



**Chemical Safety and Hazard Investigation Board**

OFFICE OF GENERAL COUNSEL

---

Memorandum

To: Board Members  
From: Richard C. Loeb *RL*  
Cc: Leadership Team  
Subject: Board Action Report – Notation Item 2015-07  
Date: March 17, 2015

On March 10, 2015, Notation Item 2015-07 was calendared. The item would have reversed the vote that took place during the January 28, 2015, Board meeting in Richmond, California, and reversed all matters addressed in the accompanying motion, rendering its actions null and void. A calendaring statement of Member Ehrlich is attached.

**Voting Summary – Notation Item 2015-07**

**Disposition: CALENDARED**

**Disposition date: March 10, 2015**

	<b>Approve</b>	<b>Disapprove</b>	<b>Calendar</b>	<b>Not Participating</b>	<b>Date</b>
<b>R. Moure-Eraso</b>			<b>X</b>		03/13/2015
<b>M. Griffon</b>	<b>X</b>				03/10/2015
<b>M. Ehrlich</b>			<b>X</b>		03/10/2015
<b>R. Engler</b>	<b>X</b>				03/10/2015

## Calendaring Statement of Manny Ehrlich

I calendar Notation Item (NI) 2015-07. I do so for several important reasons.

1. The principal Board Order (BO) that was eliminated by BO 2015-01 was BO 28. Despite the concerns of my colleagues, BO 28 was truly a midnight issuance by a Board faction determined to strip the Chairperson of many of the administrative authorities normally exercised by an agency head, including by the Chairperson of the NTSB. BO 28 was approved three days after the President had already appointed a new Chairperson and a new Member. Yet, neither person was permitted to vote on BO 28, even though they were both holding office for three days after passage of the NI adopting BO 28. Neither the new Chairperson nor her Board Member colleague were even informed of the vote. The vote was done by an “Urgent Notation Item” with no public notice (and no notice to the incoming Chairperson and the other Board Member). BO 28 also improperly attempts to limit the assumption of the duties of the Chairperson to the taking of the oath of Office. This was done because the three Board Members who devised BO 28 knew that a new Presidentially appointed Chair, as well as another Member, had already taken office when the NI circulating BO 28 was issued. In all good conscience, I cannot vote to return to a BO that was clearly improper from the outset.

BO 2015-01 simply resets the clock so that the improper BO 28 is no longer recognized. In addition, as the President has just this week nominated a new Chairperson for the CSB, Vanessa Allen Sutherland, any further consideration of governance issues involving the Board and Chairperson, should properly await her confirmation by the Senate, and appointment by the President. It is incumbent upon the Board to allow a new Chairperson to fully engage in this discussion, and not to try to hand her the same set of debatable restrictions and curtailed authorities that were foisted on her predecessor, Chairperson Carolyn Merritt.

2. With respect to the three cases that were administratively closed by the Board on January 28, 2015, I believe that a better approach is for the Board to consider undertaking a study of the issues presented by these cases -- specifically use of HF at refineries, and facility siting and land use planning for refineries. This would fully address any remaining issues raised by the Silver Eagle and CITGO cases that were initiated, but saw little progress, under former Chairman John Bresland.

As for the administrative closure of the Horsehead case, the Board has released a 57 page expert report on this incident. It is comprehensive, and addresses all the relevant issues (especially as the process involved is no longer used in this country). The expert report is an excellent product and provides even more detail than is typical in some CSB reports. It has the support of the local USW, and the union has not sought anything further on the case.

3. BO 22 and BO 40 are updates of long-standing CSB procedures pertaining to recommendations and investigative protocols, respectively. Both were recommended by the Inspector General as well as the CSB staff, who as I understand it, have spent several years

updating these BOs based upon best practices development. By passing these updates, we can now seek closure of these open IG recommendations.

Summary: I am more than willing to discuss these issues in a public forum with my Board colleagues, including, I hope the new Chairperson. I am not eager to approve the NI at this time, through a notational process outside public view.