

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

MAYA NYE, et al.,

Plaintiffs,

v.

Case No. _____

BAYER CROPSCIENCE, INC.,

Defendant.

AFFIDAVIT OF MAYA NYE

Upon oath, the undersigned states as follows:

1. My name is Maya Nye. I am 33 years old and reside at 414 Fifth Avenue, St. Albans, WV 25177, less than three miles from the Bayer CropScience plant at Institute, WV. Other than time out of state for college, I have been a resident of Kanawha County or Putnam County, WV for virtually my entire life. I have been employed in Kanawha County since the year 2000.

2. From approximately 1977 to 1995, I lived with my father, an employee of Union Carbide Corporation for more than twenty years, at 2603 Wilson Avenue, St. Albans, WV, approximately 1.5 miles from the current Bayer CropScience Institute plant.

3. I attended Highlawn Elementary School, approximately 1.5 miles from the Bayer CropScience Institute plant, McKinley Jr. High School approximately .5 mile from the Bayer CropScience Institute plant, and St. Albans high school, approximately 2 miles from the Bayer CropScience Institute plant.

4. I was an intern at Union Carbide in the Health, Safety and Environmental Technology group while in college. My mother was a contract employee of Union Carbide, and my step-father was an employee of Union Carbide.

5. In 1993 at the age of 16, the methomyl/Larvin unit exploded killing two workers, one immediately and the other later. At that time I was living at 2603 Wilson Avenue, St. Albans, WV, heard and felt the explosion, and smelled chemicals in my house. I was terrified. "Shelter in place" alarms went off at the time. I experience the same fear, at noon on the last Wednesday of the month, when I hear the emergency response alarm.

6. As a result of the 1993 explosion in Institute, West Virginia, I majored in environmental studies at college. For my senior project at college I authored and directed a play titled "The Smell of Money," about environmental justice issues in the Kanawha Valley.

7. Since the 1993 explosion, I have been active in "People Concerned About MIC," an unincorporated association of individuals in and around Kanawha County, West Virginia. "People Concerned About MIC" was formed around the time of the 1984 Bhopal disaster in India that killed tens of thousands of Indian citizens who resided in proximity to the Union Carbide plant that manufactured MIC. "People Concerned About MIC" (methyl isocyanate) is dedicated to the protection of health and safety of all who reside, work, and study in the vicinity of local chemical plants producing highly toxic chemicals. For approximately five years, my office was located on the campus of West Virginia State University. As the director of day camp held on the campus each summer, I was responsible for the safety and well-being of more than 300 children.

8. On the night of August 28, 2008, I was watching television in Charleston, WV when I heard and felt the explosion at the Bayer CropScience facility at Institute, WV. I called the television news stations to find out if a "shelter in place" had been issued, or was to be issued. The fear I experienced in August 2008 was identical to the fear I experienced in 1993. I called my father to see if he was safe. I called an aunt, who was new to the area and was unfamiliar with "shelter in place," to tell her what to do because no one had provided guidance on how to respond. I did not call my 85-year old grandmother because I did not want to wake her up; in hindsight I wish I had called her.

9. Following the August 2008 explosion, I became the spokesperson for "People Concerned About MIC," and we organized an open community forum at West Virginia State University to discuss community concerns and how to respond to the event; Bayer CropScience did not appear at the community forum, although they were asked to attend. In April 2009, I testified at the interim public hearing conducted by the United States Chemical Safety Board in Institute, WV, and attended Congressional hearings in Washington, DC, inquiring into the August 2008 Bayer CropScience explosion.

10. Also in April 2009, I attended a Bayer CropScience "Community Improvement Council" meeting and asked questions regarding the August 2008 explosion. Along with others, I drove through the Bayer CropScience Institute plant in 2009 in a tour conducted by Bayer officials, and met with Bayer officials, including the safety manager of Bayer CropScience, afterwards.

11. In May 2009, "People Concerned About MIC" hosted a visit by victims of the 1984 Bhopal disaster at West Virginia State University. I led a "toxic tour" of the Kanawha Valley for the visitors, and they related the aftermath of the Bhopal disaster for the local community, including descriptions of the continuing toxic contamination and exposure, and the failure of the company to engage in an effective environmental remediation or "clean up." The Bhopal guests related that the smells they experienced in the "toxic tour" of the Kanawha Valley were similar to the smells they experienced in Bhopal.

12. In August 2009 "People Concerned About MIC" conducted a vigil at West Virginia State University, immediately outside the Bayer CropScience Institute plant, on the one-year anniversary of the August 2008 explosion that killed two employees. At this time, Bayer CropScience announced a reduction of the planned MIC storage capacity at the Institute facility, and an intention to reconstruct the facility at a cost of \$25 million.

