

U.S. Chemical Safety and Hazard Investigations Board

Business Meeting

April 4, 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:

KARA WENZEL, ACTING GENERAL COUNSEL

OPERATOR: Hello and welcome to the Chemical Safety Board Business Meeting. My name is Michelle and I will be your operator for today's conference. At this time, all participants are in a listen-only mode. Later we will conduct a question and answer session, and during this question and answer session, if you do have a question, please press \* then 1 on your touch-tone phone. Please note that this conference is being recorded.

I will now turn the call over to Ms. Vanessa Allen Sutherland. Ma'am, you may begin.

CHAIR SUTHERLAND: Thank you, Michelle. First, we will call this meeting to order. Good afternoon. This is the 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 operations and agency activities.

I'm Vanessa Allen Sutherland, Chairperson and CEO of the Board. And joining me today are Board Members Kristen Kulinowski, Manny Ehrlich and Rick Engler. Also joining us from the Office of General Counsel is Kara Wenzel, and members of our CSB 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.

Today's agenda for new business includes the release of a short animation detailing the events leading up to a fatal incident at the Packaging Corporation of America in DeRidder, Louisiana, and a discussion on a proposed amendment to our Board Order 22, which is the Recommendations Program.

I am also pleased to announce that the CSB has completed its 2017 Impact Report, which you may see, or hear about, in a moment. Hard copies are available for those at the D.C. site, near the sign-in table that you passed on the way in, and we've also posted that document on our homepage at [www.csb.gov](http://www.csb.gov).

If you are in the room and wish to make a public comment at the end of the meeting, you can use the yellow sign-up sheet which is right at the table...registration table. And for those of you on the phone, you can also submit public comments, by email at [meeting@csb.gov](mailto:meeting@csb.gov), to be included in the official record.

But first, before we begin, I'd like to highlight safety information for those in the D.C. office. Please take a moment to locate the exits and signs that were in the hallway to your left and right when you entered our glass doors.

I also ask that you please mute your phones so that the proceedings will not be disturbed. Thank you for that. Put them on vibrate or...as an alternative.

So, to commence our agenda, our routine business for these meetings includes an overview of open investigations and other administrative matters. Currently, we have eight open investigations, and a brief summary of the status of these investigations was made available on the registration table.

We will then hear respectively from Members Kulinowski, Ehrlich, and Engler on other operational updates. I will start by highlighting a few investigation developments for those who are participating today.

First, Packing Corporation...Packaging Corporation of America, or PCA. Our final report on the February 8, 2017, incident has been circulated for Board approval via a Notation Item. When the Board has voted, or adopts the report, we will announce our findings in a press briefing. But, as mentioned at the beginning of the meeting, we have a new animation that will show you...we will show you today, and make available immediately after on our website and on YouTube. If you follow us on our YouTube videos, it's [YouTube.com/uscsb](https://www.youtube.com/uscsb).

Next, an update on our Didion Milling investigation. We anticipate releasing a Factual Update later this month on that investigation which occurred...an incident occurred May 31, 2017. There was an explosion in Cambria, Wisconsin, that killed five employees. And our Factual Update will highlight combustible dust safety, which is actually the focus of our "20 Years of Driving Chemical Safety Change," which is in April, the entire month of April.

Next, Arkema is in the process of completing its draft report. That has been in development, and we anticipate that it will enter Board review in the next few weeks. We do hope to release our report and findings by the end of May, in anticipation of the start of the 2018 hurricane season. The CSB will highlight "Preparedness for Extreme Weather" as part of our "20 Years of Driving Chemical Safety Change" program starting in May.

And, lastly, yesterday marked the one-year anniversary of the Loy-Lange investigation commencement. The CSB's investigative activities are ongoing. As you may remember, the Box Company in St. Louis had a catastrophic vessel rupture which, unfortunately, sent a projectile many hundreds of feet, and killed one employee and members of the public. Our investigative team has recently

completed the metallurgical examination of the pressure vessel, and will proceed to the report development phase this month.

So, next, we will move to recommendations. Member Kulinowski will now provide an update on the CSB's Recommendation Program.

MEMBER KULINOWSKI: Thank you, Chair Sutherland. To date, the CSB has issued 809 recommendations. Currently, 81% of these, or 657 by number, have been closed, and 19%, or 152, remain in "open" status. The status of all of our recommendations can be found on our website at [www.csb.gov/recommendations](http://www.csb.gov/recommendations).

Recommendations that have been recently voted on can also be found on the Recommendations page, by following the link to "Recent Recommendation Status Updates." Each recommendation has a Status Change Summary that describes the rationale for the Board's vote.

To date in fiscal year 2018, the CSB has closed 18 recommendations. Two were closed unacceptably; seven were closed acceptably, including "acceptable alternative"; one was closed "reconsidered or superseded"; and eight were closed "no longer applicable."

Recommendations that were voted on this fiscal year were from the following investigations: Two from the Macondo Well Blowout, one from the ExxonMobil Refinery Explosion, two from the Tesoro Refinery Fatal Explosion and Fire, one from the Chevron Refinery

Fire, two from the Donaldson Enterprises, Inc., Fatal Fireworks Disassembly Explosion and Fire, two from the Freedom Industries Chemical Release, five from MGPI Processing, Inc., Toxic Chemical Release, one from the Airgas or Air Liquide Facility Fatal Explosion, six from the DuPont LaPorte Facility Toxic Chemical Release, and one from the Hoeganaes Corporation Fatal Flash Fires.

CHAIR SUTHERLAND: Thank you, Member Kulinowski. Member Ehrlich will now present an update on ongoing audits of the Office of Inspector General.

MEMBER EHRLICH: Thank you, Madam Chairperson. Good afternoon. As of April 2, 2018, the CSB is currently working with the Office of Inspector General, OIG, on four audits.

Improper Payments and Elimination and Recovery Act Audit: The OIG is currently working on this audit and expected to complete and issue their report by...by June the 18<sup>th</sup>.

Management Challenges and Internal Controls: The CSB met with the auditors for its Entrance Meeting. The OIG expects to complete and issue their report in June of 2018.

Unimplemented Recommendations: The OIG sent their draft of the Unimplemented Recommendations Audit findings to CSB on March 22, 2018. The audit included two recommendations: First, require that the CSB review and reconcile the Bureau of the Fiscal Service

Activity...Account Activity Reports transaction counts and total to the purchase card records maintained by CSB in its financial system before providing BFS activity reports to the Office of Inspector General. Second, include GSA in any future office leasing plans and revisit office needs for a potential adjustment or supplement to the Washington, D.C., and Denver office leases to reduce space within the GSA benchmarks.

The CSB agrees with the OIG recommendation to contact GSA, and will consult with them on future D.C., and Denver, lease needs.

Purchase Card Risk Assessment: The CSB and OIG held an Entrance Conference on March 27, 2018. The OIG has received all documents requested from CSB. The OIG expects to complete fieldwork by the end of April/early May of 2018.

CHAIR SUTHERLAND: Thank you, Member Ehrlich. Member Engler will now present the financial update for the CSB.

MEMBER ENGLER: Thank you, Chair Sutherland. I am pleased to report that the CSB received \$11 million in funding for the Fiscal Year 2018, which ends on September 30, 2018. We appreciate the leadership of our Appropriations Committee, and their staff, for supporting the agency's mission and our budget for FY 2018. With the FY 2018 funding approved, Congress is reviewing the CSB's FY 2019 budget, which begins on October 1...October 1<sup>st</sup> of this year.

With the funding approved for FY 2018, we...we provided our justification to continue our mission of driving chemical safety change through independent investigations to protect people and the environment.

And you can read the budget request on our website. We are hopeful that Congress will support our request, especially since the President's 2019 budget, unfortunately, again includes CSB on its list of agencies proposed for elimination.

CHAIR SUTHERLAND: Thank you, Member Engler. So that concludes our regulatory updates. We're now going to spend the remainder of the meeting on New Business. We have two topics to cover for New Business. As I mentioned before, the first is the animation regarding PCA, Packaging Corporation of America. And the second is the Board's deliberation regarding Board Order 22.

So, first, CSB is releasing today its latest animation, which details the February 8<sup>th</sup> explosion at PCA that I mentioned a moment ago. Three workers were killed and seven others injured. At the time of the incident, hot work was being conducted near a 100,000-gallon atmospheric storage tank, which likely contained an explosive atmosphere.

As you may know already, the CSB added "Safe Hot Work Practices" to its "Critical Drivers List" last year, and it was the

topic highlighted for our "20 Years of Driving Chemical Safety Change" in the month of March.

I would like to highlight Member Kulinowski for being our hot work champion, and, having already given a couple of presentations on that, doing out work...outreach to help highlight that this issue continues to occur over and over again.

So, with that, our Board Affairs team will now play the video for those in the room. And those who are on the phone, this is on CSB.gov, or you can, as I mentioned, reach it at YouTube.

[VIDEO PLAYS]

CHAIR SUTHERLAND: Thank you, Amy. We anticipate the release of the final investigation report within the next few weeks. But, did want to make sure that the animation was available now. And so, more to come with any further product that may result from our investigation of PCA.

Next under New Business, the Board will now discuss a recent proposal on proposed amendments to Board Order 22, "Recommendations Program." The proposed recommendation amendment would require the posting of "calendared" recommendation updates. Board Member Engler...I'm sorry, Board Member Ehrlich and I [inaudible] calendared this notation...([to Member Engler] it's because you have an E on

your last name, I think)...for further clarification and discussion on the proposal and implications of the proposal.

So generally, when we have "calendared" items, we give the member who has "calendared" the Notation Item an opportunity to either introduce this topic or, alternatively, the member who has made the proposal, to provide an overview. We haven't discussed a preference. Do you have a preference of who [multiple voices]?

MEMBER ENGLER: I have a short, prepared statement that's quite short, that will, I think, provide an overview, just to bring people up to speed.

CHAIR SUTHERLAND: Why don't we do that? And for those who are on the phone, you can also revisit our February 21, 2018, transcript where we discussed this issue at a high level. Certainly, you don't need to do it now, as a precursor to this discussion. But, just for those who might be near their computer, we are going to reference that, or parts of that, discussion as well. This is a follow-up to that. So, with that, I would like to recognize Member Engler.

MEMBER ENGLER: Thank you, Chair Sutherland. And this statement is essentially an excerpt from my prior [inaudible] I will try to do it expeditiously because it required a much longer explanation last time. As Chair Sutherland said, the transcript of

the meeting, as well as my statement, is on the website and [there are] printed copies on the table outside.

There's a specific area where CSB transparency 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 reports approval and our annual budget. Notation Items are prepared by 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 Board vote, there is no requirement that any document explaining the staff's specific rationale for the proposed change be available for the public before a Board discussion of that item takes place. Only after a final Board vote is a Recommendation Status Change Summary posted on our website for the public to see.

