



U.S. Chemical Safety and Hazard Investigation Board

MEMORANDUM

May 20, 2011

To: Board Members

From: Rafael Moure-Eraso

A handwritten signature in black ink that reads "Rafael Moure-Eraso".

Cc: Leadership Team

Subject: Notation Item 852

Attached for your review and vote is Notation Item 852. This item provides for the convening of a Board public meeting to consider and vote on the investigation report and recommendations on the January 2010 incidents at the DuPont plant in Belle, West Virginia. The item also provides for the adoption of a rule of procedure applicable to the meeting.

You may direct any questions about this item to Daniel Horowitz. Please return your completed vote sheets to Chris Kirkpatrick as soon as possible, but no later than the close of business on June 6, 2011. Thank you for your attention to this item.

**U.S. Chemical Safety and
Hazard Investigation Board**



Hon. Rafael Moure-Eraso
Chairperson

Hon. John S. Bresland
Board Member

Hon. Mark Griffon
Board Member

Hon. William B. Wark
Board Member

Hon. William E. Wright
Board Member

**CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD
MEMBER VOTING RECORD**

Notation No.: 852

Voting Period: May 20 – June 6, 2011

Subject: Public Meeting to Consider Investigation Report on the DuPont-Belle, WV Incidents

Whereas,

1. The Board is authorized by 42 U.S.C. § 7412(r)(6)(C)(i) to “investigate . . . and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release resulting in a fatality, serious injury or substantial property damages;”
2. The Board is further authorized by 42 U.S.C. § 7412(r)(6)(C)(ii) to “issue periodic reports to the Congress, Federal, State and local agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration, concerned with the safety of chemical production, processing, handling and storage, and other interested persons recommending measures to reduce the likelihood or the consequences of accidental releases and proposing corrective steps to make chemical production, processing, handling and storage as safe and free from risk of injury as is possible;”
3. CSB staff have prepared a proposed investigation report, including recommendations, based upon their investigation of three incidents that occurred in January 2010, at the DuPont plant in Belle, West Virginia;
4. Board Order 028 provides that investigation reports are to be approved by the Board;
5. The Board desires to hold a public meeting for the purpose of considering, and voting on the approval of, the proposed investigation report and recommendations on the DuPont Belle, WV, incidents; and
6. The attached proposed rule of procedure is intended to provide for the orderly conduct of the public meeting on the investigation report.

Notation No.: 852
Subject: Public Meeting to Consider Investigation Report on the DuPont-Belle, WV Incidents

Therefore, the Board hereby votes, pursuant to its authority, to:

- (a) Convene a public meeting in the Charleston, WV, metropolitan area, on a weekday evening between June 1 and June 30, 2011, for the purpose of considering, and voting on the approval of, the proposed investigation report and recommendations on the DuPont Belle, WV, incidents;
- (b) Authorize the Chairperson to choose the exact date for this meeting, in consultation with the other Board Members, who will identify a minimum of five available dates in the month of June and forward these to the Chairperson within two days after the approval of this item; and
- (c) Adopt the attached rule of procedure for application to the public meeting on the DuPont Belle incidents investigation report.

_____ 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**.

Date: _____

Member: _____

CSB Public Meeting -Final Report on Incidents at DuPont, Belle, West Virginia

1. Meeting Agenda

Item	Presenter	Estimated Time (min.)
Introductory Remarks	Chairperson	5
Opening Statements	Board Members	2 per member
Presentation of Staff Draft Report	Investigation Team	75
Board Questions	Board Members	5 per member
Public Comments	Public	3 per commenter
Board Consideration of Report	Board Members	20
Closing Remarks and Adjournment	Chairperson	2

2. Motions in Order

The following motions shall be considered to be in order at the meeting:

- a. A motion to approve the draft report and recommendations on the DuPont incidents, as presented by the staff;
- b. A motion to return the draft report and recommendations on the DuPont incidents to the staff, with or without instructions; and
- c. A motion to add, delete, or modify proposed safety recommendations contained in the staff draft report on the DuPont incidents; provided the following conditions are satisfied:
 - any such motion shall have been provided to the General Counsel for distribution to all the board members at least five business days prior to the scheduled date of the public meeting; and
 - any such motion shall contain the proposed text of any proposed amendment to a safety recommendation.

