

U.S. Chemical Safety and Hazard Investigations Board

Business Meeting

October 24, 2018

CSB Headquarters Office - Washington, DC

U.S. CHEMICAL SAFETY BOARD MEMBERS PRESENT:

KRISTEN KULINOWSKI, INTERIM EXECUTIVE AUTHORITY

MANNY EHRLICH, MEMBER

RICK ENGLER, MEMBER

STAFF PRESENT:

Tom Zoeller, Office of General Counsel

OPERATOR: Welcome to the Chemical Safety Board business meeting. My name is James and I'll be your operator for today's call. At this time, all participants are in a listen only mode. Later we will conduct a question and answer session. During the question and answer session, if you have a question, please press *1 on the phone. And also note this conference is being recorded. I'd now like to turn the call over to Dr. Kulinowski. Dr. Kulinowski, you may begin.

MEMBER KULINOWSKI: Thank you very much. Good after...good morning. We usually hold these meetings in the afternoon, but shake things up. We will now call to order this business meeting of the U.S. Chemical Safety Board or CSB. Today we meet in open session, as required by the Government in the Sunshine Act, to discuss the operations and agency activities.

I'm Kristen Kulinowski, Interim Executive Authority of the Board. Joining me today are Board Members Manny Ehrlich and Rick Engler. Also joining us is Tom Zoeller from the Office of General Counsel and other members of the staff.

The CSB is an independent, non-regulatory federal agency that investigates major chemical incidents at fixed facilities. The investigations examine all cause...all aspects of chemical incidents, including physical causes related to equipment design as well as

inadequacies in regulations, industry standards, and safety management systems. Ultimately, we issue safety recommendations, which are designed to prevent similar accidents in the future.

Before we proceed, I'd like to highlight safety information. Please take a moment to note the locations of the exits at the side and back of the room. And I also ask that you please mute cellphones so that these proceedings are not disturbed. Thank you.

Today's agenda for new business includes the release of a factual update and a new document related to combustible dust, stemming from the CSB's ongoing Didion Milling investigation. We will have presentations by our investigators on both issues. And both documents are currently posted on our website at csb.gov.

Following that, Member Engler will lead a discussion and possible vote on a policy regarding employee participation in CSB investigations.

If you are in the room and wish to make a public comment at the end of the meeting, please sign up using the yellow sheets at the registration table. For those on the phone, you may submit public comments by email to meeting@csb.gov to be included in the official record.

Since we have a full agenda today, a complete list of our nine open investigations can be found at the sign-in table and will be posted on the events portion of the website following this meeting.

I'd like to start off by summarizing some specifics from our recommendations program. The CSB currently has a ratio of 84% recommendations closed and 16% in open status. The total number of recommendations the CSB has issued is 815. The status of all of our recommendations can be found on our website at www.csb.gov/recommendations.

Recommendations that have been recently voted on can be found on the Recent Recommendations Status Updates page. Each recommendation has a Status Change Summary that describes the rationale for the Board vote.

This month as a part of our "20 Years of Driving Chemical Safety Change" campaign, we are developing a Safety Bulletin that addresses Emergency Planning and Response, which should be coming out in the coming days. November's topic is Human Fatigue and December's is Reactive Hazards.

For Fiscal Year '18, we issued 11 recommendations, closed 37, and advanced 2. So far, in Fiscal Year '19, the CSB has closed five recommendations acceptably, advanced four with acceptable responses or alternate responses.

Recommendations that were voted on this fiscal year were from the following investigations. Packaging Corporation of America hot work explosion, 1. Two from the Chevron Refinery fire. Three from the Airgas Facility fatal explosion. Two from the West Fertilizer fire and explosion. And one from Donaldson Enterprises Inc. fatal fireworks disassembly explosion and fire.

So Member Engler will now provide a financial update.

MEMBER ENGLER: Thank you, Chair Kulinowski. CSB, like much of the federal government, is operating under a continuing resolution that provides funding to continue our work through December 7th, 2018. Again, this is December 7th, 2018, not far off. We are awaiting final action on the Fiscal Year 2019 appropriation from Congress.

The House Appropriations Committee supports \$12 million in funding for CSB. This is actually, we're pleased to indicate, a \$1 million increase from the \$11 million CSB has received for its annual operations since Fiscal Year 2014.

The Senate Appropriations Committee, again in contrast to the House Appropriations Committee, supports continuing CSB's funding at this point, at the \$11 million level. So the House supports...Committee supports \$12 million. The Senate Appropriations

Committee supports \$11 million. But that issue has not been resolved.

While we are hopeful the CSB receives \$12 million, we are assuming an \$11 million appropriation and are developing plans to use productively any additional funding that is provided by Congress. And we are grateful to Congress for that vote of confidence in the importance of our work.

MEMBER KULINOWSKI: Thank you, Member Engler. Member Ehrlich will now provide an update of ongoing audits by the EPA Office of Inspector General.

MEMBER EHRLICH: Thank you. As of October 24, 2018, the CSB is currently working with the OIG, Officer of Inspector General...Office of Inspector General on two different audits.

The Fiscal Year 2018 Financial Statement Audit. CSB continues to work with OIG's requests for documentation. The Fiscal Year 2018 CSB Audit Exit Conference is scheduled for November 8th of this year.

The Federal Information Security Modernization Act, FISMA. CSB and OIG held its Fiscal year 2018 Exit Conference Meeting on October the 16th of 2018. Five deficiencies in two areas were identified. CSB awaits the final report expected in the coming weeks.

MEMBER KULINOWSKI: Thank you, Member Ehrlich. This brings us to the New Business portion of our meeting. First, we will hear from Investigator Steve Cutchen who will present an overview of the CSB's newly released factual update into our ongoing Kuraray investigation. Investigator Cutchen, please proceed.

SC: Thank you. My name is Steve Cutchen. I'm an investigator with the Chemical Safety Board and I'm serving as Investigator in Charge for this incident, an investigation of a fire that took place at the Kuraray America EVAL facility in Pasadena, Texas, on May 19th of this year.

I'd like to thank the Board for the opportunity to present the update to them and also thank my team members on the investigation team for the work that they've been doing to get to where we are on this investigation.

So Kuraray EVAL. EVAL is actually a trademarked name for a plastic that's made by Kuraray. Kuraray America is a...the American arm of a Japanese chemical company, rather large Japanese chemical company, Kuraray.

EVAL is a copolymer of ethylene and vinyl alcohol, which is where the name comes from. And it is a barrier-type plastic. It's used in food packaging to prevent oxygen from going through plastics so that the food inside the plastic remains unhindered by

reacting with oxygen. It also blocks other gases. So it's used in plastic containers and it's used in the manufacture of plastic gasoline tanks for automobiles.

Kuraray has manufacturing facilities for EVAL in Japan, in Belgium, and at the facility where the incident took place in Texas.

This is the facility in Texas. The...you can see the various manufacturing portions sticking up. The one on the far right is the general area where the incident took place. So where in Pasadena, Texas... First of all, where is that? And where did the incident take place?

So in the upper left corner is downtown Houston and what we're looking at is kind of the southeast corner of Harris County. And in that area is a portion that belongs to the City of Pasadena called the Bayport Industrial District. If we zoom in on the Industrial District closer map...and if we zoom in again, we get to a point where, if you have sharp eyes, you can see a couple of points that are actually labeled as Kuraray. If we could take this to a satellite view, and then zoom in one more time, this is the overhead view of the Kuraray EVAL facility in Pasadena. The major road on the left side is the one from which the other photograph was taken.

The incident, as I mentioned, took place, from that street view on the far right... So if we zoom in on that, then this is the portion of the plant that's of interest to us in our investigation.

The incident took place when a reactor on the site released vapors and those vapors found an ignition source. That reactor is located where the yellow dot is there. And if we look to see what that reaction looks like, we can kind of go to a street view and it's a tall...this tall, cylindrical vessel in the middle of the photograph. That little yellow pipe-looking device at the top of the reactor is a drive shaft for an internal agitator inside the reactor. It's a stirred tank reactor. And they fill that with chemicals and that's where their polymerization reaction takes place.

At the top of this reactor, as on most process vessels in a chemical or refinery facility, there are safety relief valves in case pressure inside the device gets too high. So what you see in the right-hand photograph here is a picture of this safety relief valve and the discharge piping that extends up from that relief valve and vents to the atmosphere.

On the right-hand side, one of the distinguishing characteristics of this particular vent system is a little more apparent. And that is there's a 90-degree bend in the top of that

vent stack, so that the vapors that would be vented from this emergency relief valve, actually are vented horizontally rather than vertically. And that ends up being a key...a key factor in the incident that took place.

So now back to this overhead view. Kuraray, at the time of the incident, was doing a site-side maintenance activity called a turnaround, where they shut the entire facility down. They enter and clean equipment. And they also install new capital projects at that same time, taking advantage of the fact that the facility is down. The work that was going on included welding. And adjacent to the reactor, on the street next to it, was a pickup truck that had a welding machine in the back of it. And that welding machine was operating.

Here's a photograph of the pickup truck's location compared to the reactor and the... You can see the horizontal discharge of that relief valve is pretty much aimed right at where that pickup truck happened to be located.

One of the capital projects that they were doing as part of this turnaround was the replacement of an original refrigeration machine that had been installed when the plant was originally built back in the late '80s. That original refrigeration machine used

ammonia as a refrigerant, which is a toxic chemical. They also needed additional capital...or additional capacity.

So they were installing a new refrigeration system that was freon based, much like your air conditioner on your air. And they installed it in a different location and it...where it was installed, in this photograph, is kind of in the upper right-hand corner. So to get refrigerant from that location down to where this reactor's located, required there to be a supply header to bring that refrigerant into the unit. The reactor needs that refrigerant because it generates heat as part of...when it's doing its job. And the refrigerant is there to help remove some of that heat.

In addition to that, there are other users that use this refrigerant from the supply header. After going through the various coolers and things that are required, that refrigerant goes into a return header which then heads back up to the upper right corner of the photograph, where the refrigeration machine is, to re-chill the refrigerant and allow it to recirculate again.

Now, one of the things that occurred, because of the fact that they relocated where this compressor was, is that some of the routing of these headers changed. And, as a result, they lost the ability to have a normal pipe connection from the supply header to

the return header, to be able just to circulate the refrigerant when there were no users using any of the refrigerant.

So what they decided to do was to make use of the reactor coolers as a path, to be able to get from the supply header to the return header. And as a result, they commissioned the reactor coolers much, much sooner than they normally would as part of a startup, because they were doing it in order to use this...create this pathway and test and commission this new refrigeration machine.

So here's the sequence of events that took place. On Wednesday, May 16th, about 10:30 in the morning, they had started circulating refrigerant and they used this jumper connection through the reactor coolers to get from the supply to the return header.

On Friday, May 18th, as part of the operational readiness portion of getting ready to start up, they began pressure testing the reactor. They had been inside it. They wanted to make sure that it was tightly sealed. So they began filling it with high-pressure ethylene gas, slowly, over time. And every so often, they would go out and make sure that nothing was leaking, continue to raise the pressure, go out again and check. And this was a process

that they were going through, to raise the reactor up to normal operating pressure.

