

UNITED STATES OF AMERICA
CHEMICAL SAFETY AND
HAZARD INVESTIGATION BOARD

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OSHA RECOMMENDATIONS

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PUBLIC MEETING

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THURSDAY,
JULY 25, 2013

+ + + + +

9:30 A.M.

+ + + + +

CSHIB MEMBERS:

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This transcript was produced from audio
provided by the Chemical Safety and Hazard
Investigation Board.

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P-R-O-C-E-E-D-I-N-G-S

OPENING REMARKS

1 CHAIR MOURE-ERASO: So I am
2
3 calling this meeting to order. Good morning,
4
5 everyone. My name is Rafael Moure-Eraso. I
6
7 am the chairperson of the Chemical Safety
8
9 Board.

10 Before getting to start, I would
11
12 like to recognize Katherine Rodriguez. She is
13
14 the daughter of Ray Gonzalez. That was one of
15
16 the fatalities in the BP in Texas City. So
17
18 Katherine is here with us, and she is going to
19
20 present some public testimony. I thank
21
22 Katherine very much for being here with us.
We appreciate it.

I would like to welcome you all to
this U.S. Chemical Safety Board meeting, also
described as the Sunshine Act meeting, here in
Washington, D.C.

I have some opening remarks, but
before beginning, I would like to call an
attention to some business issues and

1 attention to the specifics of the agenda. For
2 people here in the meeting, we are required to
3 inform you that there are two exits. If there
4 would be any kind of problems in here that we
5 need to evacuate, there is that door and there
6 is the door that you entered.

7 So I would like to call your
8 attention to the agenda. I think you saw
9 copies of them at the entrance. We are
10 covering a lot of complex issues. And so I
11 think it would be good to look at this in
12 detail.

13 We are going to start with opening
14 remarks from the Chair and from the Board
15 members. Then the next thing that we are
16 going to do is we are going to have a CSB
17 staff presentation on the PSM and fuel gas
18 issues.

19 This is going to be followed by
20 comments from Mr. Thomas Galassi, who is the
21 Director of Enforcement from OSHA. This is
22 going to be followed by public comments that

1 are going to be facilitated by our Managing
2 Director, Dr. Horowitz.

3 Then following that, we are going
4 to have deliberations of the Board on the
5 presentations of the staff. We will ask
6 questions to the staff. And following that,
7 we will take a vote of the accepting or not
8 accepting the recommendations of the staff.

9 Then we have lunch from 11:50 to
10 1:30. And in the afternoon session, we will
11 be discussing combustible dust. And also we
12 are going to take a vote on the
13 recommendations on combustible dust to OSHA
14 and also recommendations to the Board to
15 designate combustible dust as the CBS most
16 wanted chemical safety improvement, the first
17 one for this year.

18 There will be opportunities for
19 members of the audience to participate:
20 first, from 11:25 in the morning, to comment
21 on PSM or fuel oil or whatever you want to
22 comment; and then again in the afternoon at

1 2:15, in which you can discuss combustible
2 dust or anything relevant to our deliberations
3 here.

4 Now I would like to proceed with
5 my opening statement. We are here today to
6 vote, updating the status of seven important
7 safety recommendations. Over the years, the
8 CSB has made a number of recommendations to
9 the Occupational Safety and Health
10 Administration in the aftermath of 10 tragic
11 accidents that killed 60 workers. They are
12 the ones that corresponded to these specific
13 recommendations. There were 100 more workers
14 injured. And this cost millions and millions
15 of dollars in property damage, these ten
16 accidents.

17 The CSB staff made recommendations
18 to OSHA for first revision of the PSM standard
19 and the issuance of one full gas release
20 regulation for a total of three
21 recommendations that we will be discussing in
22 the morning session.

1 In the afternoon, we are going to
2 discuss the issue or recommendation to the
3 issue of an OSHA combustible dust standard.
4 There are also three recommendations related
5 to that. And the issue is the designation of
6 the issuance of the general industry standard
7 of combustible dust by OSHA to be CSB "Most
8 Wanted Safety Improvement" issue and one of
9 more orders. This all is going to be
10 discussed in the afternoon.

11 I would like to make it clear that
12 OSHA has made progress on some of these
13 recommendations. Most notably, OSHA updated
14 the Hazard Communication Standard to require
15 inclusion of combustible dust warnings. This
16 is a very important step since CSB showed the
17 lack of worker understanding of those hazards
18 was a key factor in the number of catastrophic
19 dose explosions, including Imperial Sugar,
20 West Pharmaceutical, and CDA Acoustics.

21 OSHA also updated its acetylene
22 standard based on a CSB recommendation and has

1 adopted a number of enforcement programs
2 related to combustible dust, refinery safety,
3 and now chemical plant safety. At the same
4 time, all recommendations to revise the PSM
5 standard, adopt a fuel gas standard, and
6 develop a combustible dust standard have not
7 advanced as quickly as we hoped.

8 I am further encouraged by OSHA's
9 recent action to add the Process Safety
10 Management standard onto its regulatory agency
11 agenda of this year. OSHA's notice states
12 that it is considering adding reactive
13 hazards, atmospheric storage tanks, and
14 organizational management of change to that
15 standard.

16 Today's meeting is an opportunity
17 to review with the OSHA's Director of the
18 Enforcement practice, Mr. Thomas Galassi,
19 these issues that are recommendations to us.

20 I would like very much to
21 recognize Mr. Galassi. I don't know if he has
22 arrived here at this time. Yes? He's here.

1 And I would like to thank him for accepting
2 our invitation to appear today to discuss the
3 OSHA efforts. We appreciate it.

4 Today's meeting is an opportunity
5 for the Board members to hear the staff
6 propose its evaluation of the OSHA actions to
7 date, also to hear from members of the public,
8 and then consider voting on the status of
9 these recommendations dating back to 2002.
10 Additionally, this meeting serves as a step
11 forward for the CSB advocacy initiative.

12 I cannot overstate the importance
13 of the safety recommendations we are
14 discussing today. Time and again, the CSB has
15 gone to communities where chemical disasters
16 have struck and heard the pleas of victims.
17 Family members who were left behind do not
18 look to the government for comfort, but they
19 do look to the government for action.

20 In 2006, Tammy Miser, whose
21 brother Shawn Boone died in a combustible dust
22 explosive at Hayes Lemmerz in Indiana, told

1 the Board, I quote, she said, "I think the
2 only way is for you guys to help us by making
3 recommendations to OSHA so that we can have
4 some really good regulations for this. This
5 affects more than just one family. It affects
6 generations of families. We are just asking
7 you to help us, to help restore our faith in
8 governmental humanity."

9 Years have elapsed. In 2008, 14
10 more workers died in a dust explosion at
11 Imperial Sugar. In 2011, 5 more died in
12 dust-related fires at the Hoeganaes Powder
13 Metal Plant in Gallatin, Tennessee. Among
14 those killed was Wiley Sherburne, whose wife,
15 Chris, met with CSB Board members and
16 investigators and spoke movingly at a public
17 meeting we held at Gallatin later that year.
18 Ms. Sherburne told the National Tennessean
19 that delays in getting combustible dust
20 standards was "like rubbing salt in a really
21 fresh wound."

22 Families all around the country

1 suffered death and injury from hazards that we
2 know how to prevent but where we lack the
3 modern regulatory standards and programs to do
4 so.

5 Eva Rowe is a young woman who lost
6 both her parents to a preventible accident.
7 Both her father and her mother were among the
8 15 workers who died at the BP Texas City
9 refinery in March 23rd, 2005. In 2007, she
10 testified to the House Education and Labor
11 Committee along with the CSB then Chairman
12 Carolyn Merritt. Mrs. Rowe said, and I quote,
13 she said, "It is of little comfort to us, but
14 we hope that through legislation to assure
15 more stringent working health and safety
16 standard, that their deaths won't be in vain.
17 Today I ask Congress to carefully review the
18 report issued this week by the CSB and act
19 with great speed on these recommendations."

20 CSB found at our 2005 Texas City
21 investigation that BP's Process Safety
22 Management had declined at the Texas City

1 refinery over a number of years, the victim of
2 corporate budget cuts, under-investment,
3 training shortfalls, and management turnover,
4 and downsizing. These organizational changes
5 were not properly analyzed to determine the
6 safety impacts.

7 These management of change reviews
8 are considered an important part of
9 maintaining safety. The American Chemistry
10 Council has been recommending them since 1998.
11 So does the American Institute of Chemical
12 Engineers. So do regulators in other
13 countries, like the United Kingdom and in
14 other states, like California, Contra Costa
15 County.

16 Yet, more than eight years after
17 the Texas City tragedy, no changes have been
18 made to refinery safety standards at the
19 federal level. Tragically, Mrs. Rowe's pleas
20 for federal action have, in fact, been in
21 vain. And insurance company statistics from
22 Swith Ray (Phonetic.) show the heavy price of

1 inaction as their actuaries tell us that U.S.
2 refineries suffer property losses at four
3 times the rate of other countries, a gap that
4 continues to widen. Clearly, more must be
5 done. And I look forward to working with our
6 colleagues at OSHA to see these
7 recommendations through to success.

8 Thank you. At this time, I would
9 like to ask if any of the Board members would
10 like to comment. Dr. Rosenberg?

11 MEMBER ROSENBERG: Yes. Thank
12 you.

13 Welcome. It is so nice to be in a
14 public meeting with all of you. I extend a
15 special welcome to the families and friends of
16 those who died while trying to make a living.
17 You have my condolences.

18 We are here today to discuss
19 recommendations to OSHA that have not been
20 acted on. Make no mistake. I want OSHA to
21 act on these recommendations. But to blame
22 OSHA for this inaction is myopic. There are

1 factors beyond OSHA's control that thwart the
2 agency's capacity to promulgate standards.
3 For decades, OSHA has been shackled by an
4 anti-regulatory climate, where any regulation
5 is seen as job-killing.

6 The hurdles to rulemaking are
7 many. We have all heard about the extensive
8 and resource-intensive reviews that are
9 necessary during each step of the process:
10 the technical analysis; the review; and,
11 finally, OMB review. Countries where it is
12 safest to be a worker have strong labor and
13 public health movements that force the
14 government and the business community to be
15 serious about worker health and safety. We
16 lack that now in the U.S. And OSHA's inaction
17 is a symptom of this bigger problem.

18 We need strong regulations and
19 enforcement. A root cause analysis, which the
20 CSB is famous for, will lead us beyond
21 demanding that an agency prevented from
22 rulemaking make rules. It will lead us to

1 identifying the obstacles and strategizing
2 together about ways to overcome them.

3 Thank you.

4 CHAIR MOURE-ERASO: Thank you,
5 Member Rosenberg.

6 Member Griffon, do you have some
7 comments?

8 MEMBER GRIFFON: Yes. Thank you,
9 Mr. Chairman.

10 Good morning to everyone as well,
11 happy to see everyone here. Today we are
12 going to discuss and vote on the status of
13 recommendations the CSB has made to OSHA, many
14 of which were made several years ago. The
15 items to be discussed include recommended
16 changes to an outdated Process Safety
17 Management standard and the recommendation for
18 OSHA to develop and issue a combustible dust
19 standard. These issues are clearly of great
20 interest and importance to workers, industry,
21 communities near high-hazard facilities, as
22 well as the families directly affected by

1 industrial accidents.

2 I look forward to discussing and
3 voting on these important issues in a public
4 meeting, where we can hear from the recipient
5 of the recommendations, OSHA, as well as the
6 interested public. We very much look forward
7 to hearing from all of you.

8 I am looking forward to hearing
9 our staff present on the history of these
10 recommendations. And I am also interested in
11 hearing from OSHA at what has been done since
12 the recommendations were issued.

13 As we discuss these issues today,
14 it is also important to remember the varying
15 difficulty in implementing CSB
16 recommendations. Currently approximately 25
17 percent of our recommendations are to federal
18 agencies. Many are greater than three years
19 old.

20 I certainly support
21 recommendations to federal agencies since, by
22 definition, these changes would have a

1 national impact on safety. After all, the
2 mission of the CSB is not to make
3 recommendations to accompany on how to fix a
4 broken pipe. We, therefore, should continue
5 to push for national change, but the CSB
6 should also think strategically of ways to
7 make this change happen.

8 Additionally, we have to realize
9 that while federal regulatory change may be
10 the ultimate goal, there are other means that
11 in the short term may improve safety.
12 Improving safety for workers and the community
13 is, of course, a main goal.

14 Finally, I agree with my colleague
15 Dr. Rosenberg. To blame OSHA for not
16 completing regulatory changes or being able to
17 enact a new standard does not address the root
18 cause of the delays. A recent GAO report,
19 "Workplace Safety and Health: Multiple
20 Challenges Lengthen OSHA's Standard Setting,"
21 found that it took OSHA on average more than
22 eight years to develop and issue safety

1 standards. I think we, the CSB, need to look
2 into this. Why does it take so long to issue
3 a safety standard? And what action can the
4 CSB take to address this problem?

5 Thank you, Mr. Chairman.

6 CHAIR MOURE-ERASO: Thank you very
7 much, Member Griffon.

8 At this time, I would like to
9 introduce Dr. Manuel Gomez, which is the CSB
10 Director of the Office of Recommendations. I
11 would like to add also that before I give the
12 floor to Dr. Gomez, that with us is Don
13 Holstrom, which is the Director of our Western
14 Office, sitting at the podium here. And also
15 with us, helping us on the meeting, is our
16 Managing Director: Dr. Daniel Horowitz.

17 So I would like to turn to Dr.
18 Manuel Gomez for the presentation of the
19 recommendation.

20 DR. GOMEZ: Thank you, Mr. Chair.

21 STAFF PRESENTATION: DRAFT EVALUATION OF
22 RECOMMENDATION 2001-05-I-DE-R1

1 (FROM MOTIVA REPORT)

2 DR. GOMEZ: Before I introduce
3 those who are with me here on the stage, we
4 thought it would be useful if I take a minute
5 to explain some of the words we use to refer
6 to our classification of recommendations
7 because we will be using those words today and
8 we don't want our somewhat bureaucratic
9 terminology to confuse the really important
10 issues that we will be discussing.

11 After the CSB issues
12 recommendations, the staff of our
13 Recommendations Office follows up with
14 recipients to see how well those
15 recommendations have been implemented. This
16 involves correspondence and meetings with the
17 recipients, review of documents, and other
18 evidence of implementation.

19 Based on the information through
20 these follow-up activities and in accordance
21 with some timelines or deadlines that I really
22 need not detail here today, the staff

1 evaluates the effectiveness of implementation
2 and recommends that the Board assign one of
3 several possible status categories to each
4 recommendation.

5 For the purposes of today's
6 discussion and, actually, in most instances,
7 only a few such categories are really
8 important because they are by far the most
9 frequently used and the ones of most
10 significance.

11 We refer to open recommendations,
12 as you might imagine, as those that have not
13 yet been fully implemented. These, in turn,
14 can be evaluated or assigned the status of
15 open acceptable response when the Board
16 considers that timely progress is being made
17 or open, unacceptable response when the
18 recipient either rejects the recommendation
19 and the Board does not agree with the
20 rationale for that rejection or when the Board
21 considers that progress towards implementation
22 is insufficient or too slow and also considers

1 that the recipient can and should be persuaded
2 to implement it. That's us that should
3 persuade them and hopefully other parties as
4 well.

5 As I am sure you can deduce, the
6 Board can also assign the status of closed
7 acceptable action when the recommendation is
8 judged to have been successfully implemented
9 or closed unacceptable action when the Board
10 judges that the recipient has not implemented
11 it and also that additional persuasion or
12 other efforts are unlikely to bring about
13 implementation. Again, I know this sounds a
14 bit bureaucratic but I think will help make
15 clear what the discussions later in the day
16 will be.

17 I must emphasize again that it is
18 always the Board that makes the decisions
19 about the status classification. The staff
20 only provide the Board with our analysis and
21 recommendations for those decisions.

22 Let me stop here now. You can

1 find the details of our status classifications
2 on our web page. The key point I wanted to
3 highlight before we started this morning is
4 that an open, unacceptable classification,
5 which you will hear a lot about today, simply
6 means that a recommendation has either not
7 been accepted at all and the Board disagrees
8 with the reasons for that lack of acceptance
9 or it has not been implemented in a timely
10 manner or at all and, hence, the unacceptable
11 part of the status and the Board also
12 considers that it should remain open because
13 it is both important to accomplish it and it
14 is possible to persuade the recipient to
15 implement it.

16 I hope this was a useful
17 classification. Let me now go ahead and
18 introduce my colleagues. Second to my right
19 is Mark Kaszniak, Senior Recommendations
20 Specialist in our Recommendations Department.
21 He will be our first speaker today, addressing
22 two of the recommendations related to the OSHA

1 Process Safety Management standard.

2 Next to me is Ms. Christina
3 Morgan, also a Recommendations Specialist on
4 our team, who will be describing the issues
5 related to the fuel gas standard
6 recommendation this morning and issues
7 regarding the dust recommendations in the
8 afternoon.

9 And last, who has already been
10 introduced, but certainly not least, our
11 colleague Don Holstrom, who is, as the Chair
12 indicated, the Manager of our Western Office,
13 who was very instrumental in the
14 investigations leading to all the
15 recommendations we will be discussing this
16 morning and whom we very much hope will add
17 both his perspective following the
18 presentations and also participate during the
19 question and answer session later in the
20 morning.

21 With that, Mark, I would ask you
22 to go ahead and make your presentation.

1 MR. KASZNIAK: Thank you, Dr.

2 Gomez.

3 STAFF PRESENTATION: DRAFT EVALUATION OF

4 RECOMMENDATION 2005-04-I-TX-R9

5 (FROM BP TEXAS CITY REPORT)

6 MR. KASZNIAK: The first

7 evaluation, recommendation evaluation, that I

8 am going to discuss this morning concerns a

9 2002 recommendation that the CSB Board issued

10 to OSHA regarding changing the OSHA's PSM

11 standard to include coverage of atmospheric

12 tanks involving flammable materials that occur

13 when a flammable process is present.

14 On July 17th, 2001, an explosion

15 of fire occurred at the Motiva Delaware City

16 refinery in Delaware City, Delaware. As a

17 result, a tank separated from its contents,

18 releasing its entire amount. And a fire

19 burned for nearly half an hour. Other tanks

20 also lost their contents. And one contract

21 employee was killed, and either others were

22 seriously injured. Sulfuric acid spilled into

1 the Delaware River, causing damage to aquatic
2 life in the river.

3 The incident occurred at the
4 Motiva sulfuric acid tank farm. This tank
5 farm holds six above-ground tanks, 2 of which,
6 numbered here on the slide 394 and 395,
7 contained fresh sulfuric acid. And the four
8 remaining tanks contained a spent sulfuric
9 acid solution, which is primarily sulfuric
10 acid with a combination of about five percent
11 water and the rest flammable hydrocarbons.

12 It should be noted that the
13 flammable hydrocarbons are only present in the
14 spent sulfuric acid tanks. And at the time of
15 the incident, there was welding repair being
16 made to a catwalk. Sparks from that welding
17 torch ignited flammable vapors in the
18 headspace of the tank, resulting in the
19 explosion.

20 What I am going to show you right
21 now is a brief video animation that describes
22 the events that led up to the incident and

1 explains its consequences a little further.

2 (Whereupon, a video was played.)

3 MR. KASZNIAK: The OSHA Process
4 Safety Management standard, codified at 29 CFR
5 1910.119, is a systematic approach to safety
6 and prevention of catastrophic accidents. It
7 requires adherence to 14 elements for
8 processes that contain either a process that
9 involves a chemical at or above a specified
10 threshold quantity that is listed in appendix
11 A of the standard, a process which involves
12 flammable liquid or gas on site in one
13 location in quantities of 10,000 pounds or
14 more or a process which manufactures
15 explosives in pyrotechnics in any quantity.

16 At Motiva, it should be noted that
17 sulfuric acid is not listed in appendix A. So
18 it's not subject to the PSM standard. The
19 amount of flammables in the alkylation process
20 exceeded the PSM 10,000-pound threshold for
21 flammables. And the amount of flammables in
22 the spent sulfuric acid solution tanks could

1 not be determined at the time of the
2 investigations but were interconnected with
3 the alkylation process.

4 The PSM standard contains a
5 definition for a process, which is any
6 activity involving a highly hazardous
7 chemical, including any storage,
8 manufacturing, handling, on site movement of
9 such chemicals, or their combination of those
10 activities. And for the purpose of this
11 definition, the definition goes on to explain
12 that any group of vessels which are
13 interconnected and separate vessels which are
14 located such that a highly hazardous chemical
15 could be involved in a potential release shall
16 be considered a single process.

17 However, the standard also
18 contains an exemption for atmospheric tanks
19 that store flammable liquids. It states that
20 the flammable liquids stored in atmospheric
21 tanks or transferred which are not below their
22 normal boiling point without benefit of

1 chilling or refrigeration are not covered by
2 the PSM standard.

3 In addition, in 1995, an
4 administrative law judge ruled that PSM
5 coverage does not extend to stored flammables
6 in atmospheric tanks, even if they are
7 connected to a process. OSHA at the time did
8 not challenge this particular decision. And
9 Motiva when it developed its PSM program did
10 not include the spent sulfuric acid tanks in
11 their program based on both the standards
12 exemption and the administrative court
13 decision. OSHA when it investigated the
14 Motiva accident did not cite Motiva for
15 violations of the PSM standard involving these
16 atmospheric tanks at the time of this
17 incident.

18 If PSM had been properly applied
19 for the sulfuric acid tank farm, then the
20 following PSM elements would have been
21 required by the OSHA standard. First, they
22 would have ensured that the mechanical

1 integrity of the equipment is maintained. As
2 you have noted in the video animation, there
3 were several holes in the tank. And the tank
4 had not been taken out of service to have
5 those holes repaired. Tanks were also subject
6 to corrosion that had not been addressed.

7 Also, the PSM standard would have
8 required a consistent management of change
9 procedure for any equipment changes. What is
10 not explained in the animation is that this
11 particular tank was converted from a fresh
12 sulfuric acid tank into a spent solution
13 sulfuric acid tank, but there was no
14 management of change conducted when that
15 conversion was made.

16 If such a procedure had been
17 conducted, then it would have been subject to
18 a review by safety professionals and other
19 people familiar with the process. They would
20 have done a process hazard analysis where they
21 would have identified potential hazards, such
22 as the corrosion issues and the fact that

1 there were flammable headspaces in the tank.
2 And the PHA would have required, then,
3 administrative and engineering control and
4 administrative controls to deal with those
5 particular hazards in the process.

6 In addition, before the process
7 was allowed to be started up again, a
8 pre-startup safety review would have been
9 required. And at that point, the hose that
10 was being used to put inert nitrogen into the
11 tank would have probably been spotted as an
12 ineffective means of providing nitrogen
13 inerting to the top of that tank. And that
14 would have been changed out.

15 As a result of CSB's investigation
16 in September of 2002, CSB issued its
17 recommendation to OSHA to ensure coverage
18 under the Process Safety Management standard
19 of atmospheric storage tanks that could be
20 involved in a potential atmospheric release as
21 a result of being interconnected to a process
22 with more than 10,000 pounds of flammable

1 substance.

