REBUILDING THE CHEMICAL SAFETY BOARD: FINDING A SOLUTION TO THE CSB'S GOVERNANCE AND MANAGEMENT CHALLENGES

HEARING

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REBUILDING THE CHEMICAL SAFETY BOARD: FINDING A SOLUTION TO THE CSB'S GOVERNANCE AND MANAGEMENT CHALLENGES

Wednesday, March 4, 2015

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, DC.

The committee met, pursuant to notice, at 9 a.m., in room 2154, Rayburn House Office Building, Hon. Jason Chaffetz (chairman of the committee) presiding.

Present: Representatives Chaffetz, Mica, Walberg, Amash, Gosar, DesJarlais, Gowdy, Lummis, Massie, Meadows, DeSantis, Mulvaney, Buck, Walker, Hice, Russell, Carter, Grothman, Hurd, Palmer, Cummings, Maloney, Norton, Lynch, Connolly, Kelly, Lawrence, Lieu, Plaskett, DeSaulnier, and Lujan Grisham.

Chairman CHAFFETZ. Good morning. The Committee on Oversight and Government Reform will come to order.

Without objection, the chair is authorized to declare a recess at any time. Before I give an opening statement, I would like to take a moment and announce the newest member of the Subcommittee on Health—Health Care, Benefits and Administrative Rules. I'm pleased that the gentlewoman from New Mexico, Ms. Lujan Grisham, has been appointed.

And I'm confident that she'll be an asset to the subcommittee and glad we can make that appointment.

Today we're here to revisit issues related to the management of the Chemical Safety Board. This organization has suffered from a checkered history with regard to leadership. Much has been documented by this committee. In June 2014, this committee held a hearing about whistleblower reprisals and mismanagement at the Chemical Safety Board. And now, just 9 months later, we find ourselves here again as things have not improved at all. In fact, in many cases, they have actually gotten worse as more information has come to light.

The EPA inspector general found violations of the Federal Records Act by senior Chemical Safety Board's officials, and we will be discussing this today. In January, the EPA inspector general reported that Chairman Moure-Eraso, General Counsel Richard Loeb, and Managing Director Daniel Horowitz knowingly violated the Federal Records Act by using private emails to conduct official Chemical Safety Board business, despite previous testimony and assurances to this committee that they would not and had not been doing that for some time.

The inspector general's findings are in direct contention with testimony that we heard by the Chairman of the Chemical Safety Board before this committee. The Chairman testified before this committee, on June 19, 2014, that the use of private emails had ceased in early 2013. The inspector general found—for the EPA—found, however, that the use of private emails continued through 2013 and even into 2014.

Despite objection by some Board members, on January 28, 2015, the Board suddenly and without warning passed a sweeping 22-page order. That order reversed many longstanding orders that operated as a checkup to the power of the Chairman and to assure the proper functioning of the Board. This action was widely criticized by past and current Board members, industry, labor unions, all of which worry about the state of the Chemical Safety Board. The action was also timed to prevent input by a new Senate confirmed member of the Board.

One of the other things that's deeply concerning to the committee is that the Chemical Safety Board employee satisfaction is at an all-time low. Only 26 percent of the CSB employees recently rated their senior leadership as satisfactory. And overall satisfaction was dead last in 2014, the ranking of Federal agencies. All of Federal Government, all of Federal Government, the Chemical Safety Board is dead last in terms of morale.

These problems were confirmed by an outside firm retained to review the Chemical Safety Board management. That firm found: "The agency still suffers from lack of trust in senior leadership, poor communication, ineffective goal setting, a lack of standard procedures, lack of trust, and a lack of followup by senior leadership, which contributes to a lack of accountability."

Instead of acknowledging the issues raised by the outside firm's report, Chemical Safety Board management appears to punish dissenters and discourage employees from bringing their concerns to Congress. In fact, an employee was removed from this position within minutes after overseeing an outside firm because the senior leadership was unhappy that the report showed that there were core problems at the agency. This same employee was then summarily demoted the day after speaking with committee staff about his concern.

I'm here to tell you, we put up with a lot of things. We are not putting up with employee retaliation. Members of the Chemical Safety Board and throughout Federal Government have the ability and the opportunity to speak to Members of Congress and their staff, and when they do, there is to be no reprisal. For them to simply try to demote this person, change their title, take away responsibility because they talk to Congress, we are not putting up with that sort of retaliation. It's a very serious issue, and I know on both sides of the aisle, we do not take this lightly.

Employees at the Chemical Safety Board work hard and are devoted to the agency's goals—goals have been beaten and demoralized. Nearly 50 percent of the employees have left since 2011. Moreover, the Chemical Safety Board, under its current leadership, cannot effectively carry out its important mission. That's just not me as the chairman saying that. You get outside groups coming in who have paid a lot of money to come in and analyze the group.

And we are going to read through some of their conclusions. It's not a pretty picture.

We must ensure that the Chemical Safety Board returns to its core mandate and away from leadership that fails to lead and stifles employees' actions. The safety of hardworking Americans is important to this committee and will continue to do whatever it is that we need to do in order to fix the Chemical Safety Board. We should not have to have this agency come before this committee again, but the problems are getting worse, not better. We feel that we have been misled and that the employees have been suffering consequences in the management of this—this organization.

Now, I would like to recognize the distinguished ranking member, Mr. Cummings from Maryland, for his opening statements.

Mr. CUMMINGS. Thank you very much, Mr. Chairman, and let me start off by saying that I fully agree with you that retaliation is just something that we will not stand for on both sides of the aisle.

Mr. Chairman, it's been 9 months since our committee held its last hearing on the Chemical Safety Board. During that hearing last June, I said that it was clear that there were serious management problems that needed to be addressed. I also said that they were not new revelations. For example, Henry Waxman, the former ranking member of the House Energy and Commerce Committee, who helped establish the CSB in 1990, sent seven recommendations to address these challenges on May 2, 2014.

In addition, the inspector general of the Environmental Protection Agency, which has jurisdiction over the CSB, issued five audit reports since 2011 with 23 additional recommendations on these issues.

In July 2014, the agency hired a management consultant that identified problems and made more recommendations, and the CSB also has an internal workplace improvement committee that has identified concerns and suggested even more improvements.

Today I'm equally troubled to report that despite all of this feedback and all of these recommendations, things have not improved at the CSB. To the contrary, management problems at the agency appears to have gotten worse. Last September, the CSB hired another management consulting firm to address fundamental changes within the agency. This company, Vantage Human Resource Services briefed the Chairman and Board members on its findings last month on February 12, 2015. We obtained a copy of Vantage's presentation, which was based on interviews with agency employees. Vantage found that 80 percent of CSB employees feel: "much, much frustration with top leadership—80 percent." That is astounding. That is absolutely a stunning fact.

Vantage also reported that 47 percent of employees have a, "perception of a climate where senior leadership discouraged dissenting opinion." That is nearly half the agency. Something is awfully wrong with this picture. This is the latest in the long list of negative reports the CSB Chairman has received about his senior leadership, but instead of using this feedback in a productive way, the Chairman and his managing director appeared to have retaliated against the CSB contracting officer in charge of the Vantage contract.

On the same day that Vantage briefed the Board on its findings last month, the CSB Managing Director Daniel Horowitz removed the contracting officer of the Vantage contract and designated himself—himself—as the contracting officer instead. On the same day, the managing director asked the CSB Chairman for permission to search the emails of the former contracting officer, apparently looking for some incriminating evidence. Based on documents we now have obtained, it appears that the CSB Chairman agreed to this request despite the fact that it included no specific justification whatsoever. He said only that he wanted to, "examine a confidential personnel issue."

Another troubling development occurred at a public meeting in Richmond, California, on January 28, 2015. Board Member Manny Ehrlich offered a sweeping proposal to consolidate the power in the CSB Chairman and to cancel three investigations. The motion came with no prior notice and no opportunity for Board member Mark Griffon to review the motion. Something is wrong with that picture. It also came after another Board member was confirmed by the Senate but before he was sworn in and able to vote.

These allegations are appalling and they indicate that the CSB has gone off the rails, and it's shocking to the conscience. Yesterday President Obama nominated Vanessa Sutherland to be the new Chair of the CSB, something the agency sorely needs, in my opinion, but that does not end the matter.

Until she is confirmed, sadly, the current Chairman apparently will remain in place at least for the remaining 3 months of his term. I must tell you that concerns me greatly. So I want to hear from him directly. I want to listen to his explanations for these events. I want to understand why he believes he should remain in his position. And I want to know—I really want to know—why he is not resigning, especially since he has now lost the confidence of the President of the United States of America.

I would also like to hear the perspectives of the other Board members and the Office of the Inspector General of what reforms are needed to get this agency back on track. CSB has a critical mission. The agency was created to investigate industrial chemical accidents, and it has done landmark work, such as the 2014 report on the Deepwater Horizon explosion, but I remind all of you that we're better than that. We are better than where we are now and better than what has been happening in this agency. And so we owe it to the employees who are working hard every day to carry out the mission to ensure that significant and meaningful changes come out of this hearing.

And with that, Mr. Chair, I yield back.

Chairman CHAFFETZ. I thank the gentleman.

I'll hold the record open for 5 legislative days for any Member who would like to submit a written Statement.

We will now recognize the panel of witnesses, including the Honorable Rafael Moure-Eraso, Chairman of the U.S. Chemical Safety Board; the Honorable Manuel Ehrlich, Board member of the United States Chemical Safety Board; the Honorable Rich Engler, Board member of the Chemical Safety Board; Honorable Mark Griffon, Board member of the Chemical Safety Board; Mr. Patrick Sullivan, assistant inspector general for investigations in the Office of In-

spector General at the United States Environmental Protection Agency. Mr. Sullivan is also accompanied by Mr. Kevin Christensen, assistant inspector general for audit, whose expertise may be needed during the questioning. We would like you to be sworn in as well.

We welcome you all, and pursuant to committee rules, the witnesses will be sworn before they testify, so if you will please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Thank you.

Let the record reflect that all witnesses answered in the affirmative, and you may please be seated.

We'll now recognize our panel of witnesses. And Mr.—or Dr. Moure-Eraso, the Chairman, we will now recognize you first.

Mr. MOURE-ERASO. Thank you.

Chairman CHAFFETZ. Please push the button.

WITNESS STATEMENTS

STATEMENT OF THE HONORABLE RAFAEL MOURE-ERASO

Mr. MOURE-ERASO. Thank you, Mr. Chairman. I am Rafael Moure-Eraso, the Chairperson with the U.S. Chemical Safety Board, or the CSB. I have—I am a first-generation American who has dedicated his life to occupational safety and health. I have 15 weeks to go before I retire to my home near Boston and to my family and my grandchildren.

I will start by frankly acknowledging your criticisms of my management during the last hearing. I was humbled by the messages I heard loud and clear. I took them to heart.

I have worked together with other Board members and the staff to address the issues you raise. We have adopted a set of recommendations made by former Representative Henry Waxman aimed at improving the functioning of the Board. We have also formed an independent workplace improvement committee that is functioning. As you know, we contracted with a consulting company, Vantage, to provide coaching and other services to help us improve internal communications.

We recently discovered that Vantage findings, prior from being presented to the Board, were altered through inappropriate interactions with the contractor. We have asked for the IG's—the inspector general—assistance in investigating this matter, the contractual matter.

But the most important point I will make today is that we have been making rapid progress in the core mission of the CSB, what we were called to do. We have completed eight high-quality chemical accident investigation reports in the last 9 months, a record for the agency. These reports represent the culmination of years of hard work by our highly motivated investigators. These are wonderful public servants who have spent long months away from their families determining the root causes of horrible accidents.

The number of open investigations, which was as an all-time high of 22 in June 2010, when I began my term, is now down to

6. Five of those six remaining cases are on track to be completed by the end of the fiscal year, including the West Fertilizer explosion, the contamination of West Virginia drinking water, and the Deepwater Horizon blowout.

Our Deepwater reports issued last year established for the first time why the blowout preventer failed to work properly. Many other investigations are having a lasting impact on safety.

For example, California and Washington States are revamping the refinery safety rules following the CSB Chevron and Tesoro investigations when we completed this very last year.

Finally, I would like to thank the IG for their efforts with us on Federal records management concerning the use of the nongovernmental email. In February, we received a letter from the White House Counsel concerning the IG report and have taken all the corrective actions he requested. The nongovernmental emails have been transferred to agency servers, as we recently informed the IG and the committee. We found that at least two other Board members and many staff have been using also personal email. Those emails have also been preserved and moving to the agency servers.

In addition, on February 19, we provided training to all Board members and as the new requirements on the law of the preservation of nongovernmental report.

As my time as Chairman goes to a close, we will be leaving behind a stronger agency. We have two outstanding new appointees, Manuel Ehrlich and Rick Engler, one from industry and one from labor, and both tremendously enthusiastic about the mission. It's a perfect fit.

All of us look forward to the confirmation and appointment of President Obama's new nominee as Chair, Vanessa Sutherland, who was announced yesterday. As we work through your concerns to make this an even better agency, I assure you that whatever my shortcomings have been, my commitment to the CSB mission have never wavered. I am looking forward to working collegially with the new members for the few weeks that remain. Thank you.

[Prepared Statement of Mr. Moure-Eraso follows:]

Written Testimony of Dr. Rafael Moure-Eraso
Chairperson of the US Chemical Safety Board
House Oversight and Government Reform Committee
March 4, 2015

Good Morning,

I am Rafael Moure-Eraso, Chairperson of the US Chemical Safety Board or CSB. I would like to thank you for inviting me to speak today.

I come to you today, with just over 15 weeks to go in my term of office, to report on progress and accomplishments the CSB has made since we last met, and to discuss the path ahead for the agency.

I will start by frankly acknowledging that a number of members of this committee have been critical of my chairmanship of the CSB. I was humbled by the messages I heard loud and clear during your hearing eight months ago in June.

I took your criticisms to heart. And so the report output is back on schedule.

The important core mission work of the CSB has proceeded expeditiously. We have completed eight high-quality chemical accident investigation reports in the last nine months. That is a record for the agency. These reports represent the culmination of months and years of hard work by our highly-motivated investigators. These are good public servants who spend long months away from their homes and their families at hazardous accident sites, digging into the root causes of explosions, fires and toxic releases that take too many lives and endanger too many communities.

I have tried to work closely with my fellow board members and with staff. I have worked hard with them to resolve the issues you raised, and we have adopted a set of recommendations made by former Rep. Henry Waxman aimed at improving the functioning of the Board.

To address management and morale issues, I have promoted the creation of a Workplace Improvement Committee (WIC), composed of CSB staff members. The WIC has met over the last few months, ultimately producing a plan that outlines six initiatives that have been included in the CSB's 2015 action plan. The CSB has also contracted with two consulting firms to address the agency's morale issues.

I have also been collaborating with my fellow board member to modernize and streamline the CSB's governance. Our goal is to have the CSB's structure and authority reflect that of the agency the CSB was modeled after, the well respected National Transportation Safety Board (NTSB).

Through the hard work of the staff and my fellow board members, the number of open investigations, which was at an historic high of 22 in June 2010, when I began my term, is now

down to just six, which is close to an historic low for the agency, going back all the way to the agency's beginning in 1998.

By the end of the current fiscal year, five of these six remaining cases are on track to be completed. These include final reports on the tragic fertilizer explosion in West, Texas; the chemical spill that contaminated the drinking water of 300,000 West Virginians last year; the explosion that destroyed a Puerto Rico gasoline terminal in 2009; and the explosion that killed two workers at a Louisiana olefins plant in 2013. And before my retirement in June, we will be issuing the last of a series of reports on the Deepwater Horizon – Macondo well blowout off the coast of Louisiana that killed 11 workers and disrupted life for millions of Gulf residents. Last year we issued two volumes of that report and two accompanying technical reports which – for the first time – established why the blowout preventer failed to work properly, and why the ensuing huge oil spill occurred. That report – and its critical findings about blowout preventer design and testing – is a major contribution to offshore drilling safety, we believe.

As my time, and that of my colleague Member Griffon, draws to a close in three months, we will be leaving behind, I believe, a newly energized agency. Two excellent new appointees, Manny Ehrlich and Rick Engler have already shown an enthusiasm for the agency's vital mission. Mr. Ehrlich spent his life's career in industry, particularly in plant management, training, and emergency response. Mr. Engler's life has been in the service of bringing labor and environmental interests together to better protect workers and the public. It's a perfect fit. Other nominees eventually will be confirmed and I am confident the agency will operate in a way that satisfies the expectations of this committee.

It's been a time of taking stock. I acknowledge my shortcomings while assuring you that my commitment to the mission of the CSB – preventing chemical accidents through top-quality investigations and recommendations – has never wavered for a moment. Everything I have done, every decision I have made, has been made with the safety of workers and the public in mind.

Some of my decisions may not have been popular. My communications could definitely have heen better. But while acknowledging these problems and more, with all due respect to the work of the committee, I believe the record shows a significant list of mission-oriented accomplishments over the last nearly five years that I have served with the CSB. That is to say, the core work of the CSB has been accomplished and in my view chemical industry workers and neighboring communities have greatly benefited from our thorough, scientifically based investigations.

I am proud of the work of the CSB over this period. We have large audiences of stakeholders who pay close attention to our reports and acclaimed safety videos and use them as essential tools to help prevent accidents. We know this from feedback from labor groups, safety trainers, and corporate safety executives, not just in the U.S. but from across the globe.

Despite what some have said, we have been very productive over the last five years, though I say that with the caveat that people know that we are a tiny agency of about 40 employees, 21 of whom are investigators. Our budget regularly has been around 10 to 11 million

dollars a year. Yet demands for investigators to deploy are practically ceaseless. They come from organized labor, state and local officials, and members of the House and Senate. It is very difficult to say no to an investigation of a significant accident where one or more lives were tragically lost. Yet additional resources – that is, the additional budget allocations that we had requested – have never materialized, meaning we have routinely had to pull investigators off of one investigation to start up another.

We have tackled several very big and complex accidents like the Chevron refinery fire in the Bay Area, the Tesoro refinery explosion in Washington State, and the Deepwater Horizon – Macondo blowout in the Gulf.

Over the years we have concluded several major investigations of accidents involving combustible dust which ignites in massive fireballs causing painful burn injuries, and death. We have been tireless in seeking ways to get all of industry to control this hazard.

Several committee members have commented on the length of time it has taken us to complete some investigations – the Tesoro Anacortes explosion, for example. I shared that concern as time went by, as we had to complete other pressing investigations. Timely completion is a shared goal we have. Still, the Tesoro report is thorough and unflinching in its analysis and recommendations and is very relevant in today's discussions of refinery safety issues. Despite how long it took, this report is having a significant positive impact. In January 2015, the Washington State Legislature convened a hearing and is now considering a major expansion of its refinery safety inspection program as a direct result of the CSB report.

The highly detailed reports on serious or fatal chemical accidents released during my tenure include, amongst others, investigations into Bayer Crop Science in West Virginia, Kleen Energy in Connecticut, Xcel Energy in Colorado, DuPont plants in West Virginia and New York State, Veolia Environmental Services in Ohio, Goodyear in Texas, Hoeganaes in Tennessee, Texas Tech University, Donaldson Enterprises in Hawaii, and Carbide Industries in Kentucky.

During the past eight months, as I mentioned, since the Committee's June 2014 hearing, this pace has further accelerated and is now the highest in the agency's history. Additionally, we have held a total of seven public meetings since January 2014.

These public meetings examined, among others, the Tesoro refinery fire in Washington State, the AL Solutions dust explosion in West Virginia, the Deepwater Horizon disaster in the Gulf of Mexico, the regulatory and safety standards issues behind the Chevron refinery fire in California (two separate full reports), the dust explosion at U.S. Ink in New Jersey, and the ammonia release at Millard Refrigerated Services in Alabama.

In addition to reducing the backlog, and cutting the time to report completion, we have worked on outreach and closure for our important safety recommendations, which as you know go to companies, the industry, labor groups, national fire code and building standards organizations, and sometimes to the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA), if warranted.

As of today, 73% of CSB recommendations have been closed, 65% of them positively based on successful implementation. Our recommendations are being accepted by the recipients with appropriate changes and safety improvements made. But numbers alone don't tell the whole story. Our CSB work over the last five years has had an impact on safety. Consider these accomplishments:

- The CSB currently employees a record high number of investigators.
- Since January 2014 the CSB has held seven public meetings across the country in communities impacted by chemical accidents The CSB has released eight video products since January 2014 and 26 video products since June 2010.
- The President requested an 11% increase for the CSB's budget for 2016/
- The President issued two broad executive orders in 2013 and 2014 seeking to implement CSB recommendations.
- The US Circuit Court of Appeals affirmed CSB offshore jurisdiction, which has enabled the CSB to move forward with its Macondo/Deepwater Horizon Investigation
- EPA and OSHA are considering regulatory changes at the federal level, including coverage for reactive chemicals, ammonium nitrate (AN), and atmospheric storage tanks.
- The Interior Department is reportedly considering changes to proposed blowout preventer rules based on the CSB Deepwater Horizon - Macondo technical report.
- OSHA expanded its Hazardous Communications (HAZCOM) standard to require warnings about combustible dust.
- OSHA has established a National Emphasis Programs for refineries, chemical plants, and combustible dust following CSB reports and recommendations.
- The National Fire Protection Assocation has modified numerous consensus standards, including 15, 30, 35, 54, 56, 58.
- The American Chemical Society developed hazard evaluation guidelines for laboratories following the CSB's Texas Tech University investigation.
- ABET (originally the Accreditation Board for Engineering and Technology) now requires process safety as part of university engineering curricula.
- The US Treasury Department required safety oversight for hazardous contract work following the CSB's Donaldson Enterprises Inc. investigation.
- Numerous guidance documents strengthened by the American Petroleum Institute (API), the International Code Council (ICC), and the Center for Chemical Process Safety (CCPS) as a result of CSB recommendations.
- Numerous states took action on CSB recommendations through legislation and regulation to put CSB recommendations, or portions of them, in effect, in Connecticut, Virginia, Mississippi, California, Massachusetts, West Virginia and others.
- Many organizations acted to prohibit or discourage natural gas blows in power plants.
- Major corporations such as BP and DuPont have improved safety practices based on CSB recommendations.

Along with the CSB's highly respected accident reports, CSB safety videos have helped show the agency to be a respected safety leader among industry and company environment, health and safety (EHS) officials, labor, academics and safety trainers.

CSB safety advocacy has received wide public exposure in 2014, including two op-eds in the New York Times and others in the Houston Chronicle, Seattle Times, Sacramento (CA) Bee, the

Contra Costa (CA) Times and the Federal Times. Board members and key staff regularly make presentation on CSB investigation findings and recommendations to push safety improvements forward.

Among the CSB accomplishments of which I am most proud is the impact of the investigation of the Chevron Bay Area refinery of August 2012, with the release of the final report occurring January 28 of this year. Our recommendations to that state are leading to significant reforms of California's regulatory process, which state leaders and safety officials felt were necessary, given findings showing that old refineries have not been properly maintained, have run some equipment to the point of failure, and in some cases have not even implemented recommended improvements from their own engineers. Lives have been exposed to dangerous conditions, lives have been lost, and communities have been threatened with toxic releases. Thus, following the CSB's Chevron investigation findings, the State of California has tripled the number of its refinery inspectors. The State is also in the process of modernizing process safety rules for its 14 refineries. The new regulations would require employers to prevent and eliminate to the greatest extent feasible health and safety risks to employees based on our recommendations.

I believe and would ask you to consider that this list of CSB accomplishments and safety influence is a significant legacy and one that we can be proud of.

Turning to internal issues, I want to bring the Committee up to date on the details of the governance recommendations of the former House Energy and Commerce Committee ranking member Henry Waxman, long a supporter of the CSB, as presented to us in May of last year. Below is a summary of each recommendation and the CSB's progress to date. A full listing of the recommendations can be found in Attachment 2.

1. *Regular Briefings and Meetings: The Chairperson should provide, and board members should attend, a weekly leadership meeting where updates are provided on ongoing investigations. If further information is required on behalf of board members an additional briefing should be scheduled.*

As recommended, the Chairperson has held weekly leadership team meetings (which the board members regularly attend). At these meetings, staff have updated the members on all ongoing projects. In addition and going beyond the recommendation, the staff established a SharePoint site where they provide the board members with weekly reports on their activities and projects.

Consistent with the Waxman recommendation, the Chairperson has also convened additional non-deliberative briefings with the board members on topics of interest. For example, on December 2, 2014, the Board received a special briefing of approximately two hours on the status of all open safety recommendations and the progress of the program.

On January 7, 2015, a special one day meeting was convened for new board member Manny Ehrlich, with all board members in attendance, covering all programs and activities of the agency. A similar meeting was held on February 18 and 19, for new member Rick Engler.

Finally, the chairperson has been conducting one-on-one meetings with each Board Member for unfiltered discussions. The agency also engaged a consultant firm to provide facilitation, coaching, and advisory services for federal agencies, in order to promote internal comity. The consultants have held one-on-one meetings with the Chairperson and separately with each Board Member.

2. *Other Agencies: Board members should be informed if another agency requests documents etc. Any decision to challenge the request should be discussed with all board members.*

There have not been any nonroutine requests for documents or information from the CSB since this recommendation was issued. However, the Chairperson has committed to all the Waxman recommendations, and would adhere to the suggested process for handling any such request.

3. *Memorandum of Understanding (MOU): A consensus approach should be developed for MOUs; board members should be updated on the status of MOU negotiations.*

Most Recent Action: On July 24, 2014, representatives from the CSB, DOJ and EPA serving as participants to the MOU discussion met by conference call to discuss the three agencies' concerns about various aspects of the latest draft of the MOU. Despite ongoing email dialogue among the representatives, and a continually expressed interest in resuming what have been friendly and collaborative discussions, no further meetings have been scheduled.

4. *Chevron Investigation: Issues involving the Chevron investigation should be resolved and the board should come to an agreed upon path forward.*

The CSB assigned a senior staff person to resolve the issues that had stalled the Board's second Chevron report. The Chairperson met repeatedly with the other sitting member at the time to work out an agreement. Following these meetings, the board members reached total consensus on the issues and voted unanimously to approve the Chevron regulatory report on November 5, 2014. A third and final report on Chevron, handling issues of emergency response and industry standards, was also unanimously approved on January 28, 2015, and the Chevron case was closed.

5. *Investigations Plan: A plan should be developed for investigations by July 31, 2014.*

Numerous actions were taken to address the investigative case backlog, most notably, completing many cases with final reports issued to the public. To date the CSB has reduced the backlog from 22 open investigations to just six cases. Among the cases that are currently open, the majority are less than two years old.

6. *Investigations Protocol: Board members should establish a plan to update the investigations protocol by July 31, 2014.*

A staff committee was assembled last year to update and develop new recommended sections for the investigative protocol. A new section of the protocol on "Investigation Scoping" was approved by the Board on January 28, 2015. An additional section of the protocol on "Work Product Review" is being readied for approval by the Board. The staff committee has also established goals in the agency's annual action plan to present the Board with new chapters on

(1) Product Development; (2) an update to existing Chapters A-F, which largely covers deployment and site procedures, and have not been refreshed for a number of years. All these actions are slated for completion during FY 2015.

Many other substantive Board procedures have been developed and approved during my term. These include Board Orders on employee participation in accident investigations, victim family member interactions during investigations, standardized procedures for analyzing the causes of accidents, and Board advocacy for recommendations through an agency "most wanted" program that is patterned on NTSB best practices.

7. *Disputed Board Order 28: Disagreement over Board Order 28 should not interfere with implementation of these recommendations. Board members should seek consensus on all appointment decisions.*

As noted by Rep. Waxman, at the time of the May 2014 recommendations there was a dispute among certain members concerning the validity of "Board Order 28" – a procedure developed in 2002 that purported to limit the authority of the Chairperson to appoint staff and take other administrative actions. Following a legal opinion that noted that Board Order 28 had been improperly adopted in 2002 (the newly appointed Chairperson and another new member had not been permitted to vote on the proposed order), the Board voted on January 28, 2015, to rescind this order and affirm the authority of the chairperson over staff appointments and other administrative issues, subject to consultation between the chair and the other members, as recommended by Mr. Waxman. This position was consistent with numerous federal laws and regulations vesting administrative authorities in the agency head, as well as the longstanding practices of similar agencies such as the NTSB.

Notwithstanding these developments on Board Order 28, the Chairperson has sought consensus with other member(s) on senior staff appointments. Only one senior staff appointment has been made since May 2014, but the Chairperson provided her background information and qualifications to the other sitting member and solicited his views prior to appointing her to supervise even a small, two-person program.

While the CSB investigation and support staff have worked diligently to produce quality reports, and while surveys show they have a firm commitment to the mission of the CSB and a majority feels they are held accountable for the work they do, the fact is that Office of Personnel Management (OPM) employee surveys show overall low employee morale. This frankly has been a conundrum and a grave disappointment for me — that public servants would work so hard but yet suffer low morale and feel a lack of appreciation within the office for the work they do.

Based on the OPM surveys and employee concerns and suggestions, I authorized last year the formation of a Workplace Improvement Committee (WIC). Senior management left the operation of the committee entirely to the employees. They have met often and have proposed numerous reforms and changes which, when fully implemented, are aimed at improving the work culture and on-the-job satisfaction and morale of our staff.

The group has created a set of six internal reform activities with supporting action plans. These are:

1. Development of CSB "Best Practices": This includes cataloging institutional knowledge such as training resources, contractor reviews and outreach contacts.

2. Clarifying employment policies: The WIC will compile existing policies and clarify any ambiguities and recommend revision to internal policies such as teleworking and alternative work schedules.

3. A written plan for new employees outlining their introduction to the agency over the course of his or her first month on board.

4. Communications training, including learning how to participate in a structured, productive discussion on any professional topic, regular meetings to build camaraderie among offices, and communication and training for staff on how to participate in groups.

5. Investigations Product Style Guide and Citations: The WIC will supervise the development of a macro form that will automatically format citations for final reports and products.

6. Streamlining the Deployment Process: Development of agency best practices for organizing a deployment to include travel arrangements, organization of gear, transportation of equipment and hiring of outside experts.

It is important to note that the WIC works from the employee-level up and is fashioned to produce the most effective improvement and buy-in from all staff members. I am very enthusiastic about, but more to the point, so are our employees who see a way to improve the work environment. I fully endorse the committee's six initiatives, and the committee is already working to implement them. The six initiatives are on our agency action plan for completion this fiscal year.

In summary, I am proud of the very many accomplishments the CSB board and staff have effected over the past nearly five years. I feel some of the criticisms of the way in which I have attempted to steer the course of the agency have been unfounded, from my perspective. But as I said, I do take to heart the concerns of this Committee and to that end I stand committed to work collegially with my fellow board members until June 24th and continue these improvements and the fine work of the CSB.

The CSB accomplishments – major accident investigations turned into outstanding reports, recommendations being adopted, CSB outreach through videos and public media – the outstanding core work of the agency should not be overshadowed.

As someone who immigrated to America from Colombia, becoming a citizen in the 1960's, working with labor on health and safety issues and later in academia, it has been my honor to serve on this board.

ATTACHMENT 1:

Twenty Two Investigation Reports Completed During Chairperson Moure-Eraso's Term (2010-2015)			
Investigation	Key Issues in Final Report	Date Report Approved by CSB Board	"X" Indicates Release of Accompanying Safety Video
1. Bayer Crop Science, Institute, WV	Process hazard analysis, pre-start-up safety review, process safety information and training	1.20.2011	X
2. Kleen Energy, Middletown, CT	Elimination of the large release of flammable gas in the presence of workers	6.28.2010	X
3. Xcel Energy, Georgetown, CO	Safe limits for working in confined space flammable atmospheres, pre job safety planning	8.25.2010	X
4. DuPont, Belle, WV (3 incidents)	Mechanical integrity, alarm management, operating procedures and company emergency response notification	9.20.2011	X
5. Veolia, West Carrollton, OH	Unsafe building siting, atmospheric relief systems and plant emergency procedures	7.21.2010	
6. Goodyear, Houston, TX	Emergency response and accountability, maintenance completion	1.27.2011	
7. Public Safety at Oil and Gas Storage Facilities, TX, MS & OK	Security measures are insufficient at exploration and production facilities	10.27.2011	X
8. Hoeganaes (3 incidents), Gallatin, TN	Hazard recognition and training, engineering controls, fire code enforcement	1.5.2012	X

9. E.I. DuPont de Nemours & Co Inc., Buffalo, NY	Flammable gas monitoring, tanks isolations and hot work permits	4.19.2012	X
10. Texas Tech University, Lubbock, TX	Laboratory safety management for physical hazards, hazard evaluation and organization accountability and oversight of safety	10.19.2011	X
11. Donaldson Enterprises Inc., Waipahu, HI	Hazards of fireworks disposal, lack of regulations and industry standards addressing disposal, insufficient contractor selection and oversight	1.17.2013	X
12. Carbide Industries, Louisville, KY	Facility siting, normalization of hazards, and inadequate consensus standards	2.7.2013	
13. Chevron I, Richmond, CA	Chevron process safety programs, mechanical integrity industry standard deficiencies	1.19.2013	X
14. Tesoro, Anacortes, WA	Tesoro process safety culture, control of nonroutine work, mechanical integrity industry standard deficiencies	5.1.2014	X
15. Deepwater I/II, Gulf of Mexico	Blowout preventer (BOP) technical failure analysis, barrier management and safety critical elements	6.5.2014	X

16. NDK, Belvidere, IL	Pressure vessel design and material selection requirements, inspections and learning from previous accidents	11.14.2013	X
17. AL Solutions, New Cumberland, WV	Hazard recognition and training, federal combustible dust oversight	7.16.2014	X
18. Educational Lab Safety, Reno, NV and Denver, CO	Eliminate use of bulk containers during lab demonstrations, implementation of strict safety controls	10.30.2014	X
19. Chevron II, Richmond, CA	Regulation of refineries in California: reduction of risks to As Low as Reasonably Practicable (ALARP); importance of transition from activity based to goal based risk reduction	11.10.2014	
20. US Ink, East Rutherford, NJ	Combustible dust, engineering design, management of changes, process hazard analysis	1.15.2015	
21. Millard Refrigerated Services, Theodore, AL	Design of ammonia refrigeration systems, effective emergency shutdown procedures	1.15.2015	X
22. Chevron III, Richmond, CA	Gaps in current industry guidelines and shortcoming in Chevron's safety culture and emergency response	1.28.2015	

Attachment 2

Recommendations from Rep. Henry A. Waxman to The Chemical Safety Board

May 2, 2014

Regular Briefings and Meetings: The Chairperson should provide, and board members should attend, a weekly leadership meeting. At these meetings, senior CSB staff should provide an update on the status of major projects. The Chairperson should ask the board members prior to the leadership meeting whether there are topics they would like addressed and should ensure they are covered in the meeting.

The board members should request additional nondeliberative briefings if they believe there are issues that were not adequately addressed at the weekly leadership meetings. The Chairperson should facilitate prompt scheduling of any requested briefings.

In addition, the Chairperson should meet individually with each board member at least once a month.

Other Agencies: The Chairperson should inform the board members when another federal agency makes a nonroutine request for documents, information, or action from the CSB (unless the request relates to an internal investigation of the CSB and the investigating body has requested confidentiality). Any decision to challenge or reject a request should be elevated to the board for consideration.

MOU: The Chairperson should consult with the board members to develop a consensus approach to the interagency negotiations going forward (under EO 13650) to develop a Memorandum of Understanding. The Chairman should ensure the board members are briefed monthly on the status of the MOU negotiations and keep them apprised when major developments occur. The final MOU should be brought before the board for approval.

Chevron Investigation: The Chairperson (or a mutually agreed senior staff person) should meet individually with the board members to resolve concerns about the Chevron investigation report and to develop a proposal that could be brought before the board and adopted by consensus. If consensus cannot be reached on all matters, the Board should act on the items for which agreement exists. This proposal should be developed in time to be brought before the board for action as soon as feasible but no later than May 30, 2014.

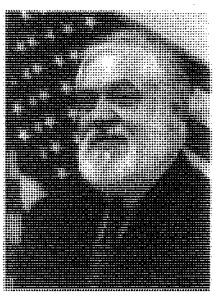
Investigations Plan: The Chairperson should consult with the board members to establish a mutually agreed investigations plan for the agency. This plan should be established as expeditiously as possible but no later than July 31, 2014.

Investigation Protocol: The Chairperson should consult with the board members to establish a mutually agreed process for updating the agency's investigation protocol. This process should be started as expeditiously as possible but no later than July 31, 2014.

Board Order 28: There is a debate over the powers of the Chairperson and the board members under Board Order 28, which has the potential to interfere with implementing these recommendations. If there is a vacancy in the senior staff that would be subject to Board Order 28, the Chairperson and board members should seek consensus on the appointment as a matter of comity, thereby avoiding a need to resolve disputes about the application of the board order to appointments and the respective rights of the Chairperson and board members on this matter.

U.S. CHEMICAL SAFETY BOARD

CHAIRMAN RAFAEL MOURE-ERASO



Rafael Moure-Eraso was nominated by President Barack Obama to the U.S. Chemical Safety Board in March 2010 and confirmed by the Senate in June 2010.

Prior to his appointment, Mr. Moure-Eraso served as a Professor and Graduate Coordinator for the Department of Work Environment in the School of Health and Environment at the University of Massachusetts Lowell, where he has been Chair of the department for the last five years. He has been a member of the faculty at the University of Massachusetts for twenty two years --12 as an Associate Professor (1988) and 10 as a full Professor since 2000. From 1993-2000, Dr. Moure-Eraso was a Visiting Lecturer in Occupational Health at the Harvard School of Public Health. In 1994-95, he held an Intergovernmental Personnel Assignment at the U.S. Department of Labor as a special senior advisor on the prevention of chemical exposures to the Assistant Secretary for Occupational Safety and Health (OSHA). Prior to joining the University of Massachusetts Lowell, Dr. Moure-Eraso served for 15 years (1973-1988) as an Industrial Hygienist Engineer with the national offices of two international unions: the Oil Chemical and Atomic Workers (OCAW) and the United Automobile Workers (UAW).

His ten years as an Industrial Hygienist of the OCAW gave him substantial field experience in the Chemical and Petro-Chemical industry. Dr. Moure-Eraso has been a member of the National Advisory Committee on Occupational Safety and Health for OSHA and a member of the Board of Scientific Counselors of the National Institute for Occupational Safety and Health (NIOSH). He also was a member of both the National Advisory Environmental Health Sciences Council and the Board of Scientific Counselors to the National Toxicological Program for the National Institute of Environmental Health Sciences at the National Institute of Health (NIEHS).

He holds B.S. and M.S. degrees in Chemical Engineering (University of Pittsburgh '67, Bucknell University, '70) and an M.S. and Ph.D. in Environment Health (Industrial Hygiene) (University of Cincinnati '74, '82). He has been a Certified Industrial Hygienist for Comprehensive Practice (CIH)since 1985. Dr. Moure-Eraso is a senior member of AIChE, AIHA, ACGIH and APHA where he had held national leadership positions.

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Chairman CHAFFETZ. Mr. Ehrlich, you are now recognized for 5 minutes.

STATEMENT OF THE HONORABLE MANUEL EHRLICH

Mr. EHRLICH. Thank you, and good morning.

My name is Manny Ehrlich. I'm a chemist who came to CSB from a 50-year career in the chemical industry, mostly with BASF Corporation. I served in a variety of roles, including executive management, and I eventually led emergency response efforts at chemical accidents across North America.

