

# Bayer reaches deal over fatal 2008 plant explosion

By Ken Ward Jr.



*TOM HINDMAN | Gazette-Mail file photos*

Flames shot 50 to 100 feet into the air at the Bayer Plant in Institute as explosions rocketed the valley in 2008.

Bayer CropScience has agreed to pay a \$975,000 fine and spend \$452,000 on a series of measures to improve chemical storage facilities across the country as part of proposed deal with federal regulators over allegations of serious safety violations that helped cause a massive 2008 explosion that killed two workers at the company's Institute plant, officials said Monday.

Under the tentative settlement with the U.S. Environmental Protection Agency and the U.S. Department of Justice, Bayer will to spend \$4.23 million to improve emergency preparedness and response in Institute and to protect the Kanawha River from toxic pollution, officials said in announcing the settlement.

The proposal would resolve allegations contained in a 13-count civil complaint, filed Monday in federal court in Charleston, that accused Bayer of violations that "caused or contributed to conditions that" led to the explosion and "released extremely hazardous substances into the atmosphere."

"The multiple safety failures that existed at this facility that led to a loss of life, demonstrates why safeguards are necessary to protect people's health and the environment," said Shawn M. Garvin, administrator of EPA's Mid-Atlantic regional office in Philadelphia.

Bayer officials signed the proposed settlement on Aug. 21. It was signed by DOJ and EPA officials on Monday, the same day it was filed in court and announced in a press release. The proposed settlement is subject to court approval and a 30-day public comment period. Details of that comment period have not yet been announced.

The 173-page settlement document outlines seven "supplemental environmental projects" that Bayer will undertake at a total cost of \$4.23 million. The largest of the projects is a \$3.1 million "West Sump Expansion" to provide additional storage capacity to prevent untreated chemical process wastewater from overflowing into the Kanawha River during heavy rain events, fire-fighting emergencies and chemical process upsets.

Other projects aim to improve communications between plant personnel and local emergency responders during plant incidents, provide better training for local firefighters, and ensure proper handling of hazardous materials at local schools.

In its press release, EPA said Bayer will also take "a series of steps to prevent future chemical releases" in West Virginia, Texas, Missouri and Michigan "by improving inspections to identify potential safety issues and standardize safe operating procedures at its facilities." The proposed settlement refers to these inspections as "enhanced facilitated self-assessments."

Monday's announcement by federal authorities came more than seven years after the explosion that

sent a fireball into the air above the plant, forcing thousands of area residents to take shelter in their homes for hours. Plant workers Bill Oxley and Barry Withrow were killed in the Aug. 28, 2008, incident, which brought renewed scrutiny — and eventually elimination of — the Institute plant's huge, on-site stockpile of methyl isocyanate, the chemical that killed thousands of people in a 1984 leak at a Union Carbide plant in Bhopal, India.

The U.S. Chemical Safety Board blamed the explosion on “significant lapses” in plant safety practices and warned during a high-profile congressional hearing that the incident could easily have been “a catastrophe rivaling the Bhopal disaster.” After Bhopal, other chemical companies had stopped storing large quantities of MIC, switching to making the deadly chemical as it was needed.

EPA alleged in its complaint that “numerous problems” occurred at the Bayer plant when the company did not comply with its “risk management plan” to prevent chemical releases. For example, EPA said, a new digital control system was installed, but a safety interlock associated with it was not properly engaged at the time of the explosion. Employees were not fully trained to understand or operate the system, and failed to follow procedures for sampling, temperature control and flow safeguards, EPA said.

“The result was an uncontrollable buildup in a treatment unit causing a chemical reaction resulting in the explosion, fire and loss of life,” EPA said. “During the incident, the company delayed emergency officials trying to access the plant, and failed to provide adequate information to 911 operators.”

In a prepared statement on Monday, Bayer Institute plant chief Jim Covington said that the proposed settlement “brings to a close the regulatory actions related to this tragic accident from seven years ago.

“At the same time it reinforces for us our determination to ensure that the safety of our employees and neighbors is the first priority for Bayer,” Covington said.

The statement added that methyl isocyanate has not been produced, used or stored at the Institute site for more than four years. “Production units at the site previously involved in MIC production have been decommissioned and demolished, as have other units dependent on that chemical as a building block,” the company said.

Bayer said in late March that it was selling the Institute facility back to Union Carbide, the site's former owner and now a part of Dow Chemical Co., with a “phased turnover” expected to be completed by mid-2016.

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