

Beware Sunny Days: Lessons From BP's 2005 Texas Blast

By **Gerry Caron** (April 16, 2021)

Last month saw the 16th anniversary of the massive explosion at BP Products North America Inc.'s Texas City refinery. The explosion occurred on March 23, 2005, at the refinery's ISOM isomerization process unit, when a hydrocarbon vapor cloud was accidentally ignited. The blast resulting in 15 deaths and more than 170 injuries.

This high-profile incident led to an extensive investigation and report by a panel of experts, overseen by former U.S. Secretary of State James Baker. The report was released in January 2007.

The most publicized and memorable takeaway from the report was that while BP's personal safety programs were advanced, the company had a process safety culture and management that left a lot to be desired. This led to corporate America's renewed focus on process safety management, which in many ways continues to this day.

An equally significant takeaway from the BP incident and investigation was the report's admonition to companies against growing complacent based on favorable corporate safety metrics, particularly as to personal safety.

This admonition still rings true, and calls for close attention as we observe the anniversary of one of the most catastrophic safety incidents in the country's history. Effective risk mitigation and prelitigation planning, moreover, demand such attention.

Avoid complacency and a false sense of confidence.

The Baker report concluded that BP's seemingly strong personal safety programs and companywide reduction in injury rates gave the company a false sense of confidence that their risk profile was low and their safety performance across the board was stellar.

Under the surface, however, there were reportedly major gaps in BP's safety culture and performance that were undetected until after the 2005 incident. The data and metrics that BP tracked closely looked good regarding personal safety incidents. But according to the Baker report, this gave the company and senior management a false sense of security.

That ended up costing the company dearly, in terms of loss of life, financial impacts and reputational damage that continued for many years. While it is prudent and reasonable to track and measure performance, such metrics or measurements can and should only inform the organization and its senior management — not define them.

Data and metrics have a role to play, but it is a limited one — and they need to be balanced and supplemented with other considerations that are equally, if not more, important. Those analyzing and scrutinizing corporate safety data must always remember the critical



Gerry Caron

importance of context.

Some would say that the truth equals the facts plus context. In other words, what is behind the numbers? How are they being calculated and accounted for? What are the limitations of the data, and what is being excluded? What other critical factors are not being captured by the numbers themselves?

These other questions and factors will all play significantly in any related litigation or investigation, as they did in the BP matter. The Texas City incident led to more than 3,000 lawsuits, and a guilty plea by the company to a one-count felony violation of the Clean Air Act for conduct that resulted in the explosion.

Suffice it to say that in any high-stakes enforcement or litigation, favorable corporate metrics are only the starting point of any information requests, subpoenas or discovery, and there will be immense scrutiny and efforts to upend the metrics and demonstrate that they do not tell the entire story. All of this is fair play following any serious safety or environmental incident.

Even beyond these considerations, overemphasizing the importance and role of favorable corporate metrics can have unintended consequences that can be very damaging to an organization.

An overreliance on metrics can lead to bad results.

An overreliance on metrics can be counterproductive, and misdirect corporate attention and focus. The challenge is that you are never really sure what you are looking at with a particular data set. Does it truly represent the entire universe of relevant data points, or is it just an unrepresentative snapshot, with serious limitations and possible biases?

This can lead to a situation where the organization has its collective eye on the ball — but it is the wrong ball. One corollary to this misfocus may be that the organization allocates resources to the wrong areas, because the true needs and challenges go unrecognized.

Again, based on the Baker report, this appears to be what happened at BP leading up to the Texas City incident. This too will be closely examined in any ensuing litigation or enforcement.

Additionally, if there is too much emphasis placed on driving incidents down, even small ones, so that the metrics look good, this may unintentionally encourage underreporting, and there will be missed opportunities to learn from the mistakes and experiences of others within the organization.

There will still be incidents, but they will be subterranean, and there will be a false sense of security that everything is fine — so no learning and growing is happening. Over time, the organization can come to believe that the numbers themselves matter more than the underlying performance and health of the culture.

A strong compliance culture requires a learning culture.

The foundation of a strong compliance culture is a learning culture. The U.S. Department of Justice Criminal Division's guidance and criteria for evaluating corporate compliance programs, last updated in June 2020, emphasize the importance of sharing learnings within organizations.

In fact, to satisfy the DOJ's criteria for favorable consideration based on a company's corporate compliance programs, learnings must be routinely identified and shared broadly within the organization.

Making safety incidents visible and the subject of conversation within the company represents an opportunity to learn as a group, improve, adapt and move forward. If this is not happening, there will still be mistakes — but they will not see the light of day, and others will not have an opportunity to learn from them.

Similarly, if there is too much emphasis and pressure on driving down the number of findings associated with safety and environmental compliance audits, one potential outcome is that the stringency and focus of the audits may get diluted. That, in and of itself, will likely drive down the number of findings.

An effective corporate audit program is the backbone of a solid and well-functioning compliance program, and it should be robust and fully loaded. A weak audit program would be at odds with a learning culture, and the best practice of using the audits as an opportunity to learn and improve — which arguably is much more important than reducing the total number of findings.

Audited facilities should welcome constructive findings as an opportunity to develop and maintain growth. But for this to happen, the organization must value and encourage findings at the corporate and regional level.

Takeaways

The BP Texas City explosion was a wake-up call to corporate America in the area of safety performance and culture. The ensuing Baker report was intended to speak to a broader audience, well beyond the senior executives and board at BP, on improved safety culture and corporate safety oversight.

And so, 16 years after the BP Texas City incident, let us remember to beware of sunny days, and always maintain a healthy sense of dissatisfaction with the status quo and seemingly favorable corporate metrics. This mindset is essential to effective risk mitigation and prelitigation management within an organization.

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