That was at 3:00 in the afternoon on Friday. By 11:20 that evening, the pressure inside the reactor and cooler system got high enough that, with the cold temperature of the refrigerant, they actually began condensing ethylene gas inside those reactor coolers. And the liquid ethylene drained back into the reactor and was collecting inside the reactor. The reactor itself began to get very cold, on the order of 17 degrees Fahrenheit. And they were continuing to raise the pressure as part of their pre-startup operations.

They didn't notice the temperature until the following morning at shift change, at 7:00. The supervisor that came on for the day shift noticed the low reactor temperature. And he had the operators block the refrigerant line and they began to try to bring the temperature of the reactor back up. In fact, they started not only blocking refrigerant, but they started heating the reactor. So the reactor pressure was rising because they were in the middle of their pressure test. But it was also rising because this liquid ethylene that was inside the reactor was vaporizing.

About three-and-a-half hours later, at 10:28, the reactor pressure got to the point where that safety relief valve that we

looked at earlier in the photograph lifted and reactor vapor ejected horizontally from that relief valve, forming a large vapor cloud. That large vapor cloud was ignited by the welding machine, a conclusion that was reached by the Harris County Fire Marshal that that was the ignition source. And there was a large flash fire.

So this is a picture... This is not at...at the point of the flash fire, but it's not long afterwards. And what happened was you had this large vapor cloud that ignited. It flashed and propagated back to the relief valve. And so this was the situation that existed while the relief valve was open. The...that horizontal vent that we looked at earlier was actually a jet fire of flame coming out over the roadway above where that truck was sitting with its welding machine.

So this initial flash fire propagated back, becoming a jet fire. It burned for almost three minutes before enough vapor from the reactor was ejected to allow the pressure to get low enough for that relief valve to close.

There were a lot of contract workers in the area because of the capital project work and the turnaround work that was going on. And they tried to get the heck out of Dodge. They took off. There were people that were doing welding. Obviously, the welding

machine was running. They were doing insulating. They were doing painting and other types of maintenance and capital project work.

In the process of trying to get away, you have people that were working at height and they were wearing fall protection belts and systems that they had to get out of. You have people that jumped from height and that were injured because of that. You had people that suffered burns from the flash fire when it happened, from the radiant heat of the jet fire. And you have people that, as they were running away, were also tripping over things, falling down, and there were folks that were injured that way as well.

21 workers were transported to medical centers for treatment. One contract worker was severely burned and was in critical condition for several days and his burn injuries were life threatening, but he did survive.

So, again, this is the view, kind of, of where the event took place. This horizontal discharge over the top of where this welding machine was running.. If we look in the back of that pickup truck, this is what the welding machine looked like after it had become the ignition source.

And at this point, our investigation is continuing. We are collecting data. We are conducting interviews with people onsite and with other experts. Collecting evidence from the site. And as

we continue to do that, we will begin an analysis to try to understand the causes for why these things occurred, based on the evidence that we've collected in the course of the investigation.

At that point, we will issue a final report, which will have these and other facts, our analysis, the conclusions that we've drawn as a result of that analysis, and the recommendations that you heard about earlier, which are the ultimate output, how we try to prevent something like this from occurring again. And that will be done at the conclusion of our investigation.

And I believe as Dr. Kulinowski mentioned, this presentation is...it's not a standalone document. This is visual accompaniment to an oral presentation. The actual factual update that has the details of what I've described today is located on our website.

So do you guys have any questions?

MEMBER KULINOWSKI: No, thank you, Investigator Cutchen.

Member Ehrlich, do you have a question?

MEMBER EHRLICH: Yeah, I have several questions. What'd you say the refrigerant was? Ammonia?

SC: In this case, it... So the original refrigerant for the refrigeration machine was ammonia.

MEMBER EHRLICH: Right.

SC: And then the new compressor system uses freon. What's actually circulated, though, is a mixture of water and methanol. So essentially, it's kind of like the antifreeze that's in... A little different, but kind of like the antifreeze that's in your car. And it's like 4 degrees Fahrenheit. It's really cold.

MEMBER EHRLICH: Right. And the type of polymerization was...was a suspension polymerization?

SC: So it's a homogenous reactor.

MEMBER EHRLICH: Okay.

SC: It's catalyzed but I... They're making, ultimately, pellets. They kind of refer to it as a paste because the plastic is being created and it's, you know, a long-chain polymer. So it's kind of coming out at solution a little bit and they have a whole finishing section that turns that into pellets. The final product looks like little plastic beads.

MEMBER EHRLICH: And it's peroxide... I take it it's peroxide catalyst?

SC: I'm not... I don't know the exact catalyst. I don't remember peroxide.

MEMBER EHRLICH: Just as a comment on some of the things I'm doing in the way of outreach and advocacy in the field, particularly around process safety and things that affect culture,

process safety culture, the one point that you made was...which drives me bananas, is they didn't know the temperature was rising. Okay?

SC: Pressure.

MEMBER EHRLICH: I'm sorry, the pressure was...

SC: Well, they knew it was rising but they didn't realize that... You know, they didn't... They didn't understand why.

MEMBER EHRLICH: [multiple voices] they didn't realize.

SC: They were trying to raise the pressure to do the pressure test, but it was being raised internally, not just by their actions, but also by the fact that this liquid ethylene was vaporizing inside.

MEMBER EHRLICH: Nice update, thank you.

SC: Sure.

MEMBER KULINOWSKI: Member Engler?

MEMBER ENGLER: Thank you. Was this a process safety management covered facility under the OSHA PSM standards?

SC: Yes, it is.

MEMBER ENGLER: Okay. Have you had an opportunity yet to take a look at the...at the process hazards analysis documentation yet?

SC: That's part of the analysis that we're doing, part of the evidence that we've collected. So the evidence would be the PHAs,

the Process Hazards Analyses, the other portions of the capital project to put in the refrigeration system. All of that would contribute to evidence that we're looking at. And then, as we are able to digest that and talk to people, we're able to start doing analysis to try to figure out causal relationships, yeah.

MEMBER ENGLER: I take it if it's an EPA risk management planning facility build, similar analysis will be done.

SC: Yes.

MEMBER KULINOWSKI: So is it too soon, then, to say in which direction, what themes you're going to be exploring going forward on the...in the analysis phase, broadly speaking?

SC: At...at this point, yeah. It's still too soon. I think at this point, what we want to do is release facts to the public so that they have a little better understanding of what actually took place that day. But as far as why it took place, that's...that's really the analysis part and that's...we're still working on that.

MEMBER KULINOWSKI: Member Ehrlich?

MEMBER EHRLICH: One of things that strikes me is that if they were using ammonia or they were using one of the fluorinated[?] hydrocarbons, that requires a whole different scheme of equipment than a eutectic mix of salt and methanol. What did they do? Did they change the whole process around to accommodate methanol?

SC: So the...the way that the original system was set up, the circulating refrigerant that's going through the headers...

MEMBER EHRLICH: Yeah.

SC: Is a mixture of water and methanol.

MEMBER EHRLICH: Okay.

SC: The original design used an ammonia-based refrigeration machine to chill that water and methanol...

MEMBER EHRLICH: Oh, okay, got it.

SC: ...and they were replacing that with a freon-based refrigeration machine.

MEMBER EHRLICH: Gotcha, thanks.

MEMBER KULINOWSKI: Any additional questions from the members? Thank you very much, Investigator Cutchen.

SC: Thank you.

MEMBER KULINOWSKI: Look forward to seeing how that analysis develops. We will now hear from Investigator Cheryl MacKenzie, who will provide an overview of a new type of work product called "Call to Action: Combustible Dust". Our dust investigations have identified the understanding of dust hazards and the ability to determine a safe dust level in the work place as common challenges.

While there seems to be a shared understanding of the hazards of dust, our investigations have found that efforts to manage these

hazards have often failed to prevent a catastrophic explosion. To uncover why that is, we are initiating this Call to Action to gather insights and feedback from those most directly involved with combustible dust hazards.

This project is part of our ongoing examination of a deadly dust explosion that occurred at Didion Milling in Cambria, Wisconsin. Today we are releasing the Call to Action document, as well as new data on combustible dust incidents that occurred from 2006 to 2017. The CSB has confirmed 105 combustible dust incidents during that time, five of which are the subject of an in-depth CSB investigation. The full list of incidents is posted on our website and available as a handout for those in the room.

Investigator MacKenzie, please proceed with your presentation.

CM: Thank you. Good morning. So, yes, today I'm here to introduce a new CSB product called a Call to Action. And I'm going to start by kind of recapping where...how we got to this place.

As the Board knows, we previously looked at combustible dust incidents in a...in a...the form of a study. We looked at data from 1980 to 2005. We found 281 dust incidents that resulted in 119 fatalities and 718 injuries. We gathered all of that data and...and did all our research on the topic, and came up with a Combustible Dust Hazards Study that we published in 2006. We made several

recommendations out of that study, one of which was to OSHA to issue a comprehensive general industry standard for combustible dust.

The years went by, fast forward to today, and we wanted to revisit our dust incident data to see where we stood. And we looked basically from when our dust study had stopped in 2006 when we published our report to 2017. And we identified an additional 105 combustible dust incidents that resulted in 59 fatalities and 303 injuries.

This visual, that those in the room can see and that is in our Call to Action document and Dust Data releases today, identifies the general, broad categories that we were able to sort these events into. And, as you can see, the three biggest, most frequent incidents are occurring in food products, metal industries, and lumber and wood products. And that includes paper mills.

So, in light of these [inaudible] incidents, including our ongoing Didion Milling investigation, and the fact that the Board continues to do outreach and advocacy on the issue of combustible dust and it is on our Drivers of Critical Chemical Safety Changes list, we took a little bit of a deeper dive into our investigation file of the dust incidents we've investigated. Found out that our

recommendation to OSHA for the general industry standards still remains open.

So, in light of all that, we dug into our investigation files. And while there were certainly strong differences between these incidents and a variety of dusts were involved and a variety of industries were impacted by these events, there were some interesting similarities among the perceptions that those involved in the combustible dust worksites expressed.

And we found similarities in their perceptions about hazard awareness of...of combustible dust. And also, at a very basic level, what...what is too dusty? What does this dust level represent for me personally and for my company as it relates to risk, as it relates to my safety and my coworkers' safety and industry safety overall.

And what was interesting was that overall in the incidents where we did these in-depth investigations, we found a common theme of dust was present, dust was normal, and dust was maintained at a safe or manageable level. Yet we know that these incidents resulted in some catastrophic events with multiple fatalities and injuries. So it wasn't...it wasn't at a safe level.

This review led us to reflect a bit more about what does this say for the challenges of trying to manage combustible dust hazards. And it led us to reflect on industry's collective

understanding of combustible dust risks, the adequacy of current efforts to manage the hazards, and the effectiveness of current assessment methods to identify what is an unsafe level of dust when you have processes and operations that are inherently dust-producing.