My role as a Board member is especially meaningful to me. I worked in a plant in which two workers lost their lives in a chemical accident. It was my responsibility to notify their wives. It is an experience you never forget and one I hope none of you ever have to be involved in.

Only last month, Chairman Moure-Eraso and I visited the DuPont facility in LaPorte, Texas, where we were investigating a toxic gas release that killed four workers. This trip reminded us of the agony associated with the loss of life at a chemical plant and reaffirmed our commitment to work diligently at the CSB to prevent future accidents.

From what I have seen at my time in the agency, staff productivity is high. The work of the investigators is very stressful, but they are focused and dedicated. I'm impressed with the consistently high quality of the investigation reports and recommendations.

Mr. Chairman, I am aware of the issues this committee has raised concerning management at the agency. Coming from the private sector, my approach is that we need clear delineation of goals, procedures, and responsibilities while we work with the committee to find solutions to unresolved issues.

I would like to take this opportunity to say that I have a high degree of respect for Chairman Moure-Eraso and the high work output at the CSB during his tenure. He has been under heavy fire, but I know him as a man of high integrity that is dedicated to preventing chemical accidents and saving workers' lives and is truly committed to the agency's mission.

He's a working Chairman, who is in the office every day. He travels to accident sites and is fully immersed in the life of the agency. In my judgment, as a former industry executive, a large part of the Board's problems have been due to the confused and ambiguous lines of authority between the Board, career staff, and the Board Chair. It appears that some Board members work with a few career staff that curtail the appropriate administrative authority of the Board Chair, thus the chain of command within the agency has been undermined.

The Chair is facing internal opposition, tension, and criticism as he simply tried to undertake the basic functions of the agency. During my time at the agency, I witnessed employee actions that I have never seen in the private sector which have a very negative effect on the organization. An example is a situation the Chair referred to in which two staff members intentionally doctored a report by our organizational consultant. They took out examples of progress being made and added in very negative comments about

senior management, and they improperly instructed the contractor to keep their involvement secret.

I put forth a motion in January 2015 to clarify ambiguities about the Chair's administrative authority. My motion was about the future of the agency and the authority and leadership capacity of future Chairs. The agency needs to function in a more businesslike manner with clearer lines of accountability, responsibility, and authority. I believe my motion conforms to private sector practices as well as the practices used at agencies like the NTSB. Most importantly, it clarifies the appropriate division of responsibilities between the Board and the Chair.

It is now time to move forward and not look back. Mr. Engler and I will be working to ensure that the strong labor and environmental coalition background that he brings to the Board and the industry background that I bring will be used collaboratively. We plan to meet jointly with industry and union stakeholders to build bridges and gain acceptance of key CSB recommendations.

I look forward to working collegially with Mr. Engler and future Board members. I'll be pleased to answer any questions you have. Thank you.

[Prepared Statement of Mr. Ehrlich follows:]

Testimony of Manuel "Manny" Ehrlich
Member of the U.S. Chemical Safety Board
House Committee on Oversight and Government Reform
March 4, 2015

Good Morning, Chairman Chaffetz, Ranking Member Cummings and Members of the Committee.

My name is Manny Ehrlich and I very much appreciate the chance to appear before you today.

It is a distinct honor to have been appointed by the president to the Chemical Safety Board.

I come from a 50-year career in the chemical industry, much of it with BASF, one of the largest chemical manufacturers in the world. I served in a variety of roles, including executive management and eventually leading emergency response efforts at chemical accidents across North America.

My entire career has been devoted to protecting health and safety through prevention and investigation of chemical incidents.

I see my work as a board member of the CSB continuing that path through government service.

This position is especially meaningful to me. I once worked in a plant where two workers lost their lives in a chemical incident, and it was my responsibility to notify their wives. That is not an experience you ever forget.

Only last month the chairman and I visited the DuPont plant in LaPorte, Texas, where we are investigating a toxic gas release that killed four workers. This trip reminded me of the agony associated with the loss of life at a chemical plant, and reaffirmed my commitment to work diligently at the CSB to prevent future accidents.

I firmly believe in the mission of the CSB. It is important work. I can tell you coming from the industry, the investigations of the CSB, their safety videos and the agency itself are held in high regard.

From what I have seen in my time at the agency, productivity is high among CSB investigators and other staff. I was struck by how stressful the work of the investigators can be, but they are focused, they are dedicated.

I am impressed with the consistently high quality of the investigations and recommendations of the reports.

Organizationally, I am aware of the issues this committee has raised concerning management and governance at the agency. Coming from the private sector my approach to organizational effectiveness is built on technical competence and the clear delineation of roles, responsibilities and goals for the organization.

This means clear action plans, measurable objectives and reasonable timelines.

We of course will work with you to make appropriate improvements and to find solutions to any unresolved governance and management challenges.

But I would like to take this opportunity to say that I have a high degree of respect for Chairman Moure-Eraso and the work output of the CSB during his tenure. He has been under heavy fire, but I know him as a man whose entire being is dedicated to preventing these chemical accidents and saving workers' lives.

I know this has been a priority of the chair and certain actions have already been taken to ensure that those activities and programs continue when the chair completes his term in June.

Although I have been at the CSB since only late last year, I have closely followed the work of the Board. While awaiting Senate confirmation, I had much time to study the Board and its operations.

In my judgment, as a former industry executive, a large part of the Board's problems have been due to the confused and ambiguous lines of authority between the Board, career staff, and the Board Chair. In my observation --certainly in the past -- it appears that some Board Members worked with a few career staff to try to curtail the appropriate administrative authority of the Board Chair, so the chain of command within the agency is ambiguous.

Responsibilities that in other federal agencies are under the authority of the head of the agency were presumed not to be at the CSB. It also appears to me that a few career staff dug in on these issues and resisted efforts to ameliorate problems.

I want to emphasize that this was not the attitude of most staff, especially investigators, but it has created conflicts and tensions within the Board, between the Chair and Board, and among staff.

During my time at the agency, I have already witnessed employee actions that would never be found in the private sector. Again, I am speaking of only a few people, but this has had a disproportionately negative effect on the organization.

That is why I put forward a motion in January 2015, to clarify any ambiguities about the Chair's administrative authority. My motion was about the future of the agency, and the authority and leadership capacity of future chairs.

The agency needs to function in a more business-like way, with clearer lines of accountability, responsibility and authority. I believe my motion conforms to private sector practices as well as the practices used at agencies such as the National Transportation Safety Board (upon which the CSB is supposedly modeled) while recognizing there are differences between the government and the private sector. Most importantly, it clarifies an appropriate division of responsibilities between the Board and Chair.

I think it is now time to move forward, not look back. Mr. Engler and I will be working to ensure that the strong labor and environmental coalition background that he brings to the Board, and the industry background that I bring, will be used collaboratively.

We plan to jointly meet with stakeholders such as the United Steelworkers, the American Petroleum Institute, the American Fuel & Petrochemical Manufacturers, the International Association of Fire Fighters, the American Chemistry Council, and the Society of Chemical Manufacturers & Affiliates.

The object is to build bridges and obtain acceptance of key CSB safety recommendations that flow from our objective accident investigations.
Establishing these relationships can only have a positive impact on furthering the respect that already exists for the CSB and the agency's operating staff.

I look forward to working collegially with Mr. Engler and the other board members to create an organizational culture that is wholly focused on the important mission of the CSB.

I will be pleased to answer any questions you may have.

Board Member Manuel "Manny" Ehrlich

Manuel "Manny" Ehrlich was nominated by President Barack Obama to the U.S. Chemical Safety and Hazard Investigation Board in January of 2014 and confirmed by the Senate in December 2014. Prior to his appointment Mr. Ehrlich spent over 50 years in the chemical industry in a variety of positions. Most recently he served as a health, safety and environmental consultant to a broad range of companies across the country.

Mr. Ehrlich spent much of his career with BASF Corporation, one of the largest chemical companies in the world. During his time at BASF Mr. Ehrlich worked in a variety of roles, including plant management and eventually leading emergency response efforts across North America. In this capacity he responded to, managed and investigated numerous hazardous materials incidents in the U.S., Canada and Mexico.

Mr. Ehrlich served as the on call chemist for the Chemical Transportation Emergency Response Center (also known as CHEMTREC) in the U.S., a 24-hour service that assists responders on the scene of chemical incidents. He also served as a member of the National Fire Protection Association's committee that develops competency standards for chemical emergency responders.

Mr. Ehrlich has a B.S. in Chemistry from Drexel Institute of Technology, completed graduate studies in chemistry from Temple University and St. Joseph's College, completed graduate studies in chemical engineering from New York University and received an Ed.M. and M.A. in Counseling Psycology for Business and Industry from Columbia University.

Chairman CHAFFETZ. Mr. Griffon, you are now recognized for 5 minutes.

STATEMENT OF THE HONORABLE MARK GRIFFON

Mr. GRIFFON. Thank you. Good morning and thank you, Chairman Chaffetz, Ranking Member Cummings, members of the committee. Thank you for holding this hearing today. This committee's oversight is both timely and urgent. My name is Mark Griffon. I was nominated by President Obama in March 2010 and confirmed by the Senate in—in June 2010 to a 5-year term ending in June 2015.

I would like to focus my testimony on two key issues. One, the late night vote in a Board meeting in Richmond, California, without any advance notice, in which the agency governance system was stripped of necessary checks and balances; and two, the failure to honor commitments made to this committee in the June 19, 2014, hearing, pursuant to Congressman Waxman's recommendations.

First, the Board action in Richmond, California. In Richmond, California, on January 28 at a public meeting regarding the Chevron investigation, a surprise motion was presented by Board Member Ehrlich. The multipart motion included fundamentally modifying the governance of the agency and canceling three investigations, the Citgo refinery incidents in Corpus Christi, Texas; the explosion of the Horsehead facility in Monaca, Pennsylvania; and the explosion at the Silver Eagle refinery in Woods Cross, Utah.

My efforts to table the matter failed and the motion passed 2 to 1. The urgency of taking up a sweeping motion just prior to Mr. Engler joining the agency has not yet been explained. The resulting Board order on governance, Board Order 2015–1, consolidated power with the Chair and eliminated specific checks and balances, including Board authorities related to the development of the budget and the use and distribution of appropriated funds; the approval of large expenditures; the appointment of heads of administrative units; career Senior Executive Service appointments. The importance of these authorities was discussed in a letter from Senator Lautenberg back in 1999, shortly after the agency was established.

In this letter, Senator Lautenberg clearly indicates that the Chairperson shall exercise the executive and administrative function of the Board but must perform those functions, "under the direction and approval of the Board as a whole," The intent, as expressed by Senator Lautenberg, is lost in the motion passed on January 28, 2015.

The second key issue, CSB action subsequent to Congressman Waxman's recommendations. In a May 2, 2014, letter to the Board, Congressman Waxman put forward several recommendations to begin to address some of the management problems. These recommendations, which I consider reasonable—a reasonable starting point toward improving agency management, have not been fulfilled.

I offer the following observations: One, communication with the Board has not improved. This is best illustrated by the lack of any

communication with me leading up to the January 28, 2015, meeting. Two, rather than attempt to vote to modify Board Order 28, an order that delineates the authorities of the Board and the Chair, the Chairman unilaterally declared Board Order 28 invalid based on a CSB Office of General Counsel opinion. Three, despite Congressman Waxman's recommendations, the 2013 recommendation from the EPA IG, and numerous requests by Board members, an overall investigations plan has not been completed since I've been on the Board. And four, a plan for completing the investigations protocol has never been provided to the Board.

So what is the remedy? In the last year, the agency has hired management consultants and executive coaches and set up a workplace improvement committee purportedly to improve employee morale and make necessary management reforms. Despite these activities, no meaningful management changes have been made.

I believe the following actions should be taken. No. 1, the entire motion made in the January 28, 2015, meeting should be rescinded. Two, Board Order 28, dated August 8, 2006, should be reinStated. Three, the Board should make a clearcut statement of policy that the CSB orders are the governing procedures of the agency. Four, the Board should make a commitment to hold monthly public business meetings. And five, the oversight and recommendations provided by the EPA IG are useful and the relationship with the EPA IG must be rebuilt. The agency's mission is very important, and these problems must be resolved. Thank you for your consideration.

Chairman CHAFFETZ. Thank you.

[Prepared Statement of Mr. Griffon follows:]

WRITTEN STATEMENT

BY MARK A. GRIFFON

BOARD MEMBER

U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

TO THE

OVERSIGHT AND GOVERNMENT REFORM COMMITTEE UNITED STATES
HOUSE OF REPRESENTATIVES

ON

Rebuilding the Chemical Safety Board:
Finding a Solution to the CSB's Governance and Management Challenges

March 4, 2015

Good morning and thank you Chairman Chaffetz, Ranking Member Cummings, Members of the Committee. Thank you for holding this hearing today, this committee's oversight is both timely and urgent. My name is Mark Griffon. I was nominated by President Obama in March 2010 and confirmed by the Senate in June 2010 to a five year term ending in June 2015. My academic training is in chemistry and radiological sciences.

When I was initially appointed to the Chemical Safety Board (CSB) I believed, and continue to believe, that the unique mission of the CSB is critical in helping to prevent future catastrophic chemical incidents. With all the good that the agency has done and continues to do in the area of high hazard accident prevention the on-going management and governance problems continue to negatively impact the workplace morale and the efficiency and credibility of the agency's work.

I would like to focus my testimony on 2 key issues: 1) the late night vote in a Board meeting in Richmond, California without any advance notice in which the agency governance system was stripped of necessary checks and balances and 2) the failure to honor commitments made to this committee in the June 19, 2014 hearing pursuant to Congressman Waxman's recommendations.

1. Board Action in Richmond, California

In Richmond, California on January 28 the Board held a public meeting. The only specific item listed in the federal register posting was the Board's consideration and vote of the final Chevron investigation report. After a presentation of the report to the Board we heard public comments from the audience and then went to a vote on the report. After a unanimous vote to approve the report at about 10:30 PM most everyone, including me, thought the meeting was coming to a close. Quite to my surprise at this time Board Member Ehrlich began to summarize a 22 page motion which included fundamentally modifying the governance of the agency, dissolving 18 Board Orders, establishing a new Board Order for scoping of investigations and cancelling three investigations – the Citgo refinery incidents in Corpus Christi, Texas; the explosion at the Horsehead facility in Monaca, Pennsylvania, and the explosion at the Silver Eagle refinery in Woods Cross, Utah.

This motion was not shared with me prior to the meeting and there was no specific mention of this topic being on the agenda for the meeting in Richmond. I made an attempt to table the matter based in part on the fact that I had been given no time to review the proposal and to give an opportunity for Board Member Engler, who was confirmed the same day as Mr. Ehrlich and was due to be sworn in in approximately two weeks, to have an opportunity to deliberate and vote on these major policy changes and important investigations. My efforts to table the mater failed and the motion passed in a 2-1 vote. The urgency of taking up this sweeping motion just prior to Mr. Engler joining the agency has not been explained.

The resulting Board Order on governance (Board Order 2015-1) is a step backwards for the governance of the agency. This new Board Order eliminates 18 Board Orders

purportedly in an effort to streamline out of date rules and improve management efficiency. The actual effect was the removal of important Board checks and balances that have stood the test of time.

Specific checks and balances that were eliminated include: the board role in the development of the budget[1]; board approval of use and distribution of appropriated funds as detailed in the operations budget[2]; board authority regarding expenditures greater than $50,000[3]; board authority with regard to the appointment of heads of administrative units[4]; board authority with regard to career senior executive service appointments[5], the board role in the approval of statements to Congress or the President[6]; the board role in performance review of the direct reports to the chair[7] and oversight over board member foreign travel authorization[8].

The importance of these authorities was discussed in a letter from Senator Lautenberg in 1999 shortly after the agency was established. Senator Lautenberg played a key role in enacting the authorization for and securing the initial funding for the Agency.

In this letter to the Board dated December 1, 1999[9] (attached) on the issue of governance of the CSB Senator Lautenberg says:

> 'As stated in the statute, "the Chairperson shall be the Chief Executive Officer of the Board and shall exercise the executive and administrative function of the Board" (Section 112(r)(6)(b)). There is no doubt in my mind, however, that he or she must perform those functions under the direction and approval of the Board as a whole.'

The letter goes on to list some specific functions that must be performed by the Board as a whole.

- "Approval and submittal of the Board's budget request to Congress;
- Approval of the use and distribution of funds appropriated to the Board;
- Approval of appointments of the heads of major administrative units under the Board; and
- Approval of the general policies, regulatory decisions, findings and determinations by which the Chairperson shall carry out his or her duties."

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[1] Board Order 38, Preparation and Submission of CSB Budget Requests
[2] Board Order 28, Executive and Administrative Functions of the Board
[3] Board Order 28, Executive and Administrative Functions of the Board
[4] Board Order 28, Executive and Administrative Functions of the Board
[5] Board Order 23, Senior Executive Service (SES) Staffing
[6] Board Order 28, Executive and Administrative Functions of the Board
[7] Board Order 10, Performance Appraisal Program
[8] Board Order 45, Foreign Travel
[9] Senator Lautenberg letter to Board dated December 1, 1999.

The surprise action taken on January 28, 2015 in Richmond, California removes many of these important checks and balances and has the potential of jeopardizing the mission of the agency.

I was disappointed with the process and the result and disappointed that, rather then honor the recommendations of Congressman Waxman in his May 2, 2014 letter to the Board to improve communications and trust, two members of the Board, made a calculated decision to pull off these sweeping changes without notice, late at night in a meeting in California. This was a shock to everyone in the agency and a further blow to employee morale.

2. CSB actions subsequent to Congressman Waxman's recommendations

In a May 2, 2014 letter from Congressman Waxman to Chairman Moure-Eraso[10] Congressman Waxman put forward several recommendations to begin to address some of the management problems.

These recommendations, which I considered a reasonable starting point toward improving agency management, have not been fulfilled.

I offer the following observations:

- The recommendations called for the CSB to develop an investigations plan by July 30, 2014. A staff proposal to evaluate all open cases and develop a plan for completion or termination of cases was rejected by senior management and the Chairman. Instead of a systematic evaluation of all open investigations and the development of a plan the backlog of cases was addressed, in part, by the un-noticed vote in Richmond California to terminate three investigations. According to a 2013 IG report, the lack of an investigation plan is affecting the efficiency of work at the CSB[11]. Since 2011 I have requested a written investigative plan[12] and requested a public business meeting to get a status report of all 'open' investigations[13][14]. All requests were effectively blocked and to date there is no overall investigations plan.
- A plan for completing the investigations protocol, as called for in the Waxman recommendations, has never been provided to the Board. This is particularly troubling since this protocol has been under revision since I joined the Board in

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[10] Congressman Waxman letter to the Board dated May 2, 2014.
[11] IG report "US Chemical Safety and Hazard Investigation Board Needs to Complete More Timely Investigations", July 30, 2013, (13-P-0337)
[12] Letter from Mark Griffon and John Bresland to Chairman Moure-Eraso dated 12/12/2011 regarding several management issues included the need for investigations planning and concern over poor federal employee survey results.
[13] Mark Griffon statement at a meeting on January 17, 2013
[14] Beth Rosenberg motion in public meeting and written Notation item #2013-50

2010. Finalizing this protocol and standardizing the process from deployment to final investigation report would improve the quality and relevance of our investigations.

- The Waxman recommendations also mentioned that there was a debate over the powers of the Chairman versus the Board members under Board Order 28. Board Order 28, Executive and Administrative Functions of the Board, specifies the authorities of the Chairman and the Board as a whole. Rather than attempt to modify Board Order 28 based on a majority vote of the Board the Chairman unilaterally declared Board Order 28 invalid based on a CSB Office of General Counsel opinion.[15] It was further invalidated in the motion passed in the January 28, 2015 meeting. It should be noted that late last year the EPA IG initiated an investigation into agency governance, including the invalidation of Board Order 28. I welcome the independent, objective review.
- Finally, a recommendation intended to improve communications between the Chairman and individual Board members called for one on one meetings with the Chairman and each Board member on a regular basis to provide updates on topics which are not typically discussed in staff Leadership meetings. This recommendation, intended to improve communication and trust on the Board was not honored. This is best illustrated by the lack of any communication with me regarding the pending sweeping motion, including terminating three investigations, planned for January 28th 2015 public meeting.

So, what is the remedy?

In the last year the agency has hired two management consultant firms and executive coaches and set up a workplace improvement committee purportedly to improve employee morale and make necessary management reforms. All of these efforts identified similar problems with senior management and leadership.

Rather than considering management problems, despite all the evidence, CSB leadership has continued to defend these shortcomings as merely a function of limited resources. In the last year, no management changes have been proposed to address the timeliness of completing investigations or employee morale. It is clear that the agency continues to deflect and defend rather than reflect and reform.

I believe the following actions should be taken:

1. The entire motion made in January 28, 2015 meeting should be rescinded.
2. Board Order 28, dated August 8, 2006, should be reinstated.
3. The Board should make a clear-cut statement of policy that CSB Board Orders, in conjunction with Agency regulations, are the governing procedures of the

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[15] OGC opinion dated June 2, 2014

agency and are not to be circumvented, bypassed, or waived, unless properly amended.

4. The Board should make a commitment to hold monthly public business meetings[16].
5. The oversight and recommendations provided by the EPA IG are useful and the relationship with the EPA IG must be rebuilt.
6. There has been needless friction with the Department of Justice, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Environmental Protection Agency, and the Occupational Safety and Health Administration. The Board must have a role in guiding the CSB's interaction with other agencies so that relationships are not needlessly degraded.

Finally, there must be an effort by leadership to improve the organizational culture. This change must start at the top. Leadership must create an open, trusting environment where dissenting opinions are respected. These changes, even with committed leadership, will take time. The agency's mission is very important and these problems must be resolved.

Thank you for your consideration.

Attachment

Senator Lautenberg Letter, December 1, 1999

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16 Since I have been a Board member I have voted more than 200 times via notation voting (in private) while only about 25 votes have been taken in public meetings. In 2002 the CSB committed to holding monthly public meetings in response to a FEMA OIG report.

DEC. 1.1999 1:29PM SENATOR LAUTENBERG

FRANK R. LAUTENBERG
NEW JERSEY

COMMITTEES:
APPROPRIATIONS
BUDGET
ENVIRONMENT AND PUBLIC WORKS
INTELLIGENCE
HELSINKI COMMISSION

United States Senate
WASHINGTON, DC 20510–3002

December 1, 1999

The Chairman and Board Members
U. S. Chemical Safety and Hazard Investigation Board
2175 K Street N.W.
Suite 400
Washington, DC 20037-1809

Dear Mr. Chairman and Board Members:

I am writing to convey my understanding of the process by which the U.S. Chemical Safety and Hazard Investigation Board must govern itself, and specifically the extent to which the Chairperson is accountable to the Board in the performance of his or her duties. I do so in light of communications with each Board member which reveal sharp differences of opinion regarding Board governance. I base my understanding on the statute which created the Board (Section 112(r)(6) of the Clean Air Act) and on my own expectations both in drafting that statute and in subsequently advocating for the establishment of the Board.

As stated in the statute, "[t]he Chairperson shall be the Chief Executive Officer of the Board and shall exercise the executive and administrative functions of the Board." (Section 112(r)(6)(B).) There is no doubt in my mind, however, that he or she must perform those functions under the direction and approval of the Board as a whole. In order to be consistent with the statute, the following functions must be performed by the Board as a whole:

- approval and submittal of the Board's budget request to Congress;
- approval of the use and distribution of funds appropriated to the Board;
- approval of appointments of the heads of major administrative units under the Board; and
- approval of the general policies, regulatory decisions, findings and determinations by which the Chairperson shall carry out his or her duties.

I urge the Board to govern itself in this manner immediately.

REPLY TO:

☐ 506 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510-3002
(202) 224-4744

E-mail: frank_lautenberg@lautenberg.senate.gov
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☐ BARRINGTON COMMONS
208 WHITE HORSE PIKE
SUITE 18-19
BARRINGTON, NJ 08007-1322
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Board Member Mark Griffon

Mark Griffon was nominated by President Barack Obama to the U.S. Chemical Safety and Hazard Investigation Board in March 2010 and confirmed by the Senate in June 2010. Prior to his appointment, Mr. Griffon served as a member of the Federal Advisory Board on Radiation and Worker Health which was appointed by the president to advise the Department of Health and Human Services on occupational illness and compensation policy.

Mr. Griffon's career has included work in academia, the public sector, and the private sector. His career began in the private sector as a chemist where he was responsible for large clean-up contracts at the Philadelphia Naval Shipyard, Aberdeen Proving Ground, and Brookhaven National Labs. He worked at the University of Massachusetts Lowell to develop and deliver hazardous waste training for clean-up workers and emergency responders in the New England region. He also worked for the Toxics Use Reduction Institute in Massachusetts where he developed and delivered professional training for reducing the use of toxic chemicals within industry.

From 1987 to 2010, Mr. Griffon ran a consulting firm. He assisted the United Steelworkers in resolving several issues regarding health physics and industrial hygiene at Department of Energy (DOE) Weapons Complex sites. His consulting work also included conducting exposure assessments in support of medical screening programs at sites including the Idaho and Brookhaven National Labs.

Mr. Griffon has a B.S. in Chemistry from Rensselaer Polytechnic Institute and an M.S. in Radiological Sciences from University of Massachusetts Lowell.

Chairman CHAFFETZ. Mr. Engler, you are now recognized for 5 minutes.

STATEMENT OF THE HONORABLE RICH ENGLER

Mr. ENGLER. Good morning. Thank you, Chairman Chaffetz, Ranking Member Cummings, and the committee members for asking me to testify at this important and timely hearing. Excuse me. My name is Rick Engler. I was confirmed by the Senate to be a CSB member last December 16, and I was commissioned to the Board for a 5-year term by President Obama on February 5, 2015. I am thus the newest CSB members.

Before this appointment, I was director of the New Jersey Work Environment Council, a collaboration of labor, community, and environmental organizations where preventing chemical disasters was a primary focus. The CSB and its dedicated staff have accomplished much over its short history. Its investigations, its recommendations, reports are essential tools for preventing tragic chemical incidents, which continue today.

During my first few weeks at CSB, I've reviewed extensive material, including CSB reports, recommendations, and briefing documents, inspector general findings, materials from this committee's hearing on the CSB last June 19, and the new Vantage report discussed earlier. I've spoken to some past and all current Board members, and many but not all CSB staff as well as some outside stakeholders.

Excuse me. My learning process is not done, yet I already conclude that major internal changes must occur for the CSB to best fulfill its critical mission. Foremost, changes are needed to resolve the controversy over CSB governance and the powers of the Chair in relationship to other members. The serious engagement of all CSB members in major decisions provides critical checks and balances and would result in the best decisions.

Unfortunately, Board Order 2015–1 was approved by a 2-to–1 vote on January 28, 2015, and has been—as has been already pointed out. This action took place after I was confirmed by the U.S. Senate but just 5 business days before I was sworn in as a CSB member. It consolidated power in the Chair and eliminated, for example, the four—the role of four other members in deciding budgets, major use of funds, key contracts, and approving appointment department heads.

Well, I believe this will have a negative outcome on the performance of the agency. And I should point out, in a very small agency that has roughly 40 staff, the 5 Board members are, in my view, should be active participants in the work, not sitting aside from the work and making decisions but doing work. And that means that they should be participants actively in key decisions as well.

So I would urge the Board to rescind its overall motion of January 28. I respectfully ask this committee to urge the CSB to take such action. A new process with deadlines to ensure the both governance rules and policies with checks and balances could then begin.

Some other changes are also urgently needed to accomplish the following: Address the serious issues raised by the Vantage report, including poor internal communications, lack of consistent policies

and procedures, and employee frustrations with senior management, which have all led to very low staff morale, and I would like to add that, regardless of the process, the substance of the Vantage report is very, very troubling. So, regardless of what interactions took place, the essential message there gives me grave concern about the issues that have been raised.

I will work to ensure that CSB members and staff work collegially, where all views are respected even when there are agreements—whether it's over science, whether it's over policy, whether it's over recommendations. And I would also like to add that I have spent decades in the State of New Jersey working for strong whistleblower protection. One example is that I helped lead an effort to amend our Conscientious Employee Protection Act, which passed legislation in the State of New Jersey with virtually unanimous bipartisan support, that required an annual notice to go to every private-and public-sector employee in the State, making sure that they understand that they had a right to speak out, an obligation to speak out if they found violations of law or public policies. I feel deeply about whistleblower protections.

I also think that the Board needs to adopt a new project-management-tracking system with clear objectives, benchmarks, and internal controls, that the Board must engage stakeholders, that there must be frequent well-publicized business meetings. And I reject any notion that carrying out the people's business by a public agency is merely theater. And I look forward to a new relationship with the Office of Inspector General. And I will anticipate—in fact, I'll do it right now—I would seek a briefing from the inspector general on all the outstanding issues. And I look forward to rebuilding that—that relationship.

Chairman CHAFFETZ. I thank the gentleman.

[Prepared Statement of Mr. Engler follows:]

Rebuilding the Chemical Safety Board:
Finding a Solution to the CSB's Governance and Management Challenges
Statement of Rick Engler, Member, U.S. Chemical Safety Board to the
House of Representatives Committee on Oversight and Government Reform

March 4, 2015

Good morning and thank you Chairman Chaffetz, Ranking Member Cummings, and Committee members for asking me to testify at this very important and timely hearing.

My name is Rick Engler. I was confirmed by the U.S. Senate to be a Member of the Chemical Safety Board (CSB) on December 16, 2014 and was commissioned to the Board for a five year term by the President on February 5, 2015. I am thus the newest CSB Member.

CSB's primary mission is to investigate major chemical incidents to determine their root causes and to make recommendations for how such incidents can be prevented.

Immediately before being appointed to the Board, I was Director of the New Jersey Work Environment Council, a collaboration of labor, community, and environmental organizations where preventing chemical disasters was a primary focus of work.

My past involvement with the CSB included working with late New Jersey Senator Frank Lautenberg, NJ Congressman Rodney Frelinghuysen, and Governor Christine Whitman to help secure initial appropriations for the CSB (1997). I assisted the CSB in addressing how incidents involving runaway chemical reactions could be prevented after tragedies occurred in chemical plants in Lodi and Paterson, NJ (1998). I also led a CSB stakeholder's process which prompted a new policy to ensure that both workers and management can fully participate in CSB investigations (2012).

The CSB and its dedicated staff have accomplished much. Its investigation reports and recommendations are essential tools for the prevention of major chemical incidents.

During my first few weeks at the CSB, I have reviewed extensive material, including CSB investigation reports, recommendations, and briefing documents; Inspector General audit findings; materials related to this Committee's hearing on the CSB last June 19; and a February 12, 2015 report by the Vantage consulting group that found serious CSB internal challenges and identified some solutions. I have also spoken to some past and all current Board members and many, but not all, CSB staff, as well as some outside stakeholders.

This initial learning process is by no means complete. Yet, I have already concluded that major changes are urgently needed for the CSB to fulfill its critical mission.

- First and foremost, changes are needed to resolve the controversy over CSB governance and the powers of the Chair in relation to other Members. The serious engagement of **all** CSB Members in major decisions provides critical checks and balances and would result in the best decisions. Unfortunately, Board Order 2015-1 was approved by a 2-1 vote on January 28, 2015. This action took place after I was confirmed by the U.S. Senate – but just five business days before I was sworn in as a CSB Member. It consolidated power in the Board Chair and eliminated, for example, the role of other Board members in deciding budgets and major use of funds, deciding key contracts, and approving appointment of department heads.

  The Board should rescind its overall motion of January 28, 2015 (Order 2015-1). I respectfully ask this Committee to urge CSB to take such action. A new process, with deadlines, to clarify governance rules and policies and to ensure a system of checks and balances could then begin.

Other changes are also urgently needed to:

- Address the very serious issues raised by the new Vantage consultant's report, among them poor internal communications, lack of consistent policies and procedures, and employee frustration with senior management. These issues have led to very low staff morale.

- Ensure that CSB Members and staff work together collegially, where all views are respected, even when there are disagreements. It is especially important to respect differing scientific viewpoints.

- Adopt a thorough and specific project management tracking system, with clear objectives, benchmarks, and internal controls which reflect the Board's approved five year strategic plan and a Board approved annual implementation plan.

- Engage key stakeholders, including employers, trade associations, organized labor, environmental groups, professional associations, first responders, academic and scientific institutions, and the families of victims of chemical disasters.

- Hold frequent, publicized, public business meetings and votes and take other steps to ensure public transparency. Every public meeting agenda should include ample time for public statements and dialogue. I reject any notion that carrying out the people's business by a public agency is merely theater.

- Initiate a new relationship with the Office of Inspector General, to view them as allies rather than enemies in building the highest performing CSB.

- Rebuild relationships with other federal agencies. CSB relationships with other agencies are frayed and must be fixed.

The CSB is a small but truly important agency. In its brief existence the CSB has accomplished much to prevent tragic chemical incidents which kill workers, harm the environment, damage our businesses and economy, and cost jobs.

Recent tragedies in West, Texas, Charleston, West Virginia, and LaPorte, Texas illustrate why CSB's unique mission to find the root causes of these and other catastrophes and to press for adoption of safeguards is more essential than ever.

But to achieve this, CSB reform is needed now.

Over my five year term, I pledge to work with other Board Members and staff, this Committee and other Congressional committees, the Inspector General, key government agencies, and outside stakeholders to make the CSB the most transparent, collaborative, efficient and effective agency that it can be.

Thank you again for the opportunity to testify.

Contact: Rick Engler, Member, CSB
(202) 774-4750 (cell)
rick.engler@csb.gov

Biographical Summary

Rick Engler was nominated by President Barack Obama to the U.S. Chemical Safety and Hazard Investigation Board in January of 2014 and confirmed by the Senate in December 2014. Before his appointment, Mr. Engler spent more than five decades helping to prevent chemical hazards. Much of his work has focused on ensuring that workers and the public have a "right to know" about the potential chemical dangers they may be exposed to on the job and in the community and that government agencies operate transparently. He has advocated for successful landmark state and national public policies that promote hazard communication, workforce development, chemical incident prevention, inherently safer processes, and whistleblower protection. Among these policies are the New Jersey Worker and Community Right to Know and Toxic Catastrophe laws and the national 1990 Clean Air Act amendments that enable both management and worker representatives to fully participate during Environmental Protection Agency and Chemical Safety Board investigations of facilities that use highly hazardous chemicals.

Mr. Engler was founder and Director of the New Jersey Work Environment Council (WEC), a collaboration of labor, community, and environmental organizations working for safe, secure jobs and a healthy, sustainable environment. He founded the Philadelphia Area Project on Occupational Safety and Health and served as an elected Vice President of the NJ Industrial Union Council, AFL-CIO. Mr. Engler served on the NJ Department of Health Occupational Health Surveillance Advisory Committee. He has been a leader in collaborative labor-management-community initiatives to help investigate and prevent chemical incidents.

Chairman CHAFFETZ. Now recognize Mr. Sullivan from the Office of the Inspector General. Now recognized for 5 minutes.

STATEMENT OF PATRICK SULLIVAN

Mr. SULLIVAN. Good morning, Chairman Chaffetz, Ranking Member Cummings, and members of the committee.

I am Patrick Sullivan, assistant inspector general for investigations for the EPA and the Chemical Safety Board. Thank you for inviting me to appear before you today.

I plan to discuss two matters related to CSB.

The first is a report of investigation that Inspector General Arthur Elkins sent to the President on January 22 of this year addressing conduct by CSB Chairman Rafael Moure-Eraso and two of the senior staff members. The second relates to our audit work at CSB.

I will provide an overview of CSB's document production and its use of nongovernmental email systems for official communications. On or about February 6, 2013, the OIG received information alleging that CSB officials were conducting official business via nongovernmental email accounts. During our investigation, the OIG made a request to the CSB for communications pertaining to official CSB matters that were sent via nongovernmental email systems.

CSB declined to provide all the requested documents and provided some documents and emails in redacted form. This refusal of access to the OIG constituted a particularly serious or flagrant problem under the IG act. And Inspector General Elkins was compelled to issue a 7-day letter to Chairman Moure-Eraso on September—in September 2013. CSB nevertheless again refused to provide the emails and forwarded the IG's 7-day letter along with the CSB response to Congress.

In June 2014, this committee held a hearing on these issues. Following the hearing, the committee directed the CSB to turn over the emails to the OIG, and the agency provided a number of responsive documents. My office completed its investigation, finding information sufficient to support conclusions that Chairman Moure-Eraso and Mr. Loeb purposefully used private nongovernmental email systems to communicate on CSB matters. Also, these communications were not preserved as official records.

Regarding the OIG report of investigation on February 9, Chairman Moure-Eraso responded in writing to the White House Counsel. We are awaiting the President's determination as to whether disciplinary action is warranted. At various times, Chairman Moure-Eraso and Mr. Loeb explained what action was taken to correct the use of nongovernmental email systems for official CSB communications.

In its February 2015 letter to the White House Counsel, the Chairman Stated, "All the individuals who are cited in the OIG's Memorandum of Report and Investigations of January 16, 2015, have zealously abided by the IG's email preservation recommendations since the OIG first made us aware of this issue," More recently, in fact just 2 days ago, on March 2, Inspector General Elkins received a letter from the Chairman saying that remedial actions have been taken at CSB. But we have yet to receive state-

ments from the Chairman, Mr. Loeb, and Mr. Horowitz, which was asked for in August 2014, certifying that they have fully complied with the OIG's request for documents.

During our investigation, a document requested—a document request to Mr. Horowitz turned up a nongovernmental email communication among him, Chairman Moure-Eraso, and Mr. Loeb, dated August 21, 2013. The date is relevant because it occurred after Mr. Loeb told congressional investigators in the OIG that the use of nongovernmental emails for official business had ceased. Further, we found emails between Mr. Loeb and Mr. Horowitz sent via nongovernmental email accounts pertinent to previously received allegations from a confidential source that a high-level employee in the Office of Special Counsel had compromised the identities of whistleblowers at the CSB.

We have an ongoing—we have ongoing audits on CSB contracts, purchase card improper payments, and CSB governance. A recent CSB Board abolished 18 Board orders, which eliminated internal controls that were being reviewed as part of an ongoing OIG audit. There are five CSB related OIG audit reports with open and unresolved recommendations. Agencies are supposed to be establish a resolution process for such situations. However, the CSB has never done so.

Today, I believe I have several areas of significant concern with regard to potential waste, fraud, and abuse as identified by the EPA OIG in our investigative and audit work.

Mr. Chairman, this concludes my prepared statement. My colleague, Kevin Christensen, our assistant inspector general for audit, and I will be prepared to answer any questions that you and the committee may have. Thank you, sir.

Chairman CHAFFETZ. I thank the gentleman.

[Prepared Statement of Mr. Sullivan follows:]

U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

The EPA OIG's Oversight of the U.S. Chemical Safety and Hazard Investigation Board

Statement of Patrick Sullivan
Assistant Inspector General for Investigations

Before the Committee on Oversight and Government Reform
U.S. House of Representatives

March 4, 2015

Statement of
Patrick Sullivan
Assistant Inspector General for Investigations
Office of Inspector General
U.S. Environmental Protection Agency
Before the
Committee on Oversight and Government Reform
U.S. House of Representatives
March 4, 2015

Good morning, Chairman Chaffetz, Ranking Member Cummings and members of the committee. I am Patrick Sullivan, Assistant Inspector General for Investigations for both the U.S. Environmental Protection Agency (EPA) and the U.S. Chemical Safety and Hazard Investigation Board (CSB). Thank you for inviting me to appear before you today.

