

MEMORANDUM OF UNDERSTANDING
between
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
THE DEPARTMENT OF THE TREASURY
and
THE UNITED STATES CHEMICAL SAFETY
AND HAZARD INVESTIGATION BOARD
On
Chemical Incident Investigations

I. PURPOSE AND SCOPE

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 Department of the Treasury's Bureau of Alcohol, Tobacco and Firearms (ATF) in fire and explosive investigations resulting in or from the release of potentially hazardous chemicals. This MOU, entered into under the authority of sections 112(r)(6)(D) and (E) of the Clean Air Act, enhances the capability of the CSB to discharge its responsibility for chemical incident investigations and provides an arrangement whereby both parties can contribute to the overall enhancement of chemical safety and prevention.

II. AUTHORITY

This agreement is established pursuant to the Economy Act, 321 U.S.C. Section 1537, and promotes the efficiency and economy by providing investigative and research services through a sharing of resources.

III. BACKGROUND AND RESPONSIBILITIES

A. ATF

Pursuant to Title 18 U.S.C. §§ 842, 844 and 846, ATF enforces and investigates laws concerning arson and explosives. The ATF is a law enforcement organization within the United States Department of Treasury with unique responsibilities dedicated to reducing violent crime, collecting revenue, and protecting the public. ATF enforces the Federal laws and regulations relating to alcohol, tobacco, firearms, explosives and arson by working directly and in cooperation with others to:

- Suppress and prevent crime and violence through enforcement, regulation, and community outreach.

- Ensure fair and proper revenue collection.
- Provide fair and effective industry regulation.
- Support and assist Federal, State, local, and international law enforcement.
- Provide innovative training programs in support of criminal and regulatory enforcement functions.

B. CSB

The mission of the CSB is to investigate and prevent major chemical accidents at fixed facilities. The CSB is an independent agency authorized under section 112(r)(6) of the Clean Air Act to investigate chemical accidents to determine the conditions and circumstances which have led up to an accident and to identify the cause or causes so that similar accidents might be prevented. The CSB is modeled on the structure, activities, and authorities of the National Transportation Safety Board that investigates transportation-related accidents. The chemical incidents which the CSB investigates are those which result from the production, processing, handling, or storage of chemical substances at fixed facilities (not limited to extremely hazardous substances) causing death, serious injury, substantial property damage (including damage to natural resources), or evacuations of the public.

IV. PRINCIPLES OF COORDINATION

ATF and CSB will cooperate while carrying out their respective statutory responsibilities. Where possible, ATF and CSB will coordinate incident notification, data and information exchange, training, technical and professional assistance, and related, activities to ensure the safety, health, and well-being of the Nation's workforce and the public. In recognition of agencies' statutory authorities and responsibilities described above, the following procedures will be followed with respect to the investigation of chemical incidents resulting from fire and/or explosives related incidents:

A. NOTIFICATION OF CHEMICAL INCIDENTS

CSB and ATF will be notified of chemical releases through the National Response Center (NRC) and the other media. The NRC is a federal point of contact for reporting oil and chemical spills and is operational 24 hours a day, 7 days a week. The CSB and the ATF

will arrange mechanisms to exchange data concerning such incidents. In addition, to facilitate on-site coordination between the two agencies, the CSB will notify the ATF Enforcement Operation Center, Washington, D.C., concerning: a) the commencement of an investigation of a chemical incident at a fixed facility resulting from fire and/or explosive related incidents; b) the command structure and other pertinent information about its investigative team; and c) the possibility of ATF assistance if the incident involves an explosion or fire. In addition, the CSB also agrees to promptly notify the nearest ATF field office and provide all available information to ATF prior to arrival on scene, if feasible.

In the event that the ATF has or will send an investigative team to the same site, the ATF will notify the CSB Headquarters concerning the command structure and other pertinent information about its investigative team. The local ATF office will assess the scene and make a determination as to activating a National Response Team, or to a lesser extent, utilizing available personnel including special agent certified fire investigators (SACFI) and/or special agent certified explosive specialists (SACES).

When responding to a fire and/or explosion involving a chemical incident, the ATF agrees to promptly notify the CSB through the Director - Office of Investigations at 202-261-7600 or through the National Response Center at 1-800-424-8802. The CSB agrees to notify ATF through the ATF Enforcement Operations Center at 1-800-800-3855.

In the event that both agencies decide to send representatives to a chemical incident resulting from a fire or explosion, the representatives will meet as soon as possible with other accident, response, regulatory, and investigative agencies to coordinate on-site activities consistent with each agency's specific statutory responsibilities.

B. INVESTIGATION OF INCIDENTS

ATF's primary goal is to determine the origin and cause of a fire or explosion involving a chemical incident. ATF will treat such an incident as a potential crime and investigate the scene accordingly, unless determined otherwise. If the incident is determined to be criminal in nature, ATF will assume the lead investigative role and will coordinate its investigations with the CSB to the fullest extent possible. If the incident is determined to

be non-criminal or non-explosive related, ATF will depart the scene allowing the CSB and any other agency having primary jurisdiction to continue its investigation.

CSB's primary goal will be to determine the root cause and contributing cause(s) of the chemical incident. The CSB will use an "all cause" approach in discharging its investigative duties of chemical incidents, since all circumstances contributing to an incident (and which may effectively be modified to improve safety) are of concern to the CSB. Nothing in this MOU commits either agency to investigate any particular chemical incident.

C. DISPUTE RESOLUTION

In the event of a disagreement between CSB and ATF investigators, the matter will be promptly referred to the appropriate individuals in the agencies' headquarters for resolution.

