

From: [Gilmour \(C\), Sandy](#)
To: [Horowitz, Daniel](#)
Subject: proposed memo to you and John
Date: Thursday, February 26, 2009 10:45:56 AM

DANIEL – I would like to send this to both you and John. What say..

John and Daniel,

I just wanted to restate, as we were discussing this yesterday afternoon, my strong recommendation that the CSB, as represented by John, make it clear to the Coast Guard and other authorities that the CSB does not believe there could be any conceivable detriment to national security by continuing our investigation of this serious and tragic accident as planned.

If this goes much further, we will be spending the rest of our lives negotiating the wording of findings and recommendations with mid-level security types will always want to err on the side of secrecy.

Main message: The CSB is an experienced, responsible independent agency quite capable of investigating Bayer in a thorough way without affecting the Coast Guard's job of protecting the homeland. We ask the Coast Guard not to become a party to what is essentially a ploy by Bayer to get us to back off.

1. The MIC issue has been out there for years. Making this all a secret now would be palpably ridiculous. It is properly controversial and properly the subject of public concern (right to know) and CSB investigation for a reason: it killed a lot of people in Bhopal.
2. The CSB is the agency to properly and independently determine what caused the accident and whether the MIC tank was in harms way and should be moved. Such a determination could actually increase the security of the plant in the near term if such a recommendation were adopted.
3. We think Bayer is taking this position because it does not want the public to increase pressure on it to get rid of or drastically minimize the presence of MIC in its process – something it has done in other facilities. The CG is being used by Bayer to help Bayer in what is actually a local political controversy.
- 3.If the CG/DHS takes the position that it can censor CSB information from the public, the CSB will need to go to Congress and take a public position that the CG/DHS interpretation of the maritime security provisions is hampering our ability to investigate and that other companies and industries, and the public, will be deprived of critical information. You at the Coast Guard do not want to be seen hampering investigations.
4. From a practical and historical standpoint, accidents are far more likely to take lives of workers and threaten the public than terrorist attacks. But both accidents and intentional attacks can be prevented and the means to do so are not mutually exclusive. The presence of MIC at Bayer is widely known. A bad accident has already happened there – not a terrorist attack. Using homeland security rules to prevent the CSB from doing its open, transparent, independent job ironically makes the likelihood of another accident more probable, and sets back a process by which the plant could also be made safer from a potential intentional attack.

Sandy

Sandy Gilmour
Public Affairs
United States Chemical Safety Board
[REDACTED] Cell: [REDACTED]

Mike Wey/AGKCM/AGCHEN/US/BAYER

To "Kiefer, Kevin CDR" [REDACTED]

cc

Subject Re: Bayer CropScience Visit [Link](#)

01/29/2009 03:07 PM

Kevin

Thanks for the information and update. You have confirmed our understanding that this would be SSI. We would like to have the opportunity to discuss this further with your headquarters so that we can better communicate to the CSB and possibly discourage them from even seeking this information. Our position would be enhanced if we could meet with your headquarters representatives on Wednesday afternoon or Thursday morning. We would envision a small meeting with Nick Crosby, an outside lawyer who is supporting us in the investigation responses and me.

If you could help us in coordinating this meeting it would be greatly appreciated.

Thanks in advance for your help.

Mike Wey

----- Original Message -----

From: "Kiefer, Kevin CDR" [REDACTED]

Sent: 01/29/2009 12:47 PM CST

To: Mike Wey

Cc: Nick Crosby; Steve Fetty; "Denley, Eric LCDR" [REDACTED] "Tucci, Andrew CDR" [REDACTED]

"James, Wes LT" [REDACTED]; "Rocco, James LCDR" [REDACTED]

Subject: RE: Bayer CropScience Visit

Hello Mike,

It was nice to meet you and Nick, and it was good to see Steve again the other day. I also found our meeting to be beneficial and thank you for letting us know about this situation. I discussed the Sensitive Security Information (SSI) issue with our headquarters office (Office of Port and Facility Activities), and we believe that the information about process and inventory that you mentioned should be considered SSI. We think this is the case because the process and inventory information is either part of your Facility Security Plan (which is required to be SSI) or it is more specific containing additional details than the information in your FSP (and therefore is also required to be SSI). Also the SSI process and inventory information may be released to the Chemical Safety and Hazard Investigation Board if they agree not to disclose the information and sign SSI non-disclosure forms.

If you would like to speak with our headquarters personnel directly, I can make those arrangements for you. I hope this information is helpful.