I plan to discuss two matters relating to the CSB. The first is a report of investigation (ROI) that Inspector General Arthur Elkins sent to the President of the United States on January 22, 2015, addressing conduct by CSB Chairman Rafael Moure-Eraso and two of his senior staff members. On February 3, 2015, Inspector General Elkins reported the highlights of our ROI to this committee, and on February 24, 2015, this Office of Inspector General (OIG) provided a Privacy Act redacted version of the ROI for inclusion in the committee hearing record. The second matter that I will address relates to some of our work on governance issues at the CSB.

Overview of the EPA OIG

The EPA OIG is charged with conducting investigations and audits related to programs and operations at the EPA and the CSB. The EPA OIG operates with separate budget and decision-making authority from these agencies, and neither EPA nor CSB senior leaders may prohibit, prevent or obstruct us from conducting our work.

OIG's Report of Investigation on the CSB

First, I will provide a brief overview and timeline of the events that have led us to the present point concerning the CSB's document productions and its use of nongovernmental email systems for official communications. On or about February 6, 2013, the OIG received information alleging that CSB officials (Rafael Moure-Eraso, Chairman; Richard Loeb, General Counsel; and Daniel Horowitz, Managing Director) were conducting official CSB business via nongovernmental email accounts. During the course of this investigation, the OIG made requests to the CSB for communications pertaining to official CSB matters that were sent via nongovernmental email systems. The CSB declined to provide all of the requested documents and emails, and provided some documents and emails in a redacted form.

This refusal of access to the OIG constituted a "particularly serious or flagrant problem" under the Inspector General (IG) Act, and IG Elkins was therefore compelled to pursue the statutory remedy of issuing a "Seven Day Letter" to Chairman Moure-Eraso on September 5, 2013. The

CSB nevertheless again refused to provide the emails to the OIG. The CSB forwarded the IG's Seven Day Letter, along with the agency's response, to Congress, as required by the IG Act.

On June 19, 2014, this committee held a hearing on the foregoing and related matters. Following the hearing, the committee directed the CSB to turn over the emails, and the CSB subsequently provided the OIG with a number of responsive emails.

After receiving the additional and unredacted communications, my office completed its investigation and found information sufficient to support conclusions that Chairman Moure-Eraso, Mr. Loeb and Mr. Horowitz used private, nongovernmental email systems to communicate on CSB matters, and those communications were not preserved as official records. Further, our investigation found that Chairman Moure-Eraso and Mr. Loeb purposefully employed nongovernmental systems so that certain CSB business did not appear on CSB systems.

On January 22, 2015, the EPA OIG sent the above-referenced ROI (dated January 16) to the President via the White House Counsel. Though it is unusual to provide an ROI to the President, it was our only option because Chairman Moure-Eraso is a presidential appointee and effectively reports to no one else. On February 9, 2015, Chairman Moure-Eraso responded in writing to the White House Counsel concerning the ROI. We are currently waiting for the President's determination as to whether the CSB response is adequate or disciplinary action is warranted.

At various times, Chairman Moure-Eraso and Mr. Loeb both explained that, subsequent to their interviews by this OIG's investigators in March 2013, action was taken to correct the use of nongovernmental email systems for official CSB communications. In his February 9, 2015, letter to the White House Counsel, Chairman Moure-Eraso stated:

> All the individuals, [sic] who are cited in the OIG's "Memorandum and Report of Investigation" of January 16, 2015, have zealously abided by the IG's e-mail preservation recommendations since the OIG first made us aware of the issue (March 2013 . . .).

Additionally, on July 11, 2014, Mr. Loeb stated in an email to the OIG Counsel:

> Subsequent to the interviews of CSB staff with IG staff that were held in early March 2013, I advised the Chair and other staff to cease using non-government accounts for CSB business.

Further, Mr. Loeb stated to congressional investigators:

> After talking to the EPA IG, we switched everything over to the CSB account, so we do have that.[1]

[1] U.S. House of Representatives Committee on Oversight and Government Reform and the U.S. House of Representatives Committee on Science, Space, and Technology, *Whistleblower Reprisal and Management Failures at the U.S. Chemical Safety Board* (Staff Report), June 19, 2014 (p. 84).

A later EPA OIG request for documentation from Mr. Horowitz turned up evidence of nongovernmental email communication among Chairman Moure-Eraso, Mr. Loeb and Mr. Horowitz. The date of this email, August 21, 2013, is relevant because it was sent after Mr. Loeb had stated to both congressional investigators and the OIG that the use of nongovernmental emails for official business had stopped.

Further, a review of the documents provided by Chairman Moure-Eraso, Mr. Loeb and Mr. Horowitz disclosed emails that were sent between Mr. Loeb and Mr. Horowitz via nongovernmental email accounts. Those emails were pertinent to a previously received allegation from a confidential source that a high-level employee in the Office of Special Counsel (OSC) had compromised the identities of whistleblowers at the CSB. When the allegation of unauthorized disclosure of protected information to the CSB was made, the EPA OIG and the FBI opened a criminal investigation. However, once the U.S. Department of Justice's Public Integrity Section declined to prosecute, the FBI dropped out of the case.

On June 27, 2014, the EPA OIG provided relevant information to the U.S. Office of Personnel Management's (OPM's) OIG, which continued the investigation because the OSC does not have an assigned Inspector General and the OSC agreed to have the OPM OIG serve in that capacity. The OSC has stated to my office that upon the conclusion of the investigation, we will be made aware of the investigatory findings so that the EPA OIG can evaluate whether there has been any misconduct by CSB employees requiring further investigation by us.

In light of the executive leadership positions and public trust held by Chairman Moure-Eraso, Mr. Loeb and Mr. Horowitz within the federal government, on August 20, 2014, the EPA OIG requested that they complete a voluntary statement that they had fully complied with the OIG's requests for documents. Such a statement would provide Chairman Moure-Eraso, Mr. Loeb and Mr. Horowitz an opportunity to address and confirm the actions that they took to conduct searches on their nongovernmental email accounts and to ensure all official CSB communications had been retrieved and returned to the CSB records systems. As of this date, the EPA OIG has received no statement of compliance from Chairman Moure-Eraso, Mr. Loeb or Mr. Horowitz.

The CSB has provided documents and eliminated redactions at this committee's direction. However, because of the apparent inconsistency between the assertions of Chairman Moure-Eraso and Mr. Loeb, and the identification of later official email communication on nongovernmental email accounts, as well as the absence of a statement that articulates the specific corrective action they have taken, I still cannot report with confidence that the CSB has provided the OIG with all of the documents requested in Inspector General Elkins' Seven Day Letter.

Governance Issues at the CSB

Before I describe what we have learned about ongoing governance issues at the CSB, I would like to mention some of the audits that the EPA OIG has conducted regarding the agency. First, our Office of Audit is mandated to conduct several annual assignments:

1. Improper Payments
2. Federal Information Security Management Act Report

3. Financial Statements Audit (contracted)
4. Purchase Card Risk Assessment
5. Management Challenges and Internal Control Weaknesses

Besides these mandatory assignments, we conduct discretionary reviews of the CSB. Recent examples include:

- *Early Warning Report: Not Following Internal Controls Put Acquisitions at Risk*, October 29, 2015, Report No. 15-P-0007. The CSB did not implement internal controls designed to ensure that acquisitions (interagency agreements, contracts and purchase orders) over $50,000 receive board approval. We determined that more than $1.9 million in CSB acquisitions are at risk because the board did not approve the acquisitions.
- *U.S. Chemical Safety and Hazard Investigation Board Needs to Complete More Timely Investigations*, July 30, 2013, Report 13-P-0337. The CSB does not have an effective management system to fully accomplish its strategic objective and meet its performance goal to conduct and complete timely, high quality incident investigations and safety studies to determine the causes of chemical incidents.
- *Audit Follow-up Process Needed for the Chemical Safety and Hazard Investigation Board*, February 1, 2013, Report 13-P-0128. The CSB needs to develop and implement a follow-up system as required by OMB Circulars A-50 and A-123, including establishing a policy that identifies an audit follow-up official, roles and responsibilities, required documentation, and reporting requirements, to allow for prompt resolution of recommendations and implementation of agreed-to corrective actions.
- *U.S. Chemical Safety and Hazard Investigation Board Should Improve Its Recommendations Process to Further Its Goal of Chemical Accident Prevention*, August 22, 2012, Report 12-P-0724. The CSB did not consistently achieve its goals and standards, as outlined in its current strategic plan, for timely implementation of its safety recommendations.
- *Chemical Safety and Hazard Investigation Board Did Not Take Effective Corrective Actions on Prior Audit Recommendations*, February 15, 2011, Report 11-P-0115. The CSB did not take timely corrective actions to address audit recommendations.

Based on this completed audit work, we decided to conduct an audit examining more generally the governance issues at the CSB, including whether the CSB follows its own orders. The following audits of the CSB are ongoing:

- CSB Contracts: The objective is to determine whether the CSB effectively manages its contracts.
- CSB Purchase Card Risk Assessment and Compliance with Improper Payments: The objectives are to: 1) Perform a risk assessment of agency purchase card usage, as required by the Government Charge Card Abuse Prevention Act of 2012; 2) Determine compliance with the improper payments legislation for fiscal year 2014; and 3) Follow up on fiscal year 2013 Improper Payment Act audit findings and recommendations.

- CSB Governance: The objective is to determine if the CSB is following its internal controls through board actions. We are specifically reviewing the procedures governing leases and consulting contracts as well as a hotline allegation about Senior Executive Service recruiting actions. However, the OIG learned that a recent board vote abolished 18 existing board orders, thereby eliminating associated internal controls that were being reviewed as part of an ongoing OIG audit.

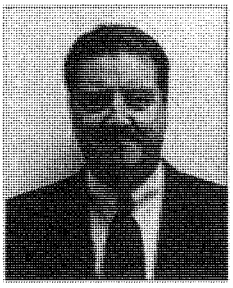
At this time, there are five CSB-oriented OIG audit reports issued between February 2011 and April 2014 with open or unresolved recommendations. The five reports collectively include 23 recommendations for improvement. Of those, seven recommendations have been closed. Eleven recommendations are still open, which means that the CSB agreed with the OIG's findings and is reportedly in the process of implementing corrective actions. Five are unresolved, which means that the OIG and the CSB are not in agreement. Under the Office of Management and Budget's Circular A-50 Audit Followup, agencies are supposed to establish a resolution process for such situations; however, the CSB has never established such a process, so "unresolved" findings remain as such.

Conclusion

I am here at the request of this committee to report on how the CSB has conducted itself in line with relevant laws and rules. Today I have laid out several areas of significant concern with regard to potential waste, fraud and abuse as identified by the EPA OIG in our investigative and audit work. While these may be tantamount to walking on quicksand, it is not the role of the EPA OIG to decide how the CSB conducts its business. It is up to Congress to judge whether appropriated money is being spent in the most economic, efficient and effective manner.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions that you or committee members may have.

Biography of Assistant Inspector General for Investigations Patrick Sullivan



Patrick Sullivan is the Assistant Inspector General for Investigations, Office of the Inspector General of the U.S. Environmental Protection Agency (EPA). He supervises the OIG's criminal investigative activities, including allegations of grant fraud, contract fraud, employee misconduct, threats directed against EPA officials and facilities, and other violations of federal law within the OIG's jurisdiction. He has more than 30 years of service in federal law enforcement with significant supervisory, administrative, intelligence, counter-terrorism and criminal investigative experience.

Prior to his appointment at the EPA-OIG, Mr. Sullivan served as a Deputy Assistant Director with the Transportation Security Administration's (TSA's) Federal Air Marshal Service. He supervised TSA's participation in the Joint Terrorism Task Force program, the Federal Air Marshals' intelligence program and the imbedding of Federal Air Marshals with the Federal Bureau of Investigation, the Central Intelligence Agency, Immigration and Customs Enforcement, and Customs and Border Protection. He also was responsible for supervising TSA's domestic and foreign law enforcement liaison activity.

Previously, Mr. Sullivan was an Assistant Director with the Government Accountability Office, Office of Special Investigations, where he worked on cases involving allegations of misconduct by high-level government officials as well as special investigations requested by congressional committees.

He spent more than 20 years in the U.S. Secret Service, where his last assignment was the worldwide supervision of counterfeiting investigations. He also was assigned to the U.S. Department of Justice, Organized Crime Strike Force, in Brooklyn, New York, where he worked cases targeting the traditional mafia crime families in New York City. Furthermore, he spent 4 years assigned to the Presidential Protection Division under Presidents Ronald Reagan and George H.W. Bush.

Early in his career, Mr. Sullivan worked for the FBI as an Investigative Assistant assigned to the surveillance of foreign intelligence officers engaged in suspected espionage and other intelligence activities directed against the United States.

He is a graduate of the John Jay College of Criminal Justice with a B.S. degree in Police Science and Criminal Justice. He is also a graduate of the Naval Postgraduate School, Center for Homeland Defense and Security, Executive Leadership Program and a member of the federal Senior Executive Service.

Chairman CHAFFETZ. We'll now recognize the gentleman from Michigan, Mr. Walberg for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman, and thank you to holding this hearing. It's important that the citizens of our great country, whether they agree or disagree with the policies that come from Congress or come from agencies, that they can expect that we play within—within the boundaries of the playing field using the rules of play. So I appreciate this—this hearing.

Mr. Sullivan, the EPA inspector general confirmed that Moure-Eraso, Loeb, and Horowitz violated the Federal Records Act. Are you certain that you've determined the entire scope of their use of private email accounts?

Mr. SULLIVAN. No, sir. We cannot be certain until we get a certification from each individual that they have complied with our request. They have not done so yet.

Mr. WALBERG. Well, based upon your investigation, were any other CSB employees or Board members involved in the use of private email accounts to conduct official business with Moure-Eraso, Loeb, or Horowitz?

Mr. SULLIVAN. Based on our investigation, we focused our inquiry on Mr. Moure-Eraso, Mr. Loeb, and Mr. Horowitz. On March 2, we received a letter from the Chairman indicating that additional CSB members had utilized private email accounts. This first came to our attention on March 2. And we are currently examining that information. And we intend to pursue further inquiries in that regard.

Mr. WALBERG. Have Moure-Eraso, Loeb, or Horowitz taken steps to ensure that their previous private email communications have been entered in the CSB records?

Mr. SULLIVAN. They have asserted that to us, sir. That's correct.

Mr. WALBERG. At this time——

Mr. SULLIVAN. But we have not confirmed that. That's what they've asserted to us, but we have not physically checked to ensure that those records are preserved, but we intend to do so.

Mr. WALBERG. OK. Mr. Moure-Eraso, have you taken steps to include all private email communications that you used to conduct official CSB business into the Federal record?

Mr. MOURE-ERASO. Yes. In February of this year, we received a letter from the White House in which they—they say that if—excuse me. Let me start again.

We believe that, at this time, we are in compliance with all regulations and with all the requests of the IG. All relevant emails have been transferred to government servers for recordkeeping. I certify my own certification in July of last year, 2014, and after reviewing——

Mr. WALBERG. Dr. Moure-Eraso, let me make it very clear, under oath, you are stating this——

Mr. MOURE-ERASO. I can send you to a letter that I sent through email in which I made the certification. If you want, I can quote it from it. It's right here. My letter say to Mr. Elkins, July 15, 2014, last two paragraphs: Accordingly, I believe that all documents requested by your office covering the period to January 2012 to the present have been fulfilled. The CSB chief information officer was responsible for conducting and overseeing these searches,

and based on his assurances and to the best of my knowledge and belief, the documents provided to your office satisfy all outstanding requests concerning this matter.

This was submitted to Mr. Elkins in July 15, 2014.

Mr. WALBERG. Let me move further on this. Is—is—you indicated that your personal email account to seek—was used to seek Mr. Loeb's legal opinion on draft communications as part of the communication that you had. Is that the only subject matter contained in these emails?

Mr. MOURE-ERASO. There were some other subject matters. We used to use the Gmail to transmit publications in which the CSB were mentioned. We discovered the publication, and I will send him a copy to——

Mr. WALBERG. Well, did—did you in fact use a personal email address to conduct almost all CSB business that involved Loeb and Horowitz?

Mr. MOURE-ERASO. That is not correct, no. That is not the case.

Mr. WALBERG. Mr. Sullivan, what is your understanding of the subject matter of emails exchanged between Moure-Eraso, Loeb, and Horowitz that violated the Federal Records Act.

Mr. SULLIVAN. There were numerous discussions of CSB business, which should have been covered under the dot-gov email accounts. Specifically, though, the issue of the compliance that we requested, we sent a request from Mr. Horowitz, Mr. Loeb, and Mr. Moure-Eraso to fill out a form. It's a statement of compliance, and we asked them to certify that they completed the correct record searches using correct search terms and that they've searched their private email accounts. We've yet to receive this document back certifying that they've done that.

Mr. WALBERG. Is that the document that Mr. Moure-Eraso referred to?

Mr. SULLIVAN. No, he sent a letter saying that he searched the records, but neither of the three gentleman we've requested have submitted this document to us specifically stating exactly the methodology they used to conduct the searches. That's what we need to certify that they're in compliance.

Mr. WALBERG. OK. Thank you.

My time is expired.

Chairman CHAFFETZ. Thank the gentleman.

Now recognize the gentlewoman from Illinois, Ms. Kelly for 5 minutes.

Ms. KELLY. Thank you, Mr. Chair, and I thank you and the ranking member for holding this hearing. Since 2010, the Federal Employee Survey results indicate dissatisfaction with the governance of CSB by senior management. CSB ranks near the bottom in a comparison of very small agencies with a high percentage of staff reporting that they would not recommend the CSB as a good place to work.

Mr. Chairman, are you aware of these survey results?

Mr. MOURE-ERASO. Yes, Congressman, I am aware.

Ms. KELLY. In September, 2014, CSB commissioned a study by Vantage Human Resource Services to help the agency address its challenges. Is that correct?

Mr. MOURE-ERASO. That is correct.

Ms. KELLY. And, in February 2015, you received a report in which Vantage provided its findings. We obtained a copy of this report. And I would like to walk through them. One of the findings was that 47 percent of CSB employees felt that senior leadership discouraged dissenting opinions.

Mr. Chairman, are you aware that nearly half of your employees don't feel as if they can disagree with the agency's position on issues without retaliation?

Mr. MOURE-ERASO. That's what the survey seemed to imply, yes.

Ms. KELLY. Excuse me?

Mr. MOURE-ERASO. That's what the survey seems to indicate.

Ms. KELLY. This concern was raised last June by former Board Member Beth Rosenberg, who said, "Those whose opinions differed from those of senior leadership are marginalized and vilified. At the CSB, disagreement is seen as disloyalty, criticism is not welcome, and staff fear retaliation."

Do you disagree with the results of this survey, Mr. Chairman?

Mr. MOURE-ERASO. I don't disagree with the results of the survey, but I disagree with the statements that you mention from the former Board member.

Ms. KELLY. OK. Why do you disagree?

Mr. MOURE-ERASO. Because I think that people have the option in the agency to express their views and to discuss it with everybody. That has been my policy.

Ms. KELLY. But you did say you agree with the—or you had the results of the survey. So the employees don't seem to agree with—that—they don't seem to feel free to be able to express themselves by the results of the survey.

Mr. MOURE-ERASO. Yes. I think that the employee—the employees disagree with my view.

Ms. KELLY. The report also finds that 60 percent of the employees felt that there was a lack of accountability and a lack of follow-through by senior leadership. Were you aware of that?

Mr. MOURE-ERASO. This says that. Also I would like to say that the report said that 70 percent of the people agree that they feel that they are accountable for achieving results and also that there have been 20 percent improvement since 2013 of more than two-thirds of the issues that were raised in the survey.

Ms. KELLY. OK. In addition, 80 percent of employees felt that conflict among Board members is having a negative impact on the agency.

Mr. Griffon, you have served for nearly 5 years now. Do you agree with this finding, and if so, why?

Mr. GRIFFON. Yes, I do agree with this finding. Thank you for the question. I think that the conflict on the Board—when Board orders are continuously violated and the Board is circumvented, it creates conflict on the Board. And it has resulted in staff concerns. And I shared—I think some Board members, including myself, shared the frustration of the staff that we can't work as a unit, work as a full Board. This frustration forced Dr. Rosenberg to leave after 17 months.

Ms. KELLY. OK. Thank you.

Mr. Chairman, you wrote a letter to the IG 2 days ago requesting investigation into potentially inappropriate communications and interactions by CSB employees with Vantage. Is that correct?

Mr. MOURE-ERASO. That's correct, yes.

Ms. KELLY. Is it fair to say that you do not agree with the conclusions about CSB senior management?

Mr. MOURE-ERASO. I am open about the conclusions of Vantage, but what I discovered is that the report itself have been compromised by two CSB senior members. They seem to have influenced the contractor to insert critical language that they theirselves have written and eliminated the language that where the consultants believe that CSB was making progress. This make it appear that the consultants were highly critical of senior leadership. They did this in secret and told the contractor to keep it confidential. I have requested that the IG investigate this contractor relationship that seems to be compromised and that seems to me that loses the integrity of the results.

Ms. KELLY. I have one more question so let me get my question in. Mr. Griffon, is there an example of how employees who express opinions that are different from or critical of senior management are treated?

Mr. GRIFFON. Yes. I think one—one obvious case involved a safety case recommendation that was made and discussed in the Chevron report in California, and there are many staff that felt at—felt as though it needed further examination as I do, and they felt strongly that if they brought that up, that was disloyalty, and they just were hushed essentially.

Ms. KELLY. Thank you, and thanks for being here.

Chairman CHAFFETZ. Thank you.

And I'll recognize the gentleman from South Carolina, Mr. Gowdy for 5 minutes.

Mr. GOWDY. Thank you, Mr. Chairman.

Dr. Moure-Eraso, in June 2014, you had been sworn and were asked a series of questions by our chairman, one of which was, have you ever used personal email for official business or communication? And, again, under oath, Dr. Moure-Eraso, your answer was, Well, yes, out of ignorance.

What was the source of your ignorance?

Mr. MOURE-ERASO. Well, what I found when I get into the agency is that it was a normal custom that——

Mr. GOWDY. Who did you—who told you that with specificity?

Mr. MOURE-ERASO. Well, I use—saw the experience that everybody used Gmail for certain communications.

Mr. GOWDY. Everybody?

Mr. MOURE-ERASO. Everybody that communicated with me, yes.

Mr. GOWDY. Did you—did you consult any manuals? Did you seek any legal guidance as to whether or not that was in compliance Federal Records Act?

Mr. MOURE-ERASO. My understanding at the time is that communications through Gmail were acceptable and——

Mr. GOWDY. Well, good. I'm glad you brought that up because your answer continued, At the beginning of my tenure, I used to write drafts or positions.

When did your tenure begin, Dr. Moure-Eraso?

Mr. MOURE-ERASO. In June 2010

Mr. GOWDY. So the beginning of you tenure would reasonably be construed as what? Since you answered under oath that you limited yourself to using personal email during the beginning of your tenure, what's a reasonable understanding of the beginning of your tenure?

Mr. MOURE-ERASO. I told you, June 2010.

Mr. GOWDY. Six months? 12 months?

Mr. MOURE-ERASO. Three months.

Mr. GOWDY. Three months. So your testimony is you did not use personal email more than 3 months after the beginning of your tenure, which would be in 2010?

Mr. MOURE-ERASO. No, that is not my answer. What I did——

Mr. GOWDY. Well, I'm reading—I'm reading your answer, and your answer was, At the beginning of my tenure, I used to write drafts or positions.

Mr. MOURE-ERASO. Yes, right. That is——

Mr. GOWDY. Did you ever use—did you ever use personal email after the beginning of your tenure, which you defined as 3 months?

Mr. MOURE-ERASO. When I was notified by my——

Mr. GOWDY. I really have——

Mr. MOURE-ERASO [continuing]. Counsel that this was not a good recordkeeping practice——

Mr. GOWDY. I really am——

Mr. MOURE-ERASO [continuing]. I stopped doing it.

Mr. GOWDY [continuing]. Looking for a yes or no answer initially, and then you are welcome to explain. Did you use personal email after you had been on the job 3 months?

Mr. MOURE-ERASO. Probably yes.

Mr. GOWDY. Probably yes or yes?

Mr. MOURE-ERASO. Yes. I mean——

Mr. GOWDY. OK.

Mr. MOURE-ERASO. I didn't know that I couldn't.

Mr. GOWDY. See there, that wasn't that complicated. The answer is yes.

Mr. MOURE-ERASO. Yes. I did know——

Mr. GOWDY. The answer is yes.

Mr. MOURE-ERASO [continuing]. I did recognize that it was not a good recordkeeping practice.

Mr. GOWDY. And then you went on to say——

Mr. MOURE-ERASO. It was pointed out to me, and I ceased to do this.

Mr. GOWDY. The court reporter is going to have enough trouble without us talking over each other, Dr. Moure-Eraso.

You also said that you used to write drafts or positions before I would put it as, and then you were cutoff. Did you ever use personal email to do anything other than write drafts or positions?

Mr. MOURE-ERASO. Yes, I transmitted——

Mr. GOWDY. All right. So that answer that you gave to Chairman Chaffetz was incorrect in multiple ways. First of all, you did use it at the beginning of your tenure, and secondarily, you did use it for more than just drafts or positions.

And then the chairman said, When is the most recent time that you used your personal email?

And I found this answer instructive. You said, We stopped the practice. Who is "we"?

Mr. MOURE-ERASO. Well, the people that I write emails to and people that write emails to me, so——

Mr. GOWDY. Does "we" include you?

Mr. MOURE-ERASO. Of course.

Mr. GOWDY. So your testimony would have been that I stopped that practice about a year and a half ago. If "I" is included in the word "we," then your answer was, I stopped that practice about a year and a half ago.

Mr. MOURE-ERASO. I don't know the exact date as you are asking for, but yes, I stopped the practice.

Mr. GOWDY. I'm—I'm looking at your exact testimony. That's what I'm looking at. And you said——

Mr. MOURE-ERASO. I don't know——

Mr. GOWDY [continuing]. You stopped it——

Mr. MOURE-ERASO [continuing]. The exact day.

Mr. GOWDY. You said you stopped it a year and a half prior to when Chairman Chaffetz asked you about it. Do you agree that a common understanding of a year and a half would be 18 months? Is that a common understanding of a year and a half? Do you disagree that a year and a half would be 18 months, Dr. Moure-Eraso?

Mr. MOURE-ERASO. Mr. Congressman, I cannot tell you an exact day. I'm sorry.

Mr. GOWDY. Well, you gave Chairman Chaffetz an exact date under oath.

Mr. MOURE-ERASO. I said——

Mr. GOWDY. Under oath you said a year and a half ago——

Mr. MOURE-ERASO. I said at the beginning of my tenure.

Mr. GOWDY. I've moved on to another question, Dr. Moure-Eraso.

I've moved on to the second question and your second answer, which was we stopped that practice about a year and a half ago, and what I find vexing, Doctor, is this was testimony in June 2014, so a year and a half ago would have been some time in early 2013. And here I am looking at personal emails you sent in August 2013, well within a year of when you gave that testimony to Congressman Chaffetz.

Can you understand why we would be troubled by your previous testimony, Dr. Moure-Eraso? I just cited four instances in which it was factually deficient.

Mr. MOURE-ERASO. If you look at the email that you are referring to——

Mr. GOWDY. I'm looking——

Mr. MOURE-ERASO. It's simply the transmission of an article that appeared in the press.

Mr. GOWDY. Dr. Moure-Eraso, I am looking at your prior testimony. That's what I find vexing and alarming is your prior testimony to the chairman of this committee.

Mr. MOURE-ERASO. Well, I accept it. I made mistake probably in address, and rather than using the CSB mail, by a mistake, I sent it a Gmail with a copy of an article that appeared in a newspaper.

Mr. GOWDY. Well, I agree you made a mistake, but my main concern is that you made a mistake when you were testifying before this committee.

And with that, I would yield back to the chairman.

Chairman CHAFFETZ. The gentleman yields back.

I now recognize the gentleman from California, Mr. Lieu, for 5 minutes.

Mr. LIEU. Thank you, Mr. Chair.

I'd like to discuss the motion that was approved at the January 28 public meeting convened by the CSB in Richmond, California. Eighteen of the agency's orders relating to personnel, contracting, budgeting, and general administration of the Board were rescinded, including Board Order 28. Mr. Chairman, is that correct?

Mr. MOURE-ERASO. Yes, it is.

Mr. LIEU. OK. The motion eliminated the Board approval regarding the hiring of senior staff, selection of members of the Senior Executive Service, and spending above $50,000. Mr. Griffon, Mr. Engler, is that your understanding as well?

Mr. GRIFFON. Yes, that is.

Mr. LIEU. All right. So I'm going to read to you a quote in the National Journal article by William Wright, a former Board member, who Stated, It looks like a takeover of the agency. Early on, the agency had some really rough roads because we were fighting over authority, but we tried to balance that. You're basically now handing it over to one person.

Mr. Griffon, Mr. Engler, would you agree with that statement?

Mr. GRIFFON. Yes, I would agree with that statement.

Mr. ENGLER. Yes, I would.

Mr. LIEU. And you agree this is essentially a power grab by the Chairman, correct?

Mr. GRIFFON. Yes. Yes, I agree it's to restore power—or put power in the Chair and take it away from the overall Board, yes.

Mr. ENGLER. Yes.

Mr. LIEU. OK.

And, in 2000, the Department of Justice Office of Legal Counsel opinion agrees with you, and it States, "The day-to-day administration of Board matters and execution of Board policies are the responsibilities of the Chairperson subject to Board oversight."

In addition, the Carden Group, a consulting firm hired by CSB to help agency address internal challenges also believed that Board oversight or governance was critically important. A report from that firm said, Restoring Board governance to ensure functionality to the Board is ultimately—and ultimately at CSB is mandatory.

Mr. Griffon, Mr. Engler, do you agree with both of those statements?

Mr. GRIFFON. Yes, absolutely. I think this—the motion removed many important checks and balances, and I absolutely agree.

Mr. ENGLER. I agree as well.

Mr. LIEU. Dr. Moure, you asked earlier—at the beginning of this hearing, you opened up by saying, I will start by frankly acknowledging that a number of members of this committee have been critical of my Chairmanship of the CSB. I was humbled by the message that I heard loud and clear during your hearing 8 months ago in June.

I don't believe you. A person who has been humbled would not, about a month and a half ago, have consolidated power on the Board. When someone's embattled, when someone has shown dys-

functional leadership, they don't consolidate power. That is what dictators do. It's not what public officials in America do.

Mr. LIEU. I do not understand why you would look at taking that action when none of the recommendations of Congressman Waxman or of this committee anywhere would say, hey, we've got a dysfunctional CSB, we've got a chairman that has violated laws and regulations, and the solution to that is for the chairman to consolidate power. That makes absolutely no sense.

Mr. MOURE-ERASO. If I may——

Mr. LIEU. No. I will ask you a question, and then you can answer.

Mr. MOURE-ERASO. OK. Well, do you want——

Mr. LIEU. Are you aware that on February 18 there was an explosion at the Torrance ExxonMobil refinery in my district? That's a question to you, Mr. Chairman.

Mr. MOURE-ERASO. Oh, that's the question, yes. Yes, I was I aware of that explosion, yes.

Mr. LIEU. And what are you all doing about it?

Mr. MOURE-ERASO. We—as we normally do when there are serious chemical explosions, we convened what we call a deployment meeting, in which we collect information about the particular incident. We poll the senior department directors on the information that we have. We use an algorithm to put a number that will define the seriousness of the consequence of the accident. And based on all those inputs, we make a decision if we are able to deploy or not to a particular accident.

And we went through all that process in Torrance.

Mr. LIEU. And what's a timeline for that?

Mr. MOURE-ERASO. The timeline is within 24 hours of the accident.

Mr. LIEU. And then have you shared what your conclusions were after 24 hours?

Mr. MOURE-ERASO. The conclusions of the deployment meeting was that, even though that was an important and serious accidents, that we didn't have the resources to deploy, and we didn't deploy.

Mr. LIEU. OK. I will followup with the CSB on that issue.

And then let me close by saying that, again, I am deeply troubled not only by your desire to consolidate power at the Board but also by the method in which you chose to do so, by intentionally ramming this through even though you had another Board member coming up who could have voted on this.

Mr. MOURE-ERASO. Mr. Congressman——

Mr. LIEU. I yield back.

Mr. MOURE-ERASO. Mr. Congressman, if I might—if I may, these changes that happened in January the 28th were not for me. I have a few weeks left. They were put on the Board after 4 1/2 years of discussion of what is the way that governance will work on the Board. And they were put in place and voted in there by the new Board member—were proposed by a new Board member and supported by me to establish clear lines of authority and to put the way that the agency functioned to make it compatible with Federal law.

We cannot have Board orders that are incompatible with Federal law. The objective is to put them in line with the National Transportation Safety Board—that we did—and to have a system that is—a system that is—that follows a model—that is, the National Transportation Safety Board—and that will work for the future. This is for the future.

If there is any idea from other Board members that this is not acceptable or it is not useful, of course they have the opportunity to propose a motion and to try to change it whenever they want. They have 5 years to do it.

Chairman CHAFFETZ. Mr. Lieu, go ahead. I recognize you for additional time if you so need it.

Mr. LIEU. I think my point has been made. Thank you.

Chairman CHAFFETZ. I'd like to interject here and ask a question as to why, then, didn't you publish this in advance of the meeting?

Mr. MOURE-ERASO. I have been discussing the government issue with Mr. Griffon for 4 1/2 years. As a matter of fact, for a year, we discussed what should be the Board's roles and responsibilities. And——

Chairman CHAFFETZ. OK. Let's get——

Mr. MOURE-ERASO [continuing]. We're proposing a Board order that we agree on, that we're going to vote on, and then he voted "no" on it. And this discussion continued for a year.

Chairman CHAFFETZ. Let's get Mr. Griffon's opinion of this perspective.

Mr. Griffon?

Mr. GRIFFON. Yes, thank you, Chairman.

It is true, we've talked about the exchanges for quite some time, and we grappled with the changes to Board Order 28 and additional Board orders on roles and responsibilities. And, at the end of the day, changes were not acceptable to me, and Mr. Bresland asked for calendaring the motion. Later, when Dr. Rosenberg was on the Board, it was the same situation.

So we did grapple with those changes, but instead of voting and trying to fix them through a vote, they continued to work around and circumvent the Board orders, leading up to this final surprise vote in California.

Chairman CHAFFETZ. When you say "surprise," what do you mean, "surprise?"

Mr. GRIFFON. I mean "surprise" in that, the night of the vote, I listened to the motion be read into the—at the end of a Chevron report, Mr. Ehrlich was recognized to make a motion. He read a summary of the motion. Subsequent to that, they handed me a 22-page package. It was the first time I saw that.

Chairman CHAFFETZ. We'll now recognize the gentlewoman, unless Mr. Lieu—unless you—or Mr.——

Mr. CUMMINGS. Mr. Chairman?

Chairman CHAFFETZ [continuing]. Cummings?

Mr. CUMMINGS. Mr. Engler, what do you want to say?

Mr. ENGLER. Thank you.

I think the issue of governance is a major central issue to the future of the Board. It's the bedrock upon which decisions are made. It will determine the nature of the recommendations. It can affect, certainly, key staffing.

And what I would like to see, moving forward, in addition to retraction of the in-the-night action in Richmond, is a look at can the Board policies and procedures be done by regulation.

The CSB is not a regulatory agency, but it does have the ability to issue regulations to govern its own conduct. And I would suggest—and I have to say that I have to consult with more people about whether this is really a good idea—that if it was done by a regulation, there would be an opportunity for advance notice, there would be an opportunity for public comment, there could be an opportunity for a public hearing of industry, labor, environment, academic stakeholders.

And so the outcome of such could be that we have rules that last beyond one particular chair, whether they are nominated by a President from one party or another, that would have lasting value. And I think that would help the credibility of the Board and stabilize the Board moving forward.

Chairman CHAFFETZ. Thank you.

Now recognize the gentlewoman from Wyoming, Ms. Lummis, for 5 minutes.

Mr. EHRLICH. Mr. Chairman, may I say a few words?

Chairman CHAFFETZ. No. We're going to recognize the gentlewoman from Wyoming now.

Mrs. LUMMIS. Thank you, Mr. Chairman.

I want to followup on Mr. Lieu's line of questioning.

Mr. Ehrlich, why did you put forth, as part of that late-night motion in California, why did you move to close out pending investigations at Silver Eagle and CITGO and Horsehead?

Mr. EHRLICH. Based on the information that I was given, we had done just about all we could do there. If——

Mrs. LUMMIS. Who provided you——

Mr. EHRLICH. Well, I'd——

Mrs. LUMMIS [continuing]. With that information?

Mr. EHRLICH [continuing]. Talked with the staff.

Mrs. LUMMIS. So the staff told you, "We're done"?

Mr. EHRLICH. Well, they had put out several reports. One of the—one of the instances had to do with technology that no one in the United States even used anymore.

Mrs. LUMMIS. So why a late-night motion that wrapped a whole bunch of Board procedures, chairman duties in with this?

Mr. EHRLICH. For the same reason I made the motion concerning the Board orders. This was tagged onto it. My primary objective was to clean the slate so that, when Mr. Engler and myself remain after June, we have a clean slate to deal with. We can go back and put any Board order or rewrite any Board order.

And, in fact, of the 18 Board orders that were rescinded, 3 of them hadn't been used in years, 10 of them were inaccurate, 3 of them were obsolete, and 1 of them conflicted with the GSA's travel policy. We are in the process of putting four Board orders in place at this time to correct some of those deficiencies.

There is nothing to say that we can't go back and put in place the correct Board orders. We can look at issues around those three particular accidents that had been closed out. But, at that point in time, we had spent a lot of data on it—a lot of time on it. And most

of the people who were involved were not involved in—were not available anymore——

Mrs. LUMMIS. OK.

Mr. Moure-Eraso, did you agree with this, this closing out the pending investigations?

Mr. MOURE-ERASO. Yes, I did. We——

Mrs. LUMMIS. OK.

So, Mr. Griffon——

Mr. MOURE-ERASO. We have——

Mrs. LUMMIS [continuing]. Did you agree?

Mr. MOURE-ERASO. If I can explain to you——

Mrs. LUMMIS. I'm sorry. You just said yes. I got my answer.

Mr. MOURE-ERASO. Yes. You know we have——

Mrs. LUMMIS. Mr. Griffon, did you agree with closing out those investigations?

Mr. GRIFFON. No, I didn't agree. And, in fact, we had an action plan submitted to the Board, a draft action plan, in November that had actually incorporated all three of these as being part of our actions going forward.

Mrs. LUMMIS. So what are the implications of closing these out without the effort to go forward?

Mr. GRIFFON. Well, I think the implications are that what we've issued so far are just—one of them is a metallurgical report and the others were urgent recommendations, which I supported, for CITGO, but it doesn't allow—it didn't allow for the full assessment that our kind of investigations would do to look at the higher-level causes of an incident.

And that's what the stakeholders are interested in. They don't want to know just why the metal failed; they want to know what caused it to get in that State in the first place.

Mrs. LUMMIS. So do you believe these investigations were closed because investigators have left the agency? Or did that have nothing to do with it?

Mr. GRIFFON. I believe that these were old investigations, and some of the investigators did leave the agency, yes. But there was a lot of work that went into these, I think overall 800-and-some-thousand dollars put into these three investigations, so I was at least interested in hearing more about what could be done with these cases with our current investigative team. They can certainly pick up the evidence that's there and work with it.

