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May 4, 2009

The Honorable John Bresland
Chairman and Chief Executive Officer
U.S. Chemical Safety and Hazard Investigation Board
2175 K Street NW, Suite 400
Washington, DC 20037

Dear Mr. Bresland:

As you know, the House Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are conducting an investigation into the events surrounding the August 28, 2008, explosion at the Bayer CropScience chemical plant in Institute, West Virginia. In addition, the Senate Committee on Commerce, Science, and Transportation has been following closely your investigation into this deadly accident and is considering its implications for chemical plant safety across the country. We thank you for your testimony before the Oversight and Investigations Subcommittee on April 21, 2009, and we appreciate your ongoing work on this issue.

Our investigation has raised serious concerns about Bayer's use and storage of the highly toxic chemical, methyl isocyanate (MIC), at its facility in West Virginia. In 1984, MIC leaked from a Union Carbide plant in Bhopal, India, killing approximately 4,000 people and injuring thousands more.

After that tragedy, another chemical company, DuPont, changed its manufacturing processes to eliminate large stockpiles of MIC at its facilities. Bayer did not do the same, however, and its plant in West Virginia remains the only chemical facility in the United States that still uses and stores large volumes of this deadly chemical.

As you testified at the hearing on April 21, the explosion last year at the Bayer plant occurred approximately 80 feet from the company's 18-ton above-ground storage tank of MIC. The explosion caused an over-pressurized vessel to hurtle violently through the facility, destroying virtually everything in its path. If this vessel had struck the MIC tank, the results

could have been a disaster worse than 1984 Bhopal accident, endangering Bayer employees, emergency first responders, and residents of the surrounding community.

We believe it is past time to consider whether Bayer's continued use and storage of MIC can be justified in light of the health and safety risks it presents to the surrounding community.

Under the Clean Air Act, the Chemical Safety Board has the authority to recommend measures "to reduce the likelihood or the consequences of accidental releases" and propose corrective steps "to make chemical production, processing, handling and storage as safe and free from risk of injury as is possible." The Board also has the authority to "conduct research and studies with respect to the potential for accidental releases, whether or not an accidental release has occurred, where there is evidence which indicates the presence of a potential hazard or hazards." We ask that you exercise this broad authority in this critical case.

Specifically, we ask that the Board:

1. Conduct an investigation to determine options for Bayer to reduce or eliminate the use or storage of MIC at its West Virginia facility by switching to alternative chemicals or processes and the estimated cost of these alternatives;

2. Determine whether Bayer has adequately examined the feasibility of switching to alternative chemicals or processes;

3. Provide in its final report specific recommendations for Bayer and its state and federal regulators on how to reduce the dangers posed by on-site storage of MIC; and

4. Brief our staff on the Board's findings and recommendations at the end of its investigation.

Our Committees intend to continue rigorous oversight of this issue, and we may hold additional hearings at the conclusion of your investigation.

If you have any questions regarding this request, please contact David Leviss with the House Committee on Energy and Commerce staff at (202) 226-2424 or John Williams with the Senate Commerce Committee staff at (202) 224-1300.

Thank you again for your work on this investigation.

Sincerely,

Henry A. Waxman
Chairman
House Committee on Energy and Commerce

John D. Rockefeller, IV
Chairman
Senate Committee on Commerce, Science, and Transportation

Bart Stupak
Chairman
House Committee on Energy and Commerce
Subcommittee on Oversight and Investigations

Edward J. Markey
Chairman
House Committee on Energy and Commerce
Subcommittee on Energy and the Environment

cc: The Honorable Joe Barton
Ranking Member
House Committee on Energy and Commerce

The Honorable Kay Bailey Hutchison
Ranking Member
Senate Committee on Commerce, Science, and Transportation

The Honorable Greg Walden
Ranking Member
House Committee on Energy and Commerce
Subcommittee on Oversight and Investigations

The Honorable Fred Upton
Ranking Member
House Committee on Energy and Commerce
Subcommittee on Energy and the Environment