



Chemical Safety and Hazard Investigation Board

Office of General Counsel

Memorandum

To: Board Members
From: Christopher Warner *Ch/L W Warner*
Cc: Leadership Team
Subject: Board Action Report – Notation Item 884
Date: November 10, 2011

On November 3, 2011, Notation Item 884 was calendared. This item would have resulted in the approval of Board Order 046, entitled “Board Member Roles and Responsibilities;” the approval of revised Board Order 028, “Executive and Administrative Functions of the Board;” and approval of revisions to Section 7, “Notation Voting,” of Board Order 001, entitled “Board Quorum and Voting.” Comments submitted by Member Bresland and Member Griffon are reproduced below.

Voting Summary – Notation Item 884

Disposition: CALENDARED

Disposition date: November 3, 2011

	Approve	Disapprove	Calendar	Not Participating	Date
R. Moure-Eraso	X				10/28/2011
J. Bresland			X		11/3/2011
M. Griffon		X			11/4/2011

John Bresland
November 3, 2011
Vote to Calendar Notation Item 884

These are my concerns which led to my vote to Calendar Notation Item 884

There was no verbal or written communication with me regarding this Notation Item prior to receiving the voting copy on October 28. The changes proposed in the Notation Item are very significant for the Chemical Safety Board and deserve discussion among the Board Members and senior staff prior to a vote by the Board Members. I also disagree with the premise, stated in Notation Item 884, that the Chemical Safety Board has lapsed \$2.5 million of appropriated funds because of inefficiencies in the current Board approval process. I do not believe that to be the case.

My concerns are:

1. **Board order 46.** In Section 4(b) the word "*should*" is used in several places e.g. "the Chairperson, through the Managing Director *should* develop a recommendations strategy". In my opinion "*should*" is too weak a word and ought to be replaced by "*shall*" or "*will*". In Section 4(d) the phrase "*depending on the circumstances*" is used in two places. There is no clarification of what "*circumstances*" would permit a Board vote. This should be clarified. In Section 5 there is the statement "The Board should hold at least four-six public meetings each year...". I would like to see a more precise objective for the number of public meetings. Also in Section 5, under Communications, there are multiple uses of the word "*should*". As I stated above, "*should*" is too vague and ought to be replaced with "*shall*" or "*will*".
2. **Board Order 28.** As I understand the revisions to Section 6(b)(1) the Chairperson's authority in executing contracts is being raised from \$50,000 to \$150,000. However, only contracts or interagency agreements exceeding \$150,000 that directly relate to Board investigations, safety studies and associated dissemination/advocacy efforts will require Board approval. What about other contracts above \$150,000 that do not meet the criteria listed above? For example, a contract to renew or change the lease on our Washington offices could well be more than \$1,000,000. Will the Board have no say in the approval of such a contract? The issue of who approves any contracts above \$150,000 needs to be clarified. This also applies to Section (8) (e). In addition I am concerned that the revisions to Board Order 28 will remove the Board's authority to approve the operating budget of appropriated funds.
3. **Board Order 28.** In Section 6(a) the Chairperson is given authority over all personnel matters and personnel actions. Currently, the Board members vote to approve the appointment of the head of any administrative unit of the CSB and also the appointment of any member of the Senior Executive Service. In addition, Notation Item 885 provides for the repeal of Board Order 23, "Senior Executive Staffing". Thus if Notation Item 884 is approved, the Board Members will have no input in any personnel matters. I am not convinced that in a small agency like the Chemical Safety Board all decisions on personnel should be in the hands of

the Chairperson. Oversight on personnel matters by the Board Members will ensure that the most qualified candidates are chosen for senior positions at the Chemical Safety Board.

I welcome an open discussion on these issues so that the Board can come to an amicable resolution.

John Bresland

John Bresland

November 3, 2011

Notation Item 884 – Dissent

While I support many of the elements of the Board Order on Board member roles I do have concerns about the role of the Board as a whole with regard to the mission of the agency. I believe there are several issues for which the Board's role needs to be enhanced including but not limited to scoping of investigations and providing input into final products including investigation reports, safety studies and videos. It is critical that the Board as a whole have authority over the mission of the agency. Overall there must be an enhanced collaboration between the Board and staff on our critical mission. It is essential that the board orders on governance included in this notation item are designed in a way to effectively facilitate that collaboration.

Mark Griffon

11/4/11



U.S. Chemical Safety and Hazard Investigation Board

MEMORANDUM

October 28, 2011

To: Board Members
From: Rafael Moure-Eraso
Cc: Leadership Team
Subject: Notation Item 884

A handwritten signature in blue ink that reads "Rafael Moure-Eraso".

Attached for your review and vote is Notation Item 884. This item provides for the adoption of one new Board Order concerning "Roles and Responsibilities of Board Members," as well as revisions to Board Orders 001 and 028 in order to modernize and streamline agency management systems, particularly with respect to budget, contracting, and personnel administration.

Member Griffon led the effort on the proposed new Board Order, and I would like to thank him for his leadership in helping to clarify Member roles and responsibilities, particularly as they relate to investigative and advocacy functions.

The proposed revisions to Board Order 028 (and conforming revisions to Board Order 001), are largely designed to modernize and simplify agency budget and contracting practices in order to ensure that routine administrative actions are processed in an effective and timely manner, and to prevent the agency from lapsing significant appropriations authority, as has all too often occurred in the past. These lapses, totaling approximately \$2.5 million between FY 2006 and FY 2010, have curtailed the agency's success in requesting much-needed resources from OMB and Congress, and have also meant that funds Congress did appropriate to the CSB were not fully applied to urgent and unmet investigative needs.

Board Members would still approve major contracts that directly support investigations, safety studies, and associated advocacy/dissemination efforts. Approval of the agency's final annual budget justification will also remain a matter for full Board consideration.

