



NOTICE OF ADDITIONAL INFORMATION FOR SUNSHINE ACT MEETING

As previously announced, the Chemical Safety and Hazard Investigation Board (CSB) will be holding a public meeting on Wednesday, April 24, 2013, starting at 9:30 a.m. EDT at the Ronald Reagan Building and International Trade Center, Horizon Room, 1300 Pennsylvania Avenue N.W., Washington, DC 20004 (for further information, see <https://www.federalregister.gov/articles/2013/03/13/2013-05854/sunshine-act-meeting-request-for-comments-on-draft-evaluation-of-recommended-practice-on-fatigue>). During the morning of the meeting the CSB intends to consider and vote on the status of Recommendation No. 2005-4-I-TX-7 issued to the American Petroleum Institute (API) and the United Steelworkers International Union (USW) in March 2007. During the afternoon, the CSB plans to consider and vote on the status designations for the following recommendations to the U.S. Occupational Safety and Health Administration: 2001-05-I-DE-1 (revision of Process Safety Management standard to clarify coverage of atmospheric storage tanks connected to process vessels); 2005-04-I-TX-9 (revision of Process Safety Management standard to require management of change reviews for certain organizational changes); 2010-07-I-CT-1 (issuance of a standard for fuel gas safety), and possibly other items at the discretion of the Chair.

This notice is to provide additional information to the public concerning the matters related to the three recommendations to OSHA listed above, which are expected to be considered during the afternoon of the meeting. At the meeting, the staff will present its draft evaluations of the implementation of these three recommendations. The Board will consider these analyses and decide concerning the status to assign to each recommendation according to Board Order 22.

Following are summaries of the draft staff evaluations for these recommendations that will be presented to the Board for consideration.

RECOMMENDATION TO THE U.S. OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION 2001-05-I-DE-1

Recommendation Text:

Ensure coverage under the Process Safety Management Standard (29 Health Administration CFR 1910.119) of atmospheric storage tanks that could be involved in a potential catastrophic release as a result of being interconnected to a covered process with 10,000 pounds of a flammable substance.

Rationale for Recommendation

The recommendation followed a fatal explosion involving a poorly maintained and corroded atmospheric aboveground tank containing spent sulfuric acid and flammable hydrocarbons at the Motiva Enterprises refinery in Delaware City in July 2001. The company considered the tank to be exempt from the OSHA Process Safety Management standard under the 1997 Meer court decision. This decision was issued by an administrative law judge of the Occupational Safety and Health Review Commission,

which exempts “flammable liquids stored in atmospheric tanks or transferred which are kept below their normal boiling point without benefit of chilling or refrigeration.” The CSB investigation concluded that if Motiva had adhered to PSM standard requirements for the tank, the accident could have been avoided.

Summary of OSHA Response to the Recommendation

OSHA does not agree that it is necessary to revise the PSM standard in order to clarify the issues of coverage of tanks connected to processes. As an alternative, OSHA reported to the CSB in 2003 that it would issue a revised PSM Compliance Directive that would clarify to all its compliance officers and to the regulated parties that tanks like the one at Motiva (which OSHA contended had a process function as well as a storage function) were covered under PSM. To date, however, OSHA has not revised its compliance directive, although a recent communication from the Assistant Administrator for OSHA indicated projected completion of a revision in 6-9 months.

Draft Summary Evaluation and Board Action

Because ten years have passed and OSHA has yet to take any regulatory or other actions which would address the intent of the recommendation the Board votes to change the status of Recommendation 2001-5-I-DE-R1 to “Open-Unacceptable Response.”

RECOMMENDATION TO THE U.S. OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION 2005-04-I-TX-R9

Recommendation Text:

Amend the OSHA PSM standard to require that a management of change (MOC) review be conducted for organizational changes that may impact process safety including:

- a) *Major organizational changes such as mergers, acquisitions, or reorganizations;*
- b) *Personnel changes, including changes in staffing levels or staff experience; and*
- c) *Policy changes, such as budget cutting.*

Rationale for recommendation

The CSB investigation of the 2005 explosions and fire at the former BP refinery in Texas City, Texas revealed that poorly managed corporate mergers, leadership and organizational changes, and budget cuts increased the risk of catastrophic accidents at the site. The CSB also noted that a 2002 survey revealed that organizational change was assessed in the Management of Change (MOC) programs of only forty-four percent (44%) of chemical processing companies, strongly suggesting that assessment of such organizational factors are not widely used in the industry. While OSHA's Process Safety Management (PSM) standard (29 CFR 1910.119) requires MOC analyses for changes to "process chemicals, technology, equipment, procedures; and, changes to facilities that affect a covered process," the CSB concluded that it does not explicitly require that employers conduct MOC reviews for organizational, personnel and policy changes that could affect process safety. Consequently, the CSB recommended that OSHA amend the PSM standard to clarify that MOC reviews must be conducted for organizational, personnel, and policy changes that may impact process safety.

