



**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES CHEMICAL SAFETY & HAZARD INVESTIGATION BOARD

AND

THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY**

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to set forth the principles of the working relationship between the United States Chemical Safety and Hazard Investigation Board (CSB) and the National Institute of Standards and Technology (NIST), U.S. Department of Commerce. The MOU establishes policies and general procedures for cooperation and coordination between the two agencies and facilitates the achievement of common goals. Both NIST and the CSB recognize that they share significant common interests in protecting the American public from the dangers and losses associated with accidents involving the release of hazardous chemicals. This MOU provides an opportunity for both organizations to facilitate the achievement of common prevention goals.

II. AUTHORITY

This MOU is entered into pursuant to the authority of section 112 (r)(6) (E) of the Clean Air Act, 42 U.S.C. § 4712 and section 4(c)(3) of the National Construction Safety Team Act, Public Law 107-231, 15 U.S.C. 7303(4)(c)(3).

III. BACKGROUND

Sections 112(r)(6)(D) and (E) of the Clean Air Act direct the CSB to coordinate its activities with investigations and studies conducted by other agencies of the United States having a responsibility to protect the public health and safety and to utilize the expertise and experience of other agencies. Similarly, Section 4 of the National Construction Safety Team Act, 15 U.S.C. §7303, authorizes NIST to enter into a Memorandum of Understanding with each Federal agency that may conduct or sponsor a related investigation, providing for coordination of investigations. The authorizing legislation further states that except for investigations conducted by the National Transportation Safety Board (NTSB) or where the Attorney General has notified NIST that the

circumstances reasonably indicate that the building failure being investigated may have been caused by a criminal act, a NIST investigation shall have priority over any other investigation of any other Federal agency.

A. Chemical Safety & Hazard Investigation Board

The CSB is an independent agency authorized under section 112(r) of the Clean Air Act to investigate chemical incidents to determine the conditions and circumstances which have led up to a chemical incident and to identify the root and contributing causes of the incident so that similar incidents might be prevented. The CSB is modeled on the structure, activities, and authorities of the National Transportation Safety Board that investigates transportation-related incidents. The chemical incidents, which the CSB investigates, are those which result from the production, processing, handling, or storage of chemical substances (not limited to extremely hazardous substances) causing death, serious injury, substantial property damage (including damage to natural resources), or evacuations of the public.

B. NIST

The National Construction Safety Team Act provides for the establishment of investigative teams to assess building performance and emergency response and evacuation procedures in wake of any building failure that has resulted in substantial loss of life or that has posed the potential for substantial loss of life. Team duties include: establishing the technical cause of the building failure; evaluating technical aspects of evacuation and emergency response procedures; recommending as necessary, specific improvements to building standards, codes and practices based on findings; and recommending research and other appropriate actions needed to improve the structural safety of buildings and improve evacuation and emergency response procedures. The National Construction Safety Team Act authorizes NIST to enter into a memorandum of understanding with each Federal agency that may conduct or sponsor a related investigation, providing for coordination of investigations.

IV. SCOPE

When requested and within the scope of specific legislative authority, the CSB and NIST will provide technical expertise and advice to the other agency regarding technical information and investigative findings regarding subjects within their specific expertise.

Section 4(d) of the National Construction Safety Team Act, Public Law 107-231, 15 U.S.C. 7303(4)(d), specifies that a NIST investigation shall have priority over other Federal or state investigations except where circumstances indicate that the building failure being investigated may have been caused by a criminal act or where the National Transportation Safety Board is investigating the incident.

In situations involving multiple jurisdictions, the CSB's focus will be on large chemical

accidents involving the production, processing, handling, and storage of chemicals at fixed facilities. In the event of a chemical accident falling under the jurisdiction of both NIST and the CSB, the CSB will cooperate with NIST and recognize the priority status of its investigation. In the event that the NIST requests technical investigative assistance from the CSB, such matters will be handled through a separate agreement. Similarly, in the event that NIST does not investigate an incident, NIST may authorize technical assistance for the CSB in response to a formal request. Without jeopardizing the NIST investigation, the CSB may on its own authority, conduct a simultaneous investigation into the root and contributing causes of the incident