In order to ensure that Board Members are involved in agency financial review processes, a new section in proposed Board Order 028 provides for quarterly financial reports to be provided to all Board Members. It is anticipated that these reports will help guide Members in their consideration of budget and resource requests and provide material information to assist in decision-making functions. These quarterly reports will, I believe, prove far more useful and informative to the Board than the various "operating budget" documents that have been presented in the past.

Please return your completed vote sheets to Chris Kirkpatrick as soon as possible, but no later than the close of business on November 4, 2011. Thank you for your attention to this item.

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

Hon. Rafael Moure-Eraso
Chairperson

Hon. John S. Bresland
Board Member

Hon. Mark Griffon
Board Member



**CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD
MEMBER VOTING RECORD**

Notation No.: 884

Voting Period: October 28 – November 4, 2011

Subject: Issuance of Board Order 046, Revisions to Board Order 028, and Conforming Amendments to Board Order 001

Whereas,

1. Because there is no generic order that fully captures or summarizes the tasks and establishes the underlying agreements and procedures governing the work and interaction of individual Board Members, and because the Board wishes to establish such guidance, the attached Board Order entitled "Board Member Roles and Responsibilities" has been drafted. The proposed Board Order addresses the roles and responsibilities of individual Board Members, as well as the Board as a whole. This Order is not intended to replace or supersede Board Orders which in part address certain specific Board and Board Member tasks and responsibilities. Rather, this proposed Board Order is intended to establish and/or clarify Board Member responsibilities, particularly with respect to the Board's substantive investigatory and advocacy/outreach missions;
2. The administrative aspects of existing Board Orders, particularly with respect to budget and contracting, have led to unintended inefficiencies in the proper expenditure of appropriated funds, e.g., large prior year lapses in Congressionally approved annual CSB budgets due to overly burdensome and unnecessary budget execution practices. These large funding lapses have had a negative impact on the CSB's ability to request and receive funds needed to fulfill the CSB's broad investigative mandate;
3. The contracting authority of the Chairperson is currently putatively restricted to an amount that is one-third of the simplified acquisition threshold (i.e., "small purchase" threshold, currently \$150,000) as specified in the Federal Acquisition Regulation, often resulting in seeking time-consuming and unnecessary Board approvals for ministerial or administrative agency functions for very small amounts, e.g., approval of copy machine repairs, acquisition of routine information technology and office furniture, and other mundane aspects of day-to-day agency administration; and

Notation No.: 884

Subject: Issuance of Board Order 046, Revisions to Board Order 028, and Conforming Amendments to Board Order 001

4. Current agency personnel policies under Board Order 028 with respect to certain career civil service appointments (i.e., requiring Board ratification of the decisions of the selecting official) have the potential to run afoul of both merit principles and EEO requirements and have rarely been applied in practice.

Therefore, the Board hereby votes to:

- a. Approve issuance of the attached Board Order 046, entitled "Board Member Roles and Responsibilities" (Attachment A);
- b. Approve issuance of a revised Board Order 028, "Executive and Administrative Functions of the Board," as provided in the attached document (Attachment B);
- c. Approve revisions to Section 7, "Notation Voting," of Board Order 001, entitled "Board Quorum and Voting," (Attachment C) in order to conform to the proposed revisions to Board Order 028 referenced in item "b" above; and
- d. Approve items "a," "b," and "c" above *en bloc*.

_____ I **APPROVE** this notation item **AS PRESENTED**.

_____ I **CALENDAR** this notation item for discussion at a Board meeting.

_____ *Some of my concerns are discussed below or on the attached memorandum.*

_____ I **DISAPPROVE** this notation item.

_____ *A dissent is attached.*

_____ *I will not file a dissent.*

_____ I am **NOT PARTICIPATING**.

Date: _____

Member: _____



Attachment A





U.S. Chemical Safety and Hazard Investigation Board

SUBJECT: BOARD MEMBER ROLES AND RESPONSIBILITIES

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1. **Purpose.** This Order formalizes the roles and responsibilities for Members of the Chemical Safety and Hazard Investigation Board (“CSB” or “Board”).
2. **Effective Date.** This Order is effective upon approval by the Board.
3. **Background.** The Board was established by the Clean Air Act Amendments of 1990 (The Act) as an agency charged with investigating the conditions and circumstances and the cause or probable cause of any accidental chemical release resulting in a fatality, serious injury, or substantial property damage (42 U.S.C. §7412(r)(6)). The Act provides that the Board “shall consist of 5 members, including a Chairperson”. All Members have demonstrated technical expertise in professional fields related to accident investigation including accident reconstruction, safety engineering, human factors, chemical safety, toxicology, or chemical regulation. The Chairperson is the Chief Executive Officer of the Board and exercises the executive and administrative functions of the Board.

The Act vests the Board with a range of powers and responsibilities relating to investigating, monitoring, and reporting accidental chemical releases. It further provides that “the Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties. The Board’s investigative responsibilities are set forth in section 112(r)(6)(c) of the Clean Air Act, 42 U.S.C. §7412(r)(6)(c).

Since its inception, the Board has adopted Board Orders and regulations governing the operations of the Board and staff. Several of the Orders, in part, address certain Board member duties or responsibilities; however, there is no generic order that fully captures or summarizes the tasks and establishes the underlying agreements and procedures governing the work and interaction of individual Board Members. This Order provides that guidance.

This Order addresses the roles and responsibilities of individual Board Members as well as the Board as a whole. This Order is not intended to replace or supersede Board Orders which in-part address certain specific Board and Board Member tasks and responsibilities.

4. **Board Member Roles.**

In accordance with this Order, each member shall take an active role in the following mission related activities.¹

- a. Advocating CSB recommendations:

¹ Board members as a group (“quorum”) outside of a public meeting, may not engage in deliberations that determine or result in joint conduct or disposition of official CSB business on such matters. 40 C.F.R. sec. 1603, implementing the Sunshine Act provisions in 5 U.S.C. Sec. 552b.