Mrs. LUMMIS. And do you think that that evidence might have a bearing on public safety, they might inform or instruct public safety in the future?

Mr. GRIFFON. Oh, absolutely. And I think, you know, that's why we do this work. It's not simply to know why the piece of metal failed. The stakeholders want to know more, and that's what we can provide.

And for the two investigations, even the fact that some investigative staff had left, CITGO and Silver Eagle, they were put into the action plan as part of an overall refinery study. And I thought that could be a reasonable option since we maybe can't do full reports on those investigation. We don't want to lose those issues; they are very important. After this meeting, the action plan was updated to eliminate the refinery study and those investigations.

Mrs. LUMMIS. Mr. Engler, any idea why this—why eliminate this?

Mr. ENGLER. I'm not precisely sure. In fact, I wanted to have a meeting tomorrow afternoon, because one of the problems of being a new Board member in this environment is complete confusion——

Mrs. LUMMIS. Yes.

Mr. ENGLER [continuing]. About what decisions have been made, the difference between an investigation—an investigation that morphs into a study that changes into an industry-wide study that might be related to a conference. I mean, figuring out what clear decisions have been made is a moving target.

Mrs. LUMMIS. Yes. I think——

Mr. ENGLER. And that's been one of my challenges as a new Board member, and I'm finding it, frankly, very difficult.

Mrs. LUMMIS. Yes. We share your frustration.

Thank you, Mr. Chairman. I yield back.

Chairman CHAFFETZ. Thank the gentlewoman.

We'll now recognize the gentleman from California, Mr. DeSaulnier, for 5 minutes.

Mr. DESAULNIER. Thank you, Mr. Chairman. And I want to thank you for this hearing, and the ranking member. And I particularly want to thank you for the title of the hearing, "Rebuilding the Chemical Safety Board," because I think the Board is important.

To the Chairman, I take extreme exception to your comments in your opening remarks, having been a State and regional regulator in California, that you would suggest that California, because of your actions, are adding to regulations.

And, as you know in our conversation, I tend to agree with you that we should look at adopting a safety-first culture that they have in Europe. And when I was in the legislature, because of a hearing in Chevron, which is in any district, in Richmond, I looked at that, but because of the dysfunction of this agency, it was recommended to me that I withhold that legislation.

So I had staff members in the meeting in Richmond City Hall that you all talk about. In the last 24 hours, I've had continued conversations with State and regional local regulators who were there, who used words to describe the events after you had the recess as "incredulous" and "embarrassing," as the actions of the Board, and that the motion was "inaudible."

So, Mr. Griffon and Mr. Engler, this action was taken, was it not, because Mr. Engler had been confirmed by the Senate and was due to join the Board so that the majority, in this instance, would not have been able to pass the motion once Mr. Engler joined the Board at a subsequent meeting? Is that not why it happened, in your view?

Mr. GRIFFON. In my view, it would seem to be the case, yes. And I made a motion to table based in part on that fact.

Mr. DESAULNIER. So I just want to read for you a quote that's been publicly put out by a former Board member during both the Clinton and George W. Bush Administrations in this regard. "The action seemed to stick its finger in the eye of the Senate."

Would you agree with that, Mr. Engler, given that you were already confirmed and because of personal reasons you couldn't join the Board for the meeting in Richmond?

Mr. ENGLER. Yes.

Mr. DESAULNIER. Another quote from a former CSB member in regards to your actions by—William Wright is the former CSB member. "They basically"—talking about the majority—"highjacked the agency," said former member William Wright. "They did it surreptitiously and with forethought. They didn't announce this major, sweeping change in advance of the meeting. Then, all of a sudden, 22 pages of changes take place." The motion canceled unfinished investigations into three major investigations.

And a comment from an employee representative said this resulted in "missed opportunities like this"—in this action—"truly putting workers and the public at risk.

Would you agree with those quotes, Mr. Engler and Mr. Griffon?

Mr. GRIFFON. Yes.

Mr. ENGLER. Yes.

Mr. DESAULNIER. Mr. Chairman and Mr. Ehrlich, when we had our conversation yesterday, I said I would be amongst your staunchest supporters when you're right, but when you're wrong, as somebody who believes in this and has been, as I said, a regulator—and Mr. Lieu and I have within our districts the preponderance of the capacity for refining in the State of California.

In my county, we have the highest concentration of chemical and refinery facilities and hazardous materials in the State of California. It's in, I believe, the fourth-largest metropolitan area surrounded by urbanized areas. I, for one, want those facilities to work and work successfully. They are continuously amongst the 10 largest taxpayers. Their multipliers are huge. I've had somewhat of a love-hate relationship with the regulated community, but they respect me and I respect them, and I don't want them to leave.

Effective enforcement is very important. We're proud of what we do in the bay area. I can't say that I'm proud of what this Board does. It's very clear, sitting here, that this is a dysfunctional agency. Usually, you have to scratch around a little bit to find arrogance and incompetence, but, in this instance, it's right out in the daylight.

And I apologize if that appears harsh, but what good would it do the agency or the public—and, Mr. Ehrlich, your comments about going to funerals, those are heartfelt. As you know, I have had to attend funerals of constituents, one of who was eviscerated, four who were burned in a very, very hard, emotional incident for the bay area. Both resulted in economic downturns for the bay area—not downturns, but they had a significant impact because of the importance of the refining capacity.

So I am at a complete loss as to why, when you tell me—and you just said you only have a few weeks, but, in effect, you have a few months. When I read the Vantage report, which I think is terrific—your last, as was said by a colleague—and viewed incomparable agencies—and you've actually gone down in the last year in terms of confidence of your employees. I look at the vote as 80 percent of the people directed at leadership as being dysfunctional as a vote

of no confidence. Normally, when you get an 80 percent vote of no confidence, you leave.

You can leave with dignity. You've had a long career. It would be my personal suggestion, having had a long time in regulatory affairs at refineries, and my ask of you personally that you resign as soon as possible. I see no possible good for you personally, the agency, or the people we serve for you to serve one more day.

So, for me—and, Mr. Chairman, again, I appreciate your having this hearing.

But for the sake of the people we serve in a bipartisan fashion, I wish we would begin to rebuild this agency, and the only way to do that, with all due respect to the Chairman and Mr. Ehrlich, is to get your resignations as soon as possible.

Thank you, Mr. Chairman. I yield back.

Mr. MOURE-ERASO. May I respond——

Chairman CHAFFETZ. Thank you.

Mr. MOURE-ERASO [continuing]. To the Congressman?

Chairman CHAFFETZ. No.

The gentleman's time is now recognized for Mr. Meadows of North Carolina.

Mr. MEADOWS. Thank you, Mr. Chairman, and I thank you for holding this hearing.

And I must confess, when I saw the topic of the hearing, I was a little surprised, Mr. Chairman, that we would be having some of these same people come back before Oversight on the very same issue. And I don't know if, perhaps, Mr. Chairman, that they didn't take the suggestions that you and others had made earlier, but I'm really confused as to why we would not have addressed those.

So, Mr. Sullivan, I'm going to come down to you because I know your credentials as an investigator are impeccable. And I thank you for your work.

And it's my understanding that you sent a report based on the investigation to the White House. Is that correct?

Mr. SULLIVAN. Yes, sir. Yes, sir.

Mr. MEADOWS. And have you received any response from the White House regarding your report on the use of private emails?

Mr. SULLIVAN. The White House Counsel has communicated with our counsel, saying it was received. And the Counsel's Office in the White House forwarded it on to Dr. Moure-Eraso for his reply, and we've received Dr. Moure-Eraso's reply.

We've had no further communication from the White House, whether or not disciplinary action is planned.

Mr. MEADOWS. But they are engaged with you?

Mr. SULLIVAN. Yes, sir.

Mr. MEADOWS. OK.

So, Dr. Eraso, have you had discussions—obviously, you've replied. Have you had discussions with the White House regarding this report?

Mr. MOURE-ERASO. Yes, I have. I have——

Mr. MEADOWS. So have you defended your actions?

Mr. MOURE-ERASO. I have, to tell them that we have immediately responded to the IG request and provided them with their request and that we have—we are in compliance with the rules

that were passed in terms of how to use nongovernmental mail that were passed by this committee and——

Mr. MEADOWS. So you've said that you've complied with this committee?

Mr. MOURE-ERASO. Absolutely.

Mr. MEADOWS. Well, now, I'm a little troubled with that, because the chairman and Mr. Gowdy both have indicated that some of your testimony here before us before is not consistent with your actions. Would you agree with that statement? That you make one statement here before us and do something else. Let me make it clear.

Mr. MOURE-ERASO. I agree there is a confusion about some dates about when these things happened. But I can tell you that all the nongovernmental emails that were produced by me and by staff and by two Board members, all those emails have been transferred—I mean, for one thing, have been kept in the server and are available for——

Mr. MEADOWS. So you've given all those to the Inspector General's Mr. Sullivan?

Mr. MOURE-ERASO. They——

Mr. MEADOWS. Yes or no?

Mr. MOURE-ERASO [continuing]. Are right here. They are right here. I informed to them that they have been put on the server and they are available.

Mr. MEADOWS. I don't care about the server. I care about getting them to Mr. Sullivan and this committee. Do I have your commitment today that you're willing to give them to Mr. Sullivan and this committee, every one of them?

Mr. MOURE-ERASO. Absolutely. They are right here.

Mr. MEADOWS. But do you understand that you've violated the Federal Records Act, you've violated the law? Do you understand that?

Mr. MOURE-ERASO. The law——

Mr. MEADOWS. By using your personal email.

Mr. MOURE-ERASO [continuing]. As far as I understand it, was passed in November 2014. Immediately, as I was made aware of that law, I——

Mr. MEADOWS. No, the Federal Records Act is not a 2014 initiative. You know, being able to keep and use your personal email, did you not know that that was illegal?

Mr. MOURE-ERASO. My understanding is that the Federal Records Act before 2014 was silent about nongovernmental emails.

Mr. MEADOWS. Well, is silent about you not losing your job. We have a piece of legislation that maybe we have to address that.

So what do we tell the people where you've used your personal email to keep control and take advantage of those employees that are hardworking employees, some of which the ranking member has identified, some of which are reaching out to us as whistleblowers? What do we tell those employees?

Mr. MOURE-ERASO. Well, I disagree with your premise that the objective of using those emails was to oppress people or all the other things that you are saying that had happened. The——

Mr. MEADOWS. So why would you use personal email versus your official one, then, if it wasn't to hide your dialog?

Mr. MOURE-ERASO. First, when I started, as I explained, out of ignorance. When I find out that this was obviously not a good way of keeping records, I stopped the practice, and I start collecting everything that was developed in——

Mr. MEADOWS. OK. I'm running out of the time.

So do I have your commitment that you will give every single email, as well as the other emails that were personally—to the investigator and to this committee? Do I have your commitment today?

Mr. MOURE-ERASO. I already have provided that information. Yes. And the information on the other people that use Gmail that I here I will provide too.

Mr. MEADOWS. I thank the patience of the chair.

Chairman CHAFFETZ. Thank you.

We'll now recognize the gentleman from Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you very much, Mr. Chairman and to the ranking member. This is an important hearing.

I want to go back. I know, Mr. Ehrlich, you talked about worker safety. And it's puzzling to me why the Board has canceled three investigations that had been pending for more than 4 years.

One of these investigations involved a fire and the release of 42,000 pounds of highly toxic hydrofluoric acid at a CITGO refinery in Texas. In that instance, one worker was badly burned in that accident.

Another investigation that you canceled involved an explosion and a fire at the Horsehead zinc plant in Pennsylvania. We had two workers killed there.

We had a third investigation that involved a flash fire caused by a large flammable vapor cloud at the Silver Eagle Refinery in Utah. We had four workers who were severely burned. And a, sort of, follow-on, second explosion at that facility caused by a pipe failure occurred a couple of months later, which also damaged about 100 homes.

So, despite the concern for worker safety and public safety, there was a decision to—and, Mr. Ehrlich, in introducing a motion before the Board to cancel those investigations, you stated, "There is no realistic opportunity to issue a CSB report" on these tragic incidents.

Mr. Griffon, you voted against this motion to cancel these investigations; is that correct?

Mr. GRIFFON. That is correct, sir.

Mr. LYNCH. You know, help me. Help me with this. How can we do this?

Mr. GRIFFON. Well, I mean, I think—I go back to something I've been requesting for 4 1/2 years, which is an overall investigations plan and the ability of the Board to make these decisions. And, you know, these investigations being canceled in the dark of night in California wasn't the appropriate way to deliberate on these.

There were other proposals put forward, as I said, of having a larger refinery study, where these investigations could've been incorporated into that. I'd be happy to deliberate on that and decide that as a Board, not—not in the fashion it was done, no.

Mr. LYNCH. Yes.

Mr. Chairman, I think that this is as bad as I've seen. And I just—I appreciate you bringing this forward.

Let me ask you about—Mr. Griffon, were you there when they did this—yes, you were there when we did this hearing and they eliminated all these rules. Previously, there was a rule on any expenditure over $50,000 required the Board members to approve it. But then, with this most recent coup—and it was a coup—now the chairman has the ability to make expenditures over $50,000 without Board approval.

What's up with that?

Mr. GRIFFON. Yes, that's correct. I think that along with other important checks and balances were lost when they canceled. And I have my binder here of the 18 Board orders.

Mr. LYNCH. Yes.

Mr. GRIFFON. You know, no opportunity to study these. I think perhaps going through these one by one and making revisions, that might be appropriate, but to sweep them all away I thought was ridiculous and lost a lot of the important checks and balances of the Board oversight over the Chairman's administrative and executive function.

Mr. LYNCH. Right.

And, Mr. Engler, this all happened just as you were—you had been approved by the Senate, but you hadn't been able to take your seat yet and to deliberate on this. Is that correct?

Mr. ENGLER. Yes, that's absolutely correct. I'd worked for decades for an organization, and, through my long process of consideration for this position, I had a responsibility not to walk out on my longtime employer. And so I needed a somewhat—somewhat of a transition time to complete work there so I could fully devote to my duties here. So I was not in a position to join the Board.

I will say, moving forward, I am very concerned about hydrofluoric acid, as I know many of the Board leaders and staff are. In fact, relating back to the mission of the Board, the Oil Insurance Association pointed out in roughly 1974 that hydrofluoric acid use in alkylation units in oil refineries posed major, major dangers. The Oil Insurance Association was then the advisor to the petroleum industry.

And so this should be taken very, very, very seriously, and I intend, moving forward, to revisit this issue. I'm not sure what the best way to do it is at this point, but I think that this is one of the most important issues that we face as a responsible Board, to look at this particular hazard.

Mr. LYNCH. Thank you, Mr. Chairman. I yield back.

Chairman CHAFFETZ. Thank you.

I now recognize the gentleman from South Carolina, Mr. Mulvaney, for 5 minutes.

Mr. MULVANEY. Thank you, Mr. Chairman.

Gentlemen, I was going to talk a little bit about that meeting in Richmond, but a couple of the exchanges that just took place regarding the emails got my attention. So I'm going to ask a variety of questions to a group of you, starting with you, Dr. Moure-Eraso.

You said that it was the Federal Records Act that was adopted in November 2014 that prompted you to change your practice. Yet, in June 2014, which was before the Federal Records Act passed,

you said, "We stopped that practice about a year and a half ago because we realized how problematic it was."

So tell me, if you're relying on the November 2014 changes to the law, why did you make your change 18 months before your June 2014 testimony?

Mr. MOURE-ERASO. Well, first of all, Mr. Congressman, we stopped using the emails, giving the exact date, March 2013.

Mr. MULVANEY. About 18 months before your June—so, clearly, the Federal Records Act changes in November 2014 had nothing to do with the change in your practice.

Mr. MOURE-ERASO. I mean, that was what the White House requested from us to comply with that——

Mr. MULVANEY. But, again, your——

Mr. MOURE-ERASO [continuing]. And we complied with that.

Mr. MULVANEY. But, previously, you told Mr. Meadows that it was the Federal Records Act of 2014. That had nothing to do with your decision in March 2013, right?

Mr. MOURE-ERASO. No, of course not.

Mr. MULVANEY. All right.

Now, then it said that—when Mr. Chaffetz asked you about why you did that, you said, "The Board was telling me that I couldn't use my private"—and then there was some talking over. I assume you were going to say "private email accounts." Is that fair? "The Board was telling me I couldn't use my private email accounts."

Why did the Board know it was against the rules but you didn't?

Mr. MOURE-ERASO. It was a general practice in the agency for people to use Gmails when I arrived.

Mr. MULVANEY. OK, but that's not what you said. You said, "The Board was tell me I couldn't use my"—did Mr. Ehrlich tell you you couldn't use your emails?

Mr. MOURE-ERASO. Mr. Ehrlich wasn't there.

Mr. MULVANEY. OK. Who was on the Board at that time?

Mr. MOURE-ERASO. Mr. Griffon, I believe.

Mr. MULVANEY. OK. Who told you at that—who on the Board told you you could not use your private emails, it was problematic?

Mr. MOURE-ERASO. No one really——

Mr. MULVANEY. And are you testifying, or is it the guy behind you in the dark hair?

Mr. MOURE-ERASO. The people that told me that—I mean, it wasn't a discussion about if we could use or not use emails. It's simply that——

Mr. MULVANEY. No, it was. It was.

Mr. MOURE-ERASO [continuing]. Naturally, people——

Mr. MULVANEY. I'm just reading your testimony. "The Board was telling me that I couldn't use my private"—and we assume the next word is "email." So I'm asking you, who on the Board told you that?

Mr. MOURE-ERASO. I have no recollection of that.

Mr. MULVANEY. Did you know that it was improper to use your private email accounts?

Mr. MOURE-ERASO. At that time, no.

Mr. MULVANEY. Should you have known?

Mr. MOURE-ERASO. I don't know. Probably I should——

Mr. MULVANEY. Were there other people on the Board who knew it was inappropriate?

Mr. MOURE-ERASO. Well——

Mr. MULVANEY. And, again, is it the guy behind you who's giving you the answers, or are you going to testify?

Mr. MOURE-ERASO. I am testifying.

Mr. MULVANEY. Would you identify the gentleman in the dark hair behind you, please?

Mr. MOURE-ERASO. That gentleman is general counsel of the agency.

Mr. MULVANEY. OK. Is he testifying today? Is he under oath? Did he just——

Mr. MOURE-ERASO. I don't know. You are running——

Mr. MULVANEY [continuing]. Feed you the answer to that question I gave you?

Mr. MOURE-ERASO [continuing]. The hearing here.

Mr. MULVANEY. Did he just tell you the answer to my question was "no"? Is that what he just said to you?

Mr. MOURE-ERASO. I didn't hear, no.

Mr. MULVANEY. You can't hear him at all?

Mr. MOURE-ERASO. No, I couldn't hear him.

Mr. MULVANEY. Because we can see him. Everybody up here can see him.

Mr. MOURE-ERASO. I am paying attention to you. I——

Mr. MULVANEY. Let's go back to my question. You just said you didn't know it was inappropriate to use your emails in March 2013. And I'm asking you, did any members of your Board know it was inappropriate or problematic?

Mr. MOURE-ERASO. I don't know.

Mr. MULVANEY. But then why did you tell Mr. Chaffetz in June 2014 that the Board was telling me I couldn't use my private emails?

Mr. MOURE-ERASO. I mean, I—I made that statement because, as I said, it was a common practice for everybody to use it, so my assumption——

Mr. MULVANEY. Did you make the statement because it was a true statement?

Mr. MOURE-ERASO. As far as I can tell, yes.

Mr. MULVANEY. So I'm asking you again—but the Board didn't tell you you couldn't use your private emails. You've already said that. You can't remember anybody on the Board telling you that. You can't identify anybody who knew it was against the rules. The Board didn't tell it was problematic, did they?

Mr. MOURE-ERASO. I don't know one way or the other. I don't have any recollection of that on that issue.

Mr. MULVANEY. All right. Should you have known?

Mr. MOURE-ERASO. Probably, yes.

Mr. MULVANEY. Was there anybody else at your agency that knew? Was there anybody else who knew it was problematic to use emails?

Mr. MOURE-ERASO. I don't know.

Mr. MULVANEY. OK.

You retire in 15 weeks.

By the way, Mr. Sullivan, did you ever come across any evidence that Dr. Moure-Eraso continued to use his private emails after he

knew it was problematic or against the law or in violation of the Federal Records Act?

Mr. SULLIVAN. Yes, Mr. Mulvaney, we did.

Mr. MULVANEY. OK. Thank you very much. And I wish I had more time to explore that.

Dr. Moure-Eraso, you retire in 15 weeks. Do you believe that retiring bureaucrats who break the law should be entitled to their full retirement package?

Mr. MOURE-ERASO. I am committed to see—to see the work of the Chemical——

Mr. MULVANEY. OK.

Mr. MOURE-ERASO [continuing]. Safety Board finished——

Mr. MULVANEY. Do you believe——

Mr. MOURE-ERASO [continuing]. And I believe that the reports that we still have on line have to be finished——

Mr. MULVANEY. I'm not asking you about that. I'm just asking you your personal opinion as a 30-year public servant. Do you think that public servants who give misleading testimony to Congress should be entitled to their full retirement package?

Mr. MOURE-ERASO. I don't have an opinion on that.

Mr. MULVANEY. Do you believe that any lifetime bureaucrat who is held in contempt of Congress should be entitled to their full retirement package?

Mr. MOURE-ERASO. I don't know which lifetime bureaucrat you are referring to. I'm not a lifetime bureaucrat.

Mr. MULVANEY. Thank you, Mr. Chairman.

Chairman CHAFFETZ. We'll now recognize the gentlewoman from Michigan, Ms. Lawrence, for 5 minutes.

Mrs. LAWRENCE. Thank you, Mr. Chairman.

This line of questioning is concerning to me, the responses.

Last May, former Congressman Henry Waxman recommended that the Chairman consult with Board members to establish an investigation plan. And it's been stated here today that that was a request and a desire of some Board members.

I think such a plan would allow the CSB to prioritize its investigations better, to better control its workload and resources to ensure that investigations are completed. And, frankly, it gives us accountability.

Mr. Griffon, has an investigation plan been developed, yes or no?

Mr. GRIFFON. No.

Mrs. LAWRENCE. But it was requested last May. Is that correct?

Mr. GRIFFON. It was requested last May, and I have requested it for several years. It was pointed out by a 2013 EPA IG report that we should have an investigative plan. So it's been pointed out a number of times, yes.

Mrs. LAWRENCE. And you also requested a public business plan to obtain information on the status of all open investigations. Is that right?

Mr. GRIFFON. Right. This was along the same lines. We—Dr. Rosenberg and myself requested that. We attempted to make a motion in a public meeting to have another meeting. We also later did a written motion for the same request, to simply have a business meeting to hear the status of all open investigations and what our

path forward was so that the Board actually had some input into where these investigations were going.

Mrs. LAWRENCE. So I understand you made the requests. What were the responses?

Mr. GRIFFON. They were denied. The last vote was calendared, essentially tabled, to be taken up, ironically, at another public meeting. But it was—it was a procedural block, essentially.

Mrs. LAWRENCE. Mr. Chairman, in your testimony, you're not even addressing an investigation plan. You talk about the backlog. Can you tell me why the request was denied?

Mr. MOURE-ERASO. The request was not denied. I disagree with Mr. Griffon. We have published an action plan in which we have listed all the open investigations and what were the plans to do. This was presented and discussed with all Board members at our public——

Mrs. LAWRENCE. Mr. Griffon, I asked you that question, and the Chairman just stated that there has been a plan submitted. What was your response to that?

Mr. GRIFFON. There has been no—there is something called an action plan—which was never published, by the way—and it was modified, as I said, after the last California meeting. But it essentially is a list of investigations that they think they're going to complete within the year. It's not a—it's not a full plan.

Mrs. LAWRENCE. You know, it has been——

Mr. ENGLER. Could I add——

Mrs. LAWRENCE [continuing]. It has been demonstrated today that there are—Mr. Engler, did you have a comment?

Mr. ENGLER. Just that I've looked at the action plan, and I just didn't think it met rigorous standards that included what the clear objectives are, what the benchmarks were for progress, what were the—any kind of time-specific focus on a breakdown of tasks.

And I think, in fact, this is an area where Mr. Ehrlich and I can agree that there needs to be a much more rigorous approach to tracking progress on these critical investigations.

Mrs. LAWRENCE. Well, I agree with you 100 percent. As a matter of fact, I want to state today on the record that this is totally unacceptable. When we look at the responsibility and the vote of trust that is placed in this agency and we do not have an accountable investigation plan, that is totally unacceptable.

Mr. Chairman, you're stating that you have a period of time that you will still be the Chairman. What is your commitment that an investigative plan—an investigation plan will be established, voted on for this Board? What is—give me a commitment today. And not an action plan.

Mr. MOURE-ERASO. Congressman, this action plan with the elements that Mr. Engler mentioned is in place. We have presented to the Board. It has been distributed to the Board. It's not simply a list of investigations. It's a prioritized list in which we say which ones are going to be finished first, second, and third and why, and also establish points in the schedule of when different things are going to be finished. That is——

Mrs. LAWRENCE. Thank you. I think that clearly defines where there is a breakdown, and what you perceive as a real, accountable

investigation plan—and I feel strongly that this Board has an obligation to do that.

And I yield my time, Mr. Chairman.

Chairman CHAFFETZ. Thank the gentlewoman.

We'll now recognize the gentleman from Colorado, Mr. Buck, for 5 minutes.

Mr. BUCK. Thank you, Mr. Chairman.

Mr. Sullivan, what's the purpose, in one sentence or less, if you can, for me, what's the purpose of the Federal Records Act?

Mr. SULLIVAN. It's to ensure that there's transparency and accountability, especially if someone files—a citizen files a Freedom of Information Act request, that the records will be available, and for oversight for Congress and for the inspector generals to have access to records.

Mr. BUCK. OK. That's two sentences but still good.

Tell me who is responsible for that.

Mr. SULLIVAN. The agency heads are responsible for ensuring compliance.

Mr. BUCK. Why do we have a Records Act?

Mr. SULLIVAN. To ensure records are kept in a timely, efficient manner.

Mr. BUCK. OK.

What would happen—how does someone set up a private email system on their public computer, on their office computer?

Mr. SULLIVAN. Well, in some agencies, private email is blocked. I can tell you that from my experience in the Federal Government. So you can only use the government email account. But in most agencies it's not blocked. You just go to Gmail or Yahoo, and you open up your email, and you start sending messages. It's fairly simple.

Mr. BUCK. OK.

My understanding is that there is a policy that was issued by the President of the United States that would prohibit private emails on government computers, Federal Government computers.

Mr. SULLIVAN. Well, it's my understanding, sir, to be technical, I think it's to prohibit the use of government business on private email accounts. I don't think there's a Presidential directive that you can't check your personal email on a government computer.

Mr. BUCK. OK. So say it—say that again. What is the directive?

Mr. SULLIVAN. The prohibition is you cannot conduct government business using private email accounts.

Mr. BUCK. And if someone used a private email account on their government computer, they're sending that email, typically, to other people in government.

Mr. SULLIVAN. Well, it really depends.

Mr. BUCK. But if they did, would there be any responsibility of other people in government to report that fact?

Mr. SULLIVAN. I think if you're a member of that agency, it would be. But if you're sending it to another government agency, I don't know. I think it would get a little murky at that point.

Mr. BUCK. But you can see clearly on the email account where it's coming from.

Mr. SULLIVAN. Yes.

Mr. BUCK. You can see that it's not coming from a government agency.

Mr. SULLIVAN. You can see——

Mr. BUCK. Coming from a Yahoo account or——

Mr. SULLIVAN. Right.

Mr. BUCK [continuing]. Coming from some other kind of account.

Mr. SULLIVAN. Yes, sir. Clearly, it does not say ".gov," so you know it's from a private account.

Mr. BUCK. OK.

So, just hypothetically, if a Secretary of State, for example, were using a private email account and sent out emails to individuals—other individuals in government, those individuals would know that that Cabinet-level official was using a private email account.

Mr. SULLIVAN. Well, hypothetically, it's obvious from the address in the email whether it's a dot-gov or not. Yes, it would be fairly—fairly self-evident.

Mr. BUCK. And at least as it pertains to other Cabinet-level officials, those folks would know that the President had issued a directive that would have told others not to use private email accounts.

Mr. SULLIVAN. Well, I certainly know that in the Inspector General's Office, and I would assume most government officials know that.

Mr. BUCK. And, certainly, Cabinet-level officials know it.

Mr. SULLIVAN. Well, I think that's a safe assumption.

Mr. BUCK. And do people in government get training on what is right and what is wrong as it pertains to either ethics or the use of private emails and other appropriate uses of——

Mr. SULLIVAN. Yes.

Mr. BUCK [continuing]. Resources?

Mr. SULLIVAN. It's required training.

Mr. BUCK. OK.

I yield back. Thank you.

Chairman CHAFFETZ. I thank the gentleman.

We'll now recognize the gentlewoman from the District of Columbia, Ms. Norton, for 5 minutes.

Ms. NORTON. Thank you, Mr. Chairman.

I would like to clear up this email business, and I think we might be able to do it right here at this hearing. Because I've heard Dr. Moure-Eraso keep pointing to the presence of emails here, you know, as if he has nothing to hide.

And I understand, Mr. Sullivan, that you wanted to make sure that the Chairman had turned over all of his emails from his personal records that reflected government business. Isn't that right?

Mr. SULLIVAN. Yes, Ms. Norton. That's correct.

Ms. NORTON. Now, I'm asking you, do you have a copy of that certification with you today?

Mr. SULLIVAN. Yes, ma'am, I do.

Ms. NORTON. I wonder if a staff from the committee would provide a copy to our colleagues?

Mr. SULLIVAN. Yes. I have two copies here for both yourself and for the majority.

Ms. NORTON. I ask that that be done. And while I wait, let me continue.

Let me make clear—let me ask you to make clear what this form that is being distributed is. Is this—it says, "Statement of Compliance." Is this the standard form you use during investigations to make sure that you have all the records?

Mr. SULLIVAN. Yes, ma'am. This is a template, and it's been—it's been specified here for the specific case we are working on. And you can see, in paragraph 3, we have the specific search terms that we're interested in in this investigation.

So it's a template that we use, but it's been—it's been kind of drilled down to be specific for the investigation involving the Chemical Safety Board and specifically involving Mr. Moure-Eraso, Mr. Loeb, and Mr. Horowitz.

Ms. NORTON. And the point is to make sure there are no additional records, that you have all the records?

Mr. SULLIVAN. Yes, ma'am. We just cannot accept a letter saying that we've checked our records. We have to determine what the methodology is. Did you use these important search terms that we're asking for? Did you have any records with any of these individuals' names mentioned that—it's important to our investigation. Because we cannot access a personal email account unless we have a search warrant. And, this time, the U.S. Attorney's office had already declined a criminal prosecution, so we had no means to get a search warrant.

So the only way we could possibly obtain compliance is self-compliance, with an affidavit to us stating that they've done what we've asked them to do.

Ms. NORTON. Well, now, I'm going to ask Mr. Moure-Eraso to listen carefully. I'm going to read the clause that I think expresses what Mr. Sullivan has just said.

"The materials provided to the OIG are genuine, complete, and in full compliance with the request made by the inspector general. After receiving the initial request from the OIG for the above referenced documents, I took no intentional action to destroy, delete, or remove any official CSB email communication in my presence. I state that the following is true and correct."

Now that you have heard this, Chairman Moure-Eraso, do you agree, under oath, that you have met the terms of this certification?

Mr. MOURE-ERASO. Yes. I affirm that.

Ms. NORTON. So it seems to me the emails now should be turned over.

Thank you very much, Mr. Chairman.

Chairman CHAFFETZ. Well, if the gentlewoman would yield, I assume you're asking unanimous consent to enter this document into the record?

Ms. NORTON. Yes, I am, Mr. Chairman.

Chairman CHAFFETZ. Without objection, so ordered.

Chairman CHAFFETZ. If I may followup on your questioning, because I think you're right, how many times and how long has the Chairman had this document?

Mr. SULLIVAN. We sent it to his chief counsel August 2014. This is after we received some of the records. We wanted to ensure—be ensured that it was complete, the records that were turned over to us.

Chairman CHAFFETZ. So why didn't you sign it?

Mr. MOURE-ERASO. I sent, as I said before, a letter to Mr. Elkins expressing that, as I said before, that the CSB Chief Information Officer, who are responsible for conducting and overseeing the searches they request, and based on his assurances and to the best of my knowledge and belief, the documents provided to the office of Mr. Elkins satisfy all outstanding requests in this matter.

Chairman CHAFFETZ. So, to be clear, the inspector general asked you to certify this, gave you a document, one page, and you elected not to sign it.

Mr. MOURE-ERASO. I sent him a letter certifying that I have sent——

Chairman CHAFFETZ. No. No, no, no. You didn't sign the document that the inspector general asked for, correct?

Mr. MOURE-ERASO. I didn't. I sent the letter——

Chairman CHAFFETZ. Thank you. And this is part of the ongoing frustration——

Ms. NORTON. Mr. Chairman, can I reclaim my time for a moment——

Mr. CHAFFETZ. Sure. Sure.

Ms. NORTON [continuing]. And ask, what's the difference you see between—now, here's the official government document. Why did you prefer your letter when there's an official—you know, I could file my own Federal income taxes my own way, too, and I prefer to do it that way. But they make me sign this document, they make me fill the thing out.

So why did you feel privileged to certify through mail rather than through the kind of official document you must have become accustomed to your entire life?

Mr. MOURE-ERASO. The way it was put to me is that I was asking to volunteer to sign the—that I—if I volunteered to sign this new form that they provided to me. And I felt like I have already certified, I have signed, I have given my word, and I didn't feel like volunteer to sign this new form—this new form that was presented to me.

Ms. NORTON. You had a conscientious objection to signing this form?

Mr. MOURE-ERASO. It's just that I already have given a certification. I was asking a second certification—volunteered to make a second one.

Ms. NORTON. Were you advised by lawyers that you should not sign this form but instead send a letter?

Mr. MOURE-ERASO. Yes.

Ms. NORTON. Oh. What lawyers? Were they private lawyers, or were they the agency lawyers?

Mr. MOURE-ERASO. My private lawyers said that I shouldn't volunteer to sign forms that I wasn't obligated to sign.

Ms. NORTON. Did they give you any reason for this? Did they think you might incriminate yourself in some fashion?

Mr. MOURE-ERASO. It was thought that it was volunteer, so I said, look, the issue is certification or send the materials. I have given a certification in the form of a letter. I have sent the material. I have given my word that I sent the material. I have my chief

information officers doing the searches, getting the information, and transferring. I—I followed the advice.

Ms. NORTON. So you're a Federal official, but you do not feel that you have to abide by the same laws requiring documents as other Federal officials.

Mr. MOURE-ERASO. Well——

Ms. NORTON. That's the long and short of it, isn't it? I mean, other Federal——

Mr. MOURE-ERASO. I wasn't very clear if I was required to sign the certification. I have a letter in which I certified——

Ms. NORTON. Well, did you ask for clarification from Mr. Sullivan?

Mr. MOURE-ERASO. Well, I thought that my letter speak for myself for giving a certification of——

Ms. NORTON. So you didn't ask for certification from Mr. Sullivan.

Mr. MOURE-ERASO. I didn't.

Chairman CHAFFETZ. Go ahead.

Mr. CUMMINGS. Just one question.

Why didn't you sign the document, man? I mean, it just seems like it's such a simple thing. You're familiar with the document. You agree with every word of it; is that right?

Mr. MOURE-ERASO. Well, I—I have—I asked for legal advice on this. This is a pretty serious matter.

Mr. CUMMINGS. Yes, it's a very serious——

Mr. MOURE-ERASO. And I showed—yes—I showed them this document and said, well, you know, they are asking me—they have developed this document, they want me to volunteer to sign. And I said, well, I already certified this, I already signed the letter saying I submitted what they want. So he said, well, my advice is you don't volunteer to sign a document that you don't have to.

Mr. CUMMINGS. And the letter said everything that's in this document. The letter that you did sign.

Mr. MOURE-ERASO. As far as I'm concerned, yes.

Ms. NORTON. Mr. Chairman, could I ask if——

Mr. CUMMINGS. Do we have that——

Ms. NORTON [continuing]. The advice was from the lawyer who's with him today?

Mr. MOURE-ERASO. No.

Mr. CUMMINGS. No. That's his private lawyer.

Do you have the document—do you have the letter?

Mr. MOURE-ERASO. Yes. I have it here.

Mr. CUMMINGS. Oh, good. May I—can we get a copy of that?

Chairman CHAFFETZ. If the clerk can get this, make duplicates for everybody on the Board. And we ask unanimous consent to enter it into the record.

Without objection, so ordered.

Mr. MOURE-ERASO. I have two copies, as a matter of fact, so I'll give you one.

Chairman CHAFFETZ. The clerk will take that. It will take a few minutes to duplicate it.

We'll now recognize the gentleman from North Carolina, Mr. Walker, for 5 minutes.

Mr. WALKER. Thank you, Mr. Chairman.

Dr. Moure-Eraso, you said earlier that you are a first-generation American; is that correct?

Mr. MOURE-ERASO. I'm sorry?

Mr. WALKER. You said earlier that you are a first-generation American——

Mr. MOURE-ERASO. Yes.

Mr. WALKER [continuing]. In your opening statement?

Do you remember the last line of the oath that you took, by chance, the last sentence of the oath?

Mr. MOURE-ERASO. I don't remember now.

Mr. WALKER. Let me read it for you. It says, "I will perform work of national importance under civilian direction when required by the law and that I take this obligation freely without any mental reservation or purpose of evasion, so help me God."

Now, interesting enough, I believe in about 15 weeks, when you're talking of retiring, is going to be your 30th anniversary of being this first-generation American. And I have a question for you.

It seems to me from what I'm hearing that you're just trying to survive another 15 weeks. Is that fair?

Mr. MOURE-ERASO. I have work to do.

Mr. WALKER. OK. Well, let me ask you a little bit about that work that you're doing.

Go back to one individual, and I'm going to list seven things, and you tell me if any of these that you disagree are correct—or feel are incorrect.

No. 1, Dr. Rosenberg said, "The criticism was never accepted." Agree or disagree?

Mr. MOURE-ERASO. Disagree.

Mr. WALKER. And that the government inside your leadership was ineffective. Agree or disagree?

Mr. MOURE-ERASO. Disagree.

Mr. WALKER. Said there was a lack of accountability. Agree or disagree?

Mr. MOURE-ERASO. Disagree.

Mr. WALKER. Said there was no priorities for reducing the backlog of investigations. Agree or disagree?

Mr. MOURE-ERASO. Disagree.

Mr. WALKER. She also said choreographed production when you had a press conference. Do you understand that, what she was saying there?

Mr. MOURE-ERASO. I disagree.

Mr. WALKER. Disagree?

And that she would literally have to have meetings—for concerns were being intimidated—she would actually have to have meetings in ladies' rooms. Agree or disagree?

Mr. MOURE-ERASO. I don't visit ladies' washrooms. So I disagree. I don't know one way or the other.

Mr. WALKER. OK.

Well, let me just expand the scope out from Dr. Rosenberg a little bit. Multiple individuals inside this agency have portrayed it as a toxic work environment. What do you have to say about that?

Mr. MOURE-ERASO. I disagree. As a matter of fact, what we have to see is what is the product of the agency, what we accomplish,

what we produce. I pointed out, in the last 8 months, we have to produced eight world-class reports on safety. And that is our core mission, that's what we do, and that's what we do right.