Thus, the public is unable to see...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 awareness is a transparency gap which could discourage public awareness and understanding.

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 Recommendation Status Change Summary for it to be made publicly available for a meeting. Specifically, the word "proposed" would appear on the document's title, the date...the date of status change would say "pending," and the word "proposed" would appear on Section C, "Board Analysis and Decision."

If we did receive 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. 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. That number may have gone up by a couple, but it was accurate at our last public meeting. Of these, only two have been calendared for substantive reasons. These two status change proposals address significant chemical safety issues: reactive chemical hazards and worker participation and whistleblower protection in the offshore oil and gas industry. But

both involve recommendations that were of substantial public interest.

And that is my background statement for this...for this discussion today. Thank you.

CHAIR SUTHERLAND: Thank you, Member Engler. I will offer to my colleagues, Dr. Kulinowski or Member Ehrlich, an opportunity to provide their comments before I do.

MEMBER EHRLICH: Okay, thank you Madam Chairperson. My comments... I wrote...prepared some written statement and supplied it to the Chair and to Mr. Engler. I don't see where this does a tremendous amount for the agency in terms of transparency. I think some of the issues that it brings up or surfaces are going to create more work for the agency. Admittedly, there's only been a few calendared Notation Items to date. In fact, my recollection is that as of the last meeting, Member Engler was the only one that had calendared two recommendations.

I do see it as creating more work if the volume increases. And at some level, I believe this provides an incentive to calendar Notation Items. I don't think our organization has personnel right now to deal with a lot of public comments that might come in.

Through my own research, I also determined that we are under no legal obligation to get back to the stakeholder if they do post

comments and ask questions. But I would ask the question of, what does that do for the perception of customer service? We've exposed ourselves at some level by putting the thing out there. A stakeholder may have a comment, or two or three, and we basically say, if we're not going to respond to it: "Thanks, but we really don't care what you had to say."

So, from that perspective, I don't see it as having any value-added to the agency. And that's basically my posture on the Notation Item.

CHAIR SUTHERLAND: Thank you, Member Ehrlich. Dr. Kulinowski?

MEMBER KULINOWSKI: I would like to refresh everyone's memory of the discussion that we had in February, where we bifurcated the issue of posting the comment, versus throw out the issue of accepting public comment on work before we vote. And Member Engler stated, you know, at that meeting or subsequently, that he was only in favor...he was only pursuing the former. This is the posting of the information that the Board would vote on so that the public would have an opportunity to understand the dialogue that we're having right now, for example.

So, just putting aside the public comment, which we already discussed and has been, you know, tabled, if not dismissed for now, going back to the issue of posting information in advance, I said

in February, and I will reiterate, that I am not...not in principle opposed to information...posting information in advance. I think it serves the public to have some understanding of what we're talking about when they take time out of their day to come to a meeting or to phone in and listen to us. It is a courtesy that we can provide to give them the basic information, background information about what we're speaking of. So, in that case, I support the posting of information, calendared information.

The issues with the specific proposal are, for me, more logistical and process-oriented in terms of, does this conflict with another timeline for publication of information that the CSB has? Is it in conflict with another regulation that we operate under? Is it consistent with our Board Orders? In other words, we shouldn't have piecemeal ways of...or piecemeal approaches of doing business. Everything should be consistent internally so that we can present a competent and efficient front to the public.

So, on that score, the original proposal, while I did vote for it in the Notation Item, I do have some issues with the number of days and with the consistency with existing proposal. So, I'm looking forward to hearing conversation as it moves forward.

CHAIR SUTHERLAND: Thank you. So...

MEMBER EHRLICH: Madam Chairperson, I forgot one thing.

CHAIR SUTHERLAND: Let me ask Member Engler [multiple voices]...

MEMBER EHRLICH: Oh, I'm sorry.

CHAIR SUTHERLAND: ...before we go through a second pass.

MEMBER EHRLICH: Okay.

MEMBER ENGLER: It's fine with me.

CHAIR SUTHERLAND: Okay. Member Ehrlich?

MEMBER EHRLICH: Well, I was out of town last night and this morning and, based on something I read last night, the original time period was set at seven days. And is it my understanding...I read that it's now down to five?

MEMBER ENGLER: Yes.

MEMBER EHRLICH: Okay, well, I...

CHAIR SUTHERLAND: Well, no, no, no. There is one calendared item on the table. Thus, there's only one motion to discuss. We can't modify or discuss a second motion unless the first one is either rescinded or otherwise disposed of through a vote.

MEMBER EHRLICH: Okay, thank you.

CHAIR SUTHERLAND: So that one, the second proposal...

MEMBER EHRLICH: Right.

CHAIR SUTHERLAND: We are not acknowledging the second proposal until we dispense with...

MEMBER EHRLICH: Dispense with the first. Thank you.

CHAIR SUTHERLAND: Good question. So, I will provide my memo to our team for the record, for the transcript. But I did provide my fellow Members with my thoughts and thinking on the Notation Item presented by Office of General Counsel from Member Engler, to revise our Board Order.

So, I'm going to...I'm not going to read the entirety of that memo. It's short but I'm even going to make it shorter because I have bifurcated my thinking into two categories. One is, if we move forward with the proposal, like Dr. Kulinowski just mentioned, I would have issues or tweaks with the language, just to make it clearer and better and something that can live...outlive us.

The second category of things I want to talk about, or deliberate with the Board Members, are the broader logistical and policy questions, and understanding how we are going about addressing a question or a fix for the agency.

I will share before my comments, just to my Board Members, I have never made it a secret that what I would like to leave for the CSB is better governance, better clarity, better documents, more meticulous focus on what we say, how we say it, in our Board Orders, our Regulations, and our practice. And, as we have seen in our short tenures here, we very often are surprised, again, with conflicts between what the agency has done in Board Orders,

procedures, regs. And I think it is incumbent upon us, as we have begun to fill the different infrastructure or refine some of those inconsistencies or conflicts, to continue to be mindful that we should do that, to leave a better legacy for the Board that comes behind us, so that they can spend time on outreach and investigations and not cleaning up operational issues.

So, with that mindset, I shared with the Board Members, and for those of you who have it, I'm going to highlight some of the things that I'm focusing on. The February 2018 meeting, that both Member Engler and Dr. Kulinowski mentioned, did in fact highlight agency transparency and public engagement. And the transcript does state that the Board Members were discussing those, in a couple of instances, interchangeably. And that was with regard to the proposed Recommendation Status Change Summary.

During that meeting, I heard at the end, support from Board Members about posting calendared Recommendation Status Change items prior to a meeting, to allow stakeholders time to print it, read it, digest it, before hearing the Board Members' deliberation.

Subsequently, Member Engler proposed a revision to Board 22 as a follow-up to that discussion. But, I want to first say and be clear: I agreed, before February, at February's meeting, and after the last public meeting, with the publishing of calendared items,

which may include Recommendation Status Changes, if enhancing transparency is the desired outcome. I think I have been diligent, along with many at the agency, in pursuing transparency with many more public meetings, business and investigative, more meetings with stakeholders, and being intentional about outreach efforts, traveling to others to learn more, and hope to find more ways to improve. We've enhanced our website. We have tried to do outreach with "En Español." I'm extremely mindful of transparency advocates with whom we have an established relationship, and those with whom we have yet to establish one. That has been the consistent theme for two years.

So, I am 100% onboard with making these meetings more interactive. I think we all want that. And in providing information where we can, and certainly being mindful of other regulatory requirements, not releasing privacy information, or other sensitive information, in the...in regards to posting. So, there are some exemptions.

So, meeting participants may understand deliberation better if we provide more context for our debate. But I leave with the overarching question: Given that 40 CFR 1600.5 v.2 currently states, "The Chairperson shall be responsible for posting information related to any agenda item that is appropriate for

public release on the CSB website no less than two days prior to a public meeting," and that the current Board Members appeared in February to agree to making relevant calendared information available prior to meeting, what is the proposed Section 11.c seeking to fix that the superseding regulation cannot or does not?

I think I just heard in our discussion that there's no requirement that calendared items be posted before Board discussion. While that is true, I think regulations are written to give this Board, and subsequent Boards, the flexibility to post, as it is already in the regulations, information appropriate for public release, no less than two days prior to the public meeting.

So, my clarifying question to the proposal, which I think we can deliberate in a moment... I actually simply revised certain language or aspects of the proposal that we were to consider to Board Order 22. But that's once we get to the revision.

I'd like to start with the unresolved sort of practical and policy question that, as a quorum, and because of the Sunshine Act, we are not able to debate in the office. So, this is the first time we'd really be able to dig into some of these in a deliberative way.

First, my first [inaudible] question is that the revision underscores the ongoing challenge with overly detailed and tactical

issues being incorporated into a Board Order or policy level document, rather than relying on a procedure, or a nimble procedure, or an existing regulation. For example, although seven days is modeled on the Federal Register timeframe in the current proposal, there are meeting notices and publication requirements in our regulations, our Board Orders, and other statutory guidance.

A procedure can be changed more easily than the policy-level Board Orders which, for good governance, should not need to change annually to edit items such as the number of days for a document posting.

My second question to my fellow Board Members will sound very familiar. What is unique about the proposed Status Change Summaries, but only those that are calendared, over other CSB material that may be deliberated at a public meeting and needs transparency or audience understanding? Why are we not doing a thoughtful, agency-wide initiative to determine how and when to post proposed work from the staff that has been sent to the Board for deliberation, if we are going to deliberate at a Sunshine Act meeting?

Third, what will the CSB do with the comments from stakeholders who read pre-decisional, deliberative calendared proposals from the staff, that by its nature is not necessarily

fully baked, because we have to deliberate and vote? Member Engler did say, in part: "I believe this is a simple and practical means to increase public transparency and to address a gap. My arguments were well-articulated at the last business meeting in response to the arguments made by my Board Members at the last public meeting. I have dropped any proposal for posting a public comment."

So, I have the question for you guys. While there is no proposal to post all public comments that we receive, there is no analysis about what to do with the comments we actually receive. The agency has not evaluated, or concluded what, if anything, the agency will do with the comments received regarding a proposed Recommendation Status Change that is posted on the website. Is there a concurrent policy or statement that will address said expectations, public expectations, about CSB's use and handling of the comments? We don't have a docket system. We're an independent, non-regulatory agency, and are not used to receiving comments except in the limited number of regulatory changes we've made.

We have discussed internally the challenges, and people's sort of musings internally, about our independence, our resources, our engagement with stakeholders who may not be as plentiful or as vocal as others, our perceived bias, our perceived disregard for

the staff's capability in pre-work, and many other factors that were raised during the internal discussions.

I would like to hear my fellow Board Members' reconciliation of the issues based on the draft proposal and the discussion that we had at the February 2018 public meeting.