Summary of OSHA response to the recommendation

OSHA responded that, in the Agency's view, the PSM standard already requires employers to develop and implement MOC reviews to determine the adequacy of all contemplated changes with respect to their safety and health impacts as they relate to

“process chemicals, technology, equipment, procedures, and facilities.” In OSHA’s view, these are the types of changes encompassed by the CSB recommendation. In addition, OSHA sent a memorandum to all Regional Administrators to clarify this policy with regard to the coverage of organizational changes under the PSM’s management of change requirements. The policy clarification was to be provided to OSHA’s compliance officers.

Draft Summary Evaluation and Board Action

A policy memorandum to OSHA Regional Administrators is not the permanent regulatory change envisioned by the Board, which sought an explicit change in the requirements of the standard through the usual rulemaking procedures. It is only a policy change that can be relatively easily reversed by a future OSHA administration. Moreover, the Board also has serious concerns that OSHA’s policy interpretation may be judged unacceptable upon judicial contest/appeal. For these reasons, the Board concludes that the status of this recommendation should be changed to: “Open – Unacceptable Response.”

URGENT RECOMMENDATION TO THE U.S. OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION 2010-07-I-CT-UR1

Recommendation Text:

Promulgate regulations that address fuel gas safety for both construction and general industry. At a minimum:

- a. *Prohibit the release of flammable gas to the atmosphere for the purpose of cleaning fuel gas piping.*
- b. *Prohibit flammable gas venting or purging indoors. Prohibit venting or purging outdoors where fuel gas may form a flammable atmosphere in the vicinity of workers and/or ignition sources.*
- c. *Prohibit any work activity in areas where the concentration of flammable gas exceeds a fixed low percentage of the lower explosive limit (LEL) determined by appropriate combustible gas monitoring.*
- d. *Require that companies develop flammable gas safety procedures and training that involves contractors, workers, and their representatives in decision-making.*

Rationale for Recommendation

The CSB investigated two natural gas explosions (Kleen Energy Natural Gas Explosion and ConAgra Natural Gas Explosion and Ammonia Release) and concluded that the fire and explosion hazards of releasing flammable gas in the presence of workers and ignition sources can be largely or entirely avoided through the use of currently available inherently safer methods than those currently in use in most workplaces. These CSB reports focused particularly on the hazards of gas purging in industrial establishments and “gas blows” conducted during the construction of gas-fired power plants; reports of these investigations can be found in the CSB webpage (www.csb.gov). The CSB also found that OSHA has three gas-specific standards for flammable gases that are used far less frequently in the workplace than natural gas. These existing gas standards apply to liquefied petroleum gases (propane and butane, 1910.110), hydrogen (1910.103) and acetylene (1910.102). Yet the Agency has no comprehensive fuel gas safety standard,

despite the fact that fuel gases pose serious explosion and fire hazards and are in much more widespread use in OSHA-regulated workplaces.

Summary of OSHA Response to the Recommendation

OSHA's initial response to the recommendation described several forceful enforcement actions affecting the industry sector conducting "gas blows" during the construction of power plants—which the CSB commended—but stated only that it would "consider" a new fuel gas standard during its next regulatory review. In a subsequent notification, however, OSHA reported that it did not "believe this is the appropriate time to initiate the regulatory process." Briefly stated, OSHA indicated that "the most prudent approach for OSHA is to monitor the implementation" of two recently revised NFPA standards and "evaluate their effectiveness at controlling the targeted hazards, and then determine if additional rulemaking is necessary to protect workers." Moreover, OSHA did not include fuel gas rulemaking in the Agency's most recent regulatory agenda (1/8/13), indicating that it has not current intention to begin rulemaking in this arena.

Draft Summary Evaluation and Board Action

Per 42U.S. Code §7412(6)(J), OSHA must inform the CSB within 180 days whether it will initiate rulemaking (and provide a timetable), or not initiate rulemaking (and explain why). OSHA's latest response indicates that the Agency does not currently intend to pursue rulemaking, and provides a rationale for its decision. It is not clear from the OSHA response, however, how or when the Agency plans to evaluate the impact of the NFPA actions on the hazards arising from the use of fuel gases, and thus when and if it would decide whether to initiate rulemaking.

CSB's Board Order 22 obligates staff to recommend an "Open- Unacceptable Response" status for urgent recommendations that "[have] not been responded to in an acceptable manner within 6 months and [are] not at a point where completion is imminent." In this case, OSHA's apparently indefinite postponement of any regulatory action on fuel gases is inconsistent with the intent of the recommendation and the Board votes to change the status of Recommendation 2010-07-I-CT-UR1 to "Open-Unacceptable Response."

For any questions regarding these draft evaluations or other aspects of the public meeting, please call Amy McCormick, Board Affairs Specialist, at (202) 261-7630.

No factual analyses, conclusions, or findings presented by staff should be considered final. Only after the Board has considered the staff presentations, listened to public comments, if scheduled, and voted to approve a change in status of the recommendation should that status be considered final.

The meeting will be free and open to the public. If you require a translator or interpreter, please notify the individual listed below as the "Contact Person for Further Information," at least five business days prior to the meeting.

The CSB is an independent Federal agency charged with investigating industrial accidents that result in the release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of accidents, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

CONTACT PERSON FOR FURTHER INFORMATION: Hillary J. Cohen,
Communications Manager, hillary.cohen@csb.gov or (202) 446-8094. General
information about the CSB can be found on the agency website at: www.csb.gov.

Dated: March 23, 2013