Mr. WALKER. Do you——

Mr. MOURE-ERASO. A place that has a toxic work environment probably cannot produce world-class——

Mr. WALKER. In two or three sentences, how would you describe—give me a brief description of your job. What are primarily, in two or three sentences, your function?

Mr. MOURE-ERASO. The function of the job is to make—to organize an agency that will be able to investigate major chemical accidents and provide recommendations for preventing them from happening.

Mr. WALKER. Uh-huh.

Mr. MOURE-ERASO. That has been happening, and that we are providing to the American public.

Mr. WALKER. On a scale of 1 to 10, how would you rate yourself in accomplishing that?

Mr. MOURE-ERASO. I would say about an eight.

Mr. WALKER. About an eight.

Mr. MOURE-ERASO. Uh-huh.

Mr. WALKER. Well, I will tell you here, I've been here 8 weeks, and this is the first committee hearing that I've participated in where there is a bipartisan approach that really drills down to the inefficiency of this particular agency, and it has been under your leadership. How do you account for that?

Mr. MOURE-ERASO. Well, I don't know how you define "inefficiency." We have produced 22 major reports in 5 years, and in the last 8 months we have produced eight reports, major reports, that include, each one, a video that appear on our Website. We have 400,000 hits on our Website for our work. I don't think——

Mr. WALKER. In other words, you are basically telling this committee that your agency has run at premium efficiency level.

Mr. MOURE-ERASO. Not premium, but, you know, it has delivered what it was designed to do.

Mr. WALKER. What would you have liked to have done better? What do you feel like the mistakes were made?

Mr. MOURE-ERASO. I would like to have—to have more resources in order to be able to cover more of these chemical accidents.

Mr. WALKER. So this was resources or the inefficiencies, they were because you didn't have enough resources.

Mr. MOURE-ERASO. We didn't have enough resources to do the work that we were—were given to us, yes.

Mr. WALKER. OK. With that, I yield back.

Chairman CHAFFETZ. I thank the gentleman. I now recognize the gentleman from Virginia, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman, and welcome back, Mr. Moure-Eraso.

Mr. Engler, you have called for the rescission of the Board decision of January 28. Is that correct?

Mr. ENGLER. Yes.

Mr. CONNOLLY. And why do you think it should be rescinded?

Mr. ENGLER. Because I think it was not considered in an open and fair way, and I don't mean—it's not a personal matter that no

one called me up prior to a formal appointment by the President and asked me what I thought. It seems to me when you change major procedures, policies, that there is an obligation as a public entity to interact with the public, to not—and frankly, I'm—I'm quite familiar with the—some of the New Jersey laws we have on this. I need a briefing. One of the things I wasn't briefed on, on the Sunshine Act. I don't know whether there was a technical violation or a—just a violation of the intent of that, but major change by agencies needs to be done with public notice, the opportunity for public comment, public hearings, and it has to be an ongoing process, and I endorse a call of Member Griffon.

Mr. CONNOLLY. Would you——

Mr. ENGLER [continuing]. For public meetings.

Mr. CONNOLLY. Thank you. Would you say that the decision to rescind made on January 28 was a pretty profound decision?

Mr. ENGLER. Yes.

Mr. CONNOLLY. Because?

Mr. ENGLER. Because it seemed to upend a whole series of Board policies, including on budget. So, before I arrived on the scene, to look carefully at budgets because, frankly, I feel like I'm accountable to the public for how the agency spends its money. I then find out that, no, I'm not.

Mr. CONNOLLY. OK. Thank you so much.

Mr. Chairman, Mr. Chairman of the CSB, you voted to rescind, on that date, 18 Board orders. Is that correct?

Mr. MOURE-ERASO. Yes, that's correct.

Mr. CONNOLLY. And one of those Board orders was Board Order 23, which established policies and procedures for hiring and selecting career appointments to the SES, the Senior Executive Service. Is that correct?

Mr. MOURE-ERASO. That is correct.

Mr. CONNOLLY. And also, that order also established the Executive Resources Board within your agency that—and that board conducts the hiring process and makes recommendations of best qualified candidates to the Board. Is that correct?

Mr. MOURE-ERASO. The old Board order, yes, it has something like that in the old Board order, yes.

Mr. CONNOLLY. Uh-huh. Why did you decide to vote to essentially eliminate the Executive Resources Board?

Mr. MOURE-ERASO. Because the—that order is in conflict with the Office of Personnel Management procedures for the choosing of SES. Under the procedures of the Office of Personnel Management, the appointment authority for SES in a Federal agency is the head of the agency.

Mr. CONNOLLY. Well, what——

Mr. MOURE-ERASO. In this particular—in the old order that you are referring to, they say that the appointment authority was on the Board. It has to be a vote to accept an SES.

Mr. CONNOLLY. Mr. Sullivan——

Mr. MOURE-ERASO. That the evaluation of the person has to be also doing by the whole Board arrive on the one person.

Mr. CONNOLLY. OK. Hold that thought.

Mr. Sullivan, I was under the impression OPM regulations actually require having an Executive Resources Board. Is that not correct?

Mr. SULLIVAN. I am not—I don't know, sir. Sorry.

Mr. MOURE-ERASO. May I make——

Mr. CONNOLLY. I've got the regulation right here: 3393, career appointments, subsection B, each agency shall establish one or more Executive Resources Boards, et cetera, et cetera.

So that seems to contradict exactly what you just said, Dr. Moure-Eraso.

Mr. MOURE-ERASO. Yes, we do have an Executive Resources Board, as a matter of fact. We have established one for SES as hiring. That is part—you are correct, that is part of the OPM regulations.

Mr. CONNOLLY. But you just said in answer to my question that in rescinding Board Order 23, the Executive Resources Board went away. Would that——

Mr. MOURE-ERASO. No, no. I misspoke. There was an additional board, internal board that was created for Board Order 23, and that is what it was, not on the Office of Personnel Management. There is an additional board created internally.

Mr. CONNOLLY. An additional board.

Mr. MOURE-ERASO. Yes.

Mr. CONNOLLY. Is it also not true that the CSB recently entered into a contract with a private company to handle the agency's recruiting and hiring of senior executives?

Mr. MOURE-ERASO. Yes.

Mr. CONNOLLY. Was that contract awarded to a long-time friend and associate of your general counsel, Mr. Loeb?

Mr. MOURE-ERASO. We have—we're authorized to have three SESes, and at the time we only have one, so I thought it was important to initiate the process to recruit another SES member. And so, since this issue is so delicate and there has to be beyond any reproach, the process, I did hire a consultant with extensive experience on SES, that was a former SES, to conduct the search to choose an Executive Resource Board that is already chosen and to start—to start the process of—open a search for an SES that has been initiated.

Mr. CONNOLLY. Thank you. Mr. Chairman, my time is up, but I do want the say I think there are so many issues here, One does not know where to begin. I am deeply troubled at what is—looks like the politicization of the hiring process and cronyism and, frankly, a very cloudy, if not illegal, meeting that took place on January 28 with, as Mr. Engler said, profound implications in the management of this agency. And it ought to concern all of us.

With that, I yield back.

Chairman CHAFFETZ. Great. Thank you.

I'm actually now going to recognize myself. I have not taken my 5 minutes.

Mr. Moure-Eraso, I want to play a clip of a hearing from last time.

[video shown.]

Chairman CHAFFETZ. So that would have put the date back in January 13. Did you use your personal email after January 13—or January 2013, I should say?

Mr. MOURE-ERASO. Mr. Chairman, I have to look at my——

Chairman CHAFFETZ. It's a yes or no. It's a yes——

Mr. MOURE-ERASO. I have to look at my records. I don't know.

Chairman CHAFFETZ. When is the most recent time that you used your personal email?

Mr. MOURE-ERASO. I have to look at——

Chairman CHAFFETZ. For work?

Mr. MOURE-ERASO [continuing]. My records. I cannot answer you.

Chairman CHAFFETZ. You can't tell us that you just haven't?

Mr. MOURE-ERASO. I have to look at my records.

Chairman CHAFFETZ. Let me ask the inspector general. What's the most recent time you've seen him using his personal email for work-related business?

Mr. SULLIVAN. August 2013.

Chairman CHAFFETZ. There is some information that suggests you may have emails as late as 2014. Would that be accurate or inaccurate, Mr.——

Mr. MOURE-ERASO. I assume that Mr. Sullivan has probably a document that says so.

Chairman CHAFFETZ. So you did use your email even though you testified to us. You testified. And then, even after that, you used it, your personal email.

Mr. MOURE-ERASO. I said that—I didn't give you a date. I can't—I couldn't give you an exact date of when this is done.

Chairman CHAFFETZ. The—you said the CIO, chief information officer, had gone through this. Did you give the chief information officer your password to your personal Gmail account?

Mr. MOURE-ERASO. Yes.

Chairman CHAFFETZ. And did you let the CIO go through all of your personal emails on your Gmail account?

Mr. MOURE-ERASO. Yes.

Chairman CHAFFETZ. Did that also happen for Managing Director Daniel Horowitz and General Counsel Richard Loeb?

Mr. MOURE-ERASO. You have to ask them.

Chairman CHAFFETZ. Well, you sent letter. You just handed us this letter.

Mr. MOURE-ERASO. Yes.

Chairman CHAFFETZ. So, tell me, what—I'm trying to read through it real quick. You just gave it to us. So what's your hesitation in signing this document that's given to you by the inspector general? I still don't understand that.

Mr. MOURE-ERASO. My lawyer told me that I shouldn't volunteer when I don't have to. So I am not volunteer.

Chairman CHAFFETZ. Your document here, July 15, 2014, says, These documents were produced based on a search of both CSB and personal email accounts of the individuals from whom the documents were requested, and the document request was above and beyond you.

Mr. MOURE-ERASO. So what is the question?

Chairman CHAFFETZ. Did they or did they not have the CIO check their personal emails, Mr. Horowitz and Mr.——

Mr. MOURE-ERASO. As far as I know, yes. My knowledge is that——

Chairman CHAFFETZ. This is—this is the pattern with you. Is once you're presented with facts, then you just change your story, but you don't give us candid testimony the moment that you're asked.

Let me go back to something. I don't want you——

Mr. MOURE-ERASO. If I don't know something, I cannot tell you yes or no.

Chairman CHAFFETZ. Let me go to something specific. I want to warn you with the sternest words I can possibly do. This is whistleblower information. You're going to be able to figure out who this person is, unfortunately, but I don't want this person's name used in this public format. Do you understand?

Mr. MOURE-ERASO. Uh-huh.

Chairman CHAFFETZ. Let me ask you about this Vantage report. The Vantage report was produced on—to the Board, or to—to you—let me get the exact date—February 11 of 2015. That presentation was from 3:30 to 4:30 that afternoon. There was a person who was the person of record interacting with Vantage. When was that switch made to change the person of record interacting with at Vantage?

Mr. MOURE-ERASO. I understand within 24 hours or 48 hours.

Chairman CHAFFETZ. Eight minutes, 8 minutes. So you get a very—you get the Vantage report, which is not very flattering. I mean, several members have gone up through this, and 8 minutes after you get bad news, you move, you change this employee away from being the contact of record.

Mr. MOURE-ERASO. I will characterize it this way. I use—I use—have reason to believe that the report has been tampered with and that the report was not a piece of that that I could trust, an integral objective evaluation of my agency. I have spent a lot of money contracting these people to give accurate information.

Chairman CHAFFETZ. What evidence do you have of that, and when will you provide it to this committee?

Mr. MOURE-ERASO. I'm sorry?

Chairman CHAFFETZ. When will you provide that information to this committee? If you have evidence of it, I want to know what it is, and I want to know when you're going to give it to me and——

Mr. MOURE-ERASO. As a matter of fact, I have a——

Chairman CHAFFETZ. When are we——

Mr. MOURE-ERASO [continuing]. A number of emails. When the committee request us for information.

Chairman CHAFFETZ. I'm requesting it right now. When are you going to give it to me?

Mr. MOURE-ERASO. We sent—we send it to you what I believe is 2,000 pages of emails, of interaction between Vantage——

Chairman CHAFFETZ. Let's go back——

Mr. MOURE-ERASO [continuing]. And CSB.

Chairman CHAFFETZ. Let's go back——

Mr. MOURE-ERASO. And you know, if you just look at what those emails said, if you will, you know. I have—I have here——

Chairman CHAFFETZ. Hold on. Hold on. Our committee interacted with this same person who was changed as the contract of record. That happened on February 25 of 2015. Two days later, that person was demoted—2 days. Less than 48 hours, he's demoted.

Mr. MOURE-ERASO. The reasons were, you know, I found an email from this person that said: "to the—to Vantage, will not say anything about progress." Also, it says, Put in the slide saying leaders appear to be backing away from external advice and accompanying committees. As a result, in the document, it says, Senior leaders are backing away from external advice.

My issue is, you know, is this a report of an independent objective consultant of professionals advising me, or is it simply they are basically transmitting——

Chairman CHAFFETZ. I think it's because——

Mr. MOURE-ERASO [continuing]. The appearance of a hostile establishment.

Chairman CHAFFETZ. I don't think you want to hear the truth. It's not like you've had one report. You've had Board members. You've had people quit. You have almost 50 percent of your people from 2011 who have actually quit and moved on. We're losing good people, decent people, who work hard for a living, who provide expertise that this government needs in order to do its job. And they can't stand you and the way you manage this place.

We heard this repeatedly for hours. We shouldn't have to have the Chemical Safety Board come before this committee twice. This person meets with our committee staff, and less than 48 hours, he's demoted. He presents you bad information that you don't want to see in the Vantage report, and 8 minutes later, he is taken off the case. That is not a coincidence, in my opinion.

Mr. MOURE-ERASO. I have asked—I have asked the inspector general to look at the relationship between the contractor and this person because I believe they compromise the integrity of the statements that they are claiming to have objectively——

Chairman CHAFFETZ. Last question.

Mr. MOURE-ERASO [continuing]. Evaluated.

Chairman CHAFFETZ. Last question. The workplace improvement committee, how many times did they meet in 2014?

Mr. MOURE-ERASO. They meet very frequently. I will say more than 10 times since they have met, yes.

Chairman CHAFFETZ. And I got to tell you it's not—well, my time is more than—more than expired, but nothing has ever been finalized. They're looking at low-hanging fruit. You don't want them to talk about management issues, and I got to tell you, I think we're very united in this. Until you leave this organization, these problems are going to persist. There is something rotten to its core, and it is you. And I believe—I didn't—I didn't start in that position, but I can tell you between you, Managing Director Daniel Horowitz, and General Counsel Richard Loeb, this is a dysfunctional, unfair, and unproductive organization. And good people are suffering. And I will do everything I can, in conjunction with my ranking member here, to make that change sooner rather than later.

This has continued to fester. We need help from the White House and this administration, but good, decent people need help. I am calling upon them.

I think you should be fired. I think the other two should be fired, but have the decency to actually step down and move this government forward.

I yield back.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

The—Mr. Chairman Moure-Eraso, your agency hired a management consultant company, Vantage Human Resources, to examine the challenges to CSB.

On February 12, 2015, Vantage provided you with a presentation that included results of interviews they conducted with CSB employees. Frankly, that report was devastating. Vantage found that 80 percent of CSB employees felt, "much frustration with top leadership." Vantage also found that 47 percent of employees had, quote, a perception of a climate where senior leadership discourages dissenting opinions.

Let me ask you about what happened directly after the briefing, and I'm going to followup on some of the things that the chairman was saying.

On that day, February 12, 2015, your managing director, Daniel Horowitz sent an email removing the contracting officer from the Vantage contract and designating himself instead. Were you aware of this removal action, and did you approve of it?

Mr. MOURE-ERASO. Yes. I found out that this report that I was counting on to help to do the work that we have was compromised and that the person that was in charge of it has interfered on the report, and I approved of removing him of having anymore responsibilities of running this contract.

Mr. CUMMINGS. Are you sure that the—I mean, what—now, so how did you find out that information?

Mr. MOURE-ERASO. I found out that information because we look at communications that were sent to you, to the committee, that you requested and emails in which there are secret communications between the CSB contracted officer and——

Mr. CUMMINGS. But wait a minute, you didn't get the communications till later, did you?

Mr. MOURE-ERASO. I got the communications because—I got the communications when I——

Mr. CUMMINGS. Mr. Horowitz—Mr. Eraso.

Mr. MOURE-ERASO. Yes.

Mr. CUMMINGS. I want you to listen to me. You got the communications later, did you not? And I want to remind you, you are under oath now.

Mr. MOURE-ERASO. Yes, I read the communications in the last 3 or 4 days. This happened 2 weeks ago, you know. It's a very fast-moving situation and——

Mr. CUMMINGS. Well, now I'm really confused. I thought you just said—I asked you how did you find out, and you said you read some communications, and that was the basis of your approval.

Mr. MOURE-ERASO. Yes.

Mr. CUMMINGS. Is that right?

Mr. MOURE-ERASO. Could I explain to you——

Mr. CUMMINGS. Of course.

Mr. MOURE-ERASO [continuing]. How it happened? When—when I read the—what Vantage presented to me, and I inquired to Vantage what were the communications that it had with your staff, he refused to give me clear information about it. And I found it strange that information about progress that we have done about the Washington report and the problems that we have gone about steps that we have taken in the nine points—in nine points, programs that I have to improve issues, none of those things that were progress on the management of the agency appeared in the report.

And I got suspicious about that because I have provided directly that information to Vantage, and they say that it was very important information to include what progress has been done. When that was missing and when—when he says that he was not commenting with anybody that—that that hasn't any of that information additional on the report, I thought that the report was incomplete and the report was——

Mr. CUMMINGS. But that was your opinion, right?

Mr. MOURE-ERASO. Exactly.

Mr. CUMMINGS. And you hired—well, you hired Vantage to look at this agency and render their opinion. They talked to employees. They put in the report what they thought was appropriate, and so now you're telling me that you approved that action because you suspected that—I mean, well, first of all, it didn't have everything you wanted in it and——

Mr. MOURE-ERASO. What I did, if I may, Congressman——

Mr. CUMMINGS. Yes.

Mr. MOURE-ERASO. What I did is say, I would like to see communications between the CSB contract—contract manager and the contractor. I read the communications, and that is when I—what I am reading to you when I saw direct interference of the contract officer was trying to change the conclusions of the report. As a matter of fact, there was aprevious version of the Vantage report in which all the positive things appear, and in the second, all were erased.

Mr. CUMMINGS. Yes, you're—you're—I think you are right now hurting yourself, but I want to clear this thing up.

Mr. Chairman, the chairman took 10 minutes. So we usually try to have equal time.

Again, the very same day, your managing director, Horowitz, sent you an email. And we now have a copy of that email. In it, he asked for your permission to go through the former contracting officer's emails. The problem is, he doesn't say why he wanted to do this. He simply says that he wants to, quote, examine a confidential personnel issue.

So you approved that request, right, just based on that?

Mr. MOURE-ERASO. I approved that because not based on the interview that I have with Vantage and the interview that I have with the person that made the—that——

Mr. CUMMINGS. All right. Let me ask you this.

Mr. MOURE-ERASO [continuing]. Made the report.

Mr. CUMMINGS. During your term as chairman, how many times have you approved a request from staff to go through an employee's emails? How many times have you done that?

Mr. MOURE-ERASO. That I remember, probably this is—this is—the time, I have to refresh my memory.

Mr. CUMMINGS. Let me ask you, do you—do you think there was another time?

Mr. MOURE-ERASO. It might be at least once before another time.

Mr. CUMMINGS. Can you tell us who that was?

Mr. MOURE-ERASO. I don't remember. I have to look at my records.

Mr. CUMMINGS. Why did you sign off on a request this significant, allowing someone to go through another employee's email, without specific information about why?

Mr. MOURE-ERASO. When—when there is what I consider that there might be some legal problems or that something is going to be detrimental of the agency, I will like to know what is happening, yes, and I did——

Mr. CUMMINGS. So you're saying that you would approve every single request under those circumstances that you just stated?

Mr. MOURE-ERASO. No, not every single request, a request that I believe the integrity of the agency is at stake.

Mr. CUMMINGS. Sir, this is a serious legal point. Let me ask you this. The meeting you all held—were hearing in February 2014 that examined surveillance of employee emails of the Food and Drug Administration. At that hearing, the inspector general recommended that the agency document the reasons for initiating, reviewing, and approving electronic monitoring, including opinions of legal counsel. Did you seek legal counsel before authorizing a search of these employee emails?

Mr. MOURE-ERASO. Yes.

Mr. CUMMINGS. And your counsel, is he copied on it?

Mr. MOURE-ERASO. Oh, yes. I mean, he—I requested——

Mr. CUMMINGS. He's not. He's not.

Mr. MOURE-ERASO [continuing]. The authority. I have verbal conversations with him about all of these developments.

Mr. CUMMINGS. So but you didn't send—you didn't provide him with a copy. Did you seek his advice?

Mr. MOURE-ERASO. I sought his advice, yes.

Mr. CUMMINGS. And who is your legal counsel? Who is that?

Mr. MOURE-ERASO. Mr. Loeb.

Mr. CUMMINGS. Is that the gentleman sitting behind you?

Mr. MOURE-ERASO. Yes.

Mr. CUMMINGS. All right. Now, why would you want—so you're saying you didn't exclude him from it. You just didn't send him a copy.

Mr. MOURE-ERASO. I discussed the issue with him, and I was told that I have the authority to do that under our rules, and I did it.

Mr. CUMMINGS. You know, this makes it sound like you are retaliating against employees. And I got to tell you, I've sat here now for the last 2 or 3 hours, and this is painful. This is painful, and it's got to be painful for you when you get a Vantage report which basically says that the leadership is the problem.

And you know, I mean, have you thought about it? I mean, you've had several members ask you to take an early retirement. Have you considered that? I mean, for the good of the organization.

Most people who truly care about an organization—and this organization does some very, very important work, but it seems as if, and the Vantage report bears this out, that you're not the right person to be the head of this, sir.

And I know that—I know you've got a lot of pride and all that kind of stuff, but this is much bigger than you.

Mr. MOURE-ERASO. Mr. Cummings, but you know, you are—you're saying that Vantage report said some negative stuff. My problem is I would very much want to believe what the Vantage report is, but, you know, the report has been compromised, the report has been interfered with. I will like to have to—I have asked for an investigation if this report is objective, if this report deserves to be used, and the conclusions are correct. That is my problem.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Mr. MEADOWS [presiding]. I thank the ranking member, and I would agree with him that you need to really evaluate this. I think the chairman, the ranking member have both been extremely eloquent but also piercing with their words, and my recommendation, for the good of the organization, is to take an early retirement.

And so the chair recognizes the gentleman from Georgia, Mr. Hice.

Mr. HICE. Thank you, Mr. Chairman.

And I agree with my other colleagues. This is extremely painful. It seems like with every question, the hole gets deeper and deeper and darker and darker along the way.

I would like to continue walking down this path a little bit further on the Vantage report and direct my questions, Mr. Griffon, to you.

You are familiar with the Vantage study, I assume.

Mr. GRIFFON. Yes. Yes, I am familiar with it.

Mr. HICE. OK. Do you—do you know the primary reason why the study was requested in the first place?

Mr. GRIFFON. We had a prior group that did an assessment, the Carden Group, and the reason we did the followup was at the recommendation of the Carden Group that they need—that we needed to have another management consultant to help us look through the problems and make recommendations to reform.

Mr. HICE. So I can take from that the Carden Group recognized that the problems likewise are deep and dark and they wanted more affirmation, and so that's——

Mr. GRIFFON. Yes.

Mr. HICE [continuing]. Kind of what——

Mr. GRIFFON. Yes.

Mr. HICE. OK. What is the primary problem that both of these studies, but let's focus on the Vantage, concerning the Chemical Safety Board, what is the primary issue that they discovered?

Mr. GRIFFON. The primary issues point to senior leadership and the failure of senior leadership, failure of senior management, and there's several things about faulty communication, no ability to have dissenting views. All these things are very consistent with previous employee surveys we've seen, also the testimony of other Board members, very consistent.

Mr. HICE. All right. But it basically came down to leadership.

Mr. GRIFFON. Yes.

Mr. HICE. And we have not one but two studies saying the same thing.

Mr. GRIFFON. Yes.

Mr. HICE. All right. Mr. Griffon, what is your reaction to the findings that the Board and, more specifically, that Mr. Moure-Eraso is the problem?

Mr. GRIFFON. I'll just say that I've—at this point, I've lost all confidence in the chairman.

Mr. HICE. And you're not the only one, it appears. So you would agree wholeheartedly with the outcome of the study?

Mr. GRIFFON. Yes. I actually got a briefing from the head of Vantage in which he told me that the only way to fix this organization is going to involve a Marshall Plan, and I think that's pretty accurate.

Mr. HICE. OK. You referred to, just a moment ago, several different issues, from a lack of collaboration to a lack of accountability to creating an environment that discourages dissenting opinions, a host of issues, and from the study, staggering, over 80 percent or somewhere in that category of people who were interviewed, agreed that we have a serious problem at leadership with all of these issues. How do you explain these general themes? I mean, they are—it appears from the questioning and the testimony that these things were wide in the open, right out in the open.

Mr. GRIFFON. Yes. And, you know, I think, you know, all this starts with leadership, and I think if—hopefully going forward, leadership will realize that the Board has to lead together. The chairman has to work with the Board instead of going around Board orders, marginalizing Board members, et cetera.

Mr. HICE. It appears the root has been discovered. We just need to pull it up.

Mr. Chairman, I am going to cease continued questions, but I would ask for unanimous consent to enter a copy of the Vantage report into the record.

Mr. MEADOWS. Without objection, so ordered.

Mr. HICE. And I yield my time. Thank you.

Mr. MEADOWS. I thank the gentleman from Georgia. The chair recognizes the gentleman from Oklahoma, Mr. Russell.

Mr. RUSSELL. Thank you, Mr. Chairman.

And Mr. Chairman, ranking member, members of the committee, I'm concerned that this problem, even if Dr. Moure-Eraso does do the honorable thing and the needed thing of stepping down, that this problem will perhaps perpetuate itself with the creation of a Senior Executive Service position for the managing director. And so my question to you, Dr. Moure-Eraso, is did the Chemical Safety Board announce the creation of a Senior Executive Service position as managing director?

Mr. MOURE-ERASO. Yes, we have that.

Mr. RUSSELL. Was it announced just yesterday?

Mr. MOURE-ERASO. It was announced, yes.

Mr. RUSSELL. Yesterday?

Mr. MOURE-ERASO. Yes, it was.

Mr. RUSSELL. Dr. Eraso, numerous whistleblowers have stated that you fast-tracked the creation of this new SES position to make

sure that Mr. Horowitz would be put in it before you left the Chemical Safety Board. Was this position created——

Mr. MOURE-ERASO. It's absolutely untrue.

Mr. RUSSELL [continuing]. For Daniel Horowitz?

Mr. MOURE-ERASO. It's absolutely untrue. This is—as a matter of fact, that's the reason why I have an outside consultant to come in to run the campaign to open a——

Mr. RUSSELL. So this position was put up on the Board for review, and then we have a Mr. Horowitz changing his title to senior advisor to the Deepwater Horizon investigation, and he did that on March 2. Is that true?

Mr. MOURE-ERASO. He has that position.

Mr. RUSSELL. He changed his title so he would what, qualify for the position?

Mr. MOURE-ERASO. The position is open for anybody that wants to—I mean, the system of the Office of Personnel Management is that you open a position in the Federal Government for anybody to apply.

Mr. RUSSELL. So let me understand the sequence of attack here. Draconian policies can be furthered by creating an SES position as managing director. Position is posted up on the Board for anyone, as you state, to apply, and magically, Mr. Horowitz changes his title so he somehow positions himself, and now it is your intention to hire him for this position. Is that about right?

Mr. MOURE-ERASO. The position of managing director have always existed at different times in the—in the—in the organization.

Mr. RUSSELL. But this one is a new position. Is that correct, the managing director?

Mr. MOURE-ERASO. The managing director has existed since September 2011.

Mr. RUSSELL. And so now you are intending to—what—even after you retire, continue your toxic work environment as was stated in these survey——

Mr. MOURE-ERASO. What I intended to do——

Mr. RUSSELL [continuing]. Position?

Mr. MOURE-ERASO. Open the position to be——

Mr. RUSSELL. How far do the——

Mr. MOURE-ERASO [continuing]. In the——

Mr. RUSSELL [continuing]. Go into this organization that you have to have a grip on it even after you would leave, whether honorably or dishonorably in 15 weeks, that you would continue to set everything in motion so that you keep your little web in control of something so vital to the country? Is that—is that the intention, or do I have it wrong?

Mr. MOURE-ERASO. You have it wrong.

Mr. RUSSELL. I see. OK. And after listening to all of the testimony and the answers given so far, we'll let the people of the United States be the judge there.

Mr. Griffon, Mr. Engler, Mr. Ehrlich, given the lack of confidence in senior leadership that has been highlighted in the H.R. consulting report, you know, I think back to when I was in the military, if I got a command climate survey as a commander of 1,000 soldiers and it said that 80 percent of my soldiers thought I was incompetent to lead and then it was followed up with a Board and

testimony and then I would have to come back and show some type of gain, whether 3 months, 6 months later, or something of that nature, and yet the follow-on reports were even worse and then I was called on the carpet before, I would be relieved of command. I mean, it would be just absolutely—that would be the result. I would be relieved of command. Do you think that hiring Mr. Horowitz for an SES position is a good idea at this time, given the climate that the command safety board has?

Mr. Griffon, please.

Mr. GRIFFON. I think, you know, I think the evidence speaks for itself as far as the problems with management, and I think it should involve a careful assessment of whether he is the appropriate person to——

Mr. RUSSELL. Do you believe that it ought to have more time other than just be posted and then titles being changed and then people being recommended and then we just go from there, or do you think that this thing might ought to have some brakes put on it and get—one, do you even need it? We look at the Veterans Affairs Administration and see the problem that our Senior Executive Services have created with the Secretary. That's a whole different issue, but now we are going to make a construct to potentially do that.

Mr. Engler, do you think that it's appropriate at this time?

Mr. ENGLER. I think that it needs to be a full, fair, and objective evaluation. I would—given how fast other things have happened, I would urge things go slower but in accordance with Federal statutory and regulatory personnel requirements.

And if I could just add for the record, part of my briefing was very useful from the CSB staff. And I appreciate the CSB staff at updating me, but there were some notable exceptions to what was not included in my briefing that I think should have been. One was any reference to the Cardon report. One—another was any detailed review of the Vantage report, which in fact I had to request a copy of to get, which I did get. But then when I requested to have a conversation with the contract—with the contractor over the last couple of days, apparently because of the—I don't know how to characterize it as a sort of a counterattack on this committee, that because there's a request to the IG, now it's something that I don't have access to, I mean, this is making due diligence for me very, very difficult. And it's just an incredibly challenging position to be in as someone who cares very, very deeply about the mission of the Board, to have to encounter these obstacles in the first days of appearing here.

Mr. RUSSELL. Well, my time is expired, and Mr. Chairman, I thank you for your patience, and I think I can speak for all of us that we are committed to try to help remove these obstacles.

Thank you, Mr. Chairman.

Mr. MEADOWS. I thank the gentleman from Oklahoma.

The chair recognizes the gentleman from Alabama, Mr. Palmer.

Mr. PALMER. Thank you, Mr. Chairman.

If you would, could we show the OMP—the OPM survey and the CSB worker satisfaction slide. Thank you.

Chairman Moure-Eraso, if you look at these statistics on employee satisfaction, they indicate an agency in turmoil. In par-

ticular, it would appear from this that the satisfaction of your senior leadership, which in this case would seem to be yourself as Chairman, your top staff, such as Mr. Loeb and Mr. Horowitz, why do you think these numbers are so low?

Mr. MOURE-ERASO. You know, we run an agency, as was explained before, that has very little resources, that does have, I agree, leadership problems. We have a—a Board that is—functions without any agreement, and they are in constant conflict. All that create a situation that I believe the people and the staff feel that the leadership of the agency is not to their liking.

Mr. PALMER. Let me ask Mr. Griffon and the rest of the Board, but particularly Mr. Griffon, as long as you work with the Chairman, you might have some more detailed thoughts on this. Can you give us some insights into why you think these numbers are so low?

Mr. GRIFFON. Well, I think the number—I think part of it is that the Board—we've had the—a series of maneuvers and operations and ways to get around orderly Board order—Board orders are governance, and I think if the Board can make a commitment to say that we will all follow the Board orders, then a lot of the conflict on the Board would go away.

That certainly contributes to it, but I also think it goes deeper than that. It's the ways in which staff are not—a fear of retaliation. There's a real fear of retaliation. There's not an openness for dissenting opinions to be shared, so it's much deeper than that. But this has gone on for quite some time. I guess my biggest disappointment is, even after the hearing in June, I urged everyone to reflect and let's try to reform. And I think instead, we continue to deflect and defend: It's lack of resources, lack of staff. It's never management problems.

And I think they are—the evidence is there. It's very clear. We have to accept them and try to actually reform the place.

Mr. PALMER. Yes, sir.

Mr. EHRLICH. I can't speak to the date that was gathered some time ago. What I can speak to is the issue of how data was handled in the Vantage study. In my——

Mr. PALMER. We already covered that, I think, earlier in the hearing.

Mr. EHRLICH. But I wasn't asked. You asked me why I—what I thought was going on, and I'd like to tell you, sir.

Mr. PALMER. Go ahead.

Mr. EHRLICH. I have talked to almost everybody in the agency. I have a background in organizational diagnosis as well as chemistry. I think there are some issues, yes, but I know for a fact—and the emails are forthcoming to the inspector general—that a person inside, two people inside the agency told the contractor—by the way, the contractor, who lied to us that nobody had ever seen this report up until the day it was presented—we have data which will be submitted to you that says in fact that two people inside of the agency told the contractor to change the data so that it was in fact not very positive.

Mr. PALMER. That's noted. Thank you.

Mr. EHRLICH. You're welcome.

Mr. PALMER. Mr. Griffon, would you please briefly explain Board Order 28. On January 28, there was a motion which rescinded Board Order 28 which established significant checks on the chairman. Would you explain that?

Mr. GRIFFON. Yes. Board Order 28 came about after some—some earlier arguments in the life of the Board, of governance on the Board, and it delineated the authorities of the chairman versus the Board as a whole, and it allowed for several checks and balances, including voting on budget allocation of funds as well as the appointment of heads of administrative units as well as large expenditures. And I think some of these I referenced in my opening statement that some of these principles were outlined by Senator Lautenberg when this initial dispute was going on. He thought that those checks and balances were very important, and I should also point out that, during a period of time under Carolyn Merritt, it seems that these Board orders, perhaps there were arguments here and there about them, but overall, they operated under those Board orders, and they were pretty productive, and I think that was working. And if you want to amend these, they should be done by the full Board, not——

Mr. PALMER. Quickly.

Mr. GRIFFON [continuing]. In the dark of night.

Mr. PALMER. Do you believe that Chairman Moure-Eraso adhered to these, to Board Order 28?

Mr. GRIFFON. No. I think even when—even when we were supposedly operating under Board Order 28, Chairman Moure-Eraso appointed a person to an administrative unit head, which I objected to, in violation of that Board order. It should have been a Board vote for that position, and he—he proceeded with the appointment unilaterally.

Mr. PALMER. Mr. Chairman, I would like to enter Board Order 28 into the record.

Mr. MEADOWS. Without objection, so ordered.

Mr. PALMER. My time is expired. Thank you, Mr. Chairman.

Thank you, the witnesses.

Mr. MEADOWS. I thank the gentleman.

The chair recognizes the gentleman from Texas, Mr. Hurd.

Mr. HURD. Thank you, Mr. Chairman.

We all know the mission of the U.S. Chemical Safety Board is to investigate chemical accidents and issue timely findings and recommendations in order to prevent future accidents, and we are all here because the serious management deficiencies at the Chemical Safety Board have prevented this independent agency from fulfilling its mission. And my first question, Chairman Moure-Eraso, you know, the CSB plays a very important role in public safety. Members of this committee have expressed their concern, as my colleague from Virginia said, about the dysfunctional culture at CSB and your ability to remain as chairman.

And your current former Board colleagues have testified to the hostile climate at CSB. Former CSB Board Member Beth Rosenberg stated that those whose opinion differed from those of senior leadership or the Chair are marginalized and vilified. You have 15 weeks—is that correct, sir—left?

Mr. MOURE-ERASO. Yes, 15.

Mr. HURD. And you have said, I think, many of my colleagues have intimated or outright said they think it's time for you to step down. And you responded with you have work to do. What work do you think you can do to fix these major problems in 15 weeks?

Mr. MOURE-ERASO. First of all, Mr. Congressman, I disagree with your premise that the core mission of the agency is not being fulfilled. As I expressed before, in the last 8 months, we have produced the eight excellent interview and reports with videos of our investigations. We have completed 22 investigations. The core mission of the agency is being made.

Mr. HURD. Is that because of you or in spite of you?

Mr. MOURE-ERASO. It's because the agency works, and the product that we have is the evidence that the agency works.

Mr. HURD. And what do you plan on doing the remaining 15 weeks of your time?

Mr. MOURE-ERASO. We still have three major reports that are in the process of being finished, and I would like to bring those reports to an end in the next weeks that I have.

Mr. HURD. Mr. Ehrlich, question for you. On February 12, 2015, you submitted a letter to the editor of the National Journal claiming that the Office of Special Counsel never substantiated any claim of whistleblower retaliation by the CSB's management after years of inquiry. Can you explain how you arrived at this conclusion and what is the basis for this claim?

Mr. EHRLICH. Well, I understand that that came about in the—in the hearing last year, and I asked the questions of the staff, was that information ever transmitted into the agency? And I was told no, and I accepted that on the face of it and accepted it to be true and wrote it in that article.

Mr. HURD. And so do you have a change of opinion now?

Mr. EHRLICH. No, sir.

Mr. HURD. Did the Board receive formal communication from the Office of Special Counsel?

Mr. EHRLICH. I don't know, sir.

Mr. MOURE-ERASO. If I may, Congressman.

Mr. HURD. Sure.

Mr. MOURE-ERASO. The Office of Special Counsel has been investigated—investigating the agency for 3 and a half years. They have come out with no findings. They have come out with no instances of retaliation, period.

Mr. HURD. So noted. Thank you.

Mr. Ehrlich, last question for you. Have you ever used personal email to conduct official CSB business?

Mr. EHRLICH. Not that I haven't copied my own email on in my office.

Mr. HURD. And who are you communicating that?

Mr. EHRLICH. At CSB.gov. I think I've sent emails from home on my personal email, but I copy my CSB.gov file.

Mr. HURD. Great. Thank you.

And my last question is for inspector general Sullivan. What is the process of removing a Board member from the U.S. Chemical Safety Board or the Chairman?

Mr. SULLIVAN. Well, we would not be involved in any process of removal. What our role would be is to present the facts in a clear

and unbiased way, present them to the next level above to take—to take the potential disciplinary action. In this case, our report of investigation was sent to the President because he is in effect Dr. Moure-Eraso's supervisor.

Mr. HURD. Is it odd to have named the Chairman before—15 months before the end of someone's tenure?

Mr. SULLIVAN. Can you repeat your——

Mr. HURD. In your opinion?

Mr. SULLIVAN. I didn't understand the question, Mr. Hurd.

Mr. HURD. The fact that the President named a replacement Chairman yesterday, is that right, March 3, is that a common practice?