Fourth, the current Board Order 22, Section 12, Board Interactions, contemplates that the Recommendations staff provide additional information to the Board Members during voting periods, to address questions of the Board Members. In the case of recommendation evaluations considered during a public meeting, the Board vote may be deferred until Recommendations Department staff provide answers to Board questions. The Board could have multiple meetings over the same topic before being ready to vote.

Therefore, I ask another practical process question about when it is appropriate, and what is appropriate, to post to help the public understand what they are watching when the Board Members are deliberating, when based on our own internal process and procedures, it's an iterative, ongoing process between us and the Recommendations staff.

I also wonder, because none of us were here in drafting that section, if the inference is that the dialogue is between Recommendations and its engagement with the recipients and the

Board Members, for us to go back and ask them to have a recommendation recipient clarified so that we understand why they're making a proposal. And given that the recommendation has already been voted in a previous investigation report, the recommendation is, in fact, [inaudible]. And so, how the Recommendations' staff and the Investigations' are evaluating compliance with, or adoption of, that recommendation is a dialogue often that's happening between the recipient and our team, not the recipient, the team, and the public.

Finally, I promise, before I vote on this Notation Item, I would also like to hear from my fellow Board Members, views on the related aspects of public comments from the proposed Recommendations process being used to exert external pressure on present or future Board Members in instances where one or more Board Members believes that it was necessary to secure a specific outcome on a change. While that may not be a current challenge, we should be building infrastructure that contemplates the future and builds a better operating agency.

Based on the collaborative process that the agency is trying to foster internally, the staff and Board Members have shared informally those pros and cons that I mentioned a moment ago—technical and logistical issues, resource impacts—and I continue to

strongly support posting on the CSB website calendared documents, again, when permissible by law, prior to public meetings, to allow stakeholders to follow the deliberation discussion. We should do that. We should be focused on transparency.

But my support of the specific timeline, language, process, or the appropriate documents to change will be based on today's public meeting discussion among the Board Members.

MEMBER ENGLER: Chair?

CHAIR SUTHERLAND: Member Engler.

MEMBER ENGLER: I do have a question for one issue that I've heard today for the first time from Member Ehrlich. Member Ehrlich, you indicated in your remarks...

CHAIR SUTHERLAND: I'm sorry, from Robert's Rules, you cannot address or critique the individual Board Members. It has to...

MEMBER ENGLER: It goes to the Chair.

CHAIR SUTHERLAND: Yes.

MEMBER ENGLER: To the Chair, a question was raised about that this proposal, if Board Order 22 is amended, would...could function as an incentive to calendar Notation Items. I would like to... I would be interested in hearing a further explanation of that.

CHAIR SUTHERLAND: Okay, thank you. Member Ehrlich, do you have a...

MEMBER EHRLICH: Well, only basically that we're offering up the opportunity to do something that we haven't done, and it provides some change in direction, and it provides opportunities for the stakeholders to provide comments. And that may be reviewed, or at least perceived, in my opinion, as being opening the door to get more input in that direction. And I don't agree with some of the direction, and particularly of not responding to stakeholders. And that's my posture on the questions.

CHAIR SUTHERLAND: Thank you, Member Ehrlich. Just following the Robert's Rules of protocol, I'll ask Dr. Kulinowski if she has a follow-up.

Just for those in the room, the process is really to give each Board Member a chance to discuss and then [inaudible] respond, rather than having the dialogue be between two people or having somebody continue to respond. So that's why I'm pausing to ask. We will get to everybody, but that's why we're going sequentially.

So, Dr. Kulinowski, do you have any follow-up?

MEMBER KULINOWSKI: Thank you, Chair Sutherland. On the narrow question of whether this decision would create an incentive to calendar Recommendation Status Changes, that doesn't concern me because it is a...a right as a Board Member. It's within our purview to calendar any Notation Item that comes before us. So, we have

that right, whether we post those...information about that or not. And I don't see that as a particular challenge to my support for the proposal.

CHAIR SUTHERLAND: Okay. Any other Member follow-up? No?

MEMBER EHRLICH: Nothing, thank you.

CHAIR SUTHERLAND: Did you have any clarifying...?

MEMBER ENGLER: Well, addressing the Chair, would it be appropriate to address some of the comments that were made earlier at this point?

CHAIR SUTHERLAND: Yes.

MEMBER ENGLER: Okay. First of all, on the question of whether there's a superseding regulation, obviously regulations supersede our Board Orders. And if a Board Order and a regulation is in conflict, the regulation would supersede the Board Order. However, in this case, the Board Order...the regulation that was cited by Chair Sutherland that does apply is in effect; that indicates that the...basically the case that the Chair has the discretion to post certain information, and would be within the no-less-than-two-days prior to a public meeting. So, it is clearly discretionary.

What I have proposed is not discretionary. At the same time, does not conflict with the regulations. It just addresses a particular issue concerning calendared Notation Items.

Relevant to this also is the question of whether we should be more nimble and have a procedure that can change. Well, in my evaluation of work at the agency, I tried to do my best—as I think we all do—of looking ahead and thinking of those times, those future dates, where we're not on this Board and how would a future Board function, and trying to use a criteria of what makes sense for the public interest based on the long-term mission of the agency.

And so, frankly, I can envision a time in the future where there is a Chair that is less concerned with transparency, who would use the discretion of the existing regulation, which leaves the posting of this kind of information to the Chair, and would have a very different viewpoint about it. And if it was in a procedure as opposed to a Board Order, a procedure could be quickly changed. I'm not even sure what the process is for changing procedures. But, certainly, at least a Board Order would have to be voted on by the Board to change it.

So, this is true. It is not as nimble. It is not an attempt to be flexible. It's an attempt to bring what I believe is an

appropriately transparent and good government practice into the Board Orders of the CSB. So, I wanted to respond to that issue.

Again, I do not think it in any way conflicts with the existing regulation that's in force at 40 CFR.

CHAIR SUTHERLAND: If you're going to go to a second topic, we should pause...

MEMBER ENGLER: Sure, okay, yep.

CHAIR SUTHERLAND: ...and do just one topic at a time. I will ask my colleagues if they have any follow-up.

MEMBER KULINOWSKI: Yes, Chair Sutherland. The...the quotation, again, was from the...from the regulations: "The Chairperson shall be responsible for posting information related to any agenda item that is appropriate for public release on the CSB website no less than two days prior to a public meeting."

So, there's a number of ways to read that. "The Chair shall be responsible" suggests that it is not discretionary. The Chair is "responsible," not "has the authority" to, but "shall" do. The only discretion comes in the judgment of the Chair as to what is appropriate for public release. And so, it is true, I would agree, if the point you were making...if the point Member Engler was making, that the Chair has the discretion to determine...not to shirk the responsibility of posting information, but to determine what is

appropriate for public release. And a Chair could determine that documents that we are discussing, included calendared Notation Items, are not appropriate for public release. So, it...it could be read that the regulation does not address that...that issue.

But my...my bigger question is, why would a present or future Chair determine one type of calendared Notation Item to be appropriate for release, and not all calendared Notation Items? So, if we are carving out an exemption for Recommendation Status Changes because it happened to come up in the Board Order 22 revision, why do we not then take a step back and say, "Well, if it's appropriate for Recommendation Status Changes, it's also appropriate for any document that will eventually be made public that is calendared during the Notation Item process"?

So, if we're going to, in my opinion, change the...either the regulations or the policies embedded in the Board Orders, then it should be a consistent and comprehensive change that encompasses all or nothing, all of the items that are calendared or none of them. That's what I'm thinking right now.

CHAIR SUTHERLAND: I think I can simultaneously respond to the questions or to the comments. Having been a regulator, there's a reason it says, "appropriate for public release," and I think I addressed that in my remarks. If we had to...if we happened to have

a calendared document... This is also in the Sunshine Act. This is not new. That's a separate statutory framework where we are not allowed to release certain information. If we were deliberating certain confidential or privileged data, it would not be appropriate for the Chair to release it. A future Chair, a current Chair, a past Chair.

If we had information that was highly sensitive, potentially had security. When I say that, I mean a Homeland Security implication involving a facility. We wouldn't necessarily think that was appropriate for release. But a regulation is not meant...it's not supposed to specify what is appropriate for release. That's why they're written to give the agency flexibility so that you don't have to change the regulation or go through an APA process every time you want to add or delete...add or omit something from the list.

I think we've been discussing that internally about the specificity of other regulations that we've done, and how that constricts the Board...the current Board's ability to change that particular operational issue.

So, there's a... I think the regulation set the bar. The procedure...this is the governance, for any on the phone who deal with [inaudible] corporate governance issues, you have a document

that has your bylaws, your incorporation, and tells you what to do. And then you have things like a Board Order or policy that tell you how you do it. And those things are likely to change based on resources, different structure, etc.

I don't see this regulation, which was here before we got here, and is still here, limiting our ability to post information. And I, likewise, as I mentioned before, don't understand what is unique about, not calendared items, but a calendared Recommendation Status Change, when transparency is the goal. We have a way...a vehicle or mechanism to post information on reports, recommendations—basically anything that wouldn't violate something else...some other statute. And I think with that, in conjunction with being able to have closed meetings, Congress contemplated us not having to disclose everything, as some things would not be appropriate for public release, because that's another statutory requirement.

So, I don't see us changing this, or using it as discretion or a loophole. The reason the discretion is there is to allow the Chair to follow the other laws that exist. Therefore, that leads me to where is the best place to capture what the agency as a whole would do? And, while I want to build a future Board that has consistent, well-run operational practices, I also don't think it's

up to the four of us to decide how five future presidentially-nominated, Senate-confirmed Board Members are going to operate.

Whether we...we draft this or not, they can do the same thing that we're doing. And that is, vote to change the Board Orders, have the legal department change the regulations. They can do all of the things that we're doing. There's nothing that we put in place that is going to foreclose bad actions coming in, in the future, to completely upend the CSB and its transparency. They could just stop having meetings. I hope that that doesn't happen. But I think the same way the regulation was changed in August of 2015...(It's the day after...Oh, look at that, it's the day after we were confirmed.)...is the same way that somebody else could change it.

I think what we need to do is set a tone, and model the behavior that we hope new Board Members will adopt. And if we're going to calendar a tiny, little subset of what we calendar, then by golly, somebody hasn't really explained to me why we're not talking about calendaring things in a way that doesn't violate the law, that meets the existing regulations, and that gives people an opportunity to understand what we're talking about. And I have gotten more than my fair share of feedback on some of the meetings that we've had, where we've deliberated, where people thought we

were going to talk about one thing, and then realized, oh wait, they're talking about something else.

I'm totally supportive of us putting...putting information out, as long as we redact it appropriately, and are mindful of counsel's support, that we're not violating some other requirement when we release documents to the public. So that's my two cents.

Therefore, I mean I...I don't necessarily know if I've heard, you know, enough from my Members to address the other questions that I have about logistically whether it's posted a day, two, five... We still have the root of the issue. What do we do when we get the comments? That's...that's really what I was trying to figure out, if somebody can help. I mean, I have an idea, but...from my own personal perspective, you don't set people's expectations to come talk to you and then ignore them.