A key task for Board Members is to ensure that proposed recommendations are adopted by recipients and that the lessons learned from the investigations are brought to the attention of ever widening audiences – to industry and safety organizations, environmental bodies and union representatives, as well as other interested groups that have a stake in chemical safety. The ultimate goal of the advocacy efforts is to facilitate actual change in factories and plants and other fixed facilities so that workers are safer, and the public and environment are better protected

b. Developing an annual recommendation Advocacy Plan:

The Chairperson should report to the Board periodically regarding advocacy efforts. As part of these activities, the Chairperson, through the Managing Director, should develop a recommendations strategy and present an Annual Recommendations Action Plan (advocacy plan) to the Board at least once a year. This advocacy plan may be updated as necessary to reflect current staff assignments by the Chairperson and the updating of a CSB “Most Wanted” recommendations list. The advocacy plan should include, at a minimum, a listing of priority recommendations for the fiscal year and an implementation plan for each listed recommendation to assist in its adoption both by the recommendation recipient, as well as wider audiences of interest where applicable. The advocacy plans should include actions items with specific assignments and time frames to be used for advocating for each recommendation.

Prior to adoption by the Board of the Annual Recommendation Advocacy Plan, the Chairperson, in consultation with Board Members, will designate a Board Member to lead advocacy responsibilities for each identified priority recommendation. The advocacy efforts typically may include speaking engagements, participation in videos, news conferences, publication of editorials and journal articles, as well as meetings with stakeholder organizations. Each Board Member should present at a public meeting his or her advocacy efforts, and if possible, any data or metrics collected demonstrating how the implemented recommendations have improved the safety of workers, communities, and the environment.

Additionally, Board Members should be involved in general outreach activities focused on educating stakeholders about the Chemical Safety Board, disseminating information from current and completed investigations, as well as safety studies, and advocating for Board safety lessons to be adopted.

c. Developing strategic plans and budget justifications:

The Chairperson should ensure that a strategic planning meeting is held at least once every 3 years starting with the new Board strategic plan for 2012-2017. Board Members and senior staff are expected to participate in the initial planning meetings. The goal of the strategic planning meetings is to develop a five year

strategic plan for meeting the mission of the Chemical Safety Board. The meetings should include discussions about legislative mandates, strategic goals, and key factors affecting goal achievement, relationships with other bureaus and agencies, and program evaluations.

Following the planning meetings, the Chairperson, through the Managing Director, will develop a final draft strategic plan and seek input from outside stakeholders before presenting a final version to the Board. Board Members should have an opportunity to comment on a draft, and then deliberate and vote on a final draft.

Similarly, Board Members are expected to consult in the development of budget proposals and review and approve the annual budget justification.

d. Participation in Investigations:

The Board will be invited to participate (via phone or in person) in the initial deployment meeting by the Chairperson or the Managing Director acting on behalf of the Chairperson. The Board will be offered the opportunity to give input into the deployment. However, the Chairperson has the authority to determine whether to deploy.

The Chairperson, in consultation with Board Members, will designate a Board member to participate in CSB deployments to major incidents. Board Member deployments will be made in general on a rotational basis. The primary role of the Board Member representing the agency in a particular field investigation will be to act as the spokesperson for the CSB. This may involve conducting press interviews, participating in press conferences, meetings with Congressional representatives or staff, meetings with community representatives, company officials, and worker representatives. The Board Member should also be available to meet with survivors' or victims' friends and family. The Investigator-In-Charge (IIC), however, leads all aspects of the investigation, in accordance with Board Order 040, subject to supervision by the Managing Director and the Chairperson.

After the initial team deployment the designated Board Member should maintain a working knowledge of the investigation and be available to return to the field for press conference updates and/or additional meetings, as necessary.

Within sixty (60) days of the conclusion of the initial deployment, the investigation team will complete a written summary of the incident which should include the following elements: incident description, preliminary findings, preliminary logic tree or Accimap, possible safety recommendations that could be developed, anticipated budget and timeline, and the recommended scope of the final product (e.g., full investigation, case study, safety bulletin etc.). This summary will be presented to the Board at a quorum meeting. After the

investigation summary report is provided to the Board, the Chairperson acting through the Managing Director should incorporate Board Member comments to the scope to the maximum extent feasible and appropriate. Depending on the circumstances, the Board may vote on the approval of the scope of the investigation.

The Board as a whole will have an opportunity through public meetings to deliberate on and give input to the investigative team regarding the overall scope and management of ongoing investigations.

Additionally, Board Members will have opportunities to review and provide input to the design and content of safety videos issued by the agency. Depending on the circumstances, the Board may vote on the approval of a safety video.

e. **Participation in Safety Studies:**

The Board Members may also participate in the identification, scoping, and review of various safety studies. The initiation of a safety study is subject to approval by the Board as a whole. Discussion of areas of interest and need may be determined during Board business meetings where stakeholder input can be considered. Status reports regarding individual studies will be conducted at staff meetings, quorum meetings, and Board business meetings on a regular basis. The Board will have the opportunity during the Board business meetings to deliberate on and give input into the scope, direction, and management of the safety studies. Based on agency needs and the expertise and interest of individual Members, Board Members may participate in some aspects of research and writing of safety studies, but the studies remain subject to entire Board approval prior to completion.

f. **Recommendations:**

Board Members are responsible for reviewing and voting on the issuance and changes to the status of all CSB recommendations. Individual Board Members will have multiple opportunities to give input to the recommendations group and the investigative team regarding specific recommendations via meetings with staff, at quorum meetings, or in public Board meetings.

5. **Board Member Responsibilities.**

Board Order 001 lists areas requiring Board approval, including among others, investigation reports, safety studies, regulations, rules and orders of the Board, strategic plans, and statements to Congress or the President on behalf of the Board. Other responsibilities include:

- Participation in Public Meetings

The Board should hold at least four - six public meetings each year for the consideration and approval of investigation reports and safety studies, for status changes to recommendations or approval of policy documents, or for the conduct of Board business matters. When appropriate, public meetings may be held at locations other than Washington, DC, in order to solicit public input on specific matters. Public meetings will be announced in the Federal Register and conducted in accordance with 5 U.S.C. § 552b and 40 CFR Part 1603.

