



# Chemical Safety and Hazard Investigation Board

OFFICE OF GENERAL COUNSEL

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Memorandum

To: Board Members

From: Kara Wenzel, Acting General Counsel *KW*

Cc: Leadership Team  
Veronica Tinney, Recommendations Specialist

Subject: Board Action Report – Notation Item 2016-27a

Date: June 2, 2016

On May 31, 2016, the Board disapproved Notation Item 2016-27a, which would have designated Recommendation 2001-01-H-R9, to the American Chemistry Council (from the Improving Reactive Hazards investigation; 2001-01-H), with the status of Closed – Unacceptable Action/No Response Received.

Voting Summary – Notation Item 2016-27a

**Disposition: Disapproved**

**Disposition date: 5/31/2016**

	Approve	Disapprove	Calendar	Not Participating	Date
M. Ehrlich		X			5/26/2016
R. Engler	X				5/19/2016
K. Kulinowski				X	5/31/2016
V. Sutherland		X (Memo submitted)			5/25/2016




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

### Memorandum

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**To:** Board Member Manny Ehrlich  
Board Member Rick Engler  
Board Member Kristen Kulinowski

**Cc:** Office of Recommendations Staff

**From:** Chairperson Vanessa Allen Sutherland 

**Subject:** Vote to Disapprove and Accompanying Dissent for Notation No.: 2016-27a

**Date:** May 24, 2016

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This memorandum is to record my vote to disapprove Notation item 2016-27a, and to provide an explanation in the dissent. As explained below, I analyzed whether the Chemical Safety Board's (CSB) recommendation was best served by being closed as "unacceptable" or by being closed as "reconsidered/superseded." I concluded that "Closed-Reconsidered/Superseded" is more aligned with the CSB's internal guidance and also considers the almost fourteen year history of this recommendation.

#### **Recommendation to the American Chemistry Council from the CSB's 2002 *Improving Reactive Hazards Management Study*:**

Develop and implement a **program** for reporting reactive incidents that includes the sharing of relevant safety knowledge and lessons learned with your **membership, the public, and government to improve** safety system performance and **prevent** future incidents.  
[Emphasis added.]

#### ***Excerpt from the ACC's Formal Recommendation Response:***

*ACC believes that, as a trade organization, it is not the optimum venue for collecting, vetting and disseminating the potentially large volume of information that could be generated by such an effort. Nonetheless, ACC has implemented an internal system to annually collect a summary of process safety incident data from our members which includes, but is not limited to, substantive events that may involve reactive chemicals with an explicit flag in the system to note any reportable incidents that involve a reactive chemical.*

*Other organizations, such as the American Institute of Chemical Engineers (AIChE) (through its Center for Chemical Process Safety) currently collects and disseminates such information to a wide audience via several mechanisms, such as the Process Safety Incident Database*

*and its monthly Process Safety Beacon newsletter and venues such as the annual AiChE Global Congress of Process Safety (of which ACC is a participant **and** regular co-sponsor). These avenues more appropriately provide adequate mechanisms for the sharing of relevant safety knowledge and lessons learned for not only reactivity issues, **but** fire, explosion and toxic release incidents as well.*

## **Discussion**

My conclusion and vote is predicated, in part, on noting that CSB should assess if its recommendation was accurate and appropriate, the ACC response was reasonable, the actions taken by ACC addressed the recommendation or its intent, **and** the requested data (over the course of the last 14 years from September 2002 to April 2016) can or should be collected by other entities. I further considered the comments by **each** of my fellow Board members at our April 2016 public business meeting, which resulting from the calendaring of notation item 2016-27 to change the status of the ACC Recommendation to: “Closed – Acceptable Alternative Action.” On April 20, 2016, there was a split Board vote on the NI 2016-27, which left Recommendation no. 2001- 01-H-R9 unchanged.

I focused on key words in the recommendation, highlighted above, when determining my vote, and I heavily considered formal communications between the CSB and ACC. Moreover, I incorporated information from Board Order 22 to evaluate the nuances between “Closed-Unacceptable” and “Closed-Reconsidered/Superseded.”

The CSB defines “Closed-Unacceptable” as the following: when a recommendation recipient responds by expressing disagreement with the need outlined in the recommendation, and the Board does not consider that any alternative action can persuade the recipient to implement the recommendation. The classification can also be used when a recipient expresses disagreement with the recommendation and offers an alternative response, but the Board concludes that the recipient has not provided sufficient evidence that the alternative is acceptable or that the recommendation should be reconsidered, and that further actions are unlikely to change the recipient's views.

Alternatively, the CSB may close a recommendation as "Closed- Reconsidered" when a recipient rejects the recommendation based on a rationale with which the Board concurs. Reasons for this status may include the following situations:

- when later facts indicate that the conclusions of the Board should be modified,
- that concerns expressed in the recommendation were addressed prior to the incident,
- when a recommendation should have been directed to a different recipient, or
- when a recommendation is superseded by a new, more appropriate recommendation.