V. INFORMATION DISCLOSURE AND DATA SHARING

In the event that the CSB utilizes the technical expertise of NIST during its investigation of a chemical incident, and NIST does not have an active investigation, NIST agrees that, to the extent permitted by law, including the Freedom of Information Act (5 U.S.C. 552), the CSB shall be solely responsible for the public release of factual information resulting from its investigation efforts. To the extent permitted by law, including the Freedom of Information Act (5 U.S.C. 552), the timing and the content of information to be released during the field investigation, particularly at the incident scene, shall be limited to factual information and shall be coordinated through the CSB's Investigator-In-Charge. Conversely, if the CSB provides technical expertise to NIST on an investigation in which the CSB does not have an active investigation, the CSB agrees that NIST shall be solely responsible for the public release of factual information resulting from the investigation.

In the event both the CSB and NIST commence separate investigations into the events causing a failure of a building or buildings that has resulted in substantial loss of life or that posed significant potential for the loss of life resulting from a chemical incident, the CSB and NIST agree that the investigators in-charge (IIC) coordinate on-site to avoid where possible conflicting statements and to better coordinate their individual investigative tasks.

Each agency will be responsible for the public release of its documents and for maintaining the information that it has collected. Each agency will respond to requests for disclosure of material, including Freedom of Information Act requests, and will coordinate with the other agency, when necessary, to ensure that the proper disclosure and exemption criteria are applied.

VI. PROGRAM FUNDING

Nothing in this MOU shall be construed as creating or authorizing the creation of any obligation on the part of either party to make any expenditure in the excess of appropriations authorized by law. No provision herein shall be construed as to require either party to obligate funds in violation of the Anti-Deficiency Act, 31 USC 1341. Any expenses incurred by investigations or studies shall be the responsibility of the organization that incurred such costs or expenses unless a specific agreement to the contrary is reached by the parties and reduced to writing.

VII. RESOURCE SHARING

In order to conserve public resources and gain efficiencies in the process and conduct of investigations, NIST and the CSB will share resources wherever possible and feasible.

- 1) The NIST and the CSB will notify each other of relevant accident investigation courses and training that they are either aware of or conducting. Wherever possible and practical, fees charged for such courses and training will be waived, and space, as available, will be provided to the other agency. Each agency will be individually responsible for providing transportation and lodging if applicable, for its investigators and staff to and from this training.
- 2) The CSB and the NIST will explore the possibility of developing programs for the exchange of technical personnel (details) to enhance the investigative and report writing expertise of each agency, as well as the exchange of data relating to chemical and building failure accidents.

VIII. NOTIFICATIONS

A standardized protocol for notifications of accidents and communication of information relating to chemical accidents, involving building failures will be developed by the agencies. It will contain emergency contacts and phone numbers for accident notification for both agencies, information about the accident that needs to be transmitted, and accident criteria.

Close continuing liaison, communication, and cooperation between the two agencies will be maintained so that the common objectives of enhanced public safety, thorough and complete investigation, and the efficient use of resources can be achieved. Additionally, in this way, differences in objectives can be minimized and rapidly resolved.

This agreement may be modified at any time upon mutual agreement of both agencies.

To the extent that differences arise during an investigation, the respective investigators-in-charge should work out such issues. In the event jurisdictional or legal issues persist, such issues shall be immediately forwarded to each agency's Headquarters for resolution.

IX. POINTS OF CONTACT

The CSB and NIST will designate appropriate contacts for implementation of this MOU. A list of CSB contacts will be provided to the Director, Building and Fire Research Laboratory - NIST. A list of NIST contacts will be provided to the Chief Operating Officer, CSB.

X. DURATION, MODIFICATION AND TERMINATION/PERIOD OF AGREEMENT

This MOU shall become effective upon the signature date of both parties, and it shall remain in effect for five years, subject to renewal. This MOU may be revised by mutual agreement

This MOU does not preclude either agency for entering into further agreements setting forth

procedures for additional programs, which can be addressed more efficiently and expeditiously by special agreement.

XI. IMPLEMENTATION

Nothing in this agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory functions, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

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Carolyn W. Merritt
Chairman, CSB

Hratch G. Semerjian
Acting Director, NIST

Date: April 30, 2004

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