2 OSHA responded to the CSB
3 recommendation in April of 2003. At that
4 time, OSHA advised the CSB that the spent
5 sulfuric acid solution tanks in the Motiva
6 incident were not exempt from the PSM standard
7 because they were considered to be process
8 tanks, not storage tanks, and that OSHA
9 proposed to address the CSB recommendation by
10 clarifying this distinction in a compliance
11 directive. Unfortunately, OSHA did not
12 provide any timetable to the CSB for when this
13 directive would be issued.

14 In April 2004, the CSB wrote back
15 to OSHA asking the agency also to clarify its
16 position in regards to storage tanks that
17 would be attached to PSM-covered processes, as
18 was mentioned in the recommendation. In June
19 of 2004, OSHA again responded to the CSB that
20 it intended to address the issues in a
21 compliance directive that would be issued in
22 the next 6 to 9 months. And both issues would

1 be addressed in that compliance directive.

2 Some time passed, and several
3 meetings were held in the interim with no
4 action on the part of the agency. Again, in
5 December of 2011, the CSB wrote to OSHA again
6 asking for an update of the status of this
7 particular recommendation. And in August
8 2012, OSHA replied that it was still committed
9 to issuing a compliance directive and
10 estimated that the agency action on that
11 directive would be completed in the next 9
12 months. However, to date, the CSB has not
13 received a revised compliance directive from
14 the agency.

15 So, therefore, based on these
16 events, the staff's recommendation to the
17 Board notes that over ten years have passed
18 and there has been no revised compliance
19 directive or no rulemaking to clarify coverage
20 under the PSM standards. And then, as a
21 result, both the CSB recommendations and
22 investigation staff urged the Board to change

1 the classification of this recommendation to
2 open, unacceptable response.

3 The next recommendation I am going
4 to discuss is a 2006-7 recommendation that was
5 issued again to OSHA regarding the PSM
6 standard and this time requesting the standard
7 be amended to manage organizational changes
8 under the management of change provisions of
9 that standard. This recommendation was a
10 result of CSB's investigation of the BP Texas
11 City refinery in Texas City, Texas.

12 That event occurred on March 23rd,
13 2005. A series of explosions and fires
14 occurred, which resulted in 15 deaths and 180
15 injuries. In this situation, a raffinate
16 splitter column in the isomerization unit
17 overfilled with flammable liquid. That
18 overfill caused the safety relief valves on
19 that vessel to open, resulting in that
20 flammable liquid flowing into an open top
21 stack blowdown drum, which is shown in the
22 slide with the surrounding yellow box.

1 That blowdown drum subsequently
2 overfilled and flammable liquid gushed out the
3 top of that blowdown drum, started falling to
4 the ground and vaporizing, creating a vapor
5 cloud, which contacted the ignition source,
6 resulting in the explosions and fires.

7 CSB did an extensive investigation
8 of the root and contributing causes of this
9 investigation and found that one of the causes
10 was poorly managed corporate mergers,
11 leadership, and organizational changes and
12 budget cuts that greatly increased the risk of
13 catastrophic incidents at the site. Some
14 examples that CSB noted in the report were the
15 merger of BP and Amoco, which led to a lack of
16 focus of the process safety function in the
17 corporation.

18 In this particular case, since
19 there was centralized process safety
20 management staff at both Amoco and Arco, which
21 merged into BP, these staffs were eliminated
22 in a centralized manner and delegated back

1 down to the business unit level. And, in
2 addition, some PSM functions were relegated to
3 special committees of practice involving all
4 of BP's refineries, which were basically
5 reduced to sharing lessons learned between
6 themselves.

7 The Texas City site underwent a
8 number of organizational changes that affected
9 its stability and reduced the prominence of
10 the PSM function. Again, there were many
11 changes in site management and leadership over
12 a short period of time, something like seven
13 different managers of the site over a
14 five-year period and the PSM function being
15 transferred to different departments,
16 eventually ending up as a subunit of the
17 Environmental Health and Safety Department at
18 the refinery.

19 And, finally, there were policy
20 changes that were made by BP, such as budget
21 cuts and changes to the bonus structure that
22 eliminated the PSM metrics from calculations

1 for remuneration and further impacted process
2 safety performance.

3 Budget cuts involved cuts to
4 training and staff, board operators,
5 mechanical integrity, and, in fact, even
6 preventing them from eliminating the blowdown
7 drum in the isomerization unit due to budget
8 cutbacks. Staffing changes occurred, where
9 people were removed from various safety
10 functions and various PSM-related issues. And
11 the metrics that were being used to hold
12 managers accountable were based primarily on
13 profits and their typical lost time injuries.
14 Even though the refinery had undergone three
15 or four major process-related fatalities in
16 the last year, the people at the refinery
17 still got their bonuses.

18 When CSB was investigating the
19 organizational changes at the BP Texas City
20 refinery, it noted that there were a number of
21 good guideline practices out there that had
22 already addressed organizational changes.

1 These had been issued by the Center for
2 Chemical Process Safety; the American
3 Chemistry Council; the Health and Safety
4 Executive in the U.K.; the Canadian Society of
5 Chemical Engineers; and the Contra Costa
6 County, California unit out in the State of
7 California. In addition, a 2002 published
8 survey result showed that organizational
9 change was only being addressed in the
10 management of change programs in 44 percent of
11 chemical processing companies.

12 Now, OSHA covers management of
13 change in subset section L of its standard.
14 And that section of the standard states that
15 the employer shall establish and implement
16 written procedures to manage changes except
17 for replacements in kind to process chemicals,
18 technology, equipment, procedures, and changes
19 to facilities that affect a covered process.

20 While it can be demonstrably
21 arguable that some organizational changes may
22 affect changes to facilities or procedures,

1 the CSB final report, issued in March of 2007,
2 contained a recommendation of the Board to
3 amend the OSHA PSM standard to require that
4 management of change review, be conducted for
5 organizational changes that may impact process
6 safety, including major organizational
7 changes, such as mergers, acquisitions, or
8 reorganizations, personnel changes, including
9 changes in staffing levels or staff
10 experience, and policy changes, such as budget
11 cutting.

12 OSHA responded, initially
13 responded, to the CSB recommendation in
14 December 2007. The agency agreed that
15 organizational changes can affect safety at
16 the plant level but disagreed that regulatory
17 change was needed. Instead, the agency
18 proposed modifying its PSM compliance
19 directive to provide guidance and again
20 provided no timetable for when they would
21 change the compliance directive. It should be
22 noted the compliance directive to this date

1 has not been changed in any way, shape, or
2 form.

3 CSB received a second response
4 after the change of administration in 2008 and
5 November of 2009, where OSHA reiterated its
6 previous position that mandatory changes are
7 not needed but, instead, that the agency had
8 decided to issue a memorandum into its
9 regional administrators to provide guidance.
10 This memorandum listed organizational changes
11 that need to be considered when under the
12 management of change section of the standard
13 contained an example of both an organizational
14 and a budget change had a decision-making
15 flowchart incorporated into it and even
16 provided suggestions to compliance officers as
17 to what types of citations to cite. OSHA also
18 asked the CSB at that time to close this
19 recommendation with an acceptable response.

20 While the CSB considered this to
21 be a partial solution to the problem, in our
22 evaluation, we noted that a simple guidance

1 memo could be changed or rescinded by any
2 subsequent OSHA administration, that we asked
3 OSHA to provide us with examples of management
4 of change where organizational change had been
5 cited under the standards, but today OSHA has
6 not provided the CSB with any examples.

7 We also reviewed administrative
8 law judge and review commission decisions to
9 see if this particular issue had been
10 litigated in the courts. And we could find no
11 cases where this issue had been decided. We
12 also reviewed the regulatory preamble of the
13 PSM standard as well as the actual text of the
14 standard itself and all of the guidance
15 documents associated with it and noted that
16 the issue of organizational change and even
17 the words "organizational change," "merger,"
18 "acquisition," "budget cuts," things like
19 that, have not been addressed in either the
20 standard, the compliance documents, or even in
21 the preamble. The issue was never raised
22 during the rulemaking discussions.

1 So while the courts have to give
2 deference to the agencies and their
3 interpretation of the standards, there are
4 various due process requirements that the
5 courts have to provide that basically tell
6 them that the agency just can't make its own
7 interpretations out without any factual basis
8 in the actual standard itself. And so the CSB
9 was concerned that the due process
10 requirements have not been met in this
11 particular case with the simple issue it's of
12 a compliance memo and that the courts would
13 have problems interpreting the fair use of the
14 PSM standard under this particular policy
15 change.

16 Consequently, based on this
17 evaluation and this analysis and the text of
18 the actual recommendation, which asked for an
19 amendment to the PSM standard, which, by the
20 way, was the only significant regulatory
21 change that was made in the BP Texas City
22 case, both recommendations and investigation

1 staff urged the Board to change this
2 classification to open, unacceptable response.

3 I will now turn the presentations
4 over to Christina Morgan, who will discuss our
5 recommendation regarding fuel gas safety.

6 STAFF PRESENTATION: DRAFT EVALUATION OF
7 RECOMMENDATION 2010-07-I-CT-UR1
8 (FROM KLEEN ENERGY AND CONAGRA
9 INVESTIGATIONS)

10 MS. MORGAN: All right. The next
11 recommendation on the agenda is a
12 recommendation calling upon OSHA to issue a
13 comprehensive fuel gas safety standard for
14 both construction and general industry. The
15 recommendation was issued following the CSB's
16 investigation of the February 2010 natural gas
17 explosion at Kleen Energy in Middletown,
18 Connecticut, but it is also related to the
19 CSB's investigation of a June 2009 natural gas
20 explosion at the ConAgra Slim Jim facility in
21 Garner, North Carolina.

22 On June 8th, 2009, workers at the

1 ConAgra Slim Jim facility in Garner, North
2 Carolina were installing a new gas-fired
3 industrial water heater. Because they were
4 having difficulties lighting the water heater,
5 the workers suspected that the gas line was
6 not effectively purged with air. Therefore,
7 they purged the line indoors, inside the
8 building's utility room, intermittently over
9 a two and a half-hour period. No combustible
10 gas detectors were used to warn of the levels
11 of natural gas, which were accumulating inside
12 the building.

13 The gas eventually contacted one
14 of many potential ignition sources, triggering
15 a massive explosion. The blasts caused 4
16 deaths and at least 67 injuries, including an
17 amputation and severe burns. The facility
18 itself was severely damaged, with large
19 portions of the roof area experiencing
20 collapse.

21 In addition, damage to the
22 facility's ammonia-based refrigeration system

1 caused release of approximately 18,000 pounds
2 of toxic anhydrous ammonia to the atmosphere.

3 Subsequent to the event, the Slim
4 Jim facility closed. And hundreds of jobs
5 were lost in the region.

6 Just three days after the CSB
7 released its findings on the ConAgra incident,
8 on February 7th, 2010, a second devastating
9 natural gas explosion occurred at Kleen
10 Energy, a combined cycle natural gas fuel
11 power plant then under construction in
12 Middletown, Connecticut. At Kleen, workers
13 were not purging gas piping but, rather,
14 conducting an operation known as a gas blow
15 whereby natural gas is forced through piping
16 at high pressure and velocity in order to
17 remove debris that could damage the newly
18 installed gas turbine upon startup.

19 Large quantities of natural gas
20 and debris were released to the atmosphere
21 outside the power generation building. The
22 released gas accumulated and contacted an

1 ignition source, causing a massive explosion.

2 Six workers were killed. At least
3 50 were injured. And the completion of the
4 Kleen Energy power plant was significantly
5 delayed.

6 Both the Kleen and ConAgra
7 incidents had several important
8 characteristics in common. Both involved
9 planned work activities that led to large
10 releases of highly flammable natural gas in
11 the presence of workers and ignition sources.
12 Both caused serious loss of life, serious
13 injuries, and significant economic impacts.
14 Both had the potential to cause even more
15 damage and loss of life, and both were
16 entirely preventable.

17 In the aftermath of both
18 incidents, the CSB issued a number of
19 recommendations to a variety of stakeholders,
20 including voluntary consensus developers, such
21 as the National Fire Protection association
22 and the International Code Council.

1 At its June 2010 meeting in
2 Connecticut, the Board issued the
3 recommendation that is the subject of today's
4 presentation: a recommendation to the federal
5 Occupational Safety and Health Administration,
6 or OSHA, calling for the promulgation of a
7 regulation addressing fuel gas safety to both
8 construction and general industry.

9 The Board asked, at a minimum,
10 that the regulation prohibit the use of
11 flammable gas to clean piping, which was the
12 cause of the accident at Kleen Energy, and
13 that it prohibit purging flammable gases
14 inside, which was the cause of the accident at
15 ConAgra.

16 To prevent both types of
17 accidents, the CSB recommended that the new
18 regulation prohibit venting or purging
19 outside, where a flammable atmosphere could be
20 formed in the vicinity of workers or ignition
21 sources.

22 The Board also recommended that

1 the new regulations prohibit any work activity
2 in areas where the concentration of flammable
3 gas exceeds a fixed low percentage of the
4 lower explosive limit, or LEL, as determined
5 by appropriate combustible gas monitoring.

6 Lastly, the Board asked that the
7 new regulation require companies to develop
8 flammable gas safety procedures and training.

9 In issuing the recommendation to
10 OSHA, the Board noted that OSHA already has
11 industry and construction regulations for
12 flammable gases, including hydrogen,
13 acetylene, and liquified petroleum gases.
14 Yet, the use of natural gas in the U.S. far
15 exceeds the usage of all of these gases
16 combined.

17 In addition, 80 percent of natural
18 gas used in the United States is used in
19 sectors covered by OSHA. Still, OSHA does not
20 have a standard that addresses the safe
21 handling of natural gas or the hazards of
22 methane, which is the primary component of

1 natural gas.

2 More than three years have passed
3 since the Kleen Energy incident. And OSHA has
4 no plans to initiate rulemaking on this
5 important issue. In the agency's initial
6 response, dated December 2010, OSHA described
7 a number of commendable actions that the
8 agency took in the aftermath of the Kleen
9 Energy disaster. These included issuing
10 significant proposed penalties to the
11 companies involved in the commissioning of the
12 Kleen Energy facility and sending a strongly
13 worded letter to the 125 power plants that the
14 CSB identified as planning to commission new
15 turbines between 2010 and 2015.

16 That letter notified power plants
17 of the hazards of using gas lifts to clean
18 piping and called for the use of
19 non-flammable, non-explosive alternative
20 media. The letter also warned of severe
21 penalties under existing OSHA regulations,
22 including the general duty clause, for failure

1 to protect workers engaged in pipe-cleaning
2 operations.

3 Unfortunatley, OSHA's response was
4 silent on the issue of unsafe purging
5 operations such as that which occurred at
6 ConAgra. Moreover, the response stated only
7 that OSHA would "consider initiating
8 rulemaking for a fuel gas safety standard
9 during the agency's regulatory review."

10 A second response from OSHA, dated
11 March 2012, indicated that OSHA does not
12 believe it is appropriate to commence
13 rulemaking on fuel gas safety at this time.
14 Instead, OSHA has indicated that they will
15 monitor states' and localities' adoption of
16 NFPA standards addressing these hazards into
17 their fire codes and evaluate the
18 effectiveness of these standards at
19 controlling the targeted hazards. At that
20 point, the agency will determine whether
21 rulemaking is necessary to protect workers.

22 OSHA offered no fixed timeline for

1 conducting this evaluation. To date, OSHA has
2 yet to announce via press release or Federal
3 Register notice that it plans to commence
4 rulemaking on this issue at any time in the
5 near future.

6 Ensuring comprehensive and timely
7 safety improvements underscored the Board's
8 rationale for issuing recommendations to a
9 variety of recipients, including the National
10 Fire Protection Association. NFPA's revisions
11 to NFPA 54, the National Fuel Gas Code, and
12 their issuance of a brand new standard, NFPA
13 56, entitled "Standard for Fire and Explosion
14 Prevention During Cleaning and Purging of
15 Flammable Gas Piping Systems," will continue
16 to improve the safety of gas-processing
17 activities in the United States. But the
18 Board did not intend for voluntary consensus
19 standards to substitute for needed federal
20 regulation on fuel gas safety.

21 While valuable in establishing
22 best industry practice, voluntary consensus

1 standards carry the force of law only when
2 adopted into state and local codes or
3 explicitly referenced as mandatory in federal
4 regulations. Adoption of the most recent
5 editions of these standards at the state or
6 local level is often very slow and politically
7 difficult, even for the most safety-minded of
8 jurisdictions. Moreover, even in instances
9 where codes are enforceable by state and local
10 jurisdictions, enforcement capabilities are
11 often insufficient to prevent accidents.

12 In summary, OSHA's decision to
13 defer regulation indefinitely while monitoring
14 the implementation of voluntary consensus
15 standards is in direct conflict with the
16 intents of the CFC's recommendations, which is
17 now more than three years old. Therefore, CSB
18 recommendations and investigation staff
19 recommend that the Board vote today to
20 designate this recommendation with the status
21 open, unacceptable response.

22 Thank you. I will now turn it

1 over to our Managing Director, Dr. Horowitz,
2 for the public comment session.

3 CHAIR MOURE-ERASO: No, no.

4 MS. MORGAN: Oh, I'm so sorry.
5 Yes.

6 CHAIR MOURE-ERASO: Let me do
7 that. Let me do that.

8 MS. MORGAN: Sort of important.

9 CHAIR MOURE-ERASO: Anyway, we are
10 doing very well with time. So before hearing
11 the OSHA remarks, I am going to take a
12 five-minute break.

13 (Whereupon, the foregoing matter
14 went off the record briefly.)

15 CHAIR MOURE-ERASO: At this time I
16 would like to welcome and introduce to you Mr.
17 Thomas Galassi. He is the OSHA's Director of
18 Enforcement. And he is going to address the
19 recommendations that the CSB has presented so
20 far and also the recommendations of this
21 afternoon in combustible dust. I understand
22 Mr. Galassi is not going to be with us this

1 afternoon. So he is going to cover all of his
2 comments this morning.

3 Mr. Galassi?

4 MR. GALASSI: Thank you, Mr.
5 Chairman.

6 OSHA COMMENTS

7 MR. GALASSI: I have got some good
8 news. I have a PowerPoint-free presentation,
9 not that PowerPoint isn't important, but I
10 know that gets a little tedious.

11 Before I offer my prepared
12 comments, I would like to introduce my
13 colleagues here with me today. Number one is
14 my colleague, although I think he is probably
15 not here, but -- he is here -- is the Acting
16 Director of the Directorate of Standards and
17 Guidance, Mr. Bill Perry -- I guess they are
18 my shield here -- in addition, our Director of
19 our Office of Chemical Process Safety and
20 Enforcement Initiatives, Mary Lynn; our lead
21 process safety management engineer, long term
22 with OSHA, Mr. Mike Marshall; and a senior

1 process safety engineer from our Office of
2 Chemical Process Safety, Mr. Jeff Wanko.

3 So it is a pleasure to be here.
4 On behalf of Assistant Secretary David
5 Michaels and our newly confirmed Secretary of
6 Labor, Thomas Perez, I want to thank you for
7 inviting OSHA to this important meeting.

8 As you are aware, OSHA and its
9 state plan delegates regulate safety and
10 health in over eight million workplaces over
11 a wide range of industries. Despite our
12 efforts, each year more than 4,500 workers die
13 on the job in the United States. And more
14 than a million are injured, suffer injuries
15 serious enough for them to miss at least one
16 day of work.

17 OSHA cares deeply for the safety
18 and health of all workers in America and
19 believes these injuries are preventable. We
20 act aggressively to enforce all of the
21 standards, including those impacting the
22 process industries. OSHA's 29 CFR 1910.119,

1 "Process Safety Management of Highly Hazardous
2 Chemicals," is the most comprehensive standard
3 applicable to process industries.

4 Before I discuss OSHA's
5 activities, I want to make one very important
6 point. Although OSHA's mission is to assure
7 safety and healthful working conditions for
8 workers in America, it is ultimately the
9 employer's responsibility under the act to
10 provide a safe and healthy workplace.

11 OSHA has a number of tools at its
12 disposal to make sure employers fulfill that
13 duty and protect workers from workplace
14 hazards. The tools include enforcement with
15 special emphasis to help focus our inspection
16 activities on particular hazards; issuance of
17 standards and regulations, on which
18 enforcement is based; and compliance
19 assistance, providing guidance, materials, and
20 training.

21 OSHA's citations are based on
22 standards and regulations issued by the

1 agency. Where no standard exists, OSHA can
2 use its general duty clause, which states that
3 an employer must furnish a place of
4 employment, free from recognized hazards
5 likely to cause serious physical harm.

6 Standard setting is one of the
7 most important and permanent actions that OSHA
8 can take, but it is rarely the quickest means
9 of addressing workplace hazards. Not only do
10 OSHA standards require substantial outlay of
11 resources, but the process is extremely long.

12 A recent Government Accountability
13 Act's report, for example, estimated it takes
14 an average of seven years for OSHA to issue a
15 standard. And the process is only getting
16 longer. The rulemaking, therefore, is a tool
17 best reserved for the most widespread and
18 serious hazards.

19 Because of the enormous job OSHA
20 has and the limited resources available to
21 perform these tasks, we must carefully choose
22 which of these tools we use at any given

1 situation and what the most effective and
2 efficient action would be to address the most
3 important hazards.

4 Before deciding to address a
5 hazard by promulgating a new standard, OSHA
6 considers a number of factors. And they
7 include the estimated time it takes to issue
8 a final OSHA standard; the existing applicable
9 OSHA standards in place; the usefulness of our
10 general duty clause for addressing the
11 particular hazards, including the existence of
12 industry standards and codes which show the
13 industry knowledge of the hazards, which is a
14 particular requirement of general duty; the
15 effectiveness of training, education,
16 consultation, and outreach efforts; as well as
17 vigorous use of the bully pulpit. And, last
18 but certainly not least, is OSHA's available
19 resources to apply on a given problem.

20 OSHA appreciates and takes CSB
21 recommendations very seriously. We have
22 carefully considered and responded to every

1 recommendation the Board has submitted to the
2 agency, taken into account our resources and
3 broad responsibility to protect all workers in
4 America, not only those exposed to explosion
5 and catastrophic hazards.

6 Each of our responses, including
7 the four considered here today, was delivered
8 to the Board in a timely manner. When in an
9 OSHA analysis a Board recommendation,
10 including a recommendation to promulgate a new
11 standard may not be the most effective option,
12 OSHA may use other methods to address the
13 hazard, essentially taking a different route
14 to the same destination in order to
15 effectively protect workers as expeditiously
16 as possible.

17 I will now describe the actions
18 OSHA has taken or is in the process of taking
19 to respond to the recommendations under review
20 today, so first the coverage of atmospheric
21 storage tanks under the Process Safety
22 Management standard or the existence of the

1 exemption.

2 Following its investigation of the
3 July 17th, 2001 sulfuric acid tank explosion
4 at Motiva Enterprise, Delaware City, Delaware
5 facility, the CSB recommended that OSHA ensure
6 coverage under the Process Safety Management
7 standard of atmospheric storage tanks that
8 could be involved in a potential catastrophic
9 release as a result of being interconnected by
10 a covered process.