Mr. SULLIVAN. I don't know, sir.

Mr. MOURE-ERASO. If I may, Congressman.

Mr. HURD. Sure.

Mr. MOURE-ERASO. The process is that the President nominates a person. What has happened is that the President nominated a person to be the Chairman. The process now has to follow by the Senate to confirm.

Mr. HURD. Confirmation, right.

Mr. MOURE-ERASO. But, at this time, all that we have is a name that the President has presented for consideration to the Senate.

Mr. HURD. Thank you for that clarification.

I yield back the balance of my time.

Mr. MEADOWS. I thank the gentleman.

Mr. Ehrlich, let me clarify something that Mr. Hurd just brought up. You are very confident when you said you only used your personal emails only if you copied your official email. Did you copy those personal emails to your official account at a much later time than when you were actually having it back and forth?

Mr. EHRLICH. Not to my recollection, sir.

Mr. MEADOWS. So—but you were very clear in your answer to Mr. Hurd——

Mr. EHRLICH. I was.

Mr. MEADOWS [continuing]. That you did that. So you are confident that each time that you copied—when using your personal email, that you copied it, because you're under oath.

Mr. EHRLICH. I understand that, sir.

Mr. MEADOWS. And you're confident of that. That's your testimony here today.

Mr. EHRLICH. It is. My recollection is that that is exactly true.

Mr. MEADOWS. Recollection is very different than what you told Mr. Hurd.

But we'll go ahead and recognize the gentleman from Georgia, Mr. Carter.

Mr. CARTER. Thank you.

Thank you, Mr. Chairman.

And thank you, gentleman, for being here today. We appreciate your presence.

Let me ask you, Dr. Moure-Eraso, getting back to January 28 when, the motion was made to consolidate some powers, do you think that was a pretty significant motion that was made that day? Pretty significant change; would you agree?

Mr. MOURE-ERASO. The only thing that was different about the meeting that we have in January 28 is that I have a clear majority that was backing the position. That was the only thing that was especially different.

Mr. CARTER. I'm sorry, I didn't understand you.

Mr. MOURE-ERASO. That I have a majority on the position that was presented in a motion. That was the only thing that was different in the——

Mr. CARTER. I'm talking about the change that was made. The change, was it significant? Would you consider it significant——

Mr. MOURE-ERASO. Yes, the change, of course, it was significant, yes.

Mr. CARTER. Who made it? Who made the motion?

Mr. MOURE-ERASO. This is a process of 4 and a half years of discussion on the governance of leadership that we have.

Mr. CARTER. No, no, no. Who made the motion?

Mr. MOURE-ERASO. The motion was made by Board member Ehrlich.

Mr. CARTER. By Mr. Ehrlich.

Mr. MOURE-ERASO. Yes.

Mr. CARTER. Mr. Ehrlich, let me ask you, you made that motion on January 28, right?

Mr. EHRLICH. Yes, sir.

Mr. CARTER. When did you join the Board?

Mr. EHRLICH. I was appointed in December 2014.

Mr. CARTER. You were appointed in December 2014, and then you made what is admittedly, by the director, a significant motion, a significant change. Is that correct?

Mr. EHRLICH. Yes.

Mr. CARTER. Now, that's pretty quick. You're pretty aggressive there. Let me ask you, you were appointed. Who appointed you? How did you get appointed?

Mr. EHRLICH. I was nominated by the President, confirmed by the Senate.

Mr. CARTER. OK.

Mr. EHRLICH. Appointed by the President.

Mr. CARTER. And during that confirmation process, did you ever—did you ever discuss what you—I mean, obviously, you've been thinking about doing this. Did you ever discuss that?

Mr. EHRLICH. Well, yes, I did. I watched what was going on when I came in. I did a lot of reading. I was provided with a lot of information before I came to Washington. And I saw this as an opportunity, as you do, for example, in a business environment to fix some things that didn't appear correct and clear the slate for Mr. Engler and I to move forward in June.

Mr. CARTER. Did you discuss it with anyone before you made such a significant motion?

Mr. EHRLICH. I discussed it internally, yes.

Mr. CARTER. Internally. With who?

Mr. EHRLICH. With the Chair, with the managing director, a few of the people in the organization, staff members.

Mr. CARTER. So you did discuss it with the Chair that you were going to make this motion, and I assume he was in agreement with that?

Mr. EHRLICH. Yes, sir.

Mr. CARTER. Was anyone in opposition to it? Did you talk to anyone who said, No, I don't think that's a good idea?

Mr. EHRLICH. I did not.

Mr. CARTER. OK. But you went ahead and did it anyway?

Mr. EHRLICH. I did.

Mr. CARTER. You know, again, I find that—that significant, to say the least. Did anyone help you with it, or you just came up with that on your own?

Mr. EHRLICH. Well, no, I got help internally to put some of the verbiage together, yes.

Mr. CARTER. Who helped you?

Mr. EHRLICH. Managing director, general counsel, the Chair. I talked to some of the senior investigators, or one of the senior investigators.

Mr. CARTER. So the Chair did help you in crafting this motion?

Mr. EHRLICH. At some level, yes, sir.

Mr. CARTER. You know, that's—that's pretty significant. It seems—so would you—would you say that you had an agenda when you came on the Board?

Mr. EHRLICH. Well, I had an agenda to the extent that I wanted to see the Board—I wanted to see the agency function more smoothly. I wanted rules and regulations that were up to date. I wanted to apply a business model from my executive management that would help bring it up——

Mr. CARTER. OK. But were you aware of what existed at the time? I mean, after only 3 weeks, you know, I'm not sure how aware you could have been, and when I'm talking about then, I'm talking about the morale of the employees, about just what has obviously here been described as a very, very disruptive work force.

Mr. EHRLICH. I have, and yes, I had talked to a number of employees in that period of time. And I understand where some of the problems were. And I felt that we could take action at the time, at the Board meeting, since it was the only one—or the community meeting, since it was the only one scheduled, to correct some of the issues and move forward and clean the slate.

Mr. CARTER. So understanding that a lot of the concern among the work force and in the workplace was that of the director, instead you made a motion to give him even more power.

Mr. EHRLICH. Sir, I never—when I talk to people—first of all, I didn't give him any more power. He's not going to be there. It gave Mr. Engler and I the ability to—and future Chairs for power. I never talked to anybody in the organization that had anything negative to say to me about the Chair. They had things to say about communication. There was no finger pointing as to who was responsible or not. They had issues about the fact that we need to work on a—on a protocol, on a style guide. All of these things, I would assume, had been discussed on Mr. Griffon's shift.

Mr. CARTER. You would assume.

Mr. EHRLICH. Well, I know some of them were discussed, yes, OK. And just to clarify an issue from before, Mr. Engler and I had a discussion about going back and looking, for example, at an HF issue. In fact, we talked about how the research would be done on it because I understood that that created some issues. So we agreed

that we were going to look at it and decide how we could move forward collegially.

Mr. MEADOWS. The gentleman's time has expired, but the chair is going to ask a followup question to this because the gentleman from Georgia is exactly right.

Mr. Ehrlich, it is troubling that you—you are an unbelievable quick study. After being there just a couple of weeks, you made all of this unbelievable analysis. So who drafted the motion, Mr. Ehrlich?

Mr. EHRLICH. I was——

Mr. MEADOWS. Because I have reason to believe that it was not you that drafted the motion. Who drafted the motion?

Mr. EHRLICH. It was drafted within the organization——

Mr. MEADOWS. By who?

Mr. EHRLICH [continuing]. And I agreed to it.

Mr. MEADOWS. By who?

Mr. EHRLICH. By the Chair, by the managing director, by——

Mr. MEADOWS. So let me understand this. The Chair drafts a motion for you to make the motion to give the Chair more power.

Mr. EHRLICH. Not in—not in its entirety. I wrote a lot of it and I had——

Mr. MEADOWS. Well, we've got the transcript, and we'll——

Mr. EHRLICH. I wrote the verbiage——

Mr. MEADOWS [continuing]. Follow it up.

Mr. EHRLICH [continuing]. That——

Mr. MEADOWS. So did the general counsel—did the general counsel draft the motion?

Mr. EHRLICH. No, but he talked to me about the verbiage.

Mr. MEADOWS. All right. So you drafted it?

Mr. EHRLICH. Yes.

Mr. MEADOWS. So if we subpoena your records, it will be a draft form in yours, Mr. Ehrlich? Is that your testimony? I would be careful there.

Mr. EHRLICH. I believe so, but I'm not 100 percent sure.

Mr. MEADOWS. So is your testimony that you drafted it or you didn't? I'm giving you a chance to back up.

Mr. EHRLICH. I signed off on the draft. I made——

Mr. MEADOWS. So you didn't draft——

Mr. EHRLICH [continuing]. Changes.

Mr. MEADOWS. You didn't draft it.

Mr. EHRLICH. So I needed—I needed assistance from inside——

Mr. MEADOWS. Mr. Ehrlich, I will remind you that you are under oath, and when you—you're the one that used the word "lie" earlier, but when you do not tell the truth to this committee, it is a major deal. So did you draft it? Is that your testimony, yes or no?

Mr. EHRLICH. The final draft was mine, yes. Did I drew all of the drafts? No.

Mr. MEADOWS. All right.

The chair will recognize the gentleman from Wisconsin, Mr. Grothman.

Mr. GROTHMAN. OK. A followup question for you.

Mr. MEADOWS. Can the gentleman turn on his mic?

Mr. GROTHMAN. Followup question for you. There was a meeting on January 28. Did you provide a 1-week notice of the Board vote on that meeting?

Mr. EHRLICH. I did not.

Mr. GROTHMAN. OK.

Mr. MOURE-ERASO. If—might I say, you know, when we have a public meeting, we have to put a public description of the meeting in the Federal Register. It was in the Federal Register according with law, and it was said in the Federal Register that we were to discuss the Chairman report and we were going to discuss administrative matters and vote on administrative matters. All that is in the Federal Register.

Mr. GROTHMAN. Did you provide Board Member Griffon a copy of the motion prior to the hearing?

Mr. MOURE-ERASO. No. There is not a custom in our agency to do that. As a matter of fact, I have experiences before in which a Board orders—I mean, proposals for voting are kind of sprung at the moment and voted immediately without providing copies to other Board members.

Mr. GROTHMAN. OK. So he didn't have an opportunity to review the motion prior to the vote?

Mr. MOURE-ERASO. Well, all the issues that are related—that appear in the motion have been in discussion for 3 and a half years—issues of Board Order 28, as was mentioned, issues of how we are going to do the recommendations, issues of how we are going to do scoping of investigations, issues of what—what have been produced in this for all investigations so that we could basically administrative close with the problem that we have already producing them. All those things have been in continuous discussion with Mr. Griffon.

Mr. GROTHMAN. I would like to ask Mr. Griffon to comment on that, how much advance notice you were given.

Mr. GRIFFON. I had no notice of the motion, you know. Other issues have been under discussion for years, but if you can't get a majority to support amendments to Board orders, then they don't move, so that's the way a Board should operate. This was clearly a—planned out when the Chairman had the votes.

Mr. GROTHMAN. OK. So you feel it was by design that you weren't given a copy of the motion? Would that be an accurate statement?

Mr. GRIFFON. Yes, I can't come to any other conclusion, yes.

Mr. GROTHMAN. OK.

Mr. Moure-Eraso, just one more question. Under the Sunshine Act, it requires agencies to make public announcements at least 1 week in advance of—you should be noticing location, the time, and the subject matter of the Board meeting. Do you feel that you complied with that statute?

Mr. MOURE-ERASO. Yes, pretty much. The Federal Register notice that we put about the meeting speaks for itself. You can read it.

Mr. GROTHMAN. OK. I'll yield the rest of my time.

Mr. MEADOWS. So your testimony is you pretty much adhered to it, is that correct, Dr. Eraso, pretty much? I mean, so——

Mr. MOURE-ERASO. Yes. Well, I——

Mr. MEADOWS. On a scale of 1 to 10 with being completely, would you put it—is that a 7?

Mr. MOURE-ERASO. Well, I am unclear about what the Sunshine Act requirements are to discussion about administrative matters in public meetings. I am not clear about that.

Mr. MEADOWS. All right.

Thank you, Doctor.

The chair recognizes the gentleman from South Carolina, Mr. Mulvaney, for a few followup questions before we have closing remarks.

Mr. MULVANEY. I appreciate that, and I appreciate the panel staying and the chairman allowing the indulgence of. Just a couple of followup questions.

First, Dr. Moure-Eraso, the ranking member asked you why you didn't sign the compliance statement when you turned over your email documents. I have your letter, which you provided earlier, and then I have the statement which isn't here, and there are two things I want to draw to your attention, the statement that you didn't sign.

This isn't the statement they asked you to sign. There's the introductory paragraph about who you are, who you asked, and by the inspector general to fill out some stuff. So if I mention—the next sentence, In good faith, I have made a diligent search of all the records and communications, and you sort of say that in your—in your letter.

Then you say—the next thing in the section of the document you didn't sign asked you to affirm that your methodology to collect email records included conducting a search of personal email, which is such and such, and to use the following search term, "Jason Zuckerman," "Peter Broida," et cetera, et cetera. And your document that you did draft or your counsel drafted for you and that you signed said that you searched the names that the IG had requested, so so far so good.

Then the next paragraph of the document you didn't sign says, I also developed the additional search terms based upon my review in order to make sure my search included the full scope of email communications pertaining to official CSB matters. And there is places where you could have filled in the blank for additional search terms. Now, your letter didn't speak to that. Did you use any other search terms other than the names that were given to you by the IG?

Mr. MOURE-ERASO. I used—I think there was a long list, more than 1-page long. I cannot tell you each one of them, but you know, there was a number of search terms that were used.

Mr. MULVANEY. No, well, I'll read them to you. And again, I'm not trying to trick you. The search terms were "Jason Zuckerman," "Peter Broida," "Daniel Horowitz," "Christopher Warner," "Office of Special Counsel," "OSC," "SC," and "special counsel." So I guess the question is, in the next paragraph of a document you didn't sign, there is an opportunity to disclose other search terms that you might have used in looking for the documents.

Mr. MULVANEY. Did you use any search terms other than those I've just read to you in searching your documents?

Mr. MOURE-ERASO. I might have. I mean, what happens is that when we use those terms we drew a blank. This is working with my chief information office at my computer. So we'll start using—let's put some other terms to see what the IG is trying to find.

Mr. MULVANEY. When you searched those terms, you drew blanks in your private emails?

Mr. MOURE-ERASO. The ones that you have in there, some of them, yes, I drew blanks.

Mr. MULVANEY. OK. All right. That's interesting.

Mr. MOURE-ERASO. Some for my Gmail, in which—for instance, when I put "CSB"——

Mr. MULVANEY. Yes.

Mr. MOURE-ERASO [continuing]. It drew a blank. When I put "Zuckerman," it drew a blank.

Mr. MULVANEY. OK.

Mr. MOURE-ERASO. So, you know, it was—I wanted to be responsive, you know.

Mr. MULVANEY. All right.

The last paragraph says, "The materials provided to the EPA are genuine and complete," and you say that in your document.

This is the last substantive sentence of the document you didn't sign: "I took no intentional action to destroy, delete, or remove any official CSB email communication in my possession." That's missing from here. Why is that?

Mr. MOURE-ERASO. Yes, it's missing. You are asking if I destroyed any document?

Mr. MULVANEY. No, I'm asking——

Mr. MOURE-ERASO. The answer is no.

Mr. MULVANEY. Why didn't you put that in your letter?

Mr. MOURE-ERASO. I guess—it wasn't required for me to put that. But, you know, I——

Mr. MULVANEY. It wasn't required? No, it was required. It was in a document that they sent you. And you didn't sign this document.

Mr. Cummings asked you a question——

Mr. MOURE-ERASO. Well, but you are talking about a document that I don't have. How could I answer the question?

Mr. MULVANEY. I can—I just read it to you.

Mr. MOURE-ERASO [continuing]. Without having it in front of me and having time to evaluate what you're asking, I cannot——

Mr. MULVANEY. You haven't looked at this document?

Mr. MEADOWS. Would the gentleman—will the gentleman yield for just——

Mr. MOURE-ERASO [continuing]. Probably months ago.

Mr. MULVANEY. Did you want to give him the document?

Mr. MEADOWS. Dr. Eraso, you're the one that gave that to us.

Mr. MOURE-ERASO. No, I didn't.

Mr. MEADOWS. I'm not talking about the inspector general's report, but——

Mr. MOURE-ERASO. I'm talking about Mr. Sullivan's document. I don't have Mr. Sullivan's document.

Mr. MEADOWS. But you've seen the document that they asked you to sign.

Mr. MOURE-ERASO. Probably 6 months ago, yes.

Mr. MEADOWS. OK.

Mr. MULVANEY. Dr. Moure-Eraso, did you intentionally, or I guess unintentionally, destroy, delete, or remove any official——

Mr. MEADOWS. Will the gentleman suspend for just a second?

Mr. MULVANEY. I'd be happy to.

Mr. MOURE-ERASO. No. The answer is no.

Mr. MEADOWS. Will the gentleman suspend for just a second?

Dr. Eraso, the ranking member makes a very good recommendation. We think you ought to read the document right now. And I think that's a very fair request.

And, Mr. Mulvaney, if you'll give it to him.

Mr. MOURE-ERASO. Thank you.

Mr. MULVANEY. You're welcome.

Mr. MOURE-ERASO. So I guess you were asking about this last paragraph here?

Mr. MULVANEY. Yes, sir.

Mr. MOURE-ERASO. It says, "The materials provided to the EPA are genuine, complete, and in full compliance with the request. I took no intentional action to destroy, delete, or remove any official CSB email communications in my possession."

The answer to that question is that's correct. I absolutely never took intentional action to destroy, delete, or remove any official CSB communications in my possession.

Mr. MULVANEY. All right. Then I think we leave open for now, Doctor, the question that the ranking member asked you, which is why you didn't sign the document. But I appreciate that.

Before we let you go, Mr. Ehrlich, you said some things just a few minutes ago that caught my attention. It was not part of my original questioning, but I'm fascinated by it.

What is a scoping document?

Mr. EHRLICH. A scoping document is a document that's used to determine the magnitude of an incident and from a numerical scale that's derived from it.

Mr. MULVANEY. When did you learn that? When did you learn what a scoping document was?

Mr. EHRLICH. Right after I came to the agency.

Mr. MULVANEY. OK.

I'm looking at the motion that the gentleman from Georgia asked you about—it's, I don't know, 10 pages double-sided—that you said you offered after being there for about 3 weeks. Is that correct?

I guess, let me ask the question a different way.

Dr. Moure-Eraso, were you involved in drafting this document?

Mr. MOURE-ERASO. I had discussions with Mr. Ehrlich about different details of the document.

Mr. MULVANEY. Were you involved in drafting this document?

Mr. MOURE-ERASO. Drafting itself? No.

Mr. MULVANEY. Did you instruct somebody to draft all or part of it?

Mr. MOURE-ERASO. I didn't instruct anybody.

Mr. MULVANEY. You've never asked anybody to draft any part of this amendment——

Mr. MOURE-ERASO. I never——

Mr. MULVANEY [continuing]. This motion?

Mr. MOURE-ERASO. I never give instructions to anybody to draft that motion.

Mr. MULVANEY. No, that wasn't my question. Did you ask anybody to work on this motion?

Mr. MOURE-ERASO. No.

Mr. MULVANEY. Who did?

Mr. MOURE-ERASO. Mr. Ehrlich.

Mr. MULVANEY. So this is just your work.

Mr. EHRLICH. I worked with others on it because I needed to know the language and the format. I worked with the managing director, and I worked with general counsel.

Mr. MEADOWS. All right. I thank the gentleman from——

Mr. MULVANEY. Oh, I'm sorry. Yes, I'm out of time. Thanks.

Mr. MEADOWS [continuing]. South Carolina, whose time has expired.

I will say that the gentleman from Alabama has a followup question. We're going to ask him to submit it, and it is an answer that this committee does need. The gentleman from Alabama has it. He will submit it to you in writing. We ask for your response to be in writing.

Mr. MEADOWS. And because of the time, we go to the ranking member for his closing statement.

Mr. CUMMINGS. Mr. Engler, what did you want to say?

Mr. ENGLER. Very briefly. Thank you. I just want to put two short points on the record.

Mr. CUMMINGS. Sure.

Mr. ENGLER. One is that there was a process prior to this committee hearing to prepare for it, which involved going over voluminous documents and involving an outside consultant at some point to, frankly, spin what cannot be spun.

I want to go on the record to point out that I said—and I believe this is pretty close to a precise quote—I refuse to participate in this process.

I am dedicated to the mission of the agency. I want to move forward. I hope to be back here before your committee and to work with the inspector general, but based on whether we're accomplishing the mission of the agency, not whether we're taking steps that have been described today to interfere with the mission of the agency.

This agency has no credibility whatsoever to tell anyone outside the agency virtually anything if its internal practices around issues like the right to know, of not informing people about the actions of the agency—when we expect corporations and government agencies and others to take steps to inform the public and inform workers what materials they're working with, what the risks are, and we can't set a standard for good practice here?

I pledge to you that that's why I'm here, that's what I'm going to work for. And I look forward to coming back to this committee and to being accountable to all the relevant stakeholders and the inspector general in the months ahead.

Mr. CUMMINGS. Mr. Engler, I really appreciate that.

I see you shaking your head, Mr. Griffon. Do you feel the same way? Just yes or no, if you don't mind.

Mr. GRIFFON. Yes. Yes. Absolutely.

Mr. EHRLICH. And I feel the same way, sir.

Mr. CUMMINGS. Very well.

I just—I want to thank you for that, your statement. And after this long hearing, to hear that is refreshing.

And I think what happens in life so often is people can go in circles, and never getting off the merry-go-round. And going in those circles, you don't accomplish the things that you want to accomplish or fully accomplish.

And I think what has happened is that we've gotten this—the leadership here has basically become dysfunctional and has been dysfunctional for a long time. And it's interesting that the employees know that. They know it, and they figured it out. And it affects their lives. They're probably good people trying hard to be the very best that they can be. They take their jobs very seriously, and they want to make sure that they address the kind of important issues that you deal with. They want to do it effectively and efficiently. But then they're almost blocked and they're distracted, in many instances, because of all of this stuff that's happening at the top.

And so, again, Mr. Chairman Moure-Eraso, I would ask that maybe, you know, when you get a chance after you leave here today, that you give some thought to taking an early retirement and let this agency go forward so it can do the things that it needs to do.

And I want you to understand, I don't say that lightly. Very rarely have I asked anybody from this dais to leave. But I just think that this is so important. And I do think that you need to put a mirror up and ask the question, is it me? And I think the Vantage report and the findings and a lot of what we've heard here today points to you. And I hope that you'll consider that.

Again, I thank you all.

Mr. MEADOWS. I thank the——

Mr. MOURE-ERASO. May I respond or——

Mr. MEADOWS. We are just doing closing statements at this point. You've had more than enough time to share your perspective, Dr.——

Mr. MOURE-ERASO. Thank you very much.

Mr. MEADOWS [continuing]. Eraso. And so, I think at this point it is important that we bring this to a close under a number of different issues.

One is, Mr. Engler, thank you. Thank you for your comment. It's not easy when you're on a Board to make those kind of comments, so thank you so much for hopefully giving us a fresh start.

And to the employees, who may or may not be watching this particular hearing—the ranking member and I were talking about this while some of the other questioning was going on. We've got your back. And whether it's a whistleblower that is receiving retaliation or whether it's other issues within this agency that have not been properly handled, I can tell you that the ranking member and the chairman of the full committee, Mr. Chaffetz, are committed to working hand-in-glove to make sure that the employees get treated fairly.

Some of what I've heard here today is very discouraging and would certainly make for very low morale, because what ultimately this has been about is the truth and power. And, sadly, both of

those have been left, really, in the hands of the wrong people. And I find that very troubling. And so I'm looking forward to a new day where we'll have a new Chairman come before this committee and, indeed, everything would look a little bit brighter.

I'm going to ask for unanimous consent for the following items to be put in the record: the letter from the American Chemistry Council to the committee; a letter from the United Steelworkers to the committee; a letter from the former CSB Board member William Wright to the committee; a letter from the former CSB Board member Gerald Poje to the committee; a letter from the former CSB Board member William Wright, a second one, to the committee; written testimony from the former CSB Board member Beth Rosenberg to the committee; a letter from the former CSB Board member William Wark to the committee; a letter from the former CSB Board member John Bresland to the committee; February 12, 2015, Vantage report titled "Briefing to CSB Senior Leadership"; July 10, 2014, Carden Group report titled "U.S. Chemical Safety Board Path Forward Overview"; July 7, 2014, letter to the President; Government in Sunshine Act 5 U.S.C. 522b; Chemical Safety Board Order No. 28; and a job posting on the USAJOBS for the new Senior Executive Service position of managing director at the Chemical Safety Board, posted on March the 2d, 2015; and the January 16, 2015, memo from the EPA inspector general to the President; and a February 2d letter from the White House Counsel to this CSB Chairman.

Without objection, those will be entered into the record.

Mr. MEADOWS. And, with that, this committee hearing is adjourned.

[Whereupon, at 12:16 p.m., the committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

WALTER MOORE
VICE PRESIDENT
FEDERAL AFFAIRS

March 3, 2015

The Honorable Jason Chaffetz
Chairman, Committee on Oversight and Government Reform
United States House of Representatives
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Member, Committee on Oversight and Government Reform
United States House of Representatives
Washington, DC 20515

Dear Chairman Chaffetz and Ranking Member Cummings:

The American Chemistry Council[1] (ACC) is pleased to provide input to you regarding the subject hearing on March 3, 2015. ACC and its member companies strongly support the U.S. Chemical Safety Board's (CSB) mission and therefore have great interest in its work. Safety has always been a primary concern of ACC members; both ACC and its individual companies have been recipients of and benefitted from CSB safety recommendations. However, in recent years, we have had concerns about the quality and timeliness of CSB investigations and associated reports. In addition, we are concerned with the motion passed by CSB in late January 2015. These concerns are summarized below.

Clear criteria for Board membership are needed.

ACC is concerned with how potential Board members are chosen for nomination and confirmation. Nominees should have sufficient technical skills in process safety. Certainly it is appropriate for their backgrounds to be broader than this, however, there should be adequate core experience in this area. Based on this opinion, ACC questions why almost a quarter of the CSB staff members are attorneys and what effect this may have at all levels of CSB operations, particularly in the quality of investigations that focus on process safety.

Clear criteria are Needed for Defining Incidents to Investigate and the Scope of Investigations.

[1] *The American Chemistry Council (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®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is an $812 billion enterprise and a key element of the nation's economy. It is the nation's largest exporter, accounting for twelve percent of all 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.*

Under the current Board, ACC believes that at least one incident did not warrant investigation because CSB went outside its scope. In an investigation of one incident, CSB investigated violations unrelated to the incident, thereby expanding the scope of the investigation process. The related findings were not significant or relevant to the incident.

In depth investigation to identify root causes and contributing causes, either of individual incidents or groups of similar incidents, is crucial.
CSB has failed to do this in recent investigations. Finding root causes is key to a focused investigation process, improving safety and promoting learning. In one case, CSB did not investigate certain issues that should have been a focus based upon the incident, but rather chose another focus. In other instances CSB's recommendation was requiring regulation of "inherently safer technology" or "IST." This determination cannot be made without rigorous analysis by a facility.

CSB should Issue Recommendations Strongly Supported by Evidence. CSB should also Track Recommendations to Resolution more Efficiently.

CSB has not closed certain recommendations even though scientific/technological evidence has been provided (sometimes multiple times) to substantiate the need to do so. Thus the Board leaves open recommendations on its website, which can cast the entity receiving the recommendation in a negative light. Such recommendations may address regulations, enforcement, consensus standards, industry guidelines, industry/company practices and other such factors affected by improvements to process safety.

In addition, recent recommendations to OSHA are very focused on a recommendation to replace the current OSHA Process Safety Management regulation for a European model - the "Safety Case." There is not sufficient data showing that this approach would improve safety. CSB has not provided such data either. The Safety Case approach could leave facilities with no clear path forward because CSB does not have criteria for doing so. Safety Case would also mandate a complete shift in US Regulatory Policy—regulators would now have to formally approve a company's "license to operate." This is not simply a methodology change.

The January 2015 CSB Motion Contains Several Issues of Concern to ACC.

ACC interprets Part 1 of the Motion to give almost all CSB power to the Chairman. This approach could diminish or in some cases eliminate any influence of other Board members and personnel on the day-to-day operation of the agency. With as few investigations as the Agency is completing and closing, this could further relegate the Board to a "sit and wait" mode until the Chairman makes a decision on a matter.

Part 2 of the motion states that the Board plays no role in the formation, vetting or development of recommendations until a formal vote is taken. All draft recommendations are reviewed by Staff and the Chair only, and finalized by counsel before the Board can act. ACC believes the Board needs to be involved earlier in this process.

Additionally, this procedure places no burden on CSB staff to critically evaluate, publish and debate substantive feedback from those to whom the recommendation was issued, which ACC believes is critical to formation of sound recommendations.

Part 3 of the Motion contains no approval mechanism for the scoping of an investigation. As stated above, such a mechanism is needed to conserve resources when deciding whether to conduct investigations. In addition, investigations already begun (past the scoping stage, as described above) should not be terminated as indicated, but rather should be closed based on certain criteria (e.g., lack of evidence, etc.).

Also, in Part 3 (#12.g), the Motion states that CSB can issue rulemaking under the Administrative Procedures Act. Up until now, CSB has recommended rulemaking to those entities, e.g., OSHA, which can legally do so. ACC assumes this is simply an error, but it is critical that it be corrected because CSB was not granted rulemaking authority under its authorizing statute.

Conclusion

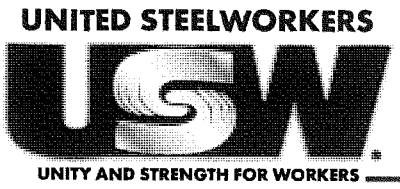
In closing, ACC appreciates the opportunity to provide the above information and recommendations regarding the operation of CSB. In addition to these recommendations, ACC also recommends that the Committee consider the following documents as it further evaluates CSB:

- *A Report on the Continuing Development of the U.S. Chemical Safety and Hazard Investigation Board, OIG-04-04*, January 4, 2004 (go to: http://www.oig.dhs.gov/assets/Mgmt/OIG_04_04_CSB_Continuing_Development.pdf)
- The American Institute of Chemical Engineers, Center for Chemical Process Safety's White Paper: *Recommendations for Establishing Process Safety Investigation Boards*, January 20, 2015 (go to: http://www.aiche.org/about/press/releases/01-20-2015/chemical-engineers-offer-recommendations-establishing-process-safety-investigation-boards)

If you have any questions or require additional information, such as comments that ACC has provided to CSB on certain investigation reports, please do not hesitate to contact me at (202) 249-6200 or Walter_Moore@americanchemistry.com.

Respectfully submitted,

Walter K. Moore



March 2, 2015

VIA EMAIL

The Honorable Jason Chaffetz, Chairman
House Committee on Oversight & Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Elijah Cummings, Ranking Member
House Committee on Oversight & Government Reform
2471 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Chaffetz, Ranking Member Cummings and Members of the Committee:

Thank you for asking me to comment on behalf of the United Steelworkers on the action taken by the U.S. Chemical Safety and Hazard Investigation Board toward the end of its January 28 public meeting in Richmond, California.

The United Steelworkers Union represents 850,000 workers in North America. We are the predominant union in the oil, chemical, rubber, paper, steel, and metals industries. Many of our members work in facilities where a catastrophic chemical accident can occur. In fact, USW-represented facilities have been the subject of more CSB investigations than those of any other union, or any company. We have been perhaps the Board's strongest supporter ever since it was established by the Clean Air Act Amendments of 1990. Historically, the quality of CSB reports has been high, and the dedication and competence of the CSB investigators and non-executive staff are evident. However, we are concerned that the organizational, leadership and morale problems now plaguing the agency do not compromise the value of the investigations on which we, the industry and the public have come to depend.

We were shocked and surprised to discover on January 29, that the night before, at the end of a public meeting in Richmond, California, whose announced subject was the August 6, 2012 Chevron Richmond refinery fire, the CSB had adopted a sweeping motion which wiped away a number of previous Board rules and procedures on operations and governance; concentrated even greater power in the hands of a CSB Chair who has been found by the Office of Inspector General to have violated federal open records laws, regulations, and Presidential directives on transparency; and cancelled three important investigations. The public was given

zero notice that such an action might occur at the meeting; it was done with little discussion on a 2-1 vote, with no opportunity for comment even by the public still in the room, over the strenuous objections of Board Member Mark Griffon, who had not been notified that the other two Board Members were contemplating such an action. It appears that the only reasons for the unseemly secrecy and haste were to avoid public discussion, and to prevent future Board Member Richard Engler from voting on the motion; at the time, Mr. Engler had been confirmed by the Senate, but not yet sworn in.

The rest of these comments are directed at the cancellation of the three investigations. The governance issues at the CSB are complex and best resolved by Presidential action and a reconstituted Board. We cannot comment in this letter on the legality of the Board's lack of public notice. We will, however, note that workers in two of the three facilities in question are represented by the USW. Family members and co-workers from those locations would have travelled to Richmond for the meeting had proper notice been given.

Fire and Hydrofluoric Acid Release, CITGO Refinery, Corpus Christi, Texas

On July 19, 2009, a fire broke out in the alkylation unit in the CITGO Corpus Christi refinery, and approximately 42,000 pounds of highly toxic hydrofluoric acid (HF) was released. One worker was badly burned, but survived. Some of the resulting vapor cloud was suppressed by water cannons, but an estimated 4,000 pounds escaped beyond the fence line. Fortunately the wind blew the HF out to sea, and not into the surrounding homes or the city of Corpus Christi.

Workers at CITGO are represented by the USW. The refinery is one of fifty in the United States that use large amounts of HF as a catalyst in a process called alkylation, which rearranges hydrocarbon molecules to create higher octane gasoline. HF is both corrosive and poisonous. A full scale release of HF could form a deadly vapor cloud that could drift for miles. Cities in the path of a potential release include Philadelphia, Memphis, Corpus Christi and the suburbs of Houston, Chicago and Los Angeles. With the exception of a full nuclear-plant meltdown, no industrial process has a greater intrinsic hazard, as measured by the number of people a worst case accident could injure or kill. Data collected by EPA show that more than 26 million people live in the danger zone.

The CSB deployed a team of investigators to the site the next day, and issued a 3-page "Urgent Recommendations" document on December 9, 2009. The document was highly useful: it debunked CITGO's claim that only 30 pounds of HF had escaped water cannons, and it revealed that the company's internal water system had almost run dry. But it only devoted 6 sentences to the immediate causes of the fire, and did not address root causes at all. The recommendations were limited to asking CITGO to upgrade its water cannons, to conduct an audit of its HF units, and to share the results with appropriate parties.

A full scale investigation was undertaken by the CSB, but never completed. The CITGO accident represented a chance for the Board to thoroughly explore this most hazardous industrial process, the adequacy of the safeguards in place and those recommended by the American

Petroleum Institute, and the possibility of replacing HF alkylation with a safer method. The Board could have made a significant contribution, not only to improved refinery safety, but also to the current dialog over "inherently safer technology" in general. That opportunity has now been lost, along with all the staff time and other resources consumed by the cancelled investigation.

Fatal Explosion and Fire, Horsehead Holding Company, Monaca, Pennsylvania

On July 22, 2010, an explosion and subsequent fire at the Horsehead zinc plant in Monaca, Pennsylvania killed two workers. Both were members of the USW. The explosion occurred in a zinc distillation column. The column was equipped with breakaway panels designed to vent the force of an explosion, and thus protect the column from serious damage. Unfortunately, the panels were arranged so as to vent into areas where maintenance workers could be at risk, and the two workers were directly in the path.

The CSB deployed to the site three days later, and announced that it would conduct a "full investigation." The promise of a full investigation was repeated several times to the families of the victims and to coworkers. That promise was not kept.

The plant has since closed. It was the only one in the United States using such a process to refine zinc. The reason given by Board member Manuel Ehrlich for his motion at the January 28 Richmond meeting was "the process [is] no longer in existence..." But that is true only in the narrowest, most technical sense. Many factors went into the design of the columns, the decision to use blast panels instead of addressing the cause of previous explosions, the placement of the panels so as to vent into potential work areas. A great deal could have been learned from such an investigation. In September 2014 the Board hired a distillation expert to review the case file, but his report will be no substitute for the kind of full investigation of root causes and underlying failures that are the mission of the CSB. Equally important, the Board should not break its promises to American families, especially those whose loved ones have died in catastrophic accidents.

Flash Fire and Explosion, Silver Eagle Refinery, Woods Cross, Utah

On January 12, 2009, four workers suffered serious burns at the Silver Eagle refinery in Woods Cross, Utah, when a large vapor cloud was released from a tank of naphtha. On November 4, 2009 a second explosion occurred when a 10-inch pipe failed, releasing high-pressure hydrogen. The blast damaged nearly 100 nearby homes, two of them severely. One was lifted off its foundation. While this is not a USW-represented facility, we are, of course, keenly interested in preventing similar accidents in any refinery, USW-represented or not.

Although the CSB deployed to the January accident, it appears that no report of any kind was ever issued. The mechanism of failure of the November accident, corrosion, has been a common failure mode in oil refineries. Corrosion is a complex phenomenon, and can occur in many ways. The Board issued what it now calls a "final report" in April 2014, but the report was

nothing more than a metallurgical analysis by an outside contractor, completed ten months earlier. There were no recommendations.

In summary, we are disappointed that these investigations were cancelled. Important opportunities to learn from the accidents were lost. Federal resources were wasted. It is true that the CSB has a backlog of investigations. It is true that the cancelled investigations were more than four years old. But the Board should examine and address the root causes of the backlog and delays instead of simply abandoning its work and its mission.

Respectfully submitted,

Michael J. Wright
Director of Health, Safety and Environment

MJW/em

March 1, 2015

The Hon. Jason Chaffetz
Chairman, Committee on Oversight and Government Reform

The Hon. Elijah Cummings
Ranking Member, Committee on Oversight and Government Reform

U.S. House of Representatives
2471 Rayburn House Office Building
Washington, D. C 20515

Dear Congressman Chaffetz and Ranking Member Cummings,

Thank you for inviting me to submit written comments for your upcoming hearing on the U.S. Chemical Safety and Hazard Investigation Board (CSB). Attached is my written testimony.

Very respectfully,

William E. Wright

WRITTEN STATEMENT

BY WILLIAM E. WRIGHT, FORMER BOARD MEMBER (2006-2011)

U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

TO THE

OVERSIGHT AND GOVERNMENT REFORM COMMITTEE

UNITED STATES HOUSE OF REPRESENTATIVES

ON

US Chemical Safety Board

MARCH 4, 2015

I appreciate the Committee's attention to the continuing and on-going management and leadership problems at the U.S. Chemical Safety Board. I also appreciate the opportunity to submit these written comments, which I hope are helpful to the Committee's investigation of the problems at the CSB under the current leadership.

In addition to this written testimony I have provided the Committee's staff with a number of documents. I would of course be happy to answer any questions about them, and to help the Committee in any way that I can to change the situation and correct the problems at the CSB.

I served as a Board Member on the CSB from September 2006 – September 2011. Prior to becoming a member of the CSB I had served as a member of the United States Navy Special Operations community for 30 years with a specialty in Explosive Ordnance Disposal. In my final tour I served as Chairman, Department of Defense Explosive Safety Board, where I worked closely with the Deputy Under Secretary of Defense (Installations and Environment) to affect a sound explosives safety program within the Department of Defense.

