

U.S. Chemical Safety and Hazard Investigations Board

Business Meeting

November 14, 2017

CSB Headquarters Office - Washington, DC

U.S. CHEMICAL SAFETY BOARD MEMBERS PRESENT:

VANESSA ALLEN SUTHERLAND, CHAIR

MANNY EHRLICH, MEMBER

RICK ENGLER, MEMBER

KRISTEN KULINOWSKI, MEMBER

STAFF PRESENT:

KARA WENZEL, ACTING GENERAL COUNSEL

OPERATOR: Welcome to the CSB business meeting. My name is [inaudible] and I will be your operator for today. At this time, all participants are in a listen only mode. Later, we will conduct a question and answer session. During the question and answer session, to ask a question, you will need to press \* and then 1 on your touchtone phone. Please note that this conference is being recorded. And now I will turn the call over to Chair Vanessa Allen Sutherland. You may begin.

VANESSA ALLEN SUTHERLAND: Thank you. Good afternoon. And we will now call to order this business meeting of the U.S. Chemical Safety Board, or CSB. Today, we met in open session as required by the Government in Sunshine Act. We will discuss the operations and agency activities of the CSB. I'm Vanessa Allen Sutherland, Chairperson and CEO of the Chemical Safety Board. And today joining me are Board Members Dr. Kristen Kulinowski, Manny Ehrlich, and Rick Engler. Also joining us from the Office of General Counsel is Kara Wenzel, and members of our staff.

The CSB is an independent, non-regulatory agency. We investigate major chemical incidents at fixed facilities. The investigations examine all aspects of chemical incidents, including physical causes related to equipment design as well as inadequacies in regulations, industry standards, and safety management systems.

Ultimately, we issue safety recommendations which are designed to prevent similar incidents in the future.

We will be starting off with the new business portion of our meeting. And I will first give an overview of several recent events that impact the agency, including a new Freedom of Information Act rule, as well as recent ruling on enforcement of the CSB's Exxon subpoenas.

We will note an investigation update which is set to occur tomorrow, November 15<sup>th</sup>, regarding an organic peroxide incident. The Board will also deliberate and vote on two calendared recommendations from October 2017. All of our Board Members' statements will be available after the meeting. I look forward to a spirited and respectful discussion with my fellow Board Members.

Additionally, we will have an update on investigations, studies, recommendations, deployments, and the action plan for our regulations, and an overview of ongoing Inspector General Audits and a financial update.

If you are in the room and wish to make a public comment at the end of the meeting, please sign up using the yellow form at the registration table right outside of our doors. But if you are on the phone, you may submit public comments by emailing [meeting@csb.gov](mailto:meeting@csb.gov) to be included in the official record.

Before we officially begin, I'd like to highlight safety information for those in the room. Please take a moment to note the location of our exits at the sides and back of the room. As I note every public meeting, our stairwells are immediately outside of the glass doors through which you came, on your left and right.

I also ask that you please mute or make your phone vibrate so that these proceedings are not disturbed. Thank you very much for that.

So with that, we are going to get started with the new business portion of today's meeting. First, I would like to discuss the Freedom of Information Act rule recently published by the CSB in the Federal Register.

On September 29, 2017, the CSB published an interim final rule in the Federal Register and, as an interim final rule, that rule became effective immediately upon publication in the Federal Register. This approach enabled the CSB's regulatory changes to take effect sooner than would be possible with the traditional publication of a notice of proposed rule making in advance. Nonetheless, the CSB welcomed public comments from interested persons regarding the rule for a 30-day period that ended just a couple weeks ago on October 30<sup>th</sup>. The CSB did not receive any public comments.

Accordingly, the CSB may now publish a brief final rule in the Federal Register and the rule will not repeat all of the text provided in the interim rule. Rather, the rule will explain the CSB did not receive comment and is not making any changes to the interim final rule published on September 29<sup>th</sup>. The Office of General Counsel will prepare a brief notation item for circulation to the Board Members this week. And a vote that carries the majority on that item will authorize a final rule to be published in the Federal Register.

Thank you to the Office of General Counsel for its work on this issue. It will be in line with new Federal standards, Freedom of Information Act regulations.

Second, last week a U.S. District Court ruled that Exxon must turn over some but not all of the documents subpoenaed by the U.S. Chemical Safety Board as a result of its investigation into the February 18<sup>th</sup>, 2015 incident at the ExxonMobil refinery in Torrance, California. The CSB is currently examining its options on how to move forward and we will be providing additional details in the next few weeks on the decisions of the Board.

So, at our last public meeting, which was in October of 2017, the Board Members began a discussion on two recommendations proposals stemming from our investigation of the Deepwater Horizon

catastrophic event. The two recommendations at issue, which we have short-nicknamed or shortened the title to R-7 and R-15, were calendared by Member Engler. I appreciate the thoughtful remarks that he and Member Kulinowski delivered at our October public meeting. And over the last few weeks, we have had numerous meetings and discussions between Board Members and our investigations and recommendations staff regarding the proposed status changes for these recommendations. I am confident that we will have more thoughtful deliberation this afternoon.

To refresh everyone's recollection, both recommendations are from CSB's Macondo blowout and explosion investigation, Recommendation 2010-10-I-OS-7 was issued to the Bureau of Safety and Environmental Enforcement, or BSEE. That recommendation said:

Drawing upon best available global standards and practices, develop guidance addressing roles and responsibilities of corporate board of directors and executives for effective major accident prevention. Among other topics, this standard shall provide specific guidance on how boards and executives can best communicate major accident safety risks to their stakeholders, as well as corporate level strategies to effectively manage those risks.

Since we issued that recommendation, there has been extensive communication between the staff of the CSB and BSEE. It has become

evident through those communications that BSEE does not agree with the recommendation in general. Our recommendations staff strongly believe that BSEE is the most appropriate agency to implement this recommendation to the offshore oil and gas industry. Nevertheless, they have concluded that based on their communications with BSEE that it will not develop this guidance.

Accordingly, the CSB staff is recommending that we close this recommendation as "Closed, Unacceptable Action." Further, CSB staff may develop and issue some form of this important guidance.

The second recommendation for today's discussion is 2010-10-I-OS-15, which was also issued to BSEE. And that recommendation states:

Issue participation regulations and training requirements for workers and their representatives that include the following.

A, worker-elected safety representatives and safety committees for each staffed offshore facility chosen under procedures overseen by the regulator. These safety representatives will have the authority to interact with employers, such as operators and drillers, and regulators on issues of worker health and safety risks and the development and implementation of the major hazard report documentation.

B, the elected worker representative has the right to issue an enforceable stop work order if an operation or task is perceived as unsafe. All efforts should be made to resolve the issue at the workplace level, but if the issue remains unresolved, BSEE shall establish mechanisms such that the worker representative has the right and ability to seek regulator intervention to resolve the issue, and the regulator must respond in a timely fashion.

C, the regulator will host an annual tripartite forum for worker representatives, industry management, and the regulator to promote opportunities for interaction by all three entities on safety matters and to advance initiatives for major accident prevention.

And D, protections for workers participating in safety activities with a specific and effective process that workers can use to seek redress from retaliatory action with the goal to provide a workplace free from fear that encourages discussion and resolution of safety issues and concerns. Protected activities include, but are not limited to, reporting unsafe working conditions, near misses, and situations where stop work authority is used.

Over several months of communicating with BSEE, the recommendations staff concluded that BSEE does that have the



authority or proper regulatory authority to institute these recommendations. Therefore the recommendations staff proposed a status change to "Closed, Reconsidered/Superseded".

So at this time, I would like to recognize Member Engler to begin our discussion. Member Engler asked to calendar both items for the Board to more fully deliberate the proposal and the conclusion at our last meeting and to continue at this meeting. So I request that a motion be made to address each recommendation, one at a time, which will commence our deliberation.

Is there a member who would like to make a motion to vote on the calendared recommendation?

Member Ehrlich: So moved.

VANESSA ALLEN SUTHERLAND: [inaudible] motion. Member Ehrlich.

Member Ehrlich: I make a motion that we enter into the record a motion for the record to act on the first of the two recommendations, R7.

VANESSA ALLEN SUTHERLAND: Is there a second?

MEMBER ENGLER: Second.

VANESSA ALLEN SUTHERLAND: And it is so moved that the Board will commence discussions to reach a decision on the first recommendation, shortened name to R7.

Member Ehrlich, you enjoy the privilege, having calendared the item, to begin our discussion.

MEMBER EHRLICH: No, Member Engler.

VANESSA ALLEN SUTHERLAND: Engler. Engler, sorry.

MEMBER ENGLER: I'm prepared to vote in support of this motion. Otherwise, I wouldn't...probably wouldn't have seconded it. But I do have a question. Is that appropriate now or is that immediately prior to the vote, in terms of discussion?

VANESSA ALLEN SUTHERLAND: No, discussion is now. It's been moved, seconded, now we can discuss.

MEMBER ENGLER: My question would be that if the CSB is going to issue guidance for corporate boards, is it anticipated that it would be only for boards involved with the oil industry and offshore oil and gas operations? That's the first part of my question.