3. Motions Out of Order

Notwithstanding any provision of Board Order 001 or Robert's Rules of Order, any motion not specifically listed above under "Motions in Order," including any motion to amend the rules or agenda for the meeting, shall be out of order.

4. Presiding Official

The Chairperson shall have sole authority to conduct the meeting, call for a motion, and rule on any point of order.



Chemical Safety and Hazard Investigation Board

Office of General Counsel

Memorandum

To: Board Members
From: Christopher Warner *Chris Warner*
Cc: Leadership Team
Subject: Board Action Report – Notation Item 852
Date: June 6, 2011

On June 1, 2011, Notation Item 852 was disapproved. The item had proposed to convene a public meeting for the consideration of the investigation report and recommendations on the January 2010 incidents at the DuPont plant in Belle, West Virginia. The item also proposed the adoption of a rule of procedure applicable to that public meeting. Dissenting statements submitted by Members Bresland, Wark, and Wright are attached to this memorandum.

Voting Summary – Notation Item 852

Disposition: DISAPPROVED

Disposition date: June 1, 2011

	Approve	Disapprove	Calendar	Not Participating	Date
R. Moure-Eraso	X				5/20/2011
J. Bresland		X			5/31/2011
M. Griffon	X				5/27/2011
W. Wark		X			5/24/2011
W. Wright		X			6/1/2011

**Notation Item 852 -- Public Meeting to Consider
Investigation Report on the DuPont-Belle, WV Incidents**

Dissent attached to vote to disapprove by John Bresland

I have voted to disapprove Notation Item 852 for the following reasons:

1. While I am strongly in favor of a public meeting to consider the Investigation Report on the three incidents at the DuPont-Belle, WV chemical plant, I do not agree that the public meeting should be held with the restrictions on Board member rights proposed in Notation Item 852.
2. The exclusion of the use of CSB Board Order 1 and Roberts Rules of Order is a heavy handed attempt by the Chairman to deny the other four Board Members the right to speak their mind on issues of concern to them. If the meeting is not held in conformity with Board Order 1 or Roberts Rules of Order, then what rules will control the conduct of the meeting?
3. While I have not researched this topic, I doubt if any other federal board or commission has ever held a public meeting with similar restrictions on the rights of the Presidentially appointed members.
4. My preference is for the Chairman to hold the meeting following the established procedures for public meetings of the Chemical Safety Board. These procedures have worked well for all of the public meetings held by the CSB since its founding.
5. If Notation Item 852 is not approved by a majority of the Board members, then the DuPont public meeting should proceed following the established procedures for public meetings that have served the Board well for the past 12 years.
6. Again, I wish to emphasize my support for a public meeting on the DuPont Belle investigation, but not with the restrictions proposed in Board Order 852 on the Board members' rights to express their opinions at a public meeting.



John Bresland

May 31, 2011

Wark, William

To: Moure-Eraso, Rafael; Bresland, John; Griffon, Mark; Wright, William; Wark, William
Cc: Kirkpatrick, Chris; Warner, Chris
Subject: RE: Notation Item 852 Due

Gentlemen.

