

# Comments to Docket No. CSB-09-01 Advanced Notice of Proposed Rulemaking (ANPR) Chemical Release Reporting

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**From:** [Patrick Coyle](#)  
**To:** [anpr](#)  
**Subject:** CSB-09-01 Comments  
**Date:** Saturday, June 27, 2009 5:02:54 PM  
**Attachments:** [Chemical Release ANPRM Comment.doc](#)

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The attached comments are in response to the ANPRM published in the June 25th, 2009 Federal Register regarding Chemical Release Reporting Requirements for the Chemical Safety and Hazard Investigation Board.

Patrick Coyle  
[Chemical Facility Security News](#)  
[PJCoyle@aol.com](mailto:PJCoyle@aol.com), 706-888-8459  
Twitter: [pjcoyle](#)

---

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## CSB Publishes Chemical Release ANPRM

On June 25th the Chemical Safety and Hazard Investigation Board (CSB) published an Advance Notice of Proposed Rule Making with the intent to fulfill a legislative requirement levied on the Board during its authorization almost 20 years ago.

### **Reason for the ANPRM**

The legislation authorizing the formation of the Board, the Clean Air Act Amendments of 1990, requires that the CSB establish a regulatory requirement “reporting accidental releases into the ambient air subject to the Board’s investigatory jurisdiction” {42 USC 742(R)(6)(C)(iii)}. Since the sub-paragraphs immediately preceding this requirement charge the Board with investigating “any accidental release resulting in a fatality, serious injury or substantial property damages” {42 USC 742(R)(6)(C)(i)}, and recommending steps to “make chemical production, processing, handling and storage as safe and free from risk of injury as is possible” {42 USC 742(R)(6)(C)(ii)}, it is clear that the Board’s ‘investigatory jurisdiction’ is quite wide.

### **The Purpose of Chemical Release Reporting**

The ANPRM notes that “the CSB has argued that the sole purpose of a reporting regulation is to inform the CSB of major incidents warranting the deployment of investigators” (74 FR 30260). This seems to ignore the second part of the Board’s mission, making ‘chemical production, processing, handling and storage’ as safe as possible.

It is a well established principal in the chemical process industry that the investigation of ‘near-miss’ incidents can result in identifying steps to be taken to prevent more serious incidents from occurring. If the CSB continues to concentrate their data collection efforts on accidents and incidents resulting in ‘a fatality, serious injury or substantial property damage’, the Board will be hard pressed to identify trends, developments and situations that would be predictive of future serious incidents.

It is true, of course, that the current staffing and funding levels at the CSB already prevent the CSB from conducting active investigations of all chemical incidents that result in ‘a fatality, serious injury, or substantial property damages’. Full-scale investigations of near-miss incidents would be difficult to justify when the Board cannot investigate all chemical releases resulting in deaths.

Statistical analysis of trends, however, could allow the Board to call attention to insipient problems and recommend in-depth research to be conducted by appropriate industry and academic organizations. For example it would seem that the recent spate of news reports about industrial accidents related to low-volume releases of anhydrous ammonia in food processing facilities because of valve or piping failures cries out for investigation of the adequacy of the design, installation and maintenance standards for these types of refrigeration systems.

## **Investigative Response**

Again, a full-scale investigation of one or more of these incidents would be hard to justify under the current funding and staffing constraints placed upon the Board. Assigning an investigator to collect information from local investigative agencies and providing the authority to compel submission of such reports about a class of incidents like this could allow the CSB to define the extent of the problem. Then the Board could suggest detailed research programs for organizations like the Center for Chemical Process Safety (CCPS) or a variety of industry standard setting organizations.

Ideally, the Board should be able to commission its own research from a wide variety of academic institutions. CSB does not currently have any grant making authority that would allow it to fund such research. This is something that the agency should certainly take-up with Congress.

Lacking the expansion of the investigative follow-up capability described above, the Chemical Safety and Hazard Identification Board would be hard pressed to justify the mandatory chemical release reporting requirements outlined in the ANPRM. If the information collected from such a reporting requirement is not used any more effectively than the currently collected data there is no reason to expand the data collection effort.

Patrick Coyle

[Chemical Facility Security News](#)

PJCoyle@aol.com, 706-888-8459

Twitter: [pjcoyle](#)

**From:** [joel.hall@ineos.com](mailto:joel.hall@ineos.com)  
**To:** [anpr](#)  
**Subject:** Comments on June 25, 2009 ANPR - Chemical Release Reporting  
**Date:** Wednesday, July 22, 2009 9:39:30 AM  
**Attachments:** [INEOS Fluor Comments on CSB ANPR.pdf](#)

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Please find attached comments submitted by INEOS Fluor Americas LLC on the June 25, 2009 ANPR on Chemical Release Reporting.

(See attached file: INEOS Fluor Comments on CSB ANPR.pdf)

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Sent via e-mail: [anpr@csb.gov](mailto:anpr@csb.gov)

July 22, 2009

**INEOS Fluor Americas LLC**

PO Box 30  
St. Gabriel, LA 70776

Telephone (225) 642-0094  
Fax (225) 642-8629

[www.ineosfluor.com](http://www.ineosfluor.com)

Chemical Safety and Hazard Investigation Board  
Office of General Counsel  
Attn: C. Kirkpatrick  
2175 K Street, NW  
Washington, DC 20037

Re: Comments on Advanced Notice of Proposed Rulemaking (ANPR)  
Chemical Release Reporting  
Docket No. CSB-09-01

Dear Mr. Kirkpatrick:

INEOS Fluor Americas LLC (INEOS Fluor) owns and operates a chemical manufacturing facility located in St. Gabriel, Louisiana. The facility is the largest manufacturer of the refrigerant gas, 1,1,1,2-tetrafluoroethane (R-134a) in the world. R-134a is an ozone-friendly replacement for CFCs.

INEOS Fluor has reviewed the Advanced Notice of Proposed Rulemaking (ANPR) on Chemical Release Reporting published in the June 25, 2009 *Federal Register* and appreciates the opportunity to offer the following comments.

INEOS Fluor requests that if the Chemical Safety and Hazard Investigation Board (CSB) establishes a regulation that requires chemical release reporting that such reporting be made, in accordance with the enabling legislation, to the National Response Center.

As indicated in the ANPR, the CSB is aware that chemical incident reports are required under various federal laws (OSH Act, EPCRA, CERCLA, ATSDR). Please be aware that States also have chemical release reporting requirements.

Chemical release only scenarios (i.e., chemical release incidents that do not include OSHA reporting) can be envisioned, for entities subject to existing chemical release reporting requirements in our location, that would require reports to the following entities:

- Local Emergency Planning Committee (required under EPCRA and State regulations)
- State Emergency Response Commission (also required under EPCRA and State regulations)



KLEA is a registered trademark, property of  
INEOS Fluor Holdings Ltd.

Comments on CSB ANPR  
Chemical Release Reporting  
July 22, 2009  
Page 2 of 2

- National Response Center (required under CERCLA and U.S. Department of Transportation regulations)
- Louisiana Department of Environmental Quality (required under State regulations).

Reports to some of these entities are required within one hour of learning of the release. Experience has shown that it takes approximately one hour to make the required notifications to these four entities. An additional, separate report to the CSB would cause an additional burden on the regulated community and would not be conducive to prompt reporting. Additional reporting may cause facilities with limited manpower to decide between making such a notification (or risk enforcement action) or focus on mitigation of the chemical release. Therefore, in the interest of making prompt notification to the CSB and to minimize the impact of an additional reporting requirement on the regulated community, INEOS Fluor requests that notifications to the CSB be made through the National Response Center (NRC).

Existing laws and regulations requiring chemical release reports have different reporting criteria. In order to minimize confusion by the regulated community, INEOS Fluor requests that the CSB consider using existing laws and regulations to define terms such as "extremely hazardous substance" (see 40 CFR Part 355) and "serious" injury (see 40 CFR Part 68) and make reporting criteria consistent with these laws and regulations. Most importantly, INEOS Fluor requests that terms be defined clearly and unambiguously in order to ensure consistent reporting and to minimize confusion by the regulated community.

Thank you for the opportunity to comment on the ANPR. If you have any questions, please contact me at 225-642-6348.

Sincerely,



Joel R. Hall  
Security, Safety, Health, & Environmental Manager  
INEOS Fluor Americas LLC

**From:** [Lancey, Stan](#)  
**To:** [anpr](#)  
**Subject:** CSB-09-01 Comments from American Forest & Paper Association  
**Date:** Wednesday, July 22, 2009 8:37:17 AM  
**Attachments:** [Chemical Release Reporting Docket No. CSB-09-01 final.docx](#)

---

Kindly accept our comments regarding Chemical Release Reporting, CBS-09-01

Stan Lancey  
AMERICAN FOREST & PAPER ASSOCIATION  
1111 19th Street, NW, Suite 800, Washington, D.C. 20036  
[Stan.Lancey@afandpa.org](mailto:Stan.Lancey@afandpa.org)  
202.463.2469w

[www.afandpa.org](http://www.afandpa.org)



**American  
Forest & Paper  
Association**

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July 22, 2009

Subject: Chemical Release Reporting, Docket No. CBS-09-01

The American Forest & Paper Association (AF&PA) appreciates the opportunity to submit the following comments in response to the advance notice of proposed rulemaking regarding Chemical Release Reporting [Federal Register/Vol. 74, No. 121; June 25, 2009; page 30259].

AF&PA is the national trade association of the forest products industry, representing pulp, paper, and wood products manufacturers, and forest landowners. AF&PA member companies make essential products from renewable and recyclable resources that sustain the environment. The forest products industry employs nearly 1 million workers and generates 6 percent of the total U.S. manufacturing GDP.

Members of AF&PA take workplace safety very seriously. As a result, the injury and illness incident rates (recordable incidents per 100 equivalent full-time workers) have declined by 73% at member-company pulp and paper mills and by 69% at member-company wood products facilities between 1992 and 2006, according to the Association's Environmental, Health & Safety Verification Program.

At the same time, the industry is facing very challenging economic conditions. More than 170 pulp and paper mills have closed since 1997, and the forest products industry – wood facilities and paper mills – has lost 25% of its workforce since 2006. These recent losses reflect the deep recession, which has harmed print advertising and packaging demand, and the sharp downturn in new home construction, which has sharply reduced wood products demand.

AF&PA believes that the compilation of information pertaining to chemical incidents is important, but to the extent possible, the information should be collected in a manner that does not impose undue burdens.

CSB should make a concerted effort to work with EPA, OSHA, and the NTSB to set up one effective communication and reporting system to meet statutory requirements and avoid duplicative reporting requirements for companies. The four agencies listed above can develop one template that could be used by companies for reporting all serious accidents or environmental releases. The template would contain all the relevant information and would be faxed, phoned, or e-mailed to one location that would be shared with all the agencies immediately using today's technology. Similarly, the agencies can cooperate and conduct coordinated investigations instead of duplicative

investigations. Note that reporting requirements do exist for significant incidents to OSHA, NRC, NTSB, and EPA.

Specific Recommendations:

1. CSB could model a reporting requirement after the SPCC rule or OSHA. Set thresholds, with notification only being required above the threshold levels (e.g., incidents that result in more than one death, hospitalization of more than 3 people, public evacuation).
2. Initial report to NRC. CSB is notified if the threshold in item #1 is reached.
3. Report the essential details of the incident to the extent known. If the incident is significant, the CSB will deploy staff to collect additional information.
4. Report within 24 hours via telephone, fax, or e-mail.
5. Limit reporting to significant incidents detailed in #1.
6. Factors should focus on the items in #1.
7. On-site data gathering subsequent to a reportable incident.
8. Limit reporting to the incidents described in item #1 and keep reporting electronic.
9. Maintain a limited scope of reportable incidents; focus on manufacturing sectors.

Sincerely,



Vice President, Public Policy  
American Forest & Paper Association

**From:** [Michael Kennedy](#)  
**To:** [anpr](#)  
**Subject:** CSB-09-01  
**Date:** Monday, July 27, 2009 4:37:18 PM  
**Attachments:** [CSB Reporting Rule comments SOCMA 7-27-09.pdf](#)

---

To whom it may concern,

Please find attached comments on CSB-09-01 submitted by the Society of Chemical Manufacturers and Affiliates (SOCMA).

Very truly yours,

*Michael F. Kennedy J.D.*

Senior Manager, Government Relations  
SOCMA [www.socma.com](http://www.socma.com)  
1850 M Street, NW Suite 700  
Washington, DC 20036  
202-721-4198  
[kennedym@socma.com](mailto:kennedym@socma.com)



July 27, 2009

Chemical Safety & Hazard Investigation Board  
Office of General Counsel  
Attn: C. Kirkpatrick  
2175 K St., NW, Suite 650  
Washington, DC 20037

Re: Chemical Release Reporting, Docket #CSB-09-01

Dear Sir or Madam:

The Society of Chemical Manufacturers and Affiliates (SOCMA) is pleased to submit these comments in response to the CSB's advance notice of proposed rulemaking on chemical release reporting (74 Fed. Reg. 30259, June 25, 2009).

SOCMA is the leading trade association representing the batch and custom chemical manufacturing industry. SOCMA's nearly 300 member companies make the products and refine the raw materials that make our standard of living possible. From pharmaceuticals to cosmetics, soaps to plastics and all manner of industrial and construction products, SOCMA members make materials that save lives, make our food supply safe and abundant, and enable the manufacture of literally thousands of other products. Over 70% of SOCMA's active members are small businesses.

ChemStewards<sup>®</sup> is SOCMA's flagship environmental, health, safety and security (EHS&S) continuous performance improvement program. It was created to meet the unique needs of the batch, custom, and specialty chemical industry, and reflects the industry's commitment to reducing the environmental footprint left by members' facilities. As a mandatory requirement for SOCMA members engaged in the manufacturing or handling of chemicals, ChemStewards is helping participants reach for superior EHS&S performance.

Potentially all of SOCMA's members that manufacture or handle chemicals could be subject to a CSB release reporting rule. As noted above, most of them are small businesses, and thus are particularly challenged to comply with new regulatory obligations. For these reasons, SOCMA has a vital stake in this rulemaking.

SOCMA has historically shared the view that the CSB did not need to initiate a rulemaking on this topic, particularly given (i) the existence of current obligations to

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report to the National Response Center (NRC); and (ii) the comprehensiveness and timeliness of news media reporting of significant releases, especially in the Internet age. However, SOCMA respects the CSB's decision to initiate such a rulemaking. We believe the CSB has taken the appropriate approach by starting with an advance notice of proposed rulemaking, in order to gather broad input on basic questions of coverage and content before actually proposing an approach. Below, we offer our comments on several of the issues discussed in the ANPRM.

### **I. The CSB Should Adopt Approach #3: Reporting Pursuant to CSB Notice**

*Approach #3 is ideally structured to suit the CSB's resources and needs*

The CSB has done a good job of explaining why the optimum release reporting rule would involve facility reporting to the CSB, when notified by the CSB.

While there could be tens of thousands of events that fall within the statutory phrase "accidental releases into the ambient air subject to the Board's investigatory jurisdiction," the CSB is right to recognize that its resource limitations – under any foreseeable budget scenario – counsel that it "should likely focus on selected, high-consequences events (for example, incidents that result in death, serious injuries requiring in-patient hospitalization, large public evacuations, very substantial property damage, or acute environmental impact)," and that "there are likely to be at most a few hundred incidents throughout the country each year that would require reporting to the CSB if the threshold is set at a level to capture serious consequences or substantial near miss situations."<sup>1</sup>

The CSB is also correct to conclude that it will almost certainly learn of releases meeting the foregoing description fairly shortly after the fact, either by media reporting or through the NRC.<sup>2</sup> Certainly SOCMA is unaware of any evidence that the CSB has failed to learn of important incidents, or has learned of them so late as to have lost valuable evidence or otherwise suffered prejudice to its investigative capability. Thus, it is reasonable for the CSB to structure a reporting rule to supplement its ability to collect information from its two principal current sources of initial data. A follow-on reporting rule of the sort discussed under Approach #3 would allow the CSB to collect the information it needs in a particular case, tailored to that situation. Approach #3 would also enable the CSB to collect a common dataset regarding each incident that it determines warrants such documentation – thus meeting the GAO's concerns<sup>3</sup> – while avoiding massive collections of information about incidents that the CSB does not have any interest in pursuing.

*Approach #1 Suffers Multiple Flaws*

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<sup>1</sup> 74 Fed. Reg. 30261.

<sup>2</sup> *Id.* at 30260-61.

<sup>3</sup> GAO-08-864R, at 7 (quoted *id.* at 30260).

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Such wasted activity is exactly what would result from Approach #1, as it would lead to facilities filing thousands of reports that the CSB may well not even be able to review, or which it largely would ignore because it would quickly determine the incidents not to be worth evaluating further. Such a massive compilation of data would be far less useful to the CSB than a database that is made up entirely of incidents that at least met an initial screen of relevance.

Approach #1 would require reporting of “all accidental releases subject to the CSB’s investigatory jurisdiction.” As the CSB is well aware, the Clean Air Act is inconsistent regarding that jurisdiction. At a minimum, it encompasses “any accidental release resulting in a fatality, serious injury or substantial property damages.”<sup>4</sup> While the existence of a fatality is bright-line standard, “serious injury” is a less clear term, and “substantial property damages” is even more vague. At least arguably, however, the CSB’s investigatory jurisdiction reaches more broadly to any accidental release that “had the potential to cause substantial property damage or a number of deaths or injuries among the general public.”<sup>5</sup> This general phraseology encompasses an enormous number of events, particularly since “accidental release” is in turn defined to involve releases of both “regulated substances” (which are listed by rule) and “other extremely hazardous substances” (which are not listed anywhere).<sup>6</sup> This compound vagueness raises two problems:

- Facilities that are aware of their obligation to report under such a standard are going to come to widely differing interpretations of whether the same fact patterns would be reportable, leading to inconsistencies in reporting that would (i) produce both under- and over-reporting and, as a result, (ii) undermine the reliability of the resulting database.
- Because of the lack of clarity in the language defining the CSB’s investigative jurisdiction, many facilities will have no idea that they are subject to that jurisdiction, and thus to the reporting requirement. Many of the facilities that the CSB investigates are unaware that they are subject to long-standing regulatory programs whose applicability is easily determined.<sup>7</sup> Imagine how many more facilities will conclude that the CSB’s reporting rule (under Approach #1) does not apply to them. The CSB is wise to identify the problem of “how best to educate potentially affected parties about compliance with any final rule”<sup>8</sup> – but this problem would be staggering if a final reporting rule is self-implementing and based on verbal formulations derived from the CSB’s jurisdiction.

*Approach #2 would be overly burdensome to facilities and the CSB*

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<sup>4</sup> 42 U.S.C. § 7412(r)(6)(C)(i).

<sup>5</sup> *Id.* § 7412(r)(6)(E).

<sup>6</sup> *Id.* § 7412(r)(2)(A).

<sup>7</sup> For example, the CAI facility in Danvers, MA was unaware of the OSHA PSM rule, which applied to it. See CSB final report at 56 (available at <http://www.csb.gov/assets/document/CSBFinalReportCAIExplosion.pdf>).

<sup>8</sup> 74 Fed. Reg. 30262.

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Approach #2 is an improvement on Approach #1, but is still inferior to Approach #3. Assuming that the CSB used the same consequence thresholds for Approach #2 that it would use for Approach #3, it would gain the same information in both cases, and would avoid collecting a great deal of non-useful information about low-consequence events. The CSB would still be relying on facilities to be aware of their reporting obligation, however, and would still have to contact facilities in cases where it became aware of an event but did not receive a report. The only incremental value of Approach #2 over #3 would be cases where two things happened: (i) the CSB did not become aware of the event via the NRC or the news media; and (ii) the facility was aware of its reporting obligation. SOCMA questions how many of these cases there will be.

SOCMA particularly opposes the “related” option under Approach #2 of having “high risk” facilities report regardless of consequence. SOCMA is confident that such a requirement will lead to unnecessary reporting by covered facilities and yet deprive the CSB of needed information from non-“high risk” facilities.

*Approach #4 is essentially the status quo*

Facilities already have to report to the NRC whenever they have a release over a 24-hour period of a hazardous substance or extremely hazardous substance above its reportable quantity (RQ). The CSB already reviews reports under this program. It does not appear that the CSB has identified particular chemicals not on this list that need to be reported, or lower RQs that should be used. Rather, the CSB has noted that accidents warranting its investigation “may and do result from the release of relatively small quantities of chemicals, and from chemicals that are not likely to be listed.”<sup>9</sup> Approach #4 will not address that problem, except by massively expanding the existing lists of chemicals and RQs in ways that clearly will produce declining returns. Ultimately, no self-implementing, list-based rule could ever get at the accidents that are caused by operating conditions or circumstances, where the release of a chemical is the incidental result, rather than the cause, of the accident. By contrast, a follow-up rule like Approach #3 will work ideally for such accidents.

## **II. The CSB Should Maximize the Value of NRC Reporting**

The Clean Air Act provides that reporting to the NRC “shall satisfy” any CSB reporting obligations.<sup>10</sup> Thus, the CSB is obligated to work with the Coast Guard to implement a means by which any chosen reporting rule can utilize the NRC. The NRC already has a series of web-based templates for reporting incidents subject to the jurisdiction of other agencies; e.g., DOT.<sup>11</sup> The fixed facility template already has fields for the sort of

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<sup>9</sup> *Id.*

<sup>10</sup> 42 U.S.C. § 7412(r)(6)(C)(iii).

<sup>11</sup> See <http://www.nrc.uscg.mil/htmlreport.html>.

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information the CSB says it wants (e.g., “Injuries,” “Fatalities,” “Evacuations,” “Damages”).<sup>12</sup> The CSB and the Coast Guard ought to be able to modify these templates to create exactly what CSB is looking for. A requirement to use the web-based template would avert the need to have a dedicated toll-free phone line.

SOCMA values its relationship with the CSB and appreciates the opportunity to provide these views. We would welcome the chance to discuss them further with the CSB if the Board would find that useful. If you would like to do so or have any questions about these comments, please contact me at 202-721-4198 or [kennedym@socma.com](mailto:kennedym@socma.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael F. Kennedy", written in a cursive style.

Michael F. Kennedy J.D.  
Senior Manager, Government Relations

---

<sup>12</sup> Go to <http://www.nrc.uscg.mil/fixedreport.html> and scroll down to “Impact Information.”



**From:** [Dave Heidorn](#)  
**To:** [anpr](#)  
**Cc:** [Bresland, John](#); [Horowitz, Daniel](#)  
**Subject:** ASSE Comment on ANPR on Chemical Release Reporting  
**Date:** Thursday, July 30, 2009 5:24:59 PM  
**Attachments:** [080409CSBchem.docx](#)

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<<080409CSBchem.docx>>

Please find attached ASSE's comment on CSB's ANPR on Chemical Release Reporting. Congratulations to CSB for a well written, thoughtful document. Please let me know if there are any difficulties in this transmission.

Thank you for your time,

Dave Heidorn

Dave Heidorn, JD

Manager, Gov't Affairs and Policy

American Society of Safety Engineers

[dheidorn@asse.org](mailto:dheidorn@asse.org)

(o) 847/768-3406

(m) 847/909-4558



**AMERICAN SOCIETY  
OF SAFETY ENGINEERS**

1800 East Oakton Street  
Des Plaines, Illinois 60018-2187  
847.699.2929  
FAX 847.296.3769  
[www.asse.org](http://www.asse.org)

Chemical Safety and Hazard Investigation Board  
Office of General Counsel  
Attention: C. Kirkpatrick  
2175 K Street, NW Suite 650  
Washington, DC 20037

By email: [anpr@csb.gov](mailto:anpr@csb.gov)

RE: Chemical Release Reporting Advance  
Notice of Proposed Rulemaking –  
Docket No. CSB-09-01

Dear Mr. Kirkpatrick:

The American Society of Safety Engineers (ASSE), on behalf of its 32,000 member safety, health and environmental (SH&E) professionals, appreciates this opportunity to comment on the U.S. Chemical Safety and Hazard Investigation Board's (CSB) Advanced Notice of Proposed Rulemaking (ANPR) on Chemical Release Reporting, 74 Fed. Reg. 30259, June 25, 2009. ASSE values the leadership role that CSB takes in investigating chemical incidents and the excellent work it accomplishes in communicating its findings so that industry, working with our members, can learn from these incidents and prevent their reoccurrence. ASSE has long supported CSB's mission and looks forward to continued cooperation in helping employers protect workers and employer property from the risks that chemicals can pose in the workplace.

ASSE is encouraged by CSB's effort, as reflected in this ANPR, to create a more thorough system for collecting needed information on chemical incidents. In light of CSB's enabling legislation and the 2004 report of Department of Homeland Security's Office of Inspector General, CSB's

thoughtful discussion of the various issues involved in improving its information collection through regulation is appropriate.

ASSE particularly appreciates CSB's stated intent to "complement, rather than replace, the existing mechanisms by which the CSB typically learns of chemical incidents." While supportive of CSB's intent to be thorough in learning all it can about chemical incidents in furtherance of its mission, our members on the front line of managing safety and health report that industry is already reporting sufficient information to regulatory authorities. As the ANPR itself recognizes, chemical incidents are already required to be reported through the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Emergency Planning and Community Right-to-Know Act (EPCRA), the Occupational Safety and Health Act (OSH), the Clean Water Act, the Clean Air Act, and the Toxic Substances Control Act (TSCA). Additionally, industry is required to report to various state and local agencies.

Fulfilling these reporting requirements comes at a time when a facility's supervision team is in the midst of managing an emergency, making immediate notifications to local emergency responders, making calls for assistance to off-shift employees and contractors for help in responding to the emergency and otherwise taking immediate actions to ensure the health and safety of employees and the community. ASSE is concerned that adding still another reporting requirement solely for the purpose of informing the CSB of an event would only add unnecessary burden and distraction to a supervision team working to mitigate the impact of an emergency.

This is particularly true when our members who have been involved in chemical incidents report that CSB is timely in following up the information it gains through its existing relationships with other agencies and the news media. In fact, CSB is viewed as so effective that our members voice a concern that any chemical reporting rule be carefully drawn so that reporting to CSB is not required to be immediate. Our members have learned that a minimum of three hours is needed for a site's emergency response priorities and any extenuating circumstances to be handled. A regulation must recognize that sites must deal with these emergency response and safety priorities prior to any accidental release reporting requirements.

For these reasons, ASSE supports the third approach outlined by CSB in the ANPR:

The agency would continue to rely primarily on existing sources for initially learning of chemical incidents, but would follow up on a subset of the incidents (e.g., those with the most serious consequences, based on initial reports, and a sample of all others) to gather additional information through a questionnaire or on-line form that the reporting party would be required by the rule to complete and submit to the CSB.