Meetings of the Board or portions thereof may be closed to the public under the conditions identified in 40 C.F.R. 1603.7 - 8.

- Participation in Quorum Assembly

Quorum assemblies are an opportunity for Board Members to interact with all primary business units within the CSB. This is the opportunity for each Board Member, individually, to comment and pose questions about current and planned activities. The Chairperson should schedule the quorum assemblies at such times that allows all Members to be present.

- Communications

The Chairperson, or the Managing Director, acting on his/her behalf, should make available to all Board Members bi-weekly updates on all ongoing investigations or studies.

The Chairperson, or the Managing Director, acting on his/her behalf, should provide minutes and action items for all regular weekly managers' meetings and Quorum Meetings.

The Chairperson and all Board Members should notify each other regarding meetings with stakeholders which may have policy implications, e.g., Congressional Members or staff, unions, companies, trade organizations.

The Chairperson and all Board Members should communicate in advance and collaborate with each other on press releases, significant inter-agency correspondence, and congressional testimony.

Additionally, the Chairperson or Managing Director, acting on his/her behalf, as well as all Board Members involved, should report at Board public meetings on the status of actions taken to meet the annual and strategic goals of the agency. Providing this information will keep the entire Board more informed and assist Board Members in making more informed decisions regarding agency priorities.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Adopted November __, 2011.

Attachment B



U.S. Chemical Safety and Hazard Investigation Board

SUBJECT: EXECUTIVE AND ADMINISTRATIVE FUNCTIONS OF THE BOARD

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1. **PURPOSE.** This Order establishes the manner in which the executive and administrative functions of the Chairperson are exercised. In addition, this Board Order substitutes the position of Managing Director for any reference in any other Board Order to the following terms or positions: "Chief Operating Officer," "Executive Officer," or any other term denoting general supervision and management of CSB staff.
2. **EFFECTIVE DATE.** This Order is effective upon passage by the Board.
3. **SCOPE.** This Order applies to the Board and its individual Members.
4. **REFERENCES.** This Order is based upon 42 U.S.C. § 7412(r)(6)(B) and (N), as well as statutes and regulations reposing administrative authority in the head of an agency.
5. **POLICY.** The Chairperson exercises the executive and administrative functions of the Board either directly or through delegations of authority to employees as described in this order.
6. **SPECIFIC AUTHORITY.** Upon being sworn into office, the Chairperson shall exercise the executive and administrative functions of the Board, and possesses the following specific authorities:
 - a. **Personnel Administration**
 - (1) Authority over all personnel matters and personnel actions, including, but not limited to, the appointment and supervision of staff employed by the U.S. Chemical Safety and Hazard Investigation Board (CSB), except that prior to the appointment of the head of any major administrative unit of the CSB, the Chairperson shall consult with Board Members.
 - (2) Authority over the distribution of business among the personnel employed by the CSB and among the administrative units of the CSB.
 - b. **Use and Expenditure of Funds**
 - (1) Authority to execute the CSB's annual budget, as enacted by Congress, and to control the use and expenditure of funds (including the emergency fund), including the power to authorize and execute contracts and interagency agreements and other transfers. However, the initial award of any contract or interagency agreement exceeding the simplified acquisition threshold as specified in the Federal Acquisition Regulation (*see* FAR 2.101) that directly relates to Board investigations, safety studies, and associated dissemination/advocacy efforts requires the concurrence of the Board.
 - (2) Authority to control the preparation of CSB budget requests and justifications, with Board consultation, except that final approval of the budget and submission

or transmission of the annual budget as described in 42 U.S.C. § 7412(r)(6)(R) requires a vote of the Board, except as otherwise provided in Board Order 38.

- (3) The Chairperson, acting through the Managing Director, shall provide to the Board, at least quarterly, financial statements showing obligations for the current fiscal year, including any contractual, interagency or other agreements that obligate the CSB to the expenditure of public funds.

c. Settlement Authority

After consultation with the Board Members, the General Counsel, and the Managing Director, authority to take all appropriate action, including but not limited to the execution of agreements and the expenditure of funds in an amount necessary, to settle and resolve pending or potential claims against the CSB. Such matters include disputes of any kind within the authority of the CSB to settle or resolve by written agreement, including but not limited to those which may be filed or have been filed with administrative agencies that process or adjudicate federal employment disputes. Administrative claims under the Federal Tort Claims Act are processed in accordance with 40 C.F.R. § 1620. The Chairperson's settlement authority under this provision is not limited by section 8 of this Order or the provisions of other Board Orders.

d. Investigations

Authority to authorize the initiation of an accident investigation and the deployment of investigators, subject to a vote by the Board to recall the investigators and cancel the investigation.

e. Conduct of Board Meetings

Authority to preside at meetings where a quorum of Board Members is present, consistent with the Sunshine Act and the CSB regulations implementing the Act.

f. Official Communications

- (1) Authority to supervise and authorize the response to all inquiries from Congress, the media, and the public concerning the Board and/or the CSB, except as specifically excluded by this Order.
- (2) Authority to supervise the preparation of all official statements and other communications concerning, or on behalf of, the Board and/or the CSB, except as specifically excluded by this Order.
- (3) Authority to make and/or authorize all statements, written communications, and pronouncements on behalf of the Board and/or the CSB, except as specifically excluded by this Order.

7. **RESTRICTION ON THE EXERCISE OF THE EXECUTIVE AND ADMINISTRATIVE FUNCTIONS OF THE BOARD.**

The Chairperson and Members shall be governed in the exercise of their functions by all applicable Federal statutes and regulations and by the regulations issued by the Board. In addition, the Chairperson and Members should conduct business in accordance with Board Orders.