So, yes, we have no legal...I heard both Members Ehrlich and Engler say we have no legal obligation to respond. That just does not feel right to me at all. Why...why are we asking for people's opinions and then ignoring them? And if we're going to not ignore them, what is the infrastructure this Board is willing to put in place to address the questions and comments that we get?

MEMBER EHRLICH: Can I...Madam Chairperson?

CHAIR SUTHERLAND: Member Ehrlich.

MEMBER EHRLICH: I'd like to clarify my comment on that. I only went after that business about legal because it was in his...in Member Engler's original statement and...and I found it to be true. I don't think it's a good policy to ask people for their comments and ignore them. I don't think that puts us in a good position of dealing with the public. It doesn't put us in a good position of dealing with a number of the other issues. And I think there has to be some flexibility where we don't get special interests trying to get involved in this somehow. And that's...that's also a concern I have. And while I'm at it, I will say that I don't believe that that regulation 1600.5 gives discretion to the Chair, in terms of whether the Chair does or does not execute that particular responsibility.

MEMBER KULINOWSKI: Yeah, thanks, Chair Sutherland. So, the concern is that there could be unintended consequences to passage of this...acceptance of this proposal. Unintended consequences that occur. And I articulated some of these in the February meeting, that we're creating an expectation among the public that...that they're going to weigh in and sway us, and that could be abused. So, we could imagine all kind of future scenarios where there are unintended consequences from this...from this proposal.

But there could also be positive consequences. That is, the public could feel more engaged. They could feel better able to follow our discussions. There's some positive consequences too. On its face, while I...I do agree with the concern that we could be creating an expectation among the public that we will respond to comments, that...that comes from an assumption that if we post something there will be comments. And if we post it far enough in advance, we'll get more comments. And I'm not sure that we've actually seen that to be true. Nor am I sure that if we do get comments and they are small in number, short in...in content, that we won't be able to just read them and consider them.

It's very different saying we're going to post information; we're going to make it publicly available. Yeah, people might respond to that before the meeting, and we might have to look at that, versus anticipating and creating a whole new structure to invite public comments. In my estimation, this proposal does not explicitly invite public comment. It merely invites engagement. Well, no, it merely invites... I used the wrong word. Information, knowledge. Participate...not participation. That's not the right word either. An understanding of the argument that is being discussed in our Board meetings.

MEMBER EHRLICH: But just...sorry.

MEMBER KULINOWSKI: So I hear the concern about the unintended consequences but wouldn't, on that basis alone, say that we shouldn't be providing the public information that would help them follow along.

CHAIR SUTHERLAND: So I...so I agree with that, which we already have in 1600.5 v.2. So, what are we trying to fix with Board Order 22? And I...I...I [inaudible]. I don't know if we'll get comments. I don't think we know if we'll ever get comments.

The question is, as you maybe indicated, there is still a...a blurry area, a Venn diagram, of posting and public comment and engagement and participation and where they overlap. In the conversations that we have had, they overlap implicitly, inadvertently, directly, indirectly, and...

I am trying to...to make sure that whatever we do, we can actually explain to people what we are trying to get out of it, what we...what we...what our expectations are, not necessarily have it internally slip into the same conversations that we've had about engagement and comments and public comments. Because the reason I'm raising it is because that happened among us and the staff. So, it's not fully resolved.

And we already are responsible for posting things that we think are appropriate for people to know if we're going to debate

it. We post our investigative reports before we have public meetings. So, it's not a matter of us being able to post it. I...I'm totally onboard with posting it. But what is concerning me is the underlying conversation we have continued to have about why we're posting it. I don't think we are all on the same page about the expectations of what the posting actually is designed to do.

MEMBER EHRLICH: Madam Chairperson...

CHAIR SUTHERLAND: Member Ehrlich?

MEMBER EHRLICH: I'd just like to offer one comment. I think as an agency we do a damn fine job in transparency, okay? Of all the things I've looked at in the Board Orders, and I must admit I'm not as familiar with them as others, I have found other things that need fixing. And, quite frankly, did not find that as something that needed fixing. And that's why I just don't see it as being able to answer some of the questions you're asking. Thank you.

CHAIR SUTHERLAND: Maybe I can pose a different question to each of the Board Members collectively. If...if we had had this change to Board Order 22 when we started, in addition to what we already have in 1600.5 v.2, what do we think would have been different in agency operations or outcomes? I'll start with anybody. Member Ehrlich.

MEMBER EHRLICH: Madam Chairperson, I...I would say precious little, to be honest with you. And I just...I'd have to think about that at more length. But I just...I just don't see it as a major issue, quite frankly.

CHAIR SUTHERLAND: Dr. K or Member Engler?

MEMBER KULINOWSKI: Well, I have a question. Have we done this [inaudible]? Have we posted information related to any agenda items when it's appropriate for public release no less than two days prior to a public meeting, since you became Chair?

CHAIR SUTHERLAND: Yes.

MEMBER KULINOWSKI: Every document?

CHAIR SUTHERLAND: No, not every document.

MEMBER KULINOWSKI: Every document appropriate for public release?

CHAIR SUTHERLAND: Because as we discussed, every document is not...they're not fully...

MEMBER EHRLICH: [inaudible]

CHAIR SUTHERLAND: Right. So, no, we are not putting up footnoted, you know, e-mailed conversations with the recipients, confidential information, information about people who've been injured, people's work conditions, things that have people's... No, we're not doing that because it's not appropriate and we've heard

from Recommendations, Investigations, and Counsel on many instances about what should and shouldn't be released. And I think we have relied widely on their counsel, as we should. So...

MEMBER ENGLER: Chair?

CHAIR SUTHERLAND: Oh, Member Engler. Oh, I'm sorry... Does that answer either of your questions?

MEMBER EHRLICH: Did mine.

MEMBER ENGLER: To the Chair, but let's just be crystal clear. This is a practice that has not happened, what I am proposing. There has not been posted Notation Item...Status Change Summaries. So, people got to the meeting and they have gotten some information. But, in fact, there has been decisions, or lack of action, whether it's because any Board Member, including myself, didn't pay sufficient attention to it, to ensure that this information was posted.

So, the facts are, again, just talking about calendared Notation Item status changes, which means, this is not about the Information Technology capital budget. It is about the status change of related...and intimately tied to our mission about whether a recommendation recipient...essentially implemented our key safety recommendation. And that's all this is about.

I would be more than happy to discuss other information, and to go through all aspects of information that could potentially be public. I would be happy to further discuss the question of posting... I want to come back...posting a comment, I want to come back because I have some more to say about that. I'd be happy and pleased to do any of the things that we have discussed to increase transparency.

With some reluctance to use this phrase, because I've been very critical of it at certain times in the past, this is one where I don't think that the perfect should be used...(I can't believe I'm saying this.) But on the other shoe, that the perfect should be the enemy of the good. And this is a very limited-focus change that I think we should implement. And if we then want to proceed to be looking at other elements of transparency, or other matters that should be other specific issues... I mean we have...

We use notation voting to...to deal with a lot of internal matters. And my view... Just in closing, my view is that what I tried to do here was focus this on a mission-critical element. I mean, that are just of enormous public interest. And what triggers it is a concern of one Board Member to make that calendared Notation Item because they have made a judgment that these are of broad public interest.

CHAIR SUTHERLAND: Okay, so, while I...I think this does make sense from a high level, when they are in draft... When status changes are in a Notation Item in draft, they are not appropriate for public release.

MEMBER EHRLICH: Correct.

CHAIR SUTHERLAND: And that's already in our Board Orders. So, they're draft. They're presented to the Board for deliberation. What we have calendared is, we've told people we're going to discuss the following things, and then, in the text of the meeting we have tried to give an overview.

I remember reading a very lengthy R7, R15 background to do just that, because the document is deliberative and pre-decisional, and not appropriate for public release. That's how we have dealt with it. I've read exactly what led up to it, the incident, the recommendation text. I know it's probably painful for people on the phone and in the room. I apologize retroactively. But that is how you give people the information to participate in the conversation. In addition to the investigative report and the recommendation text being up on the website.

So, I don't necessarily want to...we don't ever engage staff, but I don't know if I would get a head nod if I asked counsel if

the draft Status Change Summaries are appropriate for full posting. That's a different set...that's what we're discussing right now.

MEMBER ENGLER: Member, may I?

CHAIR SUTHERLAND: One...one last quick thing. So, I think we can talk philosophically about what's good and what isn't, but it's always going to come back to being grounded in the regulations and in our Board Orders. And so, yeah, we can post all things all day and what's appropriate. I personally spend a lot of time reading this upon arrival and get counsel from the lawyers and recommendations about what is appropriate in totality for public release.

And we...and so if we want to have that discussion, we probably want to go back and come at it from a place where we've all, you know...we want to make other wholesale changes, or we want to get, maybe, more advice about how to post draft, pre-decisional documents that are presented to us for interchange between the staff before a final vote or deliberative process.

But that's why those introductory remarks have been so long in the past, in trying to give people a head's up. I...I heard two people. You jumped in and somebody on my right jumped in.

MEMBER EHRLICH: I'll defer for the moment.

CHAIR SUTHERLAND: Dr. K.

MEMBER KULINOWSKI: Well... So, I'm confused now because I thought you said that you said that you supported the publication of these documents prior to the meeting, consistent with this part of the regulation.

CHAIR SUTHERLAND: Correct.

MEMBER KULINOWSKI: But then I thought what I just heard you say was the pre-decisional draft documents that are not appropriate.

CHAIR SUTHERLAND: All of the supporting material...

MEMBER KULINOWSKI: Oh, the supporting material...

CHAIR SUTHERLAND: That's what the summaries are. When we get summaries...

MEMBER KULINOWSKI: Well, they're not all [multiple voices].

CHAIR SUTHERLAND: But, yeah, that would be supporting information from my perspective. So, when we put up we're going to discuss, you know, Recommendation A from investigative work blank, we'll say what we're going to discuss in the Federal Register, the status change notice, Status Change Summary of particular investigative work. In posting that, what I'm saying is, I'm fine with posting more of a summary, just...not...not the work product we get with all of the footnoting and whatever.

But if we want to post more... We are discussing this because the team is going to close it this way. They have been engaged with the recommendation recipient. Do they have enough documentation? [inaudible] website. Whatever the case might be. And therefore, they're making the recommendation to the Board. That...that helps provide transparency. But again, with the blurring, and the reason I paused on the vote to have this conversation...I don't even...I didn't really know we were really talking about the same thing.

When I say, "what's appropriate for release," I'm...I'm not backtracking on we still don't give private, confidential or personal information fill-in-the-blank. But we can do a better job of saying: "This is what we're going to discuss." Rather than putting it into my introductory remarks and having me read this is the...this was the accident, this is what [inaudible] whatever said, this is, you know, what we're going to discuss today. We could do that more thoughtfully two days before, or whatever it is. And have people really coming in, "oh, that's what they're going to discuss."

MEMBER KULINOWSKI: So, if I can clarify, you know, because I think Member Engler has been clear that his idea is to only just change a few words and publish the proposed Status Change Summary

that we receive, that we actually vote on. And you're saying that you would support a different...a different way of providing the public with information about what we're voting on [inaudible] that document with a few words changed to make it clear that it's a draft.

CHAIR SUTHERLAND: No, that's what I've always said, even in the, you know, conversations we've had internally. That document with just putting "draft" on top, I think we've all...we've all heard and discussed individually that that is not...that's not the way.

But doing it with a proposed status change that highlights, rather than coming into the meeting and having me read it to people: "This is what we're going to talk about." I support that transparency because then, people can show up, knowing: "Oh, okay, this is when it happened, this is what's going on, this is why." But, giving over a document that's been provided to us in draft, that, by definition, we are either going to be discussing with the staff and having them edit, which is what we do before we deliberate...we're still editing, asking questions, talking before a public meeting. Then we're going to deliberate at a public meeting, which may require the staff to go back and change it yet again.

Again, I ask what and when is it appropriate from a practical process...when is it appropriate and what is appropriate to post to help the public understand what they are watching when the Board Members deliberate at a meeting? That was my fourth question, to discuss this very point.

MEMBER KULINOWSKI: Thank you for clarifying.

MEMBER ENGLER: Chair? I would just like to again clarify that the... I mean, the reason that the proposal has always been just the summary, relabeled as a draft, was because that information has already addressed confidentiality information before it was ever sent to us, because that is the intended document to be released to the public, number one.

CHAIR SUTHERLAND: With [inaudible] footnotes and references and...

MEMBER ENGLER: The summary document? I don't...

CHAIR SUTHERLAND: [inaudible]

MEMBER ENGLER: No, it doesn't. The additional...the supplementary information does, but the summary of the status change does not have that information, deliberately to address those concerns.

The second point which has been raised, and I think is something that we all are sensitive to, I hope I speak for

everybody, but is staff resources. And so, if we have to develop a third document to prepare for a meeting, when, in fact, the summary is something that's going to be released anyway, as long as it's clearly labeled a draft, which means it's subject to change, is actually trying to minimize the workload of the staff. Because it is conceivable, although it's actually never happened in the history of this Board that I'm aware of, unless there was... There was, actually, one situation where there was some wording changed, but [inaudible] technical errors. I shouldn't use the word "technical" errors. I mean more like typographical errors. The...the Recommendation Status Change Summaries are, in fact...have been what's word-for-word gotten released to the public; has been put on our website; has been publicly accessible after the process.

So, I...I don't see...I don't quite understand the...the argument of why we would need to produce a third and differing document.

CHAIR SUTHERLAND: I see you raising your hand. Is that a comment or [inaudible].

KARA WENZEL: It's...it's difficult to address in a brief forum like this in the time that we have. But there are implications for waiving the protection that a category of documents may have. And I believe we discussed that internally. I think your proposal, or, I had assumed that your proposal, was essentially to create kind of

a third, summary-type document that would be very similar to the Status Change Summary. And that would hopefully deflect some of the concerns about potential waiver of that protection that that category of draft, or deliberative-type, documents would need.

CHAIR SUTHERLAND: It also strikes me that, in answering [inaudible], having the Board Members discuss the Letter D question I sent you guys in the memo is... Part of the question is, well, why do we need to take what is [inaudible] in my introductory remarks when I'm leading into a calendared discussion and taking that sort of summary or excerpt which we share with people in real time in the moment, and putting that up beforehand, rather than a document [inaudible]? That, to me, gives people lead-in to what we are going to discuss, rather than hearing it in the moment, and allows, if they want to do additional research or think about it, it gives people time to understand what we're going to do. But it's not giving them a draft document that a staff member or team, who's an extension of us, has given to us for our review.

So, given that we have, at least a couple of times, come to the Board Member deliberation process [inaudible] something or we're like, "Okay, we're going to take that up at the next meeting," or we're going to pick that up separately, I don't know that when it's our obligation under Section 12 of the Board Orders

to continue to engage with staff, get information, engage back and forth, and all four of us are doing that simultaneously, what are we posting? Are we going to post a document which has Dr. K's questions and edits, my questions and edits, Member Ehrlich's questions and edits, your questions and edits, on a Notation Item which, behind the curtains, we individually go back and forth with the staff on Notation Item documents?

So, are we posting all of that, or are we just posting the summary? Because, although your proposal is just to post the summary, it doesn't really capture what we're going to discuss or what we're thinking. And, as we found previously, in discussing or trying to discuss at a public meeting, people had a very...they thought they had a very clear understanding of where all the Board Members stood. And, you know, maybe in that scenario, it would have been better to post your comments, your comments, my comments.

But it doesn't really get to the root of what I thought we were talking about, which is just to be transparent and give people enough prep time to sit in the meeting and follow the conversation. And that does not mean giving them draft documents that have four different sets of edits, or two or three, that we're going to come to deliberate.

And so, I...that's why I'm still struggling with, is there an easier fix, and do we have an infrastructure that we can leverage already and simply perfect, which is: posting documents that are appropriate for release, not things that have FOIA exemption or potential redaction issues, other sensitive documents, making sure that those are up, and backing ourselves into taking what we are going to say at the meetings, finishing that sooner, and posting it and sharing it with people. Especially if it's going to be subject to change after we deliberate. I don't know.

MEMBER ENGLER: Chair?

CHAIR SUTHERLAND: Member Engler.

MEMBER ENGLER: I...I think I should repeat for clarity what the changes that are implied are. One, specifically the word "proposed" would appear on the document title. Second, the date of the status change would say "pending". And the word "proposed" would appear on Section C, Board Analysis and Decision.

That said, that does not preclude comments, deliberations, editing, not taking action on that particular Notation Item, or any number...number of options. Again, I do not want to create additional burden for the staff, create a brand new document for a document that is already going to be...anticipated to be posted after

approval. And if it doesn't get posted, something else could get posted.

Additionally, the reality of the way this Board has handled Notation Items is, I'm not sure any of them have been... I'm not sure that's... I mean, we may have seen a...a...a typographical error, something on occasion might have been forgotten. Somebody always caught that and raised it back with the originating source and it was corrected.

So, as a practical matter, I...I again come back to the limited nature of this proposal and what this is about. And it does not preclude broader discussions of transparency, access to information on any number of subjects. I'm happy to engage all of that deliberation and...and brainstorming and...and thinking and dialogue.

But what this proposal simply does is that...that if one Board Member thinks that an issue is of critical importance to our mission, and I would argue just [inaudible] really concretely that the proposed status changes that involve reactive chemicals which continue to be a major threat to workers and community, and the proposed status changes concerning the Deepwater Horizon investigation, those were the two that I counted. I thought they were issues of enormous broader public interest. And whether there was agreement in the end about the resolution is not so much the

point as the fact that these were issues that were core to our mission, that were...that had enormous impact. Certainly, I don't think...I'm guessing no one would contest that Deepwater Horizon disaster might have been one of the greatest, if not the greatest, environmental disaster in the history of the United States.

And so, it is reasonable that if our Board is going to deliberate in public session about these matters, that there be a minimum degree of information around critical public safety and health issues made available to the public in a reasonable number of days before the meeting and not left to the discretion of whoever the Chair might be in the future.

So, I...I continue to support this proposal. I think it's quite modest, focused, and practical. I think it serves the interest of the agency. I think it's very much in alignment with efforts for transparency and ensuring sunshine in the operations of government. And I'm happy to address any other issues or comments that are...are raised.

CHAIR SUTHERLAND: I wasn't proposing a third document for the staff. I think that this could be accomplished by sharing what we would normally share in a public business meeting, without Recommendations doing another document. If they're going to write it in my script anyway, and I'm going to be reading it to people,

we can simply prepare it sooner and put it into the posted materials.

Other than that, I definitely am not advocating that we have Investigations, Recommendations, and Counsel do a third document. But putting "draft" on top of the document that has the Board analysis and other sort of deliberative discussion points, I think raises the question...or raises the same issues that we've heard before from Recommendations and Counsel on this topic internally for quite some time now.

So, we can still meet the transparency more by making the information available. And I would strive to hit a ceiling or a higher quality of discussion by [inaudible] saying what we're going to discuss, and the report from whence it comes. We can do the same introductory type of summary because Board Affairs is going to be preparing that anyway. And that means no additional document, new document. There's no new work in that proposal. And then we don't have an issue of [inaudible] related information. Well, you mentioned this letter. Can I have that too? And all the other logistical issues that we still haven't really drilled down on.

Dr. K?

MEMBER KULINOWSKI: So when we get a Notation Item on a proposed Recommendation Status Change, there's actually three parts to it.

CHAIR SUTHERLAND: Yep.

MEMBER KULINOWSKI: There's the front matter, which is the preamble, and the box to check where you approve or disapprove the signature page, and so forth.

CHAIR SUTHERLAND: The voting sheet.

MEMBER KULINOWSKI: There's... The voting sheet, right. There's the...there's the longer analysis that contains information that we ultimately do not share with the public, that has the footnotes and...

CHAIR SUTHERLAND: The appendices.

MEMBER KULINOWSKI: And references to correspondence between the recommendation recipient and our Recommendations staff. And then there's the shorter, more abbreviated document that, actually, eventually becomes public once we vote "yes."

It's my understanding that Member Engler was referring to the latter, so the last one that's already going to be made public. It does have some analysis in it, but not as deep analysis as the middle part, which is the longer version.

Are you saying that even that third document, before we vote on it, is inappropriate to share in advance of the meeting? And you would prefer to have a much higher-level presentation to the public of what...really a topical presentation. This is what we're going to talk about. Without the...even the more surface-level analysis that we ultimately publish. Is that your position?

CHAIR SUTHERLAND: I don't know. That's why I calendared the proposal.

MEMBER KULINOWSKI: And through this discussion, you haven't yet...

CHAIR SUTHERLAND: No. Because I don't...[laughter]. I haven't. I mean, you know, [inaudible]. But, no, I don't know. Because if you give somebody the summary, which is based on the thought that we've either deliberated and voted, or that we just voted and we all approved it, or the majority approved it, in my mind, at the point you'd be publishing that, it's still the equivalent of the middle one, but without all the additional information to help people understand the analysis.

So that's what I'm struggling with. I...

MEMBER KULINOWSKI: May I? Because...because that's the thing we eventually publish, the implication of what you're saying is

that, even after we have voted, we are not giving the public enough information to understand what we voted on.

CHAIR SUTHERLAND: And we've had that conversation too. They're not easy questions about a language fix here or a language fix there. And it's... I think it's the same conversation that we had in November and February.

We have, I think, all been striving for more transparency. This is how we spend the money. This is how we are doing. This is where we're going to go. This is the status of our investigation. We go out, we talk about that. We've been extremely active in going to people and telling them.

Transparency isn't... I don't think transparency is our Achilles' heel. What I am trying to figure out is, how do we get to the point where we are giving people information to help them understand how we're doing information, without it slipping into what we talked about internally, which is—I'll use Member Ehrlich's phrase—a mechanism when a future Board or future Board Member decides they need a letter writing campaign.

So, in order to do that, you have to give people all of the deliberative drafts, confidential, footnoted, appendices—some kind of contextual documents to fully understand what the Board is talking about. Or, you have to give them kind of a lead-in, an

expectation that it's not going to be an interactive, conversational process, like a rulemaking. Then you have to figure out how you're going to set that expectation when you post it. And that is what I don't think we have fully baked.

We're saying, "Well, we want to post it." And what I'm saying is, I've been a regulator, I've seen... I have seen our documentation and infrastructure. And this is not another one where I think, as Board Members, we should preside over. It's a good idea, but we haven't done the hard work of figuring out all the implications.

And I do agree with you. I don't know if we're going to get any comments. But have we even planned for that? Have we talked about it? Before today, we hadn't. I mean we've talked about what would we do with them. But I'm simply trying to...to say whatever comes out of it, I want to feel comfortable that we've exercised some rigor in talking about the implications before we say, "Well, we're talking about this narrow topic. Let's go do that." And then three months later, we're back in a public meeting. "Well, we didn't think about that. And we didn't think about that." And I don't think we do that often, but we certainly have seen the vestiges of it. And we're trying to clean that up. I don't want to be a party to that.

Member Ehrlich?

MEMBER EHRLICH: Madam Chairperson, you asked the question, "Have we prepared for that?" And the answer's simply, in my opinion, is no, because it hasn't been a problem. In my nearly four-year...well, three-and-a-half years on this Board, it just hasn't been an issue.

CHAIR SUTHERLAND: The "it" is what?

MEMBER EHRLICH: Going back after these things and trying to do something about public comment. I don't know of any--and it doesn't mean I remember them all--where somebody's come in here and said they want to talk about it, a specific recommendation or an issue. I just haven't seen it in my time on the Board. I could be wrong, but that's my recollection.

MEMBER KULINOWSKI: So the concern that was raised that it's going to bring in a plethora of public comments is perhaps just a concern. Because we didn't see it on the two issues...three...three?

CHAIR SUTHERLAND: Mm-hm.

MEMBER KULINOWSKI: Well, I was thinking of the reactive hazards and the R15 from Macondo.

CHAIR SUTHERLAND: And R7.

MEMBER EHRLICH: R7, too.

MEMBER KULINOWSKI: Oh, R7. Well, yeah, sure, right. Forgot about that one.

MEMBER ENGLER: Wasn't calendared.

CHAIR SUTHERLAND: [inaudible]

MEMBER KULINOWSKI: The point being Member Engler's point that there...that a Board Member...it's just a Board Member's judgment that this particular Recommendation Status Change is of intense public interest and that is the reason for calendaring it, one could assume that that means there's going to be an intense public response if we post it in advance. We had a one-month gap between the initial discussion on Macondo R15 and the final Board deliberation, and we did not receive any comments.

So, the concern about this overwhelming ocean of public comments that we're swimming in and we don't know how to handle, you know, we may be anticipating a problem that is not going to arise. If we leave the...the posting period short, it's hard for me to imagine a case where we would receive some overwhelming number of comments that we could not deal with because our history, brief as it is here, where without explicit invitation of public comment, which I understand has been done by the Board in the past on reports, has simply failed to materialize, you know, the tsunami of...of comments.

CHAIR SUTHERLAND: Let me just double-check and make sure Member Engler...okay.

MEMBER EHRLICH: Madam Chairperson, I...I don't disagree with a thing you've said, okay? There has not been a flood of whatever. But that goes back to my original argument that the system ain't broke, okay? So why try to repair something, fix it, modify it when it's not broken? And I understand exactly where you're coming from.

MEMBER ENGLER: I do have a question...to the Chair. It'd be in responses from Board Members. On an issue like the reactive hazards... Let me...let me focus on the Deepwater Horizon. Could the Board have benefited from greater public comment on the face of our recommendations?

MEMBER KULINOWSKI: Chair Sutherland? That's not a rhetorical question?

MEMBER ENGLER: No.

CHAIR SUTHERLAND: So that's an actual question.

MEMBER KULINOWSKI: Oh, sorry.

CHAIR SUTHERLAND: Either of the Members?

MEMBER EHRLICH: I have no comment. Thank you.

MEMBER KULINOWSKI: Possibly. I do believe that I sought out information from the investigative staff that was involved in the

drafting of the recommendation and the recommendations staff which was involved in drafting the proposed status change and had numerous, lengthy conversations about all the nuances embedded in that...in that draft document.

CHAIR SUTHERLAND: I thought about it. Ditto to what you just said as far as the number of conversations we had internally. So, no, I mean with a six-year long investigation, we've calendared it and had a month to go. To the earlier points made, we didn't have an influx of commentary. And I...I think I was, in all candor, a little bit more disturbed about how many people didn't really comment on the substance but commented on what they thought we were going to...what they thought we were thinking, which defeats the deliberative process.

MEMBER EHRLICH: Right.

CHAIR SUTHERLAND: That was more concerning to me. It's also been more concerning to me, the piece that's sticking in my mind, the thought process that opening this posting would be a mechanism to exert pressure on the Board. By whom and when? And is that people that have the most money? The people who live in D.C., who can come over? The people who have the best email campaign? The people who... I don't...I don't know what that means. I don't know

what that looks like. But that doesn't sound to me like transparency. And it doesn't feel like independent.

So, I don't know how to answer your question.

MEMBER ENGLER: I would only comment on this, to the Chair, that anyone is capable of doing this now. I mean someone could put a postcard campaign together saying any number of things. Or email or social media, or whatever. And we would be in the same, you know, in the...you know, in a similar boat. [multiple voices]

CHAIR SUTHERLAND: Can I address that? [multiple voices]  
Don't forget your second thought.

That is true, although I think in, you know, kind of listening and absorbing what others have said, we haven't seen that. Doesn't mean we won't. But the capability to do that is different than the fact that... It has been articulated that that would be an expectation. And then I don't know how we would manage that.

Let's assume we post... We haven't...we haven't ever gotten any comments. Or, to your point, a postcard campaign. Murphy's Law would have it, let's say the very next one, we get a thousand postcards from one stakeholder. Do we say, "This is really interesting. We should go that way because a thousand postcards came in"? Or do we say, "Based on what we know and what we've seen from four other stakeholders who didn't have the time or money or

maybe interest, or a combination thereof, to do the same, that they're not interested"? And so, we will not listen to their perspective? Or should we go seek out counter perspectives? That is a process question.

And I...while it is a fair point that we haven't received an influx of comments, I still have not heard the preparations for what do we do, when we do. We would be doing it on the fly. And I've already heard internally that the...part of the impetus for this is, when there are critical issues that really need to move in a certain direction, it would be nice to have the option to have people exert that kind of pressure on Board Members.

I'm sorry. That's a concern to me, without a practical mechanism, so that the next time it turns out we didn't expect any and we get them and we don't have anything... We don't have a policy, a practice. We don't have anything to say to them except: "Office of General Counsel has told us we don't have to respond to them." That's reputationally very...for me, very damaging. Because we are federal, and so we're supposed to hear from everybody, and solicit viewpoints from everyone, in order to get the best work product and help, kind of, hold everyone accountable.

And if it becomes a matter of...which we have bluntly talked about. If it's a matter of we want to be able to reserve the

option of having another regulator yell at us, or have a, you know, a stakeholder move us in another direction. That is...that's something I would like us to address before we vote on the simplicity of the language itself.

Member Engler?

MEMBER ENGLER: Part of this is very simple. This is an independent, scientifically-based body that also engages in policy recommendations. That's what our advocacy program is partially about. And so, our work as a Board should not be based on whether we get—I'm going to use a harsh example—15,000 heartfelt letters from victims of chemical disasters. Not to mention mass-produced postcards which all make the same point, and might be identical, with someone's different address on the other side. Very different criteria for this Board, in particular, even compared to an administrative agency where perhaps the dynamics of public engagement are somewhat different.

We've dealt with these things in the past in differing ways. I just wanted to kind of assert that past practice. And so, early this morning I looked at the public comments section of the CSB website and there are 16 comments on there. 11 are comments from us to other agencies and, apart from the sort of construction of that, which is a little confusing. We received public comments

externally in five cases. And some...sometimes they involve as many as...I mean they involve 17... This is actually under a Business Meeting. Once we received 17 comments on the Tesoro investigation. We received one comment on the reactive hazards meeting. We received 27 comments on the advanced notice of proposed rulemaking on the chemical release reporting rule, which, I should say, would have...might have resulted in a formal regulation and perhaps the standard for response was...was more important. We received 24 comments on the regulatory report Chevron Richmond Refinery.

And we've responded in a variety of different ways. Sometimes those comments have simply been posted. Other times, there have been responses. I'm willing and open to not only just discuss what the appropriate approach is, but, certainly, to be further educated about what are our obligations in any regulatory context, because we do have [inaudible] reporting role if we're so [inaudible] authority to...to use essentially a regulatory process to do that.

I'm open to all those [inaudible]. I come back to what I do believe is the focus and simplicity of this proposal before you. I'm willing to engage in all these broader conversations. I think they're appropriate conversations. But I do not think that the...the attempt to address all of these matters on a comprehensive basis

undermines what I think is the practical and appropriate proposal before you today.

CHAIR SUTHERLAND: Member Ehrlich or Member Kulinowski, any other comments?

MEMBER EHRLICH: Madam Chairperson, I have no further comments or questions.

CHAIR SUTHERLAND: [inaudible] Dr. K, do you have any comments or questions before we call for the question?

MEMBER KULINOWSKI: Just to say that this is complicated. I was sitting here as we were talking, writing down each aspect of this decision, each argument that has come up, and whether or not I find it persuasive. And some I'm persuaded by, some I'm not. So..

CHAIR SUTHERLAND: Does that mean you are ready, or need more time to deliberate? [laughter]

MEMBER ENGLER: Chair?

CHAIR SUTHERLAND: Member Engler.

MEMBER ENGLER: I don't know if there's a formal motion on the table, but if it's so appropriate, then Chair, I would like to amend my motion by...by withdrawing the specific language I presented and offering substitute language that addresses what I believe are some of the technical concerns that were previously raised.

CHAIR SUTHERLAND: If you move to rescind your first proposal and then make a motion with a second for a new proposal, that would be better.

MEMBER ENGLER: Okay. So, I make a motion to rescind the proposal that specifically said to...that proposed Status Change Summaries or proposed Recommendation Status Changes that are calendared for Board deliberation and vote at a public meeting will be posted on the CSB website no less than seven days in advance of the meetings whenever feasible.