This approach provides the most useful balance between improving CSB's ability to gather more information about chemical incidents without making more difficult the work of our members and their employers in addressing emergencies. ASSE urges CSB to advance this approach in further rulemaking.

### Threshold for Report

While ASSE understands the urge to be as thorough as possible in ensuring adequate reporting of incidents, we believe that CSB is currently receiving adequate notification of incidents, especially given that there is a limit on the number of detailed investigations it can conduct each year. The Clean Air Act directs CSB to investigate accidents with accidental releases resulting in fatality, serious injury, or substantial property damage. ASSE does not believe there is an adequate basis for expanding the threshold for reporting. Phrases such as "incidents that result in death, serious injuries requiring in-patient hospitalization, large public evacuations, very substantial property damage or acute environmental impact" simply rephrase the current statutory requirements that have proven adequate.

### Statutory Definitions

In its examination of statutory definitions for further rulemaking, ASSE urges CSB consider the definitions currently being developed by the ANSI RP 754 Committee on Process Safety Performance Indicators. This committee was formed in response to a CSB recommendation in its investigation of the BP Texas City explosion in 2005, and the definitions being developed by this Committee are already in use by industry. In addition, ASSE urges CSB to consider that existing reporting regulations already contain definitions for such terms as "extremely hazardous substance," "serious injury," and "accidental release" and make sure that its rulemaking on this issue harmonize with those existing regulations. Any discord between regulations only makes the work of our members more difficult.

### Conclusion

As always, ASSE and its members stand ready to work with CSB to help ensure that this rulemaking is effective and continues CSB's established record of helping industry better protect workers through the lessons learned from its investigations.

While outside the scope of this rulemaking, ASSE's members cannot help but think this rulemaking demonstrates the need for CSB to work with other federal agencies to establish a consolidated federal 911 type of call-in capability to unify the variety of required emergency release responses. In the end, such a capability would improve reporting by making it easier on individuals typically involved in difficult situations, allow for coordinated responses from various agencies, and perhaps even prove a savings to the agencies by eliminating duplicative staff and resources. We urge CSB to provide leadership in developing this kind of coordinated federal capability.

4

Again, ASSE appreciated this opportunity to comment on what we believe is a well intended effort on CSB's part to advance its information gathering abilities. If there are any questions or ASSE can provide more information, please contact Dave Heidorn, JD, Manager of Government Affairs and Policy at [dheidorn@asse.org](mailto:dheidorn@asse.org) or 847/909-4558.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Patton", with a long horizontal flourish extending to the right.

C. Christopher Patton, CSP  
President

**From:** [Adam B. Cramer](#)  
**To:** [anpr](#)  
**Cc:** [Celeste Powers](#); [Jeffrey L. Leiter](#)  
**Subject:** CSB-09-01  
**Date:** Thursday, July 30, 2009 2:59:56 PM  
**Attachments:** [CSBcommentsJuly09.pdf](#)

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Mr. Kirkpatrick –

Attached please find comments from the Independent Lubricant Manufacturers Association (ILMA) regarding the Chemical Safety and Hazard Investigation Board's Advanced Notice of Proposed Rulemaking for Chemical Release Reporting (Docket No. CSB-09-01).

Best regards,

Adam Cramer  
ILMA Regulatory Counsel

Leiter & Cramer PLLC  
815 Connecticut Avenue, NW  
Suite 220  
Washington, DC 20006  
202.386.7671 (t) 202.386.7672 (f)

This electronic message contains information from Leiter & Cramer PLLC, which may be privileged. The information is intended to be for the use of the addressee(s) only. If you are not the addressee, note that any disclosure, copy, distribution or use of the contents of this message is prohibited.



INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION

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Ronald M. Powell  
Moroil Technologies

**Vice President**

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Eastern Oil Company

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Spectrum Corporation

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Hicks Oils & Hicksgas, Inc.

**Immediate Past President**

Anwer Hussain  
CHS Inc.

**Executive Director**

Celeste M. Powers, CAE

**General Counsel**

Jeffrey L. Leiter

July 30, 2009

Mr. Christopher Kirkpatrick  
Office of General Counsel  
Chemical Safety and Hazard Investigation Board  
2175 K Street, NW  
Suite 650  
Washington, DC 20037

***Re: Docket CSB-09-01; Advanced Notice of Proposed Rulemaking***

Dear Mr. Kirkpatrick:

The Independent Lubricant Manufacturers Association (“ILMA”) submits the following comments on the Chemical Safety and Hazard Investigation Board’s (“CSB”) Advanced Notice of Proposed Rulemaking (“ANPRM”) to establish a regulation requiring accidental chemical releases be reported to the CSB or to the National Response Center (“NRC”). 74 Fed. Reg. 30259 (June 25, 2009).

***Introduction of ILMA***

ILMA, established in 1948, is a national trade association of 135 manufacturing member companies. As a group, ILMA member companies blend, compound and sell over 25 percent of the United States’ lubricant needs and over 75 percent of the metalworking fluids (“MWFs”) utilized in the country.

Independent lubricant manufacturers by definition are neither owned nor controlled by companies that explore for or refine crude oil to produce lubricant base stocks. Base oils are purchased from refiners, who are also competitors in the sale of finished products. Independent lubricant manufacturers succeed by manufacturing and marketing high-quality, often specialized, lubricants. Their success in this competitive market also is directly attributable to their tradition of providing excellent, individualized service to their customers.

ILMA previously responded to CSB’s recommendation in the Third Coast Industries petroleum products facility fire (2002-03-I-TX-6).

***ILMA’s Response to CSB’s Request for Comment***

ILMA commends CSB’s goals in the ANPRM to create a reporting rule that helps improve the timeliness, completeness and accuracy of the information it now collects on chemical incidents. We also appreciate CSB’s interest in leveraging existing reporting requirements to help meet the Board’s needs and satisfy its statutory obligations under the Clean Air Act (“CAA”). Our hope is that, rather than “reinventing the wheel,” CSB’s regulatory efforts simply add a few strategically placed “spokes” that improve reporting on serious chemical incidents without creating a duplicative and, thus, unnecessary burden on the regulated community.

400 N. Columbus Street  
Suite 201  
Alexandria, VA 22314  
phone: 703/684-5574  
fax: 703/836-8503  
email: ilma@ilma.org  
web: www.ilma.org

### ***CSB Should Strategically Enhance Existing Reporting Requirements***

As CSB acknowledges in the ANPRM, the chemical industry and users are already subject to rather extensive reporting responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), where the release of a reportable quantity of any of several hundred listed substances or substances with certain hazardous characteristic requires an immediate report to the National Response Center.<sup>1</sup> The Emergency Planning and Community Right-to-Know Act (“EPCRA”) similarly requires companies to report hazardous chemical releases that may impact the public to Local Emergency Response and State Emergency Response offices. As the ANPRM also points out, workplace fatalities, including those caused by an accidental chemical release, must be reported to the Occupational Safety and Health Administration (“OSHA”) within eight hours.

The following hypothetical narrative illustrates how these reporting responsibilities are put into action when “Company X” experiences a 5,000-gallons spill of sulfuric acid that migrates off the company’s property in the Detroit metropolitan area:

1. Upon determining that the spill is in excess of a Reportable Quantity (“RQ”), Company X immediately contacts the NRC, Michigan Department of Environmental Quality (“MDEQ”), the Pollution Emergency Alert System (“PEAS”), and the Detroit Fire Department/LEPC. In this case, a call to the fire department covers the Local Emergency Planning Committee (“LEPC”) requirements.
2. Once the initial calls are made, there are additional notifications that go to the various police forces (state, county, and local), the water and sewer departments (if the release gets into the drainage system), the environmental response contractor(s), and any back-up contractors that Company X may have.
3. Depending on the circumstances, particularly if there are any injuries associated with the spill, hospitals, OSHA (state or federal), the health department, and the poison control center may also be contacted.
4. In addition to these external calls, Company X will also contact its own environmental/safety department, communications directors, and legal. It is worth pointing out that the NRC and EPCRA may not be the first call, if the RQ has not been determined or exceeded, as a company would most likely contact its environmental response contractor first and foremost so they may respond to the incident scene more quickly.

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<sup>1</sup> As specified on EPA’s website, NRC reporting requires the following information:

- Name, address, and telephone number of the person reporting and the responsible party;
- Specific location of the incident;
- Date and time the incident occurred or was discovered;
- Name of the chemical/material released;
- Source and cause of the release;
- Total quantity discharged;
- Medium into which the substance was discharged;
- Amount spilled into water;
- Weather conditions;
- Name of the carrier or vessel, the railcar/truck number, or other identifying information;
- Number and type of injuries or fatalities;
- Whether an evacuation has occurred;
- Estimation of the dollar amount of property damage;
- Description of current and future cleanup actions; and
- Other agencies notified or about to be notified.



Attached as “Exhibit A” is a sample emergency “call tree” that further illustrates the scope of actions taken from the release of a RQ.

Considering these robust reporting requirements and the seriousness with which our industry takes these responsibilities, we were surprised to learn that the sole source of approximately two-thirds of the screened incidents at CSB come from media reports. 74 Fed. Reg. at 30260. We were also surprised to learn that, even when incidents are reported to the NRC, CSB tends to find out from media reports before anything is forwarded from the NRC to CSB. Id. at 30261. From our perspective, much of the problem appears to be suboptimal coordination between CSB and the NRC, let alone other federal, state and local entities that collect information arising out of chemical accidents. Rather than creating another extensive layer of reporting responsibilities to be shouldered by the business community, CSB’s efforts should focus on designing streamlined channels of communication between the federal, state and local entities that currently receive chemical accident reports, and CSB. ILMA also would be in favor of ensuring that such enhanced communication system is properly funded.

Though better coordination between the governmental entities will greatly help CSB attain the policy goals specified in the ANPRM, some limited modification of the “standard” chemical accident reporting protocol should be explored. Indeed, accidents that CSB is required to investigate under the Clean Air Act Amendments of 1990 (accidental releases resulting in a fatality, serious injury, or substantial property damage) could certainly arise out of a release that is less than a Reportable Quantity and thus would not trigger a NRC reporting responsibility. Similarly, a chemical accident resulting in a serious injury and hospitalization to a single person would not trigger immediate OSHA reporting responsibility under 29 CFR § 1904.39(a). A small reporting gap, apparently now being covered by the media, seems to exist for incidents that are covered by CSB’s jurisdiction, but do not trigger either NRC or OSHA reporting requirements. It is doubtful that any amount of coordination between governmental entities can cover this gap if the information never makes it into their systems.

Instead of creating a wholly new reporting system, ILMA instead suggests a targeted modification of the existing NRC reporting protocol. In addition to the current “triggers” for contacting the NRC and the types of currently required accident information, CSB should explore having those in the regulated community also contact the NRC when there is an accidental chemical release of less than a Reportable Quantity in instances that result in a fatality, serious injury or substantial property damage. As acknowledged in the ANPRM, these trigger terms need to be defined with great specificity and sufficient implementation guidance must be created to avoid any confusion as to whether a call to NRC needs to be placed.

***Reject Approach #1 and Develop a Hybrid Approach Using Elements of Approaches #2 and #3***

In the context of the three regulatory approaches described in the ANPRM, a hybrid of approaches #2 and #3 may be worth exploring. Approach #1 – requiring the reporting of all accidental releases is far too duplicative considering existing reporting responsibilities and seems not unlike swatting a fly with a hammer. We also fear such an approach would create major challenges for the CSB to sift through a great deal of information and then identify the most important accidents.

Approach #3, which merely empowers CSB to ask that a report be filed, seems to present challenges to CSB’s ability to get accident information in the first place. Approach #2 could generate helpful information for CSB, but it will work best if it is integrated into the existing NRC system, and not a stand-alone system that would need to be reconciled with the NRC system in the midst of a chemical accident. Elements of Approach #3, specifically enabling CSB to follow-up with a reporting person or business after CSB gathers information from the NRC would be helpful.

Chemical Safety and Hazard Investigation Board  
July 30, 2009  
Page 4

The suggested hybrid approach would, of course, work best if the communication efficiencies noted above were also pursued.

***Conclusion***

ILMA appreciates the opportunity to submit the foregoing comments and trusts that they can help further sharpen the focus of CSB's laudable efforts at helping chemical activities in the United States safer for everyone.

Sincerely,

A handwritten signature in black ink that reads "Celeste Powers". The signature is written in a cursive, flowing style.

Celeste M. Powers, CAE  
Executive Director

Attachment (Exhibit A)

cc: ILMA Board of Directors  
ILMA SHERA Committee  
Jeffrey L. Leiter, Esq.  
Adam B. Cramer, Esq.

**Exhibit A: SAMPLE EMERGENCY RESPONSE NOTIFICATION CALL TREE**

<b>Regulatory Agency Contacts</b>		
<b>Agency</b>	<b>Phone No.</b>	<b>Description</b>
<b>National Response Center</b>	1-800-424-8802	Report a release of any material on the back of this sheet if the amount spilled is above the RQ and impacts the environment. <b>Notification must be within 15 minutes of determining an RQ is exceeded.</b>
<b>Michigan DEQ</b> <b>District Office (8 am – 5 pm)</b> <b>Pollution Emergency Alerting System</b>	1-800-292-4706 1-313-456-4700 1-800-292-4706	Report a release of any material on the back of this sheet if the amount spilled is above the RQ to the ground (dirt). <b>Notification must be within 15 minutes of determining an RQ is exceeded.</b>
<b>Detroit Fire Department / LEPC</b>	9-911	If an emergency cannot be handled by the facility or it will affect the neighborhood, call 911. This will satisfy notification to the Detroit Local Emergency Planning Commission. <b>Notification must be within 15 minutes of determining an RQ is exceeded.</b> “24-hour Pollution Emergency Alert System (PEAS)”
Detroit Water and Sewerage	313-267-6000 or 313-267-9000	Slug loading or discharge to the sewer. <b>Notification must be within 1 hour.</b>
Ambulance - AMR	9-911	If there is a need for medical assistance and/or any release in excess of the reportable quantity, contact 911.
Concentra Medical Clinic	734-425-4600	Any injured personnel are to be transported to the clinic (if not severe), or the nearest available hospital (or personal choice).
<b>FBI</b>	313-965-2323	Call in case of DOT HAZMAT shipment security problem (e.g. hijacked shipment, terrorist threat)
<b>Police / State Police / Sheriff</b>	9-911	Call in case of DOT HAZMAT shipment security problem (e.g. hijacked shipment, terrorist threat), or intruder or workplace violence
<b>xxxxxxx - SHE Manager</b>  <b>xxxxxxx – Sr. SHE Advisor</b>	000-000-0000 000-000-0000 cell 000-000-0000 cell	Call in case of fire, explosion, chemical release, fatality, hospitalization of 5 or more employees, or plant shut down
<b>xxxxxxx – VP and Corporate Counsel</b>	000-000-0000 000-000-0000 cell	Call in case of fire, explosion, chemical release, fatality, hospitalization of 5 or more employees, or plant shut down
<b>MIOSHA</b>	1-800-858-0397	<b>Call within 8 hours in case of fatality or hospitalization of 5 or more employees</b>
DTE Primary Electric Customer	313-235-1300	(if necessary)
DTE – Michcon Natural Gas	800-947-5000	(if necessary)
National Poison Control Center	1-800-222-1222	(if necessary)
City of Detroit LEPC Emergency Management	313-596-5562	(if necessary)
Detroit Health Department	313-876-4000	Submit a written report on the release of a RQ
Hazardous Materials Emergency Response Contractors XYZ Industrial Outsourcing ABC Environmental 123 Environmental	1-734-384-9200 1-586-469-0041 1-313-834-7055	Primary Back up  24 Hour HAZMAT TEAM Outside Emergency Contractor

**From:** [DANROE@aol.com](mailto:DANROE@aol.com)  
**To:** [anpr](#)  
**Subject:** COMMENTS RE: CSB 09-01 ATTN Christopher Kirkpatrick  
**Date:** Thursday, July 30, 2009 5:03:44 PM  
**Attachments:** [2009-07-30\\_CSB\\_ROE\\_INPUT\\_CSB-09-01.pdf](#)

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Christopher:

Please see the attached input regarding CSB 09-01. Please do acknowledge receipt and advise if you need any additional information from me.

I'd also appreciate your sending my best regards to John Bresland.

If needed, I can be reached at 480-835-1308 and/or [DanRoe@aol.com](mailto:DanRoe@aol.com)

Best regards,

Dan Roe

July 30, 2009

Electronically Submitted – via e-mail.

Chemical Safety and Hazard Investigation Board  
Office of General Counsel  
Attn: C. Kirkpatrick  
2175 K St NW, Ste 650  
Washington, DC 20037

Re: Comments to Docket No. CSB-09-01

My name is Daniel Roe and until my retirement in October 2008, I served as Executive Director of the Arizona Emergency Response Commission from 1994 to 2008.

I am quite familiar with the excellent and much needed work of the Chemical Safety Board and offer the following specific comments:

I believe your 3<sup>rd</sup> program suggestion would be the most successful. It is a practical approach and minimizes creation of additional bureaucratic systems.

I suggest that consideration be given by CSB to revisit the ARIP (Accidental Release Information Program), modified to meet CSB needs. It seems that the ARIP dropped off the radar a number of years back and could be revisited so that CSB could revise/update and modify the program for its needs. Care by CSB should be exercised to ensure that demands on responsible parties are commensurate with the impact of the incident/accident/release.

Information Sought: The CSB expressed interest in comments that to the following specific questions:

- Are there Federal, State, or local rules or programs for reporting chemical or other types of incidents that would be an appropriate model for the CSB to consider in developing a reporting requirement?

\*\*\*I believe that the basic tool/model should be the NRC report. That (or news reports) could be treated as the initial "prod" for CSB to follow-up with a tool such as the ARIP mentioned above. (See <http://www.epa.gov/emergencies/docs/chem/arip.pdf>)

- Should an initial report be made to the CSB or the National Response Center?

\*\*\*Initial reports should be made to the National Response Center to ensure that the national primary program is supported and encouraged. Keeping CSB's needs aligned with NRC's basic requirements will support compliance outreach needs for CSB.

- What information should be reported to the CSB?

\*\*\*To be determined by CSB based on their years of experience and amended to ARIP or similar tool for gathering additional information. Should clearly cover the "who," "what," "when," "where," "why," and "how" as well as 'best guess' as to amount released/impact/recommendations by reporting party.

- How soon after an accident should reporting occur?

\*\*\*Without modifying requirements for reporting to NRC (i.e. immediately- construed to be 15 minutes), additional reporting to CSB should be within 'several' hours AFTER CSB MAKES A REQUEST FOR ADDITIONAL INFORMATION (for starters... let's say three hours. since the first few hours may well be chaotic for facilities and responders). Nothing precludes telephone interview/direct contact by CSB to gather preliminary additional information sooner than that if absolutely needed.

- Should the rule be designed with distinct requirements for rapid notification of high-consequence incidents and more systematic (and slower) notification of other incidents?

\*\*\*Keep it simple. Use the NRC reporting system. If not working the way CSB envisions, the system should be pumped up to meet CSB's requirements. Let the CSB coordinate with NRC and if they need the authority then perhaps the rules should include that authority. Based on an NRC report, CSB can start to determine their own priorities as to whether it's a high-consequence incident or not.

- What specific factors (such as lists of chemicals or specific consequences) should the CSB consider in drafting a proposed rule?

\*\*\*RQs (Reportable Quantities) seem to work. Consider adding serious injury/loss of life as well as evacuations impacting on community to further require reporting to the NRC. Take a look at USDOT's reporting requirements and see what can be folded into the CSB developed follow-on reporting requirements. Injury/damage costs also trigger reporting under a number of reporting systems, and might be considered by CSB in whatever they develop.

- How should the CSB gather information on incidents (such as combustible dust explosions and reactive chemical incidents) that may not involve specifically listed hazardous substances?

\*\*\*Injury/Loss of life. Perhaps there's a link to OSHA/MSHA requirements on what needs to be reported that can be used by CSB. Again, reinvention of the wheel should be avoided if there are tools/reports now that can be refined.

- How might this reporting requirement best be tailored to avoid duplication with existing sources of information on chemical incidents, including federal, state, or local reporting requirements?

\*\*\*CSB needs to coordinate with all National Response Team (NRT) members to make the reporting requirements as useful to all, as possible, while ensuring CSB's need for specific information is obtained. Use of existing tools should be incorporated into CSB's tool, as determined by CSB.

- How might the CSB best target compliance education efforts?

\*\*\*Outreach through State/Tribal Emergency Response Commissions (SERCs/TERCs) and Local Emergency Planning Committees (LEPCs); use of ALL National Response Team (NRT) members to spread the word since it 'pumps up' their respective programs, as well thus making CSB's program a win-win proposition.

Sincerely,

A handwritten signature in blue ink that reads "Daniel Roe". The signature is written in a cursive, flowing style.

Daniel Roe

**From:** [Votaw, James](#)  
**To:** [anpr](#)  
**Cc:** [Meade, Kenneth](#)  
**Subject:** CSB-09-01 - Request for Extension of Comment Period  
**Date:** Thursday, July 30, 2009 4:09:58 PM  
**Attachments:** [CSB-09-01 - Request for Extension of Comment Period.PDF](#)

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Ladies and gentlemen:

On behalf of the Corporate Environmental Enforcement Council (CEEC), the attached request seeks an extension of the 30-day public comment period on the Chemical Safety and Hazard Investigation Board's advance notice of proposed rulemaking concerning accidental chemical release reporting (Docket No. CSB-09-01) in order to permit CEEC to prepare and submit comments.

James G. Votaw | [WilmerHale](#)  
1875 Pennsylvania Avenue NW  
Washington, DC 20006 USA  
+1 202 663 6244 (t)  
+1 202 663 6363 (f)  
+1 202 641 5527 (c)  
[james.votaw@wilmerhale.com](mailto:james.votaw@wilmerhale.com)

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**WILMERHALE**

July 30, 2009

**Kenneth R. Meade**

By E-mail and First Class Mail

+1 202 663 6196(t)

+1 202 663 6363(f)

kenneth.meade@wilmerhale.com

Christopher Kirkpatrick, Esq.  
Office of General Counsel  
Chemical Safety and Hazard Investigation Board  
2175 K Street, NW.  
Suite 650,  
Washington, DC 20037

Re: Chemical Release Reporting: Advance notice of proposed rulemaking  
74 Fed. Reg. 30,259 (Jul. 26, 2009); Docket No. CSB-09-01

Dear Mr. Kirkpatrick:

On behalf of the Corporate Environmental Enforcement Council (CEEC), we are requesting an extension of the 30-day public comment period on the Chemical Safety and Hazard Investigation Board's (Board) advance notice of proposed rulemaking concerning accidental chemical release reporting (ANPR) in order to permit CEEC to prepare and submit comments.

As you may know, CEEC is an organization comprised of corporate counsel and environmental professionals from more than 25 major companies representing a wide range of industrial sectors that focuses on civil and criminal environmental enforcement and compliance policy issues. A list of our 2009 members and other information on CEEC is available from our website, [www.ceecinc.org](http://www.ceecinc.org).

CEEC has always been committed to strong, fair and effective environmental enforcement programs, and has worked frequently with the U.S. EPA on a wide variety of compliance policy issues, including those involving prevention of accidental releases consistent with Clean Air Act Section 112(r), accidental release reporting under CERCLA and EPCRA, and related reporting exemptions (e.g., the scope of the CERCLA "federally permitted release" exemption). By the nature of their operations, most if not all of CEEC's member companies are likely to be subject to any accidental release reporting rule eventually issued by the Board, and, whether or not they ever experience a reportable release, will need to incorporate any such requirements into existing compliance management systems and employee training in dozens if not hundreds of facilities across the United States.

CEEC generally supports the important investigatory work of the Board, and mechanisms that might be necessary to assure that the Board obtains the information it needs to do that work. The ANPR raises a number of important policy and practical issues that will impact CEEC's members; in addition, CEEC members have a great deal of general practical experience and expertise to offer the Board with respect to these issues. At the same time, the particular issues raised by the ANPR are being raised for the first time, and CEEC's perspectives on these

Wilmer Cutler Pickering Hale and Dorr LLP, 1875 Pennsylvania Avenue NW, Washington, DC 20006  
Beijing Berlin Boston Brussels Frankfurt London Los Angeles New York Oxford Palo Alto Waltham Washington

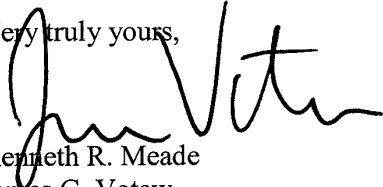
WILMERHALE

Christopher Kirkpatrick, Esq.  
Re: Docket No. CSB-09-01  
July 30, 2009  
Page 2

particular matters and the information needs of the Board are not yet fully developed. CEEC intends to submit comments but, as a practical matter, will be unable to consider the issues raised by the Board and develop meaningful comments prior to the current deadline. Therefore, CEEC requests that the comment period on this important matter be extended by 60 days, until October 5, 2009.

Thank you for your consideration of this request.

Very truly yours,



Kenneth R. Meade  
James G. Votaw

*Counsel for CEEC*

Cc: Steven B. Hellem, Executive Director, CEEC

**From:** [Bondy, Richard](#)  
**To:** [anpr](#)  
**Subject:** CSB-0901  
**Date:** Thursday, July 30, 2009 10:48:46 AM

---

*Via Email*

Chemical Safety and Hazard Investigation Board  
Office of General Counsel

RE: Comments on Docket CSB-09-01

In the advanced notice of proposed rulemaking released June 25, 2009 in the Federal Register, the Chemical Safety and Hazard Investigation Board announced its intention to develop rules related to developing a chemical incident reporting system. Appended below are comments to the proposed rules.

1. *Are there Federal, State, or local rules or programs for reporting chemical or other types of incidents that would be an appropriate model for the CSB to consider in developing a reporting requirement?*

None were identified.

2. *Should an initial report be made to the CSB or the National Response Center?*

The National Response Center should be a clearinghouse for all federally reportable incidents. In the immediate hours or minutes after an incident, the responders should not be tasked with remembering which federal agencies should be contacted. The more agencies that have their own specific phone numbers and specific notification rules, then the more likely it is that industry will have to develop spreadsheets to use in the event of an incident. These spreadsheets will then be required to be updated or verified on an annual basis. In addition, the use of a spreadsheet immediately following an incident is unwieldy, cumbersome and could lead to an agency not being notified due to a misinterpretation of the reporting guideline. Not making a timely reporting can be a source of a civil violation and result in fines.

Use of the National Response Center solves the problem for the reporting companies. Each agency that uses the NRC can provide it with information on when the agency needs to be notified.

3. *What information should be reported to the CSB?*

If a dual reporting system is used, then the information reported to the CSB should be the same information as reported to NRC to promote streamlined, consistent reporting requirements.