D. JURISDICTION

This MOU is designed to prevent duplicative investigations and unnecessary disputes over jurisdiction, while preserving the role of all agencies that have a mandate or responsibility to investigate a chemical incident.

Both parties enter into this MOU in order to facilitate investigative activities. It does not authorize the CSB to join the ATF in a criminal investigation. In the event that the potential for criminal prosecution exists with respect to a particular incident, the CSB will coordinate its actions so as not to interfere with the activities of the ATF or other criminal investigators.

E. INFORMATION AND DATA SHARING

Consistent with each agency's statutory responsibilities, ATF and CSB will coordinate their fact-finding efforts. The CSB on-site representatives may discuss factual data pertaining to an incident with other on-site agencies.

The CSB will conduct joint interviews with other investigatory bodies, including the ATF, when appropriate. However, if circumstances do not allow for joint interviews to be accomplished without compromising the CSB's mission, separate interviews of key witnesses may be conducted. If the cause is yet to be determined or has been deemed criminal in nature, all interviews will be coordinated with the on-scene ATF lead investigator.

All requests by CSB or ATF to review or copy documents or other evidence relating to an incident in the possession of the other agency must be approved by either the on scene lead investigator for the CSB or ATF upon consultation with the CSB, Office of General Counsel, or the Office of the Chief Counsel, ATF, Department of the Treasury, respectively, prior to release of the documents or evidence.

Each agency will be responsible for the appropriate 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 as necessary to ensure that the proper disclosure and exemption criteria are applied.

F. TRAINING, TECHNICAL AND PROFESSIONAL ASSISTANT

CSB and ATF will make their chemical incident and related training programs available to personnel from both agencies. ATF and CSB will also provide technical and professional assistance to each other during chemical incident investigations upon request and as resources permit. The point of contact within ATF for all training related matters will be the Office of Training and Professional Development (202) 927-9380.

G. INCIDENT INVESTIGATION REPORTS

CSB will produce public reports as a result of its on-scene chemical incident investigations. These reports will recommend measures to reduce the likelihood or the consequences of accidental chemical releases and propose corrective steps to make chemical production, processing, handling and storage as safe and free from risk of injury as is possible.

To the extent possible CSB will coordinate its public statements, the timing of Board meetings, and the release of public reports with ATF, so that such actions do not hinder or jeopardize on-going investigative activities by ATF.

In addition to agency reports, CSB may use other methods for disseminating information gained from their chemical accident investigations, such as special notices, accident data summaries for relevant industry sectors, presentations to industry trade associations, and posting of findings and lessons learned on CSB's Internet Home Pages. In addition, prior to the release of its report, the CSB may also issue interim safety bulletins to the company or industries involved or other documents to industry and other federal agencies in order to ensure the safe operation of facilities producing, processing, handling, or storing chemical substances.

H. INTER-AGENCY ASSISTANCE

In certain instances, CSB may decide not to immediately send an investigation team to the site of a chemical incident. Rather, CSB may collect incident information from the on-site agencies. The CSB will use this information, as well as data that it has collected from other sources, to analyze the incident and to determine whether further actions by CSB are necessary. If the CSB requests information from on-site ATF officials, ATF will cooperate, as permitted by law, and provide information to CSB regarding its investigative activities. ATF shall furnish such information without expense to the CSB.

I. RESOURCES

Responsibility for the costs of investigative resources, such as evidence collection, testing, sampling, and site security, will be borne individually by each agency unless a specific written agreement is reached on a particular investigation.

V. POINTS OF CONTACT

The following personnel are designated as the key policy officials for their respective agencies for the purpose of investigations. These key officials are the principal points of contact between the parties in the performance of this MOU.

CSB

Director – Office of Investigations
Telephone: 202-261-7600

ATF

Assistant Director, Field Operations
Telephone: 202-927-7970

VI. REVIEW

The parties will review this MOU for continuation and modification one (1) year after its effective date. The MOU may be modified at any time by mutual consent of the parties in order to accommodate changing circumstances. All modifications to this MOU shall be memorialized in writing and signed by both parties.

VII. PERIOD OF AGREEMENT

This MOU shall continue in effect until terminated or modified in writing by the parties. Either party may terminate it upon 30 days advance written notice to the other.

This MOU does not preclude either agency from entering into further agreements setting forth procedures for additional programs which can be addressed more efficiently and expeditiously by special agreement.

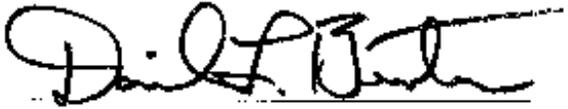
VIII. IMPLEMENTATION

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. This agreement is effective upon signature by both parties.

IX. NON-FUND OBLIGATING DOCUMENT

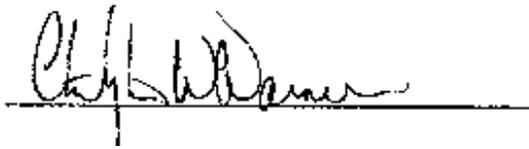
This instrument is neither a fiscal nor a funds obligating document. Any endeavor involving reimbursement or transfer of funds between parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate

agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority.

A handwritten signature in black ink, appearing to read "David L. Butler", written over a horizontal line.

Assistant Director – Field Operations
Bureau of Alcohol, Tobacco,
and Firearms

Date: 5/18/01

A handwritten signature in black ink, appearing to read "Cheryl W. Danner", written over a horizontal line.

Chief Operating Officer
United States Chemical Safety and
Hazard Investigation Board

Date: June 21, 2001