



# U.S. Chemical Safety and Hazard Investigation Board

## Office of General Counsel

### Memorandum

To: Board Members  
From: Christopher Warner *Christopher Warner*  
Cc: Leadership Team  
Subject: Board Action Report – Notation Item 683A  
Date: February 24, 2009

On February 11, 2009, the Board disapproved Notation Item 683A. *Approval* of 683A would have rescinded Notation Item 683 (a contested vote) and would have adopted a revised FY 2010 budget request. Members Visscher and Wright submitted dissents (see attached).

### Voting Summary – Notation Item 683A

**Disposition: DISAPPROVED**

**Disposition date: February 11, 2009**

	Approve	Disapprove	Calendar	Not Participating	Date
J. Bresland	X				2/6/2009
G. Visscher		X			2/11/2009
W. Wark	X				2/5/2009
W. Wright		X			2/9/2009

Notation No.: 683A  
Subject: Fiscal Year 2010 Final Budget Request

[continued from preceding page]

Therefore, pursuant to its authority, the Board hereby votes to (1) rescind Notation Item 683 in its entirety; and (2) adopt the attached (Attachment B) draft revised final budget request as the CSB Final Budget Request for FY 2010, and authorize its submission to OMB and Congress.

I APPROVE this notation item AS PRESENTED.  
 *Minor editorial suggestions are marked on attached pages.*

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: February 11, 2008

Member: 

Vote Explanation on Notation Item 683A:

This notation item would (1) rescind notation item 683, and (2) adopt the attached document as the agency's budget request to Congress for FY2010. I support the first part, rescinding notation item 683, but not the second part, the 2010 budget request document, for the reasons that follow. As I have learned, my options for voting are yes or no on the entire notation item. Notwithstanding my vote here, I do appreciate the Chair's willingness to "re-vote" the budget request to allow all votes to count in the way intended.

In past years the CSB budget requests have included a list of chemical accidents that CSB "could have" investigated but did not. The list was always accompanied by a request for more money for the agency. I do not recall that those previous requests said or implied that CSB "should have" investigated those additional accidents. In other words, CSBs' mission, whether explicitly stated or not, and certainly in practice, has been to choose among the most serious chemical accidents that occur, and within the resources Congress allocates, to investigate and report on them.<sup>1</sup>

The GAO report of last year presented a different mission. Instead of investigating and reporting on a few of the most consequential chemical accidents, and those with the most interest and/or learning potential, the GAO said that CSB is required to investigate "all accidental releases that result, or have the potential to result, in a fatality, serious injury, or substantial property damage." (pages 3-4 of GAO report).<sup>2</sup>

CSB's response to the GAO disagreed with the GAO's interpretation of the statute. In addition, the response said (1) the agency would seek additional resources to conduct additional investigations, (2) CSB would seek additional information on more accidents, and (3) CSB would seek legislative clarification of the agency's mission if necessary.

Now in this budget request the CSB's position has changed. First, it at least implicitly agrees with the GAO's construct of an "investigation gap," i.e. a gap between what the agency "should have" investigated (the universe of accidents in CSB's investigation jurisdiction) and what it did investigate in 2008. Second, it defines the universe of accidents in CSB's investigation jurisdiction in such a way that it included 31 accidents in 2008. How that universe was defined to come up with that number is not disclosed, and obviously the definition used for the budget request is different than the definition of the universe that the GAO used. Third, the budget request suggests a different approach to visiting (but not "investigating") more accident sites. In short, the budget request stakes out new positions on these issues that are different from either the GAO report or the position that the CSB has previously taken.

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<sup>1</sup> Requesting more funds based on the fact that we could do more investigations begs two questions: one, how does the mission of the agency relate to the number of accidents it investigates, and two, is the agency being efficient as well as effective with the money it does receive?

<sup>2</sup> The GAO did not address the question of whether investigating all accidents is necessary to enhance safety, for example, or whether investigating all accidents is warranted from a return on investment, but simply based their view on their interpretation of the statute.

If this were a “think piece” to get us thinking about how the agency should proceed vis-à-vis past practice and the GAO report, I would certainly not object. But here we are asked to vote on it, presumably as the agency’s position and policy, even though there have been no discussions involving the board about what seem to be quite fundamental questions about the mission and direction of the agency. Unfortunately, deleting this part from the budget request, without changing the increase in the overall dollars in the budget request was rejected, and so I vote against the notation item.

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[continued from preceding page]

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 *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: 9 Feb 2009

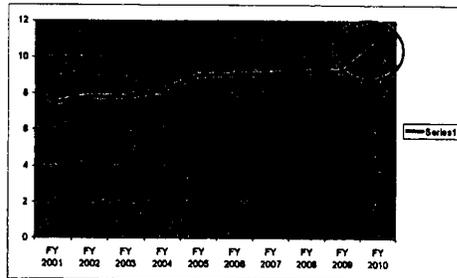
Member: William E. Wight

# NOTATION ITEM 683A VOTE IN CASE OF BOARD MEMBER WILLIAM WRIGHT

I vote NO for this budget based on the following reasons:

First and foremost this budget (\$10.85M) represents a **17.17% increase** over the CR budgeted amount of \$9.26M; and I find this to be excessive in light of the current state of the U.S. economy – see spike in table below. Further I do not believe we can fully execute such a budget.

FY	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
\$ in Millions	0	6.1	7.27	7.48	7.24	7.81	8.2	8.95	9.96	10.85
% Increase		62.8	22.4	6.14	4.81	6.59	4.85	10.12	9.35	9.35
									1.84	0
										17.17
										(\$400K)



Additionally, we have also historically returned funds to the Treasury for a number of years due to our stated inability to hire and retain staff – including based on my calculations about \$60K of non-compensation funds in FY 2008.

Second, I do not agree with many of the concepts proposed in the justification and believe the Board has not fully discussed or adopted them yet. And until we do so I question the overall benefit derived from the expansion program described in the budget submission. Some of the following items have not been finalized or agreed to by the Board:

- a. Geographic responsibility/Fourth assessment team – suggestion is provided in footnote number 13 that the new smaller fourth team responsible for exclusively conducting shorter assessments could be located in Denver in spite of fact the facilities for that office were not designed for more people or infrastructure.
- b. Deployment Protocol - I submit the deployment protocol and or criteria is still being worked to fashion a new revision. There is no clear delineation as to what is considered to be Serious, Major or Most Serious incidents. I believe we should clearly define two key elements within the deployment protocol; namely, how many major cases we will pursue and a reasonable deployment cycle time away from home base for investigators.
- c. Proof of Denver Office concept – My approval for the Denver office was predicated on proving we could more easily hire personnel outside of the DC area – but to date not a single person has been hired in Denver.

I cannot support a budget that proposes a **17.17% increase** over the current CR level of \$9.26M. I also believe the Board needs to consider the various policy decisions above on their own merits vice being coupled with a budget request.