8. **EXCLUSIONS.** All Board business which does not fall within the executive and administrative functions of the Chairperson as described in this Order shall be decided by the Board, in accordance with the relevant provisions of Order 001. Items that must be approved by the Board include, but are not limited to, the following:

- a. Investigation reports;
- b. Safety studies;
- c. Regulations or orders of the Board;
- d. Approval of the final annual budget request and submission or transmission of the budget as described in 42 U.S.C. § 7412(r)(6)(R), except as otherwise provided in Board Order 38;
- e. Initial award of contracts or interagency agreements exceeding the simplified acquisition threshold that directly relate to Board investigations, safety studies, and associated dissemination/advocacy efforts;
- f. Final CSB strategic plans; and
- g. Statements to Congress or the President on behalf of the Board as a whole.

9. **REDELEGATION.** The Chairperson may redelegate any of his or her executive and administrative functions (except presiding at Board meetings) to one or more CSB employees, consistent with all applicable Federal statutes and regulations, and the regulations, and rules of the Board.

U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

August 5, 2002

Amended, August 8, 2006

Amended, November --, 2011

Attachment C





U.S. Chemical Safety and Hazard Investigation Board

SUBJECT: BOARD QUORUM AND VOTING

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1. **PURPOSE.** This Order provides procedures for preparing, considering, and adopting documents by the Chemical Safety and Hazard Investigation Board (“CSB” or “Board”) through the notation process. This Order also describes internal procedures for handling the administrative matters necessary to plan for and hold public meetings of the Board.
 2. **EFFECTIVE DATE.** This Order is effective upon passage by the Board.
 3. **SCOPE.** This Order applies to the Board and all Board staff.
 4. **REFERENCES.** 42 U.S.C. § 7412(r)(6). 5 U.S.C. § 552b. 40 C.F.R. Parts 1600 and 1603.
 5. **POLICY.** It is the policy of the Board to conduct its voting and meeting activities in an efficient and orderly manner, in compliance with applicable statutes and regulations.
 6. **QUORUM AND VOTING REQUIREMENTS.** The quorum and voting rules of the Board are set forth at 40 C.F.R. § 1600.5.
 7. **NOTATION VOTING.** Examples of items that may be adopted through the notation process include, but are not limited to the following:
 - Order.
 - Investigation Report.
 - Safety Study Plan.
 - Safety Study.
 - Decision regarding whether to convene a Public Hearing.
 - Regulation, rule, or procedure of the Board.
 - Approval of the Final Annual Budget Justification.
 - Concurrence with the initial award of contracts or interagency agreements exceeding the simplified acquisition threshold that directly relate to Board investigations, safety studies, and associated dissemination/advocacy efforts.
 - Strategic Plan.
 - Annual Advocacy Plan for Recommendations.
 - Any other items that require action by vote of the full Board.
- a. **Document Origin.** A document that the Members will vote on under the notation process may be submitted for consideration by any Member or may originate from one of the offices of the CSB. A "notation item" consists of a covering notation memorandum,

the draft document proposed for adoption, and pertinent attachments necessary for a full understanding of the document.

b. Office Responsibilities.

- 1) Notation memorandum. A draft document submitted for notation for the first time is submitted to the Members accompanied by a notation memorandum signed by the director of the originating office (or a designee) and routed through the General Counsel. The notation memorandum is a transmittal memorandum that briefly introduces the Members to the document(s) they are to consider. The format includes headings that focus attention on the purpose of the document. The memo may direct the Members' attention to pertinent attachments provided for additional background information. For major investigation reports and safety studies that will be discussed at a Board meeting, the originating office must attach to the notation memorandum an agenda for the report discussion.

If the Members consider a document through the notation process, and it is disapproved and returned to the staff for revisions, the revised document must be reissued to the Members with a memorandum signed by the head of the originating office and routed through the General Counsel. The memorandum states: (a) the notation number of the original document; (b) that the Members directed the document to be revised; (c) that the revised document is attached; (d) an explanation of the revisions incorporated in the revised document, and (e) where appropriate, the reason(s) the staff did not make certain suggested revisions.

The originating office is responsible for obtaining any necessary concurrence from other offices both in the case of a document submitted for notation for the first time or in the case of a document being returned to the Board after Member-requested revisions. A notation item that the Members consider and then return to the staff for revisions does not require the concurrence of other offices before recirculation to the Members unless the revisions are substantial and/or pertain to safety recommendations.

- 2) Draft documents. The originating offices are responsible for preparing notation documents according to standards to be established by the Board Members. All documents must be edited and proofread by the originating office before submission to the Office of General Counsel and distribution to the Members as a notation item. The Board Members will disapprove and return documents that do not meet its standards.
- 2) Pertinent attachments. The originating office is responsible for providing all attachments to the notation memo.
- 4) Delivery to Office of General Counsel. After all concurrences except the General Counsel's are obtained, the originating office delivers the original and a minimum of six copies of the documents to be considered by the Board, to the Office of General Counsel.

- 5) Deadlines. If the Members must approve the draft document by a certain date to meet an external deadline, the originating office is responsible for ensuring that the Members have sufficient time to consider the notation item before the deadline.

c. Office of General Counsel Responsibilities.

- 1) Docketing. After receiving an item for circulation to the Members, the General Counsel determines whether the item is within the scope of matters requiring a Board vote, and if so, docketed the item and distributes it as described below. If the General Counsel determines that the item is outside the scope of this Order, the item will be returned to the originating office or Member with a brief explanation. The General Counsel's negative determination may be appealed to the full Board for further disposition.
- 2) Notation number. The Office of General Counsel assigns a file (notation) number to the document, enters the notation number and other pertinent information into the Board's docket, and prepares the notation folder. The notation number is determined as follows:
 - (a) New item.
 - (1) A new notation item that is not closely related to a previous notation item is assigned a number from a single consecutive series; notation items are numbered in the order received.
 - (2) A new notation item that is closely related to a previous notation item is assigned the same number as the previous item with the addition of a letter suffix.
 - (b) Revised item. A revision of an earlier notation item, whether just one page or a substantially revised and complete copy, is assigned the same notation number as the original item, but with a new letter suffix.
- 3) Copy distribution. The Office of General Counsel distributes copies of notation items to the Members. A Member voting record is also included with each notation item. A notation item and its accompanying voting record will be deemed distributed when delivered to the mailbox of the Member at 2175 K Street, Washington, DC. A Member may also request a temporary address for delivery of such items when the Member is traveling or otherwise anticipates being out of the main office. In such cases, the date of distribution is the date the item and voting record is sent to the Member. Such items will be sent by an overnight courier service whenever feasible.