It also led us to some fundamental questions, some of which are here and all of which are in our Call to Action document. Can a workplace be both dusty and safe? How much dust in a work environment is acceptable? How does one truly recognize that level and when it's been exceeded? How common are dust fires in the workplace? And do they create a false sense of security? How do regulations support or hinder dust hazard awareness? And what are the challenges to implementing recommended processes from industry standards?

We seek answers to these questions. And we do this today with an innovative approach. So we've released, and I have here, the Call to Action and our Dust Data, which are available to those here in our meeting room and online.

And we're releasing them today to seek input from those most involved in the conduct of work in dust-producing environments. So that industry, the workers and unions, the regulators, the inspectors, the technical experts, the academic researchers, all of

those that have insight and experience with combustible dust, we are asking and calling to them to submit responses to our questions.

The Call to Action is available on our website, as is the Dust Data. And we're asking for feedback to be submitted to CombustibleDust@CSB.gov. We have a deadline of November 26th. So all comments and feedback submitted in response to those questions by that date, we plan to analyze for common themes, potential learnings, hopefully new solutions. And our objective is to take all that information and produce a subsequent report or publication of some sort that will report on the results of this Call to Action, what we've learned. Hopefully it will spur dialogue and unearth new opportunities for safety change.

Thank you very much.

MEMBER KULINOWSKI: Thank you, Investigator MacKenzie. So when...when we receive comments, what's going to happen with those comments? You said you're going to be analyzing them. But are they going to be made publicly available? Are they going to be anonymized?

CM: As a...as a public entity, and your...you know, the...your...some sort of identify will be associated with the comments because it will be through the email. So there...you know, we are a public

agency so we cannot, you know, prohibit identities from being...from hiding this information. We're a transparent organization. So right now, you know, we ask people to submit and be open. But we are a public entity and...and we...we aren't...we cannot promise anonymity... Can't say it. We can't promise you'll remain anonymous at this time.

But we are not... We are looking for, as I said, themes and learnings and our point isn't to say, "Joe Schmo said this and Bob Smith said this." It's to say, "We're seeing the same challenge coming up again and again." Or, "We're seeing this opportunity and this solution or successful outcome here, here, and here. This is something we want to explore further."

So our intent is not to draw attention to individuals or individual entities, but to look for collective learning.

MEMBER KULINOWSKI: Okay. Member Ehrlich?

MEMBER EHRLICH: Can you speak to the issue of where...anyplace OSHA is on their combustible standard?

CM: Only that our recommendation is still open at this time, yeah.

MEMBER KULINOWSKI: Member Engler?

MEMBER ENGLER: And the... On OSHA's regulatory agenda, the issue of combustible dust standard setting is not here at all.

With that said, I'm sure there's a wealth of information and understanding and analysis at OSHA, among...at the agency. And I would request that we submit a formal letter to the Occupational Safety & Health Administration, asking for their response to our document, as well as to any other relevant federal...federal agencies or perhaps state plans...states within OSHA, particularly those states which have had dust incidents.

CM: And the...the lovely thing about this approach is it's open to all, all entities, all individuals, and organizations. So any party that feels they have some insight, we welcome it. And we look forward to receiving responses.

MEMBER KULINOWSKI: Any further questions?

MEMBER ENGLER: No, I'd like to make one comment. I made a presentation to the refinery...one of the refinery groups last week in L.A. And most of the places I've been when I talk about CDLs, they want to know what's happening in...in the combustible dust area. So I think it's a great addition and I look forward to circulating it when I go out and talk to folks.

CM: Great.

MEMBER ENGLER: Nice job.

CM: Thank you.

MEMBER KULINOWSKI: Thank you, Investigator MacKenzie. Before we proceed with the discussion of the employee participation policy, Member Ehrlich has a brief statement he would like to make.

MEMBER EHRLICH: Yeah, thank you, Dr. Kulinowski. This month we have chosen...our topic of the month is emergency response, training response and preparedness. As many of you know, this year is the CSB's 20th anniversary. To highlight the CSB's work over the past 20 years, the CSB has focused on specific chemical safety theme each month in 2018. These are areas where the agency has made a significant impact by sharing lessons learned, issuing recommendations, advocating for safety change, and collaborating with stakeholders.

This month, we're focusing on emergency preparedness, training, and response. Although my personal focus has moved somewhat from the response side to the planning side, as being more proactive. This is an issue which is certainly near and dear to my heart, as I've spent the majority of my career, about 30 years, focused on just that.

I want to take a few minutes to share a few of my personal thoughts on the issue. In the CSB's 20th year, it is important to note that many experts in the field of emergency response agree that the frequency and severity of major incidents has decreased

dramatically, specifically in the last decade. I hope that the work of the CSB and other entities has brought increased attention to the subject of preparedness. The focus on preparedness suggests that a more proactive thinking results in improved performance.

I've been in this area for at least four decades and have made...have found that increased training and hazard awareness will also improve the safety of emergency responders.

As the CSB continues to focus on outreach and advocacy, I have a singular goal of reaching emergency responders throughout the country. I've already made presentations to eight SERCs, State Emergency Response Commissions, of which there are 50, and 16 LEPCs across the country. Our record in this...in the United States has been very, very good in terms of life safety relative to responders. But two years ago, when I was in China, they told me that their...the fact that they had only lost 1,300 responders in one year was dramatically improved over what it had been.

So thank you very much.

MEMBER KULINOWSKI: Okay. I will now turn things over to Member Engler, who has been working with staff on the agency's employee participation policy. Member Engler.

MEMBER ENGLER: Thank you very much, Chair Kulinowski. For the purpose of facilitating the discussion, I will start with a motion and some brief remarks.

So this is a motion for adoption of a new...essentially revised a new policy on employee participation in CSB's investigations.

Whereas, 1) CSB's enabling statute, the Clean Air Act, establishes a foundation for facility employee and facility employee representative participation in CSB investigations by requiring that these individuals be given the same opportunity to participate in facility investigations as provided in the Occupational Safety and Health Act.

2) That Board Order 40, adopted unanimously by Notation Item 2017-17 on February 14, 2017, provides in very general outline, provisions for employee participation.

3) Procedure H of Board Order 40, adopted unanimously by Notation Item on February 27, 2012, requires revision.

And 4) The CSB Protocol Team developed a new policy document to provide guidance to CSB personnel on participation by workers and their representatives in CSB investigations.

Therefore, the Board hereby votes to...

1) Repeal existing Procedure H of Board Order 40.

2) Adopt new Board Order Addendum 40a and direct that it be posted on CSB's public website.

3) Amend Board Order 40, Section 4, References, to add the following cross reference, "Board Order Addendum 40a, Worker Participation in Investigations".

And 4) Amend Board Order 40, Section 6, Authorities and Responsibilities, Investigator in Charge, Part e., to add the following, "Provisions for worker participation in investigations is further explained in Board Order Addendum 40a."

So that's my motion and to facilitate discussion, I request a seconding of the motion before I make some brief remarks.

MEMBER KULINOWSKI: I second the motion.

MEMBER ENGLER: Thank you. So, in...employee participation is a pillar of work for process safety and for preventing chemical incidents. It's been widely recognized from everyone to the...from the Center for Chemical Process Safety to the...to other standard-setting organizations.

Our own internal policy should be consistent with that. And, under the Clean Air Act, it's actually required. Meaning there's a small provision in the CSB section of the Clean Air Act, our founding document that establishes the CSB, which requires the opportunity to participate based on the opportunities to

participate that are in the Occupational Safety & Health Act, part of which is focused on the participation in investigations, such as the accompaniment of investigators in investigations in the facility.

So specifically, what OSHA says, which applies to us as well, is that when facility inspections are conducted, "a representative of the employer and a representative authorized by his employee shall be given an opportunity to accompany the secretary or his authorized representative during the physical inspection of any workplace." And so in thousands...hundreds of thousands of inspections by OSHA, since the OSHA act was enacted in 1970, workers and their representatives have actively participated in those...in those inspections. Similarly, the fact that the CSB, for many years, has been the participation of workers and their representatives in our investigations as well.

But the other part of the history that's relevant to this is that when the Board, by unanimous vote, prior to this Board—the Board Members at the time were Moure-Eraso, Griffon, and Bresland—unanimously passed a Board Order procedural appendix called Procedure H. That established in some detail the provisions for employee participation.

However, the judgment was made at the time that that document could not be a public document. And so, while it's available for internal CSB use and as guidance to our investigatory staff, workers and their representatives and other CSB stakeholders, including management at facilities and other entities had no access to that document.

So, for a couple of reasons, it's appropriate to have revised Procedure H. One is that it did not allow enough flexibility to CSB investigators in making judgments. It had some rather mechanical components to it. For example, if an investigation involves a large number of outside contractors, each of which could have had their own distinct union representative, such as we're finding at the Husky investigation in Wisconsin right now, there's many, many construction trade representatives and separate unions. According to the old, currently-enforced but in my view out-of-date, policy, every one of those unions had to be represented in the process.

So I felt, in looking at this, along with the protocol team, that that was too mechanical in terms of giving sufficient discretion to experienced CSB investigators to use some good judgment about how to best, with both engagement but also

efficiency for the product of the investigation report, involve workers and their representatives.

Similarly, there was a mechanical...overly mechanical approach to situations in non-union facilities, which...the old Procedure H, which I say old but it's still enforced to this day and without further action by the Board will continue to be enforced, implies that the investigator should be figuring out how to engage employees, including the possibility that there'd be some type of election of employees to participate in the CSB investigation. Which is an unmanageable, unwieldy process that also raises some...some novel legal questions.

So those are a couple of examples of why the policy needs to be revised. And I come back to the public...the importance of the transparency on this issue. Because if the public is to understand how the CSB operates, it's important that they know what the policies are.

And so OSHA has numerous publications. Here's one on participating in OSHA investigations. In addition to the fact that the OSHA statute's obviously public, the regulations are public, the field operations manual which includes the detailed guidance for investigators is public. Here is the Environmental Protection Agency's guidance to their staff, including the state agencies that

have taken delegated responsibility for their risk management program and accidental release programs. And it explains how workers and their representatives can participate in EPA inspections and audits. A public document. You can find all of this on the agency's website.

But if you look for something on CSB's website, you will not actually find anything. A commitment was made to...to issuing of very general publications some time ago. Events apparently got in the way of that and it was not done.

And, thus, in the 2000...Fiscal Year 2018 Action Plan of the CSB, I would task this Board Member for working on the revision of policies and protocols, including the one on... I should say not policies, but protocols related to the investigatory process, including the revision of Procedure H and trying to sort out this issue, how to provide reasonable amount of public information.

And so, as part of my role as a Board Member in that process, I worked with others, with staff, to produce a revised version to put on the table. And so before you and everyone here who's interested in a copy of it, there is a proposal entitled "Worker Participation Investigations" to replace that prior confidential document, Procedure H. This will be a public document, posted on the website of the Board.

It is also a shorter document than the prior procedure and it does reflect extensive staff work. And I would like to thank former staff member Lucy Tyler, Cheryl MacKenzie, Chris Lyon of our Denver office, as well as Steve Klejst and Tom Zoeller for their work on this. I believe many...many, many comments have been incorporated and I now think we have a coherent document to replace existing Procedure H, which I will note will remain in force until a new policy is adopted, despite its deficiencies.

