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HOUSTON CHRONICLE

Major stories and events
First American walks in space. **PAGE A7**
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SPORTS

Keeping it in perspective

UH's Heisman candidate quarterback, Greg Ward, says he plays for his biggest fan, his 2-year-old daughter, Chloe. **PAGE C1**



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HOUSTON CHRONICLE

Sunday, August 28, 2016 | HoustonChronicle.com and Chron.com | Vol. 115, No. 320 | \$4.00 ★★★

Chance of storms: High 87, Low 74

HPD seeks control over crime techs

Ploy ignores concerns about lab's objectivity

By Lise Olsen

Houston's acting Police Chief Martha Montalvo, with the support of the powerful Houston Police Officers Union, has made a behind-closed-doors bid to take back control over the troubled Crime Scene Unit from the city's independent forensic science lab.

The Crime Scene Unit is small but critical — its technicians gather and photograph evidence from all homicides, including incidents in which police officers use deadly force against civilians.

Montalvo's move comes in the wake of a highly critical audit by three outside experts who concluded in July that crime scene investigators need increased independence from the Houston Police Department — not less — to objectively gather evidence in shootings involving HPD officers.

The audit focused on eight recent officer-involved shootings in 2016 and concluded that crime scene

Debate continues on A31

Sewer spills put city under EPA scrutiny

Poor, minority areas are the most affected

By Mike Morris

It's something of a ritual. Every time it storms, Rudy Barajas grabs an umbrella and trudges to the end of his street in southwest Houston to see if raw sewage is gurgling out of a nearby manhole on Wilcrest.

The longtime Alief resident works for a civil engineering firm, so he knows how sewer systems work — or, as is too often the case in Houston, don't work. If the rain has been particularly heavy, Barajas slogs back inside with a familiar message for his family.

"Look, we have to be real careful — we don't want to flush the commode, don't wash, use a limited amount of water," he said. "My grandkids, they're 5, 6 and 7 years old. Whenever it rains hard, they'll come and ask me, 'Is it OK to flush the toilet?' They already know there's a problem."

Houston's long-running struggle with sewer spills spares few cor-

Sewer continues on A14

CHEMICAL BREAKDOWN

Fifth in a series

Deadly accidents, no answers



Mike Smith cuddles with daughter Payton at home in Pearland. He was burned over nearly 80 percent of his body in 2013.

By Susan Carroll

Early on a Saturday morning, deep inside a chemical plant in La Porte, Javier Ortiz took his last sip of coffee. He rolled a cylinder across the "blending room" and over to a scale, filling it with highly flammable gases. He filled another as Mike Smith did paperwork at a desk nearby and prepared to leave for the day.

Moments later, there was a flash of white, a shock wave, then flames and smoke.

Smith was trapped for more than six minutes. His eyelids and ears melted off.

He crawled out of the rubble at the Air Liquide specialty gas plant as a cloud of black smoke mushroomed toward Beltway 8.

Paramedics tried to load him onto a helicopter, but he refused until they let him call his wife.

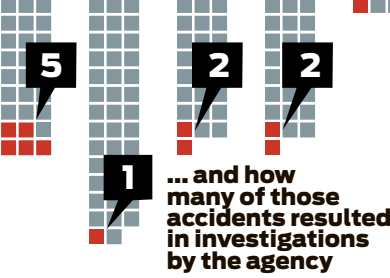
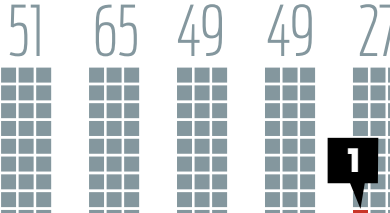
"I love you, baby," he said to Robyn. "I promise it will be OK."

Over the weeks and months that followed, as Smith fought for his life, investigators from various agencies and the company itself would try to discover what went wrong that morning.

But the one agency with a specific mandate to investigate chemical accidents that result "in a fatality, serious injury, or substantial property damages" did not send anyone to La Porte.