4. *How soon after an accident should reporting occur?*

If a dual reporting system is used, then the same reporting requirements that exist for NRC reporting should be followed so to promote consistency.

5. *Should the rule be designed with distinct requirements for rapid notification of high-consequence incidents and more systematic (and slower) notification of other incidents?*

The rule should be designed so that the original call is to the NRC with industry responding to follow-up questions from the CSB.

6. *What specific factors (such as lists of chemicals or specific consequences) should the CSB consider in drafting a proposed rule?*

The factors should be limited to the three current statutorily required criteria as to promote

consistency.

7. *How should the CSB gather information on incidents (such as combustible dust explosions and reactive chemical incidents) that may not involve specifically listed hazardous substances?*

NRC reporting requirements could be expanded to include these types of events.

8. *How might this reporting requirement best be tailored to avoid duplication with existing sources of information on chemical incidents, including federal, state, or local reporting requirements?*

To streamline the reporting process and promote consistency, the NRC should be the one location for all reporting.

9. *How might the CSB best target compliance education efforts?*

CSB could best target compliance education through the Federal Register and direct contact with trade industry organizations.

10. *Operating a dedicated CSB reporting line would cost \$450,000 per year.*

In our opinion the CSB should not opt for a separate reporting line. There should be one number to report all types of events.

11. *Certain high-risk facilities would be required to report no matter what the specific consequences of the incident...identifying high risk facilities covered by the RMP rule.*

Changing the reporting requirements for “high risk” facilities would create a burden for those facilities that only operate a single RMP process. Certain facilities in the petroleum pipeline and terminaling industry may have a RMP process, but the process and associated equipment may be only a small part of a much larger operation, and may take up a very small footprint in relation to the size of the facility.

12. *A third approach would be to require owners and operators to report to the CSB more extensive information on chemical incidents... when notified by the CSB...gather additional information through a questionnaire or on-line form that the reporting party would be required by rule to complete...*

According to the NPRM, the CSB screening personnel currently conduct telephone follow-up with companies and responders on approximately 60 incidents each year. A little more than once each week a screener follows up on a case. That does not seem to be so much of a burden as to justify shifting the responsibility to industry.

13. *Coordination with other Chemical Incident Reporting Requirements.*

It is apparent from the NPRM that the CSB, through regulation, is attempting to get immediate, comprehensive data about a chemical event. Rather than layer another set of reporting guidelines atop those from multitudes of other agencies, we would suggest CSB conduct a gap analysis, then identify which agency currently has a reporting requirement that could potentially fill that gap, and target that specific requirement for amendment.

Magellan Midstream Partners appreciates the opportunity to comment on issues that affect our industry. Please forward any questions you may have to my attention:

Sincerely,

Rick Bondy  
Emergency Response and Preparedness Coordinator  
Magellan Midstream Holdings GP, LLC  
Office: 918.574.7363  
Cell: 918.629.8207

**From:** [Scott Berger](#)  
**To:** [anpr](#)  
**Cc:** [June Wispelwey](#); [Steve Smith](#)  
**Subject:** Input from American Institute of Chemical Engineers  
**Date:** Thursday, July 30, 2009 5:35:24 PM  
**Attachments:** [AIChE Comments to CSB ANPR on reporting.pdf](#)

---

Dear Mr. Kirkpatrick,

Please see the attached comments from the American Institute of Chemical Engineers regarding the ANPR on chemical incident reporting. A hard copy will follow by courier.

<<AIChE Comments to CSB ANPR on reporting.pdf>>

Thank you and best regards,

*Scott Berger*  
Director, Technology Alliances and International Programs  
AIChE  
Three Park Ave  
New York, NY 10016 USA

<http://www.aiche.org/aicheglobal>

tel: +1.646.495.1370  
fax: +1.646.495.1504  
mob:+1.609.462.5057

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American Institute of Chemical Engineers

Three Park Avenue  
New York, NY  
10016-5991

TEL +1.646.495.1370  
MOB +1.609.462.5057  
[www.aiche.org](http://www.aiche.org)

July 30, 2009

Chemical Safety and Hazard Investigation Board  
Office of General Counsel  
ATTN: C. Kirkpatrick  
2175 K Street, NW  
Suite 650  
Washington, DC 20037

RE: Comments of Proposed Rule Making – CSB Docket CSB-09-01

The American Institute of Chemical Engineers (AIChE) represents the chemical engineering profession and has been active in the area of chemical process safety for over 30 years. As the independent organization of professionals in the chemical and related process industries AIChE believes it should place on the record, and for the CSB's consideration, comments on the Proposed Rulemaking on Chemical Release Reporting (Docket No. CSB-09-01). We are concerned about the establishment of additional reporting channels required by this proposal. AIChE also suggests that CSB adopt a systematic metrics tool to measure incident severity as part of its process to decide whether it should undertake an incident investigation.

The AIChE is in favor of reporting all incidents that involve a chemical release above established thresholds. We believe that the current reporting system to the National Response Center (NRC) has worked well and continues to do so. Industry and responders are used to using the NRC system. Establishing a parallel reporting system and reporting point would be duplicative and, in our opinion, wasteful. A new system would also create reporting confusion. We strongly recommend that the CSB continue to use the NRC as the primary point for reporting incidents. If more information is required than is currently reported to the NRC, the CSB can modify its agreement with the NRC so that the NRC can collect the desired additional information. We believe that the information that is currently reported to the NRC is in most cases sufficient for the CSB to make an initial determination to take further action.

The use of news reports in addition to reporting to NRC can be a valuable secondary source. There are a number of effective tools available to search the various news sources. CSB can access these independently and in parallel to the NRC reporting system. However, we strongly believe that the NRC reporting system should be the primary reporting mechanism that should be the only one required at the national level. Reporting at the national level to NRC is not a

substitute for immediate reporting to local first responders, nor should reporting to first responders substitute for reporting to the NRC.

AIChE suggests that the CSB consider adopting the “Process Safety Severity Index” (PSSI) in any reporting and that it be used by the CSB to evaluate if further action on its part is required. .

A detailed discussion of the PSSI can be found at

[http://www.aiche.org/uploadedFiles/CCPS\\_metrics%205.16.08.pdf](http://www.aiche.org/uploadedFiles/CCPS_metrics%205.16.08.pdf) on page 10.

The PSSI includes four factors: Safety/Human Health, Fire or Explosion, Potential Chemical Impact and Community/Environmental Impact in establishing the severity of an incident. It establishes the severity in each category and based on a total point value determines the severity level of an incident. This score may initially be computed based on best estimates and later refined based on actual data

Thank you for the opportunity to comment. We would be pleased to provide further information or be of any other assistance. Please contact Scott Berger, Director of Technology Alliances and International Programs at our headquarters office at 646-495-1370 or [scotb@aiche.org](mailto:scotb@aiche.org) for further assistance or clarification.

Sincerely yours,

A handwritten signature in cursive script that reads "Scott Berger".

Scott Berger  
Director, International and Technical Programs



**From:** [Aaron Levy](#)  
**To:** [anpr](#)  
**Subject:** Docket ID No. CSB-09-01: Advance notice of proposed rulemaking on reporting of accidental chemical releases  
**Date:** Monday, August 03, 2009 12:53:12 PM  
**Attachments:** [AMWA CSB-09-01 Comment Letter.pdf](#)

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To Whom it May Concern:

Please find attached the Association of Metropolitan Water Agencies' (AMWA) comments on Docket ID No. CSB-09-01: Advance notice of proposed rulemaking on reporting of accidental chemical releases.

AMWA appreciates the opportunity to comment on the proposed rule.

Please do not hesitate to contact me should you require any additional information or clarification at this time.

Respectfully,

Aaron Levy  
Manager of Security Policy  
Association of Metropolitan Water Agencies (AMWA)  
202-331-2820 (Office)  
[levy@amwa.net](mailto:levy@amwa.net)



August 3, 2009

Chemical Safety and Hazard Investigation Board  
Office of General Counsel  
Attn: C. Kirkpatrick  
2175 K St. NW  
Suite 650  
Washington, DC 20037

RE: Advance notice of proposed rulemaking on reporting of accidental chemical releases,  
Docket ID No. CSB-09-01

Dear Mr. Kirkpatrick:

The Association of Metropolitan Water Agencies (AMWA) appreciates the opportunity to provide comments in advance of an upcoming rule concerning accidental chemical releases and reporting requirements set forth in the Clean Air Act. As directors of the nation's largest publicly owned drinking water utilities, AMWA members believe that the Chemical Safety and Hazard Investigation Board (CSB) should consider an array of issues concerning information sharing and security as it develops the final regulation on this matter.

The advanced notice of proposed rulemaking identifies "Coordination With Other Chemical Incident Reporting Requirements" as one of several "Important Issues" that the CSB is seeking public comment on. AMWA believes that it's incumbent upon the CSB to work with other federal, state and local authorities to establish a unified Standard Operating Procedure (SOP) that creates and codifies an intergovernmental information sharing process to be activated after a major chemical release. Numerous existing laws and regulations already place significant reporting responsibilities on the shoulders of the entity that has experienced a chemical related accident. In the wake of such an event, a metropolitan drinking water utility should be able to focus on supplying safe drinking water to its customers rather than reporting information to an amalgamation of government entities.

AMWA also seeks clarification on the types of security protocols CSB intends to put in place concerning information collected from entities that experience an unintended chemical release. The water sector has worked diligently with its partners in the federal government to institute stringent information sharing protocols on items such as a utility's Vulnerability Assessment (VA). Such information is extremely sensitive to the security and overall operational tempo of AMWA's members. The same would be true for information collected in the aftermath of an accidental chemical release. Therefore, AMWA recommends that CSB work in partnership with private sector representatives to develop a set of protocols that outlines how information collected by the government will be shared, stored and used in the future.

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Charles M. Murray  
*Fairfax Water*

Chuck Clarke  
*Cascade Water Alliance*

Diane VanDe Hei  
*Executive Director*

Finally, the advance notice of proposed rule marking lays out “four general approaches” that CSB may follow in order to implement this unfulfilled statutory requirement. AMWA believes that the “third approach” outlined in the section entitled “Approaches” represents an acceptable path forward.

“(3) A third approach would require owners or operators to report to the CSB more extensive information on chemical incidents in their workplace when notified by the CSB. The agency would continue to rely primarily on existing sources for initially learning of chemical incidents, but would follow up on a subset of the incidents (e.g., those with the most serious consequences, based on initial reports, and a sample of all others) to gather additional information through a questionnaire or on-line form that the reporting party would be required by the rule to complete and submit to the CSB. This approach would be primarily aimed at addressing the data quality problems of accuracy and completeness of information on incidents in the CSB’s incident database. It would also allow the CSB to collect more complete and in-depth information on incidents than is generally available in the minutes and hours immediately after an incident.”

This approach calls for CSB to rely on established information collection mechanisms to initially learn of chemical incidents, which corresponds with AMWA’s desire to avoid overlapping reporting apparatuses. In addition, the approach outlines a framework to mitigate data quality issues, provides CSB the capability to collect more “in-depth” or granular information and formalizes preexisting roles and responsibilities within CSB’s organizational framework. AMWA believes that this approach will allow CSB to fulfill its statutory requirements effectively while preventing unintended consequences.

AMWA appreciates the opportunity to comment on this proposed rule.

If you have any questions, please do not hesitate to contact Aaron Levy or Erica Brown at 202-331-2820.

Sincerely,



Diane VanDe Hei  
Executive Director

**From:** [Randel, Lowell](#)  
**To:** [anpr](#)  
**Subject:** Comments regarding CSB 09-01  
**Date:** Monday, August 03, 2009 3:10:31 PM  
**Attachments:** [GCCA comments to CSB.pdf](#)

---

To whom it may concern:

Please find the attached comments pursuant to the Advanced Notice of Public Rulemaking published in the Federal Register on June 25, 2009.

Please let me know if you have any questions or need additional information.

Best regards,

Lowell

**LOWELL RANDEL**

DIRECTOR OF GOVERNMENT AFFAIRS  
GLOBAL COLD CHAIN ALLIANCE

[IARW](#) | [WFLO](#) | [IRTA](#) | [IACSC](#)

1500 King Street, Suite 201  
Alexandria, VA 22314-2730 USA

phone +1 703 373 4300 ext. 220

fax +1 703 373 4301

[lrandel@gcca.org](mailto:lrandel@gcca.org) | [www.gcca.org](http://www.gcca.org)





August 4, 2009

Chemical Safety & Hazard Investigation Board  
Office of General Counsel  
Attn: C. Kirkpatrick  
2175 K St., NW, Suite 650  
Washington, DC 20037

Re: Chemical Release Reporting, Docket #CSB-09-01

Dear Sir or Madam:

The Global Cold Chain Alliance (GCCA) is pleased to submit these comments in response to the CSB's advance notice of proposed rulemaking (ANPR) on chemical release reporting (74 Fed. Reg. 30259, June 25, 2009).

Comprised of its Core Partners, including the International Association of Refrigerated Warehouses, the World Food Logistics Organization, the International Institute of Ammonia Refrigeration, the International Refrigerated Transportation Association, and the International Association for Cold Storage Construction, the Global Cold Chain Alliance (GCCA) represents all major industries engaged in temperature-controlled logistics.

The primary refrigerant used in industrial applications in the United States is ammonia. As such, many of GCCA's members could be subject to a CSB release reporting rule. Many of our members are small businesses, and thus are particularly challenged to comply with new regulatory obligations. For these reasons, GCCA has a vital stake in this rulemaking.

Members of the GCCA have a history of cooperation with the Chemical Safety Board but find the latest reporting initiative is both redundant and unnecessarily onerous. Our member companies currently report to the National Reporting Center for every release of ammonia greater than 100 pounds in a 24 hour period. This information is readily available to the CSB. We believe that our members should not become the communication conduit between the NRC and the CSB.

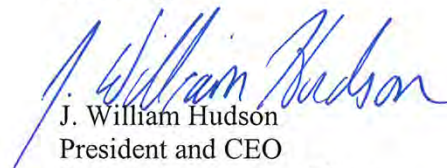
With this in mind, the GCCA encourages the CSB to adopt Approach #3, as outlined in the ANPR. We believe that this approach is best structured to suit the CSB's resources and needs.

We agree with CSB's assertion that it "should likely focus on selected, high-consequences events (for example, incidents that result in death, serious injuries requiring in-patient hospitalization, large public evacuations, very substantial property damage, or acute environmental impact)," and that "there are likely to be at most a few hundred incidents throughout the country each year that would require reporting to the CSB if the threshold is set at a level to capture serious consequences or substantial near miss situations."

We also agree that the CSB will learn of releases of this type very shortly after the event, whether through the NRC or the media. Approach #3 would give the CSB a mechanism to supplement its ability to collect information from its two principal current sources of initial data. This would allow the CSB to collect the information it needs in a particular case, tailored to that situation while avoiding massive collections of information about incidents that the CSB does not have any interest in pursuing.

Thank you for the opportunity to provide comment. Please let me know if you have any questions about these comments or would like to discuss them further.

Sincerely,



J. William Hudson  
President and CEO  
Global Cold Chain Alliance

**From:** [Diane Wysocki](#)  
**To:** [anpr](#)  
**Cc:** [Iclal Atay](#); [Paul Baldauf](#)  
**Subject:** Docket No. CSB-09-01  
**Date:** Monday, August 03, 2009 10:05:26 AM  
**Attachments:** [CSB-09-01.pdf](#)

---

Please see attached.

Diane Wysocki  
Dept. of Env. Protection  
Env. Safety & Health, PO Box 424  
401 E. State St., 3rd Fl. East Wing  
Trenton, NJ 08625-0424  
Phone - (609) 633-7964  
Fax - (609) 777-1330  
[Diane.Wysocki@dep.state.nj.us](mailto:Diane.Wysocki@dep.state.nj.us)





## State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

JON S. CORZINE  
*Governor*

Division of Environmental Safety and Health  
P.O. Box 424  
Trenton, New Jersey 08625-0424  
Phone: (609) 633-7964  
Fax: (609) 777-1330

MARK N. MAURIELLO  
*Acting Commissioner*

VIA EMAIL to  
[anpr@csb.gov](mailto:anpr@csb.gov)

August 4, 2009

C. Kirkpatrick  
Chemical Safety and Hazard Investigation Board  
Office of General Counsel  
2175 K Street, NW  
Suite 650  
Washington, DC 20037

Dear Mr. Kirkpatrick:

On behalf of the New Jersey Department of Environmental Protection (“Department”), I am writing this letter to respond to the request for comments on the advance notice of proposed rulemaking on accidental chemical release reporting from the Chemical Safety and Hazard Investigation Board (“CSB”) published in the June 25, 2009 Federal Register (Docket No. CSB-09-01). The Department implemented the Toxic Catastrophe Prevention Act (TCPA) Program rules in 1988, N.J.A.C. 7:31, one of the first chemical accidental release prevention regulations adopted in the nation. The Department supports the CSB’s intent to develop accidental chemical release reporting rules.

Initial, rapid notification should be made to the CSB on high consequence events such as incidents that result in death, serious injuries requiring in-patient hospitalization of onsite employees or the public, any public evacuation, any public sheltering in place, onsite substantial property damage, any offsite property damage, or acute environmental impact. Notification of high consequence events to response agencies is normally required to be made immediately (interpreted to mean within 15 minutes), so that response activities can commence as soon as possible. However, it may be better to require the notification to the CSB to be made within a slightly longer time on the order of one to two hours. This would allow the facility to be able to provide better information to the CSB on the incident but would still be timely enough to allow the CSB to deploy a team to initiate an onsite investigation of a high priority incident.

Definitions of “substantial property damage” and “acute environmental impact” are necessary. The CSB could define “substantial property damage” using a set estimated dollar amount.



“Acute environmental impact” could be defined as any offsite release resulting in fish or animal kills; tree, lawn, shrub, or crop damage; water contamination; or soil contamination. These items of environmental impact are specified in Section 6 of the U.S. EPA’s RMP\*Submit program developed pursuant to 40 CFR 68.42.

In addition, the CSB should establish a more systematic reporting requirement for all accidental chemical release incidents and substantial near miss situations. This could be done on an annual basis and would allow the CSB to gather data to develop better information on chemical incidents and potential chemical incidents occurring in the United States. It would help the CSB, other agencies and organizations, and industry to identify issues and trends and thereby further the cause of preventing chemical incidents. Information similar to the Accident History section in EPA’s RMP\*Submit pursuant to 40 CFR 68.42 should be collected. The CSB could establish a web-based online reporting system similar to the EPA’s new RMP\*eSubmit to use for the immediate, high-priority releases and the annual report for all releases. This type of system provides quick, direct information from the facility.

For the initial, rapid notification of high consequence incidents described above, CSB should not limit reporting to a specific list of chemicals. Any list of substances may not be comprehensive, and it is important that CSB be aware of all chemical substance release incidents with high consequences in order to fulfill its mission. For the annual reporting of lower consequence incidents and substantial near miss situations, it would be appropriate to develop a list(s) of covered substances to define the scope of the regulated community. At a minimum, the CSB should apply the chemical accident reporting requirements to any facility handling substances listed under the Occupational Safety and Health Administration’s (OSHA) Process Safety Management rule, 29 CFR 1910.119; the EPA’s Chemical Accident Prevention rule, 40 CFR 68; and any State chemical accidental release prevention rule such as New Jersey’s TCPA Program rules, N.J.A.C. 7:31. In addition, the CSB should apply the chemical accident reporting requirements to any facility for a combustible dust explosion, deflagration, or detonation, and reactive chemical incidents. Since it is difficult to make specific lists of chemical substances for combustible dust and reactive chemical incidents, the CSB instead should specify applicability by defining these terms.

The rule could include a requirement for the facility to report each unplanned, unforeseen or unintended incident, situation, condition or set of circumstances which resulted in, or could reasonably have resulted in, a regulated substance release. This would include “near misses” in addition to an actual release. A “regulated substance release” could be defined as a discharge or emission of a regulated substance from a piece of equipment in which it is contained, excluding discharges or emissions occurring pursuant to and in compliance with the conditions of a Federal or State permit or regulation. A definition of “serious incident” could be an incident resulting in the high consequences described above. A definition of “minor incident” could be any other incident that is not a serious incident. The rule should include a requirement that all serious incidents be reported within the specified timeframe, regardless of whether the incident involves a “regulated substance.” The rule should include a requirement that all serious incidents and minor incidents involving a regulated substance be reported to CSB on an annual basis.

“Reactive chemical” could be defined as a substance, or combination of substances, capable of undergoing an exothermic reaction and producing a temperature increase, pressure increase, gas evolution or other form of energy. Combustible dust is defined in NFPA 654, “Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids,” as any finely divided solid material that is 420 microns or smaller in diameter (material passing a U.S. No. 40 Standard Sieve) and presents a fire or explosion hazard when dispersed and ignited in air. OSHA, in Directive Number CPL 03-00-008, Combustible Dust National Emphasis Program (Reissued), effective date 3/11/08, defines combustible dust as a combustible particulate solid that presents a fire or deflagration hazard when suspended in air or some other oxidizing medium over a range of concentrations, regardless of particle size or shape. Also, on April 29, 2009, OSHA announced that it is initiating a comprehensive rulemaking on combustible dust. CSB should coordinate the definition of combustible dust with OSHA.

Thank you for this opportunity to comment on this important issue. Please contact me at (609) 633-7964, if you have any questions or require additional information.

Sincerely yours,



Jill Lipoti, Ph.D.  
Director

c: Paul Baldauf, P.E., Ass't Director, Radiation Protection and Release Prevention  
Iclal Atay, Ph.D., Manager, Bureau of Release Prevention

**From:** [Sam Mannan](#)  
**To:** [anpr](#)  
**Cc:** [Donna Startz](#)  
**Subject:** Docket Number CSB-09-01, MKOPSC Comments on the ANPR for Chemical Release Reporting  
**Date:** Monday, August 03, 2009 11:00:55 AM  
**Attachments:** [CSB ANPR on Incident Reporting - MKOPSC Comments.pdf](#)

---

Attached please find the official comments of the Mary Kay O'Connor Process Safety Center on the **Advanced Notice for Proposed Rulemaking for Chemical Release Reporting**.

Please let us know if you need any additional information or have any other questions.

=====

Dr. M. Sam Mannan, PE, CSP  
Regents Professor of Chemical Engineering  
Holder of T. Michael O'Connor Chair I  
Professor and Director  
Mary Kay O'Connor Process Safety Center  
Artie McFerrin Department of Chemical Engineering  
Texas A&M University System  
College Station, Texas 77843-3122, USA  
Phone: (979) 862-3985  
Fax (979) 845-6446  
e-mail: [mannan@tamu.edu](mailto:mannan@tamu.edu)  
URL: <http://process-safety.tamu.edu>

**Comments on the Advanced Notice of Proposed Rulemaking  
United States Chemical Safety and Hazard Investigation Board  
40 CFR Chapter VI  
[Docket No. CSB-09-01]**

## **Chemical Release Reporting**



***Mary Kay O'Connor Process Safety Center***

**Chemical Engineering Department  
Texas Engineering Experiment Station  
Texas A&M University System  
College Station, Texas 77843-3122**

**Contact: Dr. M. Sam Mannan, PE, CSP  
Phone: (979) 862-3985  
e-mail: [mannan@tamu.edu](mailto:mannan@tamu.edu)  
<http://process-safety.tamu.edu>**

**August 3, 2009**



**Comments on the Advanced Notice of Proposed Rulemaking  
United States Chemical Safety and Hazard Investigation Board  
40 CFR Chapter VI  
[Docket No. CSB-09-01]  
Chemical Release Reporting**

This statement was prepared by the Mary Kay O'Connor Process Safety Center (MKOPSC) at Texas A&M University. Founded in 1995, the Center conducts programs and research activities that enhance safety in the chemical process industries. Educational activities of the Center promote safety as second nature to everyone in the industry. In addition, the Center develops safer processes, equipment, procedures, and management strategies to minimize losses within the processing industry. The Center supports the U.S. Chemical Safety and Hazard Investigation Board (CSB) and welcomes opportunities to assist the CSB in its mission to improve safety in the process industry.

These comments were prepared in response to the CSB Advanced Notice of Proposed Rulemaking (ANPR) published in the Federal Register on June 25, 2009<sup>[1]</sup>. The objective of the ANPR is to fulfill the congressional mandate provided in the CSB's enabling legislation which includes a requirement that the CSB:

“Establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigatory jurisdiction. Reporting releases to the National Response Center, in lieu of the Board directly, shall satisfy such regulations. The National Response Center shall promptly notify the Board of any releases which are within the Board's jurisdiction.”<sup>[2]</sup>

Having the knowledge of past chemical release incidents is widely accepted as necessary for preventing and mitigating future incidents. The CSB plays a vital role in providing detailed investigations of such incidents. These investigations are resource intensive and given the limited budget available to the CSB, only about 7-10 investigations can be performed per year. These incidents are typically at the top of the *incident pyramid* (Figure 2), that is, a small number of incidents with severe consequences. It is equally important that incidents with lesser consequences, but those that are more numerous, also be understood. The difference between an incident with severe consequences and one without any consequences is often just chance. For example, the direction of the wind may cause one incident to affect many people and another to affect no one.

Without sufficient detail of the less significant incidents, it is impossible to put investigated incidents in context. The types of incidents, the chemicals involved, the causes and other factors are necessary pieces of information to understand what is typical of the more numerous incidents with less severe consequences. Investigations may, for example, focus on dust explosions or reactive chemicals but not provide information as to how commonly such incidents occur because the investigation lacks reference to systems of more comprehensive data collection. Knowledge of the statistical nature of the 'more numerous and less severe incidents' category also could assist the CSB in selecting the most relevant incidents to investigate in the future. Understanding what is



important statistically can help government, industry, academia, labor, emergency responders and planners, health professionals, and the general public focus resources to prevent, mitigate and respond to future incidents.

The MKOPSC has long advocated a more comprehensive and better coordinated set of chemical incident reporting systems. In 1999 and 2000, the MKOPSC held several forums with a wide variety of stakeholders interested in chemical incident data. In 2007 and 2008, the MKOPSC participated in additional forums with the goal of improving reporting. The MKOPSC has published a white paper summarizing the results of the latter entitled, “Developing a Roadmap for the Future of National Hazardous Substances Incident Surveillance”<sup>[3]</sup>. These activities have given the MKOPSC a broad perspective on the features and shortcomings of the existing data collection systems, the needs of a variety of stakeholders and various approaches to overcoming the shortcomings.

The MKOPSC also has performed research in areas such as data and text mining of existing databases. In addition, the MKOPSC has completed a number of theses/dissertations<sup>[4,5,6,7,8,9,10]</sup> in this area and with others still in progress. This research has involved developing systems for classifying equipment and their components. In some cases, these were used to code text-based data<sup>[11,12]</sup>.