And the second is what process would we use to engage all stakeholders in developing such guidance? It seems to me that, while there are many statements of what boards should do, might do incorporated in safety management systems that have been approved by consensus bodies, etc., it's no small task to do...to put out the best possible product. And I think this agency should, frankly, have some sense of modesty about taking on such a perhaps small in

length but big in objective and that we should be involved in some type of process to ensure that we have input from corporations, state associations, scientific entities, labor organizations, and others.

So that's...that's my question, about what people would see as the process for developing that product.

VANESSA ALLEN SUTHERLAND: [inaudible] Members Ehrlich and Kulinowski?

MEMBER KULINOWSKI: Madam Chairperson, I see that...those questions as secondary to the vote that we are undertaking, which is whether or not we agree with the recommendation evaluation, which if I recall correctly, did not itself have any further actions that would be taken by the Board.

VANESSA ALLEN SUTHERLAND: Correct.

MEMBER EHRLICH: I feel the same way, Madam Chairperson. It's a very valid point that he brings up but I don't think it's relevant to the motion on the floor.

VANESSA ALLEN SUTHERLAND: I would...not would. I am going to concur. The motion is to discuss the merits of R7 and voting to close as unacceptable. However, noting that after the vote and the motion have been addressed, we can follow-up with a discussion

related to type of product. The Board, to confirm, has not voted to actually issue...

MEMBER ENGLER: Then I withdraw the question in that spirit.

VANESSA ALLEN SUTHERLAND: Okay. Is there discussion on the merits of closing the recommendation as unacceptable, given BSEE's response and given our recommendations team proposal to close unacceptable? I will call on each member. If there are any additional concerns or questions regarding the proposed status or the motion, then we can discuss now before I call for any questions. Member Ehrlich.

MEMBER EHRLICH: Madam Chairperson, I have no further discussion or questions.

VANESSA ALLEN SUTHERLAND: Member Kulinowski.

MEMBER KULINOWSKI: I have no further discussion.

VANESSA ALLEN SUTHERLAND: And Member Engler.

MEMBER ENGLER: I have no further discussion.

VANESSA ALLEN SUTHERLAND: I also have no additional conversation or discussion related to the motion as presented by our staff. And I will ask our General Counsel to call for the roll for voting.

KARA WENZEL: Okay, on the question of status change of Recommendation 2010-10-I-OS-R7 from opened to "closed/unacceptable action". Member Ehrlich?

MEMBER EHRLICH: I vote in favor.

KARA WENZEL: Member Engler?

MEMBER ENGLER: In favor.

KARA WENZEL: Member Kulinowski?

MEMBER KULINOWSKI: Approve.

KARA WENZEL: And Chairperson and Member Sutherland?

VANESSA ALLEN SUTHERLAND: Approve.

KARA WENZEL: The motion is passed.

VANESSA ALLEN SUTHERLAND: Thank you. There were four votes in the affirmative and zero in the negative. So I confirm that the motion has passed. A status change will be posted to our website following the meeting.

Our second calendared item for deliberation today is R15, which I read in its entirety. And again, may I have a motion to consider and deliberate on R15?

MEMBER EHRLICH: I'd like to move that the...make a formal motion that consideration be given to R15 in the context in which it was presented.

VANESSA ALLEN SUTHERLAND: Is there a second?

MEMBER KULINOWSKI: Second.

VANESSA ALLEN SUTHERLAND: It is moved and seconded that the Board change the status of Recommendation 2015...10-I-OS-R15 to the Department of the Interior. Is there any discussion? And because Member Engler, you calendared the motion, I will give you the privilege of starting the discussion if you prefer.

MEMBER ENGLER: Okay. Unless someone else would like. I'm certainly not going to read a very long statement like I did at the last public business meeting. The entirety of my statement is distributed here. And for the record, for the transcriber, I can certainly email the statement to you later if you provide the information. I will be reading part of it verbatim so it should match what the transcription says.

I urge the Board to vote against the proposed status change to CSB Recommendation 2010-10-I-OS-15.

On April 17, 2016, this Board voted unanimously to approve CSB's Volumes 3 and 4 of our report on the Macondo Deepwater Horizon disaster. Voting now to close this recommendation as "Closed, Superseded...Reconsidered/Superseded" is not supported by our statute nor the evidence and analysis provided in Volumes 3 and 4 of the CSB's Macondo investigation report. CSB Recommendations

Department proposal to the Board for this status change does not consider:

- The clear statutory authority and mandate of CSB to issue reports and studies which can include analyses of gaps in regulatory safeguards.

- Evidence provided in CSB Macondo investigation reports Volumes 3 and 4 that poor communication, inadequate worker participation such as reluctance to report hazards, and the absence of whistleblower protection were among factors that could have contributed to this disaster.

- That CSB's enabling statute and current policies require us to consider multiple causative factors for why incidents occur or are allowed to occur.

- That the Department of the Interior has broad authority to promulgate and enforce safety and environmental regulations on the Outer Continental Shelf.

Moreover, closing this Recommendation as "Closed, Reconsidered/Superseded" conflicts with other careful assessments that urged greater worker participation and/or new statutory whistleblower protection for oil and gas workers on the outer continental shelf, including the Department of the Interior's Outer Continental Shelf Oversight Board in 2010, the U.S. House of

Representatives in 2010, the National Commission on the BP Deepwater Horizon Spill (2011), and the National Academies of Sciences, Engineering, and Medicine in 2016.

CSB's whistleblower recommendation to BSEE could have been more clearly articulated. Our analysis in Volume 4 found that there was very limited protection from retaliation for offshore workers and that statutory changes by Congress could be required.

Our recommendation to the U.S. Department of the Interior, however, was worded as follows. Issue participation regulations and training requirements for workers and their representatives that include the following:

Protections for workers participating in safety activities with a specific and effective process that workers can use to seek redress from retaliatory action with the goal to provide a workplace free from fear that encourages discussion and resolution of safety issues and concerns. Protected activities include, but are not limited to reporting unsafe working conditions, near misses, and situations where stop work authority is used.

Our recommendation should have included this clarifying language, that if legislation authority...that if legislative authority is required to implement whistleblower protections, the



Secretary of the Interior, working with other agencies, shall seek such authority from Congress.

The Board can easily correct any confusion by adding these words in bold type to the recommendation. Because the underlying report is entirely accurate—I'd like to reiterate that the underlying report analysis is entirely accurate—no revision to the underlying report is required.

On April 20, 2010, 11 workers died and 17 were injured on the Deepwater Horizon. The spill caused massive environmental contamination and enormous economic damage.

The CSB is entrusted by the American people to do all that we can do to prevent such catastrophes. The CSB recommendations at issue, if implemented, can help prevent the next disaster.

I urge Board Members to 1) vote not to approve the status change proposal; 2) to subsequently make the proposed language clarification through approval of a new Notation Item, without revising the underlying report analysis; and 3) to make renewed efforts to engage BSEE about these important recommendations.

I will only add to this that there has been much open and...discussion within the agency and I appreciate the leadership of Vanessa Sutherland in leading that process to engage our investigations staff and our Office of General Counsel, as well as

Recommendations, to bring forth their opinions. And it is my...and it is my view that much of the discussion and...and assessment that's been brought forward by the staff, including most notably the staff that actually conducted the investigation, supports the position in this...in my memo.

I'll also not that, for those on the line, that upon request, I can email this memo. It will be made part, along with the other Board Member's statements, as I understand it, an official part of the record. The statement will be available to those on the line after...immediately after this meeting, as it is to those who are attending today.

Thank you very much.

VANESSA ALLEN SUTHERLAND: You are welcome. I will now recognize, in alphabetical order, Member Ehrlich and then Member Kulinowski.

MEMBER EHRLICH: Thank you, Madam Chairperson. I'd like to comment on that by reading my opening statement for today's meeting.

First of all, thank you all for coming and thank you for the opportunity to present my thoughts on this. This is a very important discussion. And I sincerely appreciate the opportunity to have this input in a public discussion and appreciate the good

and hard work by our staff, my fellow Board Members in getting to this point. There's been a tremendous amount of effort put into this by our staff, our investigators, our Recommendations people, and I'm very supportive of what they've done.

Regardless of the [inaudible] of these two recommendations, let's not lose focus on what happened on that oil rig in the Gulf of Mexico. Too many lives were lost and others irrevocably altered by injury. We owe it to them to prevent a future tragedy, regardless of it was on a platform in the Gulf or in any other facility, for that matter. That's what our mission at CSB is all about, not simply to identify the causes of a disaster, but to make recommendations to prevent future disasters.

Our investigators did extensive work on this investigation and on the recommendations. Lest we forget that our investigators arrive on a scene and come face-to-face with devastation and destruction and tragic human toll. They see firsthand the faces of families and coworkers of those who have lost and those injured. They know the human cost of these disasters. And, frankly, unless you've been in a similar situation, it's difficult to empathize.

That's what motivates them and, for that matter, that's what motivates me, to improve safety for all. And that's the question that I'm dealing with today. How does the CSB fulfill that

important mission to drive chemical safety change? How do we promote the CDL which is integral to our structure?