I was honored to be nominated and confirmed to serve on the Chemical Safety Board, and deeply committed to the agency's purpose and role. However, several incidents and decisions that were made near the end of my tenure at the CSB caused me great concern about the direction of the agency, and certainly events since then have only reinforced my belief that the agency has gone in the wrong direction.

The CSB was designed to work as a technically-competent, collegial multi-member board to provide objective investigation and review of issues at chemical accidents and incidents and to issue technically sound reports to help prevent future incidents. Unfortunately the early experience of the Board was somewhat similar to more recent problems, with the then-Chairman and other Board Members disagreeing on their respective roles and authorities. The conflict led to a Department of Justice, Office of Legal Counsel opinion (known as the Moss Opinion) which discussed the legislative history of the agency and outlined the Chairman's administrative duties and the other Board members' oversight role of the Chairman. The Moss Opinion makes clear that the final arbiter of agency decisions is the Board. Unfortunately, the current leadership at the agency has worked very hard to undermine the Board's role. Although done under the guise of "efficiency" and "effectiveness," I believe that the real reason this was done was simply the Chairman's poor leadership and bad management. In my opinion the Chair has violated the trust that comes with his role as chair.

Recent attempt to remove oversight role of board

The Committee is correctly focusing attention on what has been called the "California Coup"

that took place in January at the Chevron public meeting.

I strongly believe the Chairman, in concert with the General Counsel and Managing Director, manipulated and orchestrated the final steps in hijacking the CSB by using a new Board Member to proffer a twenty-two page motion for the adoption of Board Order 2015-01. This order all but ended the collegial multi-member board scheme designed for the agency at its inception (as described in the Moss Opinion), and places almost all power in the Chairman's hands.

Everything about this action raises red flags – why was it introduced by a new Board Member with less than 6 weeks tenure? Why was it concealed from other board members prior to the meeting? Why was this sweeping change in board orders and procedures not listed on the agenda for the meeting? Why was it rushed at the end of a meeting that was called to consider a major investigation report? Why was Mr. Griffin's request for time to consider the changes denied? Why was it rushed through while a member who had been confirmed but not yet sworn in was not present?

If this was the right thing to do then why not share it with all Board Members and discuss it with them in advance? After reading the transcript of this meeting, I believe Member Griffon was blindsided by this motion, as he proffered his own motion to table adoption of Board Order 2015-01 to allow himself and the recently confirmed but not yet sworn in member both time to consider the ramifications of such an action. Unfortunately there was no second on his motion. I also question whether this action met the letter of the Sunshine Act – it certainly does not meet the spirit of the law.

Marginalizing Board Members

It has been suggested that change in the CSB's internal procedures was necessary to clarify the Chair's responsibility for administration, leaving the other Board members' roles as overseeing investigations. However, not only has the Chair sought to reserve for himself all administrative authority, free of Board oversight, but changes have also greatly reduced the opportunity that Board members have for involvement in investigations.

For example, the majority of the investigative staff is now located in Denver, rather than Washington DC. That has hampered effective Board Member interaction with staff to the point of being almost non-existent. Occasional phone calls based on staff availability further limits the interaction of Board during on-going investigations.

This loss of interaction between staff and members has essentially removed the Board Members' involvement in investigations. Board members are presented with the final or near-final report, with little opportunity for meaningful input. Additionally, staff members were told not to share information with the board members. In one case I received my

voting copy of a draft report 30 minutes prior to the public meeting in West Virginia. During my tenure at the agency the Chairman chastised an investigative supervisor for providing a draft report to Board Members in advance of the Chair's approval, which led to this very skilled investigator and supervisor resigning and taking a job at another federal agency.

My experience was that if Board Members had early involvement in the investigative and report writing process, it would only enhance the quality and effectiveness of reaching a true consensus based report. Muzzling of staff and exclusion of board members did not create a healthy work environment for what is supposed to be an investigative agency. In addition, when board members were finally included when a report was in its final stages, staff resented making "last minute" changes. And this scheme frustrates Board Members – so much so that Member Beth Rosenberg resigned her appointment.

Not only has the Chairman tried to limit the role of board members in investigations, but in other areas as well. When I attempted to exercise my oversight role as a Board Member by questioning staff involvement on the Hill, I was told by the Chair that my request was "*too onerous*" and he directed the Managing Director not to answer my questions. I believe this was an abuse of his power as Chair and a demonstration of poor leadership.

Board members raised concerns about other issues that were ignored by the Chairman. Some of us raised concerns about the benefits and costs of the agency's investigation of the Deepwater Horizon. It has been five years and over $5m expended on this case when other investigations have already been long completed. There have been personnel actions which I consider to be abusive in nature and some showed favoritism for certain employees of the agency. Three of the best qualified and talented Investigative Supervisor engineers left the agency. One individual was so upset with the declining climate and caustic culture at the CSB that he took a grade reduction in order to leave the agency and accepted a job at the NTSB. I know of at least ten personnel (a turnover of over a quarter of the personnel) who have left the agency in the past five years. Two of these key individuals had well over 4 decades of professional engineering experience and had collectively reported on key events during their tenure at the agency – reports which led to the CSB being referred to as the Gold Standard for the thoroughness of the reports.

Key Turning Point (Notation Items 829 and 829A)

Another way in which the Chair has undermined the board is by circumventing the agency's regular written procedures, as reflected in written Board Orders. Exemplifying the current Chair's disregard for following "regular order" are the circumstances surrounding Notation Items 829 and 829A. I would like to describe these circumstances and events in some detail.

Communication between the Chairman and other Board Members became fractured, with

the Chairman cloistered in his office and only meeting with the Managing Director and staff behind closed doors. Board Members rarely got updates from the Chairman and relied instead on staff to ascertain what was happening in the agency. It was rumored that the Chair intended to hire an SES attorney, but we were not directly informed that this was happening.

Several of us believed this would be a major organizational move that, under the existing Board Orders, required a Board vote to implement. Additionally, other Board Orders required Board approval for any expenditure over $50,000, thereby including the hiring of an SES employee. When we attempted to get answers about this proposed move, the Chairman was unavailable to discuss the matter or simply denied it.

At the same time, the Chair was attempting to rush through an Urgent Notation Item (# 828) regarding the investigation of Deepwater. Urgent Notation Items were deemed completed when a majority of approved votes were received. If however, one voted to "calendar" the item before a majority of approval or disapproval votes were received then the item should be slated for discussion at a public meeting. Member Wark and I had strongly objected to spending scarce resources to pursue this case and desired to discuss it with our peers to see why they were so adamant about pursuing this case, particularly since we had requested funding ($5.6m) from Congress and had heard nothing regarding this request. It also seemed redundant to have another investigation launch after multiple entities including a Presidential Commission, various Congressional committees and DOI/ USCG investigations were better resourced to provide timely reports. Nonetheless, despite our well-known concerns, the Chair pushed through a vote on an Urgent Notation Item to approve the investigation while Wark and I were on travel, and before we had even had an opportunity to vote or calendar the notation item.

However, in response to continued talk of a now imminent hire of an SES by the Chairman, a majority of Members proposed Notation Item 829 to clarify Board Members oversight of this important hiring. The Chairman "calendared" this item, saying that he planned to discuss it at a public meeting. No public meeting was scheduled. So, in response, we (Members Bresland, Wark and Wright) proffered an Urgent Notation Item 829A and passed it. Rather than comply with the board's vote, the Chairman ignored it while secretly directing the SES be hired. We believe he intended to do so all along, even though it meant ignoring the Board majority's vote.

Having ignored a properly voted and approved board action, the Chair then spent taxpayer funds to contract an outside law firm to tell him his actions were proper. When questioned as to why it was necessary to use taxpayer funds for an outside law firm rather than ask the agency's general counsel for an opinion, he cited a "conflict of interest" as a reason for not relying on his own general counsel staff. I believe that the outside law firm was not given all the facts, and therefore produced an opinion that supported the Chair's actions.

As a result of this action I contacted the EPA IG (Arthur Elkins) to voice my concerns about seeking an outside opinion rather than getting one from a government attorney, and the Chair unilaterally requesting the OGC to resign without consulting the Board. Both of those actions were contrary to existing board orders. The activity of hiring an SES was all done secretively, without so much as a mention to the Board about it until the Chair announced this person's arrival at the agency. In short the Chair totally disregarded the Board's involvement, oversight, and the Board vote in unilaterally hiring this individual.

Despite many attempts by board members to have Notation Item 829A followed by the Chair, he ignored it entirely. On Friday March 4, 2011 the Chair sent an email to the other Board Members in which he unilaterally asserted *"...item 829A is null and void, and Board Order 28 remains as it was written prior to Feb 15."* He then noted he had already hired the SES and that he was sworn in that morning as Counselor to the Chair, in clear violation of the board's vote.

Key Personnel Issues

There are numerous other examples of bad management. There are legitimate if difficult to prove concerns of favoritism – some employees are allowed to relocate and live in an area of their choosing and others are denied, when they request relocation. The small agency's staff is now spread across the country – Boston, upper New York State, Philadelphia, San Francisco, and Houston, and Denver. How much is being spent on additional travel because of having staff spread so widely?

Can the agency be saved?

The problems of management and leadership of the CSB have undoubtedly diminished the respect for the agency's work on chemical accidents that it once enjoyed. I believe that they have also distracted and detracted the agency, in terms of the quality of its reports. I have heard from others as well that CSB reports are no longer viewed with the same level of respect that they once were.

In my opinion, the past few years under the current leadership (including not only the Chair, but his top staff as well) have created such an unhealthy "culture" that I believe the best step would be to defund the agency as it now exists, transfer those funds to the NTSB, and allow the engineering expertise at the NTSB to rebuild and restore a Chemical Safety Board as part of that agency. Although the agency was headed in the right direction at one time, it certainly has diminished its reputation and role because of multiple violations of trust and creation of a caustic climate in a 40-person agency due to the Chairman and his key leadership team.

House Committee on Oversight and Government Reform
6434 O'Neill Federal Building
200 C Street SW
Washington, DC 20024

Dear Chairman Chaffetz, Ranking Member Cummings and members of the Committee,

I would like to submit my comments on the governance and other management problems at the U.S. Chemical Safety and Hazard Investigation Board (CSB).

Like so many longterm advocates of better chemical safety systems, I am dismayed at the multitude of problems under the current senior management at the CSB documented by EPA Inspector General audits and now openly discussed in the media:[1,2,3,4,5,6]

1. High turnover and loss of senior investigators and recommendation specialists;
2. Employee surveys indicating a troubled culture;
3. Long delays in production of investigation reports;
4. Evidence of a lack of understanding of appropriate roles and responsibilities for chair, board members and senior staff and a consequent lack of polity in senior leadership;
5. Recalcitrance in responding to requests for information from the EPA Inspector General;
6. Ill relationships with congressional oversight committee members with bipartisan scope.

The situation may have worsened last month in Richmond, CA, while far away from observation by staff from the EPA Inspector General and staff from Congressional Oversight committees. Newly appointed and just three weeks on the job, board member Manny Ehrlich introduced and won a sweeping motion that terminated three unfinished investigations. For an organization whose primary purpose is to initiate, conduct and complete investigations into catastrophic events, failure to complete an investigation is tantamount to having its own catastrophic management failures. Such action is worthy of a full investigations that identify the root and contributing causes of the failed safety culture resident in the CSB's management. Failure by the CSB to do such for themselves erodes trust in the agency's authority to conduct future investigations of highly hazardous chemical facilities and advocate recommendations for system improvements.

Many questions remain as to why and how CSB's management system weakened to the point of declaring itself unable to complete investigations that languished many years after their loud

[1] http://www.publicintegrity.org/2013/04/17/12498/critics-press-action-chemical-safety-board-investigations-languish

[2] http://news.bna.com/osln/OSLNWB/split_display.adp?fedfid=62515762&vname=oshnotallissues&jd=a0g2a4v7u9&split=0

[3] http://www.nationaljournal.com/energy/from-bad-to-worse-at-scandal-ridden-safety-agency-20150209

[4] http://www.nationaljournal.com/energy/embattled-safety-agency-head-used-personal-email-report-20150225

[5] http://www.publicintegrity.org/2014/06/19/14973/leadership-chemical-safety-board-questioned-amid-investigation-backlog

[6] http://www.publicintegrity.org/2015/02/12/16744/chemical-safety-board-halts-investigations-amid-alleged-mismanagement

initiation with press releases and extensive media interactions. Additional questions surround how much these failures to complete investigations have cost the American people and eroded the trust with many parties that have been more intimate to the conduct and outcome of these investigations. Not the least of these adverse impacts is the growing Congressional distrust for the CSB leadership by members whose district encompass sites where the incidents occurred and by others serving on Congressional committees with responsibility for authorizing, appropriating and ensuring CSB's effectiveness.

With an unusual and inexplicable sense of urgency and seemingly without providing detailed evidence either justifying the actions or identifying the consequences of the actions, the motion was introduced and approved by a 2-1 vote. Board member Mark Griffon requested tabling the motion just one week before another newly appointed board member joined the agency.

Furthermore, in an equal if not more consequential action, board member Ehrlich introduced and in a 2-1 vote consolidated the current chairman's authority over the agency - a chair whose tenure will end in June and whose competency has been challenged by Congress. The imposition of new board governance is likely to pose on-going challenges to CSB especially if the agency is unable to seat a new chair and board members during the last two years of President Obama.

News reports indicated that board member Griffon was not briefed before hand nor provided the motion before the vote was called for in public session. Such action is harmful to building collegial relations at the level of the board and demand an detailed explanation for the actions by the chair, board member Ehrlich, General Counsel Loeb and Managing Director Horowitz in developing and allowing pursuit of the motion.

I urge the Committee Chair, ranking member and members of the House Oversight Committee to investigate the substance and impact of these pivotal actions. Please request an analysis of the timing, location of action and whether and how prior notification was given to Congress and the general public. Unlike other matters which are widely broadcast and promoted on the CSB website, this matter, as of today, remains inaccessible.

As a founding board member of the CSB (having retired in 2004 after serving for two terms) I strongly support the CSB mission, but know that it can only be achieved if its leadership is competent and held accountable by strong internal and external controls.

Early Development of the CSB Governance and Structure

In a letter to the National Journal responding to an article describing the irregularity and questionable value of the January board governance motions, board member Ehrlich fails to delineate specific reasons why board orders governing the agency for nearly 15 years proved problematical and why the alternatives would prove more meritorious. Nor did he explain the urgency and odd location for his actions, especially when so many members of congressional committees have spotlighted on-going management failures at the CSB.

During late 1999 after two years of operations, the CSB was confronted with a number of serious organizational problems that resulted from past poor management practices at the highest level of the agency and serious misperceptions of an appropriate form of governance for the agency. Subsequently, the Board's Chairman (also Chief Executive Officer) resigned, and the Board voted to reassign his Chief Operating Officer (COO) to another position.

The Board was faced with the urgent need to ascertain its operational and fiscal status and the implications of its legacy of early mismanagement. To begin to accomplish the Board's important goals, and in the absence of a Chairperson, the remaining three members of the Board took the following immediate actions:

- Divided up the administrative responsibilities of the Chairperson among the three board members,[7]
- Appointed Mr. Chris Warner, the Board's General Counsel, to act in the additional capacity of COO,
- Combined the previously separate Safety Recommendations and Investigative functions under a single manager to deal with the shortage of staff resulting from the failure to meet hiring goals,
- Undertook actions to reorganize staff priorities and manage a number of EEO actions that resulted from the reorganization and past Board practices.

During the subsequent two years year, these emergency actions by the CSB were successful in dealing with a number of the challenges that the organization faced. Noteworthy Agency accomplishments included:

1. Development of the Board's first five-year strategic plan with facilitated input from all staff and a multitude of key stakeholders.
2. Hired 14 new staff, including 8 in investigation, safety and chemistry having extensive industrial experience.
3. Accelerated the completion of Board work through the additional efforts of four experts detailed to the CSB from other agencies and through a temporary university sabbatical appointment.
4. Completed three major investigations and established a more regular schedule of core work.
5. Started work on two safety bulletins in effort to recover value from previously initiated investigations which had languished under previous management.
6. Initiated a Hazard Investigation in regard to reactive chemicals management.
7. Launched two new investigative efforts.
8. Published the Board's first annual report.
9. Addressed legal policy, EEO, training and staff development issues.
10. Corrected and responded to important concerns about technical documentation and administrative deficiencies raised by the GAO.
11. Planned and implemented major revisions to the physical office infrastructure.
12. Held regular public meetings to open the CSB to public input and accountability.
13. Set policies to ensure internal transparency of senior management actions ensuring that the General Counsel and staff protected the integrity of the CSB as an institution from improper actions by individual members of the agency, whether Chair, Board member or senior staff.[8]

[7] The position of the Chair requires presidential nomination and U.S. Senate confirmation.

The Board sought counsel from staff in the oversight, executive and congressional branches on major governance and senior staffing steps to improve its efficiency and effectiveness. By and large, the Boards stakeholders were gracious in recognizing these accomplishments.[9]

The General Counsel developed and the board unanimously approved a process that defined the roles and responsibilities of a COO, and process to solicit applications and hire Senior Executive Status individuals with input from the staff. Further actions included a process for annually evaluating the performance of senior staff ensuring that the primary evaluation from the Chair of the Board was seconded by another board member.

The internal records of these actions and lessons learned from this early agency history should be available to CSB board and staff. Some current staff were present during this revival period and therefore are capable of offering historical perspective. Many others who were present during this period but who have left the agency also are available to provide historical

Subsequent Board Chairs and Board Members Accepted the Board Orders

Board members are nominated by the President and confirmed by the U.S. Senate for 5 year terms. Similarly the position of Chair requires nomination by the President and confirmation by the U.S. Senate of a sitting board member. Therefore, over the last 14 years many different chairs and boards have had the opportunity to examine the governance and initiate reforms if deemed needed.

During my two terms the board orders proved helpful in the management of agency. I was not engaged by subsequent board members or chair in efforts to initiate reform of board orders issued before their arrival. The board orders establishing this governance were accepted by three subsequent chairs and all board members until January 28, 2015.

For the majority of that time the office of general counsel was led by Chris Warner who had helped to develop, explain and enforce compliance with the orders unanimously approved by the board, to the best of my knowledge. Last June, the removal of Mr. Warner from the General Counsel position was discussed by Chairman Chaffitz in his oversight role during his questioning of Chairman Moure.[10] However, that discussion in the public hearing did not reveal whether the scope and quality of board orders was germane to the change of General Counsels. Therefore, one important area for investigating is why did the Chair, four months before completion of his five year term, and a new board member only three weeks into his term decide to pursue a major change in governance with the assistance of the current General Counsel. What were the deficiencies of the original board orders, how were these deficiencies identified,

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[8] The Board recognized that on several occasions the previous COO shielded important actions from appropriate oversight by the General Counsel.

[9] Stakeholders that offered supporting statements and endorsements for these actions included: the American Chemistry Council, the American Petroleum Institute, the National Association of Chemical Distributors, the Chlorine Institute, the International Association of Fire Fighters, the Paper, Allied Industrial, Chemical and Energy Workers International Union, the United Steel Workers of America, the International Union of Operating Engineers, the Natural Resources Defense Council, the Sierra Club, Environmental Defense, and Clean Water Action.

[10] http://oversight.house.gov/hearing/whistleblower-reprisal-management-failures-u-s-chemical-safety-board/

and how do the changes impact the roles of the chair and the board as a whole during a time of failure to complete investigations and other significant management problems?

Look to the American Institute of Chemical Engineers/Center for Process Safety White Paper

The value of a well managed CSB is broadly accepted. Evidence of past accomplishments under better Chairs, board members and senior staff is publicly available. For further guidance on the structure of I recommend that the Committee members review a recent white paper from AIChE/CCPS that highlights essential features of governance and structure for a well designed and operating board.[11]

I remain available should you or your staff need additional perspective on my tenure at the CSB and recommendations for improving its performance.

Sincerely,

Gerald V. Poje, Ph.D.

[11] http://www.aiche.org/sites/default/files/docs/org-entity/process_safety_investigation_boards.pdf

TESTIMONY OF BETH ROSENBERG

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

U.S. HOUSE OF REPRESENTATIVES

Rebuilding the Chemical Safety Board: Finding a Solution to the CSB's Governance and Management Challenges

MARCH 4, 2015

Beth Rosenberg
Former CSB Board Member
Beth.rosenberg@tufts.edu

Mr. Chairman, Mr. Cummings and members of the Committee,

Thank you for asking me to submit testimony about the Chemical Safety Board. I was honored to be nominated by the President in September of 2012 and confirmed by the Senate on Jan. 1, 2013 as a Board Member at the Chemical Safety Board. I resigned after only 17 months of a 5 year term at the end of May 2014. Before this committee on June 19, 2014, I discussed agency mismanagement, the toxic work environment, the marginalization of board members by the chair and senior management, the intimidation of the staff, the absence of deliberative public business meetings that would provide management accountability, the senior management view that dissent is disloyal, and the backlog of investigations with no plans to address it.

Below I offer some suggestions to help fix this broken agency.

In the short term:

1. A full 5 person board is required for the CSB to function. Consider 2 Democrats, 2 Republicans and the chair chosen by the president.

2. Board members are sometimes naïve and are easily manipulated by senior management. New Board members need to be trained about their rights and responsibilities as well as how a board with a chair, as opposed to an agency with a head, operates. Congress in its wisdom deemed that this agency should be guided by a board; much of the conflict stems from disagreement about power distribution among the chair and the board members. Board members, including the chair, must be trained that the business of the agency should be done in a transparent and collegial manner. Perhaps the training could be done by the National Academy of Public Administration. It certainly should not be done by anyone at the CSB.

3. The recent radical vote of January 28, 2015, to negate board orders, further consolidate power in the chair and drop investigations, whose motion was not mentioned in the Jan. 16 Sunshine Act notice for the meeting, must be reversed. The vote was held at the end of public meeting; it was a total surprise to Board Member Griffon, so he promptly made motion to postpone the vote so he and Board Member Engler, who was confirmed and would officially start a few weeks after the vote, could study the motion and thereby vote with knowledge of the proposal. Mr. Griffon's motion was not seconded and failed. The vote was emblematic of the guile and the lack of collegiality and transparency that has sadly characterized the current management of the agency. It must be reversed immediately so Mr. Engler can vote and Board Order 28, which delineates the power distribution between the chair and the board, can be reinstated. Practices such as allowing voting only on agenda items approved by the chairman must obviously be discontinued.

4. Employee morale at the CSB is now tied for the lowest of any agency in the federal government. The high turnover and mismanagement have resulted in an inability to complete timely investigations. There are now investigations that are 4-5 years old, and with age, investigations lose their value. Lives are lost because of delayed reports. Management consultants and leadership coaches were hired and a workplace improvement committee was established but it was of no substance or consequence. No meaningful management changes have been proposed to address the backlog or the low morale and the loss of experienced staff. The agency and the public that it serves are desperate for new leadership. When there is new leadership, there should be a manager of investigations, to establish work plans and project protocols, which are now non-existent.

I have one long term suggestion. Commission a GAO study to explore the feasibility and the impact on the public health and the safety of chemical plants of folding the CSB into the National Transportation Safety Board. There is already a department focused on Hazardous Materials and Pipeline Safety at the NTSB and the work of that department is closely aligned with that of the CSB. The governance issues that plague the agency now have occurred before, which implies a structural flaw that may be best ameliorated by changing the structure.

Thank you for considering my suggestions. They are offered with dedication to the public and worker health and to the important mission of the Chemical Safety Board.

Sincerely,

Beth Rosenberg, ScD, MPH

February 26, 2015

The Hon. Jason Chaffetz
Chairman, Committee on Oversight and Government Reform

The Hon. Elijah Cummings
Ranking Member, Committee on Oversight and Government Reform

U.S. House of Representatives
2471 Rayburn House Office Building
Washington, D. C 20515

Dear Congressman Chaffetz,

I thank you and the Ranking Member for allowing me to submit written comments for your upcoming hearing on the U.S. Chemical Safety and Hazard Investigation Board (CSB).

Having been appointed by President Bush and confirmed by the U.S. Senate, I served as a member of the CSB from September 2006 to September 2011. I was honored to serve at the Board and proud of its accomplishments. I was particularly pleased by the experienced professionalism, hard work and dedication of the CSB staff who, when allowed to do so, turned out high quality products which gained the respect of safety professionals and others across the nation. One of the functions that fell to me while at the Board involved significant outreach travel and speeches at many industrial conferences and other venues in the U.S. and Canada. Virtually without exception I heard nothing but high praise for the CSB and its work.

The CSB is a very small agency with a big mission; that is, to identify the underlying causes of high-consequence chemical accidents and prevent such accidents from happening in the future. Most stakeholders -- companies, regulators, labor unions --have been supportive of the CSB. I understand they continue to use its reports and videos to improve safety in the chemical industry and related fields both here at home and abroad.

History

The CSB had a troubled beginning. It was initially funded in 1998, but by 2000 was embroiled in controversy over the roles and responsibilities of the Board versus that of the Chairman. This resulted in a request to the Department of Justice for a legal opinion which reviewed the statute and delineated board member and chairman responsibilities. Subsequently, the Board promulgated directives on governance--known as "Board Orders"-- that reflected the DOJ Legal Opinion.

When I came to the Board in 2006, it appeared to me that the governance issue had been pretty much resolved under the then chairmanship of the late Carolyn Merritt. Although there were understandable disagreements, it was my opinion that, for the most part, the Agency was operating in a collegial and open fashion.

The Past Five Years

Unfortunately, over the past five years, the Board and its reputation have suffered mightily under the current Chairman, Managing Director, and the General Counsel. As has been well documented, there's been a steady erosion of collegiality between the members and the Chairman and his senior staff. The members were, and continue to be isolated, marginalized, bypassed and ignored when it comes to their legitimate roles involving key policy decisions, mission decisions, administrative oversight and other governance issues as delineated by the DOJ.

On several occasions, I and other members called for public meetings to discuss these issues, but were blocked or stalled at every turn. Indeed, near the end of my 5-year term, and out of frustration, I drafted a notice for an open public meeting and hand carried it to the Federal Register for publication. The Chairman and Managing Director choose to intercept it and declared only they could deal with such matters. Hallway rumor had it that the Chairman had told some people that they would have a public meeting after my term and that of the other Bush appointee had expired. Ironically, both of us were about as non-political as any Presidential appointees could be and our public voting records prove the point.

More recently, one of the Obama appointees has left the Board in disgust and another has been isolated and ignored for most of his term, which ends in June. With respect to the latter, I am aware of the unconscionable and unfounded attack on him orchestrated out of the CSB Denver Office and am doubly disgusted. I know this member to be a highly capable individual who I highly respect for his professional capabilities and integrity.

Staff Abuse

With the exception of a favored few, staff have been intimidated, or driven from the Agency. The current General Counsel was hired into the Agency by the Chairman under secretive and very questionable circumstances. When I and the other Members got wind of this activity we tried to halt the hire through a Notation Item vote (829 a) by freezing all personnel actions. The Chairman attempted to fire the then General Counsel (and only SES in the Agency) because, at my request, he had helped me set up the vote—in other words he was doing his job.

Bad Choice, Bad Decision

Not long after the Chairman joined the Board, he asked the members to approve establishing the position of Managing Director, similar in nature to the position at the National Transportation Safety Board. I reluctantly agreed but decided "new Chairman, new position, give it a test run." The tenure of the Managing Director in this position was, and continues to be, marked by increasing turmoil. The perfidious back-channel dealings by him, the Chairman and General Counsel have, in my opinion, ruined the Agency and destroyed morale. On a personal note, I consider this to be one of the worst decisions in my forty-year career in government.

With the recent attempted power grab by the Chairman, Managing Director, and General Counsel, it has become apparent that the CSB is badly broken and needs to be fixed.

The Fix

One of the star supervisory investigators who left the CSB in disgust accepted a position at the NTSB at a lower grade just to get away. Because of his stellar management capabilities and quality of his work, he has quickly risen through the ranks and is now the Director, Railroad, Pipeline, and Hazardous Materials Investigations at the NTSB.

I strongly urge the Congress to transfer the CSB funding and functions to the Hazardous Materials Investigations Office at the NTSB.

I'll be happy to answer any follow on questions or provide any additional background you and the Committee may require.

Respectfully,

William B. Wark

Former Member, CSB

Process Safety Risk Assessment LLC
79 N. Tamarac Drive
Shepherdstown
WV 25443

February 27, 2015

The Honorable Jason Chaffetz
Chairman

The Honorable Elijah Cummings
Ranking Minority Member

Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Chaffetz and Congressman Cummings,

In response to a request from the House Committee on Oversight and Government Reform, I am presenting my thoughts on the future of the United States Chemical Safety and Hazard Investigation Board (CSB). I was a board member of the CSB from 2002 until 2012 and board chair from March, 2008 until June, 2010. I relinquished my position as board chair when Dr. Rafael Maure-Eraso was confirmed as chairman by the Senate after being nominated by President Obama. I resigned as a board member on August 31, 2012 before the end of my second term.

I am going to restrict my comments to my thoughts on the future of the CSB and not refer to any issues that the committee has investigated in the past or is continuing to investigate.

I believe that there are three questions that need to answered when discussing the future of the CSB:

1) **Should the CSB continue in existence as an independent federal agency?**

   Since I resigned from the CSB in August, 2012 my work as a consultant on process safety issues and as a speaker on chemical and refinery safety has taken me around the world including Europe, the Middle East and Asia, and to many corners of the United States. Invariably, I hear praise for the work of the CSB and the investigations that they carry out. I am always pleasantly surprised by how many companies use the CSB safety videos for training and staff development. In the chemical and process safety arena, the CSB is probably the best known agency in the world.

The CSB has the authority to do very important work that will potentially save many lives and resources if the proper management is in place. I have no doubt that there is a need to perform independent investigations of major fires and explosions in oil refining and chemical facilities. There will clearly be a lessened opportunity for the industry to improve their safety record without the independent CSB investigations of major fires and explosions. In my opinion, the work of the CSB is essential.

2) **What is the most important future need for the CSB?**

The CSB is currently lacking strong, experienced effective management. Dr. Moure-Eraso's five year term ends in June. He has announced that he will be leaving the agency at the end of his term.

President Obama has the responsibility to nominate a candidate to replace Dr. Moure-Eraso as chair. For the future of the agency, it is absolutely critical that President Obama nominate an extremely well qualified individual for the position of chair. As I see it, the most important qualifications for the position are executive management experience in business and/or government, actual working experience in the oil and chemical industries, technical credentials and excellent communications skills.

Hopefully the new chair can be nominated and confirmed by the Senate to coincide closely with the ending of Dr. Maure-Eraso's term. Managing the CSB will be a daunting task in light of the turmoil at the agency over the past several years. There will be a need to regain the confidence of the CSB's stakeholders and to motivate the professional staff. There is an urgent need to hire well-qualified investigators and managers. I cannot emphasize enough the need for the White House to nominate a very well qualified chair.

3) **How should the CSB be organized?**

Political appointees at the CSB consist of five board members, one of whom is also nominated and confirmed to be the chair. The chair is the executive manager of the agency with the day to day responsibility of running the agency. The other four board members have (or should have) the responsibility to review and vote on the investigation reports. In addition, the four board members should have the responsibility to act as overseers of the work of the chair.

All of these responsibilities were laid out in the series of approximately 45 board orders (agency operating procedures) approved by the board in the years since the launch of the CSB in 1998.

At a public meeting in Richmond, California on January 28, 2015 a board vote rescinded 18 of those board orders, without any advance notice of the vote to the one board member who voted no. One of the board members who voted to rescind the board orders had only been working at CSB for approximately six weeks.

Among those rescinded were:

Board Order 21 Ethics Program
Board Order 23 Senior Executive Service Staffing
Board Order 28 Executive and Administrative Functions
Board Order 38 Budget Requests
Board Order 45 Foreign Travel

The effect of the rescission of those 18 Board Orders is to concentrate power in the hands of the chair. This is not an acceptable outcome. As the Inspector General of the EPA and the CSB stated at a Committee hearing on February 3, 2015, the supervisory chain above the CSB chair leads directly to the President of the United States. Obviously the President does not have the time to take a day to day interest in the operation of the CSB. This revised organizational structure as of January 28 means that in practice the CSB chair has no real oversight except by the Office of the Inspector General and the Committee on Oversight and Government Reform. It seems clear that there should be reversal of the January 18 vote so that the board members can continue to have oversight over the actions of the CSB chair both now and in the future.

Feel free to call me at 202-577-8448 if you have any questions.

John S. Bresland
President

CC Staff Director
Subcommittee on Interior
House Committee on Oversight and Government Reform

U.S. Chemical Safety Board
Organizational Development Consultation

1

BRIEFING TO CSB SENIOR LEADERSHIP

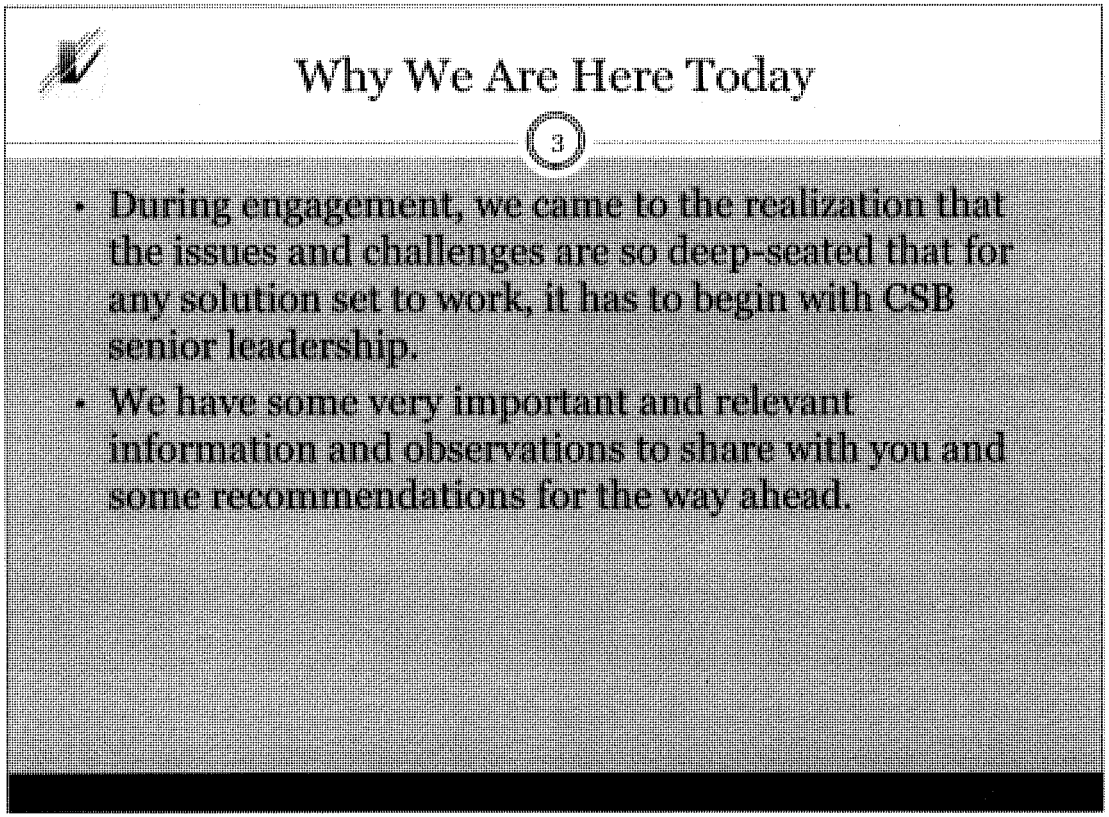
February 12, 2015

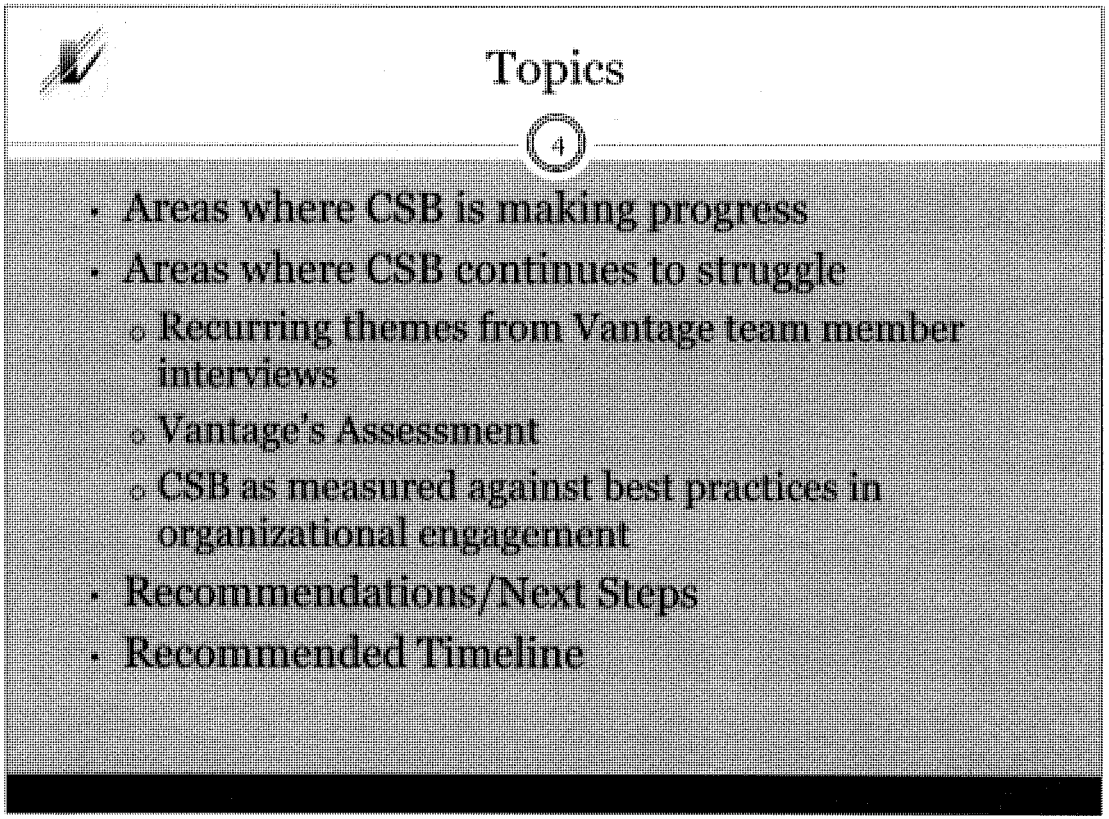
Vantage

Human Resource Services, Inc.

