections, as well as random security spot checks, which provide additional opportunities to identify safety and security concerns. Under the MTSA, the Coast Guard is required to issue regulations that require maritime facility and vessel operators to develop security plans detailing the types of security measures to be implemented under varying threat conditions. Industry groups were allowed to use an Alternative Security Program (ASP) whereby a participating facility creates its individualized security plan under the framework of a broader security plan that addresses security based on common operations within a specific maritime sector. For example, Bayer CropScience uses the American Chemistry Council's (ACC) Alternative Security Program. These plans are reviewed and approved by the Coast Guard.

In order to meet statutory deadlines for implementation of these facility security plans, the Coast Guard issued a series of final rules on October 22, 2003, requiring facility and vessel operators to submit security plans to the Coast Guard for approval. In order to protect the security of regulated facilities and vessels required to possess a facility security plan under the requirements of MTSA, it was necessary to ensure that such plans and their related facility specific security information were subject to limitations on the disclosure of the information. Therefore, the Transportation Security Administration (TSA) issued an interim final rule expanding the scope of its Sensitive Security Information (SSI) regulation so that it covered security plans and other information about security measures required by the Coast Guard's MTSA regulations.

Bayer Crop Science

Bayer CropScience is a waterfront facility regulated by the Coast Guard under 33 CFR 105 – covering Maritime Security Facilities; 33 CFR 154 – covering Facilities Transferring Oil or Hazardous Materials in Bulk; and 33 CFR 156 – covering Oil and Hazardous Material Transfer Operations. Bayer CropScience uses the ACC Alternative Security Program (ASP). This ASP was initially approved on December 22, 2003, and reviewed and approved again on October 11, 2007 due to updates incorporating Transportation Worker Identification Card requirements. As approved by the Coast Guard, the ASP requires that a site specific facility security plan be submitted to the cognizant Captain of the Port (COTP). The Coast Guard reviewed Bayer CropScience's site specific plan in conjunction with a successful MTSA facility inspection conducted on September 27, 2005. On August 14, 2008 the Coast Guard reviewed and approved appropriate plan amendments related to the forthcoming implementation of Transportation Worker Identification Credential (TWIC) requirements.

Although the incident occurred within the MTSA-regulated portion of the facility there is no indication the explosion and subsequent fire at the Bayer CropScience facility was caused by or related to a security breach or had any security nexus. At the time of the incident the Coast Guard worked closely with the Kanawha County Emergency Operations Center to monitor the events. The Coast Guard also established a safety zone on the Kanawha River. The site of explosion was beyond the marine transfer area of the facility, therefore responsibility for further investigation into safety or pollution issues fell within the jurisdiction of other Federal, State and local agencies. The Coast Guard will assist these agencies, if requested, to address areas within our jurisdiction or expertise.

Cooperation with the Chemical Safety and Hazards Evaluation Board (CSB)

The Chemical Safety and Hazards Evaluation Board (CSB) is conducting an investigation of this incident. The Coast Guard met with the Chemical Safety Board and Hazards Evaluation staff on February 26, 2009, at CSB's headquarters in Washington, DC. Both agencies agreed to work together to protect sensitive security information while preserving CSB's ability to conduct an independent safety investigation. CSB stated their desire to hold a public meeting, initially scheduled for March 19th, to discuss preliminary findings of the investigation. Since then, CSB rescheduled their public meeting for April 23rd. During the February 26th meeting, CSB indicated a desire for, and the Coast Guard indicated a willingness to, review any presentation for the public meeting scheduled for April 23rd.

In a subsequent phone conference with CSB staff on March 5, 2009, it was mutually agreed that the Coast Guard would review a draft presentation to identify and make CSB aware of any SSI concerns. The Coast Guard and CSB would then work together to appropriately address issues identified by verifying the status of the information and then take one of the following actions: protect SSI from disclosure, specifically authorize disclosure, or determine that the material had lost its designation as SSI and did not require further protective measures. CSB forwarded their draft presentation for Coast Guard review on March 18, 2009. CSB addressed limited SSI concerns raised by the Coast Guard; concerns that would not compromise the integrity of the safety investigation and the proposed public presentation.

The Coast Guard does not have any concerns with CSB having access to all SSI material, as CSB members are “covered persons with a need to know” under the SSI regulations found in 49 CFR Part 1520. If after consulting with CSB we determined that, for the sake of safety, SSI information must be disclosed, the Coast Guard would then authorize disclosure. The Coast Guard intends to continue working cooperatively with CSB during its investigation in an effort to help resolve any SSI issues which may arise. We anticipate being asked by CSB to review their final accident report to identify potential SSI concerns and then address them in the same manner as we did with the material to be presented at the forthcoming public meeting.

Mr. Chairman and distinguished Members of the Committee, the August 2008 incident at Bayer CropScience is an unfortunate and tragic event that highlights the importance of ensuring that all agencies responsible for oversight and post-accident investigation of chemical facilities work together in partnership with industry to prevent future accidents and be prepared to respond to incidents that may occur. We will continue to carry out our regulatory responsibilities as we support the Chemical Safety and Hazards Investigation Board’s investigation of the incident at Bayer CropScience. Thank you for the opportunity to provide this testimony on the Coast Guard’s role and response. I am happy to answer any questions you may have.