

MEMORANDUM OF UNDERSTANDING
between
THE UNITED STATES DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
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 United States Department of Labor, Occupational Safety and Health Administration (OSHA) in the area of chemical incident investigations.

This MOU, entered into under the authority of section 112(r)(6)(E) of the Clean Air Act and the Occupational Safety and Health Act of 1970 (OSH Act), establishes policy and general procedures for cooperation and coordination between the two agencies and minimizes duplication of activities so that each agency may carry out its specific statutory requirements in an efficient and effective manner.

II. BACKGROUND AND RESPONSIBILITIES

A. OSHA

OSHA is the federal agency with primary responsibility for worker safety and health. OSHA is authorized by the OSH Act, 29 U.S.C. section 651 *et seq.*, to promulgate and enforce mandatory safety and health standards for the purpose of assuring, so far as possible, safe and healthful working conditions for every worker in the United States.

OSHA conducts inspections of workplaces to determine compliance with the OSH Act and with specific OSHA standards. When violations of the OSH Act or OSHA standards are found, OSHA is authorized to issue citations to employers, propose penalties, and require abatement of hazards. OSHA investigates accidental releases in the chemical industries to determine whether any violations of its regulations have occurred and, if so, to require correction of those violations and ensure compliance with the OSH Act. OSHA also investigates accidental releases of chemicals to determine whether any other agency actions are necessary to enhance accident prevention efforts in the chemical industries.

Under section 18 of the OSH Act, states may elect to administer their own occupational safety and health programs, or “State Plans,” which must be approved and monitored by federal OSHA. OSHA does not delegate authority to the states, but rather removes the bar of preemption through State Plan approval. OSHA exercises no enforcement authority in these states except in limited areas, such as providing safety and health coverage for federal agencies, maritime facilities, and military bases. Thus, in states that administer their own programs, the State Plan agency is the authority responsible for occupational safety and health enforcement, and other federal and state government agencies work with the State Plan agency in the same manner as they do with federal OSHA.

B. CSB

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 (not limited to extremely hazardous substances) causing death, serious injury, substantial property damage (including damage to natural resources), or evacuations of the public. These incidents may occur at fixed facilities or during transit.

The CSB has five enumerated duties: (1) to investigate serious chemical incidents and to report on the causes or probable causes of each incident; (2) to make recommendations to Congress, other federal agencies, state and local governments, and entities in the commercial and industrial sectors on the steps that can be taken to reduce the likelihood or consequences of chemical incidents, including the proposal of specific rules and orders to be issued by the Administrator of the United States Environmental Protection Agency and the Secretary of Labor to prevent or minimize the consequences of chemical incidents; (3) to establish requirements for reporting chemical incidents; (4) to conduct general studies and investigations where there is evidence of a potential hazard to human health or property as a result of accidental releases; and (5) to review and make recommendations on the role of hazard assessments and risk management plans in preventing chemical incidents.

III. PRINCIPLES OF COORDINATION

OSHA and CSB will cooperate while carrying out their respective statutory responsibilities. Additionally, CSB and OSHA investigators will work with other federal, state, and local investigatory and response groups, to the extent permitted by law, to minimize duplication of effort and to ensure that response and investigation activities do not compromise the protection of worker or public safety and health. Where possible, OSHA 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 the

agencies' statutory authorities and responsibilities described above, the following procedures will be followed with respect to the investigation of chemical incidents:

A. Notification of Chemical Incidents

CSB and OSHA will be notified of chemical releases through the National Response Center (NRC) and other media. In addition, both agencies will notify each other of chemical incidents that meet one or more of the following criteria:

1. Result in one or more worker fatalities;
2. Result in the hospitalization of three or more workers;
3. Cause property damage of more than \$500,000;
4. Present a serious threat to worker health or safety; or are events of significant public concern.

Notification will be made as soon as possible after one of the agencies has received such a report. The offices to be contacted during business hours are:

CSB

Incident Operations Center
202-261-7600
Fax 202-261-7650

OSHA

Director of Compliance Programs
202- 219-9308
Fax 202- 219-9187

During non-business hours, OSHA will contact the CSB by calling the National Emergency Coordination Center at 1-800-634-7084. The CSB will contact OSHA by calling OSHA's emergency number at 1-800-321-OSHA.

When a chemical incident occurs meeting the criteria above, each agency will determine whether it intends to send representatives to the chemical incident and will notify the

other agency of its intent as soon as possible. If both agencies decide to send representatives to the incident, the representatives from both agencies will meet as soon as possible with other accident, response, regulatory, and investigatory agencies to coordinate on-site activities consistent with each agency's specific statutory responsibilities.