Fatal accidents tracked by the U.S. Chemical Safety Board ...

2011 2012 2013 2014 2015



Source: Inspector General

Much like the National Transportation Safety Board, the U.S. Chemical Safety Board's mission is to find out what caused an accident and make recommendations to prevent future ones. Unlike the NTSB, which investigates about 2,500 accidents a year, the CSB deploys to only a handful, about 4 percent of fatalities.

When deaths come in ones and twos, as they usually do, the public rarely learns what happened, and lessons aren't applied that could save lives.

"It's tragic," said Beth Rosenberg, an assistant professor at Tufts University School of Medicine who joined the CSB shortly before the explosion in La Porte.

The search for answers at Air Liquide began almost immediately, with Ortiz still missing and without the federal government's designated experts.

CSB continues on A20



Gary Johnson, with his family, has seen a rise in the polls.

Libertarian candidate vies for relevance

By Kevin Diaz

WASHINGTON — For Libertarian candidate Gary Johnson, Election Day arrives on Sept. 26 — the date of the first presidential debate.

The former New Mexico governor and noted

advocate for legal marijuana has hit a respectable 10-plus percent in some national and state polls, raising the hopes of disaffected voters unhappy with the major-party offerings of Donald Trump and Hillary Clinton.

Johnson's trajectory in

the year of the outsider still is well short of the 15 percent needed to make the debates, a threshold no third-party candidate has managed since Texas billionaire H. Ross Perot won nearly 19 percent of the popular vote in 1992. Perot made it onto the de-

bate stage with Republican George H.W. Bush and Democratic challenger Bill Clinton, who won the presidency.

Johnson's backers see it as a critical milestone, though one that seems to be fading with each pass-

Johnson continues on A19

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CHEMICAL BREAKDOWN



Michael Ciaglo / Houston Chronicle

Mike Smith picks up his daughter from her first day of school earlier this month. He says he doesn't like the stares he gets in public.

CSB is understaffed and underfunded

CSB from page A1

The La Porte Fire Department arrived shortly after the 7:38 a.m. explosion on Feb. 9, 2013. Firefighters were unsure what was in the room where plant workers mixed gases. There were more explosions. La Porte called the Harris County fire marshal for help.

The director of the Houston office of the Occupational Safety and Health Administration heard about the explosion on the news and sent someone out to the 60-acre plant off West Fairmont Parkway, about 30 minutes southeast of Houston.

Air Liquide hired lawyers within two hours. They sat down with employees and investigators that afternoon.

According to OSHA records, Air Liquide's safety director said the specialty gas plant wasn't required to file a risk management plan with the Environmental Protection Agency because its chemicals didn't reach a "threshold quantity."

Actually, Air Liquide had enough flammable liquid at its complex in 2012 to require such a plan, EPA records show.

Capt. Dean Hensley, with the Harris County Fire Marshal's Office, briefed the media at 5:14 p.m. One injured, one still unaccounted for, he told reporters.

"You promised me it would be OK,"

Robyn said.

"You promised me!"

A K-9 team had been called in. Hensley sat down with Ortiz's relatives at a hotel near the plant. Ortiz came from a big, Catholic family and loved playing superheroes with his kids: Daniella, 7; Gabriel, 5; and Tony, 3. His wife, Julie, was a teacher.

Hensley gave them his business card and promised to keep them posted.

Then he went back to Air Liquide. Twisted metal and exploded cylinders littered the cement floor. The search dogs had been drawn to a pile of debris, but firefighters were having trouble getting close.

Hensley ducked under a large beam, then climbed over pipes. He lifted a cylinder and saw a torso and legs. He crawled around until he found a head. Hensley called in the fatality at 6:33 p.m.

□□□

Robyn Smith waited for hours to see her husband in the Blocker Burn Unit at the University of Texas Medical Branch at Galveston. When they finally called her back, Mike was in the hospital bed, with breathing tubes. He

tried to sit up. His skull was exposed, she said.

Robyn fell to the floor, crying. God, just don't take him, she prayed. Don't take him.

