



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 718

Date: October 20, 2009

On September 16, 2009, the Board disapproved Notation Item 718, thereby declining to designate Recommendation 2005-04-I-TX-R5 and R8 (to the Occupational Safety and Health Administration) (from the BP Texas investigation) with the status of Open-Acceptable Response. Comments on the item from Mr. Visscher and Mr. Wright are attached to this memorandum.

Voting Summary – Notation Item 718

Disposition: DISAPPROVED

Disposition date: September 16, 2009

	Approve	Disapprove	Calendar	Not Participating	Date
J. Bresland		X			9/16/2009
G. Visscher		X			9/14/2009
W. Wark	X				9/3/2009
W. Wright		X			9/15/2009

Vote Explanation on Notation Item 718, re Status Change on Recommendations to OSHA from BP Texas City Investigation

I think OSHA has met the intent of the recommendations R5 and R8, but would agree to designate them “open acceptable” pending receiving reports at the conclusions of the refinery NEP (which was just extended in three regions) and further developments on the chemical NEP. But I disagree with the additional items that would, according to the staff memo, be included in the letter of communication to OSHA. Under the circumstances, I vote no on the notation item.

The memo accompanying the notation item describes areas that the letter of communication to OSHA would question in the refinery NEP, implying that CSB believes that there are shortcomings in the refinery NEP on the issues of VPP sites, state plans, and blowdown drums. Each of those, I believe, is based on incorrect assumptions.

With regard to VPP sites, I believe that OSHA excluded them from the refinery NEP for two reasons: (1) VPP sites receive an on-site review every 3 years, so the purpose of the NEP, which was to insure that a on-site comprehensive review of each refinery is conducted is already the case for VPP sites. (2) VPP sites are generally exempt from scheduled inspections, outside the VPP reviews, when they apply for and are accepted as VPP sites. OSHA could not and should not arbitrarily change the rules for the program for these sites. Furthermore, we really have no basis for implying that refineries in VPP are especially problematic. The GAO report was a general critique of VPP, not of specific sites, and identified the need for better data and consistency that would help OSHA administer the overall program and insure program quality.

With regard to states plans, OSHA met the recommendation by urging states to adopt and implement the refinery NEP. The fact that not all states decided to do so is beyond the recommendation. Furthermore, under the statute and regulations, OSHA is not a totally “federal” program; state OSHA programs set their own enforcement priorities.

On blowdown drums, the proposed language of the letter of communication would question how OSHA is going beyond the language of API 521 in encouraging “the use of inherently safer technology to replace blowdowns whenever possible.” OSHA’s NEP is an enforcement program; it does not set new substantive requirements. As I understand it, the substantive requirements are set by the PSM standard, which references industry standards, which in this case is primarily API 521 (and at the time the NEP was written and implemented, was the version of 521 that has since been revised by API). So legally OSHA is constrained from imposing new requirements on companies to replace blowdowns with flares, as the proposed letter of communication (and arguably the original recommendation) suggests they should.



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Therefore, pursuant to its authority, the Board hereby votes to designate Recommendations **2005-04-1-TX-R5 and R8** with the status of **Open-Acceptable Response**.

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**.

Date: 15 Sep 2009

Member: William E. Wight

I VOTED NO ON THIS NOTATION ITEM
MAINLY BECAUSE OF INTENDED/EXPRESSED
FUTURE CORRESPONDENCE TO BE ADDRESSED
TO OSHA. SUGGEST ALL OUTGOING CORRESPONDENCE
REGARDING RECOMMENDATIONS SHOULD BE UNDER
THE CHAIRMAN'S SIGNATURE!