B. Investigation of incidents

OSHA's primary goal following a chemical incident will be to determine compliance with the OSH Act and OSHA regulations. CSB's primary goal will be to determine the cause(s) or probable cause(s) of the incident. The CSB will use an "all cause" approach in discharging its investigatory 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 prohibits the CSB from investigating worker health and safety issues involved in chemical incidents to help determine the conditions and circumstances which led up to the incident and to identify the cause or causes of the incident so that similar incidents may be prevented. Additionally, nothing in this MOU commits either agency to investigate any particular chemical incident.

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

This MOU is not intended to and does not affect or govern any criminal investigation. In the event that the potential for criminal prosecution exists with respect to a particular accident, OSHA and CSB will coordinate with each other to ensure the maximum cooperation with criminal investigators.

C. Information and Data Sharing

Consistent with each agency's statutory responsibilities, OSHA 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 is an independent agency, however, tasked with certain oversight responsibilities; it is not an enforcement agency. To ensure that during the conduct of an investigation the CSB is not to be perceived as an extension of a state or federal enforcement investigation, its investigative activities will be separate and distinct from those of other on-site agencies. Interviews of witnesses and requests for documents will be conducted or requested separately by the CSB unless the company or person(s) involved request otherwise. While the CSB will cooperate with other on-site entities, its focus is different and its interaction with all parties must and will be distinct from the activities of enforcement agencies.

All requests by CSB or OSHA to review or copy documents or other evidence in the possession of the other agency must be approved by the CSB Office of General Counsel or the Office of the Solicitor of Labor prior to release of the documents or evidence.

Employees involved in a chemical incident who participate in an incident investigation will be provided protection under section 11(c) of the OSH Act from discrimination or reprisal for filing reports of unsafe or unhealthful working conditions. In addition, employees involved in incident investigations are entitled to protection from discrimination pursuant to Clean Air Act section 322. The Department of Labor administers these provisions. In particular, in order to protect witness confidentiality, OSHA and CSB will remove names and personal identifiers of the persons who provided information from their investigative files before releasing them to the public.

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 as necessary to ensure that the proper disclosure and exemption criteria are applied.

D. Training, Technical and Professional Assistance

CSB and OSHA will make their chemical incident and related training programs available to personnel from both agencies. OSHA and CSB will provide technical and professional assistance to each other during chemical incident investigations upon request and as resources permit.

E. 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. These reports may include recommendations by CSB concerning rules OSHA should issue to prevent or minimize the consequences of any release of substances that may cause death or injury, or may have other serious adverse effects on worker safety and health.

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

In addition to agency reports, both CSB and OSHA 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 or OSHA's Internet Home Pages. 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.

F. Inter-Agency Assistance

In certain instances, CSB may decide not to 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. See 42 U.S.C. section 4712(r)(6)(C).

If the CSB requests information from on-site OSHA officials, OSHA will cooperate to the extent permitted by law and provide information to CSB regarding its investigative activities. OSHA shall furnish such information without expense to the CSB. The CSB will not ask OSHA to investigate events that OSHA has not independently chosen to investigate, nor will the CSB request OSHA to perform investigative activities outside the scope of OSHA's normal practice and statutory authorities.

IV. OSHA-APPROVED STATE PLANS

A. Background

OSHA-approved State Plans operate under authority of state law. State standards, interpretations, regulations, and policies are adopted under state occupational safety and health, administrative procedures and other statutes, are enforceable by the state upon adoption, and are required to be “at least as effective” as federal equivalents. State law governs the release of agency records, documents, and other information.

State Plans provide OSHA coverage to both public (state and local government) and private employment sectors in 23 states. Two additional State Plans cover public employees only. OSHA has suspended or relinquished its concurrent enforcement authority in 22 of the 25 states, except in areas specifically excluded from the State Plan. All State Plans have adopted a Process Safety Management standard that is identical to or at least as effective as the federal standard. (See the Appendix to this agreement for an attached list of states with OSHA-approved State Plans.)

B. State Plan Coordination with CSB

This MOU establishes the principles for federal OSHA and CSB coordination when conducting concurrent chemical incident investigations. States may agree to accept the terms established in this MOU or may enter into separate agreements with the CSB. Unless modified by a specific, separate agreement between the CSB and a State Plan, the CSB will coordinate its investigative activities with a State Plan state and follow the general terms and conditions agreed to in this federal Memorandum.

V. 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.

VI. 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

OSHA

Deputy Assistant Secretary for
Enforcement

VII. PERIOD OF AGREEMENT

This MOU shall continue in effect unless 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.

Charles N. Jeffress
Assistant Secretary for
Occupational Safety & Health
U.S. Department of Labor

Paul L. Hill, Ph.D.
Chairman
U.S. Chemical Safety and
Hazard Investigation Board

Date:

Date: