MEMORANDUM OF UNDERSTANDING
between
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
and
THE UNITED STATES CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD
on
Chemical Incidents[1]

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 Environmental Protection Agency (EPA) in the area of accidental chemical releases, including emergency response, investigations, prevention, and research. This MOU, entered into under the authority of section 112(r)(6) of the Clean Air Act (CAA), establishes policy and general procedures for cooperation and coordination between the two Agencies to minimize duplication of activities so that each Agency may carry out its specific statutory functions in an efficient and effective manner. State or local programs authorized by the EPA do not derive any rights or incur any obligations as a result of this MOU.

II. BACKGROUND AND RESPONSIBILITIES

A. EPA

EPA is an independent agency responsible for implementing and enforcing a number of federal environmental statutes. With respect to accidental chemical releases, EPA has responsibilities concerning notification, emergency response, and investigation under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Under the Clean Air Act (CAA), EPA has related responsibilities, including implementation of a

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1 CSB uses 'incident' in lieu of 'accident' to capture a broad range of preventable circumstances while EPA uses 'accident' in keeping with the terminology of section 112(r) of the Clean Air Act. For purposes of this MOU, the two terms are synonymous.

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program to prevent and mitigate accidental chemical releases that pose a threat to the public or the environment, investigation, and research into chemical hazards, hazards analysis, release and dispersion modeling, and release mitigation.

Special Agents of EPA's Criminal Investigation Division (CID) are authorized to exercise those law enforcement powers specified in Section 3063 of Title 18 of the United States Code for the investigation of criminal violations of all laws administered by EPA.

B. CSB

The CSB is an independent agency authorized under section 112(r)(6) of the Clean Air Act to investigate chemical incidents to determine the conditions and circumstances that have led to an incident and to identify the cause or causes so that similar incidents might be prevented. The CSB is modeled on the structure, activities, and authorities of the National Transportation Safety Board which investigates transportation-related incidents. The chemical incidents that the CSB investigates are those that 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.

III. PRINCIPLES OF COORDINATION

EPA and CSB will cooperate while carrying out their respective statutory responsibilities. Each Agency plans to 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 public, worker or first responder safety and health, the environment, or enforcement of the law. Where possible, EPA 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, the public, and the environment. In recognition of each Agency's statutory authorities and responsibilities described above, the following procedures will be followed:

A. Notification of Chemical Incidents

CSB and EPA will normally be notified of accidental chemical releases through the National Response Center (NRC) and other mechanisms. In addition, both Agencies will make sure each other is aware of chemical incidents that meet one or more of the following criteria:

1. Result in one or more fatalities of workers, members of the general public, or first responders;
2. Result in the hospitalization of 3 or more workers, any members of the general public or any first responders;
3. Cause significant on-site damage;
4. Cause off-site property damage or other significant off-site consequences, such as large scale evacuations or protection-in-place actions, or closing of major transportation routes;
5. Present a serious threat to public health, safety or the environment, or are events of significant public concern.

Contact 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	**EPA**
Incident Operations Center	Chemical Emergency Preparedness and Prevention Office
202-261-7600	202-260-8600
Fax 202-261-7650	Fax 202-260-0927
Pager # 888-993-5319	Pager# 800-759-8888 Pin# 8712785

During non-business hours, EPA will contact the CSB by calling the National Response Center at 800-424-8802. The CSB will contact EPA by calling EPA's Emergency Operations Center (EOC) at 202-260-3850. Messages left at this number automatically page the EOC duty officer. Alternatively, page CEPPO at the number shown above. (Contact numbers may be changed without amending this MOU. CSB and EPA will inform each other of number changes.)

When a chemical incident occurs meeting the criteria above, each Agency will determine whether it intends to send representatives to the site and will notify the other Agency of its intent as soon as possible. If both Agencies decide to send representatives to the site, the representatives from both Agencies will meet with each other as soon as possible and with other incident, response, regulatory, and investigatory agencies to coordinate on-site activities consistent with each Agency's specific statutory responsibilities.

B. Emergency Response

Under the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Parts 9 and 300), EPA has direct responsibilities associated with emergency response. EPA On-Scene Coordinators (OSCs) are responsible for coordinating or directing Federal, state or local emergency response actions, as necessary, to protect people and the environment. CSB investigators will coordinate their actions and release of information with the EPA OSC while emergency response activities are being performed. Within the constraints of their responsibilities while performing emergency response activities, the EPA OSCs will assist CSB investigators.

C. Investigation of Incidents

After emergency response actions associated with a chemical incident are complete, EPA's primary goals will be to determine whether the facility complied with relevant safety and environmental statutes and regulations; whether existing EPA (or delegated state) regulations and programs are adequate to address the safety issues raised by the incident; and whether action under sections 112(r)(1) or (9) or other action is necessary to prevent a recurrence or similar incidents from occurring elsewhere. 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, since all circumstances contributing to an incident (including those that may effectively be modified to improve safety) are of concern to the CSB.

If a matter arises between EPA and CSB personnel at the incident that cannot be resolved quickly, the matter will be promptly referred to the appropriate personnel at the respective Agency's

headquarters for resolution.

D. Criminal Investigations

This MOU is not intended to and does not affect the conduct of a criminal investigation. However, CSB and EPA will coordinate with each other and with other appropriate law enforcement organizations as conditions warrant. If EPA initiates a criminal investigation, EPA's Criminal Investigation Division (CID) will promptly notify the CSB and advise the CSB which Special Agent is supervising the investigation. The supervising Special Agent will be responsible for coordination with the CSB.