I'm making a motion to rescind that.

MEMBER KULINOWSKI: Seconded.

[UNIDENTIFIED]: Point of information from a process when we're...

CHAIR SUTHERLAND: We're not [inaudible] so might I suggest a motion to rescind the proposed revision in Notation Item 2018-25, which could then be seconded, and then you might make a new motion for new text.

MEMBER ENGLER: That is acceptable.

CHAIR SUTHERLAND: Okay.

MEMBER ENGLER: I just made that specific wording a motion. Do I need to make the motion for... Can I ask the... Can I ask the...

CHAIR SUTHERLAND: Yes.

MEMBER ENGLER: ...Acting General Counsel [inaudible].

KARA WENZEL: So the original question was to amend Board Order 22 in Notation Item 2018-25. So, Member Engler, now you would like to move to rescind your proposal in Notation Item 2018-25.

MEMBER ENGLER: Yes.

CHAIR SUTHERLAND: Okay. Having been moved and seconded to rescind the proposal in Notation Item 2018-25, I will now call for a vote. Ms. Wenzel.

KARA WENZEL: Okay. On the question of rescinding the Notation Item 2018-25, Member Ehrlich?

MEMBER EHRLICH: Yay.

KARA WENZEL: Member Engler?

MEMBER ENGLER: Yes.

KARA WENZEL: Member Kulinowski?

MEMBER KULINOWSKI: Yes.

KARA WENZEL: And Member and Chairperson Sutherland?

CHAIR SUTHERLAND: Yes.

KARA WENZEL: The motion is approved.

CHAIR SUTHERLAND: Member Engler?

MEMBER ENGLER: I have a...

CHAIR SUTHERLAND: Are you about to move?

MEMBER ENGLER: I'm [multiple voices] would like it, but I am not [inaudible]. I have a...I have a motion. So, this is labeled "potential motion," but I am making the motion. I make a motion to revise Board Order 22, CSB Recommendation Program, with the addition of the following language: "Proposed Status Change Summaries for proposed Recommendation Status Changes are subject to deliberation and revision by the Board Members. However, if proposed Recommendation Status Change Notation Items are calendared for Board Member deliberation and vote at a public meeting in accordance with agency regulations then the proposed Status Change Summaries will be posted on the CSB website no less than five calendar days in advance of the meeting."

Everybody has this language?

MEMBER KULINOWSKI: Second. I second the motion.

CHAIR SUTHERLAND: Having moved and been seconded... Gosh, I wish we had a number or something I could shorten [inaudible]. Can we call this Proposal 2 [inaudible]?

KARA WENZEL: We can assign it a number.

CHAIR SUTHERLAND: Okay, so I'm going to do that. Having been moved and seconded to make a motion to adopt Proposal Number 2—we just named it that—from Member Engler, that proposed Status Change Summary for proposed Recommendation Status Changes that are subject

to deliberation [inaudible] by the Board Members. However, if proposed Recommendation Status Change Notation Items are calendared for Board Member deliberation and vote at a public meeting, in accordance with agency regulations, then the proposed Status Summaries will be posted on the CSB website no less than five days in advance of the meeting.

I will open the floor up for debate. Are there any...

MEMBER KULINOWSKI: I have a clarifying question. By proposed Status Change Summaries, I would like to understand if that means, as we discussed before, the shorter draft proposal to the Board that eventually makes its way onto the website after we approve it. Or are we proposing some different, shorter summary as the Chair described that would summarize the issue at a higher level with less detail?

CHAIR SUTHERLAND: Member Engler?

MEMBER ENGLER: As written. I mean it needs to be clear. As written, the motion is for the proposed Status Change Summary. Not for a fourth [multiple voices].

CHAIR SUTHERLAND: The staff proposal.

MEMBER ENGLER: The staff proposal. Not for what is essentially a fourth, brand new document. No? Dr. Kulinowski clarified that there was also a cover page.

CHAIR SUTHERLAND: That's just the voting sheet. That's the memo [inaudible] prepared. Discussion? If we have "in accordance with agency regulations," I would need clarification first that... Let me go back to my earlier... So, in spirit, Member Engler, I am trying to figure out how we get to this end of helping people understand what recommendations we're voting on. I think we still need to figure out, does "deliberation and vote" imply that we're not going to be posting unless we know we're going to vote? As we saw in October and November, we deliberated; didn't vote. Does that mean if we know we're going to just come chat about it, we don't have to post anything? That needs clarification.

I mentioned in my memo to...to all of you, we still need to clarify the seven days in the regs and our Board Orders. Sometimes we say "calendar," sometimes we say "business." And it doesn't synch up with what our other posting and timing schedule is. That's also something we would need to clean up.

"Whenever feasible"—I wasn't sure if that meant "post whatever feasible," or "five days whenever feasible." So, I'm glad to see that's not there anymore. We'll just put a fixed timeline. And then, you know, trying to determine if the staff proposal or summary that we give at the meeting is more appropriate. I still have concerns about the utility of proposed Status Change Summaries

if we're...if we're not doing it, sort of, with context. And a shorter summary to help people understand the conversation, quite frankly, sometimes more succinctly written, might be more helpful.

So, if it's the third document, as Dr. Kulinowski described it, no, I'm not supportive of that. I think we should write something that's digestible by the public, which we're going to use at the public meeting anyway.

So, those would be the minor tweaks. But I think conceptually, between 1600.5 v.2, which says "post within two days," I'd probably tweak this to make that consistent. Posting of everything that might be calendared or might be relevant for a meeting should be in the same timeframe, unless we're going to change the regulation, which I'm [inaudible] amenable to, as well.

With those three things, I think...I don't see any reason not to be more transparent. You know, the devil's in the details in trying to synch them up with other things that we already are required to do.

So, in its current form, it would need tweaks.

MEMBER KULINOWSKI: So procedurally, then, we have to dispose of this one before...

CHAIR SUTHERLAND: ...moving to another.

MEMBER KULINOWSKI: ...moving to another.

CHAIR SUTHERLAND: Correct.

MEMBER EHRLICH: Madam Chairperson, can we call the question as it's written?

CHAIR SUTHERLAND: Okay, the question is on the adoption of the motion. Member Engler.

MEMBER ENGLER: Yes, thank you. You indicated that another document might be more digestible for the public. That implies that all the Notation Item summaries, the hundreds and hundreds that are on our website now, are not digestible to the public. I don't think you really meant to imply that. They were written to be clear, concise documents.

CHAIR SUTHERLAND: I mean digestible before a deliberation so that they have an understanding of what we are going to discuss.

MEMBER ENGLER: I would argue that the staff does a very good job of doing exactly that, through these...

CHAIR SUTHERLAND: But the summaries are when it's fully baked. That's not...that's not necessarily giving a highlight of what we're going to discuss.

MEMBER ENGLER: And again, I would just like to go back to what is, I think, the threshold issue, on the question of conformance with CFR [Title 40, Part] 1600, which is, again, discretionary, because the term "appropriate" leaves an enormous

amount of room for a future Chair of the Board to decide not to make available information. Nothing about this motion, in my view, conflicts with the regulation. It's a complement to it. And we have clarified the response to the technical comments that...that you had made to me previously, saying for those that this is five calendar days and not just days.

So, I think that this...I think this proposal is clear and does not require further clarification.

CHAIR SUTHERLAND: I would think... I'm holding onto your question, and we'll be there in two seconds. If the concern is that a future Chair might be arbitrary and ignore the regulation, the motion we should be discussing right now is not this. The motion we should be discussing is the regulation.

Do I have a... We can call for the question. But if arbitrariness is what we are talking about, the regulation's still in place and it still overrides the Board Orders. That was also part of my memo. If we want to tweak that to five days, I'm not...I'm not giving you a motion at all. I'm simply saying the problems that we articulate, I would like the solutions to more narrowly tailor the concern. And I've heard we have a transparency issue, which is addressed in that language.

But, if you're saying it is not strong enough, then we should go back, as we had planned to do with implementation of public meetings, and say documents will be published, you know, seven days or whatever. I don't know how you get around "appropriate for release," unless you're going to say...cross that language out and say, "except where prohibited by law." Which I'm fine with, too.

Member Engler?

MEMBER ENGLER: I mean, I'm not adverse to it, "except where prohibited by law," but these documents, again, have been prepared for public... Unless I'm missing something here, they have been prepared explicitly for public disclosure.

So, something that was prohibited by law would not be...would not be in there unless caught by a staff. And I think if we did see something like that during the voting period, during the notational voting period, any one Board Member would catch that, go to the Office of Legal Counsel, raise that question, and it very likely would be withdrawn.

CHAIR SUTHERLAND: We hope.

MEMBER ENGLER: Well, I... And then secondly, I'm again happy to engage in further dialogue, constructive discussion about our regulations. And I know there's some changes that we've talked about and are anticipating. You know, some of them very, very

simple things, to just keep up to date. Happy to have that discussion. Though I do not understand how this proposal... I think this proposal is compatible with both existing...existing regulations governing the CSB and...and perhaps future ones, which would be addressed at that time. Happy to engage in that conversation.

CHAIR SUTHERLAND: Any follow-up before...oh, Dr. Kulinowski?

MEMBER KULINOWSKI: I...I have... So, the original proposal that was rescinded was seven calendar days and it moved to five calendar days, which is consistent with the regulation, which says "greater than two." But it's still not "greater than two." It's five. So, I question the specificity of the five calendar days, and wonder if there could be some justification for that number. Which also seems...yeah. I'll just leave it at that.

MEMBER ENGLER: The number, frankly, is somewhat arbitrary. Meaning that I was trying to think of something to balance the questions of burden on staff to produce information. Of course, the information's already out because they have it prepared for the notational voting period already and a longer...and a longer period.

And so, if someone wants to suggest changing that date, I would be open to an amendment. However, if it reduces it to uniformity of two days, which is what the existing regulation says,

I question whether that's adequate time for providing the information.

CHAIR SUTHERLAND: [inaudible]

MEMBER EHRLICH: Only request to move the question.

CHAIR SUTHERLAND: Okay.

MEMBER EHRLICH: Yeah.

CHAIR SUTHERLAND: To move the previous question? Okay. If there's no further debate, then the question on the adoption of Proposal...Motion for Proposal 2—I will read, not read it, now that it's named Proposal 2—will be voted. Ms. Wenzel.

KARA WENZEL: Member Ehrlich?

MEMBER EHRLICH: Nay.

KARA WENZEL: Member Engler?

MEMBER ENGLER: Yes.

KARA WENZEL: Member Kulinowski?

MEMBER KULINOWSKI: No.

KARA WENZEL: Member and Chairperson Sutherland?

CHAIR SUTHERLAND: No. But... Oh, sorry, you have to call the role first.

KARA WENZEL: Okay, the motion is not approved.