The MKOPSC strongly recommends that a Chemical Release Reporting rule be adopted by the CSB as described here in detail in order for the CSB to more fully accomplish its mission of reducing chemical incidents.

## 1. Objectives of Incident Reporting

Based on our experience and research, we believe that incident reporting is useful in the following three contexts:

- 1.1 CSB making an initial determination whether they should deploy a full-fledged investigation and take measures to preserve evidence.
- 1.2 CSB and other stakeholders developing lessons learned and alerts for the process industry based on investigations of individual incidents as well as analysis of a group of incidents.
- 1.3 CSB and others developing trends with regard to chemical process safety and developing annual/periodic reports characterizing the state of chemical process safety.

## 2. Selected Characteristics of an Effective Incident Reporting System

- 2.1 The definition of an incident and hazardous substance should be the following:



**a) Incident**

An incident is the sudden unintended release of or exposure to a hazardous substance, which results in deaths, injuries, significant property or acute environmental damage, evacuation or sheltering in place.

**b) Hazardous Substance**

Any substance, including a petroleum product that, because it is toxic, reactive, flammable, asphyxiating, or of extreme pressure or temperature, presents a potential hazard to people, the environment, or property.

- 2.2 Selection of incidents for reporting should NOT have as its primary basis a list of chemicals or threshold quantities stored or released.
- 2.3 Incidents with fatalities or significant injuries, large evacuations, major environmental damage etc., should be reported in detail.
- 2.4 The data taxonomy should be based on the HSEES and EPA RMP systems to the extent practical while accomplishing the goals of the CSB.
- 2.5 The CSB also should have the option to require reporting of selected incidents that it judges to be important in accomplishing its “accident investigation” mission. This would allow CSB to gather additional data on certain types of incidents, industries, and chemicals to expand its knowledge in areas of special concern.

The CSB in the ANPR noted other possible criteria for selecting incidents for inclusion. One option is to include all incidents. The MKOPSC estimates this could be on the order of 30,000 incidents annually. The Agency for Toxic Substances and Disease Registry (ATSDR) operates the Hazardous Substances Emergency Events Surveillance (HSEES) system. HSEES spends an average of \$200 per incident in grants to states in addition to the cost of ATSDR administering the system. Based on these estimates, if the total cost for gathering incident information is assumed to be \$300 per incident, this would consume the entire budget of CSB. Clearly this is not a desirable option.

Another proposed option would be to have certain facilities judged to be especially hazardous report all incidents. While there may be merit in the idea of monitoring such facilities in order to prevent incidents, it presents several problems. The primary difficulty is determining which facilities would be included. Identifying such facilities also could have negative security ramifications to the facility and the nation. Finally, it does not appear that many of the incidents the CSB has investigated to-date would fall into such a category. Many have been small facilities with relatively small quantities of chemicals.

**3. Chemical Lists**

Investigation by the MKOPSC has shown that most incidents do NOT involve the chemicals listed as “highly hazardous” by the EPA and OSHA. The HSEES data shows that less

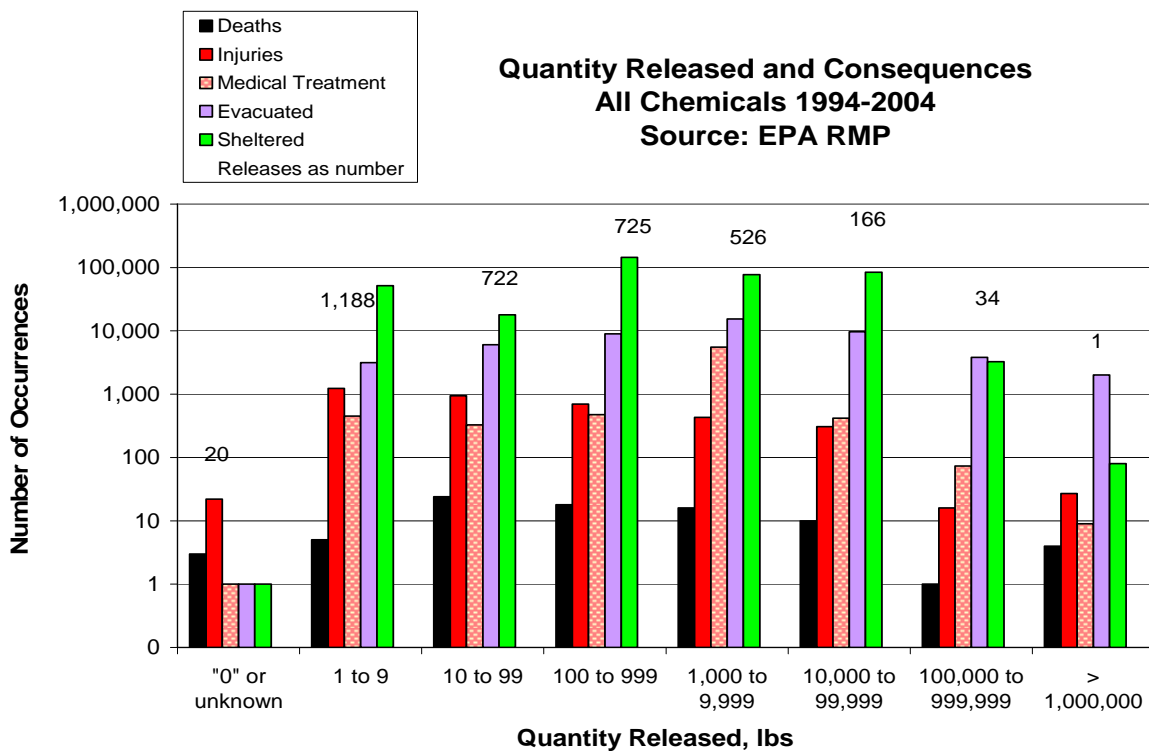


than 30% of incidents involve chemicals on these lists. Hospitalizations also involve less than 30% of these chemicals and fatalities less than 15%. The CSB incident investigations involve these listed chemicals less than 30% of the time.

Clearly a reporting system limited to such lists is inadequate for the purposes of identifying incidents for investigation or for a better understanding of chemical incidents in general.

#### 4. Threshold Quantities

The MKOPSC has investigated the effect of quantities released on the resulting consequences of deaths and injuries. These studies indicate that there is essentially no lower limit below which fatalities and injuries do not occur. This has been demonstrated with data from the EPA Risk Management Program (RMP) and HSEES. Figure 1 shows an example of this type of analysis. Clearly one cannot establish a lower threshold quantity below which consequences are not expected. However, from a cost-benefit standpoint, one could determine that it would be more beneficial to investigate or collect data regarding incidents with larger releases since they are fewer in number.



**Figure 1: Quantity Released and Consequences**  
(Source: EPA RMP 5-Year Accident History Data, 1994-2004)





## 5. Initial Reporting of Incidents

The sole federal agency for the initial reporting of hazardous substance releases is the National Response Center (NRC). We believe this practice should continue. Hopefully this rulemaking will lead to addressing some of the data problems identified by MKOPSC studies. Major findings regarding these data problems and inconsistencies are available in an internal MKOPSC report<sup>[13]</sup>.

Currently, reporting to the NRC is required by numerous pieces of legislation and includes both transportation incidents and incidents at fixed facilities. It has been in place for years and many companies handling hazardous materials are familiar with it. Creating a new initial reporting system would only increase confusion and the burden of initial reporting. The CSB should continue its more active role in seeking out incidents through news services and other internet-based searches. In addition, the CSB and the NRC could establish a two-way communication to improve the coverage of both systems.

Although the Center recommends that the NRC remain the initial reporting agency for CSB, it also recognizes that there are significant shortcomings in the reporting to that agency. The CSB in the ANPR notes that only 30% of initial notifications come from the NRC with the remainder from news sources. In a Texas HSEES report it is shown that in 1997 only 40% of reports came from the NRC<sup>[14]</sup>. The majority of the reports came from a state agency then known as the Texas Natural Resources Conservation Commission (TNRCC).

The CSB and the other agencies should undertake an effort to increase the extent and quality of reporting to the NRC. Outreach programs could help to educate those required to report to the NRC. Training and outreach could also be extended to emergency responders who could report or be the catalyst for a report of many incidents. The NRC might also seek state agencies to especially report to them incidents that meet the CSB criteria for reporting. The NRC could adopt the procedures used by the CSB to gain knowledge of incidents by monitoring of internet news sources. While not necessarily a part of this rule-making, the CSB could make such recommendations to other relevant agencies.

## 6. Scope of Reporting

The scope of the CSB is limited to incidents at fixed facilities. The US Department of Transportation (USDOT) has rules governing the initial reporting of incidents to the NRC with more detailed follow-up reporting typically required within 30 days. There is no such comprehensive system of reporting for fixed facilities. However, several agencies collect information regarding these incidents. These agencies include the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA) and the Agency for Toxic Substances Disease Registry (ATSDR).

These agencies, however, do not individually or collectively provide a comprehensive incident data collection system. The proposed data collection would, for the most part, not duplicate the existing systems, although there would be overlaps. In cases where overlaps might



occur, inter-agency agreements could provide for efficient sharing and enhancement of data quality for those incidents. The existing systems do not provide sufficient data to determine statistically the number, causes, consequences or circumstances of hazardous substance releases at fixed facilities.

The CSB reporting will not include transportation incidents. However, USDOT rules cover all transportation incidents and USDOT requires follow-up reporting in 30 days. In as much as possible, CSB reporting should be modeled on USDOT reporting procedures. It should be pointed out that USDOT requires detailed reporting for all covered transportation incidents<sup>[15]</sup>. As an example, the USDOT received almost 17,000 reports in 2008.

## 7. Existing Detailed Data Collection Systems

The ATSDR in its Hazardous Substance Emergency Events Surveillance (HSEES) system collects by far the largest number of chemical incidents of any system for fixed facilities. They collect approximately 6,400 fixed facility incidents per year in 15 states. The ATSDR does not, however, collect incidents which consist of releases of petroleum products unless other substances also are released. Studies have shown that ATSDR collects about 40% of the incidents in the US (excluding petroleum-only incidents)<sup>[31]</sup>. Current budgetary constraints appear likely to reduce this coverage significantly. The ATSDR data collection is not limited to a particular list of chemicals and employs relatively low threshold quantities for release amounts, typically 10 pounds or 1 gallon with no lower limit for certain designated substances.

The HSEES system focuses on the health consequences and emergency response to chemical releases with limited information concerning the causes, processes, equipment and components, causes and circumstances of the event. Information collected includes type and extent of injury, medical treatment, victim demographics, population potentially affected, emergency response, decontamination, and personal protective equipment utilized.

OSHA normally investigates any incident with one fatality or three or more injuries. This typically includes an estimated 400 incidents (300 chemical and 100 petroleum) per year. These investigations typically provide the basis for the issuance of citations and are not necessarily designed to determine root causes or provide lessons learned to prevent future incidents. Nor are the results presented in any organized fashion which would facilitate systematic analysis of the chemical incidents. The time lag for making the data publicly available is about 5 years, diminishing its effectiveness. A cooperative agreement with OSHA in which they would provide detailed data about incidents they investigate would seem to impose little additional work on OSHA while providing valuable information regarding significant chemical incidents.

The EPA under the Risk Management Program requires reporting of an accident history by covered facilities. The reporting is limited however to incidents with listed chemicals, stored in amounts above a certain threshold and resulting in significant consequences. The 12,000 facilities under the program (1999 – 2004 reporting period) reported only about 300 incidents per year. The combination of restrictions imposed can result in very serious incidents, such as the 2005 BP



Texas City incident which resulted in 15 fatalities, not being required to be reported because liquid hydrocarbons are not on the list.

## 8. Statistical Relationships of Existing Systems

While each of these data collection systems provides valuable information, collectively an overview of incidents in general or even of the most significant incidents is not provided. A well-designed system that could capture perhaps 2,000 to 3,000 of the most significant incidents would provide a basis, in conjunction with the ATSDR system, to estimate the total number and the characteristics of chemical releases in the US. With properly designed data taxonomy, these 2,000-3,000 incidents could be well understood without the expense of full-fledged incident investigations.

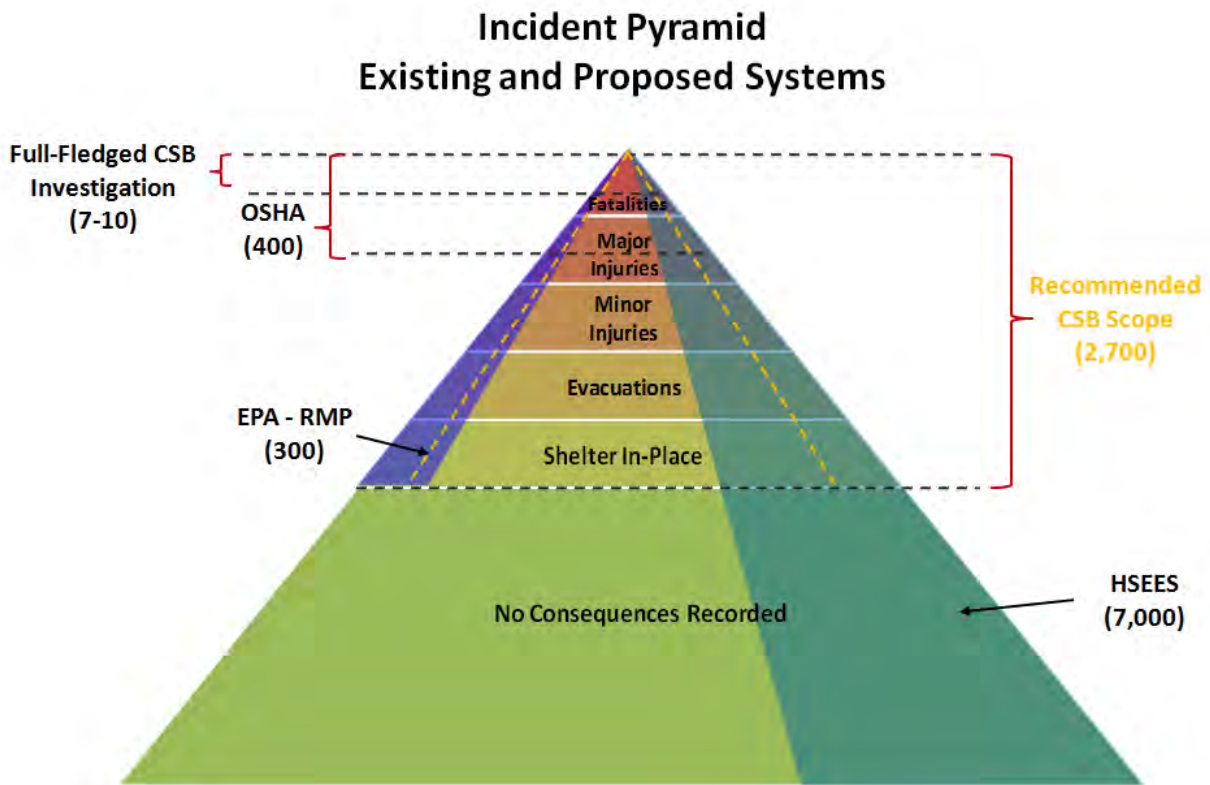
The ATSDR's HSEES data can be visualized (as shown in the following figure) as a slice of the *incident pyramid* encompassing incidents ranging from small releases with no consequences to severe incidents but of course limited to the states they cover. The new CSB data would occupy the top of the pyramid. Based on the overlapping portion of these two systems it should be possible to extrapolate to understand the missing portion of the pyramid and make estimates of the number and overall impact of chemical incidents.

The EPA's RMP data is also represented in a small slice of the *pyramid* since it excludes many chemicals, requires a threshold quantity to be stored and only reports incidents with consequences.

The OSHA data occupies the upper portion of the pyramid with the requirement for reporting of one fatality or three or more injuries.

The *incident pyramid* shown in Figure 2 also illustrates the extent of overlap between the existing and the proposed data collection system. This *pyramid* is based on earlier studies conducted by the MKOPSC<sup>[16]</sup> and our quantitative estimates of incidents covered by existing databases.





**Figure 2: Estimated Total Number of Annual Incidents (30,000 or more)**

The National Fire Protection Association (NFPA) is the agency primarily responsible for monitoring fires in the US. They rely on two sources of information to make national estimates of the number of fires. One source is the National Fire Incident Reporting System (NFIRS) which is a reporting system used by many fire departments to record the details of fires into a national database. Fire department participation is generally voluntary. Therefore, while this system contains millions of fires, it is not a complete or representative sample of the US. Large metropolitan fire departments are much more likely to report than are small fire departments, especially volunteer fire departments. To overcome this limitation, NFPA conducts a national stratified survey that provides information about the number of fires occurring in the jurisdiction of different sizes and types of departments. These two types of information are combined statistically to provide national estimates<sup>[17]</sup>.

The HSEES system is analogous to the NFIRS system in that it has detailed reporting but is not necessarily a representative sample. However, rather than conducting a survey like NFPA the proposed CSB data collection system would provide sufficient national data to combine with the HSEES state samples to allow calculated estimates of the number of incidents with varying levels of consequences.



## 9. Data Elements

Data taxonomy varies greatly across the current data collection systems. The existing systems appear to have evolved without regard to consistency amongst the systems. The data collection system developed by the CSB should consider consistency with existing systems while ensuring the data meet their requirements. The two most important systems for fixed facilities are the ATSDR's HSEES system and EPA's RMP data. The OSHA data is primarily text-based and not coded into a database. HSEES is especially strong on consequences, injuries, exposed populations and personnel protective equipment. There is potential to also improve on both systems in terms of causation, equipment and component classification.

## 10. References

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2. 42 U.S.C. 7412(r)(6)(C)(iii).
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6. Sharma, G., "A Decision Support System for Chemical Incident Information," MS Thesis, Texas A&M University, August 2002.
7. Keren, N., "Models for Multi-Strata Safety Performance Measurements in the Process Industry," PhD Dissertation, Texas A&M University, December 2003.
8. Anand, S., "Novel Applications of Data Mining Methodologies to Incident Databases," MS Thesis, Texas A&M University, August 2005.
9. Obidullah, A.S.M., "Use of Incident Databases for Cause and Consequence Analysis and National Estimates," MS Thesis, Texas A&M University, December 2006.
10. Veltman, L.M., "Incident Data Analysis Using Data Mining Techniques," MS Thesis, Texas A&M University, August 2008.
11. Anand, S., N. Keren, M.J. Tretter, Y. Wang, T.M. O'Connor, and M.S. Mannan, "Harnessing Data Mining to Explore Incident Databases," *Journal of Hazardous Materials*, vol. 130, no. 1-2, March 2006, pp. 33-41.
12. Keren, N., S. Anand, and M.S. Mannan, "Calibrate Failure-Based Risk Assessments to Take Into Account the Type of Chemical Processed in Equipment," *Journal of Loss Prevention in the Process Industries*, vol. 19, no. 6, November 2006, pp. 714-718.
13. National Chemical Safety Program – Annual Assessment Report – 2001, Draft Working Document, March 20, 2001.



14. "HSEES 1993 to 1997 in Dallas and Surrounding Counties," PowerPoint presentation, July 18, 2000, Julie Borders, Texas Department of Health.
15. US Code of Federal Register, Title 41, Part 191, <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=0dcebab763360667f17a1ee832afb033;rgn=div5;view=text;node=49%3A3.1.1.3;idno=49;cc=ecfr>
16. Mannan, M.S, M. Gentile, and T.M. O'Connor, "Chemical Incident Data Mining and Application to Chemical Safety Analysis," *Proceedings of the CCPS 2001 International Conference and Workshop*, Toronto, Ontario, Canada, October 2-5, 2001, pp. 137-156.
17. Hall, J.R. and B. Harwood, "The National Estimates Approach to US Fire Statistics," Fire Technology, May 1989, pp. 99-113.



**From:** [Wozniak, Russell \(RA\)](#)  
**To:** [anpr](#)  
**Subject:** CSB-09-01 - Dow Comments on ANPR - CSB and Chemical Release Reporting - Docket No. CSB-09-01  
**Date:** Monday, August 03, 2009 5:46:28 PM  
**Attachments:** [Final Dow Comments to CSB ANPR 080309.doc](#)

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Please find attached comments from The Dow Chemical Company on CSB's ANPR pertaining to Chemical Release Reporting (Docket No. CSB-09-01).

Regards,

<<Final Dow Comments to CSB ANPR 080309.doc>>

Russell A. Wozniak  
Global Regulatory Affairs  
The Dow Chemical Company  
Office 361-553-2920  
Mobile 361-649-2249



August 3, 2009

Chemical Safety and Hazard Investigation Board  
Office of General Counsel, Attn: C. Kirkpatrick  
2175 K Street, NW, Suite 650  
Washington, DC 20037

*Submitted via e-mail: anpr@csb.gov*

**Re: Comments on the Chemical Safety and Hazard Investigation Board - Advance Notice of Proposed Rulemaking - Chemical Release Reporting (CSB Docket CSB-09-01); 74 Fed Reg 30259 et seq. (June 25, 2009)**

Dear Sir or Madam:

The Dow Chemical Company ("Dow") respectfully submits comments on CSB's proposed rulemaking regarding chemical process safety incident reporting. Dow is a global chemical manufacturing company with approximately 45 U.S. manufacturing locations potentially impacted by the proposed rule.

We submit these comments for the CSB's consideration relative to the Advance Notice of Proposed Rulemaking on Chemical Release Reporting (Docket No. CSB-09-01). We are concerned about the establishment of additional reporting channels or significant expansion and duplication of reporting requirements. However, we also offer suggestions in the event that new requirements are implemented.

Dow is in favor of reporting all significant incidents that involve an accidental chemical release including spills, fires, and explosions. We believe that the current reporting system to the National Response Center (NRC) has and continues to work well. Industry and responders are familiar with and using the NRC system. Establishing a parallel reporting system and reporting point would be duplicative and in our opinion wasteful of resources both by industry and by the CSB. It also creates confusion. We strongly recommend that the CSB continue to use the NRC as the primary point for reporting chemical releases to the environment or significant process safety incidents that may warrant investigation by the CSB. If more information is necessary for the CSB to meet their stated mission, the CSB should modify its agreement with the NRC; and potentially require additional information to be reported. We believe the information currently reported to NRC is in most cases sufficient for CSB to make an initial determination whether to take further investigative action or not.



If it is determined that additional reporting criteria are needed to satisfy the CSB requirements that are outlined in Section 112(r)(6)(C) of the Clean Air Act, we recommend that CSB work with EPA to make targeted revisions to the existing federal release reporting rules (40 CFR, Part 302 and Part 355). These targeted revisions could include adopting identical or very similar reporting requirements to those currently in DOT regulations (49 CFR 171.15 and 49 CFR 91.5) for transportation and pipeline accidents, e.g., *“whenever the incident (or in this case the accidental release into the ambient air) involves hazardous materials and when, as a direct result of the materials;*

- *A person is killed;*
- *A person receives injuries requiring hospitalization; or*
- *Fire, explosion, or overpressure results in property damage exceeding \$100,000*

Again, we urge CSB to work with EPA on targeted revisions to existing rules rather than introducing new and duplicative regulations from the CSB.

It may also be necessary to amend the CERCLA requirements to eliminate the current exclusions from reporting requirements of releases *‘which results in exposure to persons solely within a workplace’* since such events could be of interest to the CSB.

The changes described above, combined with the existing chemical release reporting quantities listed in 40 CFR, Part 302 or Part 355, should be sufficient to identify all incidents of concern to the CSB. If it becomes necessary to utilize a new CSB regulation instead of revising the EPA regulations, the key objective should be to standardize upon the covered chemicals, chemical release threshold amounts, and reporting via the NRC.

If necessary to stipulate any new reporting timing requirements for the new criteria (fatalities, injuries requiring hospitalization, or property damage > \$100,000), we would recommend an 8-hour time window for reporting these details to the NRC. This timeframe will allow for an initial assessment of the incident and will allow for more accurate reporting of information related to a fatality, personnel injuries, or property damages that are associated with a release of a hazardous material.

Although Dow does not think the following is necessary for CSB to meet their stated mission or CAA requirements, if there is a desire by CSB to establish more definitive prioritization or ranking of incidents, we would urge the CSB to adopt the “Process Safety Severity Index” (PSSI) as published by AIChE’s Center for Chemical Process Safety (2007). The PSSI includes four factors: Safety/Human Health, Fire or Explosion, Potential Chemical Impact and Community/Environmental Impact in establishing the severity of an incident.

Page 3

It establishes the severity in each category and based on a total point value determines the severity level of an incident. This score may initially be computed based on best estimates and later refined based on actual data. A detailed discussion of the PSSI can be found at [http://www.aiche.org/uploadedFiles/CCPS\\_metrics%205.16.08.pdf](http://www.aiche.org/uploadedFiles/CCPS_metrics%205.16.08.pdf) page 10.

Thank you for the opportunity to comment. We would be pleased to provide further information or be of any other assistance. Please contact Russell Wozniak (361-553-2920) or Kenan Stevick (989-636-1372) for further assistance or clarification.

Sincerely,

Russell A. Wozniak  
EH&S Global Regulatory Affairs

**From:** [Florence Byrne](#)  
**To:** [anpr](#)  
**Subject:** Docket# CSB-09-01 - Chemical Release Reporting - The Chlorine Institute Comments  
**Date:** Tuesday, August 04, 2009 2:15:30 PM  
**Attachments:** [CI Comments - CSB - Chemical Release Reporting - Docket # CSB-09-01 - final.doc](#)

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To: Chemical Safety and Hazardous Investigation Board

From: The Chlorine Institute, Inc.

Date: August 4, 2009

Subj: Comments – Docket #CSB-09-01

Attached are comments from the Chlorine Institute, Inc. A paper copy is also being sent via U.S. mail this afternoon.

Thank you.



**THE CHLORINE INSTITUTE, INC.**  
 1300 Wilson Boulevard, Arlington, VA 22209  
 Phone: 703-741-5760 Fax: 703-741-6068  
<http://www.chlorineinstitute.org>

August 4, 2009

Chemical Safety and Hazard Investigation Board  
 Office of General Counsel  
 Attn: C. Kirkpatrick  
 2175 K Street, NW, Suite 650  
 Washington, DC 20037

**RE: Docket# CSB-09-01 – Chemical Release Reporting – The Chlorine Institute Comments**

Dear Mr. Kirkpatrick:

The Chlorine Institute, Inc. ("CI" or "Institute") submits the following comments regarding the Chemical Safety and Hazard Investigation Board's ("Board" or "CSB") Advanced Notice of Proposed Rulemaking on Chemical Release Reporting (the "ANPRM"). See *74 Fed. Reg. 30,259 (June 25, 2009)*.