11 And, as we have heard this morning
12 in the report out, the incident occurred when
13 welding on a walkway closed close to a spent
14 sulfuric acid tank, ignited flammable
15 atmosphere in the headspace of the tank.
16 Motiva used the tank to separate spent
17 sulfuric acid used in petroleum refining from
18 and trained hydrocarbon. Because of the
19 hydrocarbon content, the tank's headspace
20 contained a flammable atmosphere. The
21 explosion caused a failure of the tank and
22 resulted in the death of the welder.

1 As we have heard this morning,
2 OSHA's Process Safety Management standard
3 exempts from coverage the contents of
4 atmosphere storage tanks, the sole function of
5 which is storing flammable liquids.

6 OSHA responded to the Chemical
7 Safety Board on April 22nd, 2003 explaining
8 that the spent sulfuric acid tank at Motiva
9 was actually a process tank meant for the
10 separation of sulfuric acid and hydrocarbons
11 and not a storage tank subject to the
12 atmospheric storage tank exemption.

13 OSHA also informed the CSB it
14 intended to repair a directive for its field
15 offices, outlining the application of the
16 atmospheric tank exemption.

17 OSHA continues to address
18 potential hazards associated with atmospheric
19 tanks on a case-by-case basis and is moving
20 forward with the guidance to the field I
21 mentioned previously. In addition, OSHA is
22 considering including questions regarding the

1 atmospheric storage tank exemption in its
2 recently announced request for information
3 related to revising the Process Safety
4 Management standard. The R-5 will address a
5 number of issues that have become evident in
6 the 21 years since OSHA promulgated the PSM
7 standard.

8 The next issue is management of
9 change. Following its investigation of the
10 2005 British Petroleum Texas City, Texas
11 explosion, the Chemical Safety Board
12 recommended that OSHA change its PSM standard
13 to explicitly state that management of change,
14 such as mergers, reorganizations, personnel
15 changes, staffing levels, or budget cuts are
16 covered under 1910.119(1) section, "Management
17 of Change."

18 In the December 12th, 2007
19 response to this recommendation, OSHA
20 explained to the CSB that organizational
21 change affecting process safety is already
22 part of the PSM requirements.

1 OSHA has successfully cited
2 organizational change under paragraph 119(1),
3 both before and after the CSB recommendation.
4 At both Formosa Plastics and Kraft Foods, OSHA
5 successfully cited organizational change that
6 materially affected, changes which materially
7 affected the safety of the process. OSHA,
8 therefore, requested that CSB close the
9 recommendation.

10 In addition, OSHA issued a field
11 memorandum to its regional administrators on
12 March 31st, 2009, explaining that OSHA's
13 position on enforcement of paragraph 119(1)
14 and organizational change. The memorandum
15 clearly states that a facility must initiate
16 its management of change process if an
17 organizational change has potential to impact
18 any of the process elements listed in 119(1),
19 subsection 1.

20 Finally, OSHA is considering
21 including questions relating to management of
22 change, organizational change, to the recently

1 announced request for information for advising
2 the Process Safety Management standard.

3 Next is fuel gas safety following
4 the 2010 explosion at Kleen Energy
5 construction site in Middletown, Connecticut.
6 The CSB recommended that OSHA promulgate
7 regulations to address fuel gas safety for
8 both construction and journal industry.

9 OSHA responded that the agency
10 would consider promulgating new flammable gas
11 safety regulations. However, upon further
12 review, OSHA determined that rulemaking is not
13 the best option at this time for a number of
14 reasons that I would briefly like to touch on.

15 In general, OSHA believes the
16 country is well-served by the current
17 framework of building and mechanical codes
18 that face fuel gas safety under national Fire
19 Protection Association standard 54, National
20 Fuel Gas Code, under International Code
21 Council's international fuel gas code, and the
22 American Society of Mechanical Engineers code

1 for pressure piping. These codes incorporate
2 by reference in many municipalities, counties,
3 states throughout the country, provide broad
4 engineering standards for fuel gas systems in
5 business and residence.

6 Given that this effective
7 regulatory structure already exists, OSHA must
8 consider the utility of a fuel gas standard
9 given its regulatory priorities and finite
10 resources.

11 OSHA's other compressed gas
12 standards exists because the gases present
13 unique hazards; for example, the detonation of
14 hazards of acetylene and hydrogen into high
15 density and release of potential of liquefied
16 petroleum gas, such as propane, because the
17 facilities that use gases such as hydrogen,
18 acetylene, propane, and butane typically store
19 large inventories on site or at the point of
20 use, which presents a much greater hazard to
21 workers.

22 In response to the CSB

1 recommendation on the Kleen Energy explosion
2 on purging and cleaning of fuel gas piping,
3 OSHA participated as a technical resource in
4 the preparation of NFPA's new fuel gas process
5 safety, NFPA 56, standard and has maintained
6 a full awareness of the standard's content.

7 Relatedly, by letter dated August
8 27th, 2010, OSHA directly placed energy
9 companies and turbine manufacturers on notice
10 regarding the hazard of releasing flammable
11 gases into congested workplaces. OSHA will
12 continue to monitor developments and
13 implementation of NFPA's 56 as it becomes a
14 permanent NFPA standard. If in the future
15 OSHA discovers an employer exposing employees
16 to fire and explosion hazards associated with
17 gas blows, the agency can cite the employer
18 for violation of the general duty clause, with
19 NFPA 56 representing one source of industry
20 recognition of a gas blow hazard.

21 Even though OSHA has several tools
22 to address hazards associated with the gas

1 blows, it has determined that gas blows and
2 their associated hazards are not widespread.
3 In fact, our search revealed that there have
4 been no other fatalities due to gas blows
5 since the Kleen Energy incident. As a result,
6 OSHA believes that no further regulatory
7 action is needed because of the effective
8 comprehensive enforcement and recognition
9 already in place.

10 And, lastly, combustible dust. In
11 2006, the CSB recommended that OSHA issue a
12 standard designed to prevent combustible dust
13 fires and explosions in general industry.
14 OSHA strongly agrees that the best course of
15 action is a federal regulation to control
16 combustible dust hazards.

17 As you may know, on April 29th,
18 2009, the Department of Labor announced its
19 intent to initiate a comprehensive rulemaking
20 on combustible dust for the first new
21 regulatory action of the administration. On
22 October 21st, 2009, OSHA published an Advance

1 Notice of Proposed Rulemaking in the Federal
2 Register as an initial step in the development
3 of a standard to address the hazards of
4 combustible dust.

5 The ANPR included 69 questions.
6 The questions covered a variety of categories,
7 including the definition of combustible dust,
8 controls needed to mitigate the hazards,
9 hazards and analyses in other such categories.

10 During the comment period, which
11 ended January of 2010, OSHA received comments
12 from over 150 individuals representing
13 different industries and organizations. And
14 those comments can be found at website
15 www.regulations.gov, as all comments can be
16 found. At present, the comments have been
17 compiled, and responses to each question have
18 been addressed.

19 After the ANPR publication, OSHA
20 convened six stakeholder meetings, two in
21 Washington, D.C., December 2009; two in
22 Atlanta in February 2010; two in Chicago in

1 April of 2010; and a web chat in June of 2010.

2 As a part of the rulemaking
3 efforts, OSHA conducted 11 site visits of
4 facilities handling combustible dust. Visits
5 covered pharmaceutical plants, paper, power
6 plants, furniture, food, sulfur, wet corn
7 milling industries, representing a
8 cross-section of industries potentially
9 affected by a new combustible dust standard.

10 Additionally, the staff from OSHA
11 standards group accompanied regional and area
12 personnel and contractors on three site
13 visits. OSHA has developed several regulatory
14 alternatives ranging from basic to
15 comprehensive. The agency is also preparing
16 the necessary materials and analyses for the
17 Small Business Regulatory Enforcement Fairness
18 Act review, which is scheduled to begin in
19 November of 2013. After the SBREFA meeting,
20 OSHA will continue to work on publishing the
21 proposed rule.

22 Because the rulemaking process is

1 time-consuming, OSHA has taken more rapid
2 steps to ensure that workers are protected in
3 the interim. So in October of 2007, OSHA
4 initiated a combustible dust National Emphasis
5 Program. In light of the Imperial Sugar dust
6 explosion in February of 2008, OSHA expanded
7 the National Emphasis Program to address
8 industries, to focus on industries, a more
9 frequent, high-consequence dust incidence.
10 The revised NEP includes 64 types of
11 industries for inspection.

12 In addition, OSHA inspected all
13 sugar refineries, beaten sugar cane, under
14 federal jurisdiction as part of the National
15 Emphasis Program.

16 OSHA is taking and will continue
17 to take strong enforcement action to address
18 combustible dust hazards. Since the start of
19 the National Emphasis Program, OSHA and its
20 day plan partners conducted over 3,700
21 inspections, identifying over 14,000
22 violations at facilities handling combustible

1 dust.

2 In the absence of a combustible
3 dust standard, OSHA has a number of tools,
4 such as the general duty clause and our
5 housekeeping standard, which addresses the
6 accumulation of combustible dust in the
7 workplace.

8 OSHA also uses educational tools.
9 In 2005, OSHA published a safety and health
10 information bulletin titled "Combustible Dust
11 in Industry: Preventing and Mitigating the
12 Effects of Fire and Explosions."

13 This comprehensive guidance
14 highlights the hazards associated with
15 combustible dust, the work practices,
16 engineering controls that reduce the potential
17 for dust explosion that reduce the danger to
18 employees; if such explosions were to occur,
19 the training needing to protect employees from
20 these hazards.

21 In light of the tragedy at
22 Imperial Sugar, OSHA mailed 30,000 copies of

1 this bulletin to employers identified as being
2 at-risk industry. This proactive step
3 reminded employers of their duty to furnish
4 employees with employment free of hazards
5 resulting in serious physical harm and
6 offering them instruction and information on
7 how it can be accomplished.

8 OSHA has also clarified its hazard
9 communication requirements for combustible
10 dust hazards. On March 26th, 2012, OSHA
11 amended its hazard communication standards to
12 incorporate the globally harmonized standard
13 for classification labeling of chemicals,
14 termed GHS. As part of those revisions, OSHA
15 adopted the regulatory language that
16 explicitly requires combustible dust hazards
17 to be disclosed on labels and safety data
18 sheets. OSHA is also working with the U.N.
19 subcommittee on the GHS to include text in the
20 GHS on the classification of combustible dust
21 hazards.

22 In the interim, until a final

1 combustible dust standard is issued, the
2 agency's strong and effective enforcement of
3 existing regulatory and statutory requirements
4 combined with education and outreach to
5 employers, employees is helping to protect the
6 safety and health of working men and women who
7 may be exposed to combustible dust hazards.

8 OSHA is certain that rulemaking
9 efforts that are currently underway will
10 further reduce the potential combustible dust
11 flash fires, deflagrations, and explosions.

12 OSHA is in full agreement with the
13 CSB that there are serious chemical
14 plant-related safety and health issues facing
15 workers in America and that strong action must
16 be taken. In every instance, OSHA has taken
17 strong action to address hazards identified by
18 the CSB. We would like to work constructively
19 with the CSB in the future and find ways to
20 best reach our common goal to protect the
21 workers and communities in this country.

22 Thank you.

1 CHAIR MOURE-ERASO: Thank you very
2 much, Mr. Galassi. We appreciate your
3 comments. I thank you for them being so
4 comprehensive. I assure you that what you
5 have said and what we have presented, we will
6 take it into account in our deliberations.
7 Thank you very much.

8 PUBLIC COMMENTS

9 CHAIR MOURE-ERASO: So now we move
10 to the next issue in the agenda. We would
11 like to ask for public comments. I would like
12 to request that whoever is presenting public
13 comments to us, I will appreciate if they
14 identify who they are representing so we can
15 have that for the record.

16 I am going to call to facilitate
17 this part of the public comments to the CSB
18 Managing Director, Dr. Daniel Horowitz. That
19 is going to facilitate the process. So Dr.
20 Horowitz?

21 DR. HOROWITZ: We hope that OSHA
22 will stay because we during our question and

1 answer may have some questions directed to
2 OSHA. Is that acceptable?

3 CHAIR MOURE-ERASO: Yes. Well, I
4 wonder how OSHA feels about this. There might
5 be some comments that refer to your
6 presentations, Mr. Galassi. We will very much
7 appreciate if you could stay here for a few
8 minutes during this. Thank you very much,
9 appreciate it.

10 DR. HOROWITZ: Thank you, Mr.
11 Chairman.

12 We have a number of folks who have
13 signed up to give their comments in person,
14 received a number of comments in writing.
15 And, consistent with other public meeting
16 practice, if I could ask each commenter to
17 limit their comments to about three minutes
18 and to please spell your name clearly for the
19 final report?

20 And for those people who have
21 submitted their comments in writing, Mr.
22 Chairman, they are quite voluminous. And I

1 propose to summary them unless there is
2 someone here from that organization who wishes
3 to summarize them instead.

4 The first commenter is Ms.
5 Katherine Rodriguez, who, as the Chairman
6 mentioned, lost her father in the 2004 Texas
7 City incident and is representing the United
8 Support and Memorial for Workplace Fatalities
9 and has traveled here from Houston. So thank
10 you, Ms. Rodriguez.

11 MS. RODRIGUEZ: Good morning.
12 Again, my name is Katherine Rodriguez,
13 K-a-t-h-e-r-i-n-e R-o-d-r-i-g-u-e-z. And I am
14 with United Support and Memorial for Workplace
15 Fatalities.

16 I would like to address the
17 recommendation to OSHA on the revision of the
18 Process Safety Management standard to require
19 management of change reviews for certain
20 organizational changes. As you know, this is
21 as a result of the CSB's investigation of the
22 March 23rd, 2005 explosion at the BP Texas

1 City refinery.

2 I have a highly personal
3 perspective on this recommendation. My father
4 was killed at that very same refinery six
5 months before that explosion, on September
6 2nd, 2004. His incident was cited in the
7 CSB's final report as the Ultraformer number
8 3 incident.

9 My father and two of his coworkers
10 received second and third degree burns on the
11 majority of their bodies during the opening of
12 a pipe flange. The valve they were working on
13 had stored energy. It was determined that the
14 absence of a bleed valve didn't allow them to
15 know for certain if the pipe was safe to open.

16 It was also determined that the
17 incident was process safety-related and
18 revealed a serious decline in process safety
19 and management system performance at the BP
20 Texas City refinery.

21 My father received burns to 80
22 percent of his body. He endured multiple skin

1 graft surgeries and painful daily cleaning of
2 his skin. For two and a half months, he would
3 remain in the hospital, until November 12th,
4 2004, when he died from his injuries.

5 OSHA did investigate his incident
6 and cited BP Products North America \$102,500
7 for 7 serious and 1 willful violations. The
8 willful violation was for failure to control
9 hazardous energy.

10 I fully support the recommendation
11 to amend the OSHA PSM standards 29 CFR
12 1910.119, section (l) to require management of
13 change for organizational changes that may
14 impact process safety.

15 An independent review panel, the
16 Baker panel, said that BP made many
17 significant changes, establishing several new
18 reporting lines. And relationships remain
19 undefined. If management of change was a
20 requirement, these new lines would have been
21 required to be reviewed, possibly preventing
22 incidents, like my father's in the March 23rd

1 explosion.

2 OSHA's response to this
3 recommendation is the policy memo to clarify
4 organizational change under management of
5 change. I acknowledge and appreciate the memo
6 and believe that it is a step in the right
7 direction. My fear is that the memo is not
8 enough to prevent another fatal incident that
9 takes the life of another worker.

10 Earlier this year, the BP Texas
11 City site was acquired by Marathon Petroleum.
12 This is yet another major organizational
13 change. The BP Texas City site, now Marathon,
14 had 22 worker fatalities in 5 years, from 2004
15 to 2009.

16 I am encouraged by OSHA's spring
17 regulatory agenda to address management of
18 change in PSM. I understand that changing the
19 standard is a long, cumbersome rulemaking
20 process, but I cannot help but wonder if
21 changing the standard prevents another event
22 like what happened in Texas City, is that not

1 worth all of our efforts?

2 Our family members who die on the
3 job are not just statistics. They are our
4 sons, daughters, sisters, brothers, husbands,
5 and fathers.

6 My father spent his 35th wedding
7 anniversary in the hospital. My kids will
8 only get to hear stories about him. I miss
9 him very much, and that pain will never go
10 away.

11 I am asking the Board to vote to
12 designate the recommendation related to
13 management of change and PSM with the status
14 of open, unacceptable response so that no
15 other family member has to go through the pain
16 and suffering it might have.

17 Thank you.

18 DR. HOROWITZ: Thank you, Ms.
19 Rodriguez.

20 The next speaker is Kim Nibarger.
21 He will be speaking twice. He will be
22 speaking first representing United

1 Steelworkers. Three minutes, please.

2 And before you start, Kim, I just
3 want to remind anyone who has dialed in on the
4 telephone -- there are some folks -- that you
5 can submit comments at csb.gov. And I will be
6 happy to read or summarize them here from the
7 podium.

8 Kim, go ahead.

9 MR. NIBARGER: Good morning. My
10 name is Kim Nibarger, K-i-m N-i-b-a-r-g-e-r.
11 I work for the United Steelworkers Health,
12 Safety, and Environment Department.

13 First, we want to thank the Board
14 for conducting this public meeting to give
15 more people an opportunity to see what you do
16 as well as the opportunity to participate in
17 the process.

18 We support the recommendation of
19 including atmospheric storage tanks in the
20 Process Safety Management standard, but it
21 appears that the problem with OSHA enacting
22 these recommendations is not so much the

1 agency but the regulatory system. GAO issued
2 a report last year citing that it took OSHA
3 nearly eight years to issue a new standard on
4 health or safety.

5 Consequently, the OSHA Process
6 Safety Management standard, which covers the
7 safe operation of facilities that handle
8 highly hazardous chemicals, has not been
9 updated. When OSHA has tried to initiate rule
10 changes, the regulatory process, including the
11 legal challenges in OSHA's higher burden of
12 proof of the need for a rule under the
13 substantial evidence standard, creates a huge
14 burden on the department. Many of these
15 requirements have been implemented in the last
16 20 years.

17 The GAO has issued several
18 statements, in addition to the report, that
19 outline the burdensome, time-consuming
20 process, and why this pushed OSHA to rethink
21 issuing new statutes because of the time and
22 expense, neither of which it has.

1 Reactives are another example of a
2 process safety issue that needs serious
3 attention, particularly in the light of the
4 recent West Texas explosion.

5 In 2002, the CSB made a
6 recommendation that reactive hazards receive
7 more comprehensive attention by requiring OSHA
8 in the Process Safety Management standard and
9 EPA through the risk management program, to
10 include all existing information on chemical
11 reactivity.

12 Yet, in 2010, when OSHA stated
13 that reactives were of great concern to them,
14 they in the same breath said, "But we just
15 don't have the time and money to address it at
16 this time." Instead, another compliance
17 directive was going to be issued.

18 Maybe more attention should be
19 placed on how to protect workers on the job,
20 rather than how to stop regulators from making
21 new rules. We hear that more rules will kill
22 jobs. While we haven't seen evidence of that

1 forecasted job loss, we have seen that
2 repealing or stalling safety rules does kill
3 workers.

4 We support the recommendation to
5 OSHA that PSM cover management of change.
6 Over the last several years, we have seen
7 unprecedented reduction in operating and
8 maintenance staff in the nation's oil
9 refineries. We have also seen an accelerated
10 push of job combinations. This has for the
11 most part been motivated as cost-saving
12 initiatives by the most profitable industry in
13 the history of the world.

14 For the workers, it has caused
15 apprehension about the ability to adequately
16 respond to upset or emergency conditions. In
17 some instances, the companies have done a
18 management of change for the personnel
19 changes, but they are done from a perspective
20 of supporting the decisions to make the
21 change. They are what we refer to as a matter
22 of convenience, MOC. They fulfill the

1 paperwork requirements of the standard but are
2 done with less rigor than was intended. The
3 scope of the potential effects from the
4 changes are often very narrow, focusing only
5 on the specific job duties and not looking at
6 all reactions required by this position in all
7 operating conditions.

8 Let us remember that there is
9 nothing stopping an employer or industry trade
10 group from adopting the CSB's recommendations.
11 There are no restrictions on a company going
12 above and beyond the minimum requirements.

13 An equal responsibility falls on
14 the employer to provide a workplace free from
15 recognized hazards that are causing or are
16 likely to cause death or serious physical harm
17 to their employees. Not having enough
18 employees to respond to an emergency certainly
19 falls under this requirement. It would seem
20 to make good business sense to have an
21 adequate workforce to protect your investment.
22 It would also seem to make sense that a

1 company or industry would want to implement
2 this recommendation without having to be told
3 to do so by the regulator.

4 Thank you.

5 DR. HOROWITZ: Thank you, Kim.

6 And I'll come back to you shortly.

7 MR. NIBARGER: Okay.

8 CHAIR MOURE-ERASO: Next, Guy
9 Colonna from the National Fire Protection
10 Association. Three minutes, please.

11 MR. COLONNA: Thank you. Mr.
12 Chairman, Board members, staff, my name is Guy
13 Colonna. I'm the Division Manager for the
14 Industrial and Chemical Engineering Department
15 with the National Fire Protection Association.
16 And I am here to respond regarding the gas
17 process safety activities with respect to the
18 ConAgra and Kleen Energy incidents.

19 NFPA responded to recommendations
20 from the CSB for both of these referenced
21 incidents using the broadest features of our
22 consensus standard development system to

1 satisfy the CSB recommendations in a timely
2 manner.

3 In response to the ConAgra
4 facility incident in June 2009, NFPA's
5 National Fuel Gas Code Technical Committee
6 developed and approved a tentative interim
7 amendment, TIA, to revise the provisions in
8 NFPA 54, national fuel gas code, applicable to
9 the safe purging into service of fuel gas
10 appliances.

11 The TIA was issued by the NFPA
12 Standards Council in August 2010, completing
13 the revision of the code to add expanded
14 requirements related to the safe purging of
15 gas systems.

16 These interim changes to NFPA 54
17 became permanent with the completion of the
18 current 2012 edition of the code. CSB
19 acknowledges action by NFPA to amend the code
20 as recommended and has closed the
21 recommendation action acceptable.

22 Less than a week after the CSB

1 issued its recommendations from ConAgra, an
2 explosion at the Kleen Energy power plant in
3 Connecticut focused increased attention on the
4 practices to be followed any time flammable
5 gas can be released from a process or a piece
6 of equipment without adequate controls to
7 prevent the gas from coming into contact with
8 ignition sources.

9 After the Kleen Energy explosion,
10 NFPA was once again able to support CSB by
11 providing guidance on safe practices for such
12 activities. During this time, we discovered
13 that no single code standard or regulation
14 fully addressed the gas blow activity involved
15 with the clean energy incident or other
16 related activities where flammable gases might
17 be released.

18 In the aftermath of the incident,
19 NFPA contacted the leaders and members from
20 several of the NFPA technical committees to
21 discuss possible strategies that NFPA could
22 implement in reaction to the recommendation

1 that was anticipated from this incident. In
2 June 2010, NFPA received the CSB
3 recommendation to modify NFPA 54, the national
4 fuel gas code.

