

Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
Hearing: “Secrecy in the Response to Bayer’s Fatal Chemical Plant
Explosion”
Opening Statement
Rep. Bart Stupak, Chairman
April 21, 2009

On August 28, 2008, a tank exploded at the Bayer CropScience chemical plant in Institute, West Virginia. The explosion sent a fireball hundreds of feet into the air and was felt ten miles away. I have here photographs from the accident and its aftermath: the explosion captured from a distance; the destruction at the plant; a pair of safety goggles encased in chemical residue.

Before I go any further, I would like to express on behalf of the entire Subcommittee our condolences to the families of the two employees, Barry Withrow and Bill Oxley, who were killed as a result of the explosion. We acknowledge the tremendous personal sacrifices and pain these people and their families have been put through as a result of this tragic incident. We also thank the emergency first responders who protected the public that night, especially the six volunteer firefighters who suffered from nausea, intestinal and respiratory disturbances as a result of exposure that night. We are tremendously grateful for their service and the service of all of our public safety personnel.

Today, the Subcommittee is examining not only what actually happened, but what could have happened. About 80 feet from the blast site was a day tank that can store nearly 40,000 pounds of methyl isocyanate or MIC. MIC is the same chemical that killed thousands of people and sickened tens of thousands in 1984 after a release of the toxic chemical at a plant in Bhopal, India. The explosion at the Bayer plant in West Virginia caused a 2 ½ ton steel vessel containing methymyl to rupture and be violently propelled in a northeasterly direction, leaving a patch of destruction. Had the projectile headed south and struck the MIC tank, the Subcommittee today might be examining a catastrophe rivaling the Bhopal disaster. As it happened, the explosion caused shrapnel to damage the protective “blast blanket” around the MIC day tank.

Immediately after the explosion, local emergency responders tried to obtain crucial information from Bayer representatives, information that was essential to determine how best to protect the public and their own personnel from possible chemical contamination. For example, the emergency responders were trying to determine whether to order the community “shelter in place,” which is to stay in their homes with doors and windows closed. A “shelter in place” order must be announced soon after a chemical release in order to be effective. The fire department in Nitro, West Virginia, reported:

[W]e have a cloud of some type that is dark, it’s moving more towards Nitro, can you please try to get some information so you can tell us what it is?

Bayer rebuffed the emergency responders' efforts to obtain information about the explosion. When the 911 dispatcher asked the company to confirm whether the explosion took place in the Larvin Unit, which contains toxic chemicals, Bayer responded:

No that's all. I'm only allowed to tell you that we have an emergency in the plant.

At least six state and local emergency responders were denied entry to the plant to investigate the explosion. As Kent Carper, the President of the Kanawah County Commission wrote to Bayer a week after the explosion:

Metro 911 repeatedly asked for information and was refused. ... This was a complete abdication of Bayer's responsibility to your neighbors and our first responders, who were sent uninformed to an explosion because no one was "allowed" to inform us.

We will hear testimony today from Mr. Carper as well as from other officials and representatives of the local community.

The United States Chemical Safety and Hazard Board (CSB), an independent federal agency, is conducting an investigation with the goal of reporting to the public on the cause of the accident and recommending changes to prevent future accidents like this one. We will hear today from the chairman of the CSB on the Board's preliminary findings.

For the first time during a CSB investigation, a company sought to limit CSB's use of documents and information by labeling it "Sensitive Security Information" (SSI) under the Maritime Transportation Security Act. Although the law is supposed to prevent the public release of information that might compromise national security, Bayer has now admitted that it began using this SSI label in part to prevent negative publicity and stymie public debate about the safety of its processes. William Buckner, the President and CEO of Bayer CropScience, says in his written testimony for today's hearing that Bayer invoked SSI out of:

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.

In one document Bayer produced to the Subcommittee, company counsel instructed that the assertion of Sensitive Security Information should be "liberal" and should "strike any references to any piece of equipment, piping, or document involving" MIC or Chlorine, a process that resulted in the marking of thousands of pages of documents.

Finally, the Committee's investigation has uncovered several troubling facts that further raise concerns about an orchestrated effort by Bayer to shroud the explosion in secrecy:

- Bayer removed and destroyed the “blast blanket” that surrounded the MIC tank, pictured here with visible damage. The whereabouts of this important piece of evidence is now unknown.
- Air monitoring devices designed to determine whether MIC has been released into the air were not operational on the night of the explosion.
- Videocameras positioned to capture the site of explosion did not record the time period of the explosion because they had been disconnected from the recording unit.

Bayer’s pattern of secrecy raises serious questions not just about Bayer, but also about whether the law adequately protects the public’s right to have information about potential dangers their communities face and how those dangers might be minimized.

Today we will ask whether the Sensitive Security Information designation system is susceptible to abuse, given that the Committee’s investigation has revealed that a private chemical company, which has the most to lose invoked SSI in part out of the business motive of limiting public discussion of the fact that it continues to be the only company in America that still stores large quantities of MIC onsite.

We will also explore ways for companies to employ safer technologies to protect their communities so that tragedies like this one do not happen again.