Regards,

Kevin

CDR Kevin C. Kiefer
Commanding Officer
U.S. Coast Guard
Marine Safety Unit Huntington
[REDACTED]

-----Original Message-----

From: mike.vey [REDACTED]

Sent: Saturday, January 24, 2009 7:57 AM

To: Kiefer, Kevin CDR [REDACTED]

Cc: nick.crosby [REDACTED]; steve.fetty [REDACTED]

Subject: Bayer CropScience Visit

Commander Kiefer

We at Bayer CropScience wanted to thank you for the time you and your executive officer spent with us Friday afternoon on short notice. As we explained to you, the issue of sharing the requested information with the Chemical Safety and Hazard Board is of great concern for us. You indicated that while headquarters has asserted that the Site Security Plan is

Security Sensitive Information, you could not confirm our assertion regarding whether specific information regarding process and inventory would be considered security sensitive information. We would like to pursue this matter further with headquarters to have a positive determination that this information is security sensitive information. Could you provide us with the appropriate contact information in headquarters so that we could meet with them to establish our position on this specific information? As you can understand from our conversations Friday, this is a most urgent matter given the public meeting to be held in early February. We would like to meet with the appropriate headquarters staff as early as possible the week of January 26. Any assistance and support you can provide in helping us to move this issue forward is greatly appreciated.

I realize that your schedule has you out of the office this week, so if there are any questions or clarification you need, please feel free to contact me directly on my cell phone.

Again, thanks again to you and your staff for the time and support in our meeting Friday afternoon.

Best Regards

Mike Wey

Bayer CropScience LP
Head, HSE Expertise Center
Phone: [REDACTED]
Mobile: [REDACTED]
Telefax: [REDACTED]

Mike.Wey [REDACTED]
<http://www.bayercropscience.com>

From: Gilreath, Shannon CDR
Sent: Friday, March 13, 2009 3:56 PM
To: Kantor, David; Kramek, Joseph CDR
Cc: Lederer, Calvin; Michel, Chuck CAPT; Banks, Linda; Evans, Samuel; Tousley, Michael CAPT; Gifford, Verne CAPT; Bald, Ronald CDR; Rocco, James LCDR; Kiefer, Kevin CDR; Denley, Eric LCDR; Kishiyama, Lonnie LCDR; Weller, Alex
Subject: CSB Investigation and Summary of CG involvement

Mr. Kantor

On Friday February 20, 2009 the Chemical Safety & Hazard Investigations Board (CSB) General Counsel, Chris Warner, contacted the Coast Guard with concerns about claims that Bayer Crop Sciences (Bayer) counsel had recently made that all the material they had given to CSB was or might be sensitive security information (SSI) and therefore could not be disclosed to the public. We discovered internally that Bayer's counsel had spoken with MSU Huntington and CG-5441 about material it considered SSI and their intended course of action although that may have been slightly misrepresented by Bayer. We spoke to them in greater detail to CSB regarding these claims on Monday the 23rd of February during which time we discovered that one of CSB's Board members, William Wright had sent MSU Huntington a request for the facility security plan. The Coast Guard offered to release the requested information to CSB with a non-disclosure agreement but CSB's counsel ultimately declined and stated he would rather not have the SSI material from us.

We met formally with CSB and OSHA at CSB's Headquarters on Feb 27. In attendance from CSB were Chairman Bresland, Board member William Wright, General Counsel Chris Warner, CSB Congressional Affairs Rep Daniel Horowitz and several other investigators from CSB as well as representatives from OSHA. CSB and OSHA gave a general overview of the accident and their actions to date. We explained SSI and MTSA generally and discussed ways to try to resolve the issues of whether or not CSB actually had SSI information it wanted to disclose. CSB indicated that they had approximately 6000 documents from Bayer none of which were marked as SSI. Their immediate concern was the public meeting they intended to have prior to the release of their report which they had put on hold following Bayer's claims and were under tremendous political pressure to still hold. We agreed to work with them as much as possible to try and resolve these issues and the best short term solution would be to review the proposed power point for the public to insure it did not contain SSI. Long term there was the release of the final report which we offered to review as well but they were hesitant to allow us to do so for fear that it would appear we had oversight. There were additional concerns as to how to respond to FOIA requests. We did not offer to review all 6000 documents. From the Coast Guard side we agreed to explore other possibilities to try pin down what SSI material they might have by reviewing the facility security plan. The underlying threat assessments were the areas we had the most concern about. The bottom line is we stressed our willingness to work with CSB to help them past this.