So the CSB, in our work, talks and make recommendations about employee participation as one of...a key aspect of process safety. And we've done that numerous time. Our internal policy should be consistent with what we offer to others and that's why I offer this revised addendum in that [inaudible]. Thank you.

MEMBER KULINOWSKI: Thank you, Member Engler. Member Ehrlich, do you have a comment?

MEMBER EHRLICH: Yes, I do. I don't disagree with a lot of what Rick has said. However, I've drafted another motion to incorporate the employee participation information into Board Order...into Board Order, to make it...

MEMBER KULINOWSKI: I'm sorry [inaudible] and I sneezed and coughed.

MEMBER EHRLICH: That's quite alright. Now I forgot what I said. No, I... I don't disagree with a lot of what Rick said. You know, Procedure H should go by the wayside. And I think revision is...is required. I have put together a motion that would incorporate the employee participation information in Board Order 40 and make it part of the Board Order.

My concern is that, as it stands by itself, it's very prescriptive. It continues to proliferate the bureaucracy which I don't want to...I don't want to necessarily be a part of over time. And it could be combined in Board Order 40, to cut way down on the amount of information. Right now, as it stands, it's a five-page addendum. And I think our goal...let...let me not speak for the Board. One of my goals over time is to see to it that there's less Board Orders out there and not more, with or without addendums.

So my motion is to incorporate... It's a two-part motion, to incorporate it in Board Order 40. And because it's on short notice and...and I do apologize for that. I don't offer any excuses except that I've been on the road for like 10 of the last 14 days and I was out for several weeks. So I'm a little late in getting all the information in. But as soon as...assuming that the motion may carry, then I would...then I would suggest we go back to the committee that worked on it to help execute the inclusion through a Board Order.

MEMBER KULINOWSKI: So what is your motion?

MEMBER EHRLICH: My motion is to incorporate and work into Board Order 40 the worker participation criteria. And if that is acceptable, then have it go back to committee for review so that the language is consistent and it fits neatly in the package.

MEMBER KULINOWSKI: Okay.

MEMBER ENGLER: Madam Chair?

MEMBER KULINOWSKI: One moment. We have a motion to amend. We need to second. I second the motion. Now you may discuss.

MEMBER ENGLER: Let me clarify that. You've seconded that motion so that there's two motions...there's two motions now on the floor?

[UNIDENTIFIED]: He's amending your motion.

MEMBER ENGLER: And that's seconded, but we have not voted...voted on it, so we're just having a conversation?

MEMBER KULINOWSKI: Correct.

MEMBER ENGLER: It would be very helpful, since I have just received this memo with the new language a few minutes before this morning's meeting, if you could actually go over your point and speak substantively to why you are suggesting the changes to the...to this proposal that's before you.

MEMBER EHRLICH: Well, I incorporated a lot of the language that you did and I crossed some of it out because I thought it was redundant. I thought, in many respects, it tied the hands of the people that were in the field doing the work. And I don't know that we want to go through every paragraph right now. That's one of the reasons I suggest it go back to committee. One...one particular paragraph, 8, I found to be punitive in the way it was written and I just don't...I don't think that...

MEMBER ENGLER: Can you... Can you explain that because, you know, the public here at the meeting has no knowledge of what you're...unless you're referring to the document that was prepared by the protocol team.

MEMBER EHRLICH: Well, I'm talking about the document that was prepared by the protocol team and that deals with interference with employee participation. CSB seeks to obtain all relevant information necessary for a successful completion of its investigation, including the gathering of information through the witnesses. CSB investigators will take all appropriate actions to ensure relevant witnesses are interviewed and/or deposed. If management representatives or other parties attempt to interfere...

I just don't see a need for that kind of language in this document. And it think it takes...it takes a lot of the

responsibility away from our investigators and our senior investigators to be able to do their job in the way they were taught or the way they...they practice it and move forward. I don't want to hamstring the investigators that are in the field.

MEMBER KULINOWSKI: How does this language, in your opinion, hamstring the investigators in the field?

MEMBER EHRLICH: Well, I don't think they need to be told, for example, if management representatives or other parties attempt to interfere with employee participation in the investigation, the Executive Director or designee, etc., etc. I'm not going to read the whole thing. But I mean, they know that. That's what they do. That's part of their job. And I think that language or something similar to it can be incorporated in the body of Board Order 40.

MEMBER KULINOWSKI: But your proposal, if I'm...if I'm understanding this correctly, is to strike this paragraph altogether.

MEMBER EHRLICH: That's my proposal. But that would go to committee...

MEMBER KULINOWSKI: Right. [multiple voices] incorporated also into that [multiple voices].

MEMBER EHRLICH: Well, some of it could be incorporated, okay. That was my proposal. I don't happen to agree with that. But I

think if the committee looks at it and they accept some of it, then it wouldn't be incorporated in the Board Order.

MEMBER KULINOWSKI: Okay. So, if I'm understanding you correctly, then you would strike this language because it's telling the investigators that they need to ensure or somehow..

MEMBER EHRLICH: I think it's telling the investigators how to do their job and I think they already know how to do their job. I'm inclined to give less instruction instead of more prescriptive instruction.

Clearly, these are my thoughts, okay. If this goes back to the committee and they think some of it should be incorporated in Board Order 40, let's put it in Board Order 40. I'm flexible.

MEMBER KULINOWSKI: So this is already [multiple voices] investigators' product, work product.

MEMBER EHRLICH: Yes.

MEMBER KULINOWSKI: So you're asking them to reconsider.

MEMBER EHRLICH: I am.

MEMBER KULINOWSKI: Okay. Then I would think it would be helpful if we could go through paragraph by paragraph because you've made notations, brief notations, in each section, so that we can understand exactly what you're proposing and why.

MEMBER EHRLICH: Okay, the first paragraph, 7.1. I think that could be incorporated under the Authorities and Responsibilities of the IIC.

MEMBER ENGLER: Point of procedure.

MEMBER KULINOWSKI: Member Engler.

MEMBER ENGLER: Could you kindly read what you're talking about doing so that it's clear. This is a document marked...that you have marked confidential, that we are now [multiple voices] in a public meeting.

MEMBER EHRLICH: I didn't mark it confidential. I don't believe this document should be confidential. I did...

MEMBER ENGLER: The copy that you handed me is marked confidential.

MEMBER EHRLICH: Well, that's because the way the watermark was put on the...

MEMBER KULINOWSKI: Can I have one member speak at a time, please?

MEMBER EHRLICH: That's because the watermark that was put on the paper. There's nothing confidential about this document, in terms of government definitions of confidential.

MEMBER KULINOWSKI: For the purposes of the public hearing, it would be helpful if you could, for people especially on the call,

walk us through with some specificity... Let's start with 7.1 Engagement in Investigative Activities.

MEMBER EHRLICH: Yeah, there's six points here that talk about investigations opening meetings, status update, site walk-throughs, on-scene investigations, equipment, material, sample evidentiary testing, employee witness interviews, document requests, and review of draft written reports and recommendations.

I don't have a problem with that. I suggest we incorporate under the Authorities and Responsibilities of the IIC. I would not have marked this entire document confidential. It doesn't meet the government's definition, any confidential agreement. Okay? So the fact that it's there is because I used somebody else's template.

MEMBER KULINOWSKI: I understand that.

MEMBER EHRLICH: Good.

MEMBER KULINOWSKI: So...so 7.1 says that the IIC shall offer a reasonable number of employees or their representatives the opportunity to participate in the investigative activities, including the six that you just said.

MEMBER EHRLICH: Well...yeah.

MEMBER KULINOWSKI: Yeah, okay, so...so that we're all clear about what the...what that paragraph says. So you are saying that because it already designated that the IIC will do this, we could

incorporate this language into the existing Board Order 40, which has a number of responsibilities...

MEMBER EHRLICH: Some of them may be redundant, but that's why... [multiple voices].

MEMBER KULINOWSKI: ...to the IIC. Yes? Is that what you're saying?

MEMBER EHRLICH: Yes.

MEMBER KULINOWSKI: Okay. And then you struck the note about information asserted to be protected as trade secrets and other things by any entity shall be protected, not shared by...under this Board Order [inaudible] determination's been made the information can be shared.

Why did you...why are you proposing to get rid of that?

MEMBER EHRLICH: I just don't see it as being relevant there. I mean the investigator should know that. They do that all the time. And there's something similar to that in Board Order 40, although I don't have that exact language with me.

MEMBER KULINOWSKI: Okay, do you have a question on Member Ehrlich's position on Section 7.1, Member Engler?

MEMBER ENGLER: I don't think that Board Order 40, which I have here, incorporates this in that kind of detail. It is very limited. Can I move on to the...?

MEMBER EHRLICH: Well, that's why [inaudible] come back to committee, because when you issued this board order, I wrote back and said, "I don't agree with this." And the response was, "Well, basically I disagree with what you have to say." So I'm trying different...different format to get it into the system.

MEMBER KULINOWSKI: To be clear, what you're proposing is that this language be incorporated.

MEMBER EHRLICH: At some...in some way, shape, or form.

MEMBER KULINOWSKI: Into the section under the IIC's responsibilities, which are numerous. We have numerous elements to what the IIC, the Investigator In Charge...

MEMBER EHRLICH: Yeah, there's probably 16 or 18...

MEMBER KULINOWSKI: ...for the people who are not [inaudible]. And your proposal is that we take this language and make it another element of the IIC's authorities and responsibilities.

MEMBER EHRLICH: But not...not necessarily redundant.

MEMBER KULINOWSKI: Okay. Do you understand Member Ehrlich's position?

MEMBER ENGLER: I understand the position. [multiple voices]

MEMBER KULINOWSKI: Okay. Do you have questions about it?

MEMBER ENGLER: No.

MEMBER KULINOWSKI: Okay. Can we move on? Section 7.2, Collective Employee Involvement.

MEMBER ENGLER: Well, I would like to just discuss the note[?]. I'm sorry to interrupt.

MEMBER KULINOWSKI: No, go ahead.

MEMBER ENGLER: But the note... I think the intent here of putting the...of the note about information asserted to be protected as trade secrets, confidential business information, or security sensitive information, etc... And this is crossed out entirely. So if you have a copy, you can follow along. It's at the end of Section 7.1. Was to make it very clear upfront that certain information that the CSB receives from facilities under investigation may be confidential business information, may be trade secrets, may be security sensitive information. And that's not to raise expectations that every kind of information is automatically therefore public.

At the same time we may have...we have a process for reviewing that. But in light of the fact that, unlike Procedure H, which is being considered a confidential document, this new Board Addendum would be public. It was important that while this is guidance for CSB staff, it is also something that would be widely read by stakeholders and it's important to establish that reference to our

policy early in the document, which later in the document, as we'll come to, discusses the question of sharing drafts and certain draft information.

MEMBER KULINOWSKI: Okay, so your...your conclusion is that striking this information, then, would require additional edits for the downline because there's a reference. It's important on its face and there's a reference further on in the document that refers back to this link.

MEMBER ENGLER: I think...I believe that was the intent of the protocol team in including that language. It was not...it was not... I can certainly say on this issue, it's not something that...that I was insistent upon. It reflected the...I think the consensus of the group that worked on this proposed addendum.