13. Since the August 2008 explosion, I have studied almost all available literature on MIC and the risks associated with MIC production in a major population center. My study has included detailed review of the Chemical Safety Board study dated January 2011, United States Occupational, Safety and Health Administration (OSHA) violation reports, West Virginia Department of Environmental Protection (DEP) inspections documents, United States Environmental Protection Agency (EPA) toxic release inventory, Bayer's risk management plans, and Bayer's off-site consequences analysis data, only available in EPA reading rooms in Washington, D.C.

14. On January 11, 2011, Bayer CropScience announced its intention to discontinue the production of MIC at the Institute plant, and its plans to restart the facility and run it for the next 18 months. Bayer's press release stated that it had completed all of the safety measures announced in August 2009.

15. My review of the available literature, including Bayer CropScience's Risk Management Plans, causes me to conclude that restarting the MIC production facility at the Bayer CropScience Institute plant presents an unreasonable risk of unacceptable to human health, when compared to any economic losses that Bayer or its employees might experience.

16. My conclusions are based, in part, on the Off-site Consequences Analysis (OCA) prepared by Bayer CropScience. The Chemical Safety Information, Site Security and Fuels Relief Act (CSISSFRA), 42 U.S.C. §7412, expressly exempts the OCA from disclosure under the Freedom of Information Act. Under regulations implementing CSISSFRA, codified at 40 CFR § 1400.1 - § 1400.13, distribution of OCA data is severely restricted.

17. On January 29, 2010, in compliance with CSISSFRA, I reviewed on site at an EPA office in Washington, D.C., the OCA data for the Kanawha-Putnam Emergency Planning Committee (KPEPC), current through January 27, 2010. Because CSISSFRA does not permit the removal of hard copy, I personally entered all of the data on the KPEPC OCA into forms which are attached hereto as Exhibit A. That data was then keyed into a spreadsheet, which is attached as Exhibit B. All of the data on these exhibits is current through January 31, 2011 with the single exception of the data in Column I, Row 16, which records the permissible volume in pounds of MIC at the Bayer CropScience facility in Institute, WV. The January 27, 2010 data was 200,000 pounds; the current information is 50,000 pounds, which reflects changes made in the OCA by Bayer CropScience, effective December 15, 2010.

18. Based on my own experience and my interactions with others – community members, other residents of the valley, victims of the Bhopal disaster, emergency responders, public health officials, knowledgeable people in the field of chemical safety and national security -- I presently fear the restart of the MIC unit at Bayer CropScience. The reasons for my fearing a restart of the MIC facility in Institute the following:

- a) My personal experience of living through the multiple incidents at the MIC facility before and after Bayer's 2002 acquisition of the facility;
- b) The knowledge that the West Virginia Department of Environmental Protection and the United States Environmental Protection Agency do not monitor for MIC
- c) Knowledge that no regulatory agency charged with chemical safety and oversight has examined whether Bayer has complied with all of the safety procedures necessary to restart the unit;
- d) Knowledge that prior to and after the 2008 explosion, Bayer failed to report deviations to their Title V Hazardous Air Permits; in fact their records are missing;
- e) Knowledge that Bayer in bad faith obstructed a the federal investigation of the U.S. Chemical Safety Board in order to prevent the public from knowing the dangers that exist in their community;
- f) Awareness that the restart of the MIC facility, in the very near future, after a prolonged outage by inexperienced personnel with new and unfamiliar equipment much mirrors the events leading up to the 2008 explosion.

19. I know that a palpable fear is created throughout the community at noon on the last Wednesday of every month when the test emergency response alarm sounds; that people are unable to go for walks around the neighborhood because of the stench in the air that makes them sick; that the only evacuation route for residents, workers, students, faculty and staff of WVSU in Institute has been and remains chain-locked; that many people have had damages from the plant including broken windows and foundation damage to their houses.

20. I am alarmed by the information reported by Bayer CropScience in the OCA on file currently at the EPA reading room in Washington, D.C. , which indicates that the Toxic Chemical in Lbs is 50,000 lbs, that the Tox WCS (Worst Case Scenario) is a 25-mile radius of the Bayer CropScience facility at Institute, WV (Latitude 38.387020 / Longitude -81.774300), and that the population in the WCS area is 300,912 people.


Maya Nye

SUBSCRIBED AND SWORN TO BEFORE ME THIS 9 DAY OF FEBRUARY, 2011.


NOTARY PUBLIC

MY COMMISSION EXPIRES: April 6, 2018