I've had to tell two spouses in my working career that their husbands are not going to come home from work that day and it's very difficult. And I hope that I never, ever have to do that again. I'm committed to that. I'm going to do what I can to help avoid it.

We can only make recommendations. We don't have the authority to force any recipient to make the changes that we see. And when a recipient says that it won't work, what do we do next? I'm interested in our steps forward. Today's vote, regardless of outcome, doesn't close the door. Rather, it just means that we have to find another avenue to chemical safety change. At the end of the day, the objective is to send workers home safely and uninjured. In order that worker participation move forward, whistleblower protection, employee participation, is a critical part of building a culture of safety, regardless of the venue in which the work is performed. No one should take from today's meeting that the CSB has walked away from their recognition of those facts.

Thank you, Madam Chairperson.

VANESSA ALLEN SUTHERLAND: Thank you, Member Ehrlich. The Chair now recognizes Member Kulinowski.

MEMBER KULINOWSKI: Thank you, Chair Sutherland. I want to echo the statements of my fellow Board Members about the importance of this investigation, the commitment of the CSB to strong worker protection, and worker participation. Our conversation in October..

Oh, and before I go any further, I ask permission to revise and extend our remarks for the record.

VANESSA ALLEN SUTHERLAND: Yes. It was duly noted.

MEMBER KULINOWSKI: Thank you. Our conversation in October, as well as subsequent commentary in the news and elsewhere, stretched beyond the specific issues presented in the recommendation evaluation. That is, causal link and appropriateness of the recipient, to issues of whether the Board can make recommendations absent a causal link and even, unfortunately, whether this Board is sufficiently committed to worker safety.

I'll address these issues, but first there's some things to keep in mind. The first is regarding the decision before us. We must vote on the recommendation as written. We cannot make changes to the report, which include changing the text of a recommendation, to reflect what anyone believes in hindsight it should have said

then or should say today to achieve the safety objective I believe we all share, and that you've already heard from two of my fellow Members, that of greater worker participation in health and safety activities. Even if the only action we wanted to make...to take was to change a few words to redirect the recommendation to another Federal agency or to Congress, we cannot change it in any material way without first voting to rescind the report, directing the staff to rewrite it, even in that narrow way, and then voting to reissue a new report with a new recommendation. That's not the decision before us today.

Second, we must assess the recommendation evaluation as written. We have several options for changing the status of a recommendation, but our choice today is whether to vote yes, meaning the recommendation is "Closed, Reconsidered", no, meaning it remains open awaiting response, or to abstain.

According to Board Order 22, we must vote yes if the recipient rejects the recommendation based on a rationale with which the Board concurs. Of the conditions that trigger this status, the one of particular relevance to our decision is the conclusion of our Recommendations Department that the recommendation should have been directed to a different recipient.

We must vote no if the recipient has not submitted a substantive response, or the evaluation by staff of a response is pending, or the Board has not yet acted on staff recommendation of status. BSEE has responded more than once. Our staff has evaluated its response. And we are here to act on that evaluation. So these conditions have not been met.

Moreover, a no vote is not merely a request for more time to persuade the recipient, gather more information or amend the recommendation language. Instead, it is an explicit rejection of the recommendation staff's analysis.

With regard to the merits of the recommendation evaluation itself, the evaluation asked us to consider two threshold criteria. 1) whether there was a causal link to the incident and, by extension, whether our enabling statute or Board Orders even require one; and, 2) whether the recommendation was directed to the correct recipient.

With regard to causal link, the key question in my mind is does our enabling statute or do our Board Orders require causal link. There's considerable discussion on this point and I believe some disagreement on it.

My interpretation of our enabling statute is that the phrase, "investigate the facts, conditions, and circumstances" is separate

from the phrase "cause or probable cause." Meaning that facts, circumstances, and conditions are different from causation.

Likewise, the mandate in our statute to "issue periodic reports, recommending measures" is broad is not explicitly tied to causation by a simple reading of the plain language.

There's more ambiguity on our Board Order, which states that "Recommendations proposed to the Board should describe a clear rationale that links the findings of the investigation, study, or similar product with explicit conclusions that factually support the need and basis for the recommendation." Without clear definitions or consistent operational usage of the terms "findings" or "conclusions" within the agency, there is room here for interpretation.

The language in our statute and Board Order, by my reading, is broad enough and this case of sufficient magnitude that I would not reject the investigation staff's analysis solely based on the argument that, in addition to facts, conditions, and circumstances, which I do find, there must be a direct causal link.

So was there a causal link? In reviewing some of the materials, I do find support for a conclusion that certain Deepwater Horizon workers feared getting someone fired for reporting an unsafe work practice and the Transocean safety culture



placed too much responsibility for safety on the workers versus management. Negative perceptions of the safety culture were not universal, however, as third-party assessments found many positives about how Transocean engaged workers in safety activities.

Nonetheless, I can accept our investigators' conclusion that worker engagement and whistleblower protections could have been stronger in Transocean generally and on the Deepwater Horizon specifically.

But it is not possible to say that there was a causal link between these cultural issues and the incident. But I can accept a conclusion that there were facts, conditions, and circumstances that contributed to a less-than-ideal working environment for workers on the Deepwater Horizon, that these conditions likely persist today in the offshore oil industry, and that a remedy is needed to fill this gap.

The second threshold for approval is whether these recommendations were directed to the correct recipient. The additional legal analysis we received since October does not change my original understanding that most of these recommendations were more appropriately directed to the US Coast Guard or to be shared between Coast Guard and BSEE. BSEE asserts it does not have the authority to implement these recommendations and it would appear to be correct.

Make no mistake, this is murky, given the history of agreements between OSHA and the Coast Guard, BSEE's promulgation of SEMS II, which has worker participation and stop-work authority provisions in it. It would seem, given this lack of clarity, that a legislative clarification is needed.

I note that a bill has been introduced in the US House of Representatives to strengthen whistleblower protections for offshore workers. While not a clear indication of Congressional intent, it is noteworthy that this bill, as well as previous versions dating back to 2010, vests enforcement authority consistently with OSHA.

Moreover, a letter we received today from the drafter of that legislation explicitly acknowledges that, "the Department of Interior may not have current legislative authority to complete this on their own."

So in the end, I'm not sure I see why CSB would seek to force-fit this authority into BSEE, an agency that neither it nor Congressional drafters of pending legislation for the last seven years, see as the appropriate one. The argument that we vote to keep this recommendation open to avoid creating a perception that we are retreating from worker protections in the offshore oil industry is spurious. It is possible to both support protections

for offshore workers and to want them assigned to the appropriate authority. I agree that Congress should establish that authority.

Let me conclude by saying that, regardless of the outcome of today's vote, like these two previous Board Members you heard already, and I'm sure Chair Sutherland, I remain committed to strong worker participation as an essential component of major incident prevention. Should the motion pass, it would be erroneous to conclude that I am giving up on or retreating from this important issue.

There is a clear gap in the statute and regulations that leaves offshore workers vulnerable to significant process safety incidents. That gap should be closed. Today's decision by the CSB is a technical one based on facts and analysis and should be interpreted narrowly as such. It neither broadcasts some sea change in the views of the Board with respect to the importance of worker participation nor precludes us from taking any number of other steps to signal our commitment to these issues. I look forward to exploring mechanisms of action by the Board in the near future.

VANESSA ALLEN SUTHERLAND: Thank you, Member Kulinowski. Before I share my remarks, usually I do an opening statement and I took the liberty of merging my opening statement thoughts with my discussion of R15, to make sure that we stay focused on the issue

at hand, which is addressing the motion as calendared and as presented to us by the staff.

Based on our last meeting, I want to first make a couple of quick points. The first is that the Government in Sunshine Act, passed a long time ago, 1976, affects the operations of the federal government, Congress, federal commissions, and other legally constituted bodies. It is one of the many Freedom of Information Acts intended to create greater understanding of decision making and transparency from the government. Thus, the public may see everything from us as Board Members brainstorming to fully developed or fully entrenched ideas during a Sunshine Act meeting. The idea is for Board Members to present information to fellow members prior to voting to adopt certain agency actions.

Much like the Supreme Court, each member has beliefs or experiences and uses one vote, may agree or dissent with the majority's decision. And similarly to the Supreme Court, a vote on the merits of what is presented for review neither forecloses the Justices from revisiting the same or similar issues later, nor does it imply that one side is unintelligent or soulless or lacking in moral character for viewing the same information very differently.

With approximately 14 public business meetings, I value the ability to be transparent, which is part of the government's

responsibility. Yet, in a societal time lacking in civility and focusing more on individuals and their ideas, the merits of those ideas, we must be vigilant in asking how honest are we to debate and really encouraging our citizens to be open and honest?

A recent article said that CSB is wrestling to define the limits of its authority. I would respectfully beg to differ. Our statute is clear about our broad authority. The CSB rather has struggled with answering the question of who it is and who it wants to be. It is an independent, objective agency, scientifically based, or is it grassroots lobbying entity, or is it a political and policy-based entity or a combination of these?