MEMBER KULINOWSKI: Okay. Do you have questions about...?

MEMBER EHRLICH: No. And we're not going to get anyplace doing it this way.

MEMBER KULINOWSKI: Well...

MEMBER EHRLICH: You asked me before the meeting if I had gone back to the protocol team to discuss any of my comments and the answer is not because, number one, I didn't think it was appropriate at the time. And, two, I didn't finish working on this to the extent that I worked on it until the last couple days.

At this point, I think it would be more appropriate to go back to the protocol team, meet with them, and meet with Rick, and discuss it, rather than try to go through point by point here, where I basically... You know, he says, "I don't agree with you." And we get no place.

MEMBER KULINOWSKI: Well, in order for us to make a...an informed decision on the motions that we have pending, I think it would be helpful to understand the viewpoints that each of you are bringing to the conversation. So I would like to proceed with hearing those viewpoints in the public, as we are supposed to do.

So let's move on to Section 7.2, Collective Employee Involvement. You don't make any suggested changes to this information. This...this passage talks about how employees in various ways. Some of it is factual, relating to how employees in union facilities versus non-union facilities may be represented. And your edit is that all of this can be incorporated under the duties of the immediate supervisor in the body of Board Order 40. Would you like to say more about that?

MEMBER EHRLICH: No. It's self-explanatory.

MEMBER ENGLER: What is the immediate supervisor?

MEMBER EHRLICH: That's the title that was in the Board Order that I saw when I looked at it.

MEMBER KULINOWSKI: Yes, so in Board Order 40, immediate supervisor is one of the...if applicable, is one of the roles whose duties are outlined in the Board Order.

MEMBER EHRLICH: And, basically, you can go through 7.3, 7.4, 7.5, 7.6.1, 7.6.2, 7.6.3, 7.7, and I've not made any changes to the language there except I assigned it where I thought it should go in the Board Order 40. That can be debated. All right? In 7.2...I'm sorry, 7.3, same thing under the Individuals' Responsibilities, Office of Recommendations, 7.4. In the case of 7.5, I struck a lot of that language about multiple unions because I thought it was redundant. And basically I left the fact that the CSB has discretion to determine most effective and most efficient ways to involve all relevant unions in investigations, period.

MEMBER KULINOWSKI: Okay, I'm still back on 7.2.

MEMBER EHRLICH: [inaudible]

MEMBER KULINOWSKI: So if...if we were to move all of that language, it looks as though 7.2...the only CSB role mentioned in 7.2 is number three, if the facility investigated is not covered by a union or a union or a health and safety committee at a non-union facility, investigators should consult with a reasonable number of those other types of employees. So that's a role that you could assign to, as you have suggested, the immediate supervisor.

MEMBER EHRLICH: Well, as I also noted [multiple voices] make any changes to the language.

MEMBER KULINOWSKI: What do we do with numbers one and two, where there's no particular role assigned to a CSB employee as written?

MEMBER EHRLICH: Well, that I would probably like to discuss with the staff that helped put this thing together because I don't know the answer to that. But I think there are work arounds.

MEMBER KULINOWSKI: Okay. Member Engler, do you have any discussion of 7.2?

MEMBER ENGLER: Not further.

MEMBER KULINOWSKI: Okay, 7.3, individual employee involvement. Employees also have the opportunity to be involved in an individual capacity in CSB investigations. For example, relevant employees will have the opportunity to serve as witnesses in CSB investigations. Employees may have documents or other written materials in their possession that may be important evidence to the CSB investigation...investigators, which investigators may request for production.

And your note is that this can be incorporated under Individuals' Responsibilities. Which individual's responsibilities?

MEMBER EHRLICH: The ones that are highlighted in Board...the identity...identification of the individual responsible in Board Order 40.

MEMBER KULINOWSKI: Board Order 40 has the investigations team, the investigator in charge, and the immediate supervisor, Office of Recommendations, executive director, and Office of General Counsel, and then Chairperson and Board Members. So to whom would you assign the language about individual [multiple voices]?

MEMBER EHRLICH: I would want...I would want to talk to the staff that was involved in this to make that decision. As I said, I did not talk to anybody that was responsible for this in the first place. And there's some discussion required on it.

MEMBER KULINOWSKI: Do you have anything on 7.3?

MEMBER ENGLER: Well, other than I think that clarity about this...it's quite clear in what's been proposed. [inaudible] represent the input of the protocol team which involves a number of individuals on the staff, including three people who are directly involved in investigations on the ground.

MEMBER KULINOWSKI: Okay, let's move on. Section 7.4, Notification of Deployment. I'll read it. Promptly after a facility is notified of a CSB investigation deployment, the

Executive Director of Investigations and Recommendations, or his designee, shall determine if the employees at the facility are represented by one or more unions, and identify relevant local and national union health and safety officials. Notice of deployment shall be provided to appropriate local and national union health and safety officials. If there is no union representation, the Executive Director should determine if the facility has a health and safety committee with employee members, and if so, management should be asked to provide the CSB with an appropriate employee contact.

And your proposal on this is to do what?

MEMBER EHRLICH: Include it under Officer Recommendations, Executive Director.

MEMBER KULINOWSKI: So...so if I understand, you would incorporate this language in the duties of the Executive Director of Investigations and Recommendations.

MEMBER EHRLICH: If appropriate and if that's where the protocol team folks can accept it, that's fine. I'm not that... It's not that rigid in my mind that it can't be moved around to accommodate some of this stuff and still have one Board Order without a five-page addendum to it.

MEMBER KULINOWSKI: Okay, I understand.

MEMBER EHRLICH: Okay.

MEMBER KULINOWSKI: Member Engler, do you have a response on 7.4? The proposal to...

MEMBER ENGLER: Right.

MEMBER KULINOWSKI: If we were to adopt Member Engler's motion...

MEMBER EHRLICH: No, I'm Ehrlich.

MEMBER KULINOWSKI: Sorry. Will...will need to be restated because I wasn't exactly sure what we were moving, to incorporate some or all of this language into the Board Order. Do you have a question about...?

MEMBER ENGLER: I think it's so sufficiently vague as to what would actually be done to [inaudible] include under Office of Recommendations. And I think I substantively question why the Office of Recommendations would play that role necessarily. In discussions with Executive Director Klejst, we wanted to make sure that it was sufficiently flexible that the Executive Director for Investigations and Recommendations had the authority and discretion to deal with the notification issue. Because, while investigators are on their way to the scene, it's sometimes...sometimes just because of logistical reasons that they're on an airplane and it's difficult to make phone calls or reach out, we wanted to make sure

that the Executive Director for Investigations and Recommendations had sufficient discretion to make sure that this work got done, however it was most practical and appropriate.

So I think that...that issue, in particular, has been quite well thought out.

MEMBER EHRLICH: We can move it back under Executive Director. I...you know.

MEMBER KULINOWSKI: So, in this case, in my mind, this is a clear duty of the Executive Director of Investigations and Recommendations and this language could be incorporated into those duties in Board Order 40 without significant revisions. This one is clearer to me than some of the others. Do you have a response?

MEMBER EHRLICH: No.

MEMBER KULINOWSKI: Anything additional on this one?

MEMBER ENGLER: No.

MEMBER KULINOWSKI: Okay. Multiple Unions, 7.5. I'll read the text and then what you propose and then we can discuss.

If multiple unions represent employees or contractor employees at the facility, the CSB shall extend an invitation to participate in the investigation to all unions with employees determined to be relevant to the investigation and any health or safety issues at the facility. The CSB has discretion to determine the most

effective and most efficient means to involve all relevant unions in an investigation.

Your proposal is to strike the first sentence, beginning "If multiple unions" ending "health and safety issues at the facility."

MEMBER EHRLICH: And leave it stand that the CSB has discretion to determine the most effective and most efficient means to involve all relevant unions in investigation.

MEMBER KULINOWSKI: So your purpose in striking the first sentence is what?

MEMBER EHRLICH: I thought it was too prescriptive. I think...I think the last sentence covers what needs to be said and gives the folks that are involved in the investigation latitude to do it.

MEMBER KULINOWSKI: Member Engler, response?

MEMBER ENGLER: Again, I defer to the work that's been done. There are...there are areas in this Board Order which I personally care about more than others and my input may have been reflected more than elsewhere. But again, this was a work product that involved a number of staff here and I defer to what has been proposed.

MEMBER EHRLICH: I'm not...I'm not arguing that point, Rick. I have not talked to the staff about it. You asked me for my comments on this document and Dr. Kulinowski asked me this morning

if I had talked to the other work committee members and I have not. And I think that, if we do, there are obviously opportunities for discussion and reconsideration.

MEMBER KULINOWSKI: Okay. 7.6 Meetings. 7.6.1 Opening the Onsite Investigation. The IIC will often coordinate an opening meeting with the facility management, other companies involved, etc., to explain the investigation's purpose and process. When the CSB plans to initiate an opening investigative meeting with the facility management, or other companies involved with the incident, such as contractors, the CSB shall invite union representatives, and members of health and safety committees. The IIC will inform all parties of the CSB's approach to worker participation as explained in this Board Order.

And your note on this was okay under IIC. So can you please explain what you would do with this language?

MEMBER EHRLICH: Put it under the IIC.

MEMBER KULINOWSKI: You would make it an additional...

MEMBER EHRLICH: I don't remember if there's letters or numbers there.

MEMBER KULINOWSKI: ...bullet item. Yeah, it's a letter.

MEMBER EHRLICH: And...and perhaps, if it...if it goes back to the committee, they may want to cut down on some of the verbiage and have it less verbose. But time will tell.

MEMBER KULINOWSKI: So Member Engler?

MEMBER ENGLER: Well, what I guess I would point out is that Board Order 40, and this may apply to some...I won't repeat this comment, but it may apply to other sections as we go through, is six-and-a-half pages long. So, since there's an absence of detail on any of these issues in Board Order 40, if we add even severely edited five pages of...or less than five pages, we're in fact making a much longer document.

So there may be pros and cons to doing that. But the notion that we're...we're coming up with a...a...kind of a shorter, more concise document is not at all clear. No such document yet exists. And it would then be added to Board Order 40, which is already six-and-a-half pages.

MEMBER KULINOWSKI: Okay, I look at 7.6.1. and I see responsibility assigned to the IIC in two of the parts and responsibility assigned to the CSB more broadly in the CSB shall invite union representatives and members of health and safety committee. So this one seems like it is largely the responsibility of the investigator in charge to execute.

MEMBER EHRLICH: Yeah, and...and let's talk about the fact that just because I didn't cross out the language... Where I crossed out language, I crossed it out because I don't support it or I don't think it's required. But if it goes back to committee, they may be able to manipulate some of this language and come up with a shorter document and get rid of some of the verbosity in it.

MEMBER KULINOWSKI: Okay, and you know I'm all about good...good writing. So...but what...

MEMBER EHRLICH: Oh, I'm acutely aware of that.

MEMBER KULINOWSKI: [laughs] What is the... Why is a shorter document the goal, in and of itself?

