

U.S. Chemical Safety and Hazard Investigations Board

Business Meeting

February 21, 2018

CSB Headquarters Office - Washington, DC

U.S. CHEMICAL SAFETY BOARD MEMBERS PRESENT:

VANESSA ALLEN SUTHERLAND, CHAIR

MANNY EHRLICH, MEMBER

RICK ENGLER, MEMBER

KRISTEN KULINOWSKI, MEMBER

STAFF PRESENT:

MICHELE BOUZIANE, ASSISTANT GENERAL COUNSEL

OPERATOR: Hello and welcome to the Chemical Safety Board public business meeting. My name is Brandon and I'll be your operator for today. At this time, all participants are in a listen-only mode. Later, we will conduct a question-and-answer session, during which you can dial \*1 if you have a question. Please note this conference is being recorded, and I will now turn it over to Vanessa Sutherland. Vanessa, you may begin.

CHAIR SUTHERLAND: Thank you, Brandon, and good afternoon. We will now call to order this business meeting of the U.S. Chemical Safety Board. Today we meet in open session, as required by the Government in Sunshine Act, to discuss the operations and agency's activities.

I'm Vanessa Allen Sutherland, the Chairperson and CEO of the Chemical Safety Board. Joining me today are Board Members Dr. Kristen Kulinowski, Manny Ehrlich, and Rick Engler. Also joining us from the Office of General Counsel is Assistant General Counsel Michele Bouziane, and also members of our staff.

The CSB is an independent, non-regulatory federal agency that investigates major chemical incidents at fixed facilities.

The investigations examine 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 incidents in the future.

During today's New Business section, we will release a new product called the "CSB Safety Spotlight" and will be announcing a new outreach initiative to commemorate the agency's 20th anniversary of operation.

Since this is not one of our regulatory, quarterly public business meetings, I will provide a condensed update on open investigations, recommendations, and deployments, as well as an overview of ongoing Inspector General audits, and a financial update.

If you are in the room, and wish to make a public comment at the end of the meeting, there is a yellow sign-in sheet, a sort of very bright gold, that you can use to sign up to make a comment, on our registration table. For those on the phone, you may also submit public comments by email, to [meeting@csb.gov](mailto:meeting@csb.gov), to be included in the official record.

But before we begin, I'd like to highlight safety information. Please take a moment to note the locations of the exits. If you're in the back of the room, they're to your right. If you're closer to the front of the room, they're out of the door closest to the Board Members. When you came into our building, there's two glass doors,

and the stairwell exits are behind the elevators, behind the exit sign.

I'm also going to ask that those in the room, please mute your phones at this point, or put them on "vibrate," so that the proceedings are not disturbed. Thank you very much for that.

We will now proceed with a short overview of our open investigations. I will quickly say, for those who were at the January meeting, each of the Board Members read a summary. It's only been a month, so, I'm going to provide a general update on which...what we have open at the moment.

The CSB currently has nine open investigations. All of the investigations are in various stages of development. The next investigation that we plan to release is the Packaging Corporation of America, PCA, that involved an atmospheric storage tank explosion at the PCA facility in DeRidder, Louisiana, killing three workers and injuring seven others. Details on our other open investigations can be found on our website, at [csb.gov](http://csb.gov). The PCA investigation, we don't have a specific date, but that will be coming out soon. And Dr. Kulinowski, our "hotwork" person, will likely be sharing the lead [inaudible] on that.

Under recommendations, for the recommendations update, I will provide new activities since our January public business meeting.

Our overall recommendations status is as follows. We currently have a ratio of 80% closures. That's 648 out of a total issued of 809. We have 20% in an "open" status, which is the equivalent of 161 recommendations.

To date in fiscal year 2018, the CSB has closed 9 recommendations. Four were closed "Acceptable," including an "Acceptable Alternative" closure. Recommendations that were voted on this fiscal year were from the following investigations. Freedom Industries chemical release—that was one recommendation. And...we have several others that will be posted on our website under the "Recommendations Status, Closure."

I would also like to provide an update on Recommendation 2010-10-I-OS-15, which, you may remember, was shortened to R15, issued to the Department of the Interior resulting from the CSB's Macondo Investigation. That recommendation was discussed in November of 2017, when the Chemical Safety Board voted to close R15 as "Closed-Reconsidered," with the Board Members' desire to drive safety change through additional outreach efforts to highlight the issues.

The agency subsequently has sent letters to Congress and relevant agencies, and has discussed additional opportunities to promote the importance of those worker participation and whistleblower protections through outreach and upcoming CSB

products. More details about the Board vote can be found in the meeting transcript of that meeting and we will continue to update you as we continue outreach and CSB product development.

Next, our IG updates have not changed much since last month. But as of February 21<sup>st</sup> of this year, the CSB is working with the Office of Inspector General on two audits including, number one, the Improper Payment and Elimination and Recovery Act audit. The OIG is conducting their analysis and expects to complete and issue their report by the end of the third quarter.

And, second, our Management Challenges and Internal Control audit is underway. The CSB completed its entrance exam and meeting with the auditors and the OIG expects to complete and issue their report by June of this year.

And before we get to new business, just another brief update over the last month about our financial status. On Monday, February 12, 2018, the CSB submitted its FY 2019 budget request to Congress to continue its mission of driving chemical safety change through independent investigations to protect people and the environment. We are hopeful that stakeholders and the Congress will support our request, especially since the President's FY 2019 budget again proposes that CSB be eliminated, along with a list of other agencies. Currently, the CSB is operating under the Continuing

Resolution, which ends on March 23<sup>rd</sup> of this year. We are awaiting final action on the FY 2018 appropriation, as are every other federal agency. We do have funding to continue our operations. And I would note that both the House and Senate Appropriators' bills support funding CSB at \$11 million, which we have received for annual operations since about FY 2014. We are very grateful to the leadership of the Appropriations Committee for supporting the agency and continuing to grant us that funding to do operations, investigations, and outreach.

So, that is just a brief update of operations from where we've been in the last month. In a moment, I'll give you the date for our regularly-scheduled April meeting. But I'd like to focus next on new business.

Today, the U.S. Chemical Safety Board is releasing its first "Safety Spotlight," a new program to highlight the important role of CSB Recommendations and the resulting actions taken by their recipients. The CSB's first Safety Spotlight highlights the role of individual state governments in driving chemical safety change.

And, for those who are on the phone, or in the room, who were at our January meeting, we explained that this first Safety Spotlight is to highlight, not only those individuals that we believe are advancing in meeting our recommendation requests, but

who are often exceeding them and continuing to implement and find ways to drive chemical safety change in the industry. We highlight, in this Safety Spotlight, several very important state activities. And I'm going to simply highlight the recommendations and resulting safety improvement that are reflected in the Spotlight.

First is a 2007 propane explosion [which] occurred at a general store in Ghent, West Virginia, killing four people and leading the CSB to issue a recommendation to the Governor and Legislature of the State of West Virginia aimed at improving propane training requirements for propane technicians. West Virginia approved a bill in 2010 requiring the completion of a nationally-recognized propane service training program for "persons who install or maintain liquefied petroleum gas systems." This requirement was also implemented into the West Virginia State Fire Code.

I should mention, for those in the room, if you missed it, a copy...Amy, if you could hold that document up...a copy of the Safety Spotlight, it's printed, on the table and if you missed it, you can definitely grab one or more than one on the way out.

The second incident that we highlight in that Safety Spotlight is from our February 7, 2010, Kleen Energy investigation, which was a natural gas-fueled power plant under construction in Middletown,

Connecticut, which experienced a catastrophic natural gas explosion that killed six and injured at least 50 people. The incident occurred while workers were conducting a gas blow, which is where natural gas is forced through new piping and released into the atmosphere at a high temperature and volume in order to remove debris. The CSB issued a recommendation to the Governor and Legislature of the State of Connecticut to enact legislation that prohibits gas blows. In 2010, the former Governor of Connecticut, M. Jodi Rell, banned the use of natural gas blows by power plants in Connecticut.

And last, we will highlight California. In 2014, the CSB issued a recommendation to the Governor and Legislature of the State of California to enhance and restructure California's process safety management regulations for petroleum refineries. The State of California amended its Occupational Safety and Health Process Safety Management, PSM, standard in 2017 to improve workplace safety and hazard prevention and management at California's 15 petroleum refineries. The newly adopted standard, which became effective just last October 1<sup>st</sup>, requires that refineries, among other things, perform a damage mechanism review for each existing and new mechanical, chemical, physical, or other process that results in equipment or material degradation.

The CSB emphasizes that a number of state governments have made significant safety improvements following a chemical disaster in or near their state. These actions are made to protect people and the environment with a goal of preventing similar incidents. And we acknowledge all of their efforts, including the three that we highlight in our Safety Spotlight.

So, next, under new business, we will share CSB's 20-year anniversary. For many of you who are very familiar with the CSB, the CSB was created under the Clean Air Act, but not funded until 1998. So, this is actually our 20<sup>th</sup> year anniversary and we are excited about marking this anniversary and sharing some of our work, and hopefully our vision, for the next 20 years.

Throughout 2018, we will highlight a safety topic that reflects findings from agency investigations during our first 20 years of driving chemical safety change. And I'm going to share an overview of the monthly activities that we have. For those who are in the room as well, there's a laminated...I wish...oh, Manny has one...a laminated bookmark, which will highlight for you each month our area of focus. And...oh, thank you very much, Amy. In the room, we also have a PowerPoint which highlights a broad summary of those activities.

So, in February, we will be focusing on Process Safety Management Modernization. Next month, Safe Hot Work Practices. In April, Combustible Dust Safety. In May, just around the time of hurricane season, we will be discussing Extreme Weather. June will be Preventive Maintenance. July, our focus is Contractor Safety. In August, our focus is Lab Safety, Laboratory Safety. September we will address Human Fatigue. October, Emergency Planning and Response, which is also one of our CDL, "Critical Drivers List", issues. November, Winterization. And December is Reactive Hazards. And that doesn't mean we won't cover or address other topics as the year unfolds, or as we deploy. But we wanted to highlight every month an area where our investigations have hopefully shaped lessons to be shared and safety to prevent catastrophic events anywhere in the country.

CSB Board Members will be discussing the topics during their outreach events and presentations. And the CSB will feature information on each topic on its social media platforms. If you are in the room, please take more than one of the bookmarks, but also be, you know, sort of, I guess, in tune with our website because we will certainly have many of these outreach events and activities on our website as well.

So, before we have a Board discussion, we have two more items under new business to cover. And the next is our collaboration with the Chlorine Institute. When we were discussing the Safety Spotlight and how we might advocate for recipients who've done good work, we also wanted to make sure we were collaborating with many of our not only new stakeholders, but stakeholders with whom we've worked over the years.

So, I would like to take this opportunity to highlight a recent joint statement that I have recently worked on with the Chlorine Institute and their President. You can pick up a copy of that...

MEMBER EHRLICH: I've got one of them, too.

CHAIR SUTHERLAND: Manny, thank you. You can pick up a copy of that at the sign-in table, as well. For those who are on the phone, it will be posted on our website, and we will also provide a link to the Chlorine Institute where it's posted.

And it focuses on preventive maintenance, which is also one of the CSB's Critical Drivers List items. We've highlighted cases from our investigations where inadequate preventive maintenance was a causal factor.

For example, in the 2011 Carbide Industries fire and explosion, the pathway that caused a furnace water leak to allow

foreign raw materials to enter the furnace was identified in industry literature as early as the 1960s. The statement emphasizes that facility owners and operators should become active in industry safety groups, to share their best practices and experiences, learn from industry peers and contribute to developing improved preventive maintenance performance.

I'm extremely pleased, and I very much thank the Chlorine Institute, for initiating this collaboration and look forward to working with other organizations and associations in the near future. Member Ehrlich and I were in California last week and received lots of opportunities and suggestions about collaborating with first responders, academic institutions. And I know that I and my fellow Board Members are always open to figuring out a way for us to share the messages, or reach new audiences and new member organizations.

So, as I continue to say, "Safety is a shared responsibility." I know that working with organizations like the Chlorine Institute will hopefully amplify that and combine our missions and make an even stronger voice. So, thank you.

And next is Board outreach. I should say next and final, before we have a Board discussion.

So, at our January meeting, we discussed that the Chemical

Safety Board is going to track and do a...a better job of making sure we reach out to as many organizations as possible through the CDL Program and other forums and events, where we can learn or we can share. And we displayed an overview, just for illustrative purposes at our January meeting, of the Board Member's outreach activities from FY 2015 to 2017. We didn't show you all of them. It was really just meant as a backdrop to the conversation, to show that we are very mindful of where we fit, and it helped the Board Members make sure we're reaching out as broadly as possible.

The full list of organizations with whom each Board Member has met during their tenure at the CSB will be available on our website at [csb.gov](http://csb.gov). But, to summarize the breadth of our activities, I would direct you to the chart that those in the room can see. It's a pie chart that our Board Affairs team was kind enough to do, just to have as a backdrop to this conversation today.

The chart shows the detail of the total number of organizations reached by our Board Members. And if you look at it and you're in the room, you'll see the color key and legend and next to the group with whom we've met is a parenthetical. And that's the number of times that we have reached out to those entities. So, if you see...what does that say? 57? I can't read that far. (male audience member: "57.") Thank you, all of you, your eyes

are much better. The chart will help you determine, by organization type, our reach over the last two years.

CSB Board Members have met with over 130 different organizations since 2015, some of them multiple times, in different venues. And we've classified those organizations into eight broad categories: associations, associations that are also Standards Developing Organizations, corporations, meaning individual companies, academia, Emergency Planning and Response organizations, various government bodies, legal organizations, and unions.

Note that these classifications are based on our defined categories for recommendation recipients, with the exception of "Legal", as we generally do not issue recommendations to legal bodies. But they have invited us to participate in forums such as the American Bar Association Energy and Environment Group, where we can talk more broadly about our work. So we were happy to broaden that outreach.

So, as the year progresses, you will see not only more communication about where we are going, but we will certainly welcome any feedback about where you think we need to reach out. And please use the social media that's posted on our website, YouTube, Twitter, and Facebook, or our website, which has an email link, which is [csb.gov](http://csb.gov), to contact us.

So, at this time, with that new business behind us and hopefully you all are as excited about it as we are, we're trying to figure out new ways to communicate what we do; we are going to shift to a discussion with Member Engler. And I would like to recognize Member Engler to lead a discussion that he raised with the Board. Member Engler.

MEMBER ENGLER: Thank you, Chair Sutherland. I'm now about to read a prepared statement which will be also submitted to the transcriber [inaudible].

CHAIR SUTHERLAND: Thank you.

MEMBER ENGLER: Over our twenty-year history, the CSB has made advances in transparency, participation, and collaboration, three pillars of Open Government. Our website, in addition to posting all CSB investigation reports and recommendations, includes information on all Board Notation, or paper votes, Board Member voting records, Board Orders and rules that govern our operations, and transcripts of Board public meetings. Our public meetings in the field, which are part of specific CSB investigations, allow family members of victims, facility management, union representatives, technical experts, elected officials, and the public at large to offer information, raise issues, and explain their viewpoints.

In 2015, CSB's rules were amended to add a requirement for the Chairperson to place notation item votes that have been calendared to the agenda of a public meeting within 90 days of the calendared notation vote. The rule also adds a requirement for the agency to conduct a minimum of four public business meetings per year in Washington, D.C., in addition to any public meetings held in communities where CSB investigations take place.

We are also issuing more information about our initial findings earlier in the investigative process. More CSB materials are translated into Spanish. Public meetings have provided an opportunity for public comment, generally at the conclusion of the meeting. And we hope, after technology upgrades, to livestream our public meetings.

There is a specific area, however, where CSB transparency and participation can, in my view, be easily improved. A Notation Item is a paper ballot that can be used to record the votes of CSB Board Members on various matters, including investigative report approval and our annual budget. Notation Items are prepared by the staff. Notation Items propose changes to the status of CSB safety recommendations. If such a Notation Item is calendared, sending the issue to a public meeting for a vote...for a Board vote, there is no requirement that any document explaining the staff's specific

rationale for the proposed change be available to the public before Board discussion of that item takes place. Only after a final Board vote is a Recommendations Status Change Summary posted on our website for the public to see.

This transparency gap was illustrated by our October 16, 2017, public Board meeting that focused on the proposed staff changes...status changes to Recommendation 2010-10-I-OS-15 to the U.S. Department of the Interior, which focused on increasing worker participation and ensuring whistleblower protection for offshore oil and gas workers. It resulted from CSB's investigation of the Deepwater Horizon disaster at the Macondo well in 2010, an incident that killed 11 workers, seriously injured 17 others, and was arguably the largest environmental disaster in U.S. history.

The public present in the meeting room or listening by telephone on October 16<sup>th</sup> had little information before the discussion. If they had read the Federal Register Sunshine Act notice or a CSB email alert about the meeting, they could go to the CSB website and read the recommendation and learn its current status. In this case it was "Open-Awaiting Response" or "Evaluation/Approval of Response".

Yet, they would not be able to learn anything in advance of the Board discussion about what changes were being proposed by CSB

staff and the staff's rationale for a status change. This lack of information is a transparency gap which could discourage public participation. Such participation could potentially be expressed through a prepared oral comment at the meeting by members of the public or, perhaps more useful for Board review, through a written submission to CSB a few days before the meeting.

To address this, I intend to propose, at our next public meeting, that for all calendared Notation Items concerning recommendation status changes, that a modified status change summary be posted on CSB's website no less than ten days before the date of the public meeting when that item is on the agenda. This would allow interested parties, all interested parties, including the recommendation recipient, as well as government agencies, trade associations, unions, environmental groups, professional organizations, technical and policy experts, and the public at large, opportunity to submit factual information and written viewpoints in advance of Board discussion and voting.

Additionally, I plan to propose that such public comments received be posted on our website. This proposal would be through an amendment to Board Order 22, the CSB Investigations Program, which is on our website, and possibly to our rules, as well. This proposal would create little new work for the small, three-person

staff of CSB's Recommendations Department. While they would have to develop a new document for public posting, there would need to be just three small wording changes to the already prepared Recommendations Change Summary for it to be made publicly available before a meeting. Specifically, the word "Proposed" would appear on the document's title, the "Date of Status Change" would say "pending" instead, and the word "Proposed" would appear on "Section C. Board Analysis and Decision".

If we did receive written public comments after posting this new document online, according to our Office of General Counsel, we are under no legal obligation to develop agency documents in response. And I emphasize that this proposal would only apply to proposed Recommendation Status Changes that have been calendared by a Board Member for discussion at a public meeting, not all proposed Recommendation Status Changes.

Since January 1, 2015, to date, there have been 107 proposed Recommendation Status Changes. Of these, only two have been calendared for substantive reasons. These two status change proposals addressed significant chemical safety issues: reactive chemical hazards and worker protection/whistleblower protection in

the offshore oil and gas industry. Both involved recommendations that were of substantial public interest.

Receiving public information or viewpoints would not interfere with the Board's independence. Assessing quality of chemical safety information and considering diverse public viewpoints is an essential Board Member role. I am confident that CSB Members will continue to meet this responsibility.

CSB could benefit from hearing from other stakeholders, not just the recommendation recipients who communicate with CSB as our staff prepares status change proposals to the Board for voting. We have a straightforward and practical opportunity to hear from the public and consider their information, expertise, and concerns.

In closing, I request that this statement be posted on the CSB website and I look forward to hearing the views of my fellow Board Members on this proposal. Thank you.

CHAIR SUTHERLAND: Thank you, Member Engler. I don't know if you want to lead this conversation or questions or if you just want us to jump in.

MEMBER ENGLER: I think Board Members should jump in.

CHAIR SUTHERLAND: Board Members?

MEMBER EHRLICH: You go first.

MEMBER KULINOWSKI: Okay, thank you, Chair Sutherland. And thank you, Member Engler for raising this really interesting issue. I observe that there are really two proposals here. One is to make calendared Recommendation Status Change Summaries public before the Board votes. And a separate proposal to take public comment on them prior to the vote.

So, let me address the first one, and then maybe I'll stop there. So, the first one is to make calendared Recommendation Status Changes available to the public in advance of the public meeting at which the Board votes on them. The stated rationale is to inform the public of the matter under consideration so that people tuning into the public meeting can better understand the Board Members' deliberation.

I believe that allowing the public to better understand what is being deliberated at a public meeting is a good goal. If that were all that's sought from this policy change, then posting it the day before or even the morning of the meeting would meet this goal. These are short documents, a couple of pages at most, that can be read in a few minutes. Those interested in the topic, which would already have been noted in the Federal Register, would be able to see the proposal in advance, enhancing their ability to follow the deliberation during the public meeting.

So, in this proposal, Member Engler notes that the public had little notice about what we were going to discuss regarding the Macondo recommendation prior to the October 16<sup>th</sup> meeting. Fair enough. That's true. But we didn't vote on October 16<sup>th</sup>. We discussed the issue at some length during our public deliberation, but didn't vote on the issue until our next public meeting on November 14<sup>th</sup>, almost a month later.

In the intervening time, I will note that not a single member of the public submitted a comment to the Board. Other than a brief missive from a Congressman that came in no more than three hours ahead of the November meeting, that was the only response we got to the discussion. So, I'm not, in principle, opposed to posting information in advance. I do ask: Is there a more widespread issue with public confusion about our deliberations than that raised by this one vote on the Macondo R15 Recommendation Status Change?

And a second question I have is why this is the only...this is only being proposed for *calendared* Recommendation Status Changes, and not for other possible calendared voting items that are also posted on our website after the fact, which the public would have no opportunity to discover prior to our deliberation, such as a budget justification, most Board Order revisions, and all

investigation reports. Isn't the rationale the same for these items, regardless of the nature of the calendared item?

Indeed, one can make a stronger case for posting a calendared draft investigation report because our reports and videos are a primary product through which the broader community learns the lessons from the tragic incidents that we investigate. So, couldn't it be argued that the reports are even more important to be subject to public scrutiny or participation through the same process? If so, and we may decide that this is a valuable exercise, process, we would need to post these well in advance to give the public greater time to digest the subject matter which, as fans of our work know, can number into the hundreds of pages.

So, I'll just stop; I pause there, on the first point. I would like to better understand the justification for applying a unique process to Recommendation Status Changes, calendared Recommendation Status Changes, under this proposal. So, right now, it looks like a good idea. But it could have the unintended consequence of doing the very thing that it purports to prevent, that is, confusing the public, because different processes are being applied to different voting items for reasons that remain, to me, at least at this time, unclear.

CHAIR SUTHERLAND: Do you want to go or...?

MEMBER ENGLER: Yeah, that's fine.

CHAIR SUTHERLAND: I mean I can...

MEMBER EHRLICH: Thank you, Madam Chairperson. Thank you, Member Engler, for the effort you've put into this. I recognize it's a lot of work. And I think there's a lot of discussion required as to whether it's just a simple matter of changing three words that's going to make it flow downhill and be...be what you expect it to be.

A thought that I had when I read some of this last night was that when you talk about the pillars of open government proposed, and I believe that was President Obama that proposed that, I don't believe we have an issue related to transparency. Perhaps participation, and at some level, collaboration. But I do think we do a relatively good job at dealing with transparency. It's not an easy subject. And I would...I would be sitting here and not telling you the truth if I told you I understood all of the intricacies of it, which I have not done and not been in the government long enough to get totally involved in that. I have included a copy of 5 U.S.C. Section 552 outside on Sunshine Act, for anybody that's interested in it.

So...I also, in some sense, have the same impression that Member Kulinowski had. I tend to look at things and say: Is the system

broke? Okay? Or broken. And sometimes I think when you try to fix something that's not broken, you end up with a process that's more complicated than that which you intended to fix. So, I think there's a lot of discussion to be had on this. I don't think it's an easy issue to readily solve. But I'm certainly open to further discussion on the matter. Thank you, Madam Chairperson.

CHAIR SUTHERLAND: Thank you, Member Ehrlich. It does require more thought and discussion. But I think it has to be bifurcated. The way I see them, it's three different issues, actually. I ultimately agree with Member Kulinowski that we have two...that were just espoused. So, we have a transparency question, which is promoting accountability by providing the public with information about what the government is doing. That's posting, that's sharing, that's meeting, that's inviting people into the meetings. That's taken straight from President Obama's directive.

There's accessibility, which existed apart from this, which is making sure that items are available to those in the ADA community, so that, as we are sharing with the public, we're mindful about how those might be...how the documents and graphs and charts that we have in our reports, or that we issue, plus Recommendation Status Changes, are widely accessible. And that's sort of a disability question. And then we have the third bucket, in my mind, which is

"engaging." So, I hear what Member Engler is saying, that we have a transparency gap. I actually think we're uber-transparent. We have multiple social media venues, we have a website that actually allows you to click on Open Government and see what we're doing, our open investigations, Board votes, Board Orders. We have many more than the four recently-implemented regulatory quarterly meetings to let people know what we're doing, in addition to news conferences, and, where necessary, field meetings. We are out and about, I think, in a very regular way.

So, from a transparency perspective about what we're doing, and giving people the opportunity to engage with us, I have heard...I think I've read some of the same prior documents or referable documents that the Board Members have read, that CSB was actually a leader in being transparent under the Sunshine Act, and that many of the things that were recommended or best practices, we adopted in order to let people know what we do. Because we're independent; we're not regulatory. Our goal is to share information.

So, I don't necessarily see a transparency issue. But I see a blurring... Just so that we can all discuss it and debate, I see a blurring of the term "transparency" and "engagement" or "transparency" and "participation." And they shouldn't be used as

synonyms. Even in the President Obama Open Government directive that I think you mentioned a minute ago, Member Engler, participation allows members of the public to contribute ideas and expertise so that their government can make policies with the benefit of information that is widely dispersed in society.

So, the "open" question that I have to think about (it's a question; it's not a statement) is, we're not a policy-making, rulemaking body. Our entire mission, like the NTSB, is to be an independent, objective, scientifically-based body that is focused on facts and evidentiary collection in order to present that and hold everyone accountable, without fines, without penalty, without blame, without shame.

And, so, I am not a chemist, but, the way I read that is, this directive went to every government agency. It didn't just go to the Chemical Safety Board. So, you have to account for participation, which, by the way, is already covered in broad statutory terms by the Administrative Procedure Act. It mandates how you do rulemaking and comment.

So, that's a question that I have to think about. We're not a policy or rulemaking body. As an investigative body, what does that look like? So that's something, I guess, at a subsequent meeting we would have to discuss. But I think, from a

transparency perspective, I, like my fellow Board Members, might want to peel back what deficiencies we have there, given our different document formats, given our "En Español" outreach just over the last couple years, everything being posted on the web, the number of meetings, the number of documents we share...what we could do better in that regard.

But in the participation camp, maybe you could help peel that back, what that looks like, from a commenting and inclusion perspective. Because I think we all agree, it sounds like...I don't want to speak for anybody—pipe up...The transparency is something we try to do well, or are doing well. At least I think...

MEMBER EHRLICH: Absolutely.

CHAIR SUTHERLAND: ...I heard the three of you say that. And I agree. But I think for the participation, I'd like to hear more about, what does that look like and feel like? I don't...you don't necessarily have to have all the process updates, but just to hear more of what you're thinking when you say, "for people to participate." What does that look like?

MEMBER ENGLER: Well, I do think we would benefit from greater participation in general. Let me...let me give you an example of something that's coming up that we haven't discussed the process for, as yet, or timeframe, or really...I don't think

there's been any informal preliminary discussion at all. That is, when we close another Macondo investigation...I'm sorry, another Macondo recommendation, where we had said the Department of Interior...I don't have the number, it might be R7, that the Department of Interior, we had recommended, should issue—and I'm paraphrasing very broadly—guidance for corporate leadership oversight on major chemical disaster prevention. That was closed; I think it was a unanimous vote, and we said that the follow-up would be that our agency would issue such guidance itself because we felt we could go ahead and do this and it would be a useful contribution.

It seems to me that there are many, many corporations with skilled, experienced, knowledgeable experts on staff, that have...for example, on offshore oil and gas issues, for decades. And that's just an example of one stakeholder group, that I spent a lot of time listening to them in a recent Academy of Sciences workshop in Houston, that would offer an enormous amount to this agency.

And, so, my vision about this may not be encapsulated in a...exactly in the precise form of this proposal. But is in the spirit of trying to do more to hear the voices of our stakeholders, in part because I think on some issues, however

independent we are, and we should be independent, whatever expertise we have, and we have a lot of knowledge, there are many external stakeholders that are embedded in the industry for years, whether they're at the corporate safety department level, whether they're a member of a safety and health committee, whether they're part of a professional or standards-setting organization, and I could go on, that have a lot to offer.

And, so, that's the spirit of what I'm trying to approach. And I agree with...completely with Member Kulinowski's point about, well, why wouldn't this kind of proposal apply more broadly. I would actually agree, and would certainly be pleased to participate in the discussion of whether those issues that...that make sense to have broader input.

Now, I don't think input on what our budget is, for example, is...I think that is an operational question for the agency itself to set. So, I do think there are areas that are...where we would learn much less and is essentially our organizational prerogative to pursue. But I don't disagree with you that this is...that in a sense, this is selecting out one area of our work, and not others, for additional transparency and potentially participation.

CHAIR SUTHERLAND: Before you go to a second point, can I

ask you to clarify? When you say, for example, "R7, we would have heard other voices from stakeholders," to clarify, you were saying there are others who would have been able to provide guidance. Why wouldn't that fit into, or couldn't that fit into, our collaboration bucket?

We've closed recommendations "unacceptable" in the past...

MEMBER ENGLER: This is not...Sorry, but this is not a criticism of that process on that specific recommendation...

CHAIR SUTHERLAND: No, I just mean as an example.

MEMBER ENGLER: ...as much as looking forward, looking ahead.

CHAIR SUTHERLAND: Right, but any of those recommendations, irrespective of how we, sort of, grade or vote on them, even if they're acceptable, we're not foreclosed from collaborating with somebody to highlight a point. And it seems that it might be more imperative...And I just want to make sure I'm understanding what you're saying about getting the feedback from voices. The voices wouldn't necessarily have told us how to close that, because I think the Board Members still would have said it's unacceptable that they didn't do it. So, if we'd have gotten more feedback, it feels like that's...it wouldn't have necessarily changed the vote.

It would have changed the subsequent outreach efforts, which are, you know, maybe fluid. It might have allowed us to collaborate with somebody on a product.

So are...Just to make sure I understand. So, you're saying that if we have a scenario where the Recommendation Status is unclear, or if it's something that we are going to close unacceptably, we would want to invite in the experts? Or were you just using that as an example?

MEMBER ENGLER: I think I was using that as an example. I think that the...that essentially the [inaudible] for any one Board Member who believed that the proposal for a status change is of such significant public interest that they can trigger a broader and more inclusive process. I mean that's...I think what it basically said. So, is there something that's objective? Is there an absolute set of criteria? Are there areas where the Board Member who calendared would simply discover nothing, even with the process, and no one was involved and no one spoke up and we learn nothing? Quite possibly. But I think it's...

I don't quite know how to put particular criteria on it, other than that, if there are areas where closing a proposal, or a status change, is one of very significant public interest, that's one basis for a Board Member to calendar it, although I

would not specify the basis for, you know, the basis for calendaring. I can imagine another being that there's actually a disagreement about the interpretation of the information provided by staff. That's a possibility. Another would be that there were...intrinsic to the status change, was the need to reach out to other stakeholders at the site, in the community, a Local Emergency Planning Committee, for example, that would know whether a particular...or might know whether a particular, you know, situation had changed at a facility. That might be [inaudible].

CHAIR SUTHERLAND: But then for that one, wouldn't that be something that we would do internally? Because if we wanted to reach out before a Recommendation Status Change, it would seem to me that the fix there is during the...is for us to direct the staff and say, before a Recommendation Status has come to us, here are the things we expect you to check. Have you done this? So, exercising the Board Member's due diligence to say: "You know, you are working on painting this fence blue. That's a safe issue. Did you talk to the recommendation recipient? Check. Did they talk to other people? Check. Did you have any way of verifying with pictures, or whatever, that the fence is actually painted blue now? Check." So, for that one, if we needed to reach out,

are you saying that we would be reaching out to verify what the staff has done? Or...or reach out to people that the staff didn't contact in order to verify what the recommendation recipient and other parties have told us?

MEMBER ENGLER: I guess what I'm saying is that if...the way it's proposed...and the way it's...the way it's been used, and I'll speak for myself, since I was the Board Member that calendared the two, the two of...That doesn't mean, to be clear, that the votes were unanimous. There's a variety of...you know, there's more of a diversity of votes. Although the overwhelming majority of the Status Change Recommendation votes were unanimous by this Board. Were based on different types of, you know, different...different criteria.

I mean right now we do not have a way for...I don't think, for Board Members to...I mean we can ask questions of the Recommendations Department, but in the end, in terms of voting, we can only...you know, we only can vote the recommendations up or...you know, up or down or not participate.

CHAIR SUTHERLAND: Well, no, that's true. I mean, or abstain, I guess. I forgot that one, that's the fourth. So maybe we don't have the answer today, but how...how will we know if something is of great public interest? That may warrant

feedback. I'm just...For those who watched us in October, I am more of a...I ask questions, I think, I process, and it might take me, like several days to go home, think about it, come back. So, I think that's part of the dynamic of the Board.

Picking up, or just remembering, something that Member Kulinowski said about the gap between our October meeting and November meeting, where we thought we had great public interest, but we didn't get any comments and we didn't get any feedback, at least not in the interim. People sort of came to the meeting, prepared to discuss the topic at the meeting. But they hadn't heard us talk yet.

So, how will we gauge if there is great public interest, or whether it's just an issue that's very passionate, you know, among the Board Members? Because to me, I'm wondering if there's a blurring there. If we are passionate about something, we will want to seek out if there's public interest, versus us knowing definitively, well, there's public interest and this one really warrants the solicitation of feedback? And that's open to everybody, that question.

MEMBER KULINOWSKI: I have some additional questions about the second half of the...We've already started to talk about the engagement piece. You call it engagement. We can call it

participation. But we're talking about taking public comments for a calendared Recommendation Status Change prior to a Board vote. And, you know, Member Engler has...has given some really good reasons why there might be...in our...in our interest to hear from the public. We always want to hear from stakeholders and we want to understand is there something we missed. You know, do we have the whole picture? We want our stakeholders to feel that they can contact us. All those are very valid.

But I do have a number of other concerns, some of which are process-oriented, because that's how my brain thinks, and one very significant substantial one. And the substantial one, I'll lead with. And that's the independence of the Board. You mentioned that you didn't think that this taking a public comment would challenge our independence. And I'm not sure that I agree with that. I'd like to explore that a little bit more.

But we know that Congress established us differently than a regulatory agency. They established us as an independent agency that should uphold the highest standards of rigor in our information gathering and analysis. Our decisions should be driven by facts and not political or ideological considerations. That's why, as Board Members, we have terms that may span the change of an administration, presidential administration.

So, the question I have is, couldn't taking, and especially, then responding, to public comment prior to a vote open us up to doubt about our impartiality? I'm sorry to say that CSB has suffered from a perception in the past that the agency is in the pocket of this or that group, depending on the Board and the Board Member, you can choose the group. I'd love to say that those perceptions are only of our past Boards but I hear from people who remain concerned that this Board, even this Board, is too politicized. This is from people that I would consider friends of the CSB, who strongly support our mission, who spoke up for us under the fear of elimination, and are willing to tell us privately these uncomfortable truths about how we are perceived from the outside.

So, couldn't allowing ourselves to be influenced by the viewpoints of individuals, or especially organized groups, undermine our credibility as a neutral, independent, investigative body with no agenda other than the one expressed in our mission statement?

And I may be engaging a little bit of hyperbole here, but with our continued survival under persistent threat, shouldn't we work harder to develop and maintain our independence and objectivity to quash those concerns that we are a politicized

body that should be eliminated? And is this proposal that you bring consistent with the core values that are on the wall over there of...of independence, objectivity, technical rigor, and so forth?

So, not sure that receiving public comments or viewpoints would not interfere, not with our independence but with the perception of our independence by the outside. So, for example, to raise the other one that you calendared, the other Recommendation Status Change, if the American Chemistry Council had organized a campaign to lobby us on the reactive hazards recommendation, what do we think others in the public...

MEMBER ENGLER: Sorry [multiple voices].

CHAIR SUTHERLAND: If they...if they had...

MEMBER ENGLER: Oh, if they had.

MEMBER KULINOWSKI: If they had.

MEMBER ENGLER: The American...

MEMBER KULINOWSKI: *If* the American Chemistry Council, the recipient of recommendation, had organized a campaign among its member companies to lobby us to change that recommendation, what do you think...what do we think others in the public would have

concluded when we did ultimately vote 3-1 to reconsider that recommendation? We could have exposed ourselves to concerns that we are in the pocket of the chemical industry because they lobbied us to do this and we did it. Without that, we have the facts and analysis that we gather internally and that's what we relied on.

We didn't rely...There was no public campaign. They didn't do it. And we're not in the pocket of the chemical industry. Well, we shouldn't be in the pocket of any particular stakeholder group.

So, I do have some concerns that, even though I strongly support hearing from stakeholders and so forth, the issue of inviting the public to influence our decision-making could...could raise concerns about our independence.

And there's a second issue...

MEMBER ENGLER: Can I respond to the independence one?

MEMBER KULINOWSKI: Yes.

MEMBER ENGLER: I think what troubles me about that analysis is that it's an argument for, perhaps, not having interim meetings where we learn from those affected early in the investigation. I mean, those are...those meetings, which have

public comment periods, I think...I don't know that they quite solicit, but they...I think they encourage public comment. Those comments can include scientific information. They can include findings, concerns. They can cover anything anybody wants to get up and say, regardless of its validity or use. And we've heard all kinds of things at public meetings.

I think that by...this proposal actually supports independence. Meaning, right now, if a Board Member, or some Board Members, or the Chair, or whoever, gets correspondence from an entity that is a recipient of a recommendation, for example, or...that is what it is. And it's received by the agency, and it may or may not have any effect on influencing our thought process, depending on the content or...or...I can't foresee all the kind of scenarios, but if public comment were actually just put on the website, which is the second proposal...And you may have noticed that in this statement, I didn't talk much about speaking at the meetings. It is very late in the process. I'm not sure it would allow time for thoughtful review, and we already have a regulation that would have to be addressed that...on speaking at public business meetings, which...which, you know, I think the Chair has taken an appropriate and more open approach to people speaking at public meetings, and I appreciate that, than what's necessarily

reflected in this horrible regulation.

But I think it would encourage clarity of thinking and uphold our independence. So, I've had some conversations lately where...and I'm sure, you know...I don't think I'm unique, that I'm the only Board Member that would have a conversation about an issue here with an outside stakeholder. And I've said, you know, send a letter to the Board. Not to one Board Member. Not to two Board Members. Not just to the Chair. Not just to the staff. If you want to elevate an issue that needs a response, send a letter to the full Board.

And I think it would be arguable that we could maintain a document of those kind... I mean, again, the devil's in the details with...about what...Is it about recommendations? Is it about investigations that were not modeled in terms of our specific investigative procedure, the way the NTSB is modeled? That raises a whole host of different questions. But I think that having comments out in the open, at public meetings, in letters that are posted on our website, actually makes us more transparent and more conscious of the need to be vigilant in...and independent.

CHAIR SUTHERLAND: So, I...I would want to interject. Because part of the reason we have interim public meetings is that work

product isn't fully baked. The expectations are set. There's a rigorous process. It is for the purpose of technical rigor, to solicit information at a time where evidence is still being gathered, analysis is still being done. That, to me, is not analogous to a report that has been voted on, which includes a recommendation with a status and a team that has been working directly with the recommendation recipient, getting underlying documents that, you know, support, don't support their implementation of a recommendation, and it's fully baked.

And so, for...I think for me, having been at a regulator [agency] for many years, doing the rulemaking process, and I'm sure the three of you may have had an opportunity to submit comments. But, there's nothing like being on the regulator's side to understand what that process is like...It is very much analogous in my mind to and SDO—a Standards Developing Organization. And we used to have very many debates when I was at a regulator [agency] about how do you encourage and facilitate equality in the comment process? Not everybody can fly to Palm Springs to go to the standards developing annual meeting. So, you inadvertently exclude people.

If you were well-organized, and you happened to have a group that is just dedicated to submitting their comments, the

fact that they submit their comments doesn't mean that other people don't have opinions or care. Or, the fact that only one person submits a comment, versus the five people who were organized together can submit five comments. How do we weigh those? Do we say, we got five postcards, so that means this group is more interested, and we should give more weight to their opinion than the person who could only muster one postcard?

So, I know...We're still refining the conversation, so, I'm just kind of thinking out loud. But what...what is a little bit angst-producing for me is, we enjoy the ability to be independent, and we can go out and talk to anybody we want because our role...our focus is supposed to be collaboration. We're supposed to do that along the way. We do it at the back end, on the Recommendation Status Changes, which is the focus of this, you know, narrow discussion. But if we start to listen to public comments, do we only acknowledge the comment, or the people who have the time to respond? What do we do with the comments that are about the underlying report to which the recommendation was attached? How do we reconcile the comments? Do we...Do we vet those for accuracy, or do we let people submit it and we accept on its face what they say?

How do we respond to each of them? Because I think I heard you say, Member Engler, that we wouldn't...The lawyers have said we're not obligated to respond. And I have...I have to raise the question for our next conversation. So, what are we doing with the comment? If we're...If we have no legal obligation to develop agency documents in response, how do we at least acknowledge receipt and that we considered it? And why are we asking if, for some of them, we may not consider them?

Because, like, these are questions...I'm putting myself in the mind of...as a member of the public. I guess a couple of other points, too, just related to them. These are questions I'm just throwing out, because we're running out of time, for us to think about for others in the room, or on the phone, to think about. How much more information will we be allowing access to, in the recommendation recipient process, if we post a recommendation and a commenter says: "I'd like to see all of the submissions and confidential business information and layout of the facility to see if the recipient really could do what they said they were going to do"?

And then are we also going to allow cross-commenting? For those who've been regulators—and there probably aren't that many in the room except two of us—you have a scenario where Party A

puts up a comment. Party B, but for that comment, wouldn't have commented. So, now they're doing cross-comment and you have to reconcile those. And then that invites other people to make comments.

So, we'd have to kind of work through it from a process perspective. What are we trying to get out of people? Because I hear your point. We don't want to forego getting technical expertise. No one in the CSB, I think, would want to forego an expert opinion on relevant data. We want to be technically vigilant.

But, what do we do when we get comments that actually aren't related to the posting that we had, which is common in rulemaking? We're working on a rule about this. Somebody says, "I want to actually talk about this." So, we have to think about that.

Because I...My secondary concern, outside of just making sure that we would even be able to have equitable assessment of who's sending in what, when, and what weight do we give to each of those, is a follow-up concern, which is, are we setting ourselves up to over-promise and under-deliver? Because at some point, NaCO is just NaCO. Right? There's no comment period for that. I mean, maybe somebody could make one up.

MEMBER KULINOWSKI: In solid form, or it could be an aqueous solution.

CHAIR SUTHERLAND: You think that's going to come in the...? Okay. Could be. But, there are some things that, from an evidentiary perspective, we won't be able to open up for privilege purposes, deliberative purposes, draft and confidentiality purposes, PPI. So, I think what I'd like to do is, because we're brainstorming the questions and I don't have answers to any of these, and it doesn't mean I have an opinion...I think we do well on transparency. I think we generally do really well on collaboration.

I think for participation, as an independent agency that is not engaged in policy-making, rulemaking, grant-giving, all of the other things that require broad engagement and APA structure, I wonder if there's a way to get at what you seek, that allows us to take the input at the right places along the investigative process. Because if we've gotten to a recommendation that is really that controversial by the time we're doing a Status Change, we probably missed something during the report writing, and we probably missed something during the interim phase or evidence collection, if we've just completely gotten the science wrong and it only emerges during a Recommendation Status Update. That...that would concern me even more. I hope that doesn't happen to us.

But...so, those are some of the things that I'm going to have to grapple with between now and the next meeting. And I also think that, you know, for those who we try to engage who are new, recommendation recipients excluded, just new stakeholders, since they have a new perspective, I welcome that. And I also want to make sure that we have enough openness to include new stakeholders who may not have previously been comfortable commenting at the CSB or who've never engaged with us. I still want to be welcoming. But I think we have a couple of things.

So, I'm going to go down the table to make sure I'm mindful of everyone's time. Member Ehrlich, do you have other questions that you would like us to think about before the next meeting?

MEMBER EHRLICH: I do not. Thank you.

CHAIR SUTHERLAND: Dr. Kulinowski?

MEMBER KULINOWSKI: I just want to echo some of the things that you said, that there's what I termed as information asymmetry between what we use to make our deliberation and our vote and what we are able to share with the public. And Congress envisioned that, because we're a non-regulatory body, we would need to rely on the cooperation of the entities that we're investigating and making recommendations to for everything that

we do. And that that collaboration is essential. And if we were to, you know, feel like we needed to share underlying documents that are shared with us in confidence, that would be almost...that would be an existential threat to the agency, if we had to do that.

So, I agree with the...the issues you raised about the...the setting up a...setting the public up to be disappointed in what we're doing. Because if we don't do a formal comments process, then we already have historical precedent for doing an informal comment process. Not on a Recommendation Status Change, but on an investigation report, where we said let's...You know, you have new technical information for us. You have new information for us. Let's...We'll review that and, you know, I think it's fair to say that our handling of the comments on that report, although they were undertaken with good intent, did very little to satisfy our commenters that that process, and the revised report we issued in response, were done thoroughly and softly.

So, from my perspective, if we're going to take public comment, we ought to do it right. And by right, I mean with a formal process that is applied consistently to every matter of the same kind, so the public knows what...what's going to happen with their comments. They know what we're

going to do with them. They'll know whether we should consider them. Doing that does raise a lot of questions about resources.

Obviously, the formal public comment process is very resource-intensive. I don't think we have the capacity to do that with our current budget. Even if we did it informally, I think it's a little bit underestimating the staff resources to just say, "We'll just do this informally," because it's going to require the revision of at least two Board Orders, which is off of the General Counsel's time. Every time we do this, it's going to require Public Affairs to figure out how to post all that on the website. They manage the website. Board Affairs is going to have to make sure that we have access to the comments and, you know, time to consider them. Recommendations and Investigations staff are going to have to respond to questions that we...that may come up when Board Members look at these comments.

I will personally confess that I caused Recommendations and their Investigations staff numerous hours, just me alone, on a single recommendation that was calendared, status change. So, that was just me. Because in the conversations that we were having about this status change, I needed more analysis and I needed it from both teams. So, if that...that's just...you know,

that's just one Recommendation Status Change for one Board Member.

So, I think it...it's going to require a lot...a lot more resources than just the...than I think we may have considered. So, I do have concerns about that when, you know, what we're hearing from our stakeholders is that they would like us to do our core work with greater efficiency. They'd like us to get our reports out faster.

CHAIR SUTHERLAND: Videos.

MEMBER KULINOWSKI: Our videos. They...I've gotten very positive feedback about some of our new outreach resources, the things that we displayed here today. And we should consider asking ourselves, what is the best use of our limited resources to best serve the public, to advance our mission?

CHAIR SUTHERLAND: Well, then I'm going to add a question for us to think about, because something that you said is in my margin, which is, the Board will have to read all these comments. It will not be enough to simply have those comments come in. So, in addition to the staff having to review them, vet them, verify the accuracy, deficiencies, new topics, novel issues, we have to read all of those, as well. And I think from a practical perspective, for those who haven't done a formal

docket process, we...we don't have the infrastructure. If, in addition to resources, we would need to be on regulations.gov to post, have everybody on central locations, storage for records management purposes, people be able to see it and so that they can respond to other posting, etc., there's a time effort and a cost to that, in addition to just posting them on the website, if we're going to do this in a formal way. So, that's something that we should be thinking about, as well, from an infrastructure and a cost perspective.

But I think the process issues are...We can talk philosophically, but we need to talk about the process issues, as well. Because even if we posted documents, which I think makes a lot of sense from a transparency perspective...I have no issue with that...If I can be any clearer, I have no issue with that. Post them beforehand, that's a good idea. Check. If we take comments ten days before the public meeting, that means day nine, the Board Members really can't be traveling because you need to read all the comments that have come in, react to them, and answer questions, reconcile anything that seems new, unusual. We would...We need to have a conversation about our time and what that means from the process, in addition to changing the Board Orders and the rules. I'm not averse to having that

conversation. We need to have that conversation. If it's something we want to do, we absolutely have to do it right. That is my...That's my mantra. Whatever we do at the CSB, do it well. If we want to do something new, excellent. Then we have to think about what are the other things, candidly, we want to give up, or forego, to do it well. We are 40 people, \$11 million. Deployments that we can't attend to because we don't have 100 inspector/investigators. Outreach and advocacy. I think people...we've heard feedback that some think we're tipping toward too much strategic outreach and advocacy to try to get the messages out.

So, we have to be candid and come back to the next meeting and...and discuss and debate. What are we willing to give up and how are we going to reprioritize, if we are going to become a notice-and-commenting shop? Because it can't be that we post the documents and get comments ten days before the meeting and then expect that we're not going to have anything else to do, or travel anywhere else. So maybe that's 30 days. Well, then that means 30 days we're not getting Recommendation Status Changes out in a timely manner because of 30 days for us to have comment.