The answer of who we are drives our behaviors, our priorities, our discussions, and the expectations of stakeholders. Stakeholder feedback over the last two years has underscored that academia, regulators, and trade associations likewise have been unclear about our role, the role we should and do play, and they seek consistency.

Our deliberations on R7 or R15 may indirectly highlight some of these very issues.

But more importantly today, I'm here to talk about my perspective of the proposal made to us by the Recommendations Team. And I believe that the CSB should and could be a preferred source

of chemical safety information. It should be bold but based in data. It should be collaborative but clear in its own voice and, most importantly, independent from undue pressure by any single source at any given time. Data and analysis must be respected, lest inconsistency, unpredictability, low credibility and even absolutism may reign, which I recall as prior criticisms of this Board.

While the CSB's most critical role is to drive chemical safety change to foster a nation safe from chemical disasters, it must do so through its non-binding recommendations and advocacy based on investigative findings and conclusions. It has no regulatory or enforcement authority.

Which brings me to the question of R15. The question to resolve here has never been, has never been does CSB support or believe in worker or whistleblower protection.

In addition to the proposal from the Recommendations staff and four weeks of internal communications and document review among the Board Members, Investigations, Recommendations and our Office of General Counsel, I re-reviewed the CSB Statute, Board Orders 22 and 40. Our internal discussions highlighted among us that there is unanimous agreement within the Board and among the staff on the critical role of worker participation in safety management systems,

inclusive of effective whistleblower protections and stop work authority which help foster worker participation.

And it was clear to me, based on those discussions, that regardless of the disposition of R15 by this Board at this meeting, the CSB would explore alternate...alternative paths in driving chemical safety change. And some of those suggestion, I will summarize below.

In the public meeting last month, board members discussed at a high level the potential concerns with changing the status of this recommendation to closed/reconsidered. And as Member Kulinowski just articulated, one of those was whether there was a causal link, and even if there was a causal link, was the Department of the Interior the correct recipient of the recommendation.

Our Recommendations and Investigations staff have presented thoughtful, detailed discussion about the facts upon which they relied to make their proposal. Both teams' perspectives have merit, and moreover, the review of internal correspondence, surveys and interviews from that investigation demonstrate that the culture on the Deepwater Horizon and worker retaliation or stop work authority perceptions were not black and white and in some cases were positive.

Thus, even if one concludes that there is a direct or indirect causal link between the evidence and the recommendation, you must still answer the question who can or will address the proper implementation of this recommendation? And that is really at the heart of our debate, not our commitment to worker safety.

Department of Labor's Occupational Safety and Health Administration and the Department of Homeland Security's Coast Guard appear to have concurrent authority to regulate worker safety and health on the Outer Continental Shelf. BSEE and the Coast Guard both acknowledge the references in the OCSLA, Outer Continental Shelf Land Act, to carry out responsibilities either individually or jointly if they so agree. Federal agencies are given very broad deference in carrying out their statutory authority and their programs.

If the Department of Interior actually does not have jurisdiction over this matter or they simply believe that they cannot act because it does not have jurisdiction over this matter or they believe that another federal agency is better suited to carry out the intent and actions in the recommendation, the CSB can drive safety change on this topic by working with those who are willing and able to address it, rather than keeping a recommendation open indefinitely with a recalcitrant recipient.



Most notably, as you heard moments ago, Congress has initiated legislation at least twice related to offshore whistleblower protection. And at least twice it has named the Secretary of Labor as the responsible party for these issues.

I pause to repeat that twice Congress has chosen another agency apart from the Department of Interior to address offshore whistleblower protection. As we sit and deliberate about BSEE's determination that it does not...it is not the appropriate recipient, Congress re-introduced a bill last week affirming that the Secretary of Labor is the proper recommendation recipient.

Couple this fact with the fact of BSEE's interpretation, our staff's diligence in its proposal to the Board, the language in OCSLA about shared agency responsibility, and the overlapping roles of three different federal agencies on these matters, and it is more than reasonable to vote yes to close this recommendation reconsidered with regard to the recipient.

Our mission calls for the Board to drive chemical safety change, and it is clear there is ambiguity within the Federal government regarding the jurisdiction of offshore worker participation and protection. Thus, CSB is poised to highlight an issue that both Congress and various Federal agencies must collaborate upon, offshore worker safety.

The most important point of my remarks today is that strong worker participation, whistleblower protections, and well-implemented safety management systems are essential to achieve safe workplaces and, most importantly, our vision of a nation safe from chemical disasters.

Regarding the vote, it appears, based on correspondence between the CSB and BSEE, that BSEE will take no further action on the substance of the recommendation, which alternatively may lead to a closed/unacceptable vote at a later date, but still no action taken by the recipient in the interim. However, if we vote to affirm the Recommendation staff's proposal on R15 as closed/reconsidered, BSEE will still not take up the matter, will be switched with OSHA, and the CSB's work will continue without delay, not being diminished or curtailed, to effectuate change through the appropriate recipient.

We deliberate on documents and facts and data, and those presented made a reasonable case for reconsidering the recipient of this recommendation. The latter point is different from a categorical generalization that the CSB will no longer focus on offshore worker safety, simply because of today's vote.

Based on internal discussions, these are a few low effort/high impact initiatives that can be taken regardless of today's vote and

most likely would be taken even if BSEE were implementing this recommendation. The examples foster a necessary, continued dialogue on this critical safety issue. Some examples might be:

An issue...an issuance of a letter to Congress and/or necessary agencies that highlights the legislative gaps as articulated here today and the need to redress it.

To the extent that Congress has already initiated legislation, continuing to spur them to draft this legislation and offering the CSB's view on any pending legislative proposals.

Develop opinion pieces for dissemination through media platforms, such as traditional print media, articulating the need and value of worker participation in offshore operations.

Developing or issuing a safety alert about worker participation similar to that of the High Temperature Hydrogen Attack Safety Alert that we conducted when we did not believe the recipient had gone far enough.

And many other actions that we've discussed internally as part of this ongoing R15 discussion.

I will close and open the floor up to Members to speak a second time and respond to anything that they've heard their fellow Members say before initiating a vote. And in the order in which we

spoke, I will circle back to Member Engler for our first set of responses or comments if you have any.

MEMBER ENGLER: Two procedural questions. One is I would request that I can revise and extend remarks because I already found a typo in my statement, despite reading it over and over again.

VANESSA ALLEN SUTHERLAND: Okay.

MEMBER ENGLER: And second of all, I would like to know whether there's been any response sent to Congressman DeSaulnier in response to the correspondence that was sent. I think I received it...I did receive it this morning, that was sent to all Board Members.

VANESSA ALLEN SUTHERLAND: Yes, I have contacted Congressman DeSaulnier's office. I've left a message with this legislative director. I sent him and his legislative director an email in response, noting that we are in receipt of the letter and will respond immediately after this meeting, but we had two hours here. We have drafted a letter response that should be mailed out later today, but we can also fax that if we need to.

MEMBER ENGLER: And that can be shared with the other Board Members?

VANESSA ALLEN SUTHERLAND: Oh, of course.

MEMBER ENGLER: Okay. Well, first I'd like to say that I appreciate the evolution of this conversation because that...at our prior board meeting, we were essentially questioning whether CSB, based on what evidence there was in Volume 3 and Volume 4, could even issue...issue recommendations related to...to whistleblower protection. So I think there's been an evolution in the thinking of...of Board Members and I very much appreciate that. Because I think that we were basically narrowing our scope of analysis potentially. Not saying we were actually doing that in actuality but we were potentially doing that in a way that would lead us to not be able to look at some of the underlying organizational causes of major chemical incidents. And I think that would have been quite problematic. And as I indicated in the statement, really would have undermined the direction that Congress indicated in establishing the agency in the first place in the amendment to the Clean Air Act in 1990.

I...I still would maintain that there is a simple, practical, low-effort solution to this, which is to not as part of the vote, I understand, just to be clear in terms of procedure what the vote is before us, and I know I'm offering no motions to this effect because I understand a second motion is on the table.

With that said, I continue to support a rejection of the proposed status change to allow additional time for additional...for more work on this, which could be simply be...could simply be passing a notation item to make the proposed wording change. And I don't...no one has provided any conclusive arguments to me that we couldn't...that we couldn't do that. So what we're essentially doing is taking a step back on the core findings and recommendations of this agency.

We've had much discussion of late in terms of a period of time where we're challenged, lack of resources, uncertainty. The core of our work is the investigations and the recommendations. And as we've worked through together on the strategic plan to come up with all kinds of other potential initiatives. We've tried to come back that the core of our work is the investigations and the recommendations.

And so my preference would be to vote this down, to take a look subsequently to the practical language I proposed, and to move on from there to consider some of the suggestions and others that have been made today. I've read the section on worker participation three or four times. And I'm trying to find something wrong. I reminded myself of various suggestions I made to the staff that now seems a long time ago, in the spring of 2016,

some of which were accepted, some of which were rejected. I tried to put that aside because we have a finished product here.