The Chlorine Institute, Inc., founded in 1924, is a 201-member, not-for-profit trade association of chlor-alkali producers worldwide, as well as packagers, distributors, users, and suppliers. The Institute's mission is the promotion of safety and the protection of human health and the environment in the manufacture, distribution and use of chlorine, sodium hydroxide, potassium hydroxide and sodium hypochlorite, plus the distribution and use of hydrogen chloride. This includes continuous improvement and a long-term goal of zero injuries and releases. The Institute's North American Producer members account for more than 97 percent of the total chlorine production capacity of the U.S., Canada, and Mexico. U.S. chlor-alkali producers operate some of the safest facilities in the world, with incident rates consistently below overall industry and overall chemical business averages.

The Chlorine Institute has been a long-time supporter of the CSB and applauds the Board for its excellent work investigating high consequence chemical release incidents. The Board's mission<sup>1, 2</sup> is unique in the federal government and its activity to

<sup>1</sup> The Board, in its "History" section on its website provides background information regarding its mission: "The principal role of the new chemical safety board is to investigate accidents to determine the conditions and circumstances which led up to the event . . ."

<sup>2</sup> 42 U.S.C. 7412(r)(6)(C)(i): The Board shall – "investigate (or cause to be investigated), determine 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;"

Page 2

date has provided a critically needed service to the public. Industry's intention is to operate with zero injuries and incidents. Unfortunately, accidents do happen and when appropriate the CSB is available to apply its independent expertise towards an inquiry that all parties involved trust will lead to even greater safety. CI hopes that the Board continues to emphasize its primary role of first hand on-site investigation into serious chemical accidents. With this in mind, the Institute offers the following comments on the ANPRM.

### **The CSB Should Utilize the Existing NRC Database as Its Primary Method for Rapid Notification Concerning Significant Chemical Incidents**

The CSB's primary mission is to investigate "any accidental release resulting in a fatality, serious injury or substantial property damages" (generally speaking, any serious incident.) In its ANPRM, the Board gives no evidence or other information that the use of the National Response Center ("NRC") for notification concerning these serious incidents is inadequate or has in any way hampered the Board's effectiveness in the timely identification and on-site response to such incidents.

In the Institute's opinion, the CSB is not hampered by a lack of awareness that serious accidents have occurred. Instead, the CSB has been hampered by insufficient resources that prevent the agency from investigating many of the incidents of which the CSB is fully aware.

Industry currently has the obligation to notify the NRC of any accidental release that reaches or exceeds the reportable quantity. The NRC and its database are the most effective manner by which the CSB can be notified concerning chemical releases. If the NRC and its notification mechanism are not currently effective, then the Board should suggest possible solutions for improving the NRC.

If the Chemical Safety Board believes that the reportable quantity (RQ) listing of specific chemicals is incomplete or the RQ value is too high, the Institute suggests that CSB petition EPA to change the RQ tables. The CSB should provide documentation explaining the reason for such changes.

### **The CSB Should Utilize the Existing OSHA Mandated Reporting as a Secondary Method for Rapid Notification Concerning Serious or Fatal Injuries**

OSHA (or the state equivalent) requires that any accident resulting in the death of any employee or the in-patient hospitalization of three or more employees as the result of a work-related incident be reported to OSHA within eight hours. The CSB could use this system as a secondary method for identifying serious incidents.

Page 3

### **CSB Reporting Requirements Would Be Redundant to Existing Requirements and Drain Significant Limited Resources Available to the CSB**

Any new requirements would be in part, if not entirely, redundant when evaluated with respect to other reporting requirements such as those found in EPA and OSHA regulations. No new regulatory authority for CSB data collection is necessary nor should new reporting requirements be imposed on industry.

Almost instantaneous notification of an incident is available from the NRC, which industry has the current obligation to notify of any accidental release that exceeds the reportable quantity. The NRC should be able to provide the information necessary to allow the CSB to make timely decisions regarding the need for an incident investigation.

The CSB, in its ANPRM, writes that it needs better access to information so that it may analyze long-term incident trends. The CSB need not impose additional mandates on industry to obtain this data, which is already collected and present in various databases (e.g. NRC's and EPA's Risk Management Program databases). The establishment of such redundant reporting requirements would further deplete the CSB of its very limited resources resulting in dilution of its efforts to fulfill its core mission.

### **The CSB Should Arrange a Memorandum of Understanding with Select Agencies to Facilitate the Exchange of Incident Data**

The information the CSB believes it needs to analyze incident data over the long-term (something CI considers secondary to its primary mission of direct investigation of an incident) is already being collected, CSB just needs to better coordinate with the agencies that currently have the authority to obtain that data. The idea is simple and the execution should be straightforward and achievable. The CSB should arrange for MOUs with EPA, OSHA and other federal entities to obtain the data the Board believes are necessary to conduct its analyses.

In conclusion, the Chlorine Institute asks the Board to carefully consider its attempt to expand its authority to collect information. Such an expansion is unnecessary and would create an undue burden on industry. Most importantly, the Institute believes that such a move is actually counterproductive to the Board's primary mission. Such expanded duties will only divert limited resources away from what the CSB does best – investigate serious chemical releases and make recommendations to prevent future incidents of a similar nature.

Mr. Kirkpatrick  
August 4, 2009  
Page 4

Thank you for the opportunity to submit these comments and the Institute looks forward to working with the Board on this and other issues in the future. If you have questions please do not hesitate to contact us. I can be reached at the address on the letterhead, by email at [ddunlap@CL2.com](mailto:ddunlap@CL2.com) or by phone at 703-741-5765.

Sincerely,

A handwritten signature in black ink, appearing to read "David D. Dunlap". The signature is fluid and cursive, with the first name "David" being the most prominent.

David D. Dunlap  
Vice President  
Health, Environment, Safety & Security

cc: Arthur Dungan

**From:** [Votaw, James](#)  
**To:** [Kirkpatrick, Chris](#)  
**Cc:** [Meade, Kenneth](#); [anpr](#)  
**Subject:** CSB-09-01: Corporate Environmental Enforcement Council  
**Date:** Tuesday, August 04, 2009 2:30:13 PM  
**Attachments:** [CSB-09-01 Corporate Environmental Enforcement Council.PDF](#)

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Dear Mr. Kirkpatrick,

The Corporate Environmental Enforcement Council (CEEC) thanks the Board for considering its request to extend the public comment period on the Board's accidental chemical release reporting ANPR. Although it will be unable as a practical matter to provide comments prior to the current deadline, the enclosed letter confirms that CEEC will nevertheless complete and submit its comments after the close so that the Board will have the opportunity to consider CEEC's perspectives as it proceeds with the rule development process.

Thank you.

James G. Votaw | [WilmerHale](#)  
1875 Pennsylvania Avenue NW  
Washington, DC 20006 USA  
+1 202 663 6244 (t)  
+1 202 663 6363 (f)  
+1 202 641 5527 (c)  
[james.votaw@wilmerhale.com](mailto:james.votaw@wilmerhale.com)

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**WILMERHALE**

August 4, 2009

**Kenneth R. Meade**

By E-mail and First Class Mail

+1 202 663 6196(t)

+1 202 663 6363(f)

kenneth.meade@wilmerhale.com

Christopher Kirkpatrick, Esq.  
Office of General Counsel  
Chemical Safety and Hazard Investigation Board  
2175 K Street, N.W.  
Suite 650  
Washington, DC 20037

Re: Chemical Release Reporting: Advance notice of proposed rulemaking  
74 Fed. Reg. 30,259 (June 25, 2009); Docket No. CSB-09-01

Dear Mr. Kirkpatrick:

We thank the Board for considering the request by the Corporate Environmental Enforcement Council (CEEC) to extend the public comment period on the Board's advance notice of proposed rulemaking concerning accidental chemical release reporting (ANPR). As stated in its request, CEEC intends to comment on the ANPR, but will be unable as a practical matter to provide those comments prior to the current deadline. If the comment period is not extended, CEEC will nevertheless complete and submit its comments after the close so that the Board will have the opportunity to consider CEEC's perspectives as it proceeds with the rule development process.

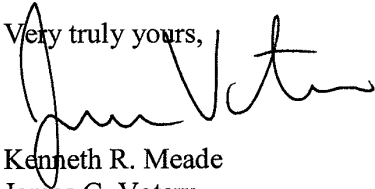
The comments will address CEEC's perspective on both the broad outlines of an appropriate program considering the legal scope of Board's responsibilities, and CEEC's members' perspectives, based on their experience, with the practical details of similar reporting. For example, for many companies, the prospect of another layer of "immediate" chemical release reporting requirements beyond what may already be required by CERCLA, EPCRA, TSCA, individual NESHAPs, OSHA, PHMSA, state law analogues to these, and/or by individual orders and permits may be unnecessarily burdensome if not warranted by the Board's actual needs. Those needs should be considered in light of other available information sources, and any further reporting appropriately tailored to meet those residual needs. Long experience with release reporting programs points to the many practical and legal issues such requirements can present to even the best managed organizations. These typically involve the challenges of making multiple, rapid applicability determinations against contextually ambiguous criteria, and based upon uncertain and evolving factual understandings and engineering judgments, often further complicated by the simultaneous need to respond quickly and effectively to the accidental release itself.

WILMERHALE

Christopher Kirkpatrick, Esq.  
Re: Docket No. CSB-09-01  
August 4, 2009  
Page 2

We look forward to working with the Board as this effort continues.

Very truly yours,

A handwritten signature in black ink, appearing to read "James G. Votaw". The signature is written in a cursive style with a large initial "J" and "V".

Kenneth R. Meade  
James G. Votaw

*Counsel for CEEC*

Cc: Steven B. Hellem, Executive Director, CEEC

**From:** [Jason FREDERICK](#)  
**To:** [anpr](#)  
**Cc:** [Stan BEISERT](#)  
**Subject:** CSB-09-01  
**Date:** Tuesday, August 04, 2009 8:43:33 AM

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Mr. Bresland,

Total Petrochemicals USA, Inc. (TPI) appreciates the opportunity to comment on the Advanced Notice of Proposed Rulemaking (ANPR) regarding the Board's proposed release reporting rule.

As operator of one refinery and several polymer manufacturing plants in the United States, TPI is subject to the various incident reporting rules established by other agencies and mentioned in the ANPR. We feel that the existing criteria for reporting set forth by those other agencies, and the information required by those reports, is sufficient to capture the incidents that the Board expects to meet its criteria for severity. We therefore encourage the Board to adopt proposed "Option 3", in which the Board formalizes the existing discovery process, using existing information, and establishes by rule the ability to request further information from the owner or operator of a facility as needed.

Sincerely,

**Jason D. Frederick**

Senior Environmental Coordinator



**1201 Louisiana Street, Suite 1800**  
**Houston, TX 77002**  
**713-483-5056**  
**713-483-5050 fax**  
**[jason.frederick@total.com](mailto:jason.frederick@total.com)**

**From:** [Skip Edwards](#)  
**To:** [anpr](#)  
**Cc:** [Stacey-Ann Taylor](#); [Steve Sides](#)  
**Subject:** Comments: Chemical Release Reporting, Docket #CSB-09-01  
**Date:** Tuesday, August 04, 2009 1:07:18 PM  
**Attachments:** [NPCA's Comments CSB Reporting Rule 4 Aug 09.pdf](#)

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The NPCA/FSCT submits the attached comments to the CSB re. Chemical Release Reporting, Docket #CSB-09-01.

Lance "Skip" Edwards, CIH  
Director, Health & Safety  
NPCA/FSCT  
1500 Rhode Island Ave., NW  
Washington, DC 20005-5597  
202-462-6272 Ext. 228  
202-719-3688 (Direct)

August 4, 2009

Chemical Safety & Hazard Investigation Board  
Office of General Counsel  
Attn: C. Kirkpatrick  
2175 K St., NW, Suite 650  
Washington, DC 20037

Re: Chemical Release Reporting, Docket #CSB-09-01

Dear Sir or Madam:

NPCA/FSCT is pleased to submit these comments in response to the CSB's advance notice of proposed rulemaking on chemical release reporting (74 Fed. Reg. 30259, June 25, 2009).

NPCA/FSCT is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. NPCA/FSCT serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services.

NPCA/FSCT has historically shared the view that the CSB did not need to initiate a rulemaking on this topic, particularly given (i) the existence of current obligations to report to the National Response Center (NRC); and (ii) the comprehensiveness and timeliness of news media reporting of significant releases, especially in the Internet age. However, NPCA/FSCT respects the CSB's decision to initiate such a rulemaking. We believe the CSB has taken the appropriate approach by starting with an advance notice of proposed rulemaking, in order to gather broad input on basic questions of coverage and content before actually proposing an approach. Below, we offer our comments on several of the issues discussed in the ANPRM.

### **I. The CSB Should Adopt Approach #3: Reporting Pursuant to CSB Notice**

*Approach #3 is ideally structured to suit the CSB's resources and needs*

The CSB has done a good job of explaining why the optimum release reporting rule would involve facility reporting to the CSB, when notified by the CSB.

While there could be tens of thousands of events that fall within the statutory phrase "accidental releases into the ambient air subject to the Board's investigatory jurisdiction," the CSB is right to recognize that its resource limitations – under any foreseeable budget scenario – counsel that it "should likely focus on selected, high-consequences events (for example, incidents that result in death, serious injuries requiring in-patient hospitalization, large public evacuations, very substantial property damage, or acute environmental impact)," and that "there are likely to be at

NPCA | FSCT: Advancing the paint and coatings industry through product stewardship, advocacy, science and technology, and essential business information

most a few hundred incidents throughout the country each year that would require reporting to the CSB if the threshold is set at a level to capture serious consequences or substantial near miss situations.”<sup>1</sup>

The CSB is also correct to conclude that it will almost certainly learn of releases meeting the foregoing description fairly shortly after the fact, either by media reporting or through the NRC.<sup>2</sup> Certainly NPCA/FSCT is unaware of any evidence that the CSB has failed to learn of important incidents, or has learned of them so late as to have lost valuable evidence or otherwise suffered prejudice to its investigative capability. Thus, it is reasonable for the CSB to structure a reporting rule to supplement its ability to collect information from its two principal current sources of initial data. A follow-on reporting rule of the sort discussed under Approach #3 would allow the CSB to collect the information it needs in a particular case, tailored to that situation. Approach #3 would also enable the CSB to collect a common dataset regarding each incident that it determines warrants such documentation – thus meeting the GAO’s concerns<sup>3</sup> – while avoiding massive collections of information about incidents that the CSB does not have any interest in pursuing.

#### *Approach #1 Suffers Multiple Flaws*

Such wasted activity is exactly what would result from Approach #1, as it would lead to facilities filing thousands of reports that the CSB may well not even be able to review, or which it largely would ignore because it would quickly determine the incidents not to be worth evaluating further. Such a massive compilation of data would be far less useful to the CSB than a database that is made up entirely of incidents that at least met an initial screen of relevance.

Approach #1 would require reporting of “all accidental releases subject to the CSB’s investigatory jurisdiction.” As the CSB is well aware, the Clean Air Act is inconsistent regarding that jurisdiction. At a minimum, it encompasses “any accidental release resulting in a fatality, serious injury or substantial property damages.”<sup>4</sup> While the existence of a fatality is bright-line standard, “serious injury” is a less clear term, and “substantial property damages” is even more vague. At least arguably, however, the CSB’s investigatory jurisdiction reaches more broadly to any accidental release that “had the potential to cause substantial property damage or a number of deaths or injuries among the general public.”<sup>5</sup> This general phraseology encompasses an enormous number of events, particularly since “accidental release” is in turn defined to involve releases of both “regulated substances” (which are listed by rule) and “other extremely hazardous substances” (which are not listed anywhere).<sup>6</sup> This compound vagueness raises two problems:

- Facilities that are aware of their obligation to report under such a standard are going to come to widely differing interpretations of whether the same fact patterns would be

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<sup>1</sup> 74 Fed. Reg. 30261.

<sup>2</sup> *Id.* at 30260-61.

<sup>3</sup> GAO-08-864R, at 7 (quoted *id.* at 30260).

<sup>4</sup> 42 U.S.C. § 7412(r)(6)(C)(i).

<sup>5</sup> *Id.* § 7412(r)(6)(E).

<sup>6</sup> *Id.* § 7412(r)(2)(A).

reportable, leading to inconsistencies in reporting that would (i) produce both under- and over-reporting and, as a result, (ii) undermine the reliability of the resulting database.

- Because of the lack of clarity in the language defining the CSB’s investigative jurisdiction, many facilities will have no idea that they are subject to that jurisdiction, and thus to the reporting requirement. Many of the facilities that the CSB investigates are unaware that they are subject to long-standing regulatory programs whose applicability is easily determined.<sup>7</sup> Imagine how many more facilities will conclude that the CSB’s reporting rule (under Approach #1) does not apply to them. The CSB is wise to identify the problem of “how best to educate potentially affected parties about compliance with any final rule”<sup>8</sup> – but this problem would be staggering if a final reporting rule is self-implementing and based on verbal formulations derived from the CSB’s jurisdiction.

*Approach #2 would be overly burdensome to facilities and the CSB*

Approach #2 is an improvement on Approach #1, but is still inferior to Approach #3. Assuming that the CSB used the same consequence thresholds for Approach #2 that it would use for Approach #3, it would gain the same information in both cases, and would avoid collecting a great deal of non-useful information about low-consequence events. The CSB would still be relying on facilities to be aware of their reporting obligation, however, and would still have to contact facilities in cases where it became aware of an event but did not receive a report. The only incremental value of Approach #2 over #3 would be cases where two things happened: (i) the CSB did not become aware of the event via the NRC or the news media; and (ii) the facility was aware of its reporting obligation. NPCA/FSCT questions how many of these cases there will be.

NPCA/FSCT particularly opposes the “related” option under Approach #2 of having “high risk” facilities report regardless of consequence. NPCA/FSCT is confident that such a requirement will lead to unnecessary reporting by covered facilities and yet deprive the CSB of needed information from non-“high risk” facilities.

*Approach #4 is essentially the status quo*

Facilities already have to report to the NRC whenever they have a release over a 24-hour period of a hazardous substance or extremely hazardous substance above its reportable quantity (RQ). The CSB already reviews reports under this program. It does not appear that the CSB has identified particular chemicals not on this list that need to be reported, or lower RQs that should be used. Rather, the CSB has noted that accidents warranting its investigation “may and do result from the release of relatively small quantities of chemicals, and from chemicals that are not likely to be listed.”<sup>9</sup> Approach #4 will not address that problem, except by massively expanding the existing lists of chemicals and RQs in ways that clearly will produce declining

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<sup>7</sup> For example, the CAI facility in Danvers, MA was unaware of the OSHA PSM rule, which applied to it. See CSB final report at 56 (available at <http://www.csb.gov/assets/document/CSBFinalReportCAIExplosion.pdf>).

<sup>8</sup> 74 Fed. Reg. 30262.

<sup>9</sup> *Id.*

returns. Ultimately, no self-implementing, list-based rule could ever get at the accidents that are caused by operating conditions or circumstances, where the release of a chemical is the incidental result, rather than the cause, of the accident. By contrast, a follow-up rule like Approach #3 will work ideally for such accidents.

## II. The CSB Should Maximize the Value of NRC Reporting

The Clean Air Act provides that reporting to the NRC “shall satisfy” any CSB reporting obligations.<sup>10</sup> Thus, the CSB is obligated to work with the Coast Guard to implement a means by which any chosen reporting rule can utilize the NRC. The NRC already has a series of web-based templates for reporting incidents subject to the jurisdiction of other agencies; e.g., DOT.<sup>11</sup> The fixed facility template already has fields for the sort of information the CSB says it wants (e.g., “Injuries,” “Fatalities,” “Evacuations,” “Damages”).<sup>12</sup> The CSB and the Coast Guard ought to be able to modify these templates to create exactly what CSB is looking for. A requirement to use the web-based template would avert the need to have a dedicated toll-free phone line.

NPCA/FSCT values its relationship with the CSB and appreciates the opportunity to provide these views. We would welcome the chance to discuss them further with the CSB if the Board would find that useful. If you would like to do so or have any questions about these comments, please contact me at 202-4626272 or [sedwards@paint.org](mailto:sedwards@paint.org).

Sincerely,

// Signed //

Lance “Skip” Edwards, CIH  
 Director, Health & Safety Affairs  
 NPCA/FSCT  
 1500 Rhode Island Ave., NW  
 Washington, DC 20005-5597  
 202-462-6272 Ext. 228

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<sup>10</sup> 42 U.S.C. § 7412(r)(6)(C)(iii).

<sup>11</sup> See <http://www.nrc.uscg.mil/htmlreport.html>.

<sup>12</sup> Go to <http://www.nrc.uscg.mil/fixedreport.html> and scroll down to “Impact Information.”



**From:** [Lara Swett](#)  
**To:** [anpr](#)  
**Subject:** CSB-09-01 Chemical Reporting Rule on behalf of NPRA  
**Date:** Tuesday, August 04, 2009 1:20:41 PM  
**Attachments:** [CSB-09-01 Chemical Reporting Rule.pdf](#)

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Please see the attached comments for CSB-09-01 submitted on behalf of NPRA, the National Petrochemical and Refiners Association.

Lara Swett  
Manager, Safety Programs  
NPRA  
202-457-0480



National Petrochemical & Refiners Association

1667 K Street, NW  
Suite 700  
Washington, DC  
20006

202.457.0480 voice  
202.457.0486 fax  
www.npra.org

August 4, 2009

U.S. Chemical Safety and Hazard Investigation Board  
Office of General Counsel  
Attn: C. Kirkpatrick  
2175 K Street, N.W., Suite 650  
Washington, D.C. 20037  
[anpr@csb.gov](mailto:anpr@csb.gov)

Attn: Comments on Chemical Release Reporting (Docket No. CSB-09-01)

Dear Mr. Kirkpatrick:

NPRA, the National Petrochemical and Refiners Association, is a national trade association with 450 members, including those who own or operate virtually all U.S. refining capacity, as well as most of the nation's petrochemical manufacturers with processes similar to those of refiners.

NPRA appreciates the opportunity to provide our input on the Chemical Safety and Hazard Investigation Board's (CSB) June 25, 2009 notice and request for comments on a Chemical Release Reporting Proposal (74 Fed. Reg. 30,259 (June 25, 2009)).

NPRA agrees that Section 42 U.S.C. 112(r)(6)(c) of the Clean Air Act (42 U.S.C. 112(r)(6)(c)) requires CSB to promulgate a Chemical Reporting Rule. NPRA supports a Chemical Reporting Rule that formalizes the current mechanisms employed by the CSB to satisfy the statute's requirements. NPRA believes that the current mechanisms the CSB employs are efficient and effective. Reporting beyond what is currently done would not necessarily improve the current process, but could in fact create confusion and diversion during a critical emergency response.

**Current Mechanisms the CSB employs are Efficient and Effective**

Through the CSB current mechanisms, it successfully receives all necessary information in a very short time to make the decision as to whether or not to send an investigative team to a site. Based on accounts from NPRA member companies, the CSB has called sites within hours of an incident for more information and according to the *Federal Register* notice, a majority of these incidents are reported from media reports first, i.e., See *Fed. Reg. 30260*. Based on this information, NPRA believes the CSB employs mechanisms that are efficient, effective, and accurate and that any changes to them would be counterproductive.

2

August 4, 2009

**Existing Emergency Notification Requirements are Extensive**

In addition to managing the emergency to ensure the health and safety of facility employees and the community, the facility supervision team is already obligated to take the following actions depending upon the specific circumstances:

- Immediately notify local emergency responders who can assist in the response;
- Make calls for assistance to off-shift employees for help in responding to the emergency, and;
- Make multiple notifications to local, state, and/or federal environmental and safety agencies.

As stated in the *Federal Register* notice at page 30261, “In drafting a new requirement, the CSB will seek to avoid unnecessary duplication with various other reporting requirements.” Incident and/or release reporting is already required under and occurring through the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Emergency Planning and Community Right-to-Know Act (EPCRA), the Occupational Safety and Health Act (OSH), the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act (TSCA), the Hazardous Materials Transportation Act, and state and local agencies. Imposing additional reporting obligations beyond those already required by the above, and that are solely for the purpose of informing the CSB of an event; add unnecessary burden and distraction to the facility supervision team who would be working to mitigate the impacts of an emergency. According to the CSB website, (<http://www.csb.gov/about/history.aspx>), the CSB has entered into a number of memorandums of understanding (MOUs) for the purpose of each agency carrying out its statutory mission efficiently and without unnecessary duplication. NPRA recommends that before there is consideration of adopting additional reporting regulations, there should be efforts to improve and enhance federal inter-agency and federal/state information sharing and notification procedures.

**Criteria For Reporting**

On page 30261 of the *Federal Register* notice, CSB suggests possible criteria for the notification reporting rule: incidents that result in death, serious injuries requiring in-patient hospitalization, large public evacuations, very substantial property damage or acute environmental impact. The Clean Air Act requires notification of only those accidental releases resulting in: 1) fatality; 2) serious injury; and 3) substantial property damage. NPRA supports using only the three statutorily required criteria and opposes additional reporting criteria not required by the statute, such as public evacuations or environmental impacts. Of course, NPRA’s support of the three statutorily required criteria would depend on how CSB defines “serious injury” and “substantial property damage.” To avoid further confusion, CSB should consider that existing reporting regulations, such as CERCLA, and the OSH Act already contain definitions for such terms as “extremely hazardous substance,” “serious injury,” and “accidental release.”

3

August 4, 2009

**Formalizing Current CSB Practice**

NPRA is confident that CSB's existing mechanisms are efficient, effective and allow them to receive timely notice of chemical incidents. Therefore, NPRA supports the third option outlined in the *Federal Register* notice at page 30262: "*CSB would continue to rely on existing sources to learn of chemical incidents, and would then follow up on certain incidents (e.g., those with the most serious consequences) to gather additional information that a reporting party would be required to complete and submit to CSB.*"

In formalizing a CSB Chemical Reporting Rule, NPRA opposes any rule that would require reporting more detailed information to the CSB within minutes and hours after an incident. Consistent with other NPRA comments on incident reporting, a minimum of 3 hours is needed for the site's emergency response priorities to be handled. In addition, flexibility is required for extenuating circumstances. The CSB must recognize that sites must deal with important emergency response and safety priorities prior to any accidental release reporting requirements. Lastly, consistent with the statutory language, only high-consequence incidents should be included, and "high-consequence" should be defined to include one of the three statutory criteria: 1) fatality, 2) serious injury, or 3) substantial property damage.

NPRA appreciates the CSB's thoughtful consideration of these comments. Please do not hesitate to contact me if you have any comments or need further explanation on any of the comments provided. I can be reached at NPRA, 202-457-0480/ [lswett@npra.org](mailto:lswett@npra.org).

