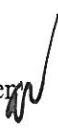




U.S. Chemical Safety and Hazard Investigation Board

Office of General Counsel

Memorandum

To: Board Members
From: Christopher Warner 
Cc: Leadership Team
Subject: Board Action Report – Notation Item 729
Date: December 15, 2009

On December 3, 2009, the Board approved Notation Item 729, thereby approving the allocation of \$83,474.34 from the CSB's FY 2010 appropriated funds to be obligated to Tasks 2 – 4 of Order TPD-CSB-09-K-00010 with ABS Consulting, Inc. for support of the ConAgra-NC investigation. Mr. Wright's comments are attached.

Voting Summary – Notation Item 729

Disposition: APPROVED

Disposition date: December 3, 2009

	Approve	Disapprove	Calendar	Not Participating	Date
J. Bresland	X				12/2/2009
W. Wark	X				12/3/2009
W. Wright	X				12/4/2009

Board Member Wright Comments on Notation Item 729

I voted to approve this notation item as I believe the blast marker identification effort is critical to this case; and question some of the other tasks to be undertaken as part of this contract.

I also however have some reservations about how this case has progressed to this point; and express my concern about the lack of communication from the Chairman and the staff, and question how the Board is to have confidence that monies it approves are being used as authorized. Notation item 700 approved a maximum of \$130K based on four distinct task orders which were to be considered at various milestones under the contract (may or may not be executed based on the evidence). That notation item was approved several months ago but no report was ever given to board members. Now some four months later we are asked to authorize an additional \$83K for the same actions which were previously approved and authorized; but not executed and funds lapsed due to end of the fiscal year. Who is responsible for ensuring execution of authorized funds in a timely manner?

Further Notation item 713 proffered an *urgent recommendation* (urgent because the NFPA panel was considering this issue in the November 2009 timeframe) that included the staff's very prescriptive language to the recipients which resulted in a 2 to 2 tie vote - deadlocked vote. Board Member Visscher and I proffered alternate language which I believe would have been approved if it had been presented to the board. In July and August I repeatedly requested that a Notation item 713A be drafted to put this language to a Board vote - this never happened. In my view the Chairman abused his role by refusing to present alternative language to the board when the staff's draft language was not adopted. While the urgent recommendation remained idle, the Board approved a Safety Bulletin to address some of the issues found in the ConAgra case.

Subsequently various entities have or are in the process of modifying or revising their regulations, namely, North Carolina, NFPA panel, and others.

I remain skeptical about when this case will be wrapped up and a formal report written; as it appeared to be a relatively simple case by comparison to many others.

WEW
4 Dec 09



Chemical Safety and Hazard Investigation Board

Memorandum

To: Board Members

From: John Bresland

A handwritten signature in cursive script that reads "John Bresland".

Cc: Leadership Team

Subject: Notation Item 729

Date: December 1, 2009

Attached for your review and vote is Notation Item 729. This item provides for the allocation of Fiscal Year (FY) 2010 appropriated funds, which have not yet been allocated in an annual operating budget, for obligation to three tasks to be exercised under the contract currently in place with ABS Consulting, Inc. for support of the ConAgra-NC investigation. Board approval is required because the total allocation amount exceeds \$50,000. As described in the item, the Board previously allocated FY 2009 funds for these three tasks. However, because the tasks were not exercised during FY 2009, the use of those previously allocated funds would not be consistent with federal appropriations law. Instead, FY 2010 funds must be used

Please direct any questions about the contractor's support of the investigation to Don Holmstrom or Mark Kaszniak. Questions about the financial aspects of this item should be directed to Bea Robinson. Please return completed vote sheets to Chris Kirkpatrick as soon as possible. Thank you for your attention to this item.



Chemical Safety and Hazard Investigation Board

John S. Bresland
Chairman

William B. Wark
Board Member

William E. Wright
Board Member

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD MEMBER VOTING RECORD

Notation No.: 729

Voting Period: Urgent Notation Item, December 1 – December 8, 2009, but votes are requested as soon as possible.

Subject: Allocation of Funds for Support Contract for ConAgra (Garner, NC) Investigation

Whereas,

1. On June 9, 2009, the CSB, pursuant to its authority under 42 U.S.C. § 7412(r)(6)(C)(i), initiated an investigation of a fatal explosion at the ConAgra Foods Inc. plant in Garner, North Carolina;
2. The Board, by Notation Item 700 (June 17, 2009), approved a contract, with a maximum value not to exceed \$130,000, for a blast damage survey and explosion analysis/modeling services in support of the ConAgra-Garner investigation, and also approved the allocation of \$130,000 within the Fiscal Year (FY) 2009 operating budget to fund the contract;
3. The contract, awarded to ABS Consulting, Inc., includes one required task – the initial blast damage survey – which commenced at the time of contract award with a not-to-exceed cost of \$46,165.60;
4. The awarded contract also includes the following three optional tasks: Task 2 – monitoring deconstruction/conducting survey of blast epicenter, Task 3 – survey of plant water heating and ammonia systems, and Task 4 – explosion analysis based on the results of Tasks 1 – 3;
5. Heretofore, there had not been a need to exercise the optional tasks because outside parties, including the CSB, could not gain access to the internal areas of the plant for inspection and forensic deconstruction;
6. On November 23, 2009, a North Carolina Superior Court judge issued an order, requested by parties in litigation with ConAgra, permitting inspection of the internal areas of the plant;
7. In light of the court order, the CSB investigation team wishes to immediately exercise Tasks 2 – 4 of the support contract, so that the CSB's experts can participate in site entry planning and execute the work contemplated by the contract;

Notation No.: 729

Subject: Allocation of Funds for Support Contract for ConAgra (Garner, NC) Investigation

8. Because Tasks 2 – 4 were not exercised during FY 2009, the use of the previously allocated FY 2009 monies to fund the performance of the tasks in FY 2010 would not be consistent with federal appropriations law; instead, FY 2010 funds must be used;
9. Funding for the not-to-exceed cost of Tasks 2 – 4, in the amount of \$83,474.34, is available from the FY 2010 funds appropriated to the CSB, none of which have yet been allocated in an annual operating budget; and
10. Board Order 027 requires that the Board approve the allocation of funds for contracts exceeding \$50,000.

Therefore, the Board hereby votes to approve the allocation of \$83,474.34 from the CSB's FY 2010 appropriated funds to be obligated to Tasks 2 – 4 of Order TPD-CSB-09-K-00010 with ABS Consulting, Inc. for support of the ConAgra-NC investigation.

_____ I **APPROVE** this notation item **AS PRESENTED**.

_____ I **CALENDAR** this notation item for discussion at a Board meeting.

_____ *Some of my concerns are discussed below or on the attached memorandum.*

_____ I **DISAPPROVE** this notation item.

_____ *A dissent is attached.*

_____ *I will not file a dissent.*

_____ I am **NOT PARTICIPATING**.

Note: An urgent notation item is either adopted or disapproved when the affirmative or negative votes of a majority of the participating members are received by the Office of General Counsel.

Date: _____

Member: _____