

**U.S. Chemical Safety and
Hazard Investigation Board**

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Honorable Vanessa Allen Sutherland
Chairperson and Member

Honorable Manny Ehrlich, Jr.
Board Member

Honorable Rick Engler
Board Member

Honorable Kristen M. Kulinowski
Board Member



May 17, 2018

The Honorable Kirstjen Nielsen
Secretary of Homeland Security
Washington, DC 20528

Dear Secretary Nielsen:

The U.S. Chemical Safety and Hazard Investigation Board (CSB) is an independent agency of the Federal Government mandated by statute to conduct root cause investigations of chemical accidents at fixed facilities. As a result of its investigations, the CSB issues safety recommendations to other Federal or State agencies, facility owners/operators, industry organizations, and labor groups. The CSB does not have any regulatory authority to enforce its recommendations, but recipients of CSB recommendations are obligated to respond to the agency. 42 U.S.C. §7412(6).

As a result of our investigation of the April 20, 2010, explosion and fire at the Macondo Well, the CSB issued over 16 separate recommendations to address the safety issues raised. One of the recommendations issued to the Department of the Interior (DOI) pertained to the implementation of stop work authority, whistleblower protection and worker participation [Recommendation No. 2010-10-I-OS-R15 (R15)]. Specifically, R15 requested DOI:

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*

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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 workforce 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.*
- 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.*

Upon receipt of R15, the DOI referred this matter to its Bureau of Safety and Environmental Enforcement (BSEE). Over the course of several months, staff at the BSEE and the CSB engaged in discussions about the implementation of the recommendation. Earlier this year, the CSB concluded that BSEE lacks the proper regulatory authority to implement the entirety of this recommendation. Accordingly, the CSB staff recommended to the Board that R15 should be “closed reconsidered/superseded.” At a public meeting of the CSB on November 14, 2017, the CSB closed R15 as recommended by the staff.

During the Board’s deliberations on the status of R15, it was evident that there is a safety gap in the jurisdiction of Federal agencies to promote improved safety at offshore drilling facilities. In fact, our Board members noted the Congress should address through legislation to clearly define the authorities of the DOI, the Department of Labor (DOL) and the Department of Homeland Security (DHS) to regulate and to enforce requirements for worker participation and whistleblower protection. In fact, while the CSB was considering the status of R15, H.R. 4304 – *Offshore Oil and Gas Worker Whistleblower Protection Act of 2017*, was introduced in the House of Representatives, which, if enacted, designated the Secretary of Labor as the responsible agency for offshore whistleblower protection issues. Although the Safety and Environmental Management System (SEMS) program within BSEE regulations states that stop work authority must be incorporated into the safety program, the SEMS regulations do not contain adequate whistleblower protections to assure that the use and effect of stop work authority may be realized. Some protections are required as a part of the offshore operators’ SEMS program, but there are no federal statutory whistleblower protections that specifically cover offshore workers.

While the CSB believes that the Congress should address this gap through legislation, we also believe that the DOI, DOL, and DHS are capable of creating an interagency memorandum of understanding (MOU) which clarifies roles and responsibilities to improve and ensure the safety of offshore drilling operations. Accordingly, the CSB strongly urges you to initiate actions that would create such an MOU.

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work authority and well-implemented safety management systems are essential to achieve safe workplaces and the CSB's vision. Safety is a shared responsibility, and I welcome your future action on these important issues.

A similar letter has been sent to the Secretaries of the Interior and Labor.

Sincerely,



Vanessa Allen Sutherland

cc: Charles B. Barbee, Director of Recommendations, CSB