MEMBER EHRLICH: I could turn this around and say, "Well, that's what Rick just said. It's too damned long." I...I don't think taking a five-page addendum and putting all the language into a Board Order... I don't care if the Board Order's shorter or longer. We can cut down on some of this language, okay. But it has to be done in concert with people that have the background, familiarity, at a much different level than I do to discuss it. That's all. I like short documents. You like short documents, okay. If we can turn it into two pages that say, "IIC go do it," go do it.

MEMBER KULINOWSKI: Okay. Any other comments on 7.6.1.,
Opening the Onsite Investigation?

MEMBER EHRLICH: Nope.

MEMBER KULINOWSKI: Okay, 7.6.2., Concluding the Onsite
Investigation. When the CSB concludes its onsite activities, it is
within the CSB's discretion to conduct a formal closing meeting. If
conducted, the CSB shall invite the employee representatives in the
same manner as the company representatives. Any communication
should include an explanation of the CSB's process for engaging in
a confidential review and feedback process on the CSB draft report,
recommendations, or other public document.

And your note says, "Determine who is responsible and move
under that..."

MEMBER EHRLICH: I...I thought that was vague, okay. I thought
that should be one person that has the ultimate responsibility to
go do it. That's what my comment's about.

MEMBER KULINOWSKI: Okay, so because it is...it is...it always
says the CSB shall do this, then it's not...

MEMBER EHRLICH: Well, you're trying to identify...

MEMBER KULINOWSKI: ...specific enough?

MEMBER EHRLICH: In this particular case, no. I mean you're
trying to identify who's responsible for what and assign individual

a particular responsibility. In this case, I don't think that happened.

MEMBER KULINOWSKI: Okay. One of the stated goals of this revision process that Member Engler mentioned before was needing more flexibility in the policy and some of this being too prescriptive. So...

MEMBER EHRLICH: I said it was too prescriptive as well. But I think there are cases where you have to say, "It's your responsibility. You do it."

MEMBER KULINOWSKI: Okay, and to... Do you have an idea to whom you would assign this responsibility?

MEMBER EHRLICH: Not right now. I'd want to talk about it.

MEMBER KULINOWSKI: Do you have comments or discussion?

MEMBER ENGLER: Nope.

MEMBER KULINOWSKI: Okay. 7.6.3., Separate Meetings. If management or employee representatives request separate opening, status update, or closing meetings, the IIC should hold separate meetings.

And your comment is this is part of the investigator in charge or IIC responsibilities.

MEMBER EHRLICH: That's my comment.

MEMBER ENGLER: Yes, I have a question. Do you mean in general it's part of the IIC responsibilities or you disagree with the substance of what this actually says, it's not clear? In other words, that they shift general discussion to the IIC...?

MEMBER EHRLICH: Yeah, basically.

MEMBER ENGLER: About how to...

MEMBER EHRLICH: I'm not taking exception with what's written here. I would have crossed it out if I found it to be substantively wrong or in disagreement with it.

MEMBER KULINOWSKI: So then you would... One of the things you would like us to consider is moving this language to the investigator in charge...

MEMBER EHRLICH: Right.

MEMBER KULINOWSKI: ...responsibilities in Board Order 40, as you are proposing for other [multiple voices].

MEMBER EHRLICH: That...that is correct.

MEMBER KULINOWSKI: Any further discussion on 7.6.3.? All right. 7.7, Site Walk-throughs and On-Scene Investigation Activities. The CSB shall make all reasonable efforts to provide employee representatives with an opportunity to accompany CSB investigators on any site inspection, site or process orientation,

and, if appropriate, any subsequent site walk-throughs or other on-scene activities of any location that may impact employees.

If there is no union representative, or health and safety committee, at the discretion of the IIC, the CSB investigative team will also request...may also request the inclusion of a reasonable number of employees in any such walk-through activities.

The next section you are proposing to strike. They are...A site walk-through includes initial onsite activities such as touring or receiving an orientation to a facility, conducting an initial review of process equipment involved in the incident, collecting samples that require immediate action to preserve evidentiary integrity, and taking any initial pictures or video footage of the site.

If any of the parties are not amenable to an appropriate, safe, and reasonable site walk-through, or other on-scene activity plan, and any other associated terms and conditions established by the CSB for the safe and efficient conduct of the investigative activities, those parties may be excluded. Such parties may also choose not to participate.

After the site walkthrough is accomplished, the IIC or designated investigation team members may, upon request, provide a

summary briefing to those parties about the results of those activities.

So you struck those sentences.

MEMBER EHRLICH: I did.

MEMBER KULINOWSKI: And can you help us understand why?

MEMBER EHRLICH: Sure. They don't understand what a site walk-through is and how to conduct it and how to use the manpower...I shouldn't say manpower...the personnel that are available to them, they just shouldn't be there, in my opinion.

MEMBER KULINOWSKI: Who's they?

MEMBER EHRLICH: The IIC, whoever's running the investigation, okay. The IIC. I mean to me, that's common sense. And for folks that have been doing it for a long time, I just don't think they need to be told what to do and how to do it. A site walk-through, I mean, that's common terminology in the industry.

MEMBER KULINOWSKI: So are you assuming that all investigators in charge will be always experienced and understand all these things from the outset?

MEMBER EHRLICH: Well, perhaps that's a better question to ask you because my thinking is, yeah, they will be. They may be in training but there's going to be somebody there that will be able to oversee that.

MEMBER KULINOWSKI: Member Engler?

MEMBER ENGLER: Well, again, it's sort of a general point that applies to a number of these revisions, that this was intended as a standalone document that was to be concise and clear, in part for...to be used as guidance for CSB investigations. But also that it was a coherent document for establishing, in one place, an explanation of how workers and their representatives could be involved in CSB investigations.

MEMBER EHRLICH: I don't disagree with that.

MEMBER ENGLER: But you propose [multiple voices].

MEMBER EHRLICH: If it was supposed to be a standalone document, it's not a standalone document. Therefore, it's redundant so get rid of it.

MEMBER KULINOWSKI: I'm sorry, I didn't understand that.

MEMBER EHRLICH: Really?

MEMBER KULINOWSKI: The part about...

MEMBER EHRLICH: Rick said it was supposed to be a standalone document and that's why this...

MEMBER KULINOWSKI: That's what his proposal...

MEMBER EHRLICH: That's why this was important. Well, I don't...

MEMBER ENGLER: [multiple voices] an addendum, just to be clear, still an addendum to Board Order 40, and to be read in concert. But it is a standalone document.

MEMBER EHRLICH: Yeah, and what I'm suggesting is it become part of the Board Order.

MEMBER KULINOWSKI: Okay, so part of the language that you're striking...proposing to strike, is explanatory, detailing what is involved in a site walk-through.

MEMBER EHRLICH: Mm-hm.

MEMBER KULINOWSKI: Part of it establishes alternatives to a site walk-through if...if deemed unsafe or unreasonable or something.

MEMBER EHRLICH: Well, if it's unsafe, it's not going to be done, I mean...

MEMBER KULINOWSKI: But you struck the sentence about what to do if any of the parties think it's not safe, the walk-through.

MEMBER EHRLICH: I did, because that's common sense and because, in any kind of protocol, if there's a safety issue, the action is terminated or not conducted.

MEMBER KULINOWSKI: But that's not what this sentence says. The sentence says if parties don't think it's safe, the CSB may exclude them.

MEMBER EHRLICH: I don't happen to agree with that. If they don't think it's safe, they have a valid concern, and that ought to be discussed. They shouldn't be excluded because they don't think it's safe. If...if...if, for example, you deal in the incident management structure or the incident command structure, at any point, if anybody operating under an incident command structure feels the operation is not safe, then the safety officer has his or her responsibility to stop the operation, okay. Not be excluded.

MEMBER KULINOWSKI: Mm-hm, okay.

MEMBER EHRLICH: So that's...to me, that just doesn't belong there.

MEMBER KULINOWSKI: Okay, so the next sentence says, "Such parties may also choose not to participate." And you struck that sentence. And you struck the sentence, "After the site walk-through is accomplished, the IIC may..."

MEMBER EHRLICH: And...and...

MEMBER KULINOWSKI: Let me finish. "...provide a summary briefing to those parties in lieu of having them do the walk-through." So that first sentence does seem like explanatory. But the others are how the CSB investigators on-scene are going to handle participation in site walk-throughs.

MEMBER EHRLICH: And I wouldn't be surprised if they already know that or they have some other document that states that. But, as I said, this goes back to committee and the people that worked on it don't feel that my striking of that is appropriate, then un-strike.

MEMBER KULINOWSKI: Do you have any additional comment on 7.7?

MEMBER ENGLER: No.

MEMBER KULINOWSKI: Okay. 7.8 is struck in total. It reads Equipment, Material, and Sample Evidentiary Testing. Employee representatives, along with management representatives, shall be provided an opportunity to review and comment on proposed protocols for equipment and sample testing conducted as part of the CSB investigation. All parties will be afforded the opportunity to observe the testing.

Please explain why you're proposing to cut that?

MEMBER EHRLICH: I don't think it's necessary. I think it's all part of what the process is all about. And anybody that's an IIC ought to know that and will probably practice in accordance without...without being told to. It just...it just seems to me that it's too prescriptive and the IICs really ought to know that. If they don't, they probably shouldn't be an IIC.

MEMBER KULINOWSKI: Do you have any response, Member Engler?

MEMBER ENGLER: Only, again, that this was in part in addition to being a guidance for investigators, it was also another purpose, B, which would be to provide a coherent explanation of the opportunities for employees and their representatives to actively participate in investigations.

MEMBER KULINOWSKI: So your position is that if this is struck, then employee representatives or employees will have no way of knowing that they are allowed to review and comment on equipment, material, and sample evidentiary testing.

MEMBER ENGLER: How...how... I would ask that question to Member Ehrlich and ask how would they know that. How would that information be deciphered[?]?

MEMBER EHRLICH: Well, first of all, if you've ever been involved in something like the incident command system, to which this is very similar, okay, everybody has discussions of what's to be included and discussed and evaluated during the process. I don't see this as being any different. I just don't see the requirement spell that out in that particular way.

MEMBER KULINOWSKI: So you are...

MEMBER EHRLICH: And...and I want to go back to my other contention. If the people that did this don't agree with what I've

suggested, then we can change it, all right? I'm not intractable. I'm not inflexible.

MEMBER KULINOWSKI: I'm just trying to understand your position, right. Today, that's what I'm trying to do here.

MEMBER EHRLICH: Okay, good.

MEMBER KULINOWSKI: Okay. So 7.8 is both for our IICs, I guess you would say...

MEMBER EHRLICH: I guess.

MEMBER KULINOWSKI: ...to understand as part of the normal job without being told. And for the worker to know because they're talking with investigators on the scene and...

MEMBER EHRLICH: You could...you could leave one sentence here if you chose. "All parties will be afforded the opportunity to observe testing," or whatever. Okay. It just seems to me that it doesn't need to be that prescriptive, okay? I am willing to discuss that with anyone and consider an alternative, because I just... I put down what I thought was appropriate. I was asked to comment on this. I commented on it. Okay?

MEMBER KULINOWSKI: Yes...