CHAIR SUTHERLAND: However, I...I like a lot of the things that we've heard and been able to deliberate. And I think that we can

tweak this, but being mindful that it's 3:00, I think that with two tweaks and clarifications, we can do a new Notation Item that meets Member Engler's need [inaudible] proposal. I think we can do a new motion, but I think we'd all be drafting kind of on the fly.

So, what I would like to suggest, or propose, is that we do a new Notation Item with tweaks to this for a vote because I think what I heard from people is, there's support for figuring out how to get information out so that people can be more participatory in the discussion. And I...what I just heard, it sounds like there are really only two differences, in terms of what does that document look like, and the days.

I'll ask, per our Board Order 1, that Office of General Counsel to draft a new notation item. Any comment on that?

MEMBER ENGLER: No.

MEMBER KULINOWSKI: No.

CHAIR SUTHERLAND: None, okay. All right. So, at this time, I would like to open the floor for public comment related to the CSB's activities, either the new business or operational updates. Please present your comments within the three minutes requested. We will begin with the list of people who signed up to speak on the yellow sheet.

However, for those listening on the phone, you can email your comments to [meeting@csb.gov](mailto:meeting@csb.gov) and, Operator Michelle, if you let us know if anyone is in the queue, we will acknowledge them after people in the room are done. And, although we have one person that signed up, anyone in the room who's listened and now has a comment—just raise your hand. I would love to hear any additional thoughts or suggestions.

First, Jim Frederick, Title...well, affiliation, United Steelworkers.

JIM FREDERICK: Great, thank you. I can just do this from here. Oh, the mike.

CHAIR SUTHERLAND: Just a little bit closer.

JIM FREDERICK: Yeah, yeah, yeah. I picked the one seat away from all the mikes. So, I'm Jim Frederick with the Steelworkers Union, Health and Safety Environment Department, from Pittsburgh. And, first and foremost, thank you to the Board...the Board Members and the staff of the CSB for the ongoing work that you do.

No one wants to experience a visit from the CSB. It's following a tragic event that the CSB comes to a facility. And it's at these workplaces that the professionalism of the staff really shines and comes through, because it's such a...a horrific situation that is usually ensuing, is mitigated in part by the

professionalism that the staff demonstrates during the investigatory process. We hear over and over again from our members at facilities that experience a CSB investigation about that.

So, thank you to the staff and the Board Members for the continued professionalism of the investigations.

We know about this firsthand, as well, as we have a member of the union that is killed at work approximately every ten days. And so, we investigate almost every one of those fatalities. Someone from our staff, or someone from a local union that we work very closely with, investigates each and every one of those. And so...so we have some experience about that.

So, in my 25 years with the union, I have either personally investigated or supervised the investigation of over 500 fatalities across the union. And so, we have something quite in common with the work that you do.

We appreciate the video that we saw today from the PCA facility. That is a facility that we represent the workers at. And, on behalf of our members at that facility, thank you for the work on that video.

The PCA report that will be soon to be issued, we believe has...has a number of key findings or key issues that will be included in the report. Hot work is one of them.

Last week, Chair Sutherland, you spoke at our Health & Safety Environment Conference in Pittsburgh, and thank you for doing that. There were more than 1,600 delegates in attendance at the conference and...and when we walked through, before...before the presentation from the CSB, [inaudible] or some of the workshops that the staff and Board Member Engler presented at the conference, and we talked to people about the CSB, the thing I always hear back from our members when we raise the CSB is, "Oh, they produced the video on X, Y, or Z." Our members know about these videos. They watch these videos. They use these videos in their workplace to improve health and safety conditions that they work with, to be part of the investigation process or training that they do, or to just improve situations.

We know that the work you do has an impact across the industries of the...the...associated with the incident or like industries that have similar hazards. I'd guess that our members, [inaudible] have seen materials from the CSB more than the constituents of any other stakeholder group. I don't know that, but it would be a guess that I would make.

Our challenge is that when CSB reports issue, there are multiple findings, multiple recommendations, multiple issues to be addressed. But, as in...case in point with this video, it highlights one of those. And that's great. But it doesn't tell folks the full story. It's very important messages from the CSB that are getting lost in that process when we're not able to convey more.

Again, my guess, my estimate from talking with our folks about this, our members about this, is that for every 100 people that look into a CSB investigation, 95 of them just look at the video. Maybe five read the report. Maybe five read the report.

So, the video is what most people see. So, it's vital that the CSB makes certain that all of the key factors are referenced in the video presentation. And we'd ask that you consider a slight edit to the narration, or perhaps a list of bullets at the end, that would highlight the other key findings from this particular investigation and this particular video. But also in all future investigations that result in a video as well as a written report.

Secondly, just on...on this issue of transparency and this is kind of, you know, live TV as...as you were deliberating on this for the last hour or so. I certainly believe, having been involved with CSB investigations for a very long time as a stakeholder, that transparency and more open process could be improved, and should be

improved, in the CSB process. There is certainly room for improvement. And...and some of the references made today about, "well, we haven't gotten this sort of feedback," is partially because there's not an opportunity for it.

Just...just kind of a case in point. We certainly feel that we have an opportunity to provide comment after you've voted. And we'd like to be engaged and involved more...more and more often earlier in the process to make certain that the concerns that we hear from our members who are...are at the facilities that...that are directly involved, or at like facilities that are similarly hazards, have that opportunity to put that into the record.

And then, finally, as...as you referenced, the CSB is going to release their report on the PCA investigation relatively soon, assuming that the...the vote goes through the process. We'd like to invite the CSB to, not only do some sort of a release here inside the Beltway, but also come back to DeRidder, Louisiana, and make a presentation. We'll coordinate this with you at our local union, or it could be somewhere in the...the public, to do a parallel release of the report for the workers at the facility, the members of the community, and the employers at the facility as well.

Again, we think it's very important in this process, and perhaps we could provide some closure to the process for the

victims, their families, and all involved at the facility, to have that opportunity to hear directly from you, see, touch, feel the report, and have some dialogue and interaction. And again, not only in this case, with PCA in DeRidder, but in all future safety investigations, it'd be wonderful if you could implement some process like that.

Our experience has always been that when the CSB performs the public meetings at the facilities or near the facilities of...of interest and concern, that the engagement from those directly involved is much, much greater. It is very difficult for folks to come to Washington, D.C.

So, again, thank you for the work. Thank you for the staff of the CSB and the hard work that they do. Did I do that in three minutes?

CHAIR SUTHERLAND: I don't know. [multiple voices] Thank you very much for all three of those suggestions. I apologize for having to look down and take notes at the same time instead of making eye contact. But I was listening intently the whole time. And I really appreciate those three suggestions. And thanks for coming. I know it's probably a little bit out of your way.

Michelle, do you have any questions on the phone or comments on the phone?

OPERATOR: Okay, if you do have a question or comment, remember to press \*1 on your telephone keypad. Ma'am, we have no questions in the queue at this time.

CHAIR SUTHERLAND: Okay, and then I will ask if there are any other questions in the room. Okay.

I usually don't do this to people without asking them first. But, I'm going to say thank you to former CSB Member John Bresland for attending our meeting today and coming. So, hopefully I'm not, you know, outing you too much or making you uncomfortable.

[laughter]

MEMBER EHRLICH: He is blushing.

CHAIR SUTHERLAND: Yeah, just a little bit. But...

MEMBER EHRLICH: Good to see you, John.

CHAIR SUTHERLAND: He has...he has been a great continued supporter of the CSB from the day that I started, which was a week before Kristen, through our ongoing evolution and...and funding and other things. So, thank you for coming. And I just didn't want you...I mean, I talked to you before, but I didn't want...People in the room who don't know, say thank you to him, because he was on this Board before, pushing it forward before the four of us got to get up here and talk for two hours. So, thank you very much.

JOHN BRESLAND: Well, now that you've outed me, I will...I just want to make one quick comment. [inaudible] probably the main reason that I came to this...(This is all right, this is on?)

CHAIR SUTHERLAND: Yes.

JOHN BRESLAND: As you know, there's a...there will be a process safety conference in Edinburgh, Scotland, in May, and I'm the keynote speaker at it. I'll also be speaking on a...on a topic of the training of chemical plant operators around the world. And it's based on an...an article that I wrote for Chemical Engineering Magazine.

But the other reason I'm...Well, not the...While I'm there, I'm also...an article that I wrote for Chemical Engineering Magazine on the...the Chemical Safety Board's follow-up to the Texas City tragedy, they've decided that that was the best article in the year 2017, so I'll be getting something called the Hanson Medal. I'm not quite sure what, [laughter] but it will be a medal.

But I just wanted to give you a heads-up on that, because there will be some...there may be some discussion on the CSB's follow-up to BP Texas City. And there were...I wrote the article and I had a couple of comments in the article that might be construed as being somewhat, in a minor way, critical of some of the...some of

the follow-up. I don't know if that will come up in...for discussion but...

[UNIDENTIFIED]: It's okay.

MEMBER ENGLER: It's okay, John.

JOHN BRESLAND: If I'm allowed to do that...well, I did...I already did it so...[laughter].

MEMBER EHRLICH: This is after the fact, right?

CHAIR SUTHERLAND: It's done.

JOHN BRESLAND: Yeah, but I certainly look forward to getting together again with you in Edinburgh, and look forward to your presentation in Edinburgh, as well.

CHAIR SUTHERLAND: Thank you.

MEMBER ENGLER: And I had requested of former Chair Bresland that he send a copy to me of this article and I will circulate it.

CHAIR SUTHERLAND: I just asked him to do that so we could post it. We usually don't do this, but John [inaudible]. The Hanson Medal is a pretty awesome thing. So I actually am going to applaud and ask... [clapping] And we're [inaudible] so we don't mind criticism. Or praise. I mean, either way, whatever people want to do.

But are there any other questions, Michelle, on the phone before we close? We're about to wrap up the meeting.

OPERATOR: No, ma'am, we have no questions in the queue at this time.

CHAIR SUTHERLAND: Great. Then I would like to thank those in the audience who stayed for two hours and 15 minutes, for those who can't see the clock, our staff, and definitely my fellow Board Members for, in the moment, thinking and...and raising really good points that I think helped all of us in today's deliberation.

I also want to make sure that I thank the staff who is not here, that helps us prepare, as well as the staff that is here, to help these meetings look really seamless. So, thank you, *in absentia*, to many of them, as well. And we all share a very strong interest in trying to figure out how to move chemical safety forward. So, for those who made comments also, thank you very much for that. Because we get better when we...we see what people think from the outside in, and give us suggestions or criticisms, as the case may be.

Our next public business meeting is tentatively scheduled for July 25<sup>th</sup>, 2018. We will keep the current date...make sure that the current date is on the website. Please check that at the website, at [csb.gov](http://csb.gov), the Federal Register, or sign up for email alerts, and we'll tell you directly what the exact date is as we move closer.

With that, the meeting is adjourned. Thank you for coming.

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