- 4) Notation files. The Office of General Counsel maintains the official, complete file on all notation items the Board has considered. The files contain a copy of the draft documents circulated to the Members, the Members' voting records, all notation-related memoranda, and final copies of the document as issued.

8. CONSIDERATION OF NOTATION ITEM BY WRITTEN VOTE.

- a) **Scope**. All notation items submitted to the Members for a vote may be acted on in writing; there is no requirement that a notation item be discussed at a Board meeting. However, any Member may request that a notation item be placed on the agenda for discussion at a Board Meeting. Notation items that are to be discussed at a Board meeting should be circulated to the Members at least two weeks before the meeting. Members may act on a notation item in one of three fashions: by signature on a voting record, by voice vote at a Board meeting, or by a recorded vote at a Board Meeting.

b) The Voting Record.

- 1) Actions. When a notation item is circulated by the Office of General Counsel to the Members, each Member records his/her vote on a Member Voting Record supplied with the item. A Member chooses one of the following actions:
- (a) APPROVE the subject notation item AS PRESENTED .
The Member should not add any additional suggested revisions or changes. If the Member would like to see any change, the Member should calendar the item or vote to disapprove the item.
 - (b) CALENDAR the notation item for discussion at a Board meeting. When a Member elects to calendar an item, the Member should specify on the voting record or by separate memorandum attached to the record the particular matter(s) the Member wants to discuss at a meeting. Once an item is calendared, the other Members' voting records for that item are suspended because the vote taken at the Board Meeting will prevail.
 - (c) DISAPPROVE the subject notation item without offering a revision, or disapprove and submit a written dissent and/or suggested substantive revisions.

If a Member wants to persuade other Members to his/her way of thinking, the Member should address a memorandum to other Members indicating disagreement with the document and the rationale for it, and the desired disposition of the document. The memorandum should be sent to the Office of General Counsel for distribution to the Members and appropriate Board staff.

- (d) NOT PARTICIPATING in the disposition of the document.
- 2) Due date. A Member's voting record is due five workdays from the date the notation item is distributed and must be returned by that date to the Office of the General Counsel. For example a voting record distributed on Monday, October 22, 2007, would be due on Monday, October 29, 2007. Legal Holidays would not be considered workdays for purposes of the calculation of the due date. The due date may be extended by the Chairperson at his discretion or based upon the request of a Member for up to an additional five workdays. In no event shall the due date for a vote on a specific item exceed 10 workdays from the date of distribution unless the Members vote to adopt a special deadline for that item. A Member that does not submit a vote by the due date will be listed as not participating in that vote. Any Member may request that the General Counsel designate an item as one requiring "Urgent Action." Votes on a document marked "Urgent Action" are requested "as soon as possible" but may be returned and counted up to five days from the date of distribution and still be included in the final vote tally. An urgent item is indicated as such on the voting record.
- 3) Adoption/disapproval date. The date of adoption or disapproval is determined by the following:
- a) Routine item. A routine notation item is either adopted or disapproved when the Office of General Counsel has received all Member voting records for the item, and a majority of the participating Members have voted in favor of or against the item. The date of adoption or disapproval is the date that the last Member signed his/her voting record. In the event that a Member fails to submit a voting record for that item by the due date, the date of adoption or disapproval is the day after the due date for votes on that item.
 - b) Urgent item. An urgent notation item is either adopted or disapproved when the affirmative or negative votes of a majority of the participating Members are received by the Office of General Counsel.
- 4) Former Member participation. Occasionally, a Member will leave his/her term at the Board while a notation item is pending. If the Member has submitted his/her voting record to the Office of General Counsel, the vote will be considered in the final disposition of the notation item, even if the adoption/disapproval date falls after the Member has left the Board, except in the following two situations: (1) if the notation item has been calendared by another Member, the former Member's vote is voided because the vote taken at the Board meeting will prevail; (2) if another Member subsequently proposes substantive revisions to the notation item, the former Member's vote is voided when he/she is not available to participate in the consideration of the revisions.

A new Member who is appointed to the term of the former Member will not receive a voting record to participate in a pending notation item if the former Member has voted. If the former Member's voting record is eventually voided because the notation item is calendared or substantive revisions have subsequently

been proposed, the new Member will then be given a voting record for that notation item and may participate in the vote.

The General Counsel is responsible for resolving any disputes regarding the validity of a former Member's vote.