Sincerely,



Lara Swett  
Manager, Safety Programs  
NPRA

**From:** [Miller, Laurie](#)  
**To:** [anpr](#)  
**Cc:** [Miller, Laurie](#)  
**Subject:** ACC Comments on the Advance Notice of Proposed Rulemaking on Chemical Release Reporting  
**Date:** Tuesday, August 04, 2009 3:46:10 PM  
**Attachments:** [ACC CSB Reporting ANPR Comments 8-4-09.pdf](#)  
**Importance:** High

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Dear C. Kirkpatrick:

Attached please find the American Chemistry Council's comments on the Chemical Safety Board's Advance Notice of Proposed Rulemaking on Chemical Release Reporting. If you have any questions regarding the comments, please do not hesitate to contact me.

Best regards,

*Laurie A. Miller*  
Director, Process Safety  
American Chemistry Council  
1300Wilson Blvd  
Arlington, VA 22209  
laurie\_miller@americanchemistry.com  
(P) 703.741.5247  
(F) 703.741.6247



*Via electronic mail*

August 4, 2009

Chemical Safety and Hazard Board  
Office of General Counsel  
Attn: C. Kirkpatrick  
2175 K Street, N.W.  
Suite 650  
Washington, DC 20037

**RE: CSB-09-01**

U.S. Chemical Safety and Hazard Investigation Board Advance Notice of Proposed Rulemaking;  
*74 Federal Register* 30259-30263, June 25, 2009  
[Comments of the American Chemistry Council](#)

Dear Sir or Madam:

The American Chemistry Council (ACC) is pleased to submit comments to the U.S. Chemical Safety and Hazard Investigation Board (CSB) on the Board's Advance Notice of Proposed Rulemaking (ANPRM) on Chemical Release Reporting. ACC represents the leading companies engaged in the business of chemistry.

If CSB decides to promulgate a regulation on chemical release reporting, ACC strongly supports CSB proposing a regulation that mirrors its current framework. We believe this framework could be improved in certain respects, which CSB could address in the proposed rule. We explain these in the attached comments, which can be summarized as follows:

- ACC supports CSB addressing its accident notification needs via the existing government agency reporting/notification framework provided by the National Response Center (NRC), using a "one-call" notification strategy and existing well-known regulatory definitions, notification mechanisms, and event data collection taxonomies. As the single effective focal point, NRC should then distribute notification information to any parties within and outside government. This approach would necessitate that CSB work closely with other agencies to integrate its accident notification needs within the existing reporting framework. ACC believes that this is a strategy that CSB has used in the past and therefore should continue to support.
- CSB, in conjunction with other agencies, should evaluate and improve electronic and web-based mechanisms for reporting and notifying appropriate entities to improve timeliness, accuracy, and efficiency.
- CSB should use this rulemaking to seek information to assist in its effective use of accident investigation deployment resources.
- CSB should not pursue any duplicative, confusing or inefficient accident reporting strategies that will take away from CSB's efforts to investigate accidents and from industry's efforts to provide timely emergency management and response.



- ACC believes that it is important for CSB to provide a sound rationale for its belief that improved chemical accident reporting will improve its accident investigation response time. In particular, CSB should provide data that demonstrates that its existing means for receiving notification has been inadequate and resulted in significant deployment delays in accomplishing its investigation mission. Unless CSB provides this information, it may be difficult for CSB to show that the chemical accident reporting regulation it is considering will, in fact, significantly improve its investigation response time and therefore justify the associated costs.
- As CSB states on its web page, although the Board was created to function independently, it also collaborates in important ways with the Environmental Protection Agency, the Occupational Safety and Health Administration, and other agencies. The Board has entered into a number of memorandums of understanding (MOUs) that define the terms of collaboration. For example, in cases where several agencies are conducting investigations of a particular accidental chemical release, the MOUs outline mechanisms for coordination in the field. The goal of the MOUs is to allow each agency to carry out its statutory mission efficiently and without unnecessary duplication of effort. ACC believes that CSB should continue to follow this approach after adopting its reporting regulation.
- CSB's authority for investigation of chemical accidents is limited to stationary facilities (non-transportation).
- Concerning the scope of a CSB chemical release reporting rule, ACC believes that broadening the CSB accident notification scope and reporting mechanism beyond existing statutory restrictions and existing frameworks would result in unnecessary duplication of effort, inefficiency, confusion, and lower overall emergency response performance.
- In summary, ACC would support regulatory language that applies the existing accident notification/reporting framework and requires efforts to maintain efficiency and high data quality, and minimize burdens that would detract from effective emergency response and CSB investigative response.

ACC appreciates the opportunity to comment on this ANPRM. We look forward to future dialogue with CSB to continuously improve the Board's investigation practices pertaining to chemical release accidents. If you have any questions about our comments or would like additional information, please do not hesitate to contact me by phone at (703) 741-5247 or by email at [laurie\\_miller@americanchemistry.com](mailto:laurie_miller@americanchemistry.com).

Sincerely,



Laurie A. Miller  
Director, Process Safety  
Regulatory & Technical Affairs

Attachment



August 4, 2009

Comments of the American Chemistry Council on the  
**United States Chemical Safety and Hazard Investigation Board's**  
**Advance Notice of Proposed Rulemaking on Chemical Release Reporting**  
**40 CFR Chapter VI, Docket No. CSB-09-01**

The American Chemistry Council (ACC) is pleased to submit comments to the U.S. Chemical Safety and Hazard Investigation Board (CSB) on the Board's Advance Notice of Proposed Rulemaking (ANPR) on Chemical Release Reporting.

If CSB decides to promulgate a regulation on chemical release reporting, ACC strongly supports CSB proposing a regulation that mirrors its current framework. We believe this framework could be improved in certain respects, which CSB could address in the proposed rule. We explain these points in the comments that follow.

ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care<sup>®</sup>, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$689 billion enterprise and a key element of the nation's economy. It is one of the nation's largest exporters, accounting for ten cents out of every dollar in U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.

The Business of Chemistry employs approximately 850,000 Americans. As an inherent aspect of these companies' businesses, many of their employees work in settings with the potential for exposure to toxic substances or hazardous chemicals. As a result, our industry is a leader in occupational health science and in the application of industrial hygiene practices for worker safety and health protection. ACC member companies are also subject to regulation by the Occupational Safety and Health Administration (OSHA) health standards to manage such potential exposures, and accordingly have a great interest in CSB accident reporting policies and practices, and therefore this rulemaking.



August 4, 2009

Comments of the American Chemistry Council on the  
**United States Chemical Safety and Hazard Investigation Board's**  
**Advance Notice of Proposed Rulemaking on Chemical Release Reporting**  
**40 CFR Chapter VI, Docket No. CSB-09-01**

### **Executive Summary**

The American Chemistry Council (ACC) believes that the Clean Air Act gives the U.S. Chemical Safety and Hazard Investigation Board (CSB) the authority to publish an accidental chemical release reporting rule. However, the Act does not state that CSB *must* issue such a rule. If CSB decides to promulgate a reporting rule, we recommend that it relies on existing mechanisms to collect chemical release information and avoid duplicative and inefficient methods that could hamper emergency response and detract from the Board's efforts to initiate investigations in a timely and efficient manner. CSB should use the existing accident reporting framework provided by the National Response Center (NRC), including existing well-known regulatory definitions, notification mechanisms, and event data collection taxonomies. Existing methods are not without challenges, however. ACC would support CSB working with other government agencies involved in accidental chemical release reporting to improve electronic and web-based mechanisms for reporting and notifying appropriate entities to improve timeliness, accuracy, and efficiency. ACC would also support a reporting framework that is bound by statutory-based reporting criteria that are appropriately defined.

ACC questions whether CSB's Advance Notice of Proposed Rulemaking (ANPR) on Chemical Release Reporting will provide a substantive improvement over currently used reporting mechanisms in terms of improving CSB's investigation efficiency. Therefore, we believe CSB should provide in any Notice of Proposed Rulemaking (NPR) a sound rationale for its belief that enhanced chemical accident reporting actually improves its accident investigation response time. We believe CSB should demonstrate that the chemical accident reporting regulation it is considering will, in fact, significantly improve its investigation response time and therefore justify the associated costs.

August 4, 2009

Comments of the American Chemistry Council on the  
**United States Chemical Safety and Hazard Investigation Board's**  
**Advance Notice of Proposed Rulemaking on Chemical Release Reporting**  
**40 CFR Chapter VI, Docket No. CSB-09-01**

**I. Statutory Requirements**

**A. CSB is not required to promulgate a regulation and can rely on existing mechanisms.**

ACC believes that the Clean Air Act (CAA) gives CSB the authority to publish an accidental release reporting rule. However, the Act does not state that CSB *must* issue such a rule. In the interest of efficiency, CSB can rely on existing mechanisms that have for years, more than adequately facilitated collection of this information.

CAA § 112(r)(6)(C)(iii) states that CSB shall:

[E]stablish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigatory jurisdiction. *Reporting releases to the National Response Center, in lieu of the Board directly, shall satisfy such regulations.* The National Response Center shall promptly notify the Board of any releases which are within the Board's jurisdiction. [FN: 42 U.S.C. § 7412(r)(6)(C)(iii) (emphasis added).]

Based on this language, we believe Congress intended that CSB have the option either (i) to develop its own accidental release reporting rule, with requirements beyond those specified 40 C.F.R. § 302.6 and 40 C.F.R. § 355.40 – 355.43 (the EPA rules that currently provide for release reporting to the NRC, or (ii) to rely instead on the EPA reporting requirements. If Congress had intended that CSB necessarily issue its own, more demanding accident reporting rule, it is difficult to see why Congress would have provided for use of the existing EPA reporting rule as an acceptable substitute. Nor would Congress have used the unspecified adjective “any” to refer to such a rule in § 112(r)(6)(O), which states the following:

After the effective date of *any* reporting requirement promulgated pursuant to subparagraph (C)(iii) it shall be unlawful for any person to fail to report any release of any extremely hazardous substance as required by such subparagraph. The Administrator is authorized to enforce *any* regulation or requirements established by the Board pursuant to subparagraph (C)(iii) using the authorities of sections 7413 and 7414 of this title....[FN: Id. § 7412(r)(6)(O) (emphasis added).]

In addition, neither § 112(r)(6)(C)(iii) or § 112(r)(6)(O) includes a requirement for facilities to provide any particular data beyond that required by the EPA rule when reporting an accidental release. Rather, these statutory provisions refer only to the need to require facilities to report accidental releases.

Finally, it would serve no purpose, except to waste CSB's resources, to compel the Board to go through the procedural motions of promulgating a rule that simply adopts the EPA accidental release reporting rule.

August 4, 2009

Comments of the American Chemistry Council on the  
**United States Chemical Safety and Hazard Investigation Board's**  
**Advance Notice of Proposed Rulemaking on Chemical Release Reporting**  
**40 CFR Chapter VI, Docket No. CSB-09-01**

Based on the foregoing, ACC respectfully recommends that the CSB simply formalize its existing data collection and analysis practices using the NRC, but with certain modifications, which are described below.

## **II. Criteria for Reporting**

ACC believes that CSB should use and integrate existing regulatory frameworks, including terminology, criteria, and reporting means, within its proposed rule. Specifically, ACC recommends that CSB use the definition and notification criteria from the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 40 CFR §302.3, which can be modified for use by CSB to meet its accident reporting/notification needs.

CERCLA defines Release and Reportable Quantity as follows:

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes:

- (1) Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons...*[ACC comments do not include the two other non-relevant criteria]*

Reportable quantity ("RQ") means that quantity, as set forth in this part, the release of which requires notification pursuant to this part.

ACC believes that CSB should adopt these definitions, without the restriction listed in (1) above. This would allow the CSB to be notified of all events involving a release at or greater than an RQ that could result in harm to workers, the public, or the environment. However, ACC also believes that CSB should limit notification to events having significant consequences pertinent to chemical accident investigations and prevention, as described below.

### **A. The CAA requires notification for only accidental releases resulting in 1) fatality, 2) serious injury, or 3) substantial property damage.**

ACC believes that CSB should focus any accident notification and reporting requirements on high-consequence events resulting in fatalities, serious injuries, or substantial property damage. These criteria are consistent with CSB's statutory obligations and have proven sufficient for CSB to deploy accident investigation resources. Our suggested definitions of serious injury and substantial property damage are provided in section III below.

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**B. CSB is considering expanding notification criteria to 1) death, 2) serious injuries requiring in-patient hospitalization, 3) large public evacuations, 4) very substantial property damage, or 5) acute environmental impact.**

ACC does not believe that CSB should expand its notification and reporting regulatory scope to include lesser events involving large public evacuations or environmental impact (items 3 and 5 listed above in heading IIB). Reporting of these events was addressed as Congress had intended in the CAA by requiring reporting to the NRC and using the EPA Risk Management Plan (RMP) accident reporting criteria. Adding lesser events (like items 3 and 5 above) to CSB's deployment resource screening activities would simply divert its resources away from its investigative mission.

**C. CSB should provide for correction of erroneous accident notification and reporting information.**

Following an accidental release, accurate, detailed information may not be readily available. Sometimes, in an effort to quickly notify the NRC, incomplete information may be provided that later may be proven to be incorrect. ACC recommends that CSB provide for the ability to correct unintentionally inaccurate data within a reasonable period of time (e.g., 30 days) after the release. This will help encourage prompt reporting and improve data quality.

**III. Definitions**

**A. Ambient Air**

ACC believes that the definition of ambient air within existing regulations (EPA RMP rule [40 CFR 68]) is sufficient for the purposes of this rulemaking.

**B. Extremely Hazardous Substance (EHS)**

ACC recommends that CSB use a definition for accident reporting based on the CERCLA definitions provided above for release and reporting quantity, combined with the definitions of the appropriate consequence criteria of fatality, serious injury and substantial property damage, which are provided below. This approach obviates the need to further define EHS.

**C. Substantial Property Damage**

ACC recommends that CSB select a property damage value consistent with the objective of assisting CSB to deploy investigation resources to accidents with the greatest learning value. Specifically, ACC recommends that CSB use a significant property damage threshold that is a multiple of the existing property damage limit used in Department of Transportation (DOT) regulations, which industry is already familiar with, i.e., 49 CFR 171 and 191. ACC recommends CSB use the existing DOT regulatory limit, resulting in

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an initial threshold of \$50,000. This approach is consistent with ACC's espoused principle of using existing regulatory framework and tools to address CSB's accident notification needs. As circumstances evolve that make it appropriate for the property damage value to change, CSB will not have to alter its regulation.

ACC asserts that this limit is for property damage only, not business interruption or product loss. Also, ACC also believes that this reporting criterion will not be easy to implement since the amount of property damage from an incident is not always readily available within a short time frame after the incident terminates. Determining sufficiently accurate property damage information for use as a reporting criterion may take days or weeks following the event. It is therefore likely that correction of this information in the NRC database would be needed at some point following the incident.

#### **D. Serious Injury**

Commensurate with using existing regulations and accident reporting frameworks, ACC recommends that CSB define serious injury on the basis of the definition used by OSHA for a catastrophe, i.e., three or more in-patient hospitalizations for a period in excess of twenty- four (24) hours for other than medical observation. This definition is already widely understood and used and eliminates the problem of "precautionary" hospital visits being counted.

#### **E. Accidental Release**

ACC recommends that CSB use the definitions and notification criteria from CERCLA (40 CFR 302.3), for accidental release, which can be modified for use by CSB to meet its accident reporting/notification needs by (a) removal of the workplace exposure limitation and (b) using high consequence event criteria (i.e., fatality, serious injury, or substantial property damage) for screening which events are reported to CSB.

#### **IV. Consideration of Possible Approaches**

If the CSB believes that it must formalize its accident notification/reporting protocols in a regulation, ACC strongly recommends that CSB use Option (3). Using this approach would allow the most efficient means of integrating existing accident notification mechanisms and limit wasteful burden, with CSB making additional data requests for only those accidents it deems to have sufficient learning value.

A NPR by CSB on any of the proposed options should provide a sound rationale for CSB's belief that enhanced chemical accident reporting would, in fact, significantly improve its investigation response time and efficiency, and therefore justify the associated costs.

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**A. Option 3: CSB would rely on existing mechanisms to learn of chemical incidents and would require facilities to report more information to CSB only when notified by the CSB.**

ACC supports this option, with incorporation of the definitions of the data elements provided in section III above. Facilities experiencing an accidental release should be required to make only *one* call to notify the NRC and then be able to focus their resources on effective emergency response and management. The NRC should then notify the appropriate government organizations, including the CSB, based upon their respective statutory and regulatory reporting criteria. We believe this option would ensure that CSB receives the proper notification and allow it to devote its resources to initiating investigations.

If CSB were to not select Option 3, ACC has provided recommendations below regarding the other four options CSB provided in the ANPR.

Note that ACC believes that reporting criteria and the amount of data to collect/report are closely linked factors. If CSB were to define accident reporting criteria that are substantially different from ACC's recommended definitions, then ACC's position on these factors could be different.

**B. Option 1: Comprehensive approach in which all accidental releases would be subject to CSB investigatory jurisdiction.**

ACC strongly opposes this option. It would be an inefficient commitment of resources for both the CSB and subject facility, go beyond CSB's statutory scope and result in confusing overlap with existing government accident notification and reporting frameworks (i.e., NRC and EPA RMP).

**C. Option 2a: Targeted approach requiring basic information for incidents meeting significant consequence thresholds. Based on the initial information provided, CSB would determine whether more information is needed.**

ACC does not support this option in its present form because we believe that including lesser, non-high-consequence events (large public evacuations and acute environmental impact, which are not part of CSB's statutory scope), even with reasonable definitions of the data elements required for expanded accident reporting (see below), would result in a burdensome and unnecessarily complicated re-work of the existing accident notification and reporting framework (i.e., NRC and EPA RMP).

**D. Option 2b: Require reports from High Risk Facilities, no matter what the consequences.**

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ACC believes that this option will not be efficient in helping CSB to develop broadly applicable accident prevention lessons. It will unnecessarily restrict accident reporting and likely miss some notable events with significant learning value. As long as CSB restricts its accident notification/reporting scope to high-consequence events (without regard to where they occur at stationary facilities), and appropriately limits its accident reporting data requests (see below), ACC believes this option is not as good as Option 2a and urges CSB to reject it.

**E. Option 4: Base reporting requirement on the presence or release of specified chemicals and specified threshold amounts.**

ACC believes that this option is consistent with other existing reporting requirement approaches. However as CSB points out, its investigations have shown that serious consequences may and do result from releases of relatively small amounts of chemicals and from chemicals that are not likely to be listed. Thus, ACC does not believe that this option, as defined, is in the public's best interests.

**V. Specific Information Sought**

**A. Are there any appropriate models already existing in Federal, State, or local rules or programs?**

As stated above, ACC recommends that CSB use existing models/frameworks for accident notification to avoid confusion, waste and unnecessary burden. Specifically, CSB should formalize its ties to the NRC and use existing structures for securing additional value-added accident data (e.g., EPA RMP accident reporting definitions and data elements). Subsequent data collection needed to support other CSB programs can take place at some point following the initial accident notification and should be done as a part of "administrative" CSB investigation efforts. Some states, including Louisiana, have a single-call system for reporting spills or releases. Lessons learned from such applications should be considered by CSB if it formalizes its communications with the NRC.

**B. Should an initial report be made to NRC or CSB?**

As stated above, ACC strongly recommends that NRC be the initial reporting center and that CSB improve its communication methods with NRC to minimize any inefficiency that may have occurred in the past.

**C. What information should be reported to CSB?**

CSB should receive notification of an accident within its statutory jurisdiction directly from the NRC. Initial data from the notification to allow CSB to make proper deployment decisions can follow under CSB administrative requests as it is presently done.

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**D. How soon after an incident should reporting occur?**

ACC strongly opposes any addition to, or shortening of accident reporting deadlines. Any changes would hamper local emergency response efforts and add confusion to the existing reporting process.

**E. Should the rule be designed with distinct requirements for rapid notification of high-consequence incidents and more systematic (and slower) notification of other incidents?**

ACC supports notification and data collection for high-consequence events only. Using a two-tiered approach for accident notification and data gathering would be unnecessarily confusing, especially when such event data can be garnered via other (slower) means (e.g., an RMP change).

**F. What specific factors (such as lists of chemicals or specific consequences) should be considered?**

Any consequence definitions should be consistent with and limited to the CSB's jurisdiction as specified in the CAA.

**G. How should CSB gather information on incidents (such as combustible gas explosions and reactive chemical incidents) that may not involve specifically listed hazardous substances?**

Consistent with our comments above, ACC recommends that CSB continue to learn of these events in the manner which it has used in the past.

**H. How should CSB avoid duplication with existing sources of information on chemical incidents?**

The substance of the ACC comment package is designed to answer this question. Existing regulatory and administrative frameworks set up for accident reporting, as modified based on our recommendations, should allow the NRC to be the sole clearinghouse for accidental release reporting and notification and prevent duplication of efforts.

Any other approach will result in duplication, excessive costs, inefficiency and burden on government as well as the industry.

**I. How might CSB best target compliance education efforts?**



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ACC would support CSB efforts to educate the regulated community about any forthcoming regulation. As in the past with OSHA and EPA, ACC stands ready to participate in workshops and virtual education programs to ensure awareness.

**J. Other Issues**

ACC believes that CSB should restrict its accident reporting rulemaking efforts to support its investigation resource deployment decision making needs. Other needs within CSB's mission (e.g., data to support research and hazard investigations) are *not* appropriate to include within this rulemaking. The needs for quick efficient notification immediately following an accidental release are much different than the needs involving CSB's other mission objectives. If CSB pursues meeting such objectives in this rulemaking, ACC believes that CSB would have difficulty demonstrating that the value of such regulatory efforts (as opposed to administrative efforts) would support its mission and justify associated costs.

**From:** [Orr, Maureen F. \(ATSDR/DHS/SRB\)](#)  
**To:** [anpr](#)  
**Cc:** [McDonald, Caroline \(ATSDR/DHS/OD\)](#); [Williamson, G. David \(ATSDR/DHS/OD\)](#); [Horton, D. Kevin \(ATSDR/DHS/SRB\)](#); [Sinks, Tom \(CDC/CCEHIP/NCEH\)](#); [Holler, James S. \(Jim\) \(ATSDR/DTEM/PRMSB\)](#)  
**Subject:** CSB-09-01  
**Date:** Tuesday, August 04, 2009 5:06:03 PM

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Agency for Toxic Substances and Disease Registry's (ATSDR) response to the advanced notice of proposed rulemaking (ANPR) CSB-09-01 Chemical Release Reporting as submitted by

Maureen Orr, MS  
Epidemiologist  
ATSDR/DHS/SRB  
4770 Buford Highway, Mailstop F-57  
Atlanta, GA 30341  
770-488-3806 phone  
770-488-1537 fax  
morr@cdc.gov e-mail

<http://www.atsdr.cdc.gov//HS/HSEES/> Web site

#### ATSDR Response to the Four Proposed Approaches

(1) A comprehensive approach would require the reporting of information on all accidental releases subject to the CSB's investigatory jurisdiction. The CSB is concerned that this approach might be unnecessarily broad in scope, duplicative of other federal efforts concerning chemical incident surveillance, and may not be necessary for the CSB to learn of most significant incidents that would justify an on-site investigation.

**Response: ATSDR agrees that this would be a broad approach and could be duplicative of other federal agencies activities including the Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA), and the Agency for Toxic Substances and Disease Registry (ATSDR). A better approach might be to augment data already collected elsewhere, such as the DOT Hazmat Information Portal (HIP), a fusion of many different federal hazmat databases. ATSDR's Hazardous Substances Emergency Events Surveillance (HSEES) system has found that monitoring existing required reporting sources (i.e National Response Center (NRC) Incident Reporting Information System (IRIS) or U.S. Department of Transportation (DOT) Hazardous Materials Information System (HMIS) and negotiating informal and formal agreements with other notification sources (e.g. state environmental and public safety hazmat reports, news media, etc) provides good coverage of toxic substance incidents that have significant consequences, such as injuries or evacuations. HSEES is currently working with the DOT to get the additional data sources needed for a comprehensive national toxic substance incident database within the HIP. HSEES funded states will then actively seek out additional data to complete the detailed data collection form. This type of approach, in coordination with the ATSDR, may work well for the Chemical Safety Board (CSB).**

(2) A targeted approach would require reporting of basic information (e.g., location, date, and time of incident; chemical involved; number of injuries) for incidents that met significant consequence thresholds (incidents that result in death, serious injuries requiring in-patient hospitalization, large public evacuations, very substantial property damage, or acute environmental impact). Such an approach would be consistent with that taken by several other federal agencies, whose accident reporting rules incorporate the same or similar consequence-based criteria. Examples of this type of rule include the NTSB railroad accident notification rule (49 CFR 840.3); Department of Transportation rules on notification of hazardous materials accidents (49 CFR 171.15), gas pipeline accidents (49 CFR 191.5), and hazardous liquid pipeline accidents (49 CFR 195.50); and the OSHA work-related accident reporting rule (29 CFR 1904.39).

**Response: If CSB were to require reporting, then we agree that a consequence-based initial report is a good approach to begin collecting timely causal data on the type of incidents most important to the CSB. It would be best to use the same approach that the DOT takes, having serious incidents reportable to the NRC, with a complete follow-up report due to the CSB at a later time.**

A related approach would require reports from certain high risk facilities no matter what the specific consequences of the incident. For example, the EPA Office of Inspector General recently issued a report which identified three different approaches to identifying high risk facilities covered by the RMP rule. (U.S. Environmental Protection Agency, Office of Inspector General, EPA Can Improve Implementation of the Risk Management Program for Airborne Chemical Releases, 09-P-0092, Feb. 10, 2009, at 17). Similar criteria could be employed in a rule to require that certain facilities promptly report incidents to the CSB. Based on such targeted reports, the CSB could determine whether the owner/operator would be required to submit additional, detailed information to the CSB for evaluation and further investigation.

**Response: Having another reporting rule for high risk facilities may be burdensome. Additionally incidents many occur in facilities that are not considered high risk, as evidenced by the HSEES data (i.e. schools and smaller manufacturers.) Therefore this may not capture serious incidents that CSB would be interested in following up on. This then would not be a favorable approach.**

(3) A third approach would require owners or operators to report to the CSB more extensive information on chemical incidents in their workplace when notified by the CSB. The agency would continue to rely primarily on existing sources for initially learning of chemical incidents, but would follow up on a subset of the incidents (e.g., those with the most serious consequences, based on initial reports, and a sample of all others) to gather additional information through a questionnaire or on-line form that the reporting party would be required by the rule to complete and submit to the CSB. This approach would be primarily aimed at addressing the data quality problems of accuracy and completeness of information on incidents in the CSB's incident database. It would also allow the CSB to collect more complete and in-depth information on incidents than is generally available in the minutes and hours immediately after an incident. For example, the information required could go beyond the location, date, and time of incident, and also include information on the materials involved, the nature of the incident (e.g., chemical reaction, untested presence of flammables, etc.), and type of operation, as well as more complete information on consequences. This approach would formalize what the CSB screening personnel currently do, i.e., follow up

(primarily by telephone) with companies and responders on approximately 60 incidents each year to gather detailed information on the consequences, as well as the processes and chemicals involved, beyond what is contained in media or NRC reports.

