



U. S. Chemical Safety and Hazard Investigation Board RECOMMENDATIONS STATUS CHANGE SUMMARY

Report:	Macondo Blowout and Explosion
Recommendation Number:	2010-10-I-OS-15
Date Issued:	April 17, 2016
Recipient:	U.S. Department of the Interior (delegated to the Bureau of Safety and Environmental Enforcement (BSEE))
New Status:	Closed – Reconsidered/Superseded
Date of Status Change:	November 14, 2017

Recommendation Text:

Issue participation regulations and training requirements for workers and their representatives that include the following:

- a. Worker-elected safety representatives and safety committees for each staffed offshore facility chosen under procedures overseen by the regulator; these safety representatives will have the authority to interact with employers (such as operators and drillers) and regulators on issues of worker health and safety risks and the development and implementation of the major hazard report documentation;*
- b. The elected worker representative has the right to issue an enforceable stop-work order if an operation or task is perceived as unsafe; all efforts should be made to resolve the issue at the workplace level, but if the issue remains unresolved, BSEE shall establish mechanisms such that the worker representative has the right and ability to seek regulator intervention to resolve the issue, and the regulator must respond in a timely fashion;*
- c. The regulator will host an annual tripartite forum for workforce representatives, industry management, and the regulator to promote opportunities for interaction by all three entities on safety matters and to advance initiatives for major accident prevention.*
- d. Protections for workers participating in safety activities with a specific and effective process that workers can use to seek redress from retaliatory action with the goal to provide a workplace free from fear that encourages discussion and resolution of safety issues and concerns. Protected activities include, but are not limited to reporting unsafe working conditions, near misses, and situations where stop work authority is used.*

Board Status Change Decision:

A. Rationale for Recommendation

On April 20, 2010, a multiple-fatality incident occurred at the Macondo oil well approximately 50 miles off the coast of Louisiana in the Gulf of Mexico during temporary well-abandonment activities on the Deepwater Horizon (DWH) drilling rig. Control of the well was lost, resulting in a blowout; the uncontrolled release of oil and gas (hydrocarbons) from the well. On the rig, the hydrocarbons found an ignition source. The resulting explosions and fire led to the deaths of 11 individuals, serious physical injuries to 17 others, the evacuation of 115 individuals from the rig, the sinking of the Deepwater Horizon, and massive marine and coastal damage from approximately 4 million barrels of released hydrocarbons.

The Macondo blowout has illuminated the potential severity of consequences from a single offshore incident and has served as a catalyst for examining major accident risk management in the offshore drilling industry. The U.S. Chemical Safety and Hazard Investigation Board (CSB) produced a four volume investigation report and issued 16 recommendations. The CSB issued 11 recommendations to BSEE. As a part of the investigation, the CSB looked at the regulatory environment and the role that BSEE plays in it. In particular as the regulator for the offshore safety and environmental management system (SEMS) and the workforce's ability to participate in it. This evaluation is specific to Recommendation No. 2010-10-I-OS-15 from volume four of the investigation report.

B. Response to the Recommendation

A letter from BSEE dated March 22, 2017, informed the CSB that BSEE did not believe they had the statutory authority from the Outer Continental Shelf Lands Act (OCSLA), which is where BSEE via the Department of the Interior derives its statutory authority), to implement the recommendation. They stated that the Department of Labor typically addresses collective bargaining, unionization, and protection from retaliatory employer actions. Additionally, they named the U.S. Coast Guard as also having authority on issues related to safety during oil and gas operations. Lastly, they saw similarity in the proposed recommendations with currently existing regulations.

The CSB concurs with this statutory and regulatory analysis. Specifically, that the federal regulator with authority and jurisdiction over the safety and health of workers offshore is delegated to the "the Secretary of the Department in which the Coast Guard is operating." The CSB also concurs that BSEE's current regulations require management consultation with their employees in the development, implementation, and modification of their safety and environmental management system (SEMS). Additionally, their current regulations grant all offshore personnel with stop work authority without fear of reprisal. Additionally, the CSB concurs with the statutory analysis regarding BSEE's lack of authority to extend 'whistleblower' protections to offshore workers other than ensuring an operator's SEMS program addresses it. Currently, OCSLA has no 'whistleblower' protection provisions. However, the Department of Labor does address the majority of the U.S. workforce with regard to 'whistleblower' protections and OCSLA states that nothing in OCSLA shall affect the authority provided by law to the Secretary of Labor for the protection of occupational safety and health.

C. Board Analysis and Decision

The Board received a tremendous amount of information from the CSB Staff and then deliberated on this recommendation at two public meetings. The information, discussions, and deliberation all highlighted that there is unanimous agreement within the Board and among the staff that worker participation, effective 'whistleblower' protections, and stop work authority are vital in any safety management regime. However, after extensive analysis and deliberation, in addition to the other issues raised above, the Board determined that this recommendation was most likely addressed to the wrong recipient. Furthermore, the Board has determined there are other CSB actions that could more effectively address the regulatory gaps identified in the Macondo Blowout and Explosion investigation. As such, the Board voted to change the status of CSB Recommendation No. **2010-10-I-OS-15** to: **"Closed – Reconsidered/Superseded"** and has committed the CSB to taking appropriate actions to address the intent of the recommendation.