But on this...on that particular question, I couldn't find a single sentence that was actually inaccurate. Could I find something that could have been more artfully said? Yes. And so I guess I ask the Board Members to identify if there are any sections of the underlying report...in other words, the assessments in Volumes 3 and 4, separate from the specific language of the recommendations, that are inaccurate.

VANESSA ALLEN SUTHERLAND: So before recognizing Members Ehrlich and Kulinowski to respond to any of the statements, I would take a liberty of also first responding to that question. Which is I don't think the recommendation as drafted is in-artful or ineloquent. It describes worker participation and whistleblower protection already, I think, in a very clear way. So I don't have any issue with the text. I have an issue with the recommendation recipient. So I wouldn't be able to point out for you a factual inaccuracy in the things that need to happen to provide better protection to offshore workers, because I don't think there is anything. And I haven't been presented with anything that needs to be added. I think those four provisions, A through D, are quite articulate. It just shouldn't have been to BSEE.

So I will recommend...recognize Member Ehrlich to address the questions posed by Member Engler or anything in the statements subsequent to yours.

MEMBER ENGLER: Well, I'm no... I'm of the same opinion you are, Madam Chairman. Thank you. I can't go back and say...articulate what was wrong or what was right, a word here or a word there. I think it's a very important issue. I don't think that anything that's been said here today would any way minimize what the agency supports and feels relative to employee participation and whistleblower protection. It's just the way it was done, okay.

And I...I just want to reemphasize my position on that. I think it's vitally important. I want to see time spent on advocacy and outreach related to that and the message we can get out there. Because I think it's a damn important message, okay. And that's... I can't directly comment to what Member Engler has submitted relative to those four points.

In terms of some other things, I thought Member Kulinowski was very articulate in this causal link thing. It's kind of interesting that the opinion came down from the California court this week relative to ExxonMobil and inasmuch the judge also kind of tied in this causal link thing and said, hey, you don't have it,



you don't go, okay. That's nothing new. I think maybe we have to work at how to better define that, which I think is...is a great objective. But it doesn't change how I feel about it. And, of course, I'm...I'm in a position where I'd like to see the motion go forward, approved, as it was made.

Thank you.

VANESSA ALLEN SUTHERLAND: You're welcome. Thank you. And recognizing Member Kulinowski.

MEMBER KULINOWSKI: Thank you, Chair Sutherland. I also did not take issue with the underlying report analysis, simply as you stated, the recipient of the recommendation.

But I also have a question and that is, is there anything foreclosing us from voting to approve this recommendation and then subsequently doing what Member Engler has proposed, which is going back and changing the text and reissuing it? I understand that it would take a vote to rescind and staff work and a vote to approve with the new language. But it's not clear to me that the decision that we make today affects that subsequent action at all.

VANESSA ALLEN SUTHERLAND: Two different motions. Two different proposals. So the motion today doesn't foreclose us from doing anything else in the future, as long as we have a motion that is properly seconded and a vote in the affirmative with a majority

vote to move forward with that subsequent action. Not [inaudible] them, so the action that we have today is voting on the proposal, irrespective of whether we engage Congress, whether we do letters, whether we do our own outreach. Those would be subsequent to an vote on approving, disapproving, or abstaining from the R15 vote.

MEMBER KULINOWSKI: Thank you, Chair Sutherland. That is what I thought but I wanted to make sure that I understood that correctly as...as a procedural matter. So without opining on whether or not I would support subsequent action on the report and a reissuance of the recommendation, the...the actions that you have described as communicating clearly, I...I actually agree. I think what you said was that we have a clearer path to speak to Congress about the need for, you know, directing it to a different recipient, than if we hold this open. Because if we hold this open, we're still saying we're still committed to this course of action and how can we support a different course of action by Congress if we're still on record as supporting this other course of action, which is different.

So I...I...if that's what you were saying, then I agree that the path is clearer for us to do stronger advocacy to get perhaps even standalone whistleblower protection and worker protections offshore and have legislative clarity on who has the authority for that.

That path is easier if we close this recommendation than if we keep it open.

VANESSA ALLEN SUTHERLAND: Thank you, Member Kulinowski. Yes, that is what I was saying. And...and, two, it struck me that if Congress continues to reiterate the Secretary of Labor, most likely OSHA as a sub-administration, is the most likely recipient, and that they will...if the legislation ever moves forward and is fully implemented...[inaudible] and implemented, that they would be expecting OSHA to take this on.

Yes, I think we have a stronger path spending our time and resources now on helping make that effort a reality however we may. And to not, in the short term, create confusion by sort of channeling or forcing BSEE to take action that may later be completely out of their jurisdictional scope and based on all [inaudible] will be out of their scope.

So for them to spend time on those resources instead of figuring out how to partner with OSHA or partner with the Coast Guard or for us to be spending our resources on highlighting the legislative gap that we have identified and supporting Congressional efforts to move this forward to OSHA, yes, I think we are probably all better suited to encourage the federal agencies to work together in the short term. But to figure out a way to help

amplify the criticality of the legislation that continues to be introduced but not get further than the House.

I...my last comment really is that I very much appreciate the fact for the three of you to come out and give your opinions openly and to have put the time into writing them down and thinking about it not only helps us to delve into really complicated issues [inaudible] by our own thinking. I really appreciate that we have challenged each other with our own opinions or original positions or assumptions to help us refine how we're thinking about this. And, as part of the Sunshine Act, to allow people to see how agency operations and business is done, why people make certain decisions, how they interpret their own mission.

So I first want to say thank you to the three of you for that. Second, I am not going to opine on subsequent actions that [inaudible] a motion that's on the floor. We're only focused on clarifying any points that we've heard in order to be able to make a vote on R15, to approve, disapprove, or abstain from it. So I also am not going to take up if we vote this way, then this. Because that's not the motion at hand.

But I will say I'm inclined, based on all of our subsequent internal discussions over the last four weeks following the October meeting, and the additional documentation, dialogue among the

members, to vote to approve closing the recommendation as reconsidered and then to put our eggs in the basket of getting the right recipient and hoping to facilitate Congressional action and to facilitate understanding through our own safety bulletins, our own bully pulpit, our own advocacy and outreach, and anything else that we come up with, including Member Engler's suggestion.

So I think all options are on the table because I've heard violent agreement that voting on data as presented to us is not a repudiation of keeping people and the environment safe. And so I'm inclined, after hearing the statements and having done my own preparatory work for this meeting, to vote to close the recommendation reconsidered/superseded.

Is there any final debate? I will make one...

MEMBER ENGLER: Yes, I have a question.

VANESSA ALLEN SUTHERLAND: I will make one round of each person [inaudible] second time unless everyone else has spoke and we've done that. So we'll go through one more round before calling for a vote. Member Engler.

MEMBER ENGLER: I have a question, though. If we close this as proposed, and then we follow-up the...this four-part recommendation... It's unfortunate that it's in four parts and the way it's structured, but that's the way it's structured. We

discussed the...the various opportunities for action have been proposed, including a response to Congress around the whistleblower issues.

What happens to the other three parts of the recommendation, that...those being elected worker representatives and safety committees on rigs, the enhanced stop-work authority, which in my analysis is clearly shown to be different than simply redundant of what authority BSEE already has, and the result of discussion of a tripartite safety conference that...that did not receive any attention in BSEE's response, I believe, and not in mine. But it is part of the recommendation.

VANESSA ALLEN SUTHERLAND: So I will respond and...and certainly, in order, ask Members Ehrlich and Kulinowski to respond as well. I think that's the beauty of us engaging Congress to clarify the legislative gaps. That is one of four. And so it would...I think it's still incumbent upon us to articulate when they ask us. I mean I received a letter, as you alluded to, from Congress today to take a look at the matter more robustly. I think the question becomes how do we clarify in statutory and legislative action who is responsible for offshore worker participation, whistleblower protection, and stop-work authority.

We already know that BSEE...this is...this is my, you know, response just to your question. We know that BSEE's not going to take any action. So we can close it unacceptable. No action will be taken. We can close it reconsidered and find the right recipient. But at the end of the day, the types of gaps and issues that we are describing, I believe that Congress has the biggest and most powerful voice to help direct the federal agencies to address issues that are critical to offshore operations. And I don't think that we...in good conscience, I wouldn't be able to sort of say to them [inaudible] worker participation or just do whistleblower or just do stop-work. When I say I think we need to engage Congress in the three relevant federal agencies, that's to deal with all four drafted elements of R15.

That would be my...my approach. I know that's probably something we need to vote on. But my perspective is we don't leave any of them on the table. It's a package deal because all of those issues intersect.

MEMBER ENGLER: Does that suggest that BSEE does not have the authority to do stop-work authority under [inaudible] or...or other aspects, putting aside the whistleblower sections part of the recommendation? It's very confusing to me to now talk about going to Congress...and this is why I disagreed with the analysis of the

Recommendations Department. One of the reason is, is that there was acceptance of an argument by BSEE that they didn't have authority. Or, more accurately, as...and refer to the statement for the direct quotations of the material, that they might not have authority or they didn't think they had authority or maybe they didn't have authority or maybe they did have authority at one point.