MEMBER ENGLER: Member Ehrlich, you referenced the incident command parallels to this. Perhaps you could explain to me, because I don't quite understand the specific relevance of the

incident command system under emergency response conditions and the structure of that system to the development of more equitable participation by all parties in CSB investigations.

MEMBER EHRLICH: I'm not going to get into details of that. But the incident command system, the incident management system, this system are all management systems where people work collaboratively towards a certain set of goals or objectives. Okay? And I can draw that comparison on that basis. Just like any other system that you have in an organization, where people sit down, understand the objectives, work towards common goal, and there are certain leaders and followers, if you will, for lack of a better term.

MEMBER ENGLER: Well, I do find that...the reference to that to be instructive. I...I would appreciate outside the context of this, if you could provide any other information about that because...

MEMBER EHRLICH: I'd be glad to do that.

MEMBER ENGLER: My...my understanding is that an incident management system was designed particularly to deal in emergency response settings, where there was an urgency of action, where there was not time to have a process which was fully engaging of all parties because a...a process is in flames, that there is an urgent danger, that there's an imminent hazard. This setting is

quite different. Very, very fundamentally different. So I think that the incident command system, which is essentially a command and control system, is quite different than engaging a variety of parties in our process.

MEMBER EHRLICH: I will be glad to provide you with a whole lot of information on management systems. I don't agree with your analysis or your interpretation of ICS and IMS. But I'm willing to provide information to you on that basis.

MEMBER KULINOWSKI: Okay, moving on to 7.9, Employee Witness Interviews. 7.9.1 describes that the IIC will direct the investigators to interview relevant employees, in accordance with our regulations, etc., and may interview employees and their representatives outside the workplace. Ensure that interviews with employees are conducted in an atmosphere that is free from threats, etc.

And the proposal here is to keep the language intact but to put it under the responsibilities of the IIC in Board Order 40. Is that correct?

MEMBER EHRLICH: Yes.

MEMBER KULINOWSKI: Do you have any other...?

MEMBER EHRLICH: No.

MEMBER KULINOWSKI: ...discussion of that? Member Engler?

MEMBER ENGLER: I think I would be being redundant to the point of, again, pointing out that this was also intended as a standalone document to help inform stakeholders about their opportunities to participate in CSB investigations.

MEMBER KULINOWSKI: To that point, if it were incorporated into Board Order 40, it would become part of public Board Orders. Yes, okay. So we would...it wouldn't be lost if it was incorporated into Board Order 40.

7.9.2 Employee Representation. I'm going to read this one because of how you [inaudible]. Employees may request to have a representative of their choice present during interviews. It is the right of the employee to choose their own representative. Interview representatives may include, but are not limited to, individual [inaudible] and other non-supervisory employees, a union representative, an attorney chosen by the witness, or a family member. And it references a regulation, 40 C.F.R. Part 1610, Representation of Witnesses in Investigations.

And your note says, "Don't see this as a separate requirement."

MEMBER EHRLICH: I know, but I have to admit I'm not familiar with 40 C.F.R. 1610, so I probably need to review that or have someone review it, again, back in committee.

MEMBER KULINOWSKI: Member Engler?

MEMBER ENGLER: No comment.

MEMBER KULINOWSKI: Okay. This seems to be one that doesn't neatly fit into Board Order 40. [inaudible] not assigning responsibility to one of the roles that we already have there.

MEMBER EHRLICH: Right.

MEMBER KULINOWSKI: And it seems to be a part of what we're trying to get at when we talk about employees participating in our interviews...in our investigation process, I mean.

Okay, 7.10 Document Requests. You proposed to strike the entire brief, two-sentence section, reading the CSB may request any relevant documents, in accordance with all CSB regulations and procedures, from employees or their workplace representatives. Document requests are usually done on a voluntary basis but can be formalized through the issuance of a subpoena.

Why do you propose [multiple voices]?

MEMBER EHRLICH: I think that's already included where we talk about subpoenas, but I'm not sure. My preference is we don't have this language here. Send it back to committee, let them decide where it belongs. That's the same as 7.10 and 7.11.

MEMBER KULINOWSKI: But they decided to put this language in here. So [multiple voices].

MEMBER EHRLICH: ...from the people that they decided without benefit of commentary from people that commented on this outside of their committee. They didn't see any of my comments. I haven't discussed it with anyone. I don't know if they saw any of [inaudible] comments.

MEMBER KULINOWSKI: Point of information, Member Engler, how long were you working on this document with the staff?

MEMBER ENGLER: Number of months. And this document, the initial...the...the most recent version... And since then there have been no substantial [inaudible] changes provided to Member Ehrlich on Wednesday, October 3rd, at 3:26 in the afternoon.

MEMBER EHRLICH: I'm a little bit behind on getting through some of this stuff. Sorry.

MEMBER KULINOWSKI: Member Engler, can you help me understand the importance of Section 7.10 from your perspective? Because in other places, it's...you know, it's right there in our statutes that we can request information and we have the right to subpoena information. So what, for you, is the importance of this being included?

MEMBER ENGLER: Sure. This goes back to the question of what is the...what are the purposes of the document. And they are twofold. One is just guidance internally. But also that there be

one coherent document that explains in one location critical information for employees and their representatives. So it serves both functions. And sometimes there is explanatory information and this is an example of explanatory information. It's not a direct citation from a regulation that gives us authority to request documents.

MEMBER KULINOWSKI: So when we request documents, procedurally, are we requesting them from management and that's why we need separate language saying that we can, in fact, separately request documents from employees or their representatives?

MEMBER ENGLER: Well, it's my understanding that we certainly could request information and have requested information from employees. We certainly could request minutes of...of safety meetings and things like that that might be directed at the...might be...that would not be directed...that might be directed at the union, might be directed at management, might be directed at both parties.

MEMBER KULINOWSKI: Okay. Okay, 7.11 Review of CSB Staff Draft Reports, Recommendations or Other CSB Public Documents.

You proposed to strike this in total. It reads... If the CSB intends to issue a draft report, recommendations, or other public document about an investigation, and elects to provide such draft documents to the entity being investigated in advance of public

release, then local and national employee representatives will also be given an opportunity to review and comment on the draft documents, in accordance with CSB protocols and procedures.

To avoid unauthorized disclosures of trade secrets or confidential business information, CBI, or sensitive security information, SSI, as noted above, the CSB must first provide draft copies of reports, recommendations, or other publications it intends to release outside of the agency, to the company for review. Upon completion of the company trade secret/CBI/SSI review and CSB determination of its merit under applicable law, the CSB will promptly provide employee representatives with the same document reviewed by the company, except for those portions, if any, deemed by CSB to be trade secret/CBI/SSI.

You proposed, Member Ehrlich, to cut the entire section. Please [inaudible].

MEMBER EHRLICH: I did, because I think that the people that are involved in this process already know it. I wouldn't be surprised if it's part of their job duties, if they're specified. And it just seems to be too much redundant information here.

MEMBER KULINOWSKI: Member Engler?

MEMBER ENGLER: Well, this is an example where clarity is actually quite important because there are...have been, just during

my almost three-and-a-half years on the Board, cases where draft reports were not provided to employee representatives. And this is a case where I believe, and I believe the protocol came to believe, that it was appropriate to spell it out.

MEMBER EHRLICH: Fair enough. It's open for discussion if we take it back to the committee.

MEMBER KULINOWSKI: Okay, Section 8. We're almost there, folks. Interference with Employee Participation. You proposed to strike this all as unnecessary. I will read it. The CSB seeks to obtain all relevant information necessary for the successful completion of its investigations, including the gathering of information through witness interviews. CSB investigators will take all appropriate actions to ensure relevant witnesses are interviewed and/or deposed.

If management representatives or other parties attempt to interfere with employee participation in the CSB's investigation, the Executive Director, or his designee, shall remind the parties of the CSB's statutory powers with respect to information gathering, and the agency's statutory authority to provide employees and their representatives the opportunity to participate in agency investigations.

If any interference continues, in consultation with the Office of General Counsel, the Executive Director will address any interference with the investigation by all appropriate means. Interference with any CSB investigations in any form may be reported to Federal law enforcement as obstruction of a Federal investigation.

You propose to strike that.

MEMBER EHRLICH: I do, because I think it's redundant. I think the people that are involved in this know this. They've been counseled on it. Right now, since we're moving into an environment where we're going to have a collective bargaining agreement, certainly HR has...has or will cover these issues. Okay? And it has to be...it has to be...in my mind, it has to be already known to the people that are out in the field doing this, that they have certain...certain obligations under the law to not interfere. And it seems to me that that just doesn't need to be there.

MEMBER KULINOWSKI: So to what is it redundant? Some other language in Board Order 40? Or another...

MEMBER EHRLICH: I don't...I don't know right now. I think it's something that needs to be discussed. But I...I am sure there are documents in the annals of the CSB that talk about this kind of

issue. And I just don't see it here...as being here, belonging here. Again, if others are interested in redoing that, I'm flexible.

MEMBER KULINOWSKI: Member Engler?

MEMBER ENGLER: I have nothing.

MEMBER KULINOWSKI: Okay, without understanding to what else...where else this is redundant, you...in several of these cases, you seem to be making an argument that people should know this stuff.

MEMBER EHRLICH: Mm-hm.

MEMBER KULINOWSKI: And I'm not sure why it's not also valuable to have it written down.

MEMBER EHRLICH: Okay.

MEMBER KULINOWSKI: Especially as we bring new people, and hire new investigators, train up new investigators [inaudible] and so forth. I think there is value in stating what may seem to you to be obvious, with your many decades of experience that may not be to people with less experience.

MEMBER EHRLICH: Well, that's something that I'd be more than willing to discuss.

MEMBER KULINOWSKI: Okay. 9, Whistleblower Protection.

MEMBER EHRLICH: I'll read that.

MEMBER KULINOWSKI: All right, go ahead.

MEMBER EHRLICH: The Clean Act...Clean Air Act provides that no employer may discharge or discriminate against any employee with respect to communications, terms, conditions, or privileges of employment, for exercising his or her rights in proceedings covered under the Clean Air Act. While no federal regulation details the specific activities that are protected, examples may include representing a CSB investigation, regardless of where the CSB chooses to open an investigation; supplying evidence or testimony in the course of a CSB investigation, including health and safety and/or environmental concerns to CSB investigators; identifying potentially relevant evidence; and providing the names of individuals that the CSB may wish to interview.

The Occupational Safety and Health Administration enforces whistleblower protections provided under the Clean Air Act, the Occupational Safety and Health Act, and other federal laws. OSHA provides additional information at...there's a website there.

My contention is the Clean Air Act provides that no employee may discharge, etc., etc., etc. the Occupational Safety and Health Administration enforces whistleblower protections. Those two paragraphs are all that are required to discuss the act of whistleblower protection.

MEMBER KULINOWSKI: So this is an argument in favor of conciseness, having language that explains...

MEMBER EHRLICH: It's already there. I mean it's two statutes...

MEMBER KULINOWSKI: ...how we would...how we would...

MEMBER EHRLICH: Right.