She panicked when he wouldn't stop tugging at the tubes and yelled at him to stop.

She wasn't prepared for this. "You promised me it would be OK," she cried. "You promised me!"

Mike had been burned over close to 80 percent of his body, most of it third- and fourth-degree.

Later that day, Robyn told an investigator with the fire marshal's office what a burn surgeon had said initially, that there was a 103 percent chance her husband would die. Once he found out it was a chemical fire, he made it a 130 percent chance, she said.

The investigator asked a few more questions, thanked her and left.

□□□

The EPA sent Air Liquide its first request for information about the explosion — some 24 questions — three days afterward. The agency often looks for risk management problems after an accident. OSHA typically investigates on behalf of workers.

The EPA asked: Had the company pinpointed what caused the accident? What measures did it take to fix problems it identified? What emergency response measures were taken to minimize hazards?

□□□

Four days after the explosion, Ortiz was eulogized at Holy Rosary Catholic Church, where he volunteered as a math and science tutor. He was remembered as a doting dad and husband. His obituary quoted his life motto: "It's OK, don't worry."

That day, the fire marshal's office sent another investigator to Galveston. Mike was in surgery at that time, a social worker said, and not doing well. The investigator asked to talk to Robyn, but he was told she was in "no condition to talk to anyone."

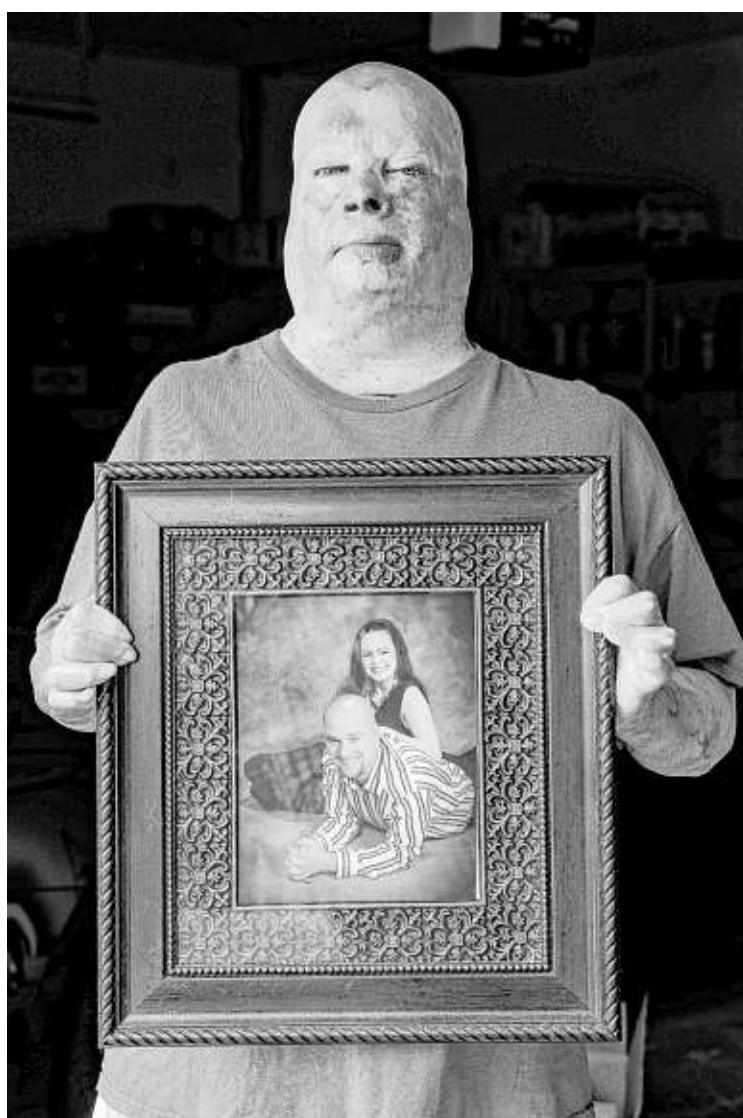
Mike and Robyn had been living together for eight years by then. They had a 4-year-old daughter, Payton, and Karlee, who was 10. Karlee's biological dad had died 12 days before her first birthday. He and Mike were close, since they were kids, and after he died, Mike checked on Robyn from time to time.