5 Based on the input from the
6 respective committee members and a review by
7 NFPA staff, NFPA proposed an alternative
8 strategy in response to the CSB
9 recommendation. NFPA proposed to create a
10 completely new standard to address all
11 applications involving flammable gases where
12 during operation, startup, or maintenance,
13 those gases could be released to the
14 environment without adequate ignition
15 controls.

16 With approval from the NFPA
17 Standards Council to begin this process in
18 October 2010, NFPA solicited interested
19 parties to join this new committee and work on
20 developing this new standard while in the
21 preliminary stages of this new standard
22 development NFPA took the opportunity to share

1 the strategy for the new standard with both
2 CSB and OSHA.

3 Our intent for meeting with CSB
4 was to outline for the Board why NFPA was
5 pursuing an alternative path in response to
6 the Board urgent recommendation from the Kleen
7 incident.

8 Essentially NFPA adopted this
9 strategy for two reasons. First, if
10 successful, it would yield a more
11 comprehensive standard of practice that was
12 much broader than that called for by CSB
13 recommendation; and NFPA also believed it
14 could be achieved much more quickly than the
15 actions specifically recommended.

16 We asked to meet with OSHA staff
17 to review our plan and determine their
18 interest in participating. OSHA staff
19 currently serves on over 40 of the NFPA
20 technical committees. And with the CSB
21 recommendation directly to OSHA, NFPA wanted
22 the agency's involvement so they could be

1 familiar with the new standard and its
2 background and the agency can consider using
3 the new standard as part of any regulatory or
4 compliance action it might take.

5 As a result of our meeting with
6 OSHA, a member of the OSHA staff was
7 appointed, as Mr. Galassi has noted in his
8 remarks, to the Gas Process Safety Technical
9 Committee and has participated in all of the
10 meetings during development of NFPA 56 PS, for
11 preliminary standard, and continued to fully
12 participate during the recent meetings, where
13 we have developed the 2014 edition.

14 In an unprecedented action for
15 standards development, NFPA completed and
16 issued NFPA 56 PS, standard for fire and
17 explosion prevention during cleaning and
18 purging of flammable gas piping systems using
19 an accelerated schedule and process. And
20 barely 18 months after the Kleen Energy
21 incident occurred, our standard was completed
22 and issued.

1 Because the standard was developed
2 using an expedited process in response to the
3 urgency of the Board's recommendation, NFPA
4 has just issued the 2014 edition of NFPA 56
5 following the full procedures of the NFPA
6 standards development process.

7 Upon completion and issuance of
8 NFPA 56 PS in August 2011, CSB acknowledges
9 the accomplishment by NFPA and a designated
10 recommendation as open acceptable response
11 pending the adoption of the 2014 edition.
12 These incidents related to purging and other
13 gas process safety activities, highlighted gas
14 from the consensus code, and standards as well
15 as federal regulations are the hallmark of the
16 NFPA process.

17 We work with the CSB staff and
18 Board on each of these recommendations to use
19 the NFPA standards-making system and our
20 network of technical committee volunteers to
21 address each of the issues raised in a timely
22 manner. Consistent with the safety goals of

1 both the CSB and NFPA, we also ensure that
2 information regarding these outcomes is widely
3 disseminated.

4 Thank you.

5 DR. HOROWITZ: Thank you.

6 And for those of you who do have
7 longer statements prepared, I invite you to
8 submit your full text for the record. And, if
9 you would, please do try to talk in just a
10 couple of minutes. We have eight minutes and
11 six commenters signed up and a number of
12 written comments as well.

13 Next is Liz Borkowski, George
14 Washington University.

15 MS. BORKOWSKI: Good morning. My
16 name is Liz Borkowski. That's L-i-z
17 B-o-r-k-o-w-s-k-i. And I am a researcher at
18 the George Washington University School of
19 Public Health and Health Services.

20 I would like to thank the Chemical
21 Safety Board for holding this meeting today.
22 The hazards described in today's staff

1 presentations have already killed and injured
2 workers and harmed communities. They continue
3 to place workers' lives and public health at
4 risk. And they warrant a strong response from
5 OSHA.

6 As Board members Beth Rosenberg
7 and Mark Griffon have noted, OSHA faces many
8 barriers to implementing CSB recommendations.
9 Insufficient action on the hazards described
10 today are symptomatic of problems that extend
11 far beyond the agency, including an
12 anti-regulatory climate and insufficient
13 resources. OSHA rulemaking should not take
14 eight years to complete, as the recent GAO
15 report found that it does.

16 I support the CSB staff
17 recommendations to classify the open
18 recommendations discussed this morning as
19 open, unacceptable response. I believe doing
20 so is a step toward addressing barriers to
21 OSHA rulemaking and is consistent with
22 recognizing the important work OSHA is already

1 doing to address these hazards.

2 I also support any CSB activities
3 to identify root causes of slow or inadequate
4 OSHA responses to serious workplace hazards
5 and to recommend ways to ensure OSHA can
6 respond swiftly and effectively to hazards
7 that place workers' lives and health at risk
8 and endanger communities.

9 Thank you.

10 DR. HOROWITZ: Thank you very
11 much.

12 And next is Charlotte Brody,
13 representing the BlueGreen Alliance.

14 MS. BRODY: Thank you. And thank
15 you for doing this hearing.

16 I am Charlotte Brody,
17 C-h-a-r-l-o-t-t-e B-r-o-d-y. I am a
18 registered nurse and the Vice President for
19 Health Initiatives for the BlueGreen Alliance,
20 a coalition of ten labor unions and four
21 environmental organizations.

22 The president for whom this

1 building is named was a mater of the big
2 screen. Ronald Reagan knew how to talk to the
3 American people in the broadest, most
4 cinematic ways, and to leave the details for
5 others.

6 I want to talk to you in the
7 master of optics', Ronald Reagan, way for a
8 minute. First, if there is a hearing about
9 OSHA's unacceptable responses to CSB
10 recommendations, what are the plans for the
11 rest of the series? When will you call out
12 industry groups? When will you call out
13 Congress and OMB? When will you publicly
14 review your own incomplete responses?

15 Second, in your opening remarks,
16 Mr. Chairman, you eloquently quoted Tammy
17 Miser and other members of the families of
18 chemical safety tragedies for asking for
19 government agencies to care, for expecting and
20 demanding action.

21 It is a very simple and compelling
22 plot line: action versus inaction, caring or

1 non-caring. If there are missed deadlines,
2 then OSHA must not care. If there are
3 recommendations that have not been
4 implemented, the problem must be inaction:
5 neat, simple, and dangerously wrong.

6 There has been plenty of action.
7 There has been plenty of caring. But most of
8 this has been the action and caring of the
9 industry and political groups who don't want
10 strong regulations and enforcement who make
11 good livings taking action and taking care to
12 make sure that OSHA and other regulatory
13 authorities stay weak and ineffective.

14 It is shameful that workers in the
15 United States are less safe than the women and
16 men who do the same jobs in other countries,
17 shameful. I share your frustration, but how
18 much safer are we making workers when we point
19 fingers, rather than strategically determining
20 how to be the model agency in finding the ways
21 out of no way: the strategies that allow us
22 to overcome the pressure and the power of the

1 opponents of more protections?

2 CSB has the mandate, the talent,
3 and the bully pulpit, the stage presence to
4 invoke Ronald Reagan, to tell the real story
5 to the American people, not a story of lack of
6 caring, inaction, but the more nuanced story
7 of the power and pressure of the U.S. chemical
8 and petroleum industry. And the only good
9 government is no government-elected officials
10 and the ways to effectively find our way
11 under, over, and through that power to better
12 protections for American workers and
13 communities.

14 Thank you.

15 DR. HOROWITZ: Thank you, Ms.
16 Brody.

17 Next is Kim Nibarger presenting
18 statement on behalf of Eric Frumin for the
19 Change to Win Coalition. And he seems to have
20 stepped out. So we will see about that.

21 Next is Darius Sivin for the
22 United -- oh, hold on, Darius. Kim, would you

1 like to give your statement on behalf of the
2 Change to Win Coalition?

3 MR. NIBARGER: Okay. Thank you.
4 Sorry.

5 DR. HOROWITZ: Sorry, Darius.

6 MR. NIBARGER: I have been asked
7 to read a statement on behalf of Eric Frumin,
8 E-r-i-c F-r-u-m-i-n, who is the Director of
9 Health and Safety for Change to Win.

10 "Change to Win appreciates the
11 opportunity to present our views on the
12 recommendations concerning the Process Safety
13 Management standard. We support the Board's
14 work to maintain attention to these critically
15 important improvements in OSHA's most
16 important standard on safety in the chemical
17 industry.

18 "The Board is not formally
19 considering its other recommendations
20 regarding reactive chemical hazards. The
21 Board has issued its landmark study and
22 recommendation, 2002. And OSHA initially

1 refused to provide an adequate response.

2 "OSHA's response in 2003 was
3 especially unfortunate because OSHA had
4 recognized the severity of the gap in the
5 Process Safety Management standard in 1995,
6 following the horrific incident at Napp
7 Technologies in New Jersey.

8 "OSHA also had made considerable
9 efforts in the '90s to prepare for formal
10 rulemaking. And the administration's decision
11 to drop it from the regulatory agenda in 2001
12 was indeed shameful. Those recommendations
13 are as important and relevant now as they were
14 then.

15 "The recent catastrophe in West
16 Texas demonstrates the urgency of closing the
17 loopholes on reactive chemicals in the basic
18 OSHA and EPA regulations on chemical
19 facilities and storage facilities, as Chairman
20 Moure-Eraso clearly stated in his recent
21 testimony to the Senate Committee on
22 Environment and Public Works.

1 "The fault for that continuing gap
2 is not solely one of failure by OSHA. In
3 2010, during a web chat on the regulatory
4 agenda, Assistant Labor Secretary David
5 Michaels stated the following in response to
6 a question from a reporter about the failure
7 to respond to a 2009 congressional request for
8 action on the reactive hazards and the PSM
9 standard, 'Reactive hazards are of great
10 concern to OSHA. Unfortunately, there are a
11 large number of other major priorities on the
12 regulatory agenda at the current time. And
13 our resource constraints make it impossible to
14 add reactive hazards at this time. Meanwhile,
15 we are planning to address reactive hazards
16 through a compliance directive.'

17 "OSHA never issued the compliance
18 directive dealing with reactive chemical
19 hazards either. It is simply unacceptable
20 that the Office of Management and Budget would
21 have allowed OSHA to be forestalled from
22 dealing with such a critically important

1 protection merely because of shortage of
2 funds.

3 "Standard setting is among the
4 smaller part of OSHA's entire budget. And a
5 few million dollars to support such a
6 rulemaking would make no difference to the
7 administration's budget priorities.

8 "We are pleased that OSHA has
9 reinstated the PSM standard in the latest
10 regulatory agenda, but we are deeply saddened
11 and enraged that it only happened after the
12 ammonium nitrate explosion in West Texas.

13 "The people of West Texas have
14 paid a huge price for the continuing failure
15 of the Labor Department, EPA, the Office of
16 Information and Regulatory Affairs, and the
17 Office of Management and Budget to fix this
18 problem.

19 "We hope that they will be the
20 last, but we fear that the reactive chemical
21 hazards lurking through our nation will
22 inflict their toll on many more communities in

1 the future unless the gaps are closed.

2 "Where is the Board to take note
3 of this additional issue as it conveys its
4 concerns about the gaps in OSHA's PSM standard
5 and EPA's RMP standards to the appropriate
6 parties, including the Congress, these two
7 agencies and the oversight agencies at OMB,
8 who bear major responsibility for failures in
9 the administration's regulatory program?

10 "Thank you."

11 DR. HOROWITZ: Thank you.

12 Darius? Sorry about that.

13 MR. SIVIN: My name is Darius
14 Sivin with the United Auto Workers. And I
15 would like to say a couple of things first.
16 A hearing like this is possible precisely
17 because the CSB is an independent forum, much
18 like the Federal Trade Commission and the
19 Equal Employment Opportunity Commission.

20 A recent bill in Congress would
21 deprive all such independent agencies of their
22 independence, bringing them all under control

1 of the White House, making such hearings like
2 this much less possible. And I would like to
3 say that I am glad of the independence of
4 independent agencies and would like to see
5 that preserved.

6 Secondly, I, like the Board, am
7 concerned that OSHA has not taken more action
8 on many of these things. But, like the other
9 commenters here, I am also concerned about the
10 way in which the Board is going about pointing
11 this out because I am very concerned that the
12 primary reasons for which OSHA has not taken
13 more action on many of these things is a
14 concerted anti-regulatory campaign by trade
15 associations.

16 I don't know if it is within the
17 authority of the Board to call trade
18 associations themselves out for their
19 political activities, but the Board needs to
20 be extremely careful in calling OSHA out for
21 its inaction in not inadvertently serving the
22 political goals of those trade associations

1 who have launched an anti-regulatory campaign
2 to make OSHA appear bad. So if what is
3 ultimately heard is trade associations say,
4 "OSHA, bad," CSB says, "OSHA bad," that is not
5 a message that will help actually get better
6 response to these recommendations.

7 So I think that the CSB has to be
8 very careful to do what it can within its
9 ability to act to recognize that there is a
10 larger context to OSHA's inaction and to call
11 out the players in that larger context within
12 the CSB's ability to react and not pretend, as
13 the Republicans do, that OSHA is all powerful
14 and can issue any sort of standard it wants.

15 Thank you very much. I appreciate
16 the opportunity to offer my comments.

17 DR. HOROWITZ: Thank you, Mr.
18 Sivin.

19 Next is Laura Swetz with the AFPM,
20 which is the -- oh. Okay. All right. That
21 was easy. And next is Randy Rabinowitz.

22 MS. RABINOWITZ: Hi. My name is

1 Randy Rabinowitz. That's R-a-n-d-y
2 R-a-b-i-n-o-w-i-t-z. I am an attorney in
3 private practice representing unions on OSHA
4 issues. And I am here this morning on behalf
5 of the steelworkers.

6 I want to compliment the Board on
7 holding this public meeting. Your work to
8 recognize hazards and publicize conditions
9 that put workers at risk is important, but I
10 would urge you not to label OSHA's responses
11 to your recommendations, at least in two
12 instances that I will describe, unacceptable.

13 It is true that OSHA has not set
14 standards to address each of the hazards the
15 CSB has identified, but some of the fault for
16 that failure lies with the CSB itself. I have
17 four points I would like to make.

18 The CSB's recommendations
19 consistently call on OSHA to set standards to
20 address a hazard it has identified in one of
21 its investigations. OSHA has a wide range of
22 regulatory tools in its arsenal. Standard

1 setting is only one of them.

2 While setting a standard is often
3 the best way to address a hazard, it is also
4 the most resource-intensive and involves a
5 host of legal, political, and procedural
6 hurdles that OSHA must meet before it can move
7 forward. Because of this, GAO has found that
8 OSHA takes on average eight years to complete
9 a standard once the rulemaking process begins.

10 None of the CSB recommendations at
11 issue this morning address these practical
12 problems with OSHA standard setting. None of
13 the CSB recommendations at issue this morning
14 suggest alternative or interim ways to protect
15 workers. So I think it is unreasonable for
16 you to condemn OSHA for not doing what it
17 could not reasonably be expected to have done
18 in the time that has been allotted.

19 If you want your recommendations
20 to change workplace practices, it seems to me
21 that the CSB should consider a far broader
22 range of tools that are available to OSHA in

1 formulating your recommendations. It should
2 give some consideration to the legal framework
3 OSHA must meet before it can move forward on
4 standards. And the CSB should tailor its
5 recommendations so that they fit within the
6 framework OSHA must act within.

7 There is no doubt that OSHA
8 standards would protect workers, but OSHA must
9 set priorities. Even in the best of
10 regulatory climates -- and this is by far not
11 the best of regulatory climates -- OSHA can
12 set only a handful of standards each year. It
13 must choose. If OSHA initiates rulemaking in
14 response to a CSB recommendation, some other
15 hazard facing workers will not be regulated.

16 OSHA itself does not even control
17 its regulatory agenda. Under executive order
18 12866, OMB decides what OSHA can and cannot
19 regulate.

20 So I ask you, are the
21 recommendations you are considering this
22 morning more important than regulating silica,

1 beryllium? Because your analysis does not
2 consider the level of risk. And the reality
3 is moving one of your recommendations high up
4 on the list will move those others down.

5 So with respect to two of the
6 specific things that are discussed, your
7 recommendation on the management of change and
8 your conclusion that you doubt it will have
9 legal significance, I don't know of any legal
10 basis for reaching such a conclusion. And I
11 think it is totally unwarranted.

12 OSHA has interpreted the PSM
13 standard to cover management of change. Right
14 now that is the law of the land, and it has
15 instructed its inspectors to cite accordingly.
16 There is no legal case challenging that
17 interpretation. No court has called it into
18 question. And when it does go before a court,
19 if it goes before a court, that court and the
20 review commission are required to give great
21 deference to OSHA's interpretation.

22 I cannot say as an attorney,

1 having practiced law for 30 years in this
2 field, that that interpretation will fall.
3 Until it does, rulemaking is just unnecessary.

4 It would be great if OSHA set out
5 to revise the PSM standard comprehensively
6 after 20 years if that were included among the
7 revisions that it did in a comprehensive
8 review, but initiating rulemaking in the
9 SBREFA process for that little change when
10 right now it has a recommendation in
11 interpretation in effect and over 90 percent
12 of OSHA citations are resolved voluntarily
13 with employers doing what OSHA tells it to do
14 seems like it would not be a useful way for
15 OSHA to organize its resources or set
16 priorities.

17 The other recommendation I wanted
18 to talk about is the one for Kleen Energy on
19 gas purging. I don't know on what basis you
20 have concluded that an NFPA recommendation
21 standard is not acceptable. It is a new
22 standard if it induces change in behavior.

1 And OSHA can help induce change in behavior by
2 using the NFPA standard as the basis for
3 5(a)(1) citations, then it can have a very big
4 effect on industry practices. And, again, it
5 may be that when you look at the scope of the
6 problem, that the other things on OSHA's
7 agenda are far more important and affect a lot
8 more workers than the hazard you are talking
9 about.

10 And so I would urge you before you
11 condemn OSHA to think about a much broader
12 range of tools that can meet the goal of
13 protecting workers from the hazards that they
14 face, rather than just focusing on standard
15 setting and saying, "Well, OSHA hasn't done
16 it. So they failed."

17 Thank you.

18 DR. HOROWITZ: Thank you, Ms.
19 Rabinowitz.

20 Mr. Chairman, we have a number of
21 written comments. And since we are over time,
22 how would you like to proceed? Would you like

1 those summarized or merely submitted? What is
2 your preference?

3 CHAIR MOURE-ERASO: You could
4 summarize a few until we reach the time to --
5 I mean, we have until --

6 DR. HOROWITZ: We have until noon
7 for the Board discussion. So I will use as
8 much of your time as you would like, sir.

9 CHAIR MOURE-ERASO: Yes. Okay.

10 DR. HOROWITZ: All right.

11 CHAIR MOURE-ERASO: I mean, let's
12 --

13 DR. HOROWITZ: I'll be extremely
14 brief.

15 CHAIR MOURE-ERASO: -- start and
16 see how many we can --

17 DR. HOROWITZ: First of all, is
18 there anybody else in the room who didn't sign
19 up who wanted to offer a comment or a
20 question? And at the request of someone in
21 the telephone audience, if I can ask you if
22 you are on the phone, please mute your

1 receiver. I guess people hear a certain
2 amount of background noise on the line.

3 So if there is nobody else in the
4 room, we received a comment from the Center
5 for Progressive Reform, President Rena
6 Steinzor and Senior Policy Analyst Matthew
7 Shudtz. And if I can summarize, they
8 appreciate the thorough investigations that
9 the CSB staff undertake. The analysis from
10 CSB reports inform their work in many ways.

11 They support the creation of the
12 most wanted list because it sends a clear
13 signal to OSHA about CSB's properties and
14 creates a tool that allied stakeholders can
15 use in their own work. And they state that,
16 as I think others have stated, OSHA's
17 regulatory priorities are somewhat beyond
18 their control. And they cite what they call
19 political calculations from increased
20 centralization of the regulatory agenda in the
21 White House.

22 In conclusion, they say, "The

1 facility of the CSB's most wanted program,
2 like the efficacy of OSHA's regulatory
3 program, turns on the White House's
4 priorities. If the current Zeitgeist
5 persists, CSB recommendations will go far, but
6 if CSB and OSHA can work with a broader
7 coalition of stakeholders to prioritize
8 occupational health, the most wanted program
9 could be a success." And I submit the
10 entirety for the record.

11 We have a comment from the
12 American Chemistry Council, which I will also
13 summarize. It relates to the four
14 recommendations, three of which are on today's
15 agenda. And with respect to the
16 recommendation on atmospheric tanks,
17 organizational management of change, the
18 council says that "Reopening the PSM standard
19 as recommended by the CSB is not warranted."

20 And with respect to the
21 recommendation on fuel gas safety, the council
22 says that the Compressed Gas Association is

1 addressing the issue and they will defer
2 comment.

3 We received a comment from Celeste
4 Monforton, who is in the Public Health
5 Department of George Washington. And she
6 writes that "The CSB staff have provided
7 sufficient rationale for classifying seven
8 recommendations previously made to OSHA as
9 open, unacceptable." And she further writes
10 that "The CSB's credibility and value on the
11 public side would be diminished if it did not
12 press recipients to adopt its recommendations,
13 especially those who had set the bar high."
14 And then she writes, "I shudder to think about
15 a CSB which would simply resort to issuing
16 recommendations that it thinks will be easy
17 for recipients to fulfill." And that is a
18 lengthy statement. I will include that in the
19 record.

20 I believe we heard Mr. Frumin's
21 statement. We heard Ms. Rodriguez's
22 statement. We received a statement from a Mr.

1 Norman Rogers, who identifies himself as a
2 refinery worker at Tesoro in California, I
3 believe. And he writes, "Dear CSB. I send
4 this letter as a former employee of BP who now
5 after the recent purchase of our refinery
6 works for Tesoro."

7 And he attaches a letter that he
8 sent to the Federal Trade Commission
9 expressing his concern about the safety of the
10 refinery. And he says, "Though the intent is
11 no longer the vetting of the sale, it is to
12 see the proper discipline is used in the race
13 for higher profits. Profitability is a good
14 thing for all concerned, but how management of
15 change is handled in the search for those
16 profits is of the utmost importance. The
17 stage is set for well-intentioned people doing
18 as much as they can as fast as they can to not
19 only recoup the money spent in the sale but to
20 grab those profits that attracted them to make
21 the purchase in the first place. There is a
22 place for the CSB at the table prior to there

1 being an incident. And I hope the Board acts
2 in that manner." And he also included his
3 letter to the FTC.

4 We received a comment from a Mr.
5 Jeff Daly. And his comments relates to the
6 safety of rocket fuel. It's a little afield
7 from today's topic. So I just ask that it be
8 submitted to the record and passed on to other
9 agencies that do have that jurisdiction.

