

# United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

April 3, 2009

Admiral Thad W. Allen  
Commandant  
United States Coast Guard  
2100 Second Street, SW  
Washington, DC 20593

Dear Admiral Allen:

I am deeply concerned about the recent events surrounding the investigation of a chemical explosion last August at the Bayer CropScience chemical plant in West Virginia's Kanawha Valley, which claimed the lives of two workers and potentially exposed tens of thousands of our citizens. The Chemical Safety and Hazard Investigation Board (CSB) has long wanted to hold a public hearing on this incident to lay out its preliminary findings, hear community concerns, and gather information. However, Bayer's lawyers are citing provisions in the Maritime Transportation Security Act (MTSA) to limit what the CSB can disclose to the public.

I request your urgent review of this matter and I am confident you will understand the serious concerns of Kanawha Valley residents. The Bayer CropScience chemical plant stores large quantities of toxic chemicals, including large quantities of methyl isocyanate, which is the same substance that killed thousands during the tragic incident in Bhopal, India. Although no methyl isocyanate was compromised during this incident, public and media perception that Bayer CropScience mishandled this emergency, including possible reporting delays and withholding of critical information to response teams, exacerbate these legitimate fears. In addition, I am concerned about the possible precedent that will be set if Bayer, or any other MTSA regulated facility, uses MTSA security regulations to curb inappropriately safety investigations and obstruct the right of local residents to know about the fundamental safety and security of chemical plants in their community.

Under regulations promulgated under the authority of the MTSA and other statutes, the Coast Guard has the authority to designate "information obtained or developed in the conduct of security activities" as "Sensitive Security Information"

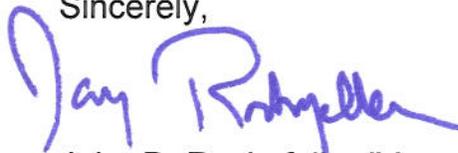
(SSI).<sup>1</sup> Once information has been designated as SSI, employees of the Department of Homeland Security and other “covered persons,” including owners and operators of maritime facilities, are required to safeguard the information.

While I understand that the purpose of these regulations is to protect homeland security interests, it needs to be balanced with public’s right to information about incidents like the August accident at the Bayer plant and should never be used as a cloak to hide or obscure information that is not security-sensitive. The SSI regulations themselves contemplate striking such a balance and allow the Coast Guard to disclose SSI information when it is in the public interest.

I know that the Coast Guard is working closely with the CSB to review its findings and to determine what information can be released to the public. I ask that you consult as soon as possible with the Transportation Security Administration and use your collective discretion to reveal all key findings of the CSB that will inform the public regarding both the incident and any remaining hazards and risks to the community, without compromising our national security interests. As you know, transparency is essential for identifying, correcting, and preventing these types of incidents and improving emergency handling in the future. MTSA regulations should never be permitted to be abused to obstruct a safety investigation.

Thank you for your assistance in this matter. If you have any questions about this request, please contact Dabney Hegg of my staff at 202-224-0411. We look forward to your response.

Sincerely,



John D. Rockefeller IV  
Chairman

Cc: Gale Rossides  
Acting Administrator  
Transportation Security Administration  
601 South 12th Street  
Arlington, VA 20598

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<sup>1</sup> 49 CFR § 1520.5.