

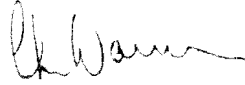


U.S. Chemical Safety and Hazard Investigation Board

Office of General Counsel

Memorandum

To: Chairperson and Board Members

From: Christopher Warner 

Cc: Manuel Gomez
Daniel Horowitz
Bill Hoyle
John Vorderbrueggen

Subject: Board Action Report – Notation Item 408

Date: March 13, 2006

On March 13, 2006, the Board disapproved Notation Item 408, which would have provided for the adoption of the investigation report and recommendations on the incident at the MFG Chemical, Inc. facility in Dalton, Georgia. Dissenting comments submitted by each Board Member are attached to this memorandum.

Voting Summary – Notation Item 408

Disposition: DISAPPROVED

Disposition date: March 13, 2006

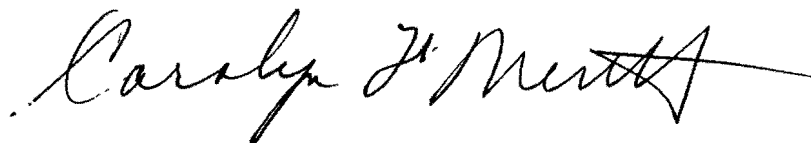
	Approve	Disapprove	Calendar	Withhold	Not Participating	Date
Chairperson Merritt		X				3/10/2006
Member Bresland		X				3/13/2006
Member Visscher		X				3/8/2006

Dissenting Vote Justification on the MFG Report Notation Item 408, March 10, 2006

It is my opinion that the findings reported on page 75 item 2(4) and 2(5) of the voting copy as Root Causes are Contributing Causes. The root causes, from my understanding, are events that precipitated the event or directly followed at the location where the release was generated allowing it to impact the community, and contributing causes are events that exacerbated or were secondary results of the impact of the event once the release occurred.

The lack of equipment and planning by the Dalton Fire Department and Police Department caused exposure of City personnel and residents. However if the chemical release had not occurred the police nor fire departments would have been involved at all and these shortcomings would not have been revealed. These shortcomings need to be addressed, however, now that they have been revealed by this incident and the recommendations which address them are valid. I would vote to move these two causes from Root to Contributing Causes.

Submitted by Carolyn Merritt

A handwritten signature in black ink, reading "Carolyn J. Merritt". The signature is written in a cursive style with a long horizontal flourish extending to the right.

**Notation Item 408
Investigation Report on MFG Chemical Inc**

**Dissent Comments by John Bresland
March 13, 2006**

Section 7.1 Root Causes

Root Cause 4 -- I object to the actions of the Dalton Fire Department being considered a root cause of this incident. If the "top event" for this incident is "exposure and injuries sustained by the emergency responders, community and employees" (John Vorderbrueggen memo on State, County and City comment resolution) then the entrance of three MFG personnel into the building (see Section 2.3.6) appears to have been at the employees' own risk without the approval of the Fire Department.

In my opinion, the "top event" can more logically be described as the release of allyl alcohol from the MFG facility. If this is the case, then the root causes of the event would all be related to the actions (or inactions) of MFG.

Root Cause 5 – I don't see how we can assign a root cause the actions of the Dalton Police Department. The police officers who were exposed to the effects of allyl alcohol were trying to evacuate citizens in an emergency. I don't see what alternative they had but to try to enter the hazard zone to warn the residents. I do not believe that they should be criticized for putting their health and lives at risk in a situation where all of the facts were not known to them.

Section 7.2 Contributing Causes

Contributing Cause 1 – I would make MFG's lack of implementation of the EPA Risk Management Program as a root cause instead of a contributing cause.

Section 1.7.2 MFG Safety Program

In the chemical and oil refining industry there is still a certain amount of confusion and lack of clarity as it applies to the OSHRC Meer decision on the applicability of the OSHA PSM program to the storage of flammable liquids in atmospheric tanks. I do not believe that the CSB should be interpreting the Meer decision in a way that absolutely states the MFG isotainer was exempt from OSHA coverage. This issue is still open to interpretation.

Other Comments

In his memo on State, County and City comment resolution, John Vorderbrueggen (Police Chief comments resolution item 4) states “CSB does recognize the dedication of the emergency responders Introduction edited to acknowledge”). In Section 1.1 we state “Emergency responders made every attempt to respond safely and promptly to the emergency, placing themselves in harms way” However, we immediately follow this sentence with “Local emergency response agency all-hazard preparedness was not adequate for this event”.

If we are going to acknowledge the actions of the emergency responders in putting themselves at risk during their response then we should separate that positive comment from our criticism of the overall emergency response planning program at the state, county and local level.

I have several other editorial comments that I will send electronically to John Vorderbrueggen.

Comments accompanying Dissent on Notation Item 408 (MFG)

Editorial Comments:

I have a couple of minor editorial comments on the report:

1. In at least a couple of places (pages 53 and 54 – I didn't notice elsewhere but also didn't do a thorough check) the report refers to EPCRA Title III. I don't think that is a correct reference – EPCRA is Title III of SARA, but I don't think there is a Title III of EPCRA (there is a subchapter III but I don't think that is what the reference is to).
2. In the abstract and on page 7 the report refers to the release of both allyl alcohol and allyl chloride. Elsewhere (e.g. pages 3 and 4) the report only refers to the release of allyl alcohol, and the report only addresses the characteristics and effects of allyl alcohol. (page 12) Is this intentional or unintentional inconsistency?

More substantive concerns

1. The report states a conclusion that the Process Safety Management standard (PSM) did not apply “because the allyl alcohol quantity used in the process was below the regulatory threshold” (page 60) and “the isotainer was exempt from PSM compliance” under the exemption in 1910.119 (a)(ii)(B) for atmospheric storage tanks.

I believe that this is not a correct conclusion, nor is it consistent with OSHA's interpretation of the exemption. I believe that OSHA's interpretation of PSM coverage and of the exemption is correct; furthermore, why should the CSB give the PSM standard an interpretation that is considerably more restrictive than does OSHA in this regard? I think it does potential harm to future efforts to apply and enforce the standard to similar situations where chemicals are temporarily held in a separate container close to and interconnected to the processing vessel.

2. I would not characterize the Dalton Fire Department's and Police Department's actions as “root causes”; at the same time I think that MFG not having a Risk Management Program probably should be listed as a root cause rather than a contributing cause. I view the test for “root cause” as “but for” [the cause] the release would not have happened. “But for” MFG's failure to have a RMP program, the release would not have occurred, it seems to me.

I don't think we can say the same for the Police and Fire Department's actions. I recognize the reason for making these “contributing causes” – as factors that added to the injuries incurred. However, I would also restate those in a way that looks less finger pointing, especially with regard to the Police. There is fine line between pointing out that first responders should have proper protection, and criticizing responders for entering an environment to warn or protect citizens without having such protection, especially where as here the severity of the risk was not clear.