



U. S. Chemical Safety and Hazard Investigation Board

MEMORANDUM

To: Investigation Supervisors and Team Leads February 18, 2014

CC: Chairman Rafael Moure-Eraso

From: Member Griffon and Member Rosenberg

Subject: Response to Investigation Supervisors Memo (February 10,2014)

Thank you for your memorandum. While we disagree with many of your contentions, we appreciate the hard work and dedicated service of all the CSB staff and welcome the opportunity to discuss ways to improve the processes in our agency. We share your concerns with the current process and believe that improved communications and planning will be helpful in resolving many of these problems

It is very clear in your memo that communications continue to be a serious problem in the agency. We believe that more communication, not less, would go a long way toward resolving problems. We understand that staff has been discouraged from speaking with Board Members. The assumption that Board Members should not be talking to staff is supported by your criticism of Board Member Rosenberg's going to the Denver office "unannounced." That she arranged hour-long appointments over a two day period with every CSB employee in Denver, and postponed her trip from April to June so as not to interfere with a particularly busy time for the investigators, could hardly be deemed "unannounced." She did it to improve communication and to find out what is working and what is not working in the agency.

The Board meeting in Richmond, California on January 15, 2014 highlighted on-going investigation planning problems. As you have told both Members Rosenberg and Griffon, the pattern of compressed timelines as investigations are coming to a close has had negative consequences. Publicly announcing the date for a Board meeting prior to offering a draft report to the public for review, as was done with the Chevron Regulatory Report, results in a frenetic staff and Board review process that pressures the staff to finalize the report and pressures the Board to not fully consider all comments and report modifications. We have made requests to extend review time or push back a public meeting, not to in any way obstruct your work but rather to ensure the reports are of the highest quality. Member Griffon's communication with the Western Region Office Director, Mr. Holmstrom, was intended to express the concern of being able to complete reports and incorporate all relevant comments prior to agency-imposed deadlines for two very important reports for the agency (Chevron Regulatory Report and Tesoro report). His motive was to ensure that these highly anticipated reports are beyond reproach.

The rush to finish the Chevron report compromised our ability as Board Members to consider all comments in our deliberation. Comments on the report from all our stakeholders – labor, government and industry - were pouring in up to the last minute, which informed our decision to postpone the vote for 120 days. Some of these very significant comments included:

- Mr. Stephen Gill, a professional who worked under the safety case regulatory structure in the UK, commented, with regard to the Chevron incident, “The failure was due to the fact that the company internal standards on inspection of piping prone to sulfidation corrosion weren’t followed (e.g. 100% component inspection of vulnerable systems), and that the inspection data that was available from the other components did lead to the conclusion that a failure was likely. In this case, at least certain parts of the Chevron organisation understood the hazards and had specified controls for it. The fact that it fell between inspection departments, turnaround planning decision making, and other parts of the organisation are in my opinion just as likely to have happened in a safety case regime as they would in a PSM regime.”
- Mr. Kim Nibarger, United Steelworkers International Union, in his comments at the January 15, 2014 meeting in Richmond, CA said “There are some good elements in the PSM standard and there are good elements in a Safety Case. The Safety Case should certainly be explored and considered. But there may be more immediate benefit in trying to beef up the elements of PSM that are weak. And we have a list of some of the things that we think need to be beefed up. In the meantime, we cannot let the perfect be the enemy of the good, or forego useful incremental changes in the search for a more major change. There are many things that federal OSHA and Cal/OSHA and currently through the Industrial Safety Ordinance could do to improve the regulation of oil refineries and other high-hazard plants short of adopting a full safety case framework. It may be easier improving what is in place, considering the litigious environment we now face with nearly every OSHA citation going to a solicitor under contest and sometimes waiting years for a trial date. Meanwhile, the workers are exposed to the hazards the company was cited for while they fight over a legal interpretation.”
- Mr. Michael Baram, Boston University, a contracted expert reviewer, thought that the report could be strengthened if it had a more balanced presentation of pros and cons of safety case and current US programs. He stated “Discussing implementation issues would also correct an obvious imbalance in the report which provides information on problems in implementing OSHA, EPA and CA programs but not on the UK program, thereby creating the impression that the UK program is problem-free.”

The Richmond meeting, advocating the most sweeping recommendation the agency has made, should not have been scheduled until the Board, and the team, had adequate time to fully consider all the comments. Finally, while disappointing to some staff, the

resulting motion to postpone will result in further review of the report where dissenting opinions can be more fully considered.

We want to be clear that we have no desire or intent to delay reports but rather want to ensure the highest possible quality reports. The lack of an established investigative protocol (in review for over three years) and the lack of planning, has led to a chaotic process – from deployment to scoping to finalizing reports and conducting a public meeting. Many of you have expressed to both of us that clarifying the investigative protocol would resolve many of the current conflicts. We believe this protocol, with a focused effort by staff along with the Board, could be completed within a few months. Almost every investigator in the agency has expressed the desire for better planning because they feel “yanked” from one project to the next. You, as a group, put forward a comprehensive plan to deal with the backlog in November 2011¹. Unfortunately the Board was never given an opportunity to discuss or adopt that plan. We have repeatedly asked for a comprehensive investigation plan, to no avail. We have voted to have a public meeting² to get a status report on all open investigations, to clarify the scope and timeline for our investigative products. We again urge the development of a comprehensive investigations plan and an investigative protocol. A Board approved investigation protocol and comprehensive investigations plan would hold the agency accountable to the public and management accountable to the Board. It would improve communications, clarify expectations, and inform our decisions regarding priorities and future deployments.

Finally, we need to stress the importance of the public Board meetings. Board meetings are not simply ceremonial activities. We respectfully differ with those in senior management who view these meetings as little more than Kabuki theatre. That sentiment was captured in your recommendation that “Board members should declare their positions and intentions prior to a public meeting and absent some unforeseen circumstances those views should be consistent with votes cast.” We value the input from all who attend the public meetings and to pre-determine our votes is in direct conflict with the intent of the public process and a violation of our duties as Board members.

We see a path forward towards making investigations and Board processes smoother. In that spirit, we offer some points for consideration in looking for meaningful solutions.

1. We agree with the need for a Board Order on communications. We stress, however, that prior to the development of any Board Order, the Office of General Counsel must provide a written opinion indicating that the entire body of Board Orders have legal significance and are binding.
2. We support an open and transparent process and strongly support regular business meetings of the Board.³ Fully transparent, deliberative board meetings are the best way for the Board to serve the public and be accountable to the public.

¹ Draft “CSB Strategic Investigation Plan, October 2011”; circulated to the Board on November 1, 2011.

² Notation Vote 2013-50, September 19, 2013; calendared by Chairman Moure-Eraso.

³ Notation Vote 2013-50, September 18, 2013, was a vote to have a public business meeting to discuss Most Wanted Recommendations Program and the status of open investigations.

3. We agree that the Board, as a whole, is responsible for the performance of the agency, but there is a parallel obligation for agency management to respect the authority of the Board.
4. As stated above, we strongly encourage management to prioritize the completion of an investigative protocol. This should only take a few months to finalize and would clarify what is expected of the staff and the Board.
5. As stated above, we strongly encourage the development of a comprehensive investigations plan and the presentation and periodic update of this plan in Board business meetings.

We look forward to the opportunity to meet with you to discuss ways to improve the agency.