MSU Huntington personnel reviewed the facility security plan which did not contain the underlying threat assessment or lists of documents that Bayer had relied on to create the plan. It also revealed that the facility actually operated under an Alternative Security Plan.

One week later on March 5th we followed up with CSB in response to a request from Congressional Staff to contact them as they were unaware of previous contact. During that conference call with Chris Warner and Daniel Horowitz from CSB we discussed again our willingness to help and offered some possible solutions. We agreed to meet with them upon their request to review their presentation for the public meeting to determine if it contained any information that we would consider SSI. We do not anticipate it containing SSI material based upon our discussions. They have tentatively set their public meeting for April 23. They have not yet requested the follow up meeting. They also indicated a willingness to allow us to review their final report for SSI as well although that is months away. In addition we offered other suggestions to help speed the process. MSU Huntington was scheduled to review the underlying threat assessment and prepare a list of document from that might be SSI which we could provide CSB to compare with the documents

they already had. We also suggested that they go back to Bayer and require them to create a protection log for the documents asserting the appropriate privilege they claimed for each document. Although a possible solution for FOIA, CSB was not inclined to go that route due to it further delaying their public meeting. We also suggested that CSB could create two versions of their final report one SSI and one non SSI. The SSI report could then be released to covered persons within the chemical industry that might need the information for safety concerns. CSB was not inclined to create two reports. CSB suggested that we might have someone at the public meeting to explain SSI and why certain material couldn't be released. We were not inclined to agree to do that at their meeting but will follow up with public affairs and the unit.

MSU Huntington met with Bayer on Monday and is developing the list of documents from the threat assessment to send to CSB.

Yesterday CSB requested we send them a formal statement of jurisdiction concerning the Bayer facility as it relates to MTSA so that they would have it for their records. MSU Huntington and D8 are developing this at our request.

We have responded promptly to all requests from CSB and intend to continue to work closely with them to help them resolve. We have been given nothing to review at this point and the Coast Guard is not holding up or impeding their investigation. We have a meeting scheduled with OSHA to discuss protocols for investigations that might encounter SSI issues.

V/R
CDR Shannon Gilreath

Kirkpatrick, Chris

From: Porfiri, Ray
Sent: Tuesday, February 17, 2009 9:53 PM
To: Warner, Chris; Kirkpatrick, Chris
Subject: Privileged- SSI

I have done an initial read through of 49 CFR Part 15 and the relevant sections of the MTSA.

At least from this information, it seems that Gombar's explanation of what would constitute SSI is much more expansive than the regulations at 49 CFR 15.5. For example, Gombar stated that facility photographs, piping diagrams, and even publicly available information could not be disclosed by the CSB or even referred to by the CSB at a public meeting. Gombar's assertions appear overbroad, at best.

It seems that the CSB needs to request from Gombar what specific documents (already in the possession of the CSB) he believes are tied to a definition contained in 49 CFR 15.5, and to explain his point in some detail.

Ultimately, even as Gombar said, the CSB is entitled to obtain this information. The issues would arise in

- a) referring to SSI in an inappropriate manner in a public setting like a meeting, or
- b) releasing it outright (as in a report, video, or FOIA release).

As for a public meeting, I do not see why the Board would have any need to make reference to site security, vulnerability assessments or other security information.

As for a report or video, the CSB could always vet these documents with the Secretary of DOT or his designee. I am not sure that Gombar is correct the Coast Guard has authority to pass judgment on this.

I think Gombar's chatter about SSI is a smokescreen to obscure what is already well known to the good citizens of West Virginia-- that MIC is stored in lethal quantities at this facility. Bayer would prefer not to remind everyone of this obvious point or to even set minds racing as to what could have occurred here but for some good fortune.

It seems like the CSB can discharge its duty while still protecting certain specific security information.

Kirkpatrick, Chris

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-----Original Message-----

From: Chris.Warner [REDACTED]
Sent: Friday, February 27, 2009 10:58 AM
To: Gilreath, Shannon CDR
Subject: FW: SSI meeting at the CSB

Shannon - Thank you again for meeting with us on such short notice. I apologize. I thought I sent this note to you on Wednesday right before I left for home. Unfortunately it went to Paul Gilbreath (DHS) who happens to work with us on deployments. Sorry about the mix up. CW

-----Original Message-----

From: Warner, Chris
Sent: Wednesday, February 25, 2009 5:41 PM
To: 'Gilbreath, Paul (Nathan)'
Cc: Vorderbrueggen, John; Bresland, John; Horowitz, Daniel
Subject: SSI meeting at the CSB

Shannon: Thanks for your prompt assistance on this matter. I have discussed our meeting tomorrow at 1:30 at the CSB offices at 2175 K Street NW Washington (4th floor) with CSB staff and OSHA contacts. OSHA intends to send two or three representatives to the meeting; the CSB will have five representatives, including Chairman John Bresland. For your benefit, I have provided below a brief summary of the Bayer CropScience incident and a short explanation of the CSB.