10 And there are other comments, but
11 they relate to the dust issue. So why don't
12 we defer those to the afternoon.

13 CHAIR MOURE-ERASO: For the
14 afternoon. Thank you very much, Dr. Horowitz.

15 BOARD QUESTIONS, DELIBERATION AND
16 VOTE ON STATUS

17 CHAIR MOURE-ERASO: So I think we
18 move to the next issue on the agenda; that is,
19 to have Board deliberations on the
20 presentation of the staff and on the public
21 comments that we have heard. So I will ask if
22 any member of the Board would like to ask any

1 question to staff who have any comments on the
2 process that we have gone through.

3 MEMBER GRIFFON: I have some
4 questions for the staff and also a couple for
5 OSHA, so maybe the first one to the staff.
6 Can you speak briefly to the breadth of the
7 issue regarding our recommendations for an
8 OSHA fuel gas standard? Our recommendation
9 speaks to both gas blows and purging, and I
10 think it is important to understand how common
11 both of those practices are.

12 I think often there is focus on
13 the gas blows, but I just wondered if you
14 could speak to the breadth of the problem
15 nationally.

16 MS. MORGAN: I am not sure if this
17 works. Oh, it does. Okay. I think that my
18 understanding is that the process of gas blows
19 is mainly restricted to the power plant
20 industry, where they are cleaning the fuel gas
21 piping in order to prevent debris in the
22 piping from damaging the gas turbines upon

1 startup.

2 However, purging is a much more
3 commonly done operation. I think, actually,
4 there may -- I'm gathering there is probably
5 someone better equipped in the audience to
6 answer this question, but my understanding is
7 that it is done quite commonly in a number of
8 industrial applications. You know, you purge.
9 When you are installing an industrial water
10 heater, that can be an industrial facility.
11 That can be in a large multi-family
12 residential building. So there are a number
13 of times when purging is done. It is a much
14 more common thing.

15 And my understanding is that that
16 is what is making rulemaking on this
17 difficult, is the wide application of a fuel
18 gas standard would have to apply to so many
19 industries where purging is an issue.

20 MEMBER GRIFFON: Do you want me to
21 continue? Yes. A question for OSHA. And I
22 am not sure I can cite to OSHA because there

1 are several of you here. So whoever might be
2 able to address this? I know this is where
3 OSHA has added the PSM to the regulatory
4 calendar. I am very happy to see this.

5 I think that, as people have said
6 already, the standard is more than 20 years
7 old. Can you tell us a little more about
8 OSHA's plans for updating the PSM standard?
9 I am just curious. And Randy Rabinowitz
10 mentioned this. Are you planning on tweaking
11 the PSM standard on specific recommendations
12 or other items that may not have come from the
13 CSB or are you considering boarder changes?

14 And while it's not a
15 recommendation of the CSB, I certainly would
16 support the need for a broader change.

17 MR. PERRY: For the record, I am
18 Bill Perry, Acting Director of OSHA's
19 Standards and Guidance Directorate. And thank
20 you for that question.

21 We have a lot of issues that we
22 are considering, to include in the request for

1 information that we plan to issue in I think
2 just a few months from now under the
3 regulatory agenda schedule. Certainly the
4 recommendations of the CSB are under
5 consideration. And what we would like to
6 learn from the public in our request is
7 information with respect to those, but, in
8 addition, I think internally OSHA has
9 identified a number of other possible
10 opportunities for improving the PSM standard
11 just through our 21 years of experience in
12 enforcing it.

13 So there is a lot on the table
14 that we are looking at and, you know not to
15 leave the impression that we are only looking
16 at issues raised by CSB if that answers your
17 question.

18 MEMBER GRIFFON: That does. Thank
19 you.

20 MR. PERRY: Thank you. Good.

21 MEMBER GRIFFON: I'll let others.

22 CHAIR MOURE-ERASO: Go ahead.

1 MEMBER ROSENBERG: Thanks. I
2 wanted to ask Mr. Colonna a question. I just
3 wanted to know if you have noticed any impact
4 of your revised guidelines on gas blows.

5 MR. COLONNA: Thank you for that
6 question, Dr. Rosenberg.

7 Nothing quantitative, more
8 anecdotal.

9 MEMBER ROSENBERG: That's okay.

10 MR. COLONNA: However, I am also
11 aware in speaking with my colleague with ICC,
12 Mr. Johnson, that they have revised the
13 international fuel gas code to include a
14 reference to NFPA 56 going forward. So that
15 will then put NFPA 56 in both the NFPA 1 fire
16 prevention code and also the ICC's
17 international fire code. So in terms of the
18 fire code applications, that will cover
19 everything from that standpoint.

20 I am aware, to Ms. Morgan's
21 question about the frequency, to Mr. Griffon's
22 question about the frequency of these types of

1 incidents, I would certainly say that she is
2 correct with respect to the gas blows. That
3 was more linked to the power plant
4 development.

5 And at the time you were doing the
6 investigation, there was an acknowledgement
7 that there were a number of power plants in
8 the planning stages. So this prospect of this
9 process was certainly there in terms of a
10 potential frequency, but certainly more
11 relevant would be the day-to-day activities
12 associated with either putting new gas
13 appliances into service but also taking
14 existing appliances or pieces of equipment,
15 even industrial boilers and things like that,
16 that are gas-fired and, therefore, have gas in
17 their system, taking them out of service for
18 maintenance and things like that, and
19 monitoring and dealing with how you deal with
20 the gas and not just indiscriminately release
21 it.

22 And I am aware of a couple of

1 incidents that have occurred in things like
2 heat exchangers that are associated with
3 gas-fired systems, where there have been fires
4 and explosions. There was one very recently
5 that resulted in a fatality as a result of
6 possibly not properly addressing the gas
7 hazard in the heat exchanger. Before opening
8 up that heat exchanger and following the
9 guidelines that are in NFPA 56, you probably
10 would have gone through a much safer process
11 before doing that.

12 MEMBER ROSENBERG: Thank you.

13 MR. COLONNA: So I hope that
14 addresses your question.

15 MEMBER ROSENBERG: Thanks.

16 MEMBER GRIFFON: Just one more
17 question to OSHA. And this is the question of
18 things that have been done shy of rulemaking
19 or regulatory change. The possibility of
20 developing or updating compliance directives
21 was mentioned for both the PSM
22 recommendations, both CSB recommendations

1 discussed by Mark Kaszniak earlier.

2 And I just wondered if -- it seems
3 that these -- I'm not sure of the dates, but
4 it seems that these were mentioned in letters
5 in response from OSHA to the CSB a couple of
6 times. And, yet, they don't seem to be acted
7 on yet. And I wondered if there is any update
8 on issuing a new compliance directive or
9 updating an old compliance directive with
10 regard to those two PSM issues.

11 MR. PERRY: Thank you for that
12 question. Let me first start with just a
13 little broad answer. And then I'll get
14 specific.

15 I am sure many in the room realize
16 this. OSHA -- or let me just say regulatory
17 requirements are established, obviously,
18 through the standard-making process. So those
19 requirements are set. And what OSHA does, as
20 many agencies who have civil law enforcement
21 responsibility, kind of deal with the opinions
22 or letters, interpretation, things of that

1 nature, but we certainly have to live within
2 the framework established by the standard.

3 So if we are doing that, we look
4 at the preamble and the record and everything
5 like that. So it is a very deliberative
6 process. And we do these things. And it is
7 not something where you can change the
8 landscape, so to speak. But what a compliance
9 directive does do is instruct the field staff
10 or stakeholders if they were to write a letter
11 of kind of these interpretive issues.

12 Process Safety Management standard
13 is a very performance-oriented standard. And
14 I think by "performance-oriented," it is
15 expected that we would be doing opinions and
16 interpretations.

17 The recommendations here before
18 the Board, the two of them, really talk about,
19 you know, putting out clarification to our
20 field so that they understand. And oftentimes
21 those letters serve a secondary purpose to the
22 regulatory community.

1 So the management of change issue
2 was dealt with through a memorandum to the
3 field. That is a viable policy document that
4 has actually almost equivalent weight of a
5 directive. And in terms of that issue, we
6 believe that we have issued before for
7 management change, we have issued after. And
8 the interpretive issue raised there is really
9 very close to the standard that you can -- you
10 know, we are going to look at management of
11 change, but it has to have some nexus to a
12 hazardous process. So there are
13 administrative changes in an organization that
14 we may not be able to make that linkage.

15 So this memo, which I think is a
16 fairly good treatment of that issue, really
17 does try to lay out for the compliance officer
18 what are those changes that impact the
19 processes so that it is covered under the
20 standard.

21 In terms of the atmospheric
22 storage tanks and the exemption that is

1 described in the standard, in my comments and
2 I think in our letter, we talk about
3 compliance directive and process and in
4 clearance. And with respect to this issue, we
5 did say that we are handling it on a
6 case-by-case basis. So let me describe that.

7 OSHA has I think a very vigorous
8 training program for its compliance officers
9 for PSM. So it goes up to six weeks of
10 training. This issue of atmospheric storage
11 tank exemptions is dealt with very clearly in
12 that training.

13 We do have a 1997 memo, which
14 provides guidance to the field following that
15 administrative law judge decision. And so
16 what we have been doing -- well, and third is
17 we have had a refinery National Emphasis
18 Program, which played out for a number of
19 years. We inspected every refinery in the
20 country except for those in state plans and
21 VPP. And we currently have a National
22 Emphasis Program dealing with chemical plants.

1 So Mr. Marshall, Mike Marshall;
2 and Jeff Wanko have a network of regional
3 contacts that they exercise frequently that
4 deal with PSM issues. Those folks are plugged
5 into the area office activity. So I guess
6 that I am describing that we have training.

7 We have some guidance out there.
8 And we have a network where as these issues
9 are raised with respect to application of the
10 exemption, we deal with them on a case-by-case
11 basis. And I can say that thus far we have
12 not identified any cases where we have not
13 issued a citation because of the exemption.
14 Have I got that right, Mike? Nor have we
15 found one of our citations going forward we
16 have lost or we had problems in litigation.

17 So in the interim, I think we have
18 a viable process. The compliance directive I
19 will say presents policy and legal issues that
20 in clearance, it pointed out. So we're not
21 getting it out as quickly as we thought, but
22 I think we do have a viable process in place

1 to deal with the application of that
2 exemption.

3 And, again, I think you all know
4 we can't eliminate the exemption. It is
5 created by the standard. But we can see how
6 it is being applied. And, for example, the
7 example of Motiva today it is my belief would
8 not happen because we have a system in place
9 that would address that. And we would have
10 gotten the feedback to our region that that is
11 a process tank, which we did do.

12 So that is kind of a long-winded
13 explanation of our policy business here in
14 those two areas.

15 MEMBER GRIFFON: Thank you.

16 CHAIR MOURE-ERASO: I will have a
17 question. As probably people know, the
18 CSB-based recommendations have been strictly
19 informed by the specific experiences of our
20 field investigators. So I would like to focus
21 my questions to the representatives of the
22 investigators here from the Western office,

1 Mr. Holstrom.

2 We have heard today in the
3 comments that CSB should use other strategies
4 different than exclusively OSHA to address our
5 prevention programs. And I would like to ask
6 him two questions in reference to that. I
7 would like him to comment on which other
8 stakeholders were addressed on the
9 investigations that we are dealing today and
10 what recommendations were made to those other
11 stakeholders different than OSHA.

12 And also the other part is that in
13 the recommendations that we make to voluntary
14 organizations that put guidelines, I want your
15 comments about the fact that those
16 organizations are basically -- the compliance
17 with those guidelines is absolutely voluntary.
18 And what is your experience on the industry
19 people actually volunteering to embrace those
20 recommendations? Mr. Holstrom?

21 MR. HOLSTROM: Thank you, Chairman
22 Moure-Eraso.

1 To deal with your first question,
2 which I understand is, do we just make
3 recommendations to regulatory agencies or do
4 we have other recommendations in relationship
5 to these incidents that we are talking about
6 today and the recommendations that are being
7 considered, the answer to that is yes.

8 I think taking the recent example
9 of the Kleen Energy and ConAgra that were sort
10 of merged together to create recommendations
11 related to gas blows and purging and other
12 fuel gas-related hazards, we made what I would
13 call layered recommendations that include
14 recommendations to standard-setting bodies
15 like the NFPA, et cetera. We made
16 recommendations to the turbine manufacturers
17 in that case, who are the ones who really set
18 the recommendations in the case of gas blows
19 for the need to clean the gas piping, and
20 although I think that those recommendations
21 have either been seen as acceptable response
22 or been closed, I believe.

1 And so in that case, the turbine
2 manufacturers, who are actually the ones who
3 need or demand that these pipes be clean to
4 ensure the warrants for the turbines, have
5 gone a long way to make those sorts of
6 improvements. So we have standard-setting
7 bodies. We have industry organizations. And
8 so there are multiple levels that the
9 recommendations were made at to address the
10 issues of the hazards of releasing large
11 amounts of gas in the vicinity of workers and
12 sources of ignition in industrial
13 environments.

14 I will give one more example. I
15 won't go through each case but the example of
16 Motiva. The CSB made recommendations not only
17 to OSHA so that a number of positive
18 PSM-related provisions would have been applied
19 to this tank that, frankly, have holes in it
20 with releasing vapors in the vicinity of
21 workers. Flammable vapors and the number of
22 PSM provisions on mechanical integrity,

1 management of change, hot work, et cetera,
2 would have been relevant and preventative in
3 this incident.

4 Not only did we make a
5 recommendation to OSHA. We made a
6 recommendation to API on mechanical integrity
7 issues for storage tanks, to NACE, which is
8 National Association of Corrosion Engineering
9 trade organization, on standards related to
10 that incident. We also made recommendations,
11 a number of recommendations in that case, to
12 the plant and I believe also to -- at that
13 time, it was the PACE Union as well.

14 And so we made recommendations on
15 a number of different levels to try to address
16 the hazards, both at the plant in
17 corporate-wide standard-setting bodies,
18 unions, trade associations, et cetera. So
19 there are a number of levels that we made
20 those recommendations.

21 I believe the next question, Dr.
22 Moure-Eraso --

1 CHAIR MOURE-ERASO: Voluntary.

2 MR. HOLSTROM: Voluntary

3 standards. You know, voluntary standards play
4 an important role in worker protection. In
5 fact, within the Process Safety Management
6 standards, other provisions that are called
7 recognized and generally accepted good
8 engineering practices, RAGAGEPs, apply. And
9 that is an important point, although I would
10 note that those only applied to mechanical
11 integrity and process safety information and
12 not necessarily other elements of PSM but
13 still very important. And, you know,
14 standard-setting bodies and voluntary
15 standards are clearly very important.

16 Some of the weaknesses when you
17 are weighing making recommendations to
18 voluntary standard-setting bodies and
19 regulatory agencies is the things that we
20 looked at at the CSB, the extent of the
21 problem, previous incidents. And most of
22 these cases, we cited a number of previous

1 incidents in our report.

2 For example, in Motiva, although
3 it's not in our report, we looked at a large
4 number of previous incidents related to fires
5 and explosions related to storage tanks. I
6 think we have over 100 of those that we
7 documented in an internal document within the
8 CSB.

9 And so we look at the extent of
10 the problem. Is this something that would be
11 best addressed with the specificity of a
12 voluntary consensus standard or do we need
13 both a change to codes and standards and
14 regulations?

15 And I think most people realize
16 that most of the OSHA standards were
17 originally voluntary codes and standards, many
18 of them based on standards of the late 1950s,
19 NFPA and other types of standards. And,
20 unfortunately, many of them because of the
21 problems people have addressed in today's
22 meeting have not been updated since the late

1 1960s. Many of these date back to that
2 period.

3 One of those dealt with fuel gas
4 safety. For example, in Kleen, there was an
5 NFPA standard, but there wasn't a similar
6 standard that was adopted by OSHA.

7 And what we pointed out in our
8 report on Kleen Energy and ConAgra was that
9 those standards, in fact, impact a large
10 number. You know, natural gas is in such wide
11 use across the country that there are
12 literally tens of thousands of workplaces that
13 could be impacted. And we identified a number
14 of incidents related not only to gas blows but
15 also to purging. Out of ConAgra, we have a
16 large number of incidents that were lifted.
17 And we felt that it was important to address
18 those, not only through consensus standards.

19 One of the issues I will conclude
20 by saying by solely relying on consensus
21 safety standards, in the words of a former
22 Chair of the CSB, Carolyn Merritt, voluntary

1 efforts are good. The problem is that not
2 everybody volunteers. And so you can't always
3 rely on voluntary consensus standards to
4 ensure that changes will take place.

5 And often regulations are
6 important to ensure that those actions would
7 be taken. And even where you have the very
8 important codes of NFPA and ICC, oftentimes
9 those are adopted in different jurisdictions
10 with different versions. In fact, in
11 Connecticut, I don't know if -- my memory is
12 it was an older version from the 1990s that
13 had been adopted in Connecticut. It wasn't
14 the most up-to-date version.

15 So, you know, if those versions
16 were up-to-date and if OSHA standards
17 reflected NFPA and other standards that were
18 up-to-date, we would be living in a much
19 improved world in terms of safety because
20 change and improvement are the life blood of
21 safety. Unless you're changing and improving,
22 you're not adequately ensuring the protection

1 of workers. So both voluntary standards and
2 regulations play a role.

3 CHAIR MOURE-ERASO: Thank you very
4 much.

5 Are there any other questions from
6 the Board? Because if not, we would like to
7 proceed with the agenda.

8 (No response.)

9 CHAIR MOURE-ERASO: I have my
10 apologies to General Counsel, Richard Loeb,
11 for failing to introduce him when I was
12 introducing people at the beginning. But here
13 to my left is the General Counsel of the
14 Chemical Safety Board, Richard Loeb.

15 I am going to ask him to help in
16 proceeding in getting a formal vote on what we
17 discussed this morning on the recommendations
18 this morning.

19 MR. LOEB: I think Board Member
20 Rosenberg would like to proceed with the
21 motion.

22 MEMBER ROSENBERG: Okay. I move

1 that the following three recommendation status
2 changes, as presented by the staff, be
3 approved by the Board, to the U.S.

4 Occupational Safety and Health Administration,
5 CSB recommendation number 2001-05-I-DE-R1,
6 revision of Process Safety Management standard
7 to clarify coverage of atmospheric storage
8 tanks connected to process vessels; number
9 two, to the U.S. Occupational Safety and
10 Health Administration, CSB recommendation
11 number 2005-04-I-TX-R9, revision of Process
12 Safety Management to require management of
13 change reviews for certain organizational
14 changes; and, finally, three, to the U.S.
15 Occupational Safety and Health Administration,
16 CSB recommendation number 2010-07-I-CT-UR1,
17 issuance of a general industry and
18 construction standard for fuel gas safety, all
19 be designated with the status of open,
20 unacceptable response.

21 Do I hear a second?

22 MEMBER GRIFFON: Second.

1 CHAIR MOURE-ERASO: Okay. We have
2 here a motion, and it has been properly
3 seconded. Is there any discussion?

4 MEMBER GRIFFON: Yes. I do want
5 to discuss. One point I would make -- and I
6 don't think it's going to make a difference
7 here, but these were originally internal
8 notation votes that we took, separate items.
9 They were separated. So now they are rolled
10 into one motion. But, like I said, I am not
11 sure that it will affect a vote here, but I
12 think we would have to record them as
13 separate, three separate, votes, I believe.
14 I am not sure.

15 Anyway, but I also want to speak.
16 I do speak in support of the motion. I also
17 want to be clear that we, the CSB, must
18 consider, as I said in my opening remarks that
19 we must consider, what steps we can take to
20 assist OSHA in making rulemaking or regulatory
21 change happen.

22 You know, I also think that it is

1 important to point out that by voting this
2 way, I am not in any way condemning OSHA. I
3 think I would rather, actually, classify this
4 as remains open, but with our classification
5 system, you know, we vote on this as open,
6 unacceptable. But I think, really, OSHA has
7 done some work on all of these fronts. And I
8 think that is important to note.

9 I also think it is important and I
10 uncertainly understand that by voting this
11 way, I am not in any way intending to affect
12 OSHA's process for setting their priorities.
13 We certainly understand and appreciate some of
14 those other many hazards that OSHA has to deal
15 with, including some that were mentioned
16 during public comment. That may well be. You
17 know, OSHA has to sort out those priorities.
18 On the other hand, I don't think that stops us
19 from pushing for these federal regulatory
20 changes.

21 So I just offer that for the
22 record. And thank you, Mr. Chairman.

1 CHAIR MOURE-ERASO: Thank you.

2 Is there any more discussion?

3 MEMBER ROSENBERG: I just wanted
4 to thank Mr. Griffon for making those remarks.
5 I concur.

6 CHAIR MOURE-ERASO: Thank you.

7 I would like also to have some
8 comments, too. I would like to observe that
9 our statutory obligation with the Clean Air
10 Act is to identify what regulations of OSHA
11 and EPA have basically not worked, have failed
12 to prevent accidents and that. And that is
13 part of our statutory obligation. It is the
14 thing that we cannot doctor, that we cannot
15 avoid. And we have to do it as our
16 obligation. And that is why we are making
17 these recommendations today.

18 If there are not any more
19 comments, I ask Mr. Loeb, the General Counsel,
20 to record the vote, please.

21 MR. LOEB: If Board members do not
22 object to an en block vote on these three

1 motions as presented by Member Rosenberg?

2 MEMBER GRIFFON: No objection.

3 MR. LOEB: No objection. Okay.

4 Then I will call the vote. Dr. Rosenberg?

5 MEMBER ROSENBERG: Aye.

6 MR. LOEB: Mr. Griffon?

7 MEMBER GRIFFON: Aye.

8 MR. LOEB: Mr. Chairman?

9 CHAIR MOURE-ERASO: Aye.

10 MR. LOEB: Mr. Chairman, there are
11 three affirmative votes for the motion as
12 presented by Member Rosenberg.

13 CHAIR MOURE-ERASO: Thank you very
14 much.

15 MR. LOEB: It's approved.

16 CHAIR MOURE-ERASO: So, you know,
17 having a unanimous yes vote in the motion, the
18 recommendation status changes are approved.

19 MR. LOEB: Thank you.

20 CHAIR MOURE-ERASO: This ends the
21 morning program. Folks should have lunch,
22 unfortunately, on their own. We would like

1 very much to invite you but can't. And we are
2 going to meet you to redo again at 1:30 to
3 continue the program. So thank you very much.

4 MEMBER ROSENBERG: Thank you.

5 (End of Tape 1, Side A.)

6 (Beginning of Tape 1, Side B.)

7 CALL TO ORDER & INTRODUCTORY REMARKS

8 CHAIR MOURE-ERASO: Good

9 afternoon, everyone. Again, my name is Rafael
10 Moure-Eraso. I am the chairperson of the
11 Chemical Safety Board. I would like to
12 welcome this afternoon to people that just
13 came in to this U.S. Chemical Safety Board
14 public meeting that is also described as a
15 Sunshine Act meeting.

16 This morning we dealt with
17 recommendations related to OSHA related to PSM
18 and fuel gas. And the Board voted on them.
19 And this afternoon, we will take a new staff
20 proposal based on CSB investigations calling
21 OSHA to issue a comprehensive combustible dust
22 standard for general industry. This is based

1 on four CSB investigations.

2 The Board also will vote on the
3 designation of combustible dust as a CSB "Most
4 Wanted Safety Improvement," to be advocated by
5 the CS Board and the staff for the ages to
6 come.