**Response: ATSDR feels that adding no new reporting requirements, or minimal changes to existing requirements, is the best approach. Then by working with existing reporting sources and doing follow-up on incidents of interest CSB can collect additional data they need. This approach would be less burdensome and is similar to the approach that the ATSDR uses. ATSDR identifies incidents of interest through regular reporting channels, the media, and other contacts and then funded states actively follow up on those that meet the specified criteria to get the additional detailed data that is required.**

(4) A fourth approach to a reporting requirement could be based upon the presence or release of specified chemicals and specified threshold amounts. However, CSB investigations have shown that serious consequences may and do result from the release of relatively small amounts of chemicals, and from chemicals that are not likely to be listed.

**Response: ATSDR data supports the CSB findings that “serious consequences may and do result from the release of relatively small amounts of chemicals, and from chemicals that are not likely to be listed.” Therefore the specified chemicals and threshold amount approach is too limited to get all of the incidents that the CSB would be interested in following up on. Additionally creating new lists and thresholds could be burdensome.**

#### Information Sought

Are there Federal, State, or local rules or programs for reporting chemical or other types of incidents that would be an appropriate model for the CSB to consider in developing a reporting requirement?

**Response: The Department of Transportation’s 49 CFR 171.15 and 171.16 are good models for reporting transportation incidents. If CSB was to require reporting of fixed-facility incidents, it may follow a similar approach, such as immediate telephonic or electronic reports to the NRC of those incidents with serious consequences, followed up by more detailed written reports to CSB at a later date.**

Should an initial report be made to the CSB or the National Response Center?

**Response: Since many of the incidents may already require notification of the NRC, the NRC is best equipped to notify the Federal On-Scene Coordinator. Furthermore, the NRC states that it is the “sole national point of contact for reporting all oil, chemical, radiological, biological, and etiological discharges into the environment anywhere in the United States and its territories”. It would add extra burden to ask companies to also report to the CSB, if CSB is able to get these notifications in a timely manner.**

What information should be reported to the CSB?

**Response: Location, date, and time of incident; materials involved; the nature of the incident (e.g., chemical reaction, untested presence of flammables, etc.); and type of operation, as well as more complete information on the amount of damage and any public health consequences such as injuries, and evacuations. It should be noted that most of this information is already collected by the NRC.**

How soon after an accident should reporting occur?

**Response: The NRC requires immediate notification of incidents for immediate response purposes. This approach is appropriate. More complete information can be collected at a later time. Follow-up data are usually available within a few months from several sources including ATSDR HSEES data and EPA After Action Reports and Situation Reports.**

Should the rule be designed with distinct requirements for rapid notification of high-consequence incidents and more systematic (and slower) notification of other incidents?

**Response: Yes, if a regulation were to be instated, then this would be an appropriate approach, as stated above.**

What specific factors (such as lists of chemicals or specific consequences) should the CSB consider in drafting a proposed rule?

**Response: Consequences, as required by CSB legislation, or potential for such consequences (near misses), should be the determining factor. If substances must be considered, then the Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act (EPCRA) and Section 112(r) of the Clean Air Act: CERCLA Hazardous Substances <http://www.epa.gov/ceppo/pubs/title3.pdf> should be considered as it is a comprehensive and standardized list used by government agencies.**

How should the CSB gather information on incidents (such as combustible dust explosions and reactive chemical incidents) that may not involve specifically listed hazardous substances?

**Response: If reporting were dictated by the consequences, not the substance, then there would be a richer database of incidents to query. The HSEES database includes an open data field for a synopsis of the incident, along with other searchable data fields, so that incidents of interest can be queried. This has been a productive approach for ATSDR.**

How might this reporting requirement best be tailored to avoid duplication with existing sources of information on chemical incidents, including federal, state, or local reporting requirements?

**Response: By current regulations, many of the incidents that are of interest to the CSB should be reported immediately to the NRC. If they are not being reported as required, then activities in conjunction with ATSDR and the NRC aimed at improving reporting should be implemented and evaluated, before deciding to add any additional regulations.**

**The ATSDR approach to expanding its scope has been to gather input from other stakeholders as CSB is currently attempting to do. The aim has been to minimize gaps and overlaps with the new ATSDR National Toxic Substances Incident Program (NTSIP). Beginning in October 2009 ATSDR will launch NTSIP with a goal of better coordination and improvement of data on existing incidents nationwide. It is our desire that the CSB and ATSDR will continue to work collaboratively and discuss how NTSIP will meet the incident reporting needs of the CSB as referenced by GAO-08-864R, to “better inform the agency of important details about accidents that it may not receive**

from current sources” and to “improve the CSB’s ability to target its resources, identify trends and patterns in chemical incidents, and prevent future similar accidents”.

**A CSB/ATSDR collaboration will minimize duplication of efforts and maximize efficient use of resources, thus satisfying the recommendation in GAO-08-864R, “Given the resource constraints on the board that limit its ability to investigate all chemical accidents resulting in fatalities, serious injuries, or substantial property damage, it is particularly important that CSB better leverage its existing resources by using other entities’ work.”**

**Specific areas of mutual benefit are**

- CSB can use data gathered by ATSDR in the HIP as a major notification source and for trending of incidents.
- ATSDR funded states can collect more detail in their incident follow-ups to aide CSB in background analysis-such as dust explosions. ATSDR currently response to data requests for CSB specific analysis.
- CSB and ATSDR can respond together to major incidents where ATSDR can collect detailed survey and exposure data to assess public health impacts and CSB gather causal data. Joint recommendations can be made to not only prevent such incidents in the future, but to also protect the public health.

How might the CSB best target compliance education efforts?

**Response: ATSDR recommends that the CSB begin by investigating which incidents that by current regulation should be reported to the NRC but are being missed or delayed. This analysis can be done by working with the ATSDR and using the HSEES database. Another way of identifying missed incidents is through comparing the NRC with media reports. The DOT has employed this method to identify unreported incidents in their HMIS databases. By identifying non-reporters compliance education can be targeted. Another group who may need compliance education would be the facilities that have been identified as high risk.**

**From:** [Katie Vassalli](#)  
**To:** [anpr](#)  
**Subject:** CSB-09-01 - Submittal of ILTA Comments  
**Date:** Tuesday, August 04, 2009 12:01:22 PM  
**Attachments:** [ILTACommentsonCSBANPR62509\\_Aug09.pdf](#)

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To Whom It May Concern:

Attached please find a PDF copy of the International Liquid Terminals Association's comments on the advance notice of proposed rulemaking that was published in the *Federal Register* on June 25, 2009.

Thank you in advance for your consideration.

Sincerely,

**Katie Vassalli**  
Manager of Regulatory Analysis & Educational Programs  
1444 I Street NW, Suite 400  
Washington DC 20005  
Ph. (202) 842-9200  
Fax. (202) 326-8660  
[www.ilta.org](http://www.ilta.org)



August 4, 2009

U.S. Chemical Safety and Hazard Investigation Board  
Office of General Counsel  
Attn: C. Kirkpatrick  
2175 K Street N.W., Suite 650  
Washington, D.C. 20037

**Re: Comments on the advance notice of proposed rulemaking "Chemical Release Reporting," 74 Fed. Reg. 121 (30259), June 25, 2009**

Dear Mr. Kirkpatrick:

The International Liquid Terminals Association (ILTA) is pleased to submit the attached comments on the above-referenced advance notice of proposed rulemaking (ANPR).

ILTA is an international trade association that represents eighty-five commercial operators of bulk liquid terminals, aboveground storage tank facilities, and pipeline companies located in forty-three countries. In addition, ILTA includes in its membership more than three hundred companies that are suppliers of products and services to the bulk liquid storage industry.

ILTA member facilities include deepwater, barge, and pipeline terminals whose bulk liquid commodities are essential to the national and international economies. These terminals interconnect with and provide services to the various modes of bulk liquid carriers, including oceangoing tankers, barges, tank trucks, rail cars, and pipelines. The commodities handled include a variety of chemicals, crude oil, petroleum products, renewable fuels, asphalt, animal fats and oils, vegetable oils, molasses, and fertilizers. Customers who store products at these terminals include oil producers, chemical manufacturers, product manufacturers, food growers and producers, utilities, transportation companies, commodity brokers, government agencies, and the military.

Thank you for your consideration of the attached comments.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "R. Peter Weaver", is written over a light blue circular stamp.

R. Peter Weaver  
Director of Regulatory Compliance and Safety



CSB Docket No. CSB-09-01  
ILTA Comments – August 4, 2009

*The responses presented below address specific questions posed by the Chemical Safety Board (CSB) and include additional comments by ILTA.*

### **General Comments**

ILTA believes that this rule should incorporate the current reporting mechanisms employed by CSB. At present, CSB relies on television, internet, and incident reports filed with the National Response Center (NRC), Occupational Safety & Health Administration (OSHA) work-related accident reports, and National Transportation Safety Board (NTSB) reports to track chemical accidents for identifying those appropriate for CSB on-site investigations.

### **Harmonize Existing Reporting Requirements**

The benefits of a new reporting requirement should be weighed against the potential burden of duplicative reporting as well as the value added to existing response and investigation efforts. To minimize redundancy, any new requirements should be harmonized with existing regulations. Existing release reporting requirements under federal laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Emergency Planning and Community Right-to-Know Act (EPCRA), the Occupational Safety and Health Act (OSH), the Clean Water Act, the Clean Air Act, and the Toxic Substances Control Act (TSCA). ILTA further recommends CSB coordinate with state and local agencies as these groups often have separate requirements for industry in addition to the federal requirements.

### **Options to Implement the Rule**

The CSB has suggested four possible options for a rulemaking and has requested industry comment on the most appropriate and effective approach. ILTA strongly recommends Option 3, stated as follows:

**Option 3**, *CSB would continue to rely on existing sources to learn of chemical incidents, and would then follow up on certain incidents (e.g., those with the most serious consequences) to gather additional information that a reporting party would be required to complete and submit to CSB.*

ILTA supports the use of existing reporting channels, notably the NRC, in lieu of establishing a new and duplicative reporting requirement directly to CSB. Option 3 would promote the correction or improvement of deficiencies in data quality that, according to the ANPR, currently exist at the NRC. CSB would then remain well positioned to request additional information if necessary, consistent with CSB's current methods for conducting post-incident investigations.

CSB Docket No. CSB-09-01  
 ILTA Comments – August 4, 2009

### **Responses to Specific CSB Questions**

ILTA is submitting comments to the following specific questions posed by CSB in the *Federal Register* notice:

*Should initial reports be made to NRC or CSB?*

As stated above, ILTA recommends that CSB continue to rely on existing reports from NRC. Any follow-up reports or requests for information from CSB should go directly to CSB as mentioned in the statute: “[r]eporting releases to the National Response Center, in lieu of the Board directly, shall satisfy such regulations [regulations to be developed by CSB].” (CAA Sec. 112(r)(6)(C)(iii))

ILTA also supports the use of other existing incident reports that are currently submitted to the U.S. Coast Guard, Federal Emergency Management Agency (FEMA), OSHA, the Environmental Protection Agency (EPA) and the Federal Bureau of Investigation (FBI), as well to the state and local authorities.

*How soon after an accident should reporting occur?*

In the event that CSB decides to proceed with an approach other than option 3, ILTA recommends that the reporting times align and match those of the other federal agencies (e.g. NRC, FEMA and OSHA). CSB’s goal, as discussed in the preamble, of deploying investigators to arrive on site within the first 24 to 48 hours can be achieved using the existing regulatory reporting time frames.

*How might this reporting requirement best be tailored to avoid duplication with existing sources of information on chemical incidents, including federal, state, or local reporting requirements?*

When an incident occurs, terminal operators are currently required to report to a number of entities, depending on the severity of the event. These entities include:

<u>National Level</u>	<u>State Level</u>	<u>Local Level</u>
○ EPA	○ State’s Emergency	○ Fire Department
○ FBI	Management Office	○ Police
○ FEMA		○ Hospitals
○ NRC		○ Contractors
○ OSHA		○ Neighboring Businesses
○ US Coast Guard		○ Community

The NRC, state, fire and other emergency responders have fifteen-minute reporting requirements as well as incident follow-up reports. ILTA recommends that CSB coordinate with these groups to gather information, rather than adding another agency to a long list.

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**Conclusion**

ILTA recommends that any rule promulgated by CSB to meet its statutory requirement reflect the current process and not add layers that could detract from timely investigations. ILTA also supports collaboration between emergency responders and government agencies to improve the efficiency and value of the incident reports submitted by bulk liquid terminals.

**From:** [Bosch, Dan](#)  
**To:** [anpr](#)  
**Subject:** Chemical Release Reporting - Docket #CSB-09-01  
**Date:** Tuesday, August 04, 2009 10:18:57 AM  
**Attachments:** [Chemical Release Reporting 08.04.09.pdf](#)

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Dear Sir or Madam:

Attached are NFIB's comments on the ANPR for Chemical Release Reporting. We appreciate the opportunity to comment and your consideration.

Sincerely,

Dan Bosch  
Program Manager  
NFIB Small Business Legal Center  
1201 F Street, NW, Suite 200  
Washington, DC 20004  
Phone: 202-314-2052  
Fax: 615-916-5151  
dan.bosch@nfib.org  
[www.nfiblegal.com](http://www.nfiblegal.com)

<<Chemical Release Reporting 08.04.09.pdf>>

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August 4, 2009

Chemical Safety & Hazard Investigation Board  
Office of General Counsel  
Attn: C. Kirkpatrick  
2175 K St., NW, Suite 650  
Washington, DC 20037

**Re: Chemical Release Reporting — Docket #CSB-09-01**

These comments are submitted for the record to the Chemical Safety & Hazard Investigation Board (CSB) on behalf of the National Federation of Independent Business (NFIB) and the NFIB Small Business Legal Center in response to the Advanced Notice of Proposed Rulemaking (ANPR) for Chemical Release Reporting published in the Federal Register on June 25, 2009. In the ANPR, CSB requested feedback on potential approaches it may pursue for its proposed rule. NFIB appreciates the opportunity to comment on the approaches at this early stage of the process.

NFIB is the nation's leading small business advocacy association, representing members in Washington, D.C. and all 50 state capitols. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents about 350,000 independent business owners who are located throughout the United States. The NFIB Legal Center, a nonprofit, public-interest law firm established to be the voice for small business in the nation's courts and the legal resource for small business, is the legal arm of NFIB.

In addition to our responses on the various approaches CSB specifically asked for, NFIB urges CSB to perform its required regulatory flexibility analysis under the Small Business Regulatory Enforcement Fairness Act (SBREFA). Federal agency compliance with this important law is critical to reducing the disproportionate compliance burden on small entities. According to a 2005 study by economist Mark Crain for the U.S. Small Business Administration, small businesses face a 45 percent greater regulatory burden than their larger counterparts. It is important that CSB implement a regulatory scheme that achieves the desired regulatory goal while taking careful consideration of small entities.

**Most preferred approach — Approach No. 3**

NFIB believes that this approach, which per the text of the ANPR "would require owners or operators to report to the CSB more extensive information on chemical incidents in their workplace

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August 4, 2009

when notified by the CSB”, is the most efficient way to meet CSB’s requirements under its Clean Air Act obligations.

This is the preferred approach for four reasons. First, CSB will be able to learn about potentially significant releases in a timely manner either through the current requirement of reporting certain releases to the National Response Center or through media reports. Via these means, it is virtually inconceivable that CSB would not find out about significant releases that could endanger the public.

Second, this approach allows CSB to make a determination based on its own resources whether or not a release is significant enough to warrant further investigation. This approach will allow CSB to avoid being bogged down investigating releases that it does not deem significant.

Third, approach No. 3 would allow the CSB to collect a meaningful data set on significant releases, as suggested by the Government Accountability Office, while avoiding collection and analysis of less important data from insignificant releases.

Fourth, this approach is the least burdensome on small employers. Small business owners have enough on their plate complying with myriad federal and state laws and regulations. Requiring these individuals to attempt to determine whether a release of a chemical is significant is beyond the scope of their expertise. It is easy to foresee an over-reporting of incidents resulting in wasted resources by CSB investigating these reports, as well as wasted time for the business owner.

### **Problems with other suggested approaches**

#### Approach No. 1

Approach No. 1 “would require the reporting of information on *all* accidental releases subject to the CSB’s investigatory jurisdiction.” NFIB believes that CSB’s authority to pursue such a rule under the Clean Air Act is dubious. In addition, CSB correctly states its concern in the ANPR that “this approach might be unnecessarily broad in scope, duplicative of other federal efforts concerning chemical incident surveillance, and may not be necessary for the CSB to learn of most significant incidents that would justify an on-site investigation.” We agree wholeheartedly with this assertion, and add our concern that the burden such a rule would place on small business owners would be significantly detrimental to small firms using or producing chemicals.

#### Approach No. 2

This approach “would require reporting of basic information (e.g., location, date, and time of incident; chemical involved; number of injuries) for incidents that met significant consequence thresholds (incidents that result in death, serious injuries requiring in-patient hospitalization, large public evacuations, very substantial property damage, or acute environmental impact).”

NFIB believes that while this approach is somewhat similar to Approach No. 3, it will lead to collection of insignificant data to CSB. In addition, holding facilities accountable for reporting at specific thresholds would require CSB to spend resources on educating regulated facilities about the

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August 4, 2009

thresholds and proper compliance procedures. Any incremental improvement in the program over Approach No. 3 would be offset by these costs.

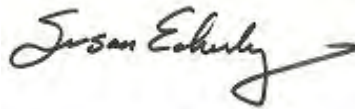
#### Approach No. 4

The final suggested approach “could be based upon the presence or release of specified chemicals and specified threshold amounts.” However, this approach is unlikely to increase public safety or provide any other meaningful benefit. As CSB itself notes, “CSB investigations have shown that serious consequences may and do result from the release of relatively small amounts of chemicals, and from chemicals that are not likely to be listed.” There are clear disadvantages to this approach.

In conclusion, we hope that CSB will performed its required regulatory flexibility analysis and pursue Approach No. 3 as it moves forward with the rulemaking process. This approach seems uniquely situated to address the recommendations of the GAO report, ensure public safety, provide CSB with the meaningful data it requires, and place an appropriate burden on small businesses. The other approaches will lead to wasted resources for all involved, and provide no clear additional benefit to the public.

Thank you for your time and consideration. Should you require further information, please contact Daniel Bosch at 202-314-2052.

Sincerely,

A handwritten signature in black ink that reads "Susan Eckerly" with a long, sweeping horizontal stroke extending to the right.

Susan Eckerly  
Senior Vice President  
Public Policy

**From:** [Yvonne Marshall](#)  
**To:** [anpr](#)  
**Cc:** [Steve Via](#)  
**Subject:** CSB-09-01--AWWA Comments on CSB ANPRN  
**Date:** Tuesday, August 04, 2009 10:35:06 AM  
**Attachments:** [2009 08 04 AWWA Comments on CSB ANPRN Final.pdf](#)

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The American Water Works Association (AWWA) appreciates the opportunity to submit the attached comments on the Chemical Safety and Hazard Investigation Board's (CSB's) advanced notice of proposed rulemaking (ANPRM) entitled "Chemical Release Reporting" (74 Federal Register 30259).

Thanks,  
Yvonne Marshall  
Office Manager  
American Water Works Association  
Government Affairs Office  
1300 Eye ST NW, #701W  
Washington, DC 20005  
202-628-8303  
202-628-2846 (fax)  
[ymarshall@awwa.org](mailto:ymarshall@awwa.org)





**American Water Works  
Association**

The Authoritative Resource on Safe Water<sup>SM</sup>

Government Affairs Office  
1300 Eye Street NW  
Suite 701W  
Washington, DC 20005  
T 202.628.8303  
F 202.628.2846  
www.awwa.org

Headquarters Office  
6666 W. Quincy Avenue  
Denver CO 80235  
T 303.794.7711  
F 303.347.0804

August 4, 2009

Chemical Safety and Hazard Investigation Board  
Office of General Counsel,  
Attn: C. Kirkpatrick  
2175 K Street, NW, Suite 650  
Washington, DC 20037

RE: Comments on the “Chemical Release Reporting” (74 Federal Register 30259)

Dear Mr. Kirkpatrick,

The American Water Works Association (AWWA) appreciates the opportunity to submit comments on the Chemical Safety and Hazard Investigation Board’s (CSB’s) advanced notice of proposed rulemaking (ANPRM) entitled “Chemical Release Reporting” (74 Federal Register 30259). Publishing an ANPRM (as opposed to publishing a proposal rule) indicates to AWWA that the CSB is interested in meaningful consideration of input from interested stakeholders. AWWA is such a stakeholder and looks forward to future opportunities to interact with CSB and provide the water utilities’ perspective as the Board’s decision-making process moves forward.

AWWA is an international, nonprofit, scientific and educational society dedicated to the improvement of drinking water quality and supply. Founded in 1881, the Association is the largest organization of water supply professionals in the world. Our 60,000-plus members represent the full spectrum of the drinking water community: treatment plant operators and managers, environmental advocates, scientists, academicians, and others who hold a genuine interest in water supply and public health. Our membership includes more than 4,600 utilities that supply roughly 80 percent of the nation's drinking water. AWWA and its member utilities are dedicated to providing safe drinking water to the American public. AWWA’s member utilities routinely manage chemicals that, if improperly handled, have the potential to harm facility personnel and, in some cases, have off-site consequences. Awareness of these safety concerns has led to facility designs, operational practices, response systems, and training to minimize and mitigate the hazards associated with chemical accidents. Practices in place include timely reporting to local emergency responders and, when appropriate, to the National Response Center (NRC) and relevant state agencies.

Mr. Kirkpatrick  
August 4, 2009  
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AWWA encourages CSB to build on and improve the existing relationships between federal, state and local response agencies in an atmosphere of continuing improvement. Current federal regulations such as the Occupational Safety and Health Administration's (OSHA's) Process Safety Management (PSM) and the Environmental Protection Agency's (EPA's) Risk Management Plans (RMPs) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requirements have not only reduced the risk to workers at facilities and people in surrounding neighborhoods, but have also driven the development of new management programs that have resulted in overall improvement of facilities' operations. While we do not feel that additional reporting requirements are necessary, we do support an approach that would require owners or operators to report to the CSB more extensive information on serious chemical incidents in their workplace when notified by the CSB.

AWWA encourages the CSB to continue working with NRC as the central clearinghouse for federal chemical incident reporting as it is a proven system into which CSB should better integrate. In particular, CSB can work directly with NRC to improve the timely transfer of information between NRC and CSB. Today's electronic communication technology allows efficient communication protocols that minimize the requirement for human intervention. Such tools could be applied to improve overall response. CSB should work with NRC and NRC affiliated agencies to analyze both the incident notification/response and incident data warehousing processes to determine how criticisms from the Inspector General and Government Accounting Office (GAO) can be efficiently addressed taking best advantage of data that is already collected.

You will find attached to this letter comments responding specifically to the questions posed in the ANPRM. AWWA appreciates the agency's consideration of our concerns and recommendations. If there are any questions, please direct them to me or Steve Via at (202) 326-6130.

Best regards,



Thomas W. Curtis  
Deputy Executive Director  
AWWA Government Affairs

cc: Cynthia Dougherty, EPA/OGWDW  
Mathy Stanislaus, EPA/OSWER  
Syed Qadir, Director, NRC

**Attachment 1.**  
**Comments in Response to Questions Posed in Chemical Release Reporting,**  
**Advanced Notice of Proposed Rulemaking**  
(74 Federal Register 30259)

The Chemical Safety and Hazard Investigation Board's (CSB's) advanced notice of proposed rulemaking (ANPRM) on "Chemical Release Reporting" raised several specific issues and posed nine specific questions. The American Water Works Association (AWWA) recommends that CSB identify how it can best leverage existing requirements under current statutes and their implementing regulations to collect notifications of serious chemical accidents and focus CSB's own information collection activities on obtaining specific information from owner / operators about targeted, serious chemical incidents when notified by the CSB.

**Proposed Approach**

CSB offered four model approaches to a CSB Chemical Release Reporting regulation. AWWA does not believe a new regulatory construct is warranted, but supports Approach 3, as this approach codifies the current system and appears to be the most efficient and effective structure if a new regulatory system is developed. Approach 3 is described as follows:

“(3) A third approach would require owners or operators to report to the CSB more extensive information on chemical incidents in their workplace when notified by the CSB. This approach would be primarily aimed at addressing the data quality problems of accuracy and completeness of information on incidents in the CSB's incident database. It would also allow the CSB to collect more complete and in-depth information on incidents than is generally available in the minutes and hours immediately after an incident. For example, the information required could go beyond the location, date, and time of incident, and also include information on the materials involved, the nature of the incident (e.g., chemical reaction, untested presence of flammables, etc.), and type of operation, as well as more complete information on consequences. This approach would formalize what the CSB screening personnel currently do, i.e., follow up (primarily by telephone) with companies and responders on approximately 60 incidents each year to gather detailed information on the consequences, as well as the processes and chemicals involved, beyond what is contained in media or NRC reports.”<sup>1</sup>

As AWWA understands it, the current approach is based on three elements:

1. Existing regulatory triggers for notification under other statutes and CSB discretion regarding other factors to identify accidents of interest,

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<sup>1</sup> 74 Federal Register 30262

2. A screening process to target investigative resources on serious chemical accidents with significant consequences, and
3. CSB staff collecting information to specifically inform their analysis of the reasons for a selected serious accident, as well as the strengths and weaknesses of existing preventative and mitigation systems.

### Specific Questions

Are there Federal, State, or local rules or programs for reporting chemical or other types of incidents that would be an appropriate model for the CSB to consider in developing a reporting requirement?

CSB should work with the National Response Center, OSHA, and OSHA-applicable state agencies to obtain the information it needs through existing regulatory requirements rather than look toward existing programs for an appropriate model for what would then be a duplicative reporting requirement.

Should an initial report be made to the CSB or the National Response Center?

Currently the National Response Center (NRC) is a single national point of contact for chemical events that release chemicals to the environment in quantities of concern to human or ecosystem health. Existing regulations already capture events that are of a sufficient scope to be worthy of CSB investigation. The CSB should utilize information captured by the NRC under existing reporting requirements.