As I related on the phone, the United States Chemical Safety and Hazard Investigation Board or "CSB" is investigating an August 28, 2008, incident at the Bayer CropScience (BCS) chemical plant in Institute, West Virginia. Two workers were fatally injured when a waste tank containing the pesticide methomyl violently exploded, causing extensive damage to a major process unit. Given the plant's location adjacent to a navigable waterway, Bayer has informed the CSB that the plant is under the Coast Guard's jurisdiction.

The immediate issue we face involves a proposed public meeting by the CSB in Charleston, West Virginia, originally scheduled for March 19, and the assertion made by Bayer, last week, that much of the information provided to the CSB about the incident, regardless of whether it is already in the public domain (found on the internet, provided or produced for other government agencies such as OSHA or EPA, normal business and engineering documents etc. is considered SSI (even though it was not so marked when provided) and should not be discussed at a community meeting. Thus our issue and our need to discuss with the Coast Guard the topic of SSI in general and the specifics of the Bayer CropScience incident.

A CSB community meeting would inform the public of key incident details; summarize environmental impact facts, solicit opinions from a panel of community and state officials regarding emergency response activities; and invite public comment for the Board to consider follow-up actions, as appropriate.

The key investigative issues for the CSB at the hearing and in its report are- 1) Process Safety Management (process design, operator training, PHA revalidation, pre-startup safety reviews and operating procedures; 2) BCS Emergency response (Communication with outside organizations and PPE for hot-zone responders); 3) Off-site emergency actions (EOC actions and coordination/communication with local communities, shelter-in-place decision

process, and notification process); and 4) The safety of a 40,000-lb storage tank of highly toxic methyl isocyanate (MIC) which was in the vicinity of the blast.

Although the issues surrounding SSI are relatively new to the CSB, the agency has discussed CVI or SSI type issues with DHS. Additionally, we have reviewed a Homeland Security procedure manual that addresses CVI information and have also reviewed the DOT and Coast Guard regulations addressing SSI materials. Based on our research and our discussions with DHS about CVI materials, we believe the documents provided to us by Bayer CropScience are not SSI.

We would like to discuss these matters with the Coast Guard and work out a mutually agreeable format for the Board to carry out its statutory responsibilities. I have provided below a short summary of the Bayer incident and some background on the CSB. Of course, if you would like to gather additional information about our agency, its legislative mandate which is similar to that of the National Transportation Safety Board (NTSB) or view some of our safety videos and products, please go to our website at: www.csb.gov <<http://www.csb.gov/>> .

Bayer CropScience Explosion and Fire on August 28, 2008 (two fatalities).

Background:

Methomyl (MOM) is synthesized from methyl isocyanate (MIC) and oxeme in a solvent, methyl isobutyl ketone (MIBK). Centrifuges separate the MOM from the solvent. The solvent is distilled to remove the trace MOM and other impurities (residue) then returned to the process.

The liquid residue from the distillation column is fed to a pressure vessel where it mixes with hot MIBK. The MOM decomposes inside the "residue treater." The liquid is then transferred to a fuel tank at the powerhouse where it is used to fuel the steam boilers.

The Incident:

Bayer CropScience was restarting the Methomyl unit (a pesticide product and intermediate chemical used to manufacture Larvin, another pesticide) after a multi-month unit outage. MOM synthesis, MIBK distillation, and residue feed to the residue treater had been ongoing for many hours.

Shortly after, the two operators were asked to investigate what was thought to be a problem with the residue treater system, the residue treater vessel exploded. The pressure vessel was propelled into the unit where it ruptured piping, and ripped out structural support beams, process pumps, and other equipment. Approximately 2500 gallons of highly flammable liquid was instantly released from the vessel.

The solvent-fueled fire caused major equipment and structural damage. The control building and other nearby structures sustained minor blast damage, but no fire damage. The BCS fire brigade with the assistance of off-site fire fighters eventually extinguished the fire in the unit early the next morning. One operator died at the scene from blunt force trauma and a second operator died a few weeks later from burns sustained in the explosion.