So here we're now talking about going to Congress about four issues where our...where we're still in internal disagreement over who has authority, where BSEE is basically making...taking a position that they don't have authority over things they already do. I think this is... I will probably agree that this confusing. I will...I will cede to that.

VANESSA ALLEN SUTHERLAND: It is, but I would ask is the CSB the right entity to...to wade through and opine on the ambiguity? We can provide our analysis but at the end of the day, it is the federal agency responsible for carrying out its statutory program and Congress who dictate what their authorities and jurisdictions will be.

So even if we disagree about who it should be or whether BSEE should keep part of it or not, to me, that's part of the ambiguity that we're discussing. We already realize there's conflict in



offshore. We already realize there's conflict of, you know, we can work together jointly or not jointly. We can't unravel that. We're highlighting a really major problem and we should be doing that. We are also highlighting that if it's confusing to us and confusing to three federal agencies, somebody else needs to resolve it. We can't dictate to them how to resolve it, what their authority is or isn't, what Congress meant or didn't mean. But Congress can. And those federal agencies should then be held to account to implement whatever authorities are clarified.

But I don't know that we are the primary voice or enforcer of if were to say, "BSEE, this piece is yours. And OSHA, this piece is yours." If they still disagree, we are still left with this [inaudible] that I think we are all struggling with. And that is where Congress needs to opine and either draw a brighter line among the three agencies or, quite frankly, give them some joint, you know, leadership or articulate how that's going to work.

But I think our suggestion and analysis and recommendation is just that. It's a suggestion or recommendation based on how we are reading what they're all reading as well. That's my... I recognize Member Kulinowski.

MEMBER KULINOWSKI: Thank you, Chair Sutherland. So this bill was introduced first in 2010, with previous Chair of the Committee.

Now it's been introduced twice by the ranking member, a new member of the...of the minority. There is no guarantee that Congress will take this action. It passed in the House. That was when the House was in Democrat majority. That's not the case today. So we have no guarantee that A) Congress will take this action or any action. We have no control over that. What we can do is advocate.

So if we believe that this bill doesn't go far enough because it only covers one of our four recommendations and three of the others have regulatory murkiness, as I called it, then there's nothing to stop us from including that in our...in our communication to Congress. Not only do you, you know, should you pass this bill on whistleblower protection, but you should also fold these other three things into whatever legislative remedy you have. There's nothing stopping us from doing that.

So, from my perspective, I agree with you that the way the recommendation was written binds us to vote all or none. We have to vote on them as a group, not splitting them out. But without that restriction, there's nothing to stop us from going to Congress and encouraging them to consider all four of them and have them figure out who does what.

VANESSA ALLEN SUTHERLAND: Member Engler, any final comments?

MEMBER EHRLICH: Member Ehrlich.

VANESSA ALLEN SUTHERLAND: I mean [multiple voices].

MEMBER EHRLICH: I don't have any final comments. [laughter]

VANESSA ALLEN SUTHERLAND: I'm so sorry, Member Ehrlich.

MEMBER KULINOWSKI: Good thing my name doesn't start with an  
E.

VANESSA ALLEN SUTHERLAND: Yes, I know, I know.

MEMBER ENGLER: Doesn't matter because Manny and I agree on  
everything.

[multiple voices]

VANESSA ALLEN SUTHERLAND: Any final comments?

MEMBER EHRLICH: Only...only what I said earlier, that this is  
not just for offshore...protection of offshore workers. It is for  
the community at large that we serve. And I think that's a message  
that...that has to be out there. And whether we approve or  
disapprove, it's not going to change our commitment to the facts.

VANESSA ALLEN SUTHERLAND: So I would say, before calling for  
the vote, I agree with all of those final comments. We've...the  
agency has had to close recommendations in the past as unacceptable  
and then we sat around and discussed how do we get the message out  
and amplify this issue because it didn't go far enough or it wasn't  
taken up at all by the recommendation recipient. And I actually  
see this as being no different.

I would also say I agree 100% with my fellow Board Members and your...all of your statements that this doesn't foreclose us from taking additional action. And we are really only limited by our own innovation and creativity about how we want to tackle that. We have a wide variety, probably things we haven't even come up with, of options already on the table. I think at our last meeting we counted six or seven. And I'm sure that engaging stakeholders and others, we'll probably get other feedback.

But if we have willing participants in Congress, despite the fact that it may not go anywhere, which we've seen in other safety issues, we still have an obligation to pick up the mantle when no one else is doing anything and hold the regulated, the regulator, academia, standard developing bodies, community groups, whomever accountable for highlighting these issues and figuring out how to make changes where they have the ability and authority to do that.

That's why we were created, to be independent from all of them and not to use the Sunshine Act, but to shine a light on where they need to fill really critical safety gaps. That's incumbent upon us and it's in our strategic goals. It's number two—outreach, advocacy, and highlighting issues that even if we cannot move the needle on recommendations or move a recipient to act, it's still up to us to get out a megaphone and explain what we have found. And I

think we have the ability to do that. Despite our size, we do that very, very well.

So if there's no further debate, I will...

MEMBER ENGLER: I have a question.

VANESSA ALLEN SUTHERLAND: A question, okay.

MEMBER ENGLER: Yes. Have we... I mean I...it's my understanding that we have not met with the new leadership of BSEE. Is that correct?

VANESSA ALLEN SUTHERLAND: The staff [inaudible] have not met with the new leadership of BSEE. You mean appointee level, critical appointee level?

MEMBER ENGLER: Yes, yes.

VANESSA ALLEN SUTHERLAND: Correct.

MEMBER ENGLER: I'd like to note for the record that the new director of BSEE expressed concern about the extent of participation in the...in a BSEE reporting program...the limited extent of participation around near miss reporting, in particular, according to one published account. And I think it would be well worth our while to...to attempt, and I would have preferred this to happen before this process was initiated, to meet with the new leadership of BSEE.

And while I certainly recognize that much of their focus seems to be in line with expanding drilling and exploration in the Gulf, BSEE still has a mission to protect workers and the environment. And I think it would be...have been well worth our while as a Board, given what happened in the Gulf disaster, to have been...you know, could have suggested this earlier myself, seize the opportunity when new leadership does come, where there's also evidence of someone who seems concerned about the issue that I raised, the lack of near miss reporting, which is an incredibly important aspect of this. And we've talked about this. The Board has opined on this in its published hearings on leading indicators.

So I would urge the Board, through the Chair, to set up a meeting with the head of...the director of BSEE as soon as possible, as part of the evolution of work on this...on this issue.

So there are statements after the vote. Is that correct?

VANESSA ALLEN SUTHERLAND: Not from us.

MEMBER ENGLER: So I'll just make a...I'll just make one sentence of a closing statement. I mean I continue to urge fellow Board Members to vote against the proposal before them today. I appreciate the evolution in thinking, particularly concerning the issue of causation, as I mentioned earlier. But I do think that the...that the... I appreciate and support the intent of what's been

said by Board Members today. But the metric, the measurement, the evaluation that I've made is in a sense looking at what was perhaps the greatest environmental disaster in U.S. history, where 11 workers were killed and many were injured, brought devastation to the Gulf, and was trying to figure out a practical way, without taking the risk of undermining the core work of the agency, which is on investigations and recommendations. And that's why I propose [inaudible]. So where we go from...from after the vote is entirely up to the Board majority in this case, as...as in other cases of what our major initiatives are and I look forward to participating in that discussion with the hope that the words expressed today will be translated into concrete, specific action. Thank you.

VANESSA ALLEN SUTHERLAND: Thank you, Member Engler. In closing out, before we do the roll call, Member Ehrlich.

MEMBER EHRLICH: No further comments.

VANESSA ALLEN SUTHERLAND: Member Kulinowski.

MEMBER KULINOWSKI: I just want to underscore what we all said earlier, which was that this vote should not be interpreted as an action that is in any way undermining the core mission of the agency. In fact, we have core values that include technical rigor and continual learning and...and other things that I hold dear. This

is...in my opinion, my vote today is in complete agreement with those core values.

So I will join with you. I will join with Member Engler and seek to take some concrete steps after this meeting, including responding to Congressional inquiries and continuing to advocate strongly for worker participation in the offshore. And I think that we can do that as one Board since we have so much agreement on this core issue. Thank you.

VANESSA ALLEN SUTHERLAND: Thank you, Member Kulinowski. And my only comment is, having had the Sunshine Act deliberation, it would be the most disturbing to me to have the outcome and, for those who aren't in the room and on the phone, the public perception to be that the agency did not act or enforce. We don't enforce or enact anything. We make non-binding recommendations. It would be moreover equally disturbing and I think it's more corrosive to our mission to have the outcome of this meeting be presented as, you know, alert, alert, the Board Members today pulled back on caring about workers or whistleblower protection.

What I heard very passionately from Member Ehrlich, having frontline experience with having to tell people with whom he worked that their colleague had died or telling the spouse that they had died, hearing Member Kulinowski's eloquent statement regarding the



decision to move forward and put our...our resources on making change with the appropriate agencies, Member Engler's passion about making sure that we take this issue up in a variety of ways to keep it at the forefront of...of all stakeholders' minds, and quite frankly, from my own experience because I think...I have been a regulator, been in the manufacturing facility, and like Member Ehrlich, have had people lose a finger or get seriously injured or maimed in those facilities.