I'm all about the details. The devil's in the details. And so, I think, let's talk about where we all are, at the next

meeting, on the idea, because the idea is worth...is absolutely worth discussing. Secondly, the practicality and cost and time, and what are we actually trying to solve, I think, is a...is a root of the discussion. Because maybe we can find another way to achieve the same ends without building a machine...a massive regulatory machine.

MEMBER EHRLICH: I did have another thought, Madam Chairperson, and I'll be brief. And that is, you know, in a business operation, you look at ROI. You know, what is all this going to do to your bottom line or your profit margin. We don't have profit margins in that respect. But we do have effect on our mission and our objectives to accomplish that mission. And we all have...I just think that we...we need to weigh that. That's not to say we shouldn't do it. But we need to figure out what that's going to do to accomplishment of our mission and accomplishment of our objectives. Thank you.

CHAIR SUTHERLAND: You are welcome. I'll go down the row. Any final questions? [multiple voices].

MEMBER ENGLER: I have a question for you.

CHAIR SUTHERLAND: Yes.

MEMBER ENGLER: Just to clarify, so that I'm not

misunderstanding what you just said a couple minutes ago. So, do you indicate that you do support the advanced posting of a draft Recommendations Change Summary? I thought you might have, but I wasn't...I wouldn't want to...

CHAIR SUTHERLAND: I...I don't have any issue with posting documents before a public meeting so that people who attend the meeting have an opportunity to read them. I think we heard a couple proposals thrown out. I didn't say a specific timeline. You have ten days in your document. But there's absolutely no reason that the day of a meeting, the day before a meeting, we couldn't post a document for people to read.

MEMBER ENGLER: Okay, but you indicated a document. My proposal is for a Recommendation Status Change...

CHAIR SUTHERLAND: That's what I mean. A calendared...

MEMBER ENGLER: ...a modified Recommendation Change.

CHAIR SUTHERLAND: A calendared Recommendation Status Change. That's what we're talking about. Not all documents.

MEMBER ENGLER: Right.

CHAIR SUTHERLAND: Your proposal, I thought, was for a modified Status Summary Change.

MEMBER ENGLER: Right.

CHAIR SUTHERLAND: And that's what I meant. I don't have any problem posting that up. You know, we're going to change this to "Closed, exceeds all of our expectations," or "Closed, acceptable," and to have people be able to read it and follow along. I think that makes perfect sense. I don't...I don't see any reason, if people are coming to a meeting, to keep them in the dark and have them have to rely on us reading documents to them, to understand what we're doing. I have no concern about that. That is transparency. And that is what was contemplated by the Sunshine Act in addition to us being able to deliberate and explain what we think about the proposal in front of us. No concerns.

The concern that I...I am struggling with is all of the infrastructure and...and other conversations that still need to be had so that I better understand, when you say participation or engagement, what that looks like for our agency with our mission and our resources. But the transparency element, I mean, I...I'm all about transparency. I mean that...that's...put more up. Do more. Reach more people. Touch more people. If I could do "*En Français*" and "*En Español*" and everything else, I would have done that today, but we don't have the time or money. And I can't translate it all myself.

But I don't...I don't see any problem with that because it helps people understand what we're talking about. That's very different than a notice and comment model of a regulatory agency being imposed on...in my opinion. Does that clarify?

MEMBER ENGLER: Yes, thank you. I...and so...should I go ahead and just?...So, thank you for that. I think that this has been an excellent discussion and that, from my point of view, that is forward movement on posting such a document as we discuss that...you know, discuss the particulars of that more, I think that...that's excellent.

As to the rest of the proposal, I did submit it in the spirit that it was a relatively modest and focused, incremental-type proposal. I certainly understand there's broader considerations. I want to reiterate that in a three-year period, two...two Recommendation Status Proposals have been calendared for substantive reasons. And I want to reiterate that we...as others have said, that we're not a regulatory agency, and we do not need to respond, and we can establish a policy about what we do in posting such comments.

But I certainly will consider the individual comments and dialogue that we've had in this...in this productive meeting today, in preparation for our next discussion at the next public Board

meeting, and will consider forward steps in that context.

[inaudible] me to be absolutely clear to revise my...you know, revise my proposal, to develop a motion that's somewhat different, or to just conclude that no further action is even necessary if operating practice of the agency would lead to simply a new practice of posting information earlier in advance if needed. So, all that is...

CHAIR SUTHERLAND: TBD.

MEMBER ENGLER: To be decided, percolating in my own mind. And I appreciate the constructive conversation that we just had at this meeting. Thank you.

CHAIR SUTHERLAND: Thank you. So, at this time, I would like to open the floor for public comment, acknowledging that for those who are in the room, we have run over about 15 minutes. So, I understand if you have a commitment, we might lose people. But please present your comments within three minutes. We'll begin with the list of anyone if they signed up or on [meeting@csb.gov](mailto:meeting@csb.gov).

For those listening on the phone, I will ask the operator to now open the line, to see if there are any questions in the queue.

OPERATOR: Thank you. We will now begin the question and

answer session. If you have a question, please press \*1 on your telephone keypad. If you'd like to be removed from the queue, please press the "pound" sign, or the hash key. If you're on a speakerphone, please pick up your handset first, before pressing the numbers. Once again, if you have a question, please dial \*1 on your telephone keypad.

And on the line we have Ron Allen. Please go ahead.

RON ALLEN: Just a quick question. Are you still going to review the status of the outstanding investigations during this meeting?

CHAIR SUTHERLAND: I could barely hear that. [multiple voices] Oh, thank you. Sorry. I was having a little difficulty hearing you. No, because we just provided an update in January, and nothing has changed, other than a new deployment, we have not provided any detailed status updates. But our January transcript will be on the website, and that has the current status of all of our open investigations, as well as our [csb.gov](http://csb.gov) section with current investigations linked.

RON ALLEN: Thank you.

CHAIR SUTHERLAND: You're welcome.

OPERATOR: And standing by for any further questions. And

on the line, we have John Morawetz. Please go ahead.

JOHN MORAWETZ: Basically I'd like to thank the Board Members. A very interesting discussion, although listening in is always hard versus being there. But I'd just say that obviously I've...as people know, I've been to a number of the Board meetings, and I think getting the draft recommendations in advance of the program solves a tremendous problem that I've spoken to numerous times and put in letters to the Board. That otherwise, the past history has been, we get the report, we're in the meeting, we have to figure out what the questions are, what we think are other points, formulate them, and mention it, which is a difficult situation. The reports in general are excellent. I cannot see getting into all the background documentation as an outside party. But on the other hand, the recommendations are very critical and have great import across many industries. Anyway, thank you.

CHAIR SUTHERLAND: Thank you.

OPERATOR: Once again, if you have a question, please press \*1...Okay, looks like nothing further at the moment.

CHAIR SUTHERLAND: Okay. Well, thank you to both of the commenters and everyone who attended today. I would love to, you know, give acknowledgement to our staff for always pulling this

together, in addition to all the other things that we have going on. So, thank you to those in the room, on the phone, inside and outside the agency.

Our next public business meeting is tentatively scheduled for April 4, 2018. Please check our website at [www.csb.gov](http://www.csb.gov), the Federal Register, or sign-up for email alerts for additional details about the agenda for that meeting. Thank you very much for your attendance, and with that, this meeting is adjourned.

OPERATOR: Thank you. Ladies and gentlemen, this concludes today's meeting. Thank you for joining. You may now disconnect.