A community shelter-in-place and highway closure was declared and remained in effect for most of the night. Based on fence-line air monitors, BCS concluded there was no toxic chemical release.

MSDSs - Methomyl

MSDS's for methomyl located on the internet indicate that thermal decomposition may produce MIC (referred to in the MSDS by its chemical formula CH₃NCO).

The explosion was likely caused by a runaway reaction/thermal decomposition of Methomyl (and not the derivative Larvin). The Methomyl MSDS indicates that decomposition produces trace amounts of MIC, hydrogen cyanide gas, and other highly toxic substances such as carbon disulfide, SO₂, and NO₂. It also states that complete combustion "greatly reduces" the amount of hydrogen cyanide and MIC.

Possible Chemical release/exposure in the plant or community

Under the conditions at Bayer on Aug. 28, there may have been an incomplete combustion and that non-oxidized decomposition products like MIC and hydrogen cyanide may have been released to the atmosphere. Some firefighters in the hot-zone reported headaches, body aches, nausea, and other possible toxic exposure symptoms that persisted for one or two days after responding to the accident (and that a couple of them sought treatment at the Bayer infirmary on site.) A day tank of MIC was also in the vicinity of the blast. There are possible issues surrounding this tank and its protection, as well.

Bayer Response

Bayer has categorically told both the public and the CSB that no MIC was released or involved in the accident. In our discussions with Bayer last week, the company indicated that discussions about processes, MIC or the day tank would be considered SSI.

CSB Background

The CSB is an independent federal agency charged with investigating industrial chemical accidents. Headquartered in Washington, DC, the agency's board members are appointed by the President and confirmed by the Senate.

The CSB conducts root cause investigations of chemical accidents at fixed industrial facilities. Root causes are usually deficiencies in safety management systems, but can be any factor that would have prevented the accident if that factor had not occurred. Other accident causes often involve equipment failures, human errors, unforeseen chemical reactions or other hazards. The agency does not issue fines or citations, but does make recommendations to plants, regulatory agencies such as the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA), industry organizations, and labor groups. Congress designed the CSB to be non-regulatory and independent of other agencies so that its investigations might, where appropriate, review the effectiveness of regulations and regulatory enforcement.

The CSB investigative staff includes chemical and mechanical engineers, industrial safety experts, and other specialists with experience in the

private and public sectors. Many investigators have years of chemical industry experience.

After a CSB team reaches a chemical incident site, investigators begin their work by conducting detailed interviews of witnesses such as plant employees, managers, and neighbors. Chemical samples and equipment obtained from accident sites are sent to independent laboratories for testing. Company safety records, inventories, and operating procedures are examined as investigators seek an understanding of the circumstances of the accident.

Over a course of several months, investigators sift through evidence, consult with Board members, and review regulations and industry practices before drafting key findings, root causes and recommendations. During the process, investigators may confer with plant managers, workers, labor groups, and other government authorities. The investigative process generally takes six to twelve months to complete, and a draft report is then submitted to the Board for consideration. Reports may be adopted through a written vote of the Board or in a formal public meeting near the incident site or in Washington, DC.

In addition to investigations of specific accidents, the Board is authorized to conduct investigations of more general chemical accident hazards, whether or not an accident has already occurred. In 2002, the Board's first hazard investigation on reactive chemicals reviewed more than 150 serious accidents involving uncontrolled chemical reactions in industry. This investigation led to new recommendations to OSHA and EPA for regulatory changes. A second hazard investigation on combustible dusts was completed in 2006.

Both accident investigations and hazard investigations lead to new safety recommendations, which are the Board's principal tool for achieving positive change. Recommendations are issued to government agencies, companies, trade associations, labor unions, and other groups. Implementation of each safety recommendation is tracked and monitored by CSB staff. When recommended actions have been completed satisfactorily, the recommendation may be closed by a Board vote.

While some recommendations may be adopted immediately, others require extensive effort and advocacy to achieve implementation. Board members and staff work to promote safety actions based on CSB recommendations. In many cases, the lessons from CSB investigations are applicable to many organizations beyond the company investigated. Many CSB recommendations have been implemented in industry, leading to safer plants, workers, and communities.