And so I would be mortified if what the outcome here is that the Chair and three Board Members...well, two Board Members, three Board Members, one Board Member, whatever it is, decided that because a recommendation status needed to be reconsidered and sent to recipients who are more likely to take action and who hopefully, subsequently will have clearer jurisdiction, because our analysis was that, we don't care about offshore workers.

I don't think I, you know, can supplant my expertise for Congress's, BSEE's and OSHA simply because I want it to be so. And I think the facts presented today make it clear that we have a difficult task at hand. And that's not to shoehorn this requirement into BSEE. It is to figure out the right fix and get everybody who can help us make that fix involved, and to not lay passive to wait for something to happen. But we need to take

ownership of being a Board, an independent Board. And if we want it to happen, we need to get out there and explain why and, yes, meet with leadership and, yes, meet with Congress.

But turning this into a very simplistic outcome would really mean we have not communicated the message effectively as a Board to the public. And for that, I would think, wow, what a very sad day for our mission that that would be the takeaway after all the discussion and analysis presented.

So, with that, I will ask the Office of General Counsel, Ms. Wenzel, to read the roll for voting on the motion... I forgot to repeat the motion. The motion is to vote on R15 recommendation from the Macondo investigation as presented by the Recommendations staff.

KARA WENZEL: Member Ehrlich.

MEMBER EHRLICH: I vote in the affirmative.

KARA WENZEL: Member Engler.

MEMBER ENGLER: Opposed.

KARA WENZEL: Member Kulinowski.

MEMBER KULINOWSKI: Approve.

KARA WENZEL: Member Chairperson Sutherland.

VANESSA ALLEN SUTHERLAND: Approve. So there are three votes in the affirmative, one in the negative. The motion has passed.

So next, just for those who are minding their time, it's 2:25 and we have to still get through open investigations, recommendation status updates, organizational updates, IG updates, finance, and public comments. So I will try to talk quickly and not make it sound really, really unintelligible.

So moving to our investigations update, which I will just note, given our time, is always current on our website, [www.csb.gov](http://www.csb.gov). I will start with Member Kulinowski providing updates on Sunoco and Packaging Corporation of America.

MEMBER KULINOWSKI: On August 12, 2016, seven workers were injured, including four critically, at Sunoco Logistics Partners, a terminal facility in Nederland, Texas. The incident involved a flash fire during welding, also referred to as hot work. The status is that the CSB's draft report has entered internal review and the team is awaiting comments.

On February 8, 2017, an atmospheric storage tank exploded at the Packing Corporation of America facility in DeRidder, Louisiana, killing three workers and injuring seven others. On the morning of the incident, PCA issued a hot work permit to the fatally injured workers to repair piping near a 100,000-gallon atmospheric storage tank which likely contained an explosive atmosphere.

The status of this investigation is that the CSB investigation team has completed its draft report, which will soon be undergoing Board review.

VANESSA ALLEN SUTHERLAND: Thank you, Member Kulinowski. Member Ehrlich?

MEMBER EHRLICH: I'd like to report on Loy-Lange Box Company and DuPont.

The Loy-Lange Box Company investigation examined the April 3, 2017, multi-fatality incident which resulted from a catastrophic steam explosion of a pressure vessel, caused when the entire bottom of the vessel separated instantaneously at the location of a 2012 corrosion repair. The vessel was part of a utility system used by Loy-Lange Box Company in the production of corrugated board products. Both the main portion of the vessel and the bottom remnant that separated have been recovered. Key areas of the focus continue to be the circumstances surrounding the 2012 repair, the cause of the corrosion, and the opportunities that may have existed to detect the progression of corrosion damage over time.

Status. Metallurgical testing of the vessel has been completed. Preparation for final interviews are underway. Final development of the cause and effect mind map will follow, with subsequent identification and key findings and recommendations.

With regard to DuPont LaPorte, Texas, November 15, 2014. On November 15, 2014, nearly 24,000 pounds of methyl mercaptan was released at the DuPont Chemical facility in LaPorte, Texas. The release resulted in the deaths of three operators and a shift supervisor inside an enclosed manufacturing building. Additionally, three other workers were injured from their exposure to methyl mercaptan and at least three more workers experienced methyl mercaptan exposure symptoms.

The CSB investigation team completed its draft report, which will be reviewed by the Board.

I'd just like to add a couple of comments...or one comment, basically, to both of these...both of these reports. It's very easy to read a report and say, well, two people died here, three people died there. And when I talk in the field about this, I tell people all of these things we do, people didn't have to die. Okay. They really didn't. And in...what makes this one case, Loy-Lange, so gut wrenching and pathetic is that two of the innocent bystanders to this investigation were a couple who worked in a building next door, had just started out married life together, reconstructing their lives after some truculent times before that. And this damn thing comes through the roof and kills them both, first day on the

job. Okay. And...and that's sad. I mean it's...it's not just the fatalities. It's sad, okay.

And in the case of the four people that died in LaPorte, two of the...two of the guys that died in that mercaptan exposure were brothers, okay. Basically took out the whole family. And we had to meet with the sister down in Texas. That's gut wrenching.

And so it's hard to impart that kind of thought when you read these reports, but I think we need never to lose track of the fact that that's the business we're in.

VANESSA ALLEN SUTHERLAND: Thank you. Member Engler.

MEMBER ENGLER: I'm reporting on two investigations, one at Enterprise Products operations, where a flammable gas release and fire and explosions occurred at the Pascagoula Gas Plant, in Moss Point, Mississippi on June 27, 2016. There were no fatalities or injuries, but members of the public in the nearby community evacuated.

Initial phase of metallurgical testing has been completed and results shared with all involved parties. Pressure testing and sectioning of key equipment was completed and final metallurgical testing is expected to be completed in December.

Second report is on MGPI, where on October 21, 2016, a chemical release occurred at the MGPI Processing plant in Atchison,

Kansas. MGPI Processing produces distilled spirits and specialty wheat proteins and starches. The release occurred when a chemical delivery truck, owned and operated by Harcros Chemicals, was connected to a tank containing incompatible materials. The plume generated by the reaction led to a shelter-in-place order for thousands of residents. At least 140 employees and members of the public sought medical attention.

This report addresses some very interesting issues, including what the optimal role of the local emergency planning committee could be. The status is that Board Members are currently review the close to final edition of the report and will be making comments back to the investigation team prior to receiving a voting copy in the near future.

VANESSA ALLEN SUTHERLAND: Thank you, Member Engler. I will now provide updates on three investigations, starting with Arkema.

Rainfall from Hurricane Harvey flooded the Arkema organic peroxide manufacturing facility in Crosby, Texas, on August 27 of this year. As the flood waters continued to rise, the facility lost electrical power and thus the ability to maintain refrigeration for the organic peroxide product containers that required cold storage. Arkema's hurricane ride-out crew relocated the containers from storage buildings to nine refrigerated

trailers, but several of those also lost refrigeration due to rising flood water.

Emergency responders ultimately evacuated that ride-out crew on August 29<sup>th</sup> and established a 1.5-mile perimeter evacuation zone. But lacking the ability to maintain refrigeration for the organic peroxides, they warmed and some reached their self-accelerating decomposition temperature and burned. One trailer burned on the 31<sup>st</sup> of August, two subsequently began to burn on September 1<sup>st</sup> and it was decided among emergency officials that they would initiate a controlled burn of the remaining six trailers on September 3<sup>rd</sup>. And thus, the evacuation zone was lifted on the 4<sup>th</sup> of September, so that residents could return to their homes.

The status of that is that the investigation into the loss of refrigeration and the resulting fires continues. However, you heard it here first. The CSB will be releasing a short animation and factual update into our Arkema investigation tomorrow morning here in D.C. For media in D.C., we will be at our offices at 10:30 a.m. But we will also have a call-in number for anyone who would like to participate remotely.

Nest is Midland Resource Recovery, which operates a facility in West Virginia that, among other things, decommissions equipment previously used to odorize fuel gas. Two explosions occurred at



that facility in a four week period, killing a total of three workers and seriously injuring another. The first explosion killed two workers and seriously injured the contractor on site and literally only four weeks...I'm sorry, three-and-a-half, four weeks later, a second explosion occurred at the facility, killing that fourth worker. Both explosions happened during activities to decommission the equipment. And we have released a factual update on that incident as of September 22<sup>nd</sup>. Our investigative staff continues its documentation of the facts and analysis to prepare a final work product.

And lastly is the Didion Milling summary. On May 31<sup>st</sup> of this year, an explosion occurred at the Didion Milling facility, which is located in Cambria, Wisconsin. Luckily, it occurred at 11:00 p.m. at night when there were only 16 employees working the night shift. Five employees, unfortunately, were killed, and more than a dozen were injured. But I say fortunately, because our investigators determined that had this explosion happened in the morning, as many as 50 people would have been involved in that combustible dust explosion and many more than the five may have been killed.