They started dating about two years later. She loved that they were friends first and that he was so good with Karlee.

Soon, she was a daddy's girl, Robyn said.

Karlee turned 11 a week after the explosion. She cried as she blew out her birthday candles.

Robyn tried to stay hopeful as Mike's infection grew resistant to more and more antibiotics.



Michael Ciaglo / Houston Chronicle

Smith and his wife, Robyn, took family portraits six months before the accident.



Courtesy of Mike Smith

Smith and his family enjoy the moment as he finally walks outside after months in the hospital.

She smelled the infected flesh, the silver nitrate and the bleach.

Air Liquide filed a risk management plan with the EPA. It also responded to the EPA's questions about the explosion.

The internal investigation was still underway. There were no "findings, conclusions or recommendations" to report, the company wrote.

Days later, nearly two months after the explosion, Robyn posted on Facebook that Mike was no longer responsive. She hoped it might be the pain medication, or maybe he had just gone off somewhere in his mind to escape. "Please, Please pray."

The doctor said that once all of the skin grafts had taken and closed, the bacteria would die. An antibiotic just needed to keep working long enough for that to happen.

Robyn missed the girls. The girls missed them both. Payton started sucking her thumb again.

Robyn was terrified of how Mike would feel when he saw himself for the first time, of how the girls would react when they saw him, of falling behind on the bills.

At one point, he became alert enough to start mouthing words. A week later, doctors temporarily deflated his tracheotomy tube. He coughed and gasped. The alarm went off. Then he calmed down and counted to three and looked at his wife.

"I love you," he said.

□□□

Around this time, the CSB deployed to the explosion at a fertilizer plant in West, Texas, that killed 15.

It sent investigators that summer to Geismar, La., after a fire and explosion killed two workers.

It did not send anyone to Donaldsonville, La., that June after an explosion at a nitrogen plant killed one worker and injured seven, or head to Springdale, Ark., after a fire broke out at a recycling plant and a worker died.

Rosenberg, the professor who joined the CSB that year, said it was clear to her that the agency would never have enough resources to investigate every serious accident. The CSB has only 20 investigators and a 2016 budget of \$11 million, less than J.J. Watt's annual salary.

Rosenberg wanted the agency to take a scientific approach and analyze the causes of fatal accidents to see if patterns emerged.

Other board members, she said, seemed more interested in investigating only the accidents that attracted the most publicity.

Her push for the comprehensive study of fatalities got no traction.

"Studies generally don't get a lot of media attention," she said.

Chemical continues on A21

CHEMICAL BREAKDOWN



Michael Ciaglo / Houston Chronicle

Smith and his daughter enjoy homemade kolaches and joke about pulling out her loose tooth.



Michael Ciaglo / Houston Chronicle

Smith has limited motion as a result of his burns and sometimes struggles with simple tasks like tying his shoes.

Chemical from page A20

One hundred and nine days after the Air Liquide accident, the Harris County fire marshal closed the investigation. The explosion was the “result of a detonation of confined fuel gas within the free standing cylinder pressure vessel resting on the scale in front of Manifold #2,” where Ortiz was working.

“The initiating cause of the detonation is unknown,” the investigator wrote.

An Air Liquide spokeswoman, Heather L. Browne, recently declined to answer questions and instead issued a statement that called it “a tragic and difficult time for our employees and the families of those involved.”

Browne said the company “cooperated fully with federal and state law enforcement officials, including OSHA.”

OSHA records tell a different story.

OSHA filed a subpoena in the spring of 2013, seeking dozens of company records. The OSHA investigator noted in a report that Susan Amodeo Cathey, Air Liquide’s “point-of-contact,” had stopped responding to emails or calls within a month of the explosion. Air Liquide employees told OSHA Cathey was out of the country.