If you have any questions, please do not hesitate to give me a call. My blackberry number is: [REDACTED]

Regards,

Christopher W. Warner

From: Conn, Eric
Sent: Thursday, February 19, 2009 6:30 PM
To: Neely, Donald - SOL
Cc: Gombar, Robert
Subject: Bayer CropScience (Sensitive Security Information)

Don--

I wanted to follow-up with you about my voicemail from last week regarding the Institute Plant's Sensitive Security Information ("SSI"). The Institute Plant is covered by the "Maritime Transportation Security Act of 2002," (the "MTSA"), 46 USC 70101 et seq., pursuant to which the Plant has conducted a Facility Vulnerability Assessment ("FVA") and prepared a Facility Site Security Plan ("FSP") covering anti-terrorist precautions associated with its critical chemical assets. Pursuant to the "Transportation: Protection of Sensitive Security Information" regulations at 49 C.F.R. Part 1520, that information, and the information referenced in the FVA and FSP, are considered SSI, and may not be disclosed to the public.

We raise this to your attention for two reasons. First, we wanted to give OSHA a heads-up that it currently has in its possession information that the Institute Plant and the U.S. Coast Guard (the entity responsible for enforcing the MTSA) consider to be SSI. For example, during the inspection, OSHA took custody of copies of PHAs and P&IDs for the Methomyl Unit, which identify, among other things, precautions applicable to and specific locations of critical chemical assets at the Plant. Second, and most importantly, we want to make sure OSHA understands its obligations to protect the SSI in its possession from public disclosure, including disclosing SSI in citations or other documents that are available to the public.

These issues have arisen as a result of our dealings with the U.S. Chemical Safety & Hazard Investigation Board, and we recognize that the issues involving SSI are much more likely to surface with the CSB than with OSHA, but we want to make sure that OSHA knows that it has SSI and has a duty to protect it from public disclosure. We know that OSHA is not in the business of publicizing in its citations the documents in its file, but even references to precautions (including valves, instrumentation, piping diagrams, etc.) or locations of critical chemical assets in citation item descriptions could be an unlawful disclosure of SSI, so we ask that OSHA be extremely careful in drafting any citation items it intends to issue to the Institute Plant.

We are available to talk anytime about these issues.

Thanks, Don.

Eric

Eric J. Conn

McDermott Will & Emery LLP

600 13th St., N.W.

Washington, DC 20005

Work [REDACTED]

Fax [REDACTED]

[REDACTED]

From: Conn, Eric
Sent: Monday, February 23, 2009 3:53 PM
To: Neely, Donald - SOL
Cc: Gombar, Robert
Subject: Bayer CropScience (Sensitive Security Information)

Don--

This email contains Sensitive Security Information.

Thanks for talking with me this morning, February, 23, 2009, about the important issues surrounding the Institute Plant's Sensitive Security Information ("SSI"). As we discussed, OSHA has in its possession information that the Institute Plant and the U.S. Coast Guard (the entity responsible for enforcing the Maritime Transportation Safety Act) consider to be SSI. We also discussed OSHA's obligations to protect that SSI from public disclosure, including in any citations or in narrative descriptions of citation items or other documents that OSHA may make available to the public.

We understand your concern about OSHA's ability to identify SSI, other than by the Confidential Business Information markings. We are available to work with OSHA to help identify any documents or information that may include or reference SSI before OSHA issues its citations to the Institute Plant. However, as a guide, the critical chemical assets potentially at issue in these citations are Methyl Isocyanate (MIC) and Chlorine. MIC is stored in a day tank in the Methomyl Unit, passes through transfer piping into the Unit then into other process equipment, including the Methomyl Reactor, and is protected by various safety precautions, often identified in the P&IDs, PHAs, Risk Sheets, SOPs and Emergency Procedures. The same is true for Chlorine.

Accordingly, your review for SSI in the language of the citations should be liberal, and OSHA should strike any references to any piece of equipment, piping or document involving those two chemicals. You should be particularly cautious about PHA and P&ID references to those chemicals or their interconnectivity to other parts of the Unit.

As further assistance in your review, attached is a rough and preliminary attempt to identify the OSHA inspection requests in response to which, based on the wording of the request, SSI may have been produced. As I explained during our call, I do not have a copy set of the actual documents produced to OSHA, so this assessment is just based on a log of OSHA's requests and is in no way comprehensive or complete.

WARNING: This record contains Sensitive Security Information that is controlled under 49 CFR Part 1520. No part of this record may be disclosed to persons without a "need to know", as defined in 49 CFR Part 1520, except with the written permission of the Administrator of the Transportation Security Administration. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR Part 1520.

BCS-C00059698

Again, we remain available to discuss these issues before the citations are issued and assist OSHA in avoiding any inadvertent disclosure of SSI to the public.

Thanks.