We have completed interviews with all eye witnesses willing to speak with the CSB from the night of the incident. We have been

reviewing almost 3,000 documents, as well as examining the equipment data for the month leading up to and then the night of the incident. [inaudible] doing, I think, a really great job in collaborating with the local community, OSHA, EPA, emergency responders. And an update will be forthcoming on that.

Next, for recommendations, our current ratio is 79%. That means 639 recommendations have been closed, out of a total of 804 issued, which means 21% remain in open status, or 165. The status of all of our recommendations can be found also on the website, [www.csb.gov/recommendations](http://www.csb.gov/recommendations), including any of the ones that we voted on today.

Next, organizational updates. The staff and Board Members have reviewed the final status of our last year's action plan to evaluate our completion of goals. And, as I mentioned at October's meeting, we were finalizing our FY18 action plan, which reflects some priorities that were deferred from last fiscal year due to the activities of our possible elimination. So some things are carried over from FY17 because we were unable to get to them.

Some of those priorities are annual or legal requirements, reports, filings, etc. But many of them relate to very creative innovations of the staff on updating our Board Orders, innovating

how we communicate about safety issues, recommendations, statuses, etc.

As an agency, we are still very excited about our 2018 initiatives, continuing to focus on timely completion of reports, outreach and operational improvements, and we believe it's going to be a very busy year. I think our [inaudible] report performance accountability...performance and accountability report will be out soon, showing what we were able to accomplish in FY17.

So moving on to IG updates. As of November 8<sup>th</sup>, the CSB is currently working with the Office of Inspector General on one audit. It's the financial statement audit. The CSB met with the auditors for an exit conference. The audit results are as follows.

CSB will receive an unmodified opinion on its 2017 financial statement. No significant deficiencies or material weaknesses in the internal controls over financial reporting were identified. CSB complied with all applicable laws and regulations. One control deficiency was reported in CSB's 2017 management letter report, as...as compared to seven in its 2016 management letter report. And seven of...those seven were closed out in 2017.

Next, for our finance update, the CSB, like the rest of the Federal Government, is operating on a continuing resolution that provides sufficient funding for us to continue work, including

deployments and our investigative activities, through December 8, 2017. We continue to work with our respective appropriations subcommittee's staff for full FY18 funding.

This concludes our operational updates. I will now ask the operator to open the line for any questions or comments and I will remind those who are in the room. If you have a comment, please sign up on the yellow form that is on the table to my left. And we will also...we will begin with the list of people who have signed up to speak in the room, which will give those on the phone time to queue up. If you have an email comment, please email those to [meeting@csb.gov](mailto:meeting@csb.gov) and will address them as they come in.

So our first comment is from Shanna Devine. I hope I got that right.

SHANNA DEVINE: You got it right.

VANESSA ALLEN SUTHERLAND: Okay, thank you, Shanna. From the Worker Health and Safety Advocate Public [inaudible].

SHANNA DEVINE: Thank you.

VANESSA ALLEN SUTHERLAND: You're welcome.

SHANNA DEVINE: Public citizens organization, I'm a worker health and safety advocate. I can just comment from here?

VANESSA ALLEN SUTHERLAND: Yes.

SHANNA DEVINE: Thank you for the opportunity to comment today. Public Citizen is a national consumer rights organization and we represent more than 400,000 members and supporters. We advocate in an array of issue areas to advance the public interest, including for worker health and safety, as well as whistleblower protection.

The Deepwater Horizon rig should not have been in operation prior to the April, 2010 explosion that claimed the lives of 11 workers and, in its wake, caused unprecedented environmental as well as public health impacts throughout the Gulf. The rig had an alarming record of safety violations. In a 2009 audit by BP found that Transocean, the rig's owner, had not completed nearly 400 maintenance jobs. Their report also found a number of problems.

These violations persisted in an environment that discouraged workers from reporting safety abuses. In July of 2010, the New York Times reported that a confidential survey of workers on the Deepwater Horizon in the weeks before the oil rig exploded showed that many of them were concerned about worker safety practices and feared reprisal if they reported mistakes or other problems.

From that preventable tragedy more than seven years ago now to last month's gas platform explosion in Lake Pontchartrain that claimed the life of foreman Timothy Morrison, it is inexcusable

that there are not whistleblower protections in place for offshore oil and gas workers. As acknowledged by the Board today, this statutory gap must be closed.

The Chemical Safety [inaudible] your Board's investigative report into the Deepwater Horizon explosion conclusively recommended whistleblower protections for offshore oil and gas workers, among other recommendations. We agree with these recommendations. But we also agree with the recommendation to proceed with a reissuance of the Board's recommendation, this time to Congress, in order to enact offshore oil and gas whistleblower protection.

As discussed by the Board, last week the House of Representatives reintroduced the Offshore Oil and Gas Worker Whistleblower Protection Act, HR-34-04, for the third time. This commonsense, responsible legislation provides gold standard whistleblower protection for workers to disclose unsafe working conditions and [inaudible] workers the right to stop working if they fear they could be injured or killed on the job. Importantly, its coverage extends to cleanup workers as well as emergency response personnel in the outer continental shelf as well.

This bill is consistent with the goals stated in your recommendation to provide a workplace free from fear. The CSB and

BSEE's...both BSEE and the CSB should support Congress's swift passage of this long-overdue legislation and I thank you for the opportunity to comment today.

VANESSA ALLEN SUTHERLAND: Thank you very much, Ms. Devine. Operator, are there calls in the queue?

OPERATOR: At this moment, we show no questions. As a reminder, please press \*1 to get into the queue.

VANESSA ALLEN SUTHERLAND: Thank you. I'll open it up for anyone who didn't sign up in the room, if you have any questions. If not, I will ask our Board Affairs if we had any email comments or questions at [meeting@csb.gov](mailto:meeting@csb.gov).

UNIDENTIFIED: No, not at this time.

VANESSA ALLEN SUTHERLAND: Thank you. So I would like to thank our Board Members for today's discussion and debate. I'm thanking our team in advance, Investigations and Recommendations, because what I also heard is we just indirectly assigned them a lot of work. So...I think I heard that as a subject. I'm just saying I'm thanking them ahead of time for all of the things that we said we want to tackle on this really important issue. And also thank you, Ms. Devine, for sharing those comments and for those who will read the transcript being able to read that into the record. Thank you for that.

So I'd like to thank the staff again for their teamwork and efforts in preparing for this meeting and their dedication to the ongoing work of the agency. All of us share the same interest in preventing chemical disasters in the future. And certainly having no additional loss of life and the type of catastrophes that we've investigated.

I also want to thank everyone who attended this meeting over the phone. I know it's difficult. And in person for coming out and staying the entire...oh, gosh, hour and...over an hour. And our next public business meeting is tentatively scheduled for January 31, 2018. We will have all the updates on the website to confirm that date. But if you are signed up for receiving announcements, you will get confirmation of that date. We will also post it in the Federal Register and on our website.

So thank you, again, for your attendance and with that...oh, I almost had the gavel. Do you...

MEMBER ENGLER: I would just like to announce again, for those who may still be on the line, that if you would like to get a copy of my statement that was distributed to everyone here, you can email me at [rick.engler@csb.gov](mailto:rick.engler@csb.gov).

VANESSA ALLEN SUTHERLAND: They'll be posted.



MEMBER ENGLER: I trust that things will be posted expeditiously.

VANESSA ALLEN SUTHERLAND: We're going to put them all together so that we can assure that they're posted and available all together instead of individually sending them out. Some people won't get it, some people might.

MEMBER ENGLER: How soon are we doing that then?

VANESSA ALLEN SUTHERLAND: We have our typical process, which is making sure that the transcript is done and that the statements are included. So that usually takes three days or so, three to five days.

MEMBER ENGLER: Transcript?

UNIDENTIFIED: Can you put a rush on it just because...

VANESSA ALLEN SUTHERLAND: We can put a rush on it.

MEMBER ENGLER: Okay, thank you.

VANESSA ALLEN SUTHERLAND: Yes. [inaudible]

MEMBER EHRLICH: Member Engler has a closing comment.

[laughter]

VANESSA ALLEN SUTHERLAND: Yes, Member Ehrlich/Engler.

MEMBER EHRLICH: I'd like to thank our staff for what they do to help us. And I see Johnnie back there, in particular. But all of the staff, including Special Assistant Zoeller, administration,

and legal, and the Board Members as well. Most importantly, I think what you have brought to this forum, if you will, Madam Chairperson, is the fact that we do know how to operate in the Sunshine Act. And even though I get torqued off every time Legal Counsel says, "Hey, you can't discuss that," at least now I have a forum in terms of knowing how you can discuss it and why it's beneficial. And I want to thank you for that.

VANESSA ALLEN SUTHERLAND: Thank you. Member Kulinowski, since we're going through the row, let's do it.

MEMBER KULINOWSKI: I have nothing further to add.

MEMBER EHRLICH: You didn't get her introduced as Member Ehrlich, did you? [laughter]

[multiple voices]

VANESSA ALLEN SUTHERLAND: Okay, so this time I really mean it. The meeting is adjourned.