On June 6, an OSHA investigator spotted a big tank at the plant from a distance and asked what it was. Hydrogen, he was told.

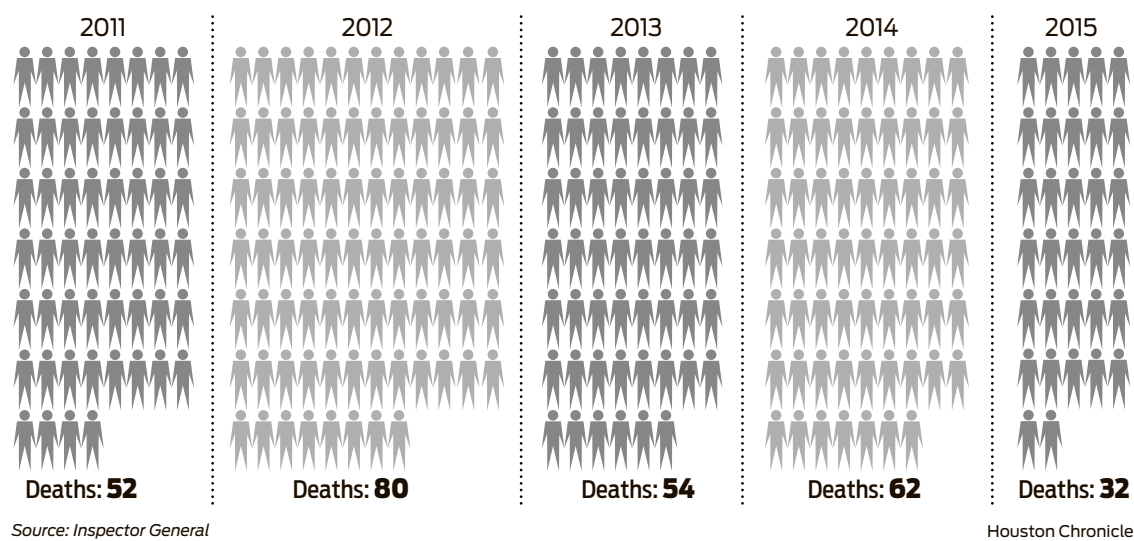
On June 21, OSHA issued another subpoena for the operating capacity of the tank, among other things.

On July 3, an investigator went to the plant looking for more information on the hydrogen but was “denied entry,” according to OSHA.

An OSHA investigator tried

Deaths attributed to chemical accidents

The toll includes several incidents with multiple casualties, including the explosion in West, Texas, that killed 15 and the leak at the DuPont chemical plant in La Porte that killed four.



Source: Inspector General

Houston Chronicle

to interview Mike Smith, but he was still in the burn unit at UTMB and hadn’t talked to his wife or attorney about what happened.

All the employees working at the specialty gas plant on the day of the explosion were sent to other Air Liquide facilities or started working for other companies, the OSHA investigator noted.

On Aug. 5, OSHA closed its investigation without interviewing the surviving witness or issuing any citations.

Two weeks later, the EPA sent Air Liquide another batch of questions. What was the result of the internal investigation, the agency asked again. What measures had Air Liquide taken in response to its findings?

Later that summer, Mike Smith was transferred to Memorial Hermann’s rehab hospital.

Before surgery No. 20, he woke up terrified.

“Surgery for what?” he asked. “How many is this?”

Robyn told him. Mike started to cry. Some of the surgeries had lasted 15 hours.

That October, Air Liquide responded to the EPA’s latest questions. The company objected to the request for a copy of its internal investigation, saying it was still “ongoing.”

Smith rallied and fought off the infections.

In November, he went home.

He receives workers’ compensation but lost his job, Robyn said. Some medications were covered; some weren’t, she said. Robyn lost her teaching job trying to take care of him.

That spring, on April 22, 2014, the EPA sent the company another request for information. To the best of your knowledge, the agency asked, what caused the explosion?