Eric

Eric J. Conn

McDermott Will & Emery LLP
600 13th St., N.W.
Washington, DC 20005
Work [REDACTED]
Fax [REDACTED]
[REDACTED]

**BAYER CROPSCIENCE
POTENTIAL SENSITIVE SECURITY INFORMATION**

Req. 1, Item 1	P&ID for Methomyl Residue treater
Req. 1, Item 2	PHA for Methomyl Unit and Residue Treater
Req. 1, Item 6	Chemistry of Methomyl Reaction and what chemicals are involved in the process.
Req. 1, Item 9	Overview of Methomyl unit and Methomyl process
Req. 1, Item 13	PHA follow-up recommendations and resolutions for the Methomyl unit.
Req. 2, Item 2	Access for review – Operating Procedures for Methomyl unit
Req. 2, Item 5	Process Flow Diagram for the Methomyl unit
Req. 2, Item 7	Pages 87, 88, 89, and 154 of the PHA that was provided for review.
Req. 2, Item 9	Critical Operating Parameters (COP) for residue treater tank change(as mentioned in the PSSR, question #1 under “Review and Documentation”)
Req. 2, Item 11	Emergency Action Plan
Req. 2, Item 13	MOC documents for control panel and instrumentation for Methomyl unit control room
Req. 3, Item 1	Alarm log from on 8/28/08 from 5:00pm to time of incident
Req. 3, Item 2	Bypass log from on 8/28/08 from 5:00pm to time of incident

- Req. 3, Item 4 E-log operator notes from 8/25/08 to time of incident.
- Req. 3, Item 5 Technical Assistant (TA) operating notes from 8/25/08 to time of incident.
Req. 3, Item 6 Any and all video and photographs obtained by Bayer CropScience.
- Req.4, Item 3 Electronic copy of P&ID for Residue Treater in Methomyl Unit (Req. 1, Item 1).
- Req. 5, Item 4 The last three Safety Device Inspection Checklists for Job #3, as described in the SOP.
- Verbal 9/16/08 Copy of Presentation Materials used during presentation re: Methomyl Unit General Process Chemistry Overview.
- Verbal 9/22/08 A copy of the Facility Siting and Human Factors sections of the 2007 PHA.
- Req. 6, Item 2 Access to the site mechanical integrity procedure.
- Req. 6, Item 3 Access to P&IDs for the entire Oxime/MOM Unit
- Req. 6, Item 4 Oxime/Methomyl Process Safety File Index that is located in the library in building 176 (as described in SOP 04-B).
- Req. 6, Item 5 Prior Incident Investigations used for the 2004 PHA re-evaluation for the Methomyl Unit.
- Req. 6, Item 11 Copies of pages 81, 94, 96, 100, 152, 155, 157, 160, 161 of the 2004 Methomyl PHA.
- Req. 6, Item 12 2004 Methomyl PHA "executive summary" developed in May 2005 by Nate Kimmerle (12 pages)
- Req. 6, Item 13 MOCs and PSSRs for the last three years for the Methomyl unit, excluding ones already provided.
- Verbal 9/26/08 Copy of the slides from the Methomyl Unit Training and Operations presentation
- Req. 7, Item 3 Last internal and external inspection records for methomyl reactor.

- Req. 7, Item 5 Last internal and external inspection records for MIC Stripper Still
- Req. 7, Item 7 - 12 Last mechanical integrity inspection record for TIA 5956-4, PSV 2565-100, PICA 2565-1, TRA 2565-3, TICA 2576-1 and FICA 2525-2
- Req. 8, Item 1 Copy of pages 18, 19, 43 and 44 of the 2004 PHA HAZOP of the Methomyl Process.
- Req. 8, Item 2 Copy of Risk Sheets #10 and 11 of the 2004 PHA HAZOP of the Methomyl Process.
- Req. 8, Item 5 All documents on the current status of Risk Sheets developed from the 2004 PHA of the Methomyl Process including all recommendations, action items and status, and resolution documentation of those sheets not requiring further action.
- Req. 9, Item 1 List of critical piping sections for Methomyl Process.
- Req. 10, Item 1 Copy of pages 41, 57, 67, 70, 81, 94, 96, 100 of 115 of Methomyl PHA.
- Req. 10, Item 2 Copy of Risk Sheets 46, 42, 40, 37, 32, 31, 30, 25, 18.
- Req. 10, Item 3 Documentation showing PSV2102-100 at inlet of Methomyl Reactor (C-2103) is suitable for service.
- Req. 10, Item 4 Documentation showing PSV2103-108 at outlet of Methomyl Reactor (C-2103) is suitable for service.
- Req. 10, Item 6 Copy of P&ID showing Methomyl Reactor (C-2103) and surrounding piping including PSV 2103-108 and PSV2102-100.
- Req. 10, Item 7 Written Operating Procedures for the water run and the solvent run done in the Methomyl Process prior to each startup including names of the solvents used and the quantities used in the process.
- Req. 12 Item 2 Copy of Risk Sheet Priority and Action List – Revision 2 (Excel spread sheet) and cover letter dated 12/08/05 (typo on OSHA request ask for 12/08/08 should be 12/08/05) from Rick Clay to Nate Kimmerle and Karen Myers.