MEMBER KULINOWSKI: How we...what aspect of the Clean Air Act provision is relevant to CSB investigation. You would cut that because too many words?

MEMBER EHRLICH: I think the explanation about the Clean Air Act and the OSHA standard are more than adequate.

MEMBER KULINOWSKI: Member Engler?

MEMBER ENGLER: Again, I think it's explanatory information, that is valuable, that is not self-evident. The Clean Air Act and the OSHA Act are both long documents and it's very much worth providing this information as part of the dual purpose of the document.

MEMBER KULINOWSKI: Okay, we've made it through the document. [laughter] Is there any further discussion? Yes, Member Engler?

MEMBER ENGLER: I'd like to point out that in Board Order 40, it says the following. "The protocol team is an agency committee responsible for reviewing and updating this Order. In addition,

the protocol team is responsible for developing and updating investigation protocol and any associated guidance. The protocol team may be asked to participate in the periodic review and update of other Board Orders relevant to investigations."

And further that Board Order 40 says, and I'm quoting here from Page 7, "The protocol team will be responsible for reviewing this Order every other year to verify accuracy or propose revisions to the Board, after consultation with the Office of General Counsel." And further, "The protocol team will be responsible for updating the investigation protocol and will function as a standing committee to address feedback as investigative practices or policies evolve."

That was passed unanimously by this Board in February, 2017. So I appreciate Member Ehrlich's comments, in part, and that some of them perhaps would lead to a more concise document. But we have the opportunity to review this in the future again. I mean this specifically says that the Order of which this employee participation addendum would be part of will be reviewed every other year.

I'd like to point out again that our Procedure H, the only document that this agency has for discussing the opportunities for employees and their representatives to participate in our work was

voted on in 2012. So 2013 passed. 2014 passed. 2015 passed. 2016 passed. 2017 and almost all of 2018 has passed. And yet we have a document who...which is not a public document, and no...no location where we either provide...where we provide that information to very, very important stakeholders in our work. And therefore, while I think, no doubt, the document could be...with some changes, in the future could be improved, I think we have a sufficient vehicle based on Board Order 40 to make any necessary further revisions in the near future.

I'd also like to point out that a focus on going back and spending time on this document after all of the staff and Board work that's been done on it, is not a good...in my view, is not the greatest use of time and resources at this point.

You indicated in your opening statement that the trends are clear, that serious chemical incidents are...are...have gone down [inaudible]. I do not think that's necessarily at all verified by the investigatory work of the CSB, nor of any other agency. There's some suggestion that the process safety management standard has helped reduce incidents. But that applies to a specific group of facilities.

It is not at all clear, and I'd like to say this as sharply and clearly for the record as I can, that the extent of serious

chemical incidents has, in fact, gone down. So we have big challenges to address that.

Another challenge that we have as an agency, whether we should, as Board Members, be fully engaged, doing outreach and encouragement of people to apply where we have challenges in filling all our staff investigations positions. We have other challenges as well.

And I would suspect... I would...I would argue that sending this document back to committee, given those other challenges, given the excellent work that the protocol team already did, and given the opportunities that all Board Members have had to review this document over almost...over a number of weeks, suggests that we should vote in favor of the document as it's proposed. And, of course, we can come back to it and revise it if there is some additional input by anyone, including, I should say, members of the public, as well as investigators.

I certainly am not one to cut off any kind of process for engagement whatsoever. I look forward to that in the future. I would welcome, in a number of months or a year from now, holding... I would be happy to support holding of broader public hearing on this document. There was an extensive stakeholder process in...either late 2011 or early 2012. I think it was 2011, where a

diversity of stakeholders that went in to developing Procedure H were engaged.

So I'm very open to all of that. But my position is such that, based on the excellent work of staff, that we should proceed to approve the motions that I...that I offered.

MEMBER KULINOWSKI: Member Ehrlich?

MEMBER EHRLICH: Yeah, certainly I'm very appreciative of what the staff here does. They do an outstanding job. And in that regard, I'd like to restate the motion and ask that the Chair move it...the Acting Chair, and that would be to direct Executive Director to engage in review of the current Board Order 40 and include in the revised Board Order 40 the appropriate inclusion of the key elements of the proposed 40a addendum.

MEMBER KULINOWSKI: Can I see that?

MEMBER EHRLICH: Yep.

MEMBER KULINOWSKI: I'm visual.

MEMBER EHRLICH: Sorry, [inaudible].

[UNIDENTIFIED]: Did you write this?

MEMBER EHRLICH: I wrote it down, yeah. [multiple voices]

MEMBER KULINOWSKI: ...procedure note to...

MEMBER EHRLICH: But it is a much better clarification.

[multiple voices]

MEMBER KULINOWSKI: Is there any more debate on Member Ehrlich's motion which is to direct the Executive Director to engage in a review of the current Board Order 40, and include in the review...in the revised Board Order the appropriate inclusion of key elements of proposed Board Order 40a, which is Member Engler's proposal.

MEMBER EHRLICH: Thank you.

MEMBER KULINOWSKI: Any further debate?

MEMBER EHRLICH: Is there a second? I didn't...

MEMBER KULINOWSKI: We seconded it already, yeah. We were just restating it.

MEMBER EHRLICH: I'm sorry. I think this is much more concise, based on the two hours we've spent talking about it.

MEMBER KULINOWSKI: [laughs] ...is a virtue. I do have... I do have a couple of things that I would like to say. First of all, I appreciate both of you for bringing your thoughts about this important policy to the public so that we could engage in a robust and extended dialog on...on this issue. In doing so, we have incidentally also allowed people to have time to digest what's in the document, as we sat here and discussed it. So I think that's a...a public benefit.

I do appreciate the work that the protocol team has done.

MEMBER EHRLICH: Absolutely.

MEMBER KULINOWSKI: With Member Engler and Director Klejst to...to put together the proposal for the addendum...Board Order 40a, the addendum to Board Order 40, and Member Ehrlich's review of that and thoughts about that.

I do find that I don't understand fully all the rationale for some of the changes that Member Ehrlich is proposing and some of the language, I think, that you wanted to cut, I think could be helpful to, as I said earlier, new investigators and new investigators in charge, so that they are clear about what they should and should not be doing with respect to employee participation.

I also find value in communicating to employees and their representatives what they can expect. And by having this publicly available, either as it stands as an addendum or incorporating it into Board Order, will promote better transparency of agency investigative procedures and that's a public benefit as well.

So with that, I just want to conclude and thank you both for this discussion and we can proceed with the vote on Member Ehrlich's [inaudible].

MEMBER ENGLER: You want a roll call?

MEMBER KULINOWSKI: Yes.

[UNIDENTIFIED: Member Engler?

MEMBER ENGLER: No.

[UNIDENTIFIED]: Member Ehrlich?

MEMBER EHRLICH: Yes.

[UNIDENTIFIED]: Member Kulinowski?

MEMBER KULINOWSKI: Yes.

[UNIDENTIFIED]: With [inaudible] motion failed.

MEMBER ENGLER: Now you have the original motion.

MEMBER KULINOWSKI: Is there any additional discussion on the original motion, which is to repeal the existing Procedure H, Board Order 40, include the commentary involving employee participation into Board Order 40. I'm not sure I'm reading the correct one... Okay, yeah, here we go. Let me start over.

The motion is to repeal existing Procedure H of Board Order 40, adopt new Board Order Addendum 40a, and direct that it be posted on CSB's public website. Amend Board Order 40, Section 4, References, to add the following cross-reference, Board Order Addendum 40A, Worker Participation in Investigations. And then Board Order 40, Section 6, Authorities and Responsibilities, Investigator in Charge, Part E, to add the following provisions for worker participation in investigations is further explained in Board Order Addendum 40a.

Further discussion? Member Engler?

MEMBER ENGLER: While I obviously support this motion, I look forward to hearing from all stakeholders, all staff, all Board Members moving forward about any changes they have to improve it in the future. And I pledge to keep an accurate file and record of that information into a summary memo of appropriate changes and make sure that the work...that the work that the staff has done and subsequent comments that would come through such a process could be incorporated in the near future, so that the efforts...and some of the points made by Member Ehrlich, are not...are taken seriously.

MEMBER KULINOWSKI: Member Ehrlich?

MEMBER EHRLICH: Abstain.

MEMBER KULINOWSKI: Well, we're not voting yet. We're just asking if you have any further comments.

MEMBER EHRLICH: Oh, I thought he voted.

MEMBER KULINOWSKI: We voted on your [multiple voices].

MEMBER EHRLICH: Oh. I have no additional comments except that I think it's a good way to move forward, barring the fact that we can incorporate it or we won't incorporate into the Board Order at this point.

MEMBER KULINOWSKI: Okay. I have no additional comments on the motion. So call the question.

[UNIDENTIFIED]: Member Engler?

MEMBER ENGLER: Yes.

[UNIDENTIFIED]: Member Ehrlich?

MEMBER EHRLICH: Abstain.

[UNIDENTIFIED]: Member Kulinowski?

MEMBER KULINOWSKI: Yes.

[UNIDENTIFIED}: Motion carried.

MEMBER KULINOWSKI: At this time, I would like to open the floor for public comment related to the CSB's activities. Please present your comments within three minutes. We will begin with the list of people who signed up to speak earlier today. For those of you listening on the phone, you can e-mail your comments to meeting@csb.gov. Are we not taking them on the phone?

[UNIDENTIFIED]: No, take them on the phone [multiple voices].

MEMBER KULINOWSKI: You can either email your comments to meeting@csb.gov or we will open the phone lines for now, for public comment as there is no one in the room who has signed up.

Operator, please open the phones for any comments from people...

OPERATOR: Thank you. If you have a question or comment, please press *1 on your phone. If you wish to be removed from the question queue, press the pound sign or the hash key. And if you

are using a speaker phone, you may need to pick up the handset first before pressing the numbers.

Once again, if you have a comment, press *1 on your phone. We have a commenter, Richard Rosera[?]. Go ahead, sir. Is your line muted?

RICHARD ROSERA: Hello. Are you able to...able to hear me?

MEMBER KULINOWSKI: Yes.

OPERATOR: Yes, sir, we can.

RICHARD ROSERA: Okay, I just had a question concerning where you are in the process of hiring new investigators.

MEMBER KULINOWSKI: We are deep into it. In fact, we have...we've been interviewing people and the process is moving along but I don't have any news to report on that front today.

RICHARD ROSERA: Thank you very much.

OPERATOR: Once again, if you have a question or comment, press *1. And it appears we have no further comments.

MEMBER KULINOWSKI: Is there anyone in the room who would like to make a comment?

Seeing no hands, I would like...want to thank everyone here today and staff as well as my fellow board members for attending today's meeting. I appreciate everyone's questions, the discussion we had, and I look forward to our next meeting in January.

Please check www.csb.gov, the Federal Register, or sign up for email alerts for additional details about the agenda for the next business meeting.

All of us share a strong interest in preventing chemical accidents in the future and this public meeting is a small part of us doing that and sharing our work in that regard.

So thank you for your attendance, and with that, this meeting is adjourned.

OPERATOR: Thank you, ladies and gentlemen. This concludes today's conference. Thank you for participating. You may now disconnect.