7 I would like to start by
8 introducing Dr. Manuel Gomez, the Director of
9 the CSB Recommendations. He is going to
10 introduce the staff that is going to present
11 the evidence for the recommendation of the
12 staff.

13 Dr. Gomez?

14 DR. GOMEZ: Thank you, Mr. Chair.

15 Actually, it would be very easy
16 right now. I will introduce again for those
17 of you who were not here this morning, on my
18 right, Ms. Christina Morgan, who is a
19 Recommendations Specialist and will be
20 addressing the recommendations concerning
21 dust; and then on my far right, Donald
22 Holstrom, the Manager of our Denver Western

1 Office, who will also make comments and help
2 us to do questions and answers.

3 So if you are ready, Mr. Chair, --

4 CHAIR MOURE-ERASO: Please
5 proceed.

6 DR. GOMEZ: -- we will take the
7 podium.

8 MS. MORGAN: Okay.

9 DR. GOMEZ: Take it away.

10 STAFF PRESENTATION: DRAFT EVALUATION OF
11 RECOMMENDATIONS 2006-1-H-R1 (FROM
12 COMBUSTIBLE
13 DUST STUDY), 2008-5-I-GA-R11 (FROM IMPERIAL
14 SUGAR REPORT), AND 2011-4-I-TN-1 AND
15 2011-4-I-TN-R2 (FROM HOEGANAES CASE STUDY)

16 MS. MORGAN: Okay. We'll start
17 with a video.

18 (Whereupon, a video was played.)

19 MS. MORGAN: I want to just start
20 with that because it sets the stage for what
21 an important issue that this is and how it has
22 the potential to affect lives.

1 And, actually, before I begin, I
2 wanted to recognize Mark Miser in the
3 audience, who is the brother-in-law of Shawn
4 Boone; also Katherine Rodriguez, who also lost
5 her father in a workplace accident at BP Texas
6 City. So thank you both for being here,
7 really appreciate it.

8 In 2003, the CSB was deployed to
9 the scene of 3 major combustible dust
10 explosions in a single year. In January 2003,
11 explosions and fire destroyed the West
12 Pharmaceutical Services Plant in Kinston,
13 North Carolina. This facility produced rubber
14 components for drug vials and syringes. Six
15 workers were killed, and 38 others were
16 injured.

17 The CSB's investigation traced the
18 explosion to a hazard that had developed in
19 the facility over the years. Combustible
20 polyethylene dust had accumulated on hidden
21 surfaces above a rubber production area,
22 providing a fuel for a series of explosions

1 and fires that destroyed this facility.

2 Less than a month later, in
3 February 2003, the CSB deployed to the scene
4 of another devastating accident in Corbin,
5 Kentucky at CDA Acoustics, which produced
6 fiberglass insulation for the automotive
7 industry. Seven workers were killed.
8 Thirty-seven were injured. And the facility
9 sustained extensive damage. The cause here
10 was combustible phenolic resin dust that had
11 accumulated throughout the facility.

12 Finally, in October 2003, the CSB
13 deployed to the scene of the accident that was
14 just depicted in the video at the Hayes
15 Lemmerz facility in Huntington, Indiana.
16 Aluminum dust explosions and fires at this
17 facility killed Shawn Boone and two others,
18 one critically.

19 In total, these devastating
20 accidents claimed 14 lives in 3 different
21 states in 3 different types of facilities. In
22 response, the CSB launched a comprehensive

1 hazard investigation study on combustible
2 dust.

3 Released in November 2006, the
4 study identified 281 combustible dust
5 incidents between 1980 and 2005 that killed
6 119 workers and injured 718. The principal
7 finding of the CSB's dust study is that a
8 federal Occupational Safety and Health
9 Administration, or OSHA, standard is gravely
10 needed to control the risk of dust explosions
11 in general industry. Three important findings
12 underscored that conclusion.

13 The first was that reliance on
14 voluntary consensus standards and fire codes
15 is insufficient to control the hazard. The
16 study acknowledged that voluntary consensus
17 standards produced by the National Fire
18 Protection Association provides details,
19 valuable guidance for preventing and
20 mitigating dust fires and explosions.
21 However, these standards are voluntary unless
22 adopted as part of a fire code by state or

1 local jurisdictions.

2 Not all states have adopted fire
3 codes that require conformance to NFPA
4 combustible dust standards. And jurisdictions
5 within states often amend state-adopted codes.
6 The CSB also concluded that, even in instances
7 where codes are enforceable by state and local
8 jurisdictions, fire inspectors rarely inspect
9 industrial facilities. And code officials may
10 be unfamiliar with dust hazards.

11 The second finding underscoring
12 the dust study was that OSHA's enforcement
13 efforts are insufficient to prevent
14 combustible dust incidents. The CSB study
15 found that while OSHA cited employers for
16 failing to address dust hazards, most
17 citations followed an incident and were,
18 therefore, not preventive.

19 Citations also tended to be
20 predicated on other OSHA standards, such as a
21 general duty clause or other standards, such
22 as General Housekeeping or electrical

1 standards, which are only generally related to
2 dust explosion hazards.

3 Lastly, the CSB's study concluded
4 that OSHA's grain-handling facility standard
5 demonstrated that OSHA can successfully
6 address dust hazards through hazard-specific
7 regulation. Promulgated in 1987, OSHA's
8 grain-handling standard substantially reduced
9 the number and severity of combustible dust
10 explosions in the grain-handling industry.

11 Upon the publication of its dust
12 hazard investigation study in November 2006,
13 the Board issued multiple recommendations.
14 Most notably, the CSB issued this
15 recommendation, number 2006-1-H-R1, which is
16 the subject of today's presentation, which
17 called upon OSHA to issue a standard designed
18 to prevent combustible dust fires and
19 explosions in general industry that would be
20 based on existing National Fire Protection
21 Association dust explosion hazards.

22 And then came the deadliest

1 industrial dust explosion the United States
2 had seen in decades. On February 7th, 2008,
3 a series of explosions and fires rocked the
4 Imperial Sugar refinery in Fort Wentworth,
5 Georgia. Eight workers died at the scene, and
6 6 more would later succumb to their injuries,
7 bringing the total death toll to 14.
8 Thirty-six workers were treated for serious
9 burns and other injuries.

10 The cause of this devastating
11 event was combustible sugar dust that had
12 accumulated on floors and elevated horizontal
13 surfaces throughout the facility.

14 The tragedy at Imperial Sugar
15 demonstrated all too clearly that a general
16 industry standard for combustible dust was
17 needed. And OSHA announced its intention to
18 commence rulemaking in April 2009.

19 When the CSB issued its own
20 investigative report on the Imperial Sugar
21 accident in September 2009, the Board
22 recommended that the agency proceed

1 expeditiously with rulemaking in order to
2 prevent future catastrophes.

3 OSHA published its Advance Notice
4 of Proposed Rulemaking in October 2009 and
5 held a series of stakeholder meetings in
6 Washington, Atlanta, and Chicago in early
7 2010.

8 In December 2010, the agency
9 estimated that they would conduct the next
10 required step in the rulemaking process, which
11 is convening a Small Business Regulatory
12 Enforcement Fairness Act, or SBREFA, panel in
13 April 2011, but the panel was not convened in
14 April 2011. In fact, today, more than two
15 years later, the SBREFA panel has still not
16 been convened.

17 The last public action on OSHA's
18 rulemaking was an expert forum convened by the
19 agency in May 2011. Just a couple of weeks
20 ago, OSHA's latest regulatory agenda estimated
21 that the SBREFA panel will be held this
22 November, 2013.

1 Meanwhile, between January and May
2 2011, the CSB found itself at the scene of 3
3 more combustible dust-related incidents at the
4 Hoeganaes Corporation in Gallatin, Tennessee.
5 The Hoeganaes Corporation manufactured metal
6 powders. Five workers lost their lives in
7 these accidents. And at least three sustained
8 injuries.

9 When the CSB released its case
10 study on these incidents in December 2011, it
11 again implored OSHA to take action. This time
12 the CSB called upon OSHA to ensure coverage
13 under the forthcoming standard for combustible
14 metal powders. And, most importantly, the CSB
15 called upon OSHA to issue a proposed rule
16 within one year, or by the end of calendar
17 year 2012. That date has also passed.

18 In June 2012, OSHA informed the
19 CSB that, although the agency could not commit
20 to a date for issuance of a proposed rule, the
21 rulemaking remained a top priority for the
22 agency. And although the standard remains

1 critically needed, it should be acknowledged
2 that OSHA has taken a number of important
3 non-regulatory actions to prevent combustible
4 dust incidents.

5 For example, even before the
6 accident at Imperial Sugar, OSHA had initiated
7 a combustible dust National Emphasis Program
8 to inspect facilities that generate or handle
9 combustible dust that may pose a fire or
10 explosion hazard.

11 A month after the Imperial Sugar
12 disaster, in March 2008, OSHA revised and
13 reissued the National Emphasis Program to
14 intensify its focus on combustible dust
15 hazards. Educational outreach and enhanced
16 enforcement efforts are both facets of OSHA's
17 NEP. As of June 2012, more than 2,600
18 inspections have been conducted under the
19 program and more than 12,000 citations issued.

20 In addition, in March 2012, OSHA
21 amended its hazard communication, or HAZCOM,
22 standards to adopt the globally harmonized

1 standard for classification and labeling of
2 chemicals along with a requirement that safety
3 data sheets include a section for unclassified
4 hazards, such as combustible dust. That
5 decision is currently being litigated.

6 OSHA has also addressed
7 combustible dust hazards by providing
8 additional training to its compliance safety
9 and health officers, for example, through the
10 OSHA Training Institute. And by publication
11 of guidance documents, including a 2005 safety
12 and health information bulletin, or SHIB, and
13 most recently an April 2013 document
14 discussing fire-fighting precautions at
15 facilities that handle combustible dust. The
16 agency has also redesigned its combustible
17 dust web page to improve the accessibility of
18 these resources.

19 Sorry. I am skipping all of my
20 slides.

21 All of these actions are
22 commendable and wholly consistent with both

1 OSHA's mission and the CSB's recommendations.
2 Unfortunately, the fact remains that a general
3 industry standard is urgently needed to
4 protect workers against the long-recognized
5 and well-understood hazards of combustible
6 dust.

7 OSHA has reported that it
8 continues to conduct research and analyses to
9 fulfill the requirements of the lengthy and
10 complex federal rulemaking process. But it
11 has yet to issue a proposed standard, despite
12 the CSB's original recommendation in 2006 and
13 its reiterations in 2009 and 2011.

14 For these reasons, both
15 recommendations and investigation staff
16 recommended that the Board vote today to
17 designate the four recommendations it has
18 issued regarding OSHA's dust standards with a
19 status of open, unacceptable response.

20 Thank you.

21 CHAIR MOURE-ERASO: Thank you, Ms.
22 Morgan.

1 Before continuing with the
2 program, I would like to recognize in the
3 audience here Johnny Banks and -- I'm sorry.
4 I always have troubles with the first name of
5 Lucy -- Lucy Taylor. The two of them were the
6 persons responsible for a very, very difficult
7 investigation on Hoeganaes that continues
8 through the months on having fatalities like
9 every two months. And it was very, very hard.
10 So I want to recognize the work that they did
11 in that Hoeganaes work. So let's continue
12 with the program. I want to give it back to
13 Dr. Gomez to continue on the issues.

14 DR. GOMEZ: Thank you, Mr.
15 Chairman. And good afternoon to all.

16 I'm a little sorry that Mr.
17 Galassi from OSHA is not here because I also
18 don't have any PowerPoint slides. So we have
19 a lot in common, including that.

20 STAFF PRESENTATION: RECOMMENDATION TO
21 DESIGNATE THE ISSUANCE OF A GENERAL INDUSTRY
22 COMBUSTIBLE DUST STANDARD BY OSHA AS A CSB

1 "MOST WANTED SAFETY IMPROVEMENT,"
2 UNDER THE CRITERIA OF BOARD ORDER 46
3 DR. GOMEZ: The CSB Most Wanted
4 Chemical Safety Improvements Program is a
5 planned effort to identify the most important
6 chemical safety goals of the CSB in the form
7 of a most wanted list of chemical safety
8 improvements.

9 When fully implemented, the
10 program will focus our limited resources to
11 targeted advocacy efforts by Board members and
12 staff on these issues. The guidelines that
13 will govern the Most Wanted Chemical Safety
14 Improvements Program can be found in Board
15 Order 46, which is available in our web page
16 and which was adopted in June of 2012.

17 The most wanted issues are to be
18 selected on the basis of, and I quote here,
19 "recommendations from CSB investigations,
20 studies, hearings, and similar fact-finding
21 activities" that seek to achieve, and I quote
22 again, "important national-level safety

1 improvements."

2 A similar program has been
3 operated by the National Transportation Safety
4 Board for many years, reportedly with
5 considerable success. For example, fatigue
6 was one of the NTSB's most wanted issues for
7 several years. And partly as a result of NTSB
8 advocacy, all the major transportation
9 regulatory agencies have recently made
10 substantial improvements in their regulation
11 of this risk factor.

12 Today, we want to propose that the
13 Board consider the adoption of the issuance,
14 as you have heard before, by OSHA of a
15 combustible dust standard for general industry
16 as the CSB's first most wanted issue.

17 In the remainder of this
18 presentation, I will first quickly summarize
19 the nature of the dust fire and explosion
20 problem, then share with you evidence that the
21 problem continues to exist, despite our
22 recommendations and despite important

1 enforcement and education actions by OSHA and
2 others. You have heard about some of those
3 before.

4 After briefly identifying some of
5 the most important stakeholders that also
6 favor prompt regulatory action, I will
7 conclude by making the case for a strong CSB
8 advocacy that should include adoption of the
9 most wanted issue.

10 Combustible dust fires and
11 explosions are relatively common in a very,
12 very wide range of industries. And they pose
13 a significant risk of fatality and serious
14 injury to workers as well as risk of
15 substantial property losses.

16 Many people are aware of the risk
17 of such explosions in coal mines, where the
18 combustible solid dust is coal, but any
19 powdered combustible solid of sufficiently
20 small size, particle size, in an enclosed
21 atmosphere can burn and explode if a large
22 enough concentration is present along with the

1 oxygen in the air and an ignition source.

2 These primary dust explosions
3 involve the rapid and very intense burning --
4 and you saw some pictures of that -- very
5 intense burning of a combustible material.
6 And they alone can result in serious
7 incidents, but they also often lead to
8 secondary explosions, in which the blast wave
9 of a primary one disturbs accumulated layers
10 of dust, which, in turn, ignite and create
11 even stronger, more destructive pressure
12 waves.

13 Such secondary explosions are the
14 most severe ones, as you saw just a few
15 minutes ago, when Ms. Morgan showed you both
16 the pictures and the video that showed the
17 consequences of several secondary dust
18 explosions the CSB has investigated.

19 Now, all of the evidence available
20 to the CSB strongly suggests that the risk of
21 dust fires and explosions is sizeable. And
22 the reasons are fairly straightforward.

1 Without adequate design and controls, the
2 methods employed in material handling and
3 processing, especially in manufacturing
4 industries, can result in the release and
5 accumulation of dust, followed by subsequent
6 dust explosions and fires, as I said, in a
7 very wide variety of industries, ranging from
8 agriculture and chemicals to food handling and
9 metal processing. And there is evidence of
10 dust incidents in these that I have mentioned
11 and many, many other industry sectors.

12 Ms. Morgan also earlier summarized
13 the findings of three combustible dust
14 investigations that led to the CSB's
15 combustible dust hazard study issued in 2006.
16 She also summarized the findings of that study
17 as well as those from the investigations of
18 two subsequent severe explosions in a powdered
19 iron operation and in a sugar manufacturer.

20 This investigation illustrates my
21 point about the wide variety of workplace
22 circumstances where dust explosions can occur.

1 And the key findings of our study in my
2 opinion serve some repetition.

3 We identified 281 serious
4 combustible dust incidents between 1980 and
5 mid 2005, with 119 fatalities and more than
6 700 injuries, many of them quite serious, in
7 44 states. Altogether, the explosions that we
8 have investigated have resulted in some 31 to
9 33 deaths, a couple of them the exact causal
10 factors are not exactly determined, and many
11 more injuries.

12 The report also pointed out that
13 the estimates from our study are likely to be
14 an undercount, an underestimate, for several
15 reasons. First, the information available to
16 the CSB was fragmentary, and it is based
17 mostly on media reports.

18 Secondly, the CSB data collection
19 systems are not designed as a comprehensive
20 surveillance system for all catastrophic
21 incidents, whether related to dust or to other
22 agents.

1 And, finally, there is simply no
2 comprehensive national repository of
3 information concerning workplace dust fires
4 and explosions.

5 The available data also strongly
6 suggest that these fires and explosions have
7 continued to occur with disturbing frequency
8 since the issuance of the dust, the CSB dust,
9 recommendations, since the substantially
10 enhanced enforcement under the ongoing
11 National Emphasis Program by OSHA, which you
12 have heard about, and even after the hazard
13 received national front page attention
14 following the tragic deaths of 14 workers and
15 the injuries to many more in the devastating
16 explosion and the virtual destruction of a
17 sugar-manufacturing facility in Georgia.

18 OSHA's own Advance Notice of
19 Proposed Rulemaking on combustible dust
20 published in the Federal Register in October
21 of 2009 listed 422 reported combustible
22 dust-related incidents between 1980 and 2008,

1 again evidence that the problem continues to
2 exist.

3 A search of the CSB's own data
4 since our studies has identified an estimated
5 70 additional serious incidents, with an
6 estimated 34 fatalities and 198 injuries.
7 And, again, I emphasize we think that this may
8 be an undercount.

9 Also, another strong indicator
10 that dust fires that may lead to explosions
11 continued to occur with troubling frequency is
12 a recent analysis of data from the National
13 Fire Incident Reporting System, a database
14 operated by the U.S. Fire Administration, a
15 federal agency. This study identified in
16 excess of 500 combustible dust-related fires
17 reported to that system in 2011 alone. These
18 were reported fire incidents that identified
19 dust as the item first ignited. So that we
20 cannot claim, and I am not here asserting,
21 that they were all workplace dust incidents in
22 the way in which we have been speaking about

1 until now.

2 But it is reasonable to postulate
3 that some and perhaps many of those incidents,
4 fires begun by where the first item was dust,
5 could be considered near-miss workplace dust
6 fires in the sense that they did not reach
7 catastrophic proportions or lead to secondary
8 explosions but likely had the potential to do
9 so under different circumstances.

10 Again, my point is not the details
11 of these signals or suggested evidence but the
12 fact that they all point to the conclusion
13 that this entirely preventible and very
14 serious hazard is still very much present in
15 American workplace.

16 Finally, the results that are
17 publicly available so far from the OSHA
18 combustible dust National Emphasis Program
19 also help to draw a picture of the nature and
20 widespread dimension of the hazard across
21 general industry.

22 The NEP, as Ms. Morgan also

1 briefly mentioned earlier, is an ongoing
2 inspection campaign focusing on some 30,000
3 facilities in 70 different industries
4 considered by OSHA to be potentially at risk
5 for combustible dust incidents.

6 The enforcement actions taken
7 under this program until late 2011, which is
8 all the information that we have available,
9 the latest that we have available, indicate
10 that OSHA had issued some 12,000 violations.
11 I believe that Mr. Galassi referred to 14 or
12 more thousand this morning. I hope I don't
13 get that wrong. And approximately 71 percent
14 of those violations until 2011 were serious,
15 willful, or repeat violations, clearly
16 indicating that a lot of serious problems
17 related to dust hazards exist in American
18 workplaces.

19 Also of note is that approximately
20 seven percent of the violations were issued
21 under OSHA's general duty clause, which is a
22 relatively rare and difficult form of

1 citation, as those of us who follow OSHA know.
2 This also indicates that, at a minimum, for
3 these places, no existing standards were
4 applicable to the hazardous dose conditions
5 that were cited.

6 There is also broad support for
7 the issuance of a dust standard. I can't
8 possibly mention all of the parties that
9 support it, but I will mention a couple. I
10 think perhaps the most heartfelt and,
11 arguably, the most important support has come
12 from numerous public statements by federal
13 workers and family members of diseased and
14 injured workers who have voiced their
15 indignation and support in multiple CSB public
16 meetings, in congressional oversight hearings,
17 and through multiple statements, interviews,
18 and other expressions in the media. As you
19 know, some of those are here with us today.

20 Other important stakeholders,
21 including major labor unions, have also
22 expressed strong support for a dust standard.

1 In 2008, the United Food and Commercial
2 Workers International Union and the Teamsters
3 Union petitioned OSHA to issue an emergency
4 temporary standard, but their petition was
5 denied. Even the former chief executive
6 officer of the sugar manufacturer that I
7 mentioned earlier that suffered the tragic
8 explosion in Georgia has also publicly stated
9 his support for an OSHA standard, a general
10 industry OSHA standard.

11 The facility was rebuilt with
12 state-of-the-art controls on the process that,
13 reportedly at least, can prevent the
14 recurrence of that tragic incident. So
15 controls are possible.

16 There is also opposition, of
17 course. I will mention only one example.
18 Various industry groups have filed court
19 challenges against OSHA's inclusion of
20 combustible dust in the new globally
21 harmonized hazard communication rule. Ms.
22 Morgan made reference to that under the GHS,

1 Globally Harmonized System. This challenge is
2 akin to a challenge to a dust rule. They have
3 not been resolved.

4 And, lastly, many of you probably
5 know that several bills have been introduced
6 in Congress since 2008 to mandate that OSHA
7 expedite the issuance of a standard, although
8 none of them have become laws.

9 Ms. Morgan also earlier provided
10 you an excellent summary of the chronology of
11 CSB's dust-related recommendations and of
12 OSHA's responses. It was the slow progress,
13 illustrated by this chronology, that has led
14 CSB staff to recommend that the response be
15 classified as unacceptable. The same delays
16 lead us now to propose that the Board adopt
17 the issuance of this standard as the first
18 most wanted issue under our program.

19 I think it is also important to
20 note that the National Fire Protection
21 Association, NFPA, has recently brought
22 together all its combustible dust-related

1 standards into one consolidated document:
2 NFPA 652. I am somewhat simplifying that, but
3 I think it is fundamentally correct.

4 We believe that this consensus
5 standard can provide an extremely valuable
6 roadmap to both facilitate and especially to
7 expedite OSHA rulemaking on this issue,
8 especially because that consensus standard
9 addresses in a consensus way many of the
10 important technical issues that have to be
11 addressed in such a rule.

12 Arguably, this consensus standard
13 could be, if you will, the shoulders on which
14 the OSHA standard can stand. And its
15 existence should help shorten the typically
16 long time that it takes to produce an OSHA
17 standard.

18 Obviously I am not talking about
19 wholesale adoption. OSHA can't do that. They
20 have to go through the rulemaking, standing
21 about standing of the shoulders of a highly
22 sophisticated document that talks about how to

1 control the hazards, not only that, but such
2 use of the consensus standard would be
3 consistent with the mandate of a piece of
4 legislation called the National Technology
5 Transfer and Advancement Act of 1995, which
6 calls on federal agencies to make use -- and
7 I am paraphrasing but accurately -- to make
8 use of existing consensus standards when they
9 are appropriate to achieve policy purposes,
10 including rulemaking. I would argue that this
11 NFPA standard fits into that category.