Nearly a month later, 437 days after the explosion, the company responded.

“Air Liquide cannot identify the specific cause of the cylinder explosion, and the investigation of the explosion is ongoing,” the company’s lawyers wrote.

On May 31, 2014, after 17 months on the CSB board, Rosenberg resigned to return to Tufts.

“I’m looking forward to going back to an academic environment where open debate is valued,” she said at the time.

That June, a congressional investigation found an agency in “crisis.”

Then-CSB Chairman Rafael Moure-Eraso blamed the budget.

“We are a very small agency charged with a mission of investigating far more accidents than we have the resources to tackle,” he said.

That July, an explosion in Marion, Ind., killed a worker. CSB did not respond.

It sent a team to Moss Point, Miss., after a tank explosion killed a worker and injured another.

In August, two people died in an explosion in Granite City, Ill. CSB did not respond.

That September, there was a deadly explosion at a steel mill in Fairfield, Ala. CSB did not respond.

The agency did investigate a leak at a DuPont plant in La Porte that killed four that No-

vember, though it has yet to issue a final report.

On March 9, 2015, the CSB sent a team to Torrance, Calif., to investigate an explosion at an Exxon Mobil refinery that had happened more than a week earlier.

Seventeen days later, Moure-Eraso resigned.

He was replaced by a board chair who, according to a report released by the Inspector General this summer, has improved morale.

The new chairwoman says that given the small staff and small budget, the CSB has to prioritize which accidents it investigates.

The Inspector General report found the CSB investigated only 2 of 49 fatal incidents in 2013, the same ratio the next year and 1 of 27 in 2015.

A few days after school let out this summer, Robyn baked homemade kolaches in their Pearland home.

Mike wore an Elvis T-shirt and gym shorts as Robyn squeezed his arm and guided a needle, trying to find a vein to test his blood sugar level. She gently pushed through scar tissue near his wrist and squeezed, but nothing came out.

“I’m probably going to have to stick you again,” she apologized.

Payton sat at the kitchen table, drinking chocolate milk and wiggling a loose front tooth, her third. She wanted it out.

“I can hook it to my remote control truck,” Mike joked.

They laughed.

Mike doesn’t like the stares in public. He looks in the mirror, he said, only when he has to shave. The fire took decades off

his life expectancy, he said, and put him at high risk for blindness, deafness and skin cancer.

He still doesn’t know what caused the explosion. The company has not publicly released the results of its internal investigation, and he’s never talked to any investigator from any agency.

“It would be nice if they came out and said what they found,” Mike said. “I don’t want to see it happen to anybody else.”

Everything is different than before the explosion, Robyn said. That life is gone. But she still sees the love of her life when she looks at Mike. They’re trying to have another baby. Somehow, she said, he managed to keep his promise.

Postscript:

A Freedom of Information Act request by the Chronicle to the CSB turned up only one page on the Air Liquide explosion. It was a copy of a TV news story posted the day after the accident.

The EPA is still investigating, according to a top enforcement official in the Dallas office, who declined to provide more information.

The agency released hundreds of pages of records to the Chronicle under a Freedom of Information Act request, most of it correspondence with Air Liquide’s attorneys. So far, it has denied the release of documents that the company sought to keep confidential.

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The series so far:

- Part 1:** Public goes unaware of chemical threats
- Part 2:** An industry left to police itself
- Part 3:** EPA’s fix is already broken
- Part 4:** ‘Runaway’ reactions going ignored
- Today:** Deadly accidents, no answers
- Coming soon:** A dangerous job made more dangerous



» See more pictures, investigative documents and an interactive presentation about the CSB.

HoustonChronicle.com



Javier Ortiz was killed in the Air Liquide explosion. He left behind a wife and three children.



Courtesy of Mike Smith

Initially, doctors told Robyn Smith that her husband wouldn’t survive his injuries.



Michael Ciaglo / Houston Chronicle

Smith sometimes has trouble controlling his tear ducts as a result of the burns he suffered. He’d like to know what caused the explosion that nearly killed him.