The NRC currently serves as the **sole national point of contact** for reporting all actual and potential oil, chemical, radiological, and biological discharges into the environment anywhere in the United States and its territories. NRC maintains agreements with federal entities to make additional notifications regarding incidents meeting established trigger criteria. The NRC receives and relays reports of incidents involving:

1. reportable under the Hazardous Materials Transportation Act for the Department of Transportation including the National Transportation Safety Board,
2. reportable under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA),
3. reportable under the Clean Water Act for the Environmental Protection Agency,
4. reportable under the Clean Air Act for the Environmental Protection Agency,
5. reportable under the Superfund Amendments and Reauthorization Act, Title III for the Environmental Protection Agency,
6. reportable under the Oil Pollution Act of 1990 for the Environmental Protection Agency,
7. radioactive material releases to the environment for the Nuclear Regulatory Commission, and the Department of Energy,

8. earthquake, flood, hurricane, and evacuation for the Federal Emergency Management Agency,
9. releases of etiological and biological agents for the Department of Health and Human Services,
10. reports of railroad incidents involving hazardous materials, grade crossing fatalities, accidents resulting in injury or death of railroad employees, and the refusal of railroad employees to submit to required toxicological testing,
11. Trans-Alaskan Pipeline Oil,
12. Terrorist/Suspicious Activity and Maritime Security Breaches on behalf of the Department of Homeland Security and the United States Coast Guard,
13. potential or actual domestic terrorism events for the Soldier and Biological Chemical Command (SBCCOM) and the Federal Bureau of Investigation, and
14. incidents involving transportation emergencies with Department of Defense munitions or explosives.

There is an overlapping reporting requirement under the Occupational Safety and Health Act. Workplace events that result in death or significant injury require immediate reporting to delegated state offices or U.S. OSHA. Federal OSHA regulations require reporting of serious accidents as follows, while some states, such as California-OSHA, have additional reporting requirements:

“Within eight (8) hours after the death of any employee from a work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related incident, you must orally report the fatality/multiple hospitalization by telephone or in person to the Area Office of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, that is nearest to the site of the incident. You may also use the OSHA toll-free central telephone number, 1-800-321-OSHA (1-800-321-6742).”<sup>2</sup>

This OSHA requirement is not limited to chemical accidents that lead to injury or loss of life but it is inclusive of such events. Reporting is not centralized to a single point-of-contact but there are statutory requirements that provide for the collection of data to characterize accidents and prepare summary reports that could inform CSB program development. A strategic investment of resources that garnered useful data from this existing reporting system offers greater potential than creation of a duplicative information collection system.

The ANPRM indicates that the cost of developing an independent, call center would be on the order of \$450,000 annually.<sup>3</sup> Improved inter-agency collaboration with EPA, OSHA and other federal and state agencies to assure timely notification to CSB of chemical incidents and sharing of data already being captured by EPA, OSHA and other

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<sup>2</sup> Reporting fatalities and multiple hospitalization incidents to OSHA. – 21 CFR 1904.39  
[[http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=STANDARDS&p\\_id=12783](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=12783)]

<sup>3</sup> 74 Federal Register 30262

federal agencies would be a much more cost effective data collection strategy. Such coordination is strongly encouraged by the CSB's enabling legislation.<sup>4</sup>

What information should be reported to the CSB?

Information currently obtained under existing regulatory authority by NRC and OSHA is adequate to meet the CSB's goals. The primary challenge facing CSB is to develop an effective system for obtaining that information from its partner agencies and organizing it to effectively answer the questions facing the agency.

How soon after an accident should reporting occur?

From the perspective of a water utility, the minutes and hours following an accidental chemical release are critical to reducing exposure to personnel, the public, and the environment. Having a very simple reporting/notification procedure (such as calling 9-1-1 for serious incidents) allows plant operators to focus on minimizing the impact of the release. When there is a chemical accident at a drinking water treatment facility, priority communication is with in-house response personnel and community emergency responders. In serious events that would be of interest to CSB, 9-1-1 calls usually result in an emergency response from the nearest fire department and the fire chief acts as the On-Scene-Commander, who will inform the NRC if the notification is not provided directly by the facility owner/operator. The speed with which the NRC is currently contacted varies depending on the event, and relates not only to regulatory requirements but also to the severity of the event. By effectively coordinating with the NRC and utilizing existing statutory reporting timeframes, the CSB will obtain information about events of high consequence more rapidly, as such events will lead to more rapid notification of the NRC.

Should the rule be designed with distinct requirements for rapid notification of high-consequence incidents and more systematic (and slower) notification of other incidents?

The speed with which the NRC is currently contacted varies depending on the event, and relates not only to regulatory requirements but also to the severity of the event. By effectively coordinating with the NRC and utilizing existing statutory reporting timeframes, the CSB will obtain information about events of high consequence with sufficient speed to meet its needs.

Accessing data for high frequency-low risk accidents offers limited opportunity for federal risk reduction actions, with limited benefit for a large amount of additional burden. Consequently, any CSB rulemaking stemming from this ANPRM should focus only on high consequence incidents. Other existing federal, state and local rules, including Process Safety Management, address smaller incidents.

What specific factors (such as lists of chemicals or specific consequences) should the CSB consider in drafting a proposed rule?

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<sup>4</sup> 42 U.S.C. 7412(r)(6)(C)(ii - iii), (D), and (E)

Criteria in place under existing regulatory structures are adequate.

How should the CSB gather information on incidents (such as combustible dust explosions and reactive chemical incidents) that may not involve specifically listed hazardous substances?

As noted previously, reporting to OSHA and OSHA-delegated state agencies will identify accidents that result in explosions and reactive chemical incidents when they are not otherwise reported under environmental statutes already captured through NRC.

How might this reporting requirement best be tailored to avoid duplication with existing sources of information on chemical incidents, including federal, state, or local reporting requirements?

Utilizing data collected through existing federal programs will (1) provide the most data collection efficiency and (2) it will reduce the chances for inadvertent reporting violations. Utilizing data reported to states and federal agencies under existing regulatory structures is also required by the Paperwork Reduction Act (PRA):

“(c) With respect to the collection of information and the control of paperwork, each agency shall—

...

(3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507—

(A) is necessary for the proper performance of the functions of the agency, including that **the information has practical utility;**

**(B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;**

**(C) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency,** including with respect to small entities, as defined under section 601(6) of title 5, the use of such techniques as—

(i) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

(ii) the clarification, consolidation, or simplification of compliance and reporting requirements; or

(iii) an exemption from coverage of the collection of information, or any part thereof;” [emphasis added]<sup>5</sup>

Existing statutes provide for the timely collection of data relevant to CSB’s mission. The task before CSB is to:

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<sup>5</sup> Excerpt from Paperwork Reduction Act of 1995, Chapter 35 of title 44, § 3506. Federal agency responsibilities

1. Determine what specific questions, CSB will be trying to answer with the data it is collecting and organizing,
2. Determine exactly what information CSB needs to answer the questions to which CSB is seeking answers,
3. Identify what additional steps are necessary to swiftly and effectively obtain information reported to the NRC, and
4. Identify what additional steps are necessary to effectively obtain information reported to OSHA or its delegated states.

AWWA strongly recommends that CSB:

1. Engage NRC, OSHA, and OSHA-delegated state agencies in a technical dialogue to support more effective information exchange, in particular this discussion should address data quality requirements, electronic information transfer, and cost containment measures.
2. Engage AWWA and other stakeholders directly affected by the proposed rulemaking to identify critical information needs and effective data consolidation strategies given existing reporting requirements.

How might the CSB best target compliance education efforts?

The public drinking water community is quite large, including more than 154,879 federally recognized “public water systems” (PWS). Of those, 150,711 serve 10,000 or fewer persons.<sup>6</sup> Most of these small PWSs operate simple water systems, but all are conceivably subject to a proposed chemical reporting rulemaking structure. The drinking water community represents just a portion of the total water sector, and the proposed rulemaking would affect numerous other sectors. The only viable education effort is one that builds on existing reporting systems familiar to a wide array of chemical producers, distributors, and users.

If the CSB data collection system is seamless with current notification protocols, education requirements will be minimal, and compliance by affected entities will be more likely. It is also important to note that:

1. the contact information for the NRC is currently well distributed and engrained in facility, local government, state government, and federal agency policies and procedures;
2. the CSB is an investigative agency and not a regulatory agency and the burden of enforcement would fall on EPA which has limited enforcement resources, and where resources that are currently applied to compliance with existing statutory reporting including requirements that are redundant with those anticipated by this notice;<sup>7</sup> and

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<sup>6</sup> FACTOIDS: Drinking Water and Ground Water Statistics for 2008, EPA 816-K-08-004, December 2008

<sup>7</sup> 42 U.S.C. 7412(r)(6)(O)



3. similarly the CSB is a small agency with limited resources to support adequate education/outreach to assure compliance with an independent CSB reporting system.

Any education program CSB develops should be developed in the context of existing training and regulatory reporting requirements. Current safety training in order to meet existing regulatory requirements for system management staff and key personnel is already substantial. Meeting a regulatory reporting requirement, should not be the focus of training, rather, water system staff should be focusing limited, valuable training hours on in-house operational practices and procedures that assure safe and reliable water treatment that protects employees, the public, and the environment.

It is difficult to overemphasize the difficulty posed by creating a duplicative reporting system. With improvements in technology over the last several decades, local, state, and federal agencies have all moved toward single point-of-contact systems. It is much easier to educate the public to make contact with a single point-of-contact. To create a separate and unique system for chemical accident reporting would be at odds with this trend, and would pose an extremely large public education challenge for CSB.

**From:** [Timothy R Gablehouse](#)  
**To:** [anpr](#)  
**Cc:** [Horowitz, Daniel](#)  
**Subject:** CSB-09-01  
**Date:** Tuesday, August 04, 2009 9:58:10 AM  
**Attachments:** [NASTTPO letter to CSB re notice regulation.pdf](#)

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**Let me know if you have any questions.**

**We would be pleased to discuss further if useful.**

**Tim**

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Timothy R Gablehouse  
410 17th St, Ste 1375  
Denver CO 80202  
303.572.0050  
800.818.0050



## National Association of SARA Title III Program Officials

*Concerned with the Emergency Planning and Community Right-to-Know Act*

August 4, 2009

*Electronically Submitted – via e-mail.*

Chemical Safety and Hazard Investigation Board  
Office of General Counsel  
Attn: C. Kirkpatrick  
2175 K St NW, Ste 650  
Washington, DC 20037

Re: Comments to Docket No. CSB-09-01

Dear CSB:

The National Association of SARA Title III Program Officials (NASTTPO) is made up of members and staff of State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), various federal agencies, and private industry. Members include state, tribal, or local government employees as well as private sector representatives with Emergency Planning and Community Right to Know (EPCRA) program responsibilities, such as health, occupational safety, first response, environmental, and emergency management. The membership is dedicated to working together to prepare for possible emergencies and disasters involving hazardous materials, whether they are accidental releases or a result of terrorist attacks. Thank you for the opportunity to comment on this proposal.

NASTTPO supports this effort. We believe that adoption of a chemical release reporting regulation specific to the mission of CSB is required by the Clean Air Act and would be useful and appropriate to the activities of the CSB.

We are mindful of some practicalities that inform our comments below:

- CSB has limited resources and cannot investigate all or even most chemical accidents that result in fatalities, serious injuries or substantial property damage as required by the Clean Air Act.

- There already are numerous release and accident reporting regimes adopted by various government agencies and meaningless duplication should be avoided.
- An accident reporting regulation adopted by CSB must improve its ability to choose which accidents to investigate in comparison to the current approach of tracking media reports.

In our view the greatest value from CSB investigations comes from examination of accidents covering a wide range of industries and a wide range of scenarios. The CSB investigation videos represent the best work being done in government to describe accident scenarios and educate industry, emergency planners, first responders and the public on how accidents may be prevented and how accident response may be improved. It would be a mistake to focus just on “targeted” industries because most communities in the country would not find those industries in their communities.

Looking at investigations conducted to this point, we believe that those involving common facilities and common materials are very valuable. This avoids the tendency to ignore the familiar facilities present everywhere which nonetheless have the potential to kill and injure workers, responders and the public. It would also be a mistake to focus just on accidents involving air releases currently reported under CERCLA, EPCRA and other chemical release threshold based programs. Such an approach with focus on specific chemical lists and/or specific release amounts would have missed the extremely valuable investigations conducted by CSB on propane releases and dust explosions.

Of the four suggested approaches in the ANPR we support number 3. As noted above the targeted industry approach would unnecessarily limit CSB’s focus. The comprehensive approach gathers data without a focus on improving the ability of CSB to select accidents for investigation. The chemical release threshold approach is duplicative and not focused on the information needed by CSB to select accidents for investigation. As noted in the ANPR, the quantity and type of chemical released does not necessarily correlate to fatalities, serious injuries or significant property damage.

We have considered two approaches to the question of which sorts of chemical releases should be reported. In both cases the report would only be required if hospitalization or death occurs and would not be dependent upon the volume released. The first option is for the regulation to require reports to the NRC for any release of a OSHA hazardous chemical for which an MSDS is required. The second option would be to require the report for the release of a chemical appearing on the EPA "List of Lists".

In both cases the objective is to rely on existing chemical regulatory programs. It is not necessary to create a new list of chemical materials given the extensive regulatory programs EPA and OSHA have already put in place. Both approaches rely on the existing EPCRA program in order to minimize the burden to facilities and we believe that most facilities will not need to do anything new from a management point of view save being cognizant that should they experience a release causing a death or injury serious enough to require hospitalization, an additional phone call or on-line report to the NRC will be required. This is a very minimal burden in our view.

We think that report should occur within 2 hours of the release when a death or hospitalization occurs contemporaneously with the release. More importantly the regulation should also require a report within a short period of time following the death of any person injured during the release. We believe this is important in order to capture those events that do not immediately result in a death or a seeming serious hospitalization. We do not believe that the current media monitoring system is always likely to note these deaths.

A caveat is important. We believe this death report should only be required of facilities regarding their employees or contractors. Our view is that deaths or serious injuries among first responders or members of the public will be well covered by the media, so we do not believe that regulation is necessary to obtain this information.


Other industrial accidents where chemical releases are not involved will be more difficult to capture without simply duplicating existing programs or creating reporting burdens that will potentially flood CSB with information that cannot be managed. The events that will be of interest to CSB, such as dust explosions, will tend to be catastrophic or involve several deaths and injuries. These events are likely to be well covered by the media. In our view the existing media-based identification program followed by direct inquiry will be the most successful approach to accidents such as these.

Our suggestions admittedly do not create a “perfect” system capturing all possible scenarios where CSB might have jurisdiction to investigate. We have attempted to balance the benefits to be obtained from CSB accident investigations, given limited resources to manage data and a desire to prioritize investigations to create the greatest value, without unduly increasing the reporting burden on facilities.

Congress has not seen fit to fund CSB at a level which would allow investigations of all chemical accidents involving fatalities, serious injuries or substantial property damage. As a result CSB is forced to prioritize its investigations and we believe the agency has done well in this regard producing a wide range of investigation reports broadly relevant to communities and facilities across the country. A reporting regulation should enhance this effort rather than capture the universe.

The approach we are suggesting should present the lowest level of industry education and compliance assistance. Facilities already understand they have release reporting obligations for listed chemicals and should have release reporting programs in place. Adding a requirement to report these very serious releases when deaths or hospitalizations occur, regardless of quantity involved, should not be difficult to understand or implement.

Thank you.



Timothy R Gablehouse  
President  
410 17<sup>th</sup> St, Ste 1375  
Denver CO 80202  
(303) 572-0050

**From:** [2026828388](tel:2026828388)  
**To:** [Kirkpatrick, Chris](mailto:Kirkpatrick.Chris)  
**Subject:** Fax received from 2026828388  
**Date:** Monday, August 10, 2009 8:31:13 AM  
**Attachments:** [pdfc1540.pdf](#)

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\*\*\*\*\*  
INCOMING FAX REPORT  
\*\*\*\*\*

Status: Received  
Date/Time: 8/10/2009 8:31:08 AM  
Speed: 14400 bps  
Connection time: 02:13  
Pages: 1  
Resolution: Normal  
Remote ID: 2026828388  
Line number: 0  
DTMF/DID: 7619  
Description: Fax received from 2026828388

\*\*\*\*\*

API  
1220 L Street, NW  
Washington, DC 20005

# FAX

To: Christopher Kirkpatrick	From: Karen Haase
Fax: 202-974-7619	Pages: 6 + cover
Phone:	Date: August 7, 2009
Re: CSB-09-01	cc:

Comments:

Chris,  
Please find attached API's comments on the ANPR on chemical release reporting that were emailed on August 4<sup>th</sup>, as well as a copy of the "undeliverable" email message and the "original" email that will document that the comments were sent by the August 4<sup>th</sup> deadline.  
Best regards,  
Karen Haase  
[khasek@api.org](mailto:khasek@api.org)  
202-682-8478



**Karen Haase**

---

**From:** System Administrator  
**To:** anpr@csb.gov  
**Sent:** Thursday, August 06, 2009 3:36 PM  
**Subject:** Undeliverable: CSB-09-01

Your message did not reach some or all of the intended recipients.

Subject: CSB-09-01  
Sent: 8/4/2009 3:10 PM

The following recipient(s) cannot be reached:

anpr@csb.gov on 8/6/2009 3:36 PM  
Could not deliver the message in the time limit specified. Please retry or  
contact your administrator.  
<HERMES.api.org #4.4.7>

**Karen Haase**

---

**From:** Karen Haase  
**Sent:** Tuesday, August 04, 2009 3:10 PM  
**To:** anpr@csb.gov  
**Subject:** CSB-09-01  
**Attachments:** API\_Comments\_ANPR\_8-4-09.pdf

Please find API's comments on the June 25<sup>th</sup> ANPR attached.

**Karen M. Haase, CAE**  
API  
1220 L Street, NW  
Washington, DC 20005  
p: 202-682-8478  
f: 202-682-8031



**Howard J. Feldman**  
Director

Regulatory and Scientific Affairs

1220 L Street, NW  
Washington, DC 20005-4070  
USA  
Telephone 202-682-8340  
Email feldman@api.org  
www.api.org

August 4, 2009

U.S. Chemical Safety and Hazard Investigation Board  
Office of General Counsel  
Attn: C. Kirkpatrick  
2175 K Street, N.W., Suite 650  
Washington, D.C. 20037

**Re: Comments on the advance notice of proposed rulemaking "Chemical Release Reporting," 74 Fed. Reg. 30259, June 25, 2009**

Dear Mr. Kirkpatrick:

The American Petroleum Institute (API) appreciates the opportunity to submit comments on the U.S. Chemical Safety and Hazard Investigation Board's (CSB) recently announced advance notice of proposed rulemaking on Chemical Release Reporting, published on June 25, 2009 (74 Fed. Reg. 30259).

API is the primary trade association representing the oil and natural gas industry in the United States. Its membership includes more than 400 corporations involved in all aspects of the oil and natural gas industry including exploration, production, marine transportation, pipelines, refining, marketing, and businesses that serve and supply the oil and natural gas industry. API and its members are committed to protecting the health and safety of the industry's workers and the communities that surround their sites. API has been a leader in establishing safety and health guidelines and supporting other initiatives, including those from the CSB, that have helped to substantially reduce injuries and illnesses in the industry.

According to the *Federal Register* notice, the Clean Air Act requires the CSB to establish a rule for the reporting of accidental releases and the CSB is seeking information on how to proceed to develop such a regulation. API notes that previously, the CSB has maintained that reports of chemical releases filed with the National Response Center (NRC) or published in the media satisfied the statute's requirements. API believes that any rule enacted to satisfy the statutory requirement should reflect the current mechanisms employed by the CSB that appear to be effective and efficient and that incidents should continue to be reported to the NRC, rather than the CSB.

**Rely Upon Existing Reporting Requirements**

The new rule should rely upon existing reporting requirements. Substantial existing information is readily available to the CSB under the current reporting framework. The benefits, if any, of a new reporting requirement, especially where existing mechanisms are functioning well, should be balanced against the diversion of resources from emergency response efforts and the burden placed on industry and agencies. Existing release reporting requirements under federal laws and regulations include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Emergency Planning and Community Right-to-Know Act (EPCRA), the Occupational Safety and Health Act (OSH), the Clean Water Act (CWA), the Clean Air Act (CAA), the Toxic Substances Control Act (TSCA), and the Transportation of Hazardous Liquids Pipeline regulation. Therefore, there is no need to require additional, possibly different, data reporting under this rulemaking.

An equal opportunity employer

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### Criteria for Reporting

On page 30261 of the *Federal Register* notice, the CSB suggests possible criteria for the notification reporting rule: incidents that result in death, serious injuries requiring in-patient hospitalization, large public evacuations, very substantial property damage or acute environmental impact. The Clean Air Act requires notification of only those accidental releases resulting in: 1) fatality; 2) serious injury; and 3) substantial property damage. API supports using only those three statutorily required criteria and believes that additional reporting criteria not required by the statute, such as public evacuations or environmental impacts, would not add substantially to the information available to the agencies and public. Of course, these criteria should be defined consistently with the definitions in other statutes and regulations. Specifically, the CSB should consider that existing reporting regulations, such as the CERCLA and OSH Act already contain definitions for such terms as "extremely hazardous substance," "serious injury," and "accidental release."

### Four Options to Implement the Rule

The CSB has requested comment on four general options to implement the proposed rule. The CSB should continue to rely on existing sources for initial incident notification and NOT set up any new reporting agency or new threshold reporting requirements. The CSB could receive all reports sent to the NRC under CERCLA and EPCRA reporting requirements. If the CSB needs more information, it could then go directly to the reporting entity for more details. This approach most closely aligns with Option 3 in the *Federal Register*.

### Deficiencies of Other Suggested Options

**Option 1, Comprehensive approach on all accidental releases subject to CSB investigatory jurisdiction,** would be too broad and duplicative of other reporting requirements.

**Option 2, Targeted approach requiring basic information for incidents meeting significant consequence thresholds. Based on the initial information provided, CSB would determine whether more information is needed. Require reports from High Risk Facilities, no matter what the consequences.** This approach would only be acceptable if the CSB feels compelled to promulgate a rule that goes beyond existing reporting mechanisms. In addition, many CSB investigations have occurred at smaller sites that would not be considered "High Risk;" thus, a reporting rule based upon "high risk" criteria would not capture incidents under the CSB jurisdiction.

**Option 4, Base reporting requirement on the presence or release of specified chemicals and specified threshold amounts.** While consistent with other reporting requirement approaches, the CSB points out that their investigations have shown that serious consequences may and do result from releases of relatively small amounts of chemicals and from chemicals that are not likely to be listed. As API has considered the threshold amounts of chemicals for reporting under its Process Safety Incidents Report, it has found that no single existing list can meet all the possible scenarios.

### Responses to Specific CSB Questions

Comments to the specific questions posed by the CSB in the ANPRM are as follows:

- ***Are there Federal, State, or local rules or programs for reporting chemical or other types of incidents that would be an appropriate model for the CSB to consider in developing a reporting requirement?***

The CSB should base its reporting rules on both CERCLA and EPCRA with an added provision that if a non-reportable incident under CERCLA and/or EPCRA results in serious consequences (fatality, serious injury, or substantial property damage), then it should be reported to the NRC.

- ***Should an initial report be made to the CSB or the National Response Center?***

The initial report of chemical spills should be made to the NRC as mentioned in the statute: "[r]eporting releases to the National Response Center, in lieu of the Board directly, shall satisfy such regulations [regulations to be

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developed by CSB.]” (CAA Sec. 112(r) (6) (C) (iii)). NRC would then notify the CSB as it does many other Federal Agencies. The threshold for chemical spill reporting requirements to the NRC would accordingly, need to be expanded to include the CSB investigatory authority (e.g., consequence) thresholds of any incidents involving death, serious injuries, or substantial property damage, regardless of the actual quantity released exceeding the CERCLA / EPCRA RQ. Any follow-up reports or responses to requests for information from the CSB should go directly to the CSB.

- ***What information should be reported to the CSB?***

The CSB should automatically and immediately receive the full NRC reports of reportable chemical releases, per the guidance above. Then, similar to other agencies using the NRC for initial incident reporting, the CSB can contact the reporting entity for more details as needed.

- ***How soon after an accident should reporting occur?***

The existing regulatory time requirements for CERCLA and EPCRA reporting are adequate.

- ***Should the rule be designed with distinct requirements for rapid notification of high-consequence incidents and more systemic (and slower) notification of other incidents?***

API believes only high-consequence incidents should be included, consistent with the statutory language, and “high consequence” should be defined to include any one of the three statutory criteria. Existing CERCLA - NRC chemical spill reporting requirements (including timeliness) should be expanded to include the high consequence chemical spill events meeting the CSB investigatory authority threshold.

- ***What specific factors (such as lists of chemicals or specific consequences) should the CSB consider in drafting a proposed rule?***

In order to ensure that the CSB reporting rulemaking adequately covers incidents under CSB jurisdiction, but are not necessarily listed as hazardous substances or covered by other existing regulatory incident reporting requirements, the CSB reporting rule will need explicit definitions of terms like “ambient air”, “extremely hazardous substance”, “serious” injury, and “substantial” property damage. This is the simplest and preferred method to ensure that the appropriate reports are gathered by NRC and transmitted to the CSB. The definitions should be identical or at least consistent with the definitions already employed in other related statutes and regulations.

- ***How should the CSB gather information on incidents (such as combustible dust explosions and reactive chemical incidents) that may not involve specifically listed hazardous substances?***

These incidents should be reported and captured under the CSB requirements to report to the NRC any incidents involving: death; serious injuries; or very substantial property damage; irrespective of the actual quantity released exceeding the CERCLA / EPCRA RQ.

- ***How might this reporting requirement best be tailored to avoid duplication with existing sources of information on chemical incidents, including federal, state, or local reporting requirements?***

The NRC should be the sole agency for the reporting requirement. To simplify the spill / incident reporting process, the CSB rulemaking should “encourage” state and local authorities to support the NRC reporting process by: 1) accepting cascaded NRC chemical spill reports as legally sufficient; and 2) including language that pre-empts states from enacting and enforcing reporting timelines that are contradictory or more stringent than overlapping federal chemical spill/incident reporting requirements.

- ***How might the CSB best target compliance education efforts?***

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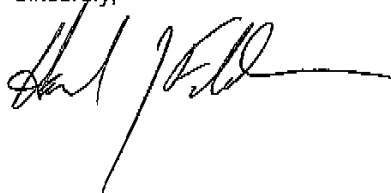
Compliance education efforts would best be accomplished via workshop style outreach efforts cascaded out to industry from regulatory agencies with existing regulatory oversight and authority over oil and chemical spill response, and via existing federal advisory boards, regional response teams, and area committees.

**Conclusion**

In conclusion, API recommends that any rule promulgated by the CSB to meet its statutory requirement reflect currently employed, efficient and effective processes and not add layers of bureaucracy to such processes that could actually detract from timely response to incidents and subsequent investigations.

If you would like to discuss this further, please contact Karen Haase at the 202-682-8478 or [haasek@api.org](mailto:haasek@api.org).

Sincerely,

A handwritten signature in black ink, appearing to be "Karen Haase", written over a horizontal line.