If an incident becomes the subject of criminal investigation, public disclosure of information about the incident will be made only with the mutual agreement of EPA's CID and the CSB until the criminal investigation is completed. EPA's CID and CSB will advise each other regarding the basis and need for protection of witness identity and statement confidentiality. During the criminal investigation, information will be released to the public as necessary to protect public health and safety.

While the CSB and EPA's CID recognize that the statutory functions performed by each are distinct, information and evidence that is independently developed by either the CSB or CID that may assist the protection of public health and safety or further the mission of either Agency will be shared promptly with the other Agency to the extent permitted by law.

E. Information and Data Sharing

Consistent with each Agency's statutory functions, EPA and CSB will coordinate their fact-finding efforts. Each Agency's representatives may discuss and share factual data pertaining to an incident with one another and with other investigatory agencies, in conformance with the requirements for protection of confidential business and enforcement-sensitive information.

The CSB is an independent, non-enforcement agency. To ensure that during the conduct of an investigation the CSB is not perceived as an extension of a state or federal enforcement investigation, the CSB will not participate in compliance and enforcement activities conducted by other agencies. To avoid duplicative efforts, interviews of witnesses and requests for documents will be conducted or requested jointly as often as possible; the CSB, EPA, the company, or person(s) involved in the investigation may request to proceed separately.

Other than when a criminal investigation or emergency response is being conducted as outlined above, 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 it receives for disclosure of material, including requests under the Freedom of Information Act (FOIA), and will coordinate with the other Agency as necessary.

F. Risk Management Plan Access

The CSB has responsibilities under section 112(r)(6) of the CAA with respect to risk management plans (RMPs) submitted pursuant to EPA's regulations implementing section 112(r)(7) of the CAA. Consequently, in order to fulfill this obligation, the CSB will need to have access to all submitted RMPs, including any information contained in RMPs that is claimed or designated as confidential business information (CBI). As EPA indicated in the Preamble to the *Accidental Release Prevention Requirements; Risk Management Programs Under Clean Air Act Section 112(r)(7), Amendments; Final Rule* (See 64 FR 964, January 6, 1999), any information claimed or designated as CBI in RMPs will be provided to the CSB under the terms of EPA's existing CBI regulations at 40 CFR section 2.209(c), *Disclosure to other Federal agencies*. In accordance with those terms, the CSB in this MOU has indicated its need for access to all RMPs, including any CBI in RMPs. EPA will notify RMP submitters via a Federal Register notice that it will provide the CSB with access to all RMPs, including any CBI in RMPs. In addition, with respect to submitted RMPs, EPA will advise the CSB of any unresolved business confidentiality claims and any determinations that information is entitled to confidential treatment. The CSB

will protect from disclosure any information in RMPs that is subject to an unresolved business confidentiality claim or that has been designated by EPA as CBI.

G. Training, Technical and Professional Assistance

CSB and EPA may make their chemical incident and related training programs available to each other's personnel. EPA and CSB may provide technical and professional assistance to each other about chemical incident investigations and other matters upon request and as resources permit.

H. Incident Investigation Reports

CSB will produce public reports as a result of its on-scene chemical incident investigations. These reports may 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 that EPA take action (such as rulemaking) to prevent or minimize the consequences of any accidental release of substances that may cause death, injury, or other serious adverse effects to public safety and health and the environment. To the extent possible, and where to do so would not compromise public health and safety, CSB will discuss the timing of Board meetings, and the release of public reports with EPA, so that such actions do not jeopardize current enforcement or other actions by EPA.

In addition to Agency reports, both CSB and EPA may use other methods for disseminating information gained from their chemical incident investigations, such as Alerts or special notices, incident data summaries for relevant industry sectors, presentations to industry trade associations, and posting of findings and lessons learned on CSB's or EPA'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 further the safe operation of facilities producing, processing, handling, or storing chemical substances.

I. 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 EPA or other on-site agencies compiled in the course of their own actions, in conformance with the requirements for protection of confidential and enforcement sensitive information. The CSB will use this information, as well as data that it has collected from other sources, to analyze the incident and determine whether further actions by CSB are necessary. See 42 U.S.C. section 4712(r)(6)(C).

J. Research and International

The CAA authorizes the CSB to conduct research and studies with respect to the potential for accidental releases. EPA also has responsibilities for research on accidental release-related topics, including hazard assessment, dispersion modeling, physical/chemical properties, release detection, and release mitigation. Each Agency plans to coordinate its research efforts, when appropriate, with each other and with other Federal agencies, State and local governmental agencies and associations and organizations from the industrial, commercial, and nonprofit sectors.

EPA and CSB are active in a number of international venues related to chemical safety, incident prevention, and incident investigation. EPA and CSB will coordinate with each other, when appropriate, to ensure that each Agency is aware of, and has the opportunity to participate in, current international chemical safety efforts.

IV. RESOURCES

Responsibility for the cost 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 Agency for the purpose of investigations. These key officials are the principal points of contact between the parties in the performance of this MOU.

CSB	**EPA**
Director - Office of Investigations	Chemical Accident Prevention Team Leader, CEPPO
Telephone: 202- 261-7600	Telephone: 202- 260-8600; and
	Director, Criminal Investigation Division
	Office of Criminal Enforcement, Forensics & Training
	Telephone: 202-564-2490

(Contact numbers may be changed without amending this MOU. CSB and EPA will inform each other of number changes.)

VI. 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.

VII. 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.

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Tim Fields Assistant Administrator (Acting), Office of Solid Waste and Emergency Response U.S. Environmental Protection Agency	Paul L. Hill, Ph.D. Chairman U.S. Chemical Safety and Hazard Investigation Board
Date: _____	Date: _____