- Req. 12 Item 3 Copy of all PHA Risk Abeyance Approval forms for the 2004 Methomyl PHA.
- Req. 12 Item 4 Copy of current status of Risk Sheets provided with requests #12-2 and #12-3.
- Req. 12 Item 5 Electronic copy of SOPs for Larvin Process
- Req. 13 Item 4 Copy of Section 27 of the 1999 Process Hazard Analysis of the Methomyl Process that includes Node 10 (6 pages) from the 1994 PHA.
- Req. 13 Item 5 Copy of page 62 of 115 of 2004 Methomyl PHA.
- Req. 13 Item 6 All thickness measurements readings documented on the MIC Stripping Still (C-2205)
- Req. 13 Item 7 List of national codes and standards that are followed to develop the internal and external inspection schedule for the MIC Stripping Still (C-2205). (i.e API 510, etc.)
- Req. 13 Item 8 Information showing the schedule of internal inspections of the MIC Stripping Still to include last internal inspection done and next scheduled internal inspection.
- Req. 13 Item 9 The maximum amount of MIC in pounds that could be in the MIC Stripping Still at one time.
- Req. 13 Item 10 Author(s) of Pre-Startup Safety Review for control system change in Methomyl Process provided in Request 2-13
- Req. 14 Item 8 Plan view (layout diagram) for equipment in the MOM and Larvin units, with scale shown.
- Req. 15 Item 1 Incident Investigation Report for September 29th MIC release/exposure from the MIC Dump Tank, including Safe Work Permit, and Safe Work Permit Procedure
- Req. 15 Item 2 Current Industrial Hygiene Sampling at Methomyl/Larvin Unit that was posted on the Safety Board in Methomyl Unit

- Req 16 Item 3 Max amount of MIC in pounds that could be in the MIC Stripping still at one time or statement that data does not exist.
- Req 16 Item 4 R&D Kimetics data on fast rate model information used to evaluate the safety valve relief capacity mentioned on page OSHA1157 of document request 9-2.
- Req 16 Item 5 P&ID of Mother Flasher and Flasher feed tank in electronic format.
- Req 17 Item 1 Copy of written notes on meeting between Rick Clay, Robert Downing, and Jeff Schneider on August 5, 2008. Please refer to page OSHA0660 in request 8-5. A copy of these notes is requested to be provided by 12/18/08.
- Req. 18, Item 1 All documents and correspondence, including but not limited to email and other written communications between Karen Myers and Mike Wey, relating to facility siting of the Methomyl Unit, including all notes and documents reflecting that the stability of the structures in the methomyl process unit has been assessed for the following: heat, pressure waves and overloading, chemical effects, vibration due to powered equipment, soft subsoil, and climatic events (freezing, earthquakes, hurricanes, wind).
- Req. 18, Item 2 All documents and correspondence, from November 2007 to date including but not limited to email and other written communications received by or sent by Rick Clay and Karen Myers, relating to the four Process Hazard Analysis "deficiencies" identified in the memo from Karen Myers to Rick Clay dated 11/29/07 entitled "Institute Methomyl Larvin Facilitated Self Assessment-2007". Additionally, the document referred to by Ms. Myers from which she copied or "cut and pasted" the four "deficiencies" reflected in the FSA memo dated 11/29/07, and all other documents that reflect that Ms. Myers did not intend to include those "deficiencies" in the memo.
- Req. 18, Item 3 All documents and correspondence, Relating to the selection of, and any change of, target dates and/or resolution dates for Methomyl risk sheet/action items numbered 25, 31, 35, 37, 40, 42, 45 & 46 from the dated of the completion of the 2004 PHA to date, including all dates on which target dates/resolution dates were changed, and all reasons for such changes. This request specifically includes, but is not limited to, all electronically stored responsive information, including information contained on the BAT System and on Excel Spreadsheets.