12 So, in closing, let me say that we
13 think a few facts are clear. It is now ten
14 years since the first of the three tragic dust
15 explosions investigated by the CSB in 2003 and
16 '4, which, as you know now, by now, claimed
17 the lives of 14 workers and prompted the more
18 comprehensive CSB dust study.

19 It has been nearly seven years
20 since the CSB issued that study with a
21 regulatory recommendation to OSHA and nearly
22 five since one of the most painful examples of

1 the need for the standard occurred, the
2 entirely preventible and horrific explosion at
3 the Imperial Sugar manufacturing complex in
4 Georgia, after which our then Chairman John
5 Bresland said that, and I quote, "The urgency
6 for action was greater than ever."

7 While OSHA has undertaken and we
8 have spoken about them, some vigorous
9 enforcement actions, and also taken some very
10 valuable steps to disseminate information
11 about the dust hazard and how to prevent it,
12 the evidence is abundant in our view that
13 these steps have not been enough, that workers
14 continue to be killed and injured in dust
15 incidents that are entirely preventible, and
16 that an OSHA dust standard is badly needed.

17 It is for these reasons that we
18 respectfully recommend that you, the Board,
19 adopt the issuance of this OSHA rule as the
20 first most wanted issue.

21 Thank you.

22 CHAIR MOURE-ERASO: Thank you very

1 much, Dr. Gomez.

2 PUBLIC COMMENTS

3 CHAIR MOURE-ERASO: Our next item
4 in the agenda is public comments. And I would
5 like to ask Dr. Horowitz, our Managing
6 Director, to facilitate the discussion. Dr.
7 Horowitz?

8 DR. HOROWITZ: Thank you, Mr.
9 Chairman. We have eight or so people who
10 signed up in the room for comments. And then
11 we have some statements that have been emailed
12 as well. And I will again ask all of our
13 commenters to try to limit themselves to about
14 three minutes. They can submit longer
15 materials into the written record.

16 Our first commenter is Mark Miser.
17 And he is representing the United Support and
18 Memorial for Workplace Fatalities and is the
19 husband of Tammy Miser, who appeared earlier
20 in video.

21 MR. MISER: Hello. And I thank
22 you for the time to address the Committee. I

1 am Mark Miser, M-a-r-k M-i-s-e-r.

2 I have always valued in-depth
3 investigation and recommendations from the
4 CSB. And if it wasn't for them, our family
5 wouldn't have been able to finally put the
6 pieces together for the unknown circumstances
7 of my wife's brother's last breath. For such
8 a small organization, the CSB I believe
9 actually does their research. And I find them
10 comparable to the National Fire Protection
11 Agency in their diligence.

12 The CSB has brought the
13 combustible dust issue to the attention of
14 OSHA since 2002, one year before Tammy's
15 brother was tragically killed, during which
16 combustible dust was introduced to the 112th
17 Congress and reintroduced to the 113th
18 Congress. I know that combustible dust has
19 also been on OSHA's regulatory agenda off and
20 on since President Obama's first term and
21 before.

22 We really need to take a hard

1 stance and let our government know that we
2 won't stand down until there is a combustible
3 dust law, something to protect us. I believe
4 that we can achieve this with the help of the
5 CSB and other determined organizations like
6 ours, USNWF.

7 Having said that, I feel the whole
8 system to protect the American workers is
9 marginal, at best. Instead of protection
10 agencies working together for the common
11 interests of the employees and their
12 employers, they let politics get in the way of
13 progress for safety.

14 According to Dr. Celeste
15 Montforton, only three worker safety health
16 rules have been established in this
17 administration. And I have to ask, are our
18 leaders really that busy? Even if a rule does
19 make it to the Office of Management and
20 Budget, it is held hostage. OIRA review is
21 limited to executive orders, only 90 days.
22 and, yet, some collect dust for over two

1 years, no pun intended.

2 The system is a train wreck. It
3 seems that each organization designed to
4 protect the workers is disconnected. This
5 makes it very difficult for the families from
6 the standpoint we don't know who to challenge.
7 Is it OSHA, our congressmen and women, the
8 President? We ask, who is the government
9 serving if not the people who pay their taxes?

10 And, last, why is it acceptable
11 for families and their communities to
12 needlessly suffer? And why are we here today
13 asking if combustible dust need be on the most
14 wanted regulation list with the status open,
15 unacceptable response? Without question, it
16 should be. It should, at the very least,
17 remain on the agenda until a comprehensive
18 combustible dust regulation is finally issued
19 by OSHA.

20 Thank you.

21 DR. HOROWITZ: Thank you. And
22 thank you for traveling here for this meeting.

1 Next is Mr. Bruce Johnson,
2 representing the International Code Council.

3 And, just a reminder, for any of
4 you dialed in, you can email any comments to
5 comments@csb.gov.

6 MR. JOHNSON: Thank you. And good
7 afternoon.

8 My name is Bruce Johnson. I am
9 the Director of Fire Service Activities for
10 the International Code Council.

11 The I codes are currently adopted
12 at the local or state level in all 50 states.
13 And they are updated every three years by our
14 consensus process. The updates often include
15 changes to the model I codes that are based
16 upon recommendations from the Chemical Safety
17 Board following the investigation of
18 industrial fires, explosions, or other events.

19 The Chemical Safety Board has
20 provided supporting testimony on several
21 current code change proposals that were heard
22 at the ICC code development hearings in Dallas

1 this past April and will conclude in October
2 in Atlantic City. These include an ISC code
3 change proposal, F-245, which will strengthen
4 the language in the ISC, requiring enforcement
5 of the applicable NFPA combustible dust
6 standards.

7 This is also in the 2012, the
8 current, ISC edition. Unmitigated combustible
9 dust is treated as a high occupancy, or an H
10 occupancy. So we are putting additional
11 recognition into this hazard that is being
12 discussed today.

13 We have also increased our
14 awareness training in all of our code
15 development programs for those building and
16 fire officials to understand the importance of
17 recognizing and mitigating through their
18 enforcement efforts the combustible dust
19 problem.

20 We also had code change proposal
21 F-280, which my colleague from NFPA, Guy
22 Colonna, spoke about this morning, which will

1 now reference the new standard NFPA 56 as part
2 of the flammable gas code and the fire code
3 for 2015.

4 The ICC's Fire Code Action
5 Committee also submitted ISC code change
6 proposals that addressed earlier Chemical
7 Safety Board incident investigation findings
8 related to explosion venting, hot work on
9 storage tanks, and secondary power
10 requirements for hazardous materials.

11 The Chemical Safety Board staff
12 also worked with ICC on emergency code change
13 proposal for the international fuel gas code
14 back in 2010 that addressed the safety hazards
15 related to flammable gas purging. That was an
16 emergency code action, action by the ICC
17 members. And that was incorporated as a
18 permanent change to the fuel gas code of 2012.

19 Thus, involving the participation
20 in the ICC model code development process by
21 staff from the Chemical Safety Board is
22 critical to updating future versions of the I

1 codes with requirements aimed at preventing
2 future industrial incidents that cause injury,
3 death, and other risk to the public.

4 The technical expertise of the
5 Chemical Safety Board investigative teams
6 along with other stakeholders interested in
7 building safety are vital to the creation of
8 comprehensive and adoptable model building
9 construction and fire safety codes that are
10 developed by the ICC.

11 The ICC commends the Chemical
12 Safety Board for its role in investigating
13 incidents and for providing their
14 recommendations to responsible federal
15 agencies, organizations dedicated to producing
16 the model safety codes and standards, such as
17 ICC and NFPA and other jurisdictions involved
18 in public safety.

19 The 2059 codes that will be
20 available next year will contain important
21 safety requirements, thanks to the
22 investigative work, hazard analysis, and

1 hazard mitigation recommendations of the
2 Chemical Safety Board.

3 A recommendation that ICC would
4 like to make to the Chemical Safety Board
5 related to the topic of today's hearing is to
6 encourage greater public-private collaboration
7 between federal agencies. This is that
8 Transfer of Technology Act that Dr. Gomez
9 referenced a few moments ago. Federal
10 agencies such as OSHA and other standard
11 development organizations, like ICC and NFPA,
12 can certainly collaborate.

13 With current model construction of
14 fire safety codes and standards being widely
15 adopted and enforced across every state, many
16 deficiencies noted in outstanding Chemical
17 Safety Board recommendations could be
18 mitigated through reference to these model
19 codes and standards by the enforcing federal
20 agency. This would address the Board's
21 concern with the insufficiency of voluntary
22 consensus standards, as referencing the codes

1 and standards would make these requirements
2 mandatory in the same way that OSHA has
3 referenced the NFPA and ICC codes as a
4 compliance option to meet with their
5 requirements for exit routes and emergency
6 management in the workplace, another example
7 of the known hazards associated with
8 combustible dust that are comprehensively
9 addressed by the latest I codes and the NFPA
10 combustible standards, again, that were just
11 referenced and that are incorporated by
12 reference.

13 To facilitate OSHA's rulemaking
14 process to develop an occupational combustible
15 dust regulation, a requirement to allow
16 compliance with the most current model codes
17 and standards as a means of demonstrating
18 regulatory compliance would be a timesaving
19 alternative that would allow local inspectors
20 to augment OSHA's resources. With thousands
21 of local code officials performing building
22 inspections and enforcing the model code

1 requirements, this compliance alternative
2 would enhance the frequency of building
3 inspections far and beyond what could be
4 accomplished with only OSHA's inspection
5 staff.

6 If the federal agencies were to
7 update the regulations by incorporating by
8 reference the appropriate current national
9 model codes and standards and thereby
10 encourage adoption of the administration of
11 current safety codes at the state, county,
12 city, and local level, workplace safety
13 relating to building and fire safety risk
14 would be greatly enhanced.

15 ICC looks forward to continuing to
16 work with the Chemical Safety Board to future,
17 to ensure recommendations given to ICC will be
18 thoroughly considered by the ICC members
19 engaged in our consensus code development
20 process.

21 We thank you for the opportunity
22 to make these comments today.

1 DR. HOROWITZ: Thank you.

2 Next is Meghan Housewright of the
3 National Fire Protection Association.

4 MS. HOUSEWRIGHT: Good afternoon.
5 My name is Meghan Housewright. I am with the
6 National Fire Protection Association. And
7 thank you for this opportunity to update the
8 Board on our work on combustible dust.

9 I just wanted to elaborate a
10 little bit on Dr. Gomez's remarks on NFPA 652.
11 So in discussion items that were within the
12 OSHA ANPRM, comments were included regarding
13 current NFPA combustible dust standards. And
14 right now there are five standards that exist.
15 And four of them address specific industries
16 where solids can create dust of a specific
17 type of composition. Right now that is
18 agriculture and food processing, woodworking,
19 and wood processes, metals, and sulfur.

20 The comments in the OSHA narrative
21 questions suggested that it was difficult to
22 figure out which NFPA standard applied and

1 that in some cases, the requirements are
2 inconsistent.

3 In response to these comments and
4 input from the CSB, we convened an expert task
5 group to develop an alternative strategy to
6 the structure of our combustible dust project.
7 To address the issue of possible overlap and
8 inconsistent requirements between the
9 documents, we introduced a correlating
10 committee. This committee is not intended to
11 focus on the specific technical requirements
12 but, instead, to address correlation and
13 consistency between industries, dust types,
14 and ultimately individual standards.

15 The second critical outcome from
16 this process is in the formation of a new
17 technical committee, established to work
18 solely on fundamental requirements applicable
19 to all industries and all dust types. By
20 establishing a new committee and proposed new
21 standard -- and that's NFPA 652, the
22 fundamentals of combustible dust -- the

1 existing industry or dust-specific standards
2 can then focus their attention on those
3 requirements unique to either the industry or
4 the specific types of dust.

5 The correlating committee manages
6 the relationship between the five committees,
7 the Fundamentals Committee, the Agriculture,
8 Metals, Woods, and General Dust, and assures
9 that there is a correlation between the
10 committees on technical, on key technical,
11 points and ensures that requirements between
12 the documents are consistent. The Correlating
13 Committee also guides each committee any time
14 there is a possible action on requirements or
15 that there could be potential overlap.

16 In the time since the first
17 instance occurred in 2003, each of the NFPA
18 combustible dust standards have been revised
19 at least two times. Each of these revisions
20 has considered the lessons learned from the
21 incidents and has been factored into specific
22 changes where applicable.

1 The development of NFPA 652 has
2 reached its first major stage: completion of
3 the first draft. The committee developed a
4 preliminary draft, published it for review and
5 input, considered and addressed the input, and
6 approved the first draft through a letter
7 ballot. The first draft will be posted to the
8 Fundamentals Technical Committee web page on
9 or before September 6th of this year. And
10 public comments may be submitted online
11 through the web page link until November 15th,
12 2013.

13 The committee meets again to act
14 on the public comments in January of 2014.
15 And the NFPA Standards Council considers
16 issuing this new NFPA standard in November of
17 2014 if no other open items remain.

18 Pending further progress by OSHA
19 to develop a federal standard on combustible
20 dust, NFPA believes the work on NFPA 652
21 should be strongly considered as such time as
22 the agency moves forward towards publication

1 of the Notice of Proposed Rulemaking.

2 Also, OSHA staff currently serves
3 on each of the technical committees for the
4 NFPA combustible dust standards, including the
5 new committee on fundamentals.

6 In addition to working with OSHA,
7 NFPA has also assisted several of the states
8 in their response to recommendations from the
9 CSB through training seminars and other
10 details that we have provided to state and
11 local officials.

12 Thank you again for this
13 opportunity to provide comments.

14 DR. HOROWITZ: Thank you, Ms.
15 Housewright.

16 Next is Matthew Clark,
17 representing the Bakery, Confectionery,
18 Tobacco Workers and Grain Millers Union. Mr.
19 Clark?

20 MR. CLARK: Thank you. Thanks
21 very much.

22 My name is Matthew Clark. And I

1 am a research specialist with the Bakery,
2 Confectionery, Tobacco Workers and Grain
3 Millers International Union. And I just want
4 to say on behalf of the leadership of our
5 union that we welcome this opportunity to
6 attend this open meeting and make a public
7 comment.

8 Our union represents workers
9 throughout the food processing industry,
10 tobacco, agriculture, sugar, and grain
11 milling. For the purposes of this meeting, it
12 is primarily our members working in grain and
13 in sugar that are most at risk from
14 combustible dust hazards. I should note that
15 at some of our baking facilities that have
16 silos, we have had explosions as well.

17 Anyone who has been working in any
18 of these industries for any kind of length of
19 time will tell you that dust accumulation and
20 the risks that are associated with that is
21 something that workers deal with on a daily
22 basis.

1 At many of the older facilities,
2 the dust is unmanageable. At some facilities,
3 dust-collecting equipment that has
4 malfunctioned or needs repair may sit idly by
5 for days, weeks, even months at a time.

6 At many facilities, there is
7 little or no training in combustible dust
8 hazards. Generally, training across all
9 industries is inconsistent and certainly not
10 uniform. Contract workers may only be on site
11 for several hours or perhaps several days, may
12 receive no training whatsoever on the
13 potential hazards of combustible dust.

14 Simply put, employers at many of
15 these facilities across the country are not
16 treating combustible dust as a hazard. And I
17 would hate to say that -- well, some but I
18 think it is probably many employers are
19 purposely ignoring it as a hazard. And I know
20 it is clear through conversations with fellow
21 labor colleagues that this is happening across
22 all industries where combustible dust is a

1 hazard.

2 Now, it is important to note,
3 especially for arguing it, that in the 1980s,
4 OSHA did pass a standard that impacted
5 combustible dust. And, of course, that was
6 mentioned earlier. That was the 1987
7 Grain-Handling Standards Act.

8 But I think it is important to
9 note that this was not a combustible dust
10 standard. It was a much larger standard
11 designed to focus on a slew of issues that
12 were plaguing the grain-handling industry in
13 the late '60s and late '70s.

14 On a positive note, the standard
15 did bring down combustible dust explosions, as
16 was illustrated earlier, but the problem is
17 that dust explosions in the grain-handling
18 sector continue to happen on a yearly basis.
19 The hazards have not disappeared. Walk into
20 any mill. Walk into any sugar mill. Walk
21 into any grain elevator. And there is a
22 massive amount of dust accumulation that has

1 not gone anywhere. The grain-handling
2 standard has not solved that problem.

3 So what is the solution? First
4 off, I think it is having a comprehensive
5 combustible dust standard. Somebody else
6 earlier had mentioned "comprehensive" being
7 the key term. I will quickly just state a
8 couple of things: one that involves worker
9 input into hazard identification, into worker
10 training because they know the hazards best.
11 They are the ones working on the floor, and
12 they know the hazards best.

13 We need a standard that promotes
14 continuous training. We need a standard that
15 allows workers to report a hazard or a
16 near-miss without fear of reprisal. We need
17 a standard that will hold employers
18 responsible for their actions but, most
19 importantly, their inaction because that is
20 what I see, is inaction. And we need a
21 standard that clearly states what an employer
22 must do, clearly states what an employer must

1 do, whether it is engineering controls,
2 housekeeping. Again, for us, the
3 grain-handling standard is so lacking when it
4 comes to that.

5 So, in closing, I would just like
6 to add that one of the things that comes up
7 publicly after any kind of combustible dust
8 explosion is that it could have been
9 preventible. In our industries, it happened
10 after DeBruce. It happened after Imperial
11 Sugar. It happened after a Sara Lee silo went
12 up. It happened after a ConAgra grain. Every
13 single time these explosions happen,
14 afterwards it comes out that it was entirely
15 preventible.

16 So clearly, at least in our
17 industry, in the grain-milling industry, that
18 standard is insufficient. So we are pushing
19 for obviously an all-inclusive standard, a
20 comprehensive standard, that includes all
21 industries and includes some of the issues
22 that I had outlined.

1 So I want to thank you very much
2 again on behalf of our organization. Thank
3 you.

4 DR. HOROWITZ: Thank you.

5 And next is Robyn Robbins,
6 representing the United Food and Commercial
7 Workers.

8 MS. ROBBINS: Thank you.

9 My name is Robyn Robbins. I am
10 with the Occupational Safety and Health Office
11 of the United Food and Commercial Workers
12 Union. The UFCW represents thousands of
13 workers in food manufacturing industries.

14 I want to first thank the CSB for
15 having this open meeting and giving the
16 opportunities for those of us representing the
17 workers and loved ones who are affected by
18 these dangerous hazard that give us the
19 opportunity to address you at today's
20 meetings.

21 I am here on behalf of UFCW
22 members who work in industries where

1 combustible dust hazards exist. Hundreds of
2 workers in industries such as grain-handling,
3 sugar production, paper, plastics, metal, and
4 pharmaceuticals have either been killed or
5 severely injured as a result of these
6 explosions. And we take this opportunity to
7 strongly support the recommendations made by
8 the Chemical Safety Board related to the
9 prevention of combustible dust explosions.
10 These recommendations urge OSHA to develop and
11 publish a comprehensive dust standard for
12 general industry.

13 We support CSB's efforts to
14 continue to highlight the need for a dust
15 standard and join it in urging OSHA to move
16 ahead with rulemaking on this crucial issue.

17 However, in my comments, I would
18 like to highlight the following. OSHA has had
19 many opportunities to better regulate
20 combustible dust in general industry. In
21 1970, the OSHA Act was passed by Congress. It
22 was stipulated that OSHA should adopt

1 appropriate consensus and technical standards
2 into OSHA's safety and health regulations.

3 Several NFPA standards were
4 adopted. However, NFPA standards addressing
5 the prevention of combustible dust explosions,
6 which existed at that time, were not.

7 In 2008, following the Imperial
8 Sugar refinery explosion, which resulted in
9 the death of 14 workers and severe burns and
10 injuries to dozens more, as Dr. Gomez noted,
11 the UFCW and the Teamsters petitioned OSHA for
12 an emergency temporary standard as well as
13 seeking expedited rulemaking for a dust
14 standard. In that petition, we noted the
15 grave dangers workers faced in these
16 facilities.

17 At that time, however, OSHA issued
18 a directive through the NEP program that
19 required each area office to conduct a minimum
20 of one inspection per fiscal year. And OSHA
21 ultimately issued the Advance Notice of
22 Proposed Rulemaking on combustible dust in

1 2009, October.

2 And we could not agree more with
3 OSHA's observations at that time that the
4 existing regulatory regime is fragmented and
5 incomplete. Existing OSHA standards do not
6 regulate important aspects of combustible dust
7 hazards. And the consensus standards related
8 to combustible dust are large, complex,
9 numerous, and interrelated and make it
10 difficult for employers to comply with them.

11 And OSHA went on to say that the
12 risk of combustible dust explosions is
13 considerable. And a single comprehensive
14 standard addressing all of these hazards will
15 likely provide clarity for employers and
16 increase safety for exposed workers. This was
17 the gap in the federal protections in 2009,
18 and this is the gap that exists still today.

19 We know OSHA faces many obstacles
20 in its efforts to adopt new standards. And it
21 is evident to us that OSHA has the desire and
22 the interest to move forward. However, we

1 urge a focus on the Office of Management and
2 Budget and the Office of Information and
3 Regulatory Affairs to do whatever they can to
4 remove the obstacles and pave the way for this
5 vital standard.

6 At the time, we welcomed the
7 Advance Notice of Proposed Rulemaking when it
8 occurred in 2009 and were pleased that OSHA,
9 even with the limits it faces on rulemaking
10 issues, has continued to vote staff and other
11 resources to work on this rulemaking.
12 However, we don't know when the next
13 combustible dust incident will occur. It
14 could be later today. It could be later next
15 week.

16 For the families of Gallatin,
17 Tennessee, it has already tragically come and
18 gone. For Chris Sherburne, whose husband,
19 Wiley, was killed at Hoeganaes on January
20 31st, 2011 after suffering 95 percent burns on
21 his body, the delays are "just rubbing salt in
22 a really fresh wound."

1 As we reflect on this unfortunate
2 history of delays while dust fires and
3 explosions continue to occur, we ask all of
4 those with the power to do so to assure that
5 OSHA moves quickly. The time for a standard
6 on combustible dust is now, not next year or
7 the year after that. It must do its job now.
8 But, more importantly, OSHA must be allowed to
9 do its job and finally give workers and
10 families and communities the protection they
11 deserve and they most certainly need.

12 I want to thank you again for the
13 meeting. And we look forward to more such
14 opportunities from the Board. Thank you.

15 DR. HOROWITZ: Thank you.

16 And, as I understand it from your
17 written statement, that statement is on behalf
18 of your union as well as Change to Win, AFL,
19 the Bakery Workers or is that --

20 MS. ROBBINS: Actually, that
21 statement is --

22 DR. HOROWITZ: Am I incorrect?

1 MS. ROBBINS: -- from the United
2 Food and Commercial Workers Union.

3 DR. HOROWITZ: That statement is
4 from the United Food and Commercial --

5 MS. ROBBINS: Yes.

6 DR. HOROWITZ: And we received a
7 similar statement, I guess, the --

8 MS. ROBBINS: Well, we're from the
9 --

10 DR. HOROWITZ: Okay. Okay.
11 Thanks for clarifying that.

12 And next is Mr. Nicholas Scala of
13 the American Society of Safety Engineers,
14 delivering a statement on behalf of their
15 president, Kathy Seabrook.

