



Chemical Safety and Hazard Investigation Board

Office of General Counsel

Memorandum

To: Board Members

From: Christopher Warner *aw*

Cc: Leadership Team

Subject: Board Action Report – Notation Item 742

Date: March 17, 2010

On January 25, 2010, the Board approved Notation Item 742, thereby making the following statement of its views on the proposed public release of the complete notation file for Notation Items 717 and 718 by the House Committee on Education and Labor:

- a. The Board supports the release of the Board Action Report (with attached Member comments), the notation item transmittal memo, and the notation item voting record for Notation Items 717 and 718, as the CSB will in the near future be releasing these same records as part of the agency's response to the Committee's request for greater transparency and the President's Open Government Directive.
- b. The Board, after careful consideration of the issues at stake and the specific nature and content of the Recommendation Response Evaluations included with Notation Items 717 and 718, as well as of Attachment 5 to the item 718 response evaluation, finds that in this particular case the balance of interests favors a discretionary disclosure of those documents. Thus, the Board waives the deliberative process privilege as to the Recommendation Response Evaluation, dated March 20, 2009, for Recommendation 2005-04-I-TX-R4 (Notation Item 717); the Recommendation Response Evaluation, dated April 15, 2009, for Recommendations 2005-04-I-TX-R5 and R8 (Notation Item 718); and Attachment 5 (document entitled, "Issues for Clarification and Additional Information to Request from OSHA in Notification Letter") to the item 718 response evaluation. In light of this waiver, and notwithstanding the provisions of Order 022, the Board does not object to release of these two response evaluations, or Attachment 5, by the Committee.
- c. The Board does not object to release by the Committee of Attachments 1 (letter from API to the CSB) and 2 (copy of a May 2008 addendum to API Standard 521) to the Recommendation Response Evaluation for 2005-04-I-TX-R4 (Notation Item 717), or Attachments 4 (letter from the CSB Director of Recommendations to API) and 6 (excerpts from a GAO report) to the Recommendation Response Evaluation for 2005-04-

I-TX-R5 and R8 (Notation Item 718), as these documents do not appear to fall within the scope of a legal privilege or other disclosure exemption.

- d. The Board does not express a view on the release of Attachments 1 (letter from OSHA to the CSB), 2 (letter from OSHA to the CSB), 3 (Refinery National Emphasis Program compliance guidance excerpt), or 7 (citations and notifications of penalty) to the Recommendation Response Evaluation for 2005-04-I-TX-R5 and R8 (Notation Item 718). These four documents appear to have originated with OSHA, which would be better situated to assess whether the release of those documents presents any issues.
- e. The Board appreciates this opportunity to coordinate and cooperate with the Committee in pursuing efforts to enhance transparency in service of the public interest and the CSB's mission.

Voting Summary – Notation Item 742

Disposition: APPROVED

Disposition date: January 25, 2010

	Approve	Disapprove	Calendar	Not Participating	Date
J. Bresland	X				1/22/10
W. Wark	X				1/25/10
W. Wright	X				1/26/10