CSB issued a recommendation to the ACC that it should develop and implement a **program** for reporting reactive incidents that includes the sharing of relevant safety knowledge and lessons learned with your **membership, the public, and government to improve** safety system performance and **prevent** future incidents. [Emphasis added]

Thus, there are two analyses to conduct. First, did ACC satisfy the elements of the recommendation? Second, if ACC did not satisfy the elements of the recommendation, then should the recommendation be closed as an “unacceptable action” or closed as a “reconsidered/superseded”?

First, there is no dispute that ACC did not create a program for reporting reactive incidents that includes sharing relevant safety information or lessons learned for access by the public and the government. Documentation received from ACC, and the evaluation by the CSB Recommendations Department, confirm this fact.

Second, as ACC did not create a program for the public and the government to report reactive incidents, what rationale did it provide for not doing so? Based on ACC’s communications to CSB, it did not respond by expressing disagreement with the need outlined in the recommendation; rather, ACC implemented part of the recommendation and provided an alternative response focusing on how to address the remainder of the intent of the recommendation via other entities.

ACC remarked that other organizations, such as the American Institute of Chemical Engineers (AIChE) - through its Center for Chemical Process Safety - collects and disseminates such information to a wide audience via several mechanisms, such as the *Process Safety Incident Database* and its monthly *Process Safety Beacon Newsletter* as well as its annual *AIChE Global Congress of Process Safety*. Additionally, ACC contributed \$25,000 to the CCPS publication “Essential Practices for Managing Reactive Chemistry Hazards,” which was offered worldwide free of charge until 2013.

Thus, ACC did not express disagreement with the need outlined in the recommendation, as much as it disagreed with the appropriateness of a trade association creating a program for distribution of incident data to the government or public. ACC has not disputed the CSB’s findings regarding the compilation of reactive incidents. Moreover, ACC offered an alternative response (e.g., CCPS database, other reactive tools by the National Oceanic and Atmospheric Association, AIChE Loss Prevention Symposium & *Beacon* publications).

Additionally, I reflected on the actions that ACC has taken regarding the sharing of information among its members, the quality of any incident reporting program without consistent or mandated root cause methodologies, the age of the recommendation, the intent and original breadth of the recommendation, and the creation of ACC’s Responsible Care program.

My conclusion is that “Closed-Unacceptable” did not take into consideration the long history and numerous actions surrounding this recommendation. Ultimately, it felt like a blunt instrument that did not fully consider our internal guidance or the various activities that have occurred over the past 13 years.

In reviewing a “Closed- Reconsidered” option, I concluded that the recommendation recipient implemented part of the recommendation and then expressed concern that the recommendation should have been directed to a different recipient(s), with which I concur.

As mentioned above, “a recommendation can be closed as reconsidered if later facts indicate that the conclusions of the Board should be modified or when a recommendation should have been directed to a different recipient.”

### **Conclusion**

The CSB’s Recommendations Program continues to be a powerful tool for safety change. Trade organizations play a valuable role in communicating the board’s findings to industry. They must be held accountable to contribute to the shared responsibility that we all have to improve chemical safety. The CSB must both collaborate with, and compel, stakeholders such as the ACC to be proactive and creative in addressing our very important recommendations; however, I believe that giving no credit to our recommendation recipients is more likely to diminishes trade associations’ desire to implement or entertain CSB recommendations than closing a recommendation as “Reconsidered.”

1. As of FY2015, the CSB had issued 740 recommendations, 558 of which were closed, which is a 75% closure rate.
2. Currently, the CSB has a total of 784 recommendations, with 583 closed, which is a 74% closure rate.
3. Promoting productive chemical safety change is a shared responsibility, which includes having associations like the ACC promote the distribution of safety information. This includes actions such the funding of the CCPS publication “Essential Practices for Managing Reactive Chemistry Hazards.” Financial and technical support of such endeavors highlights the important role available to trade associations.
4. Having open-ended, long-standing, recommendations with no intent of closure is not the objective of the CSB’s Recommendations program. The Environmental Protection Agency Inspector General has stated in a past report that “The Strategic Plan acknowledges that time consuming advocacy is required to secure implementation of significant recommendations.” This, CSB can seize the moment for outreach and advocacy following a Closed-Unacceptable finding in order to conduct broad outreach through Board members, who can explain the status and what it means to chemical safety.
5. Having an ongoing dialogue is an important part of the CSB’s recommendations process. In this case, the CSB has been adequately informed that no further action will be taken on this recommendations.

In conclusion, the CSB must consider the facts surrounding this recommendation and acknowledge that almost fourteen years have passed since this recommendation was issued. CSB recommendations should be well crafted, effective and most importantly, feasible. Ongoing communication and documentation have been supplied on behalf of the recipient to acknowledge assigning a status of “Closed-Reconsidered” would be an appropriate course of action.