16 MR. SCALA: Good afternoon and
17 thank you.

18 My name is Nicholas Scala. I am
19 with the Law Office of Adele Abrams. I offer
20 this statement on behalf of the American
21 Society of Safety Engineers.

22 The American Society of Safety

1 Engineers appreciates the leadership
2 demonstrated by the U.S. Chemical Safety Board
3 in holding a public meeting today, July 25th,
4 2013, to bring attention to the need for OSHA
5 to advance standards that can help ensure all
6 employers take responsibility for managing the
7 risks of explosions in the workplace.

8 This meeting not only is an
9 opportunity for the occupational safety and
10 health community to come together and discuss
11 needs changes in standards. It also help
12 remind us of our shared responsibility to
13 provide employers, workers, safety and health
14 professionals, and emergency responders with
15 the necessary tools for helping manage the
16 risk of workplace explosions, whether or not
17 OSHA is able to advance these standards.

18 Realistically, any call to advance
19 OSHA standards must take into account that the
20 key obstacle to improving those standards is
21 not necessarily OSHA. Our nation's process
22 for adopting or even improving workplace

1 safety and health standards is broken and in
2 dire need of a significant overhaul.

3 As a community, we must join in
4 finding a way to give OSHA the ability to move
5 effective standards forward in a reasonable
6 way. ASSE has included several suggestions to
7 improve OSHA's standard development abilities
8 in our draft occupational safety and health
9 reform bill. Encouraging cooperative
10 rulemaking, ensuring OSHA relies on consensus
11 guidelines when promulgating new rules,
12 freeing OSHA to update referenced voluntary
13 consensus standards are just a few ways the
14 process can be fixed. ASSE is open to other
15 ideas and hopes this public meeting will be a
16 catalyst for discussion on how to best support
17 a more foundational OSHA standard-setting
18 process.

19 ASSE also appreciates CSB's plan
20 to use this meeting to identify a most wanted
21 safety improvement. While ASSE considers an
22 appropriate combustible dust standard vitally

1 important, the safety improvement, we believe,
2 has the widest positive impact on the overall
3 management of workplace safety and health
4 risks is a truly risk-based OSHA injury and
5 illness prevention or I2/P2 standard.

6 An effectively written I2/P2
7 standard has the potential of changing the
8 very foundation of our nation's approach to
9 regulating workplace safety and health by
10 moving employer focus from simply meeting
11 prescriptive standards to taking an active
12 responsibility for identifying risks in each
13 workplace and then establishing a plan to
14 address each risk. An appropriate I2/P2
15 standard would give every employer the
16 opportunity to manage safety in the same way
17 of our safest, most successful employers and
18 safety and health professionals achieve safe
19 and healthy workplaces. ASSE encourages CSB
20 to consider the I2/P2 standard as a most
21 wanted safety improvement.

22 ASSE thanks CSB for its leadership

1 and hopes our comments can expand the
2 discussion to efforts that if achieved can
3 help meet CSB's goal of more effective
4 oversight of workplace safety and health from
5 OSHA.

6 Thank you very much.

7 DR. HOROWITZ: Thank you.

8 Next is Mr. Bill Cajola,
9 representing the AFL-CIO.

10 MR. CAJOLA: Thank you very much.

11 My name is Bill Cajola. I am in
12 the Safety and Health Department of the
13 AFL-CIO. And we appreciate the opportunity to
14 provide comments at this public meeting and
15 thank the CSB for holding an open session.

16 The AFL-CIO strongly supports the
17 development and promulgation of a combustible
18 dust standard by OSHA. It is an important
19 issue, a very important issue. And it is
20 necessary to have a standard in order to
21 effectively address that issue and that
22 problem.

1 And the CSB's activity in this
2 area has been critically important. You have
3 been extremely helpful in highlighting this
4 issue and the need for new regulation to
5 comprehensively address combustible dust.

6 After the refusal of the Bush
7 administration to promulgate a standard, the
8 Obama administration moved on this issue and
9 put it on their regulatory agenda.

10 We are extremely frustrated with
11 the speed and progress of regulatory activity
12 at OSHA, but it is not just limited to
13 combustible dust. Other issues that are
14 important to worker safety and health are
15 languishing. And silica is being one of the
16 most recent examples where it has been sitting
17 stuck at OMB and OIRA for 2 and a half years
18 and counting in a process that shouldn't take
19 more than 90 days.

20 The process itself of OSHA
21 rulemaking is long and cumbersome for all OSHA
22 standards, but the delays in many cases

1 currently are not the fault of OSHA. The
2 fault lies more broadly with the regulatory
3 process itself. What we are seeing is
4 blockage of all OSHA standards at the Office
5 of Management and Budget and OIRA. We believe
6 that OSHA is committed to promulgating a
7 combustible dust standard.

8 A finding by the CSB that OSHA's
9 response on combustible dust is unacceptable
10 or most wanted is not sufficient alone to move
11 the rulemaking forward. So we urge the CSB to
12 use its authority to address the broader
13 problem and weigh in directly with OMB and
14 OIRA and ask it to give OSHA the support it
15 needs to move forward and to provide the
16 budgetary support that is necessary for OSHA
17 to undergo rulemaking for combustible dust.

18 We also urge the CSB to convey the
19 importance of the combustible dust issues to
20 members of Congress and the necessity that
21 OSHA be allowed to move forward with the
22 rulemaking. We think that this broader

1 approach is the thing that will move this
2 thing off dead center and get us a rule.

3 Thank you very much.

4 DR. HOROWITZ: Thank you.

5 Is there anybody else in the room
6 who would like to sign up?

7 MS. WALTER: Yes.

8 DR. HOROWITZ: And last, if not,
9 is Karla Walter, Center for American Progress.

10 MS. WALTER: Hi. I would like to
11 thank the Chemical Safety and Hazard
12 Investigation Board for convening this public
13 meeting to discuss the issuance of a general
14 industry standard for combustible dust.

15 My name is Karla Walter, and I am
16 the Associate Director of the American Worker
17 Project at the Center for American Progress
18 Action Fund.

19 The American Worker Project
20 conducts research into increase the wages,
21 benefits, and security of American workers and
22 to promote their rights at work. The American

1 Worker Project supports the Chemical Safety
2 Board's recommendations to the Occupational
3 Safety and Health Administration that it
4 proceed expeditiously to issue a standard to
5 prevent combustible dust fires and explosions.

6 When combustible dust fires and
7 explosions occur, the consequences are grave.
8 Workers die or are seriously injured. For
9 example, a 2006 CSB report found that there
10 were 281 combustible dust incidents between
11 1980 and 2005 that killed 119 workers and
12 injured 718 more and a huge combustible dust
13 explosion at Imperial Sugar in Fort Wentworth,
14 Georgia killed 14 workers and injured another
15 36 in February, 2008. Yet, this accident was
16 found to be entirely preventible by the
17 Chemical Safety Board.

18 There is much that can be done to
19 prevent future combustible dust fires and
20 explosions. Under the leadership of Assistant
21 Secretary for Labor for Occupational Safety
22 and Health, Dr. David Michaels, the agency has

1 been focused on using its existing enforcement
2 authority to deter serious unsafe work
3 conditions.

4 For example, OSHA is using its
5 combustible dust National Emphasis Program to
6 increase its enforcement activities, focus on
7 industries particularly at risk for
8 combustible dust explosions, and change
9 industry-wide behavior by publicizing these
10 enforcement efforts.

11 Yet, without a robust general
12 industry standard for regulating combustible
13 dust, agency enforcement efforts are limited.
14 Unfortunately, there are many regulatory
15 hurdles to implement important workplace
16 safety standards. A 2012 report from the U.S.
17 GAO found that it took OSHA more than 7 years
18 on average to develop and issue safety and
19 health standards.

20 OSHA is currently working on
21 promulgating a combustible dust standard. And
22 we hope that the agency will be able to

1 proceed more efficiently to issue this
2 standard.

3 We support OSHA's efforts to move
4 forward with the rule. And we applaud the CSB
5 for convening this hearing to highlight the
6 issue and help ensure that workers are
7 protected.

8 Thank you.

9 DR. HOROWITZ: Thank you.

10 Any other speakers in the room?

11 (No response.)

12 DR. HOROWITZ: Okay. We received
13 a written comment, Mr. Chairman, from the
14 American Chemistry Council. And they
15 resubmitted their comments from 2010 to OSHA
16 when OSHA was involved in their Advance Notice
17 of Proposed Rulemaking. And they wrote that
18 they believe that OSHA can most effectively
19 accomplish the goal by continued enforcement
20 of existing relevant standards and formalized
21 educational outreach. And they did not
22 support a new standard.

1 We received a comment from the
2 National Association of Sara Title III Program
3 Officials and some related groups. And, if I
4 can summarize, "We studied the Most Wanted
5 Chemical Safety Improvements Program with
6 interest. Without regard to the unfortunately
7 chosen name, it appears to be a program that
8 has little chance of improving accident
9 prevention for these reasons." And they
10 enumerate several reasons, and they include
11 they want a focus on accident prevention and
12 more common types of accidents, I guess. And
13 "We want and need CSB to provide information,
14 rather than," their words, "picking fights
15 with sister agencies over the adequacy of
16 their regulations.

17 And we need timely reports." And
18 they conclude by saying, "It is not possible
19 to regulate our way to accident prevention."
20 And that was submitted by Mr. Tim Gatehouse
21 (Phonetic.) The full statement is in your
22 record, Mr. Chairman.

1 We received a couple of comments
2 from a Mr. John Afded (Phonetic.). He writes,
3 "The 2006 CSB combustible dust study needs to
4 be amended to include all combustible
5 dust-related incidents and not solely
6 combustible dust-related fires and
7 explosions." And he references a study of
8 NFER's reporting data that I think Dr. Gomez
9 also mentioned. He goes on that "A broad
10 range of NACE codes are affected by dust
11 hazards broader than are covered by the
12 current NEP."

13 And, lastly, he asks, "Why is the
14 CSB going to begin including of the fire
15 service and key findings and recommendations
16 in conjunction with the combustible dust case
17 studies?" And that question, Mr. Chairman, I
18 think, in fact, most of the reports have
19 spoken directly to the fire service, most
20 recently in the report on the Hoeganaes fires.
21 The CSB made recommendations to the Gallatin
22 Fire Department specifically for additional

1 codes and training. And that has actually
2 been a feature of I think most of the reports
3 that we have done, going back to '03 or '04.

4 And we received, lastly, a
5 statement from Tammy Miser. And she writes,
6 "As I look back at the very first
7 congressional testimony I had given in 2008,
8 I made a statement 'No matter how much time
9 goes by, the pain never goes away. It never
10 fades. And the incident never dies.' Our
11 family members' and victims' losses are a
12 long, needless sentence because a few
13 companies couldn't or wouldn't do what was
14 right. I hold on firm to this belief.

15 "It has been nine years since I
16 lost my brother Shawn in an aluminum dust
17 explosion. It pains me each and every time I
18 hear of another dust explosion. I know what
19 the families, coworkers, and surrounding
20 communities will have to endure.

21 "The Imperial Sugar plant
22 explosion in 2008 is one of the best arguments

1 we have for supporting nothing less than a
2 combustible dust regulation. It took 72 long,
3 agonizing days before some of the victims
4 succumbed to their injuries. Just a few days
5 before then, one victim was released, leaving
6 two still in critical care. To be honest, I
7 have no clue what happened to the last
8 Imperial Sugar burn victim. There are no
9 words to describe how savage this is. We
10 would not allow this to go unnoticed if it
11 were an animal.

12 "Imperial Sugar also had a
13 facility in Gramercy, Louisiana, which had to
14 be issued imminent danger orders and shut down
15 by OSHA until the plant was free of the very
16 same hazard because they refused to do it
17 voluntarily.

18 "The facts are people are still
19 dying from dust explosions with little
20 repercussion. It is still just a cost of
21 doing business. And our government is giving
22 them a green light. The question should be,

1 is it acceptable to knowingly allow workers
2 and the surrounding community to be severely
3 maimed or killed? I say no. And I wonder how
4 many, if asked, would agree that it is
5 acceptable.

6 "This is not a war. There are no
7 casualties. We live in a country that allows
8 all to pursue a dream. And we are entitled to
9 do so but not at the expense of others' life
10 and limb."

11 That's it, Mr. Chairman.

12 CHAIR MOURE-ERASO: Thank you, Dr.
13 Horowitz.

14 BOARD QUESTIONS, DELIBERATION AND VOTE

15 CHAIR MOURE-ERASO: So we will
16 continue the agenda. The next item of the
17 agenda is Board deliberation. So if any
18 member of the Board has any question to the
19 staff on these issues? Mr. Griffon?

20 MEMBER GRIFFON: I don't have to
21 wait for a formal motion to say that I totally
22 support the staff recommendation to keep this

1 classified as open, unacceptable. I think it
2 is pretty clear, at least to me, that we need
3 a national dust standard. So I fully support
4 it.

5 I just have one question for our
6 staff. And that is, you know, I think it is
7 very important to note that several of the
8 incidents that we have investigated have
9 involved what is classified as
10 low-combustibility dust. And one of the most
11 recent ones is at the Hoeganaes facility.
12 And, you know, I put quotes around
13 "low-combustibility dust."

14 I wonder if in our study or in the
15 numbers, Dr. Gomez, that you went over from
16 2005 on, if we have any breakdown of how many
17 of those incidents involved what some would
18 classify as low-combustibility dust or I guess
19 that would be maybe looking at a range of the
20 KST values or something like that.

21 Have we looked at how they might
22 sort out in terms of low-combustibility dust?

1 DR. GOMEZ: No. We haven't done a
2 comprehensive review of those issues that you
3 mention. I think it would be fair to say that
4 our assumption is that that would be addressed
5 carefully during the rulemaking process.

6 MEMBER GRIFFON: Sure. Sure.
7 Okay.

8 CHAIR MOURE-ERASO: Member
9 Rosenberg?

10 MEMBER ROSENBERG: I don't have
11 any questions.

12 CHAIR MOURE-ERASO: I don't have
13 any questions myself either. So I will call
14 the question.

15 MEMBER ROSENBERG: Okay. Shall I?

16 CHAIR MOURE-ERASO: Yes.

17 MR. LOEB: Sure.

18 MEMBER ROSENBERG: All right. I
19 move that the following four recommendation
20 status changes related to the issuance of a
21 general industry standard for combustible
22 dust, as presented by the staff, be approved

1 by the Board. There are three. I'll read
2 them. "One, to the U.S. Occupational Safety
3 and Health Administration, recommendation
4 number 2006-1-H-R1 from the combustible dust
5 study; two, to the Occupational Safety and
6 Health Administration, CSB recommendation
7 number 2008-5-I-GA-R11 from the Imperial Sugar
8 report; and, third, to the U.S. Occupational
9 Safety and Health Administration,
10 recommendation 2011-4-I-TN-1 and; oh, four,
11 recommendation number 2011-4-I-TN-R2, both
12 from the Hoeganaes case study), all be
13 designated with the status of open,
14 unacceptable response."

15 Do I hear a second?

16 MEMBER GRIFFON: Second.

17 CHAIR MOURE-ERASO: Having heard a
18 proposal and a second, I think we are ready to
19 vote. So I am asking the General Counsel to
20 record the vote.

21 MR. LOEB: Dr. Rosenberg?

22 MEMBER ROSENBERG: Aye.

1 MR. LOEB: Mr. Griffon?

2 MEMBER GRIFFON: Aye.

3 MR. LOEB: And Mr. Chairman?

4 CHAIR MOURE-ERASO: Aye.

5 MR. LOEB: There are three yes
6 votes.

7 CHAIR MOURE-ERASO: Okay. So that
8 is three yes votes. The recommendations as
9 recommended for the staff of open,
10 unacceptable stand, and they are approved.
11 Thank you very much.

12 There is the last one that we need
13 to do. Would you like to do it?

14 MEMBER ROSENBERG: Sure. Sure. I
15 move that the Board designate the issuance of
16 a general industry standard for combustible
17 dust by the OSHA, by the U.S. Occupational
18 Safety and Health Administration, be a "Most
19 Wanted Safety Improvement" issue under Board
20 Order 46.

21 Do I hear a second?

22 MEMBER GRIFFON: Second.

1 CHAIR MOURE-ERASO: Okay. So I
2 would ask the General Counsel to record the
3 vote. Having heard the proposal and the
4 second, I think we are ready to vote.

5 MR. LOEB: Can we do this by
6 acclimation? Is there general acclimation?

7 MEMBER ROSENBERG: Yes, there is.

8 MR. LOEB: Do I hear any dissents?

9 MEMBER ROSENBERG: No.

10 MR. LOEB: I think it's fair to
11 say.

12 MEMBER ROSENBERG: Okay. Mr.
13 Chairman, can I say one thing?

14 CHAIR MOURE-ERASO: Sure. We have
15 some concluding remarks now.

16 MEMBER ROSENBERG: Okay. Before
17 we go on to the concluding remarks, I just
18 wanted to say a couple of things. This was a
19 wonderful meeting. And I am very excited
20 about our launching our Most Wanted Safety
21 Improvements Program, with combustible dust
22 being the first on the list.

1 Deborah Hersman of the NTSB said
2 that the most wanted list is the most powerful
3 tool they have to highlight their agency's
4 priorities, and I could not agree with her
5 more. So in this vein, to take advantage of
6 the momentum that we started here today with
7 this program, I move that the Board schedule
8 another public meeting in Washington within
9 the next four months to discuss staff
10 proposals for the next four items on the most
11 wanted improvements to determine our agency's
12 top five advocacy priorities; how we are going
13 to implement the program and with what
14 resources; and, finally, a status report on
15 all open investigations.

16 MEMBER GRIFFON: I second the
17 motion.

18 CHAIR MOURE-ERASO: I don't think
19 it is appropriate to have a motion on this.
20 I mean, you are making some comments about
21 this, but --

22 MEMBER ROSENBERG: It was a

1 comment seguing into a motion --

2 CHAIR MOURE-ERASO: Well --

3 MEMBER ROSENBERG: -- to continue
4 the momentum of this program.

5 CHAIR MOURE-ERASO: I mean, I
6 acknowledge what you said. I listened to what
7 you said. But I don't think it is appropriate
8 to deal with it in a motion. I mean, I think
9 that it is perfectly all right that we --
10 definitely we are going to consider public
11 meetings in the future.

12 If you read Board Order 46, Board
13 Order 46 days that we have to continue in
14 public meetings to put in things on the list.
15 So yes, we are going to continue doing that.
16 That is, I don't think there is any need to
17 deal with a motion on that.

18 MEMBER GRIFFON: Board Order 46
19 hasn't been adopted yet. And I think we have
20 a motion on the floor, seconded. I think it
21 is appropriate --

22 CHAIR MOURE-ERASO: Motion 46 is

1 the motion that established the program of our
2 most wanted list. And that motion, that Board
3 order, says that we are going to establish
4 public meetings to have a list of other
5 matters that we are going to include on that
6 most wanted list. I mean, I don't see the
7 need to entertain a motion on this since
8 basically we already have agreed that this is
9 the procedure that we are going to do to
10 include the most wanted chemicals in our list.

11 MEMBER GRIFFON: It is a specific
12 motion to ask for a meeting within the next
13 four months, including certain items. And
14 Beth and I feel strongly about it.

15 I think there is a motion on the
16 floor, seconded. I think we should just
17 proceed to a vote if there is no more
18 discussion.

19 CHAIR MOURE-ERASO: I would like
20 to perhaps have a short recess to discuss with
21 my program here about this is totally new, I
22 think. We have an agenda, and this is

1 something new on the agenda. So if you allow
2 me for a few minutes to discuss this?

3 (Whereupon, the foregoing matter
4 went off the record briefly.)

5 CHAIR MOURE-ERASO: Well, I mean,
6 I don't want to be difficult with this. But
7 when we called the Federal Register for this
8 meeting, we said that we will discuss,
9 entertain other issues to be voted on at the
10 discretion of the Chair.

11 I don't want to throw my weight
12 around, but I don't think that it is necessary
13 to have any specific motion and vote on it.
14 So on my discretion, I think that I don't want
15 to take your vote. I don't think that I have
16 to take your vote on that.

17 MEMBER GRIFFON: Well, I think any
18 Board member has the prerogative to make a
19 motion at our open Sunshine meetings. And I
20 also think the momentum we had this morning
21 and this afternoon from all the public
22 commenters, they really appreciate the

1 opportunity to have our work done in a public
2 format like this. And I think we should just
3 commit to a schedule. I mean, I think within
4 four months is a very reasonable request. And
5 I think we should move to a vote on this.

6 CHAIR MOURE-ERASO: This meeting
7 is made on the premise that new items to be
8 discussed and to be voted on are at the
9 discretion of the Chair. And I repeat myself
10 in saying I don't think that it is necessary
11 to go through this, and I don't want to take
12 a vote on that, at my discretion.

13 MEMBER GRIFFON: Well, I think I
14 will make a note for the record that since it
15 was a motion and seconded by me that we are in
16 the majority anyway and that, even if you
17 refuse to take a vote, it is pretty clear that
18 the Board has spoken here.

19 CHAIR MOURE-ERASO: I will take
20 note of that. I think this seems to me not
21 very serious, to tell you the truth, when we
22 have already a system under Board Order 46 in

1 which we are going to continue developing this
2 program. I don't understand what is the need
3 to do this.

4 And so, you know, I still insist
5 that, on my discretion, again, we will take
6 note about your vote and your proposal and
7 your second. We won't entertain your
8 proposal.

9 CONCLUDING REMARKS

10 CHAIR MOURE-ERASO: I then would
11 like to have any closing remarks that I would
12 like to present to close the meeting. My
13 closing remarks are that I would like to
14 observe that this is a statutory congressional
15 mandated task to address OSHA and EPA
16 regulations that apply both to the
17 deficiencies in current regulations and to
18 recommend new regulations. That is a key
19 obligation of the CSB. And I intend to pursue
20 this activity vigorously.

21 Our votes today are for a status
22 change in PSM and the fuel gas investigation,

1 also the vote of continuing to pursue a
2 request for a comprehensive combustible dust
3 as well to inaugurate, as we did, our most
4 wanted safety improvement by designing our
5 campaign to obtain the OSHA standard for a
6 comprehensive combustible dust standard. All
7 are actions that we believe are going to
8 prevent the catastrophic actions that we were
9 dealing with today, and it is going to save
10 lives. And that is what our agency is all
11 about.

12 I declare this meeting finished.
13 And I would like also to thank the public
14 participants, the people this morning and the
15 people in this afternoon. I think this has
16 been a very important meeting, a very
17 important public meeting. We are committed,
18 according with our Board Order 46, of
19 continuing to having these meetings to
20 establish more items in our most wanted safety
21 improvement list. And these will be, of
22 course, announced as public meetings in the

1 future when we are ready to act on new most
2 wanted improvements, safety improvements.

3 So I think the business of our
4 meeting today is finished. And I declare this
5 meeting today closed. Thank you very much to
6 everybody.

7 (Whereupon, the foregoing matter
8 was concluded.)

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