- c) **Concurring/Dissenting Statements.** When a notation item is adopted, either orally in a Board Meeting or by written record, a Member may file a statement that offers additional views concerning all or part of the item. The Member may file a concurring statement, a dissenting statement, or a concurring and dissenting statement. The original, signed statement is retained in the official notation file in the Office of General Counsel. At a Board Member's request, his or her dissenting statement to an Incident Investigation Report shall be published on the CSB's web site.
- 1) Written record. When notation items are approved in writing, the Member attaches the concurring and/or dissenting statement to his/her voting record and returns it to the Office of General Counsel, which circulates the statement to the other Members for them to note. The Office of General Counsel may also distribute information copies to appropriate staff. Another Member may join the Member's concurring and/or dissenting statement.
 - 2) At meeting. When notation items are adopted at a Board meeting, a Member states his/her intention to file a concurring and/or dissenting statement immediately following the vote. The statement should be sent to the Office of General Counsel within five workdays after the meeting. On receipt of the statement, the Office of General Counsel circulates the statement to the other Members for them to note. The Office of General Counsel may also distribute information copies to appropriate staff. Another Member may join the Member's statement.
- d) **Notification of Board Action.** Within three workdays of the disposition of a notation item, the Office of General Counsel provides the originating office with a Board Action Report. Information copies of the Board Action Report also are sent to the Members and appropriate offices. Members should verify their records regarding the item and notify the Office of General Counsel of any discrepancies. The Board Action Report indicates the action taken by the Board, the votes of the Members, and, if adopted, the action needed to put the item in final form. The originating office is responsible for ensuring that the proper action is taken on all adopted notation items. The Office of General Counsel also distributes a Board Action Report to notify Members and appropriate staff when a notation item is superseded by a later complete revision.
- e) **Withdrawal of Notation Item.** A Member, the General Counsel, or the director of the originating office may recommend withdrawal of any notation item from the Members' consideration. The request for withdrawal is made by memorandum addressed to the Board through the General Counsel. The memorandum is handled as a notation item and circulated to the Members with a voting record. A majority of the Members must concur in the withdrawal either by written voting record or, if

calendared, by voice vote in a Board Meeting.

f) **Publication of Board Approved Documents.**

- 1) Report/Study. The originating office is responsible for the final preparation of approved investigation reports and safety studies. The originating office is also responsible for the technical and editorial accuracy of the final document. The author must review the final document for technical accuracy. The editor must proofread the final document for editorial accuracy. After technical review and proofreading, the originating office is responsible for publishing the document.
- 2) Order. The General Counsel is responsible for the preparation of any Board Order. The General Counsel is also responsible for distributing copies of Board Orders to the Members and appropriate staff.
- 3) Regulation. Following Board approval, the Office of General Counsel is responsible for the preparation of a proposed or final regulation for publication in the *Federal Register*.

9. **MEETING PROCEDURES.**

a. **Scope.** Board meetings must be held in accordance with the Government in the Sunshine Act, 5 U.S.C. § 552b, and the CSB's Sunshine Act Regulation, 40 CFR part 1603.

b. **Convening Meeting.**

- 1) Scheduling. The Chairperson shall be responsible for scheduling meetings of the full Board. The Board will conduct meetings according to the proposed schedule unless the meeting date is changed or cancelled according to the procedures in this section. When a Member anticipates a conflict with a date on the list, the Member may request, informally or through a memo, that the Chairperson change the date. A date for a Board Meeting does not become certain until the General Counsel files a notice in the *Federal Register* to announce the date of the public meeting.

If circumstances warrant, a special meeting may be held, at the request of a Member, with adequate notice to all Members. A majority of Members must vote to hold a special meeting on less-than-normal notice (see 4 b. below).

- 2) Agenda. Any Member may request that an item be placed on the agenda for discussion and if appropriate, a vote, at a Board Meeting. The General Counsel will determine whether the item requires a vote in the manner described in section 7.c.1. The General Counsel shall circulate to the Members a memorandum establishing a meeting date and agenda approximately two weeks before the meeting or with as much advance notice as possible for a special meeting. A Member may request, in a written memo to the other Members and the General Counsel, that the meeting not be held or that the agenda be changed. If a majority of Members agree to the request, the General Counsel issues a memo announcing the meeting "cancellation" or agenda change. If the meeting announcement notice has not been sent to the *Federal Register*, no further action is necessary. If the meeting announcement notice has been sent to the *Federal Register*, whether or not already published therein, a majority of the Board must formally vote to cancel the meeting or change the agenda. See 40 C.F.R. § 1603. This vote must be made public by publication of a subsequent notice in the *Federal Register*. The Office of General Counsel circulates a composite voting record to the Members for this action.

Unless an item requiring a vote is deleted from the agenda in the manner set forth herein, the Members should assume that a vote to approve, disapprove, or table the item, with or without revisions, will occur at the meeting.

- 3) Closed Meeting. Members must act affirmatively to close all or part of a meeting to the public and in accordance with the provisions of 40 CFR §§ 1603.7 and 1603.8.
- 4) Notice of Meeting.
 - (a) Normal Notice. Public notice of a Board Meeting, whether open or closed, must be published in the *Federal Register* at least seven calendar days in advance of the meeting date. The notice includes the time, place, and agenda for the meeting; the status of the meeting (open, closed, or partially open); and the name and telephone number of the CSB official designated to respond to requests for information about the meeting. The Office of General Counsel responds to non-media requests for information regarding meetings. Information about the analysis, conclusions, and recommendations in an agenda item and copies of agenda items are not made available by staff to anyone other than Board employees at any time before the items are adopted, unless prior specific approval of the Members is obtained.
 - (b) Less-than-normal Notice. If the approval to hold a Board Meeting comes too late for normal notice in the *Federal Register*, the Office of General Counsel circulates to the Members a composite voting record for approval to hold the meeting on less-than-normal notice. A majority of all the Members of the CSB must vote to approve holding a meeting with less than the required public notice period. Notice of a meeting held on less-than-normal notice is published in the *Federal Register*.

- c. **Record of Meeting.** The official record of a Board meeting is maintained by the Office of General Counsel.
- 1) Open Meeting. The record of an open meeting consists of the following: (1) a copy of the agenda circulated to Members for approval; (2) a copy of the agenda as approved by the Members; (3) a copy of the notice of meeting as it appeared in the *Federal Register*; (4) a copy of any revised agenda, including a copy of the voting record amending the agenda; (5) a copy of any change notice published in the *Federal Register*; (6) a copy of the voting record to announce a meeting on less-than-normal notice; and (7) a videotape, transcript, or electronic recording of the meeting.
 - 2) Closed Meeting. The record of a closed meeting consists of the following: (1) a copy of the agenda circulated to Members for approval; (2) a copy of the agenda as approved by the Members; (3) a copy of the notice of meeting as it appeared in the *Federal Register*; (4) a copy of any revised agenda, including a copy of the voting record amending the agenda; (5) a copy of any change notice published in the *Federal Register*; (6) a copy of the voting record to announce a meeting on less-than-normal notice; (7) a voting record by which the Members approved closing the meeting and the General Counsel certified closing the meeting; and (8) a videotape, electronic recording, transcript, or detailed minutes of the meeting.