Although I was very hesitant to dignify this as a serious " Notation Item" with any type of action on my part, I have decided to record my official "no" vote for the public record for the following reasons:

- 1- The Board Members are being asked to sign onto a document which, in effect, is another in a continuing string of ludicrous attempts to marginalize the Members and stifle public discourse on very important matters before the Board, such as the strategic direction of the Agency and the way it is being managed. As Board Member, I am at once insulted and incredulous that such an unprecedented action would even be contemplated, let alone put in writing and distributed to the Members as a public document. Asking the members to abdicate the powers conveyed to them by the President and the U.S. Senate bespeaks extremely questionable decision-making skills which should be seriously examined.
- 2- To my knowledge, all of the members (including myself) have called for a well-deserved public meeting on the DuPont investigation and its report. Had I been asked, I would have pointed out that, rather than muddy the waters with other issues that continue to plague the Agency, I would have been happy to limit my discussion to the matter at hand - DuPont. This continues to be my position. I hasten to add, however, that once again I am requesting a public business meeting to discuss these other issues in accordance with our Congressional mandate to operate under the Sunshine Act, which in my opinion continues to be violated.

Respectfully,

Member Wark

A copy of this email is attached to my no vote on Notation Item# 852 and is to made an integral and un-redacted part of my public voting record.

DISSENT OF BOARD MEMBER WRIGHT - NOTATION ITEM 852

I am on record as wanting and remain firmly committed to releasing the DuPont case report at a public meeting [Notation Item 846], and appreciate the need to do so as soon as possible in order to raise awareness about this case and to potentially prevent future incidents. Unfortunately, I cannot support an unprecedented and uniquely formatted public meeting as proposed by the Chairman for the release of the DuPont report as outlined in Notation Item 852. I view use of such a construct as an effort to thwart Board Members' rights to open discussion and transparency on Board matters. This proposal significantly limits Board discussion, changes the premise under which all CSB public meetings have been held in the past per Board Order # 1 (Section IV BOARD MEETINGS), sets a bad precedent, and is totally unnecessary. Specifically, I cannot agree to do so if it means limiting Board Member rights. Use of the long established and effective rules found in Board Order # 1 would result in a speedy public meeting in this or any other case.

Accordingly, I most strongly object to the unprecedented proposed public meeting scheme outlined in Notation Item 852. It is, in my opinion, an unconscionable approach as it also suspends Roberts Rules of Order for the meeting. Approval of this Notation Item will set a precedent which will negatively impact future Board Members and I view it as a further attempt to erode away Board Member authority by the Chairman - authority granted to each Board Member when they are appointed by the President of the United States and confirmed by the Senate. Not only does it not meet the intent of Board Order # 1, it also appears to be skirting Board Member responsibilities found in and required by the Government in the Sunshine Act and the CSB implementing Regulation. We are in effect mocking the Open Governance requirements as espoused by the Sunshine Act by seeking to establish a self-imposed muzzling of the Board Members by their own affirmative votes if they vote in favor of this plan. Further, I believe this proposed format in essence surrenders Board Member rights to the Chairman. No doubt, this appears to be the desire of the Chair, as he has proposed this format, and in my estimation he would just as soon cloister all decision making authority unto himself. It is not only inappropriate for the Chairman to decide the eventual structure of a public meeting agenda in contradiction to Board Order # 1, but creating a whole new scheme in the process further disrupts the orderly flow of information from this agency. This is unfounded, unwarranted, and clearly unnecessary! I am disturbed to see such a notation item and believe it demonstrates a continued unwillingness by

the Chairman to communicate often and openly with other Board Members on issues unless it is done under his dictated or modified terms. Use of such a format potentially muzzles the Board Members attending such a public meeting, will prevent free and unfettered discussion of issues, and will bring the objectivity of the agency into question. This also delays release of the DuPont case report.

Under the current Board Orders and rules the Chairman has the right to announce a meeting provided he gives ample Federal Register notice of said meeting in advance. So why confound this issue by proposing an amended format and why introduce another Notation Item to do so? From my perspective he should have simply announced the public meeting in the Federal Register and held it. Instead he is persisting in modifying the rules and restricting the other Board Members in the process - something which I find wholly inappropriate and offensive. The Chairman could have picked a date and announced a public meeting without the need of consulting other Board Members in lieu of using a notation item in an attempt to abridge the other Board Members' current rights.

The question to be asked is 'Why does the Chairman seek to change longstanding and effective rules vice work within them?'