Regarding item 8 of the record, the General Counsel is responsible for recording a closed meeting on videotape, recording, transcript, or minutes, as appropriate. The Sunshine Act requires the agency to retain item 8 "for a period of at least 2 years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later." Except for Members and the General Counsel, access to item 8 of a closed meeting is granted to Board employees or other persons only with the permission of the General Counsel. As directed by the Members, access to item 8 of a closed meeting may be limited to Members only and kept in the custody of the Board Chairperson.

- d. **Member Comments on Agenda Items.** The originating office of a notation item is responsible for ensuring that all revisions made by the Members before, during, and after a Board meeting are incorporated into the final document before printing or release.
- 1) Pre-meeting comments/revisions. A Member may make pre-meeting comments on agenda items by memorandum. The Member distributes copies of the memorandum to other Members, the General Counsel, and the heads of appropriate offices at least seven days prior to the scheduled meeting. To expedite discussion of a notation item at a Board Meeting, the office that originated the notation item should prepare a memorandum containing the staff response to a Member's pre-meeting comments, with revised pages if necessary, before the meeting. At least two days prior to the scheduled meeting, the originating office delivers the memorandum to the Members, Office of General Counsel, and appropriate staff.

The staff response memorandum is addressed to the Board, copied to the General Counsel and other appropriate staff, and is signed by the head of the originating office. The notation number and the title of the notation item should be referenced in the subject line of the response memorandum and the name of the Member and date of the Member's memorandum should be cited in the first line of the staff response memorandum. If the response includes revisions to pages of the notation item, the revised pages are attached to the staff response memorandum.

- 2) Meeting comments/revisions. The writer of the notation item and appropriate staff are present at the meeting at which a notation item is discussed to answer Member questions. The Members may ask the staff to add or delete information in the document or to revise current text. The revisions to the text of an adopted document do not have to be subsequently circulated to the Members for approval unless a Member specifically requests this action.
- 3) Post-meeting comments/revisions. When a Member requests that revisions be circulated for review after the meeting or if the notation item was adopted pending revisions, the office originating the notation item prepares the necessary revisions and a memorandum by which the revisions are sent to the Members. The originating office delivers the memorandum to the Office of General Counsel, which processes the memorandum as a revised notation item in accordance with the procedures discussed in Section 7. The memorandum should be distributed to the Members within five workdays after the meeting.

e. Member Voting on Agenda Items.

- 1) Voice vote. An agenda item is adopted or disapproved by voice vote as determined by the Chairperson, unless (a) an absent Member has asked that the record be held open for his/her vote (See paragraph 2. below.) or (b) a Member present at the Meeting requests a recorded vote. In the case of a recorded vote, an item is approved if a simple majority of the Members vote in favor of the item. The General Counsel or his designee shall record the votes of each of the Members, and this information becomes part of the record of that meeting. A notation item is not considered to be adopted at a meeting if the record is being held open at the request of an absent Member. In the event of a procedural disagreement, guidance in *Roberts Rules of Order* is followed.

- 2) Absent Member. A Member who is absent from a Board Meeting is listed as not participating in the disposition of all agenda items unless the Member has asked to participate in one of two ways prior to the meeting:
 - (a) Open record. An absent Member may request that the Chairperson leave the record open for up to 10 workdays following the meeting for his/her later participation and vote. Within two workdays following the meeting, the Office of General Counsel will distribute a voting record for each agenda item to the absent Member. The voting records for those items will be deemed distributed when delivered to the office of the Member at 2175 K Street, Washington, DC. The voting records may be sent to a temporary address specified by the Member at the time the Member requests that the record be left open. In such cases, the date of distribution is the date the item and voting record is sent to the Member. Such items will be sent by an overnight courier service whenever feasible. To be included in the vote tally, the signed voting record must be returned to the Office of General Counsel before the record is closed for that meeting. The adoption date for the notation item is the date an absent Member submits his/her signed voting record or the day after the record closes for that meeting, whichever date comes first. A Member who fails to submit a vote before the record closes will be listed as not participating in that vote.
 - (b) Proxy. An absent Member may vote by proxy. The proxy must include the absent Member's voting intent with respect to the agenda item; a blank proxy may not be voted. A Member may designate any other Member as his/her proxy orally, by telephone, or in writing to that Member. Notice of the designation of a proxy is given immediately to the Chairperson, the other Members, and the General Counsel. The proxy holder determines whether any changes made at the meeting have so affected the agenda item that the proxy should not be voted. Otherwise, the proxy holder votes the proxy, subject to the direction received from the absent Member.
- 3) Restrictions of Proxy. A proxy vote may not be used to provide a quorum for a Board Meeting. A proxy may not be used as a vote in deciding to hold a meeting on less than the required public notice or to close a meeting.
- 4) Vote Change. Any Member may change his/her vote within 24 hours of a vote taken at a Board meeting. The Member should notify the Chairperson, the other Members, and the General Counsel by memorandum immediately upon reaching a decision to change a vote.

10. **CONSTRUCTION WITH BOARD RULES**. To the extent that the provisions of this Order conflict with the provisions of 40 C.F.R. § 1600 or 40 C.F.R. § 1603, the provisions of those rules shall govern.

11. **REVIEW AND UPDATE**. The General Counsel shall be responsible for reviewing and proposing revisions to this Order, if needed, at least once every three fiscal years, with the first such review due no later than September 30, 2010.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Adopted October 12, 1999; Amended, October 25, 2007; November 9, 2007; November 13, 2009 and November __, 2011.