Why We Are Here Today

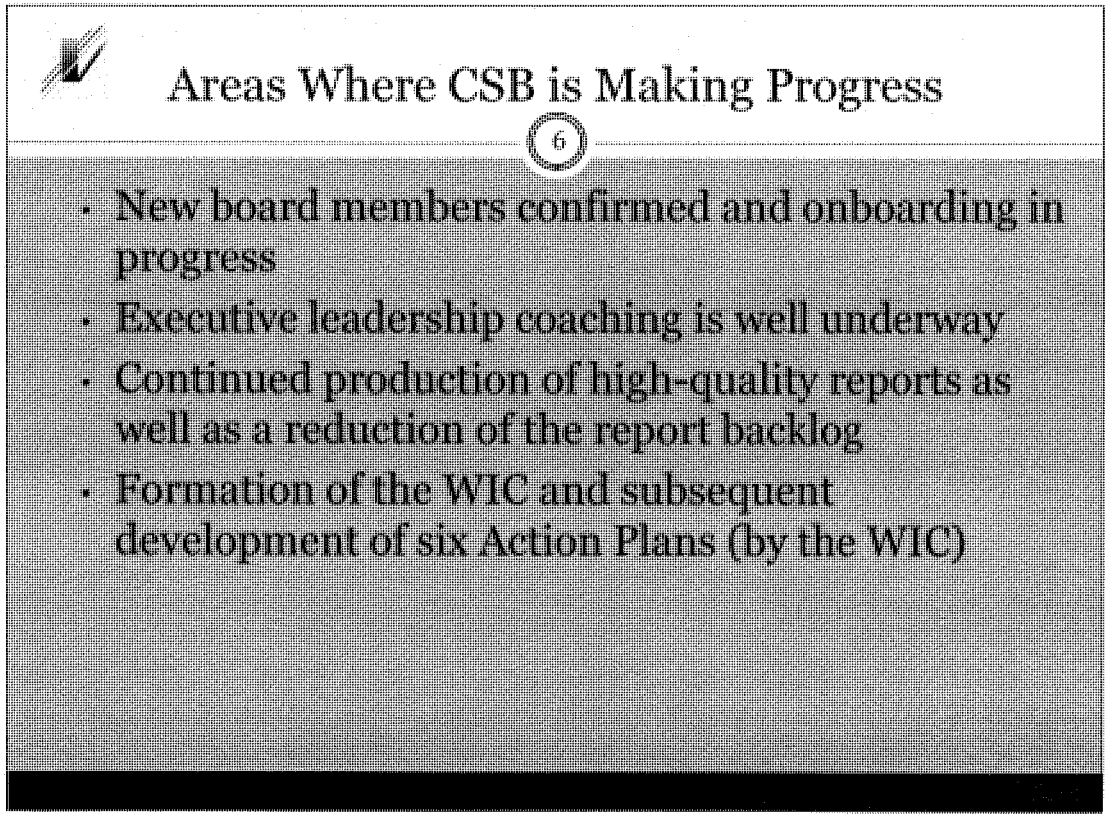
- CSB hired Vantage to engage with managers and staff to develop solutions that address fundamental issues and challenges within the agency.
- As part of the engagement effort, our team conducted one-on-one interviews with managers and key staff.
- The purpose of these interviews was to better understand the agency's issues and challenges and explore potential solutions that resonate.

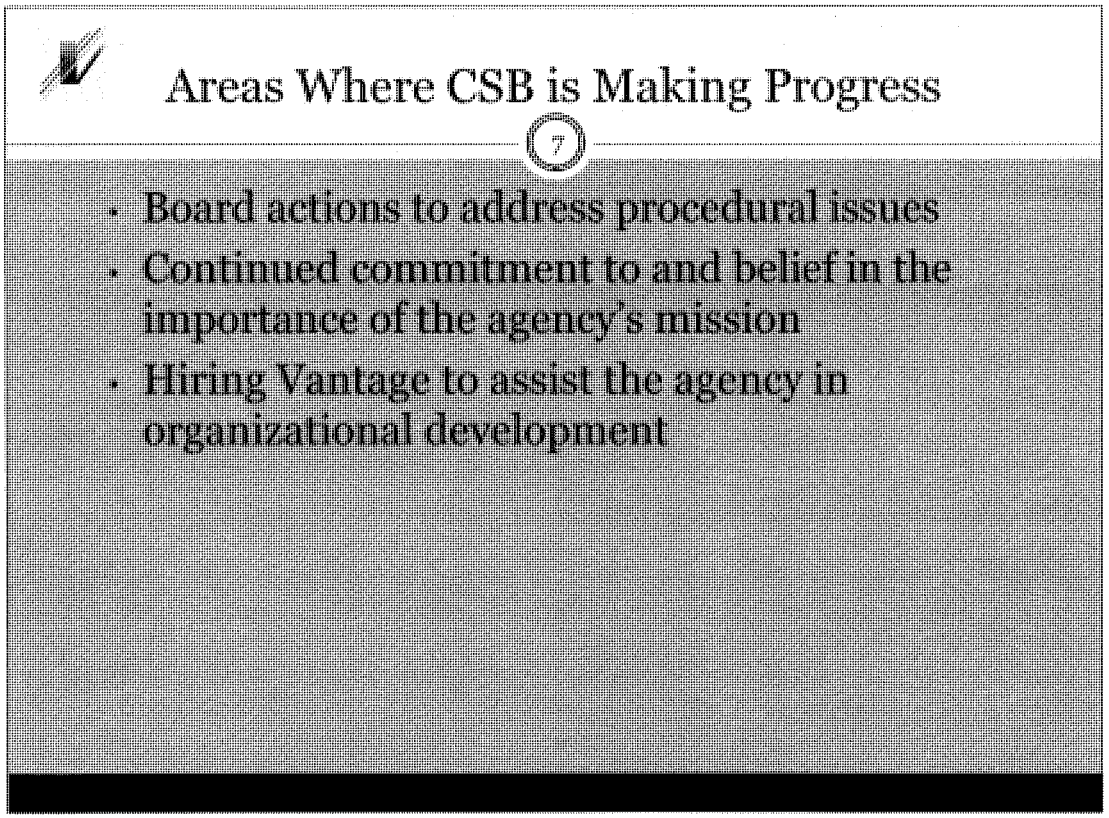

Why We Are Here Today
3
• During engagement, we came to the realization that the issues and challenges are so deep-seated that for any solution set to work, it has to begin with CSB senior leadership.
• We have some very important and relevant information and observations to share with you and some recommendations for the way ahead.

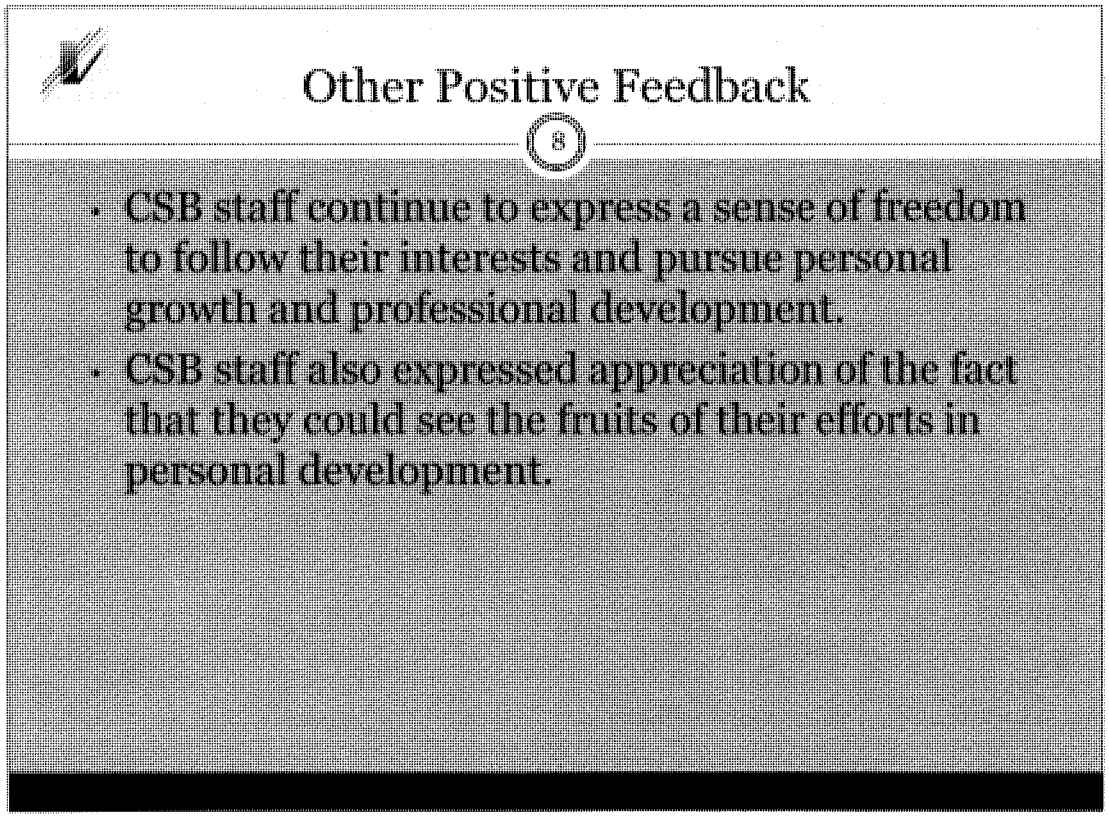

Topics
4
• Areas where CSB is making progress
• Areas where CSB continues to struggle
◦ Recurring themes from Vantage team member interviews
◦ Vantage's Assessment
◦ CSB as measured against best practices in organizational engagement
• Recommendations/Next Steps
• Recommended Timeline

5

Areas Where CSB is Making Progress

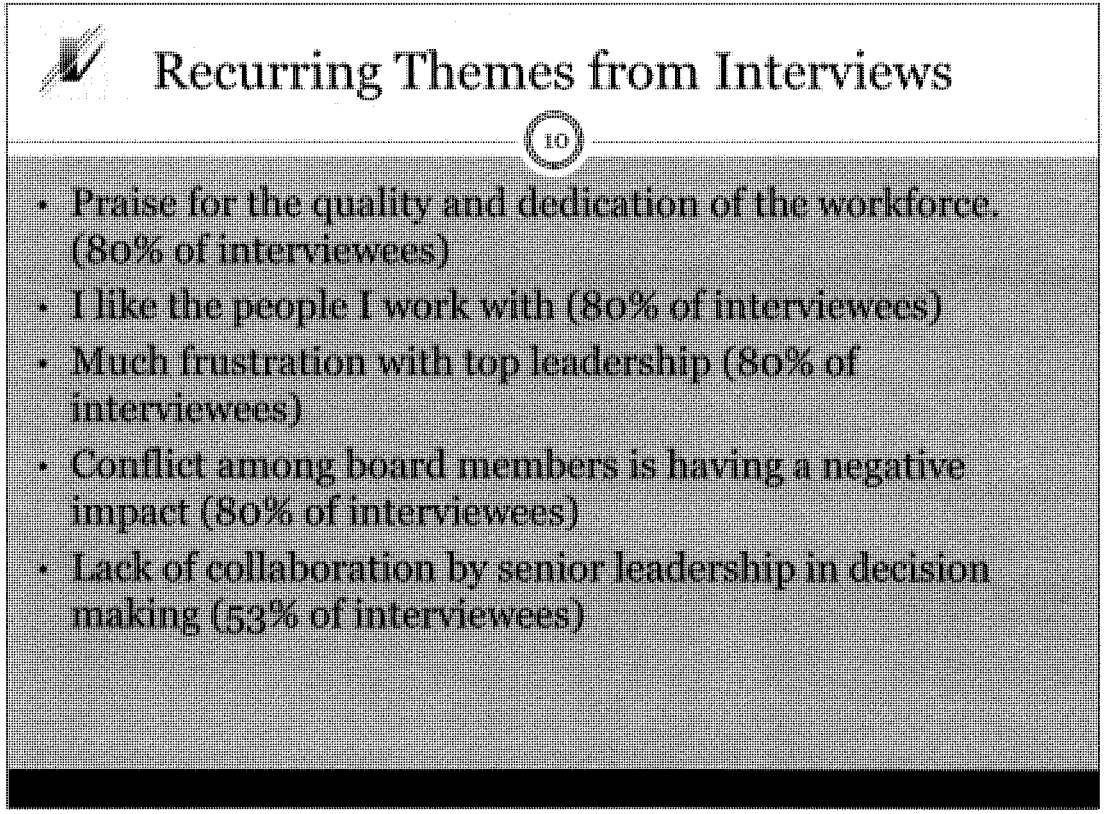

Areas Where CSB is Making Progress
6
• New board members confirmed and onboarding in progress
• Executive leadership coaching is well underway
• Continued production of high-quality reports as well as a reduction of the report backlog
• Formation of the WIC and subsequent development of six Action Plans (by the WIC)

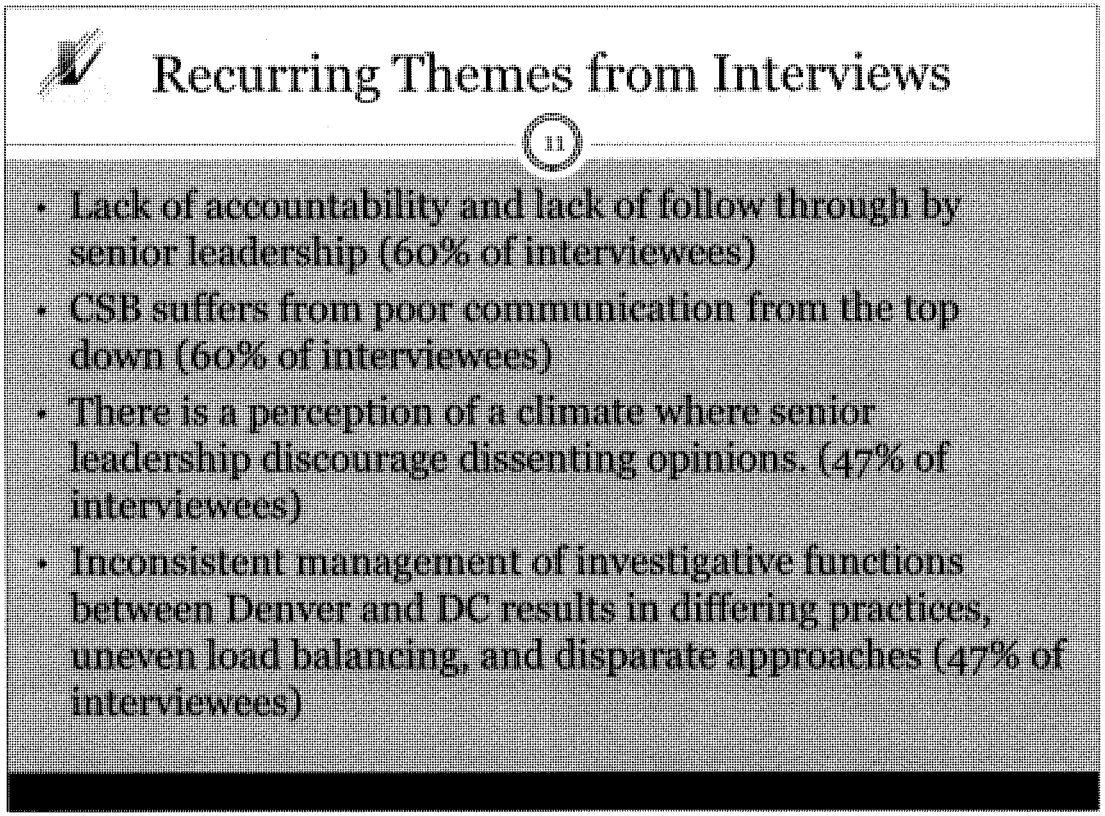

Areas Where CSB is Making Progress
7
• Board actions to address procedural issues
• Continued commitment to and belief in the importance of the agency's mission
• Hiring Vantage to assist the agency in organizational development

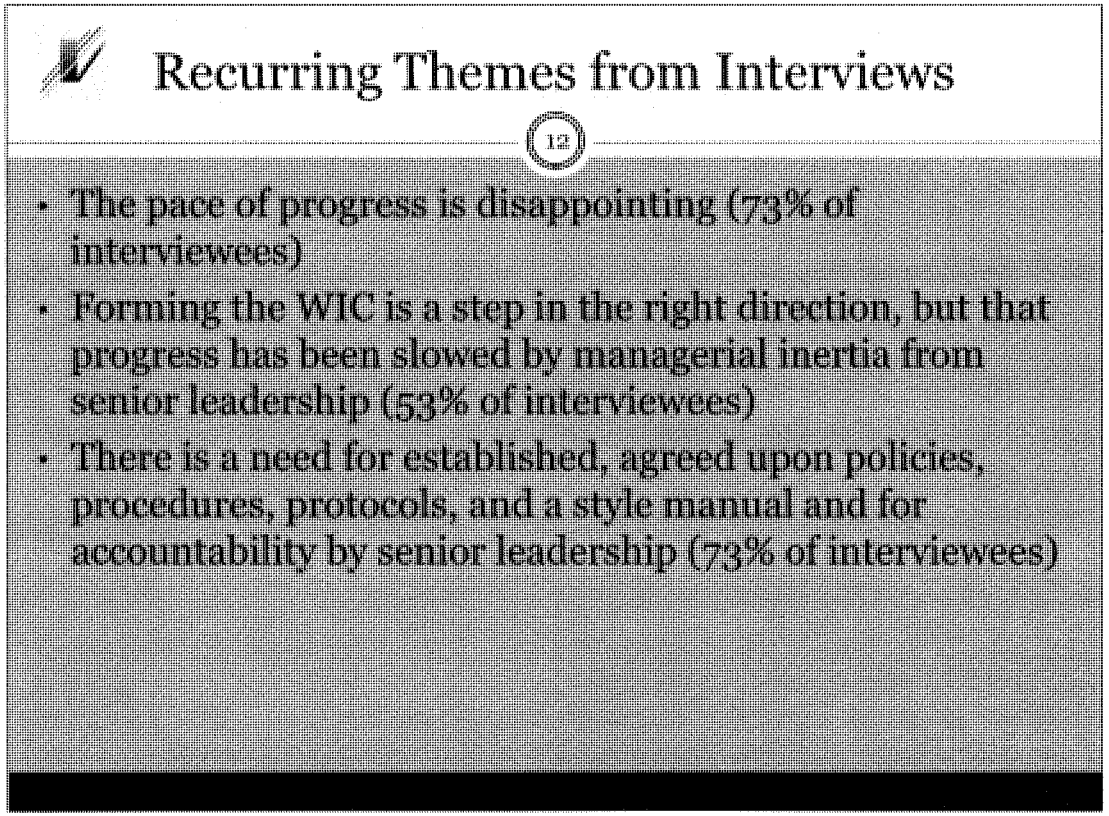

Other Positive Feedback
8
• CSB staff continue to express a sense of freedom to follow their interests and pursue personal growth and professional development.
• CSB staff also expressed appreciation of the fact that they could see the fruits of their efforts in personal development.

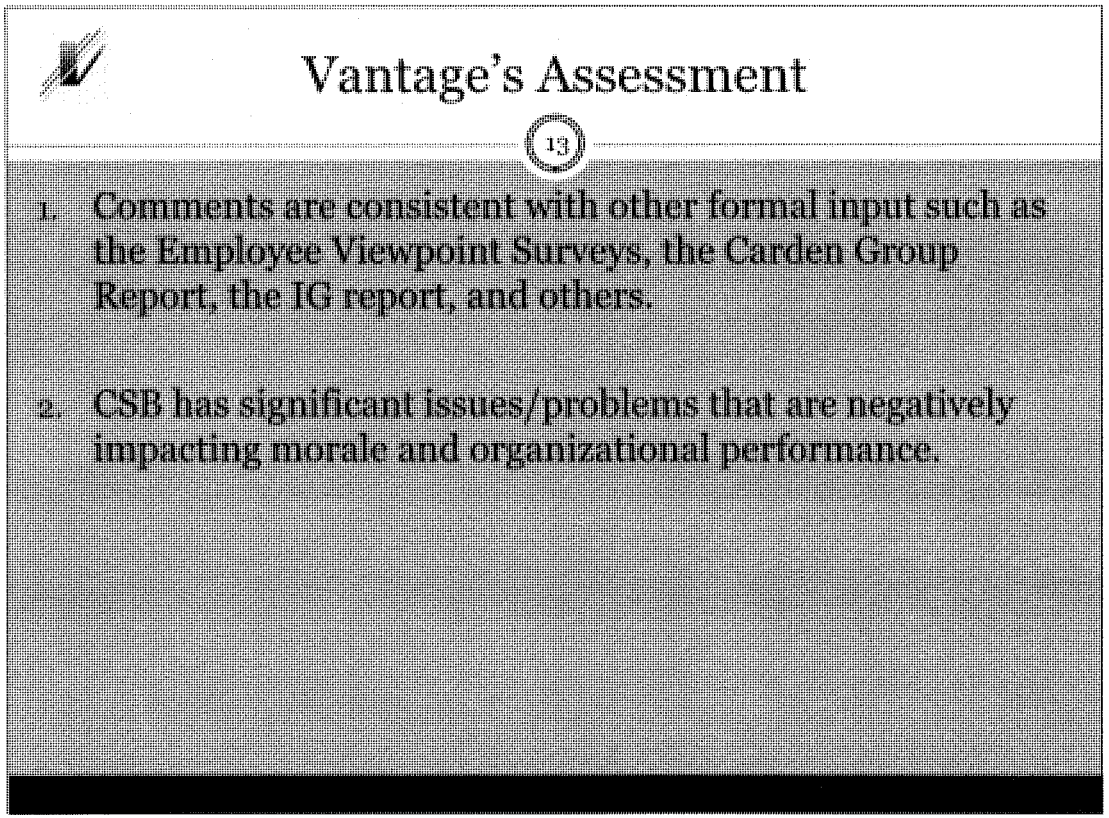
9

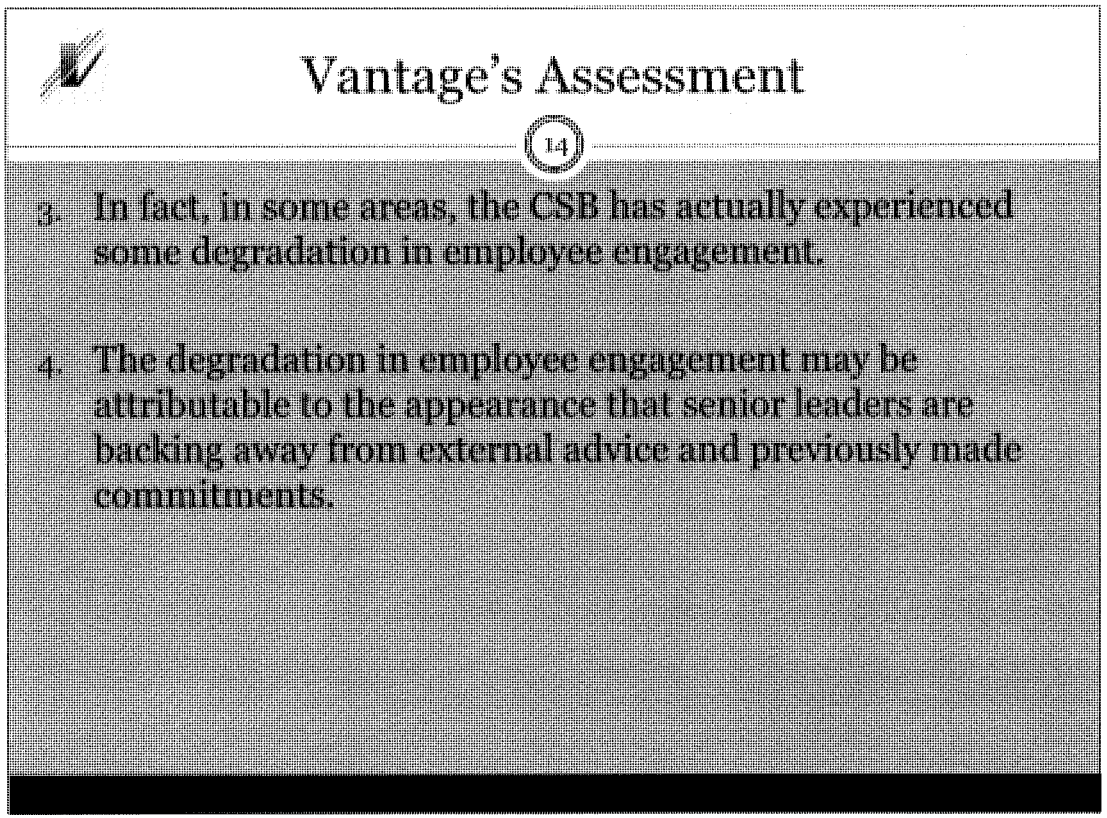
Areas Where CSB Continues to Struggle

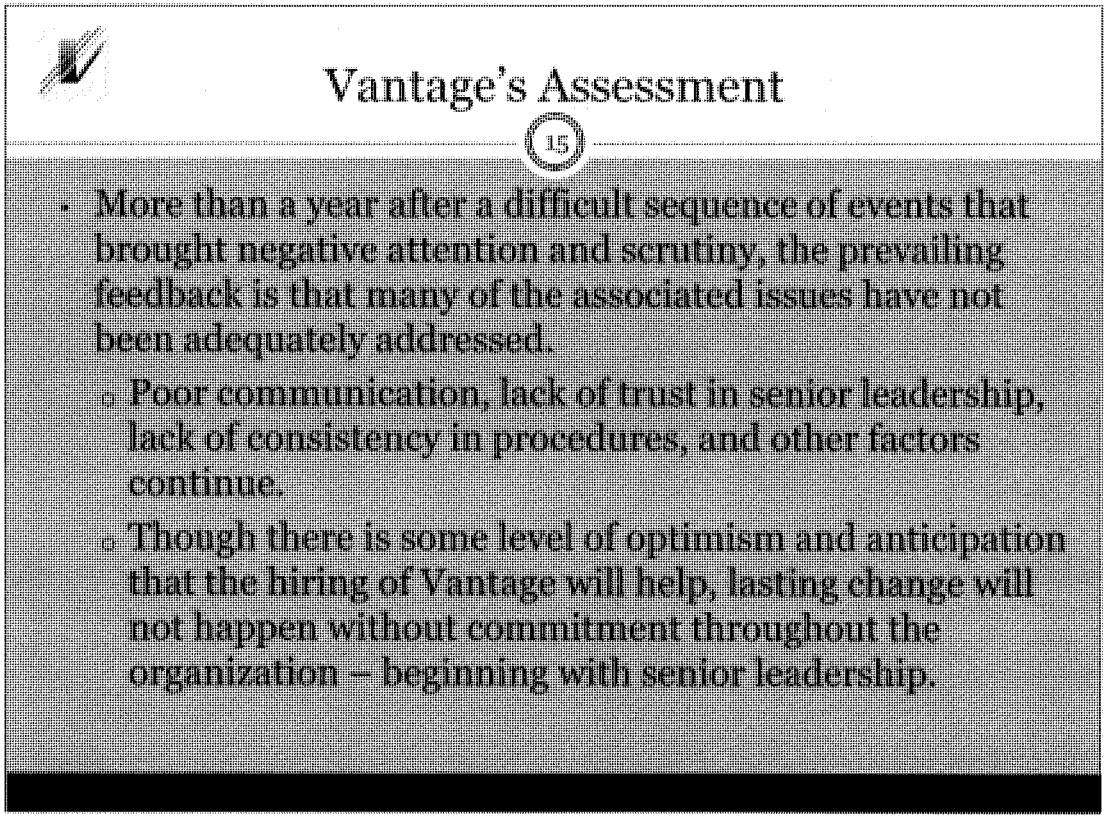

Recurring Themes from Interviews
10
• Praise for the quality and dedication of the workforce. (80% of interviewees)
• I like the people I work with (80% of interviewees)
• Much frustration with top leadership (80% of interviewees)
• Conflict among board members is having a negative impact (80% of interviewees)
• Lack of collaboration by senior leadership in decision making (53% of interviewees)

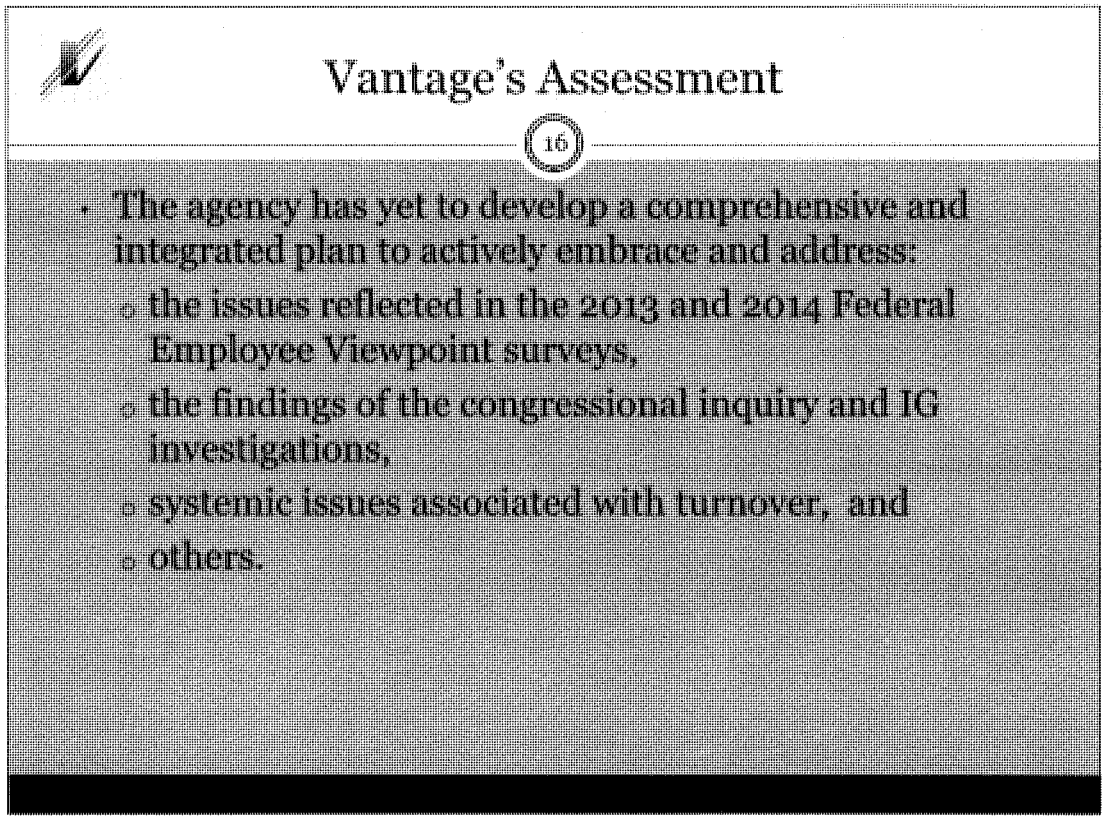

Recurring Themes from Interviews
11
• Lack of accountability and lack of follow through by senior leadership (60% of interviewees)
• CSB suffers from poor communication from the top down (60% of interviewees)
• There is a perception of a climate where senior leadership discourage dissenting opinions. (47% of interviewees)
• Inconsistent management of investigative functions between Denver and DC results in differing practices, uneven load balancing, and disparate approaches (47% of interviewees)


Recurring Themes from Interviews
12
• The pace of progress is disappointing (73% of interviewees)
• Forming the WIC is a step in the right direction, but that progress has been slowed by managerial inertia from senior leadership (53% of interviewees)
• There is a need for established, agreed upon policies, procedures, protocols, and a style manual and for accountability by senior leadership (73% of interviewees)


Vantage's Assessment
13
1. Comments are consistent with other formal input such as the Employee Viewpoint Surveys, the Carden Group Report, the IG report, and others.
2. CSB has significant issues/problems that are negatively impacting morale and organizational performance.


Vantage's Assessment
14
3. In fact, in some areas, the CSB has actually experienced some degradation in employee engagement.
4. The degradation in employee engagement may be attributable to the appearance that senior leaders are backing away from external advice and previously made commitments.


Vantage's Assessment
15
• More than a year after a difficult sequence of events that brought negative attention and scrutiny, the prevailing feedback is that many of the associated issues have not been adequately addressed.
◦ Poor communication, lack of trust in senior leadership, lack of consistency in procedures, and other factors continue.
◦ Though there is some level of optimism and anticipation that the hiring of Vantage will help, lasting change will not happen without commitment throughout the organization – beginning with senior leadership.


Vantage's Assessment
16
• The agency has yet to develop a comprehensive and integrated plan to actively embrace and address:
◦ the issues reflected in the 2013 and 2014 Federal Employee Viewpoint surveys,
◦ the findings of the congressional inquiry and IG investigations,
◦ systemic issues associated with turnover, and
◦ others.

Best Practices in Employee Engagement

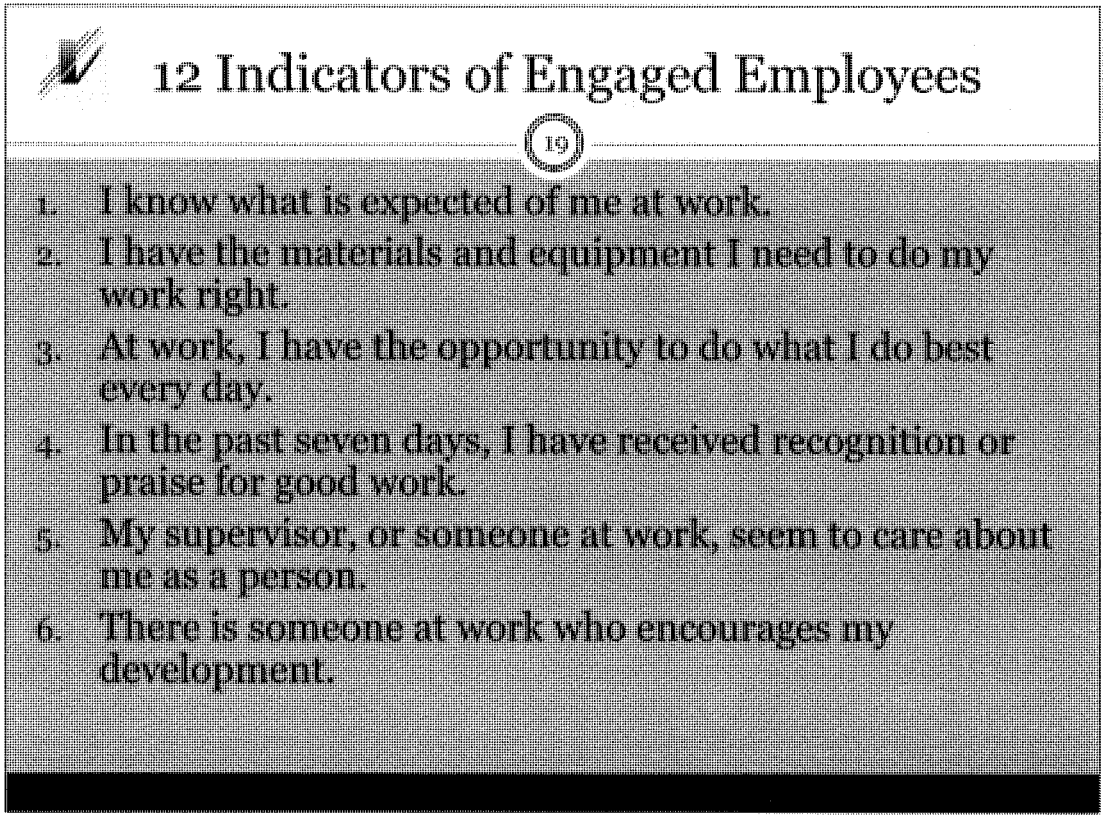
17

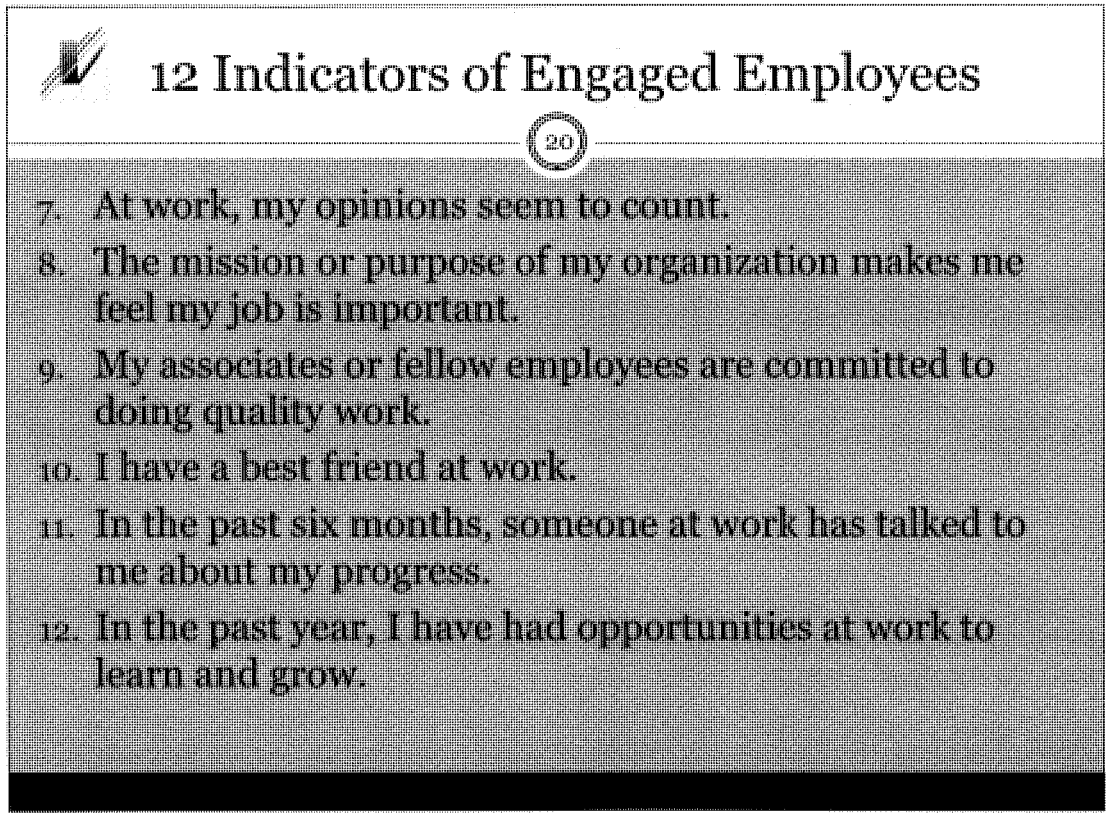
- Measured against best practices in employee engagement, CSB falls short in several areas.
- The following sequence of slides provide examples and our rationale for this conclusion.
- Employee engagement: how satisfied your employees are on the job and whether this satisfaction creates superior performance

Best Practices in Employee Engagement

18

- Each year Gallup releases its annual report on employee engagement
- Administered to more than 25 million employees in 189 countries
- The basis of the Federal View Point survey questions
- Uses 12 indicators statistically correlated as the "best predictors of employee and workgroup performance"
  - First 2 questions are critical: address primary needs
  - Other 10 questions address how workers contribute to the whole and are valued, organizational fit, and development.


12 Indicators of Engaged Employees
19
1. I know what is expected of me at work.
2. I have the materials and equipment I need to do my work right.
3. At work, I have the opportunity to do what I do best every day.
4. In the past seven days, I have received recognition or praise for good work.
5. My supervisor, or someone at work, seem to care about me as a person.
6. There is someone at work who encourages my development.


12 Indicators of Engaged Employees
20
7. At work, my opinions seem to count.
8. The mission or purpose of my organization makes me feel my job is important.
9. My associates or fellow employees are committed to doing quality work.
10. I have a best friend at work.
11. In the past six months, someone at work has talked to me about my progress.
12. In the past year, I have had opportunities at work to learn and grow.

I Know What is Expected of Me at Work

21

CSB Federal View Point Survey	2013	2014
I know what is expected of me on the job.	65.32%	69.82%
Managers communicate the goals and priorities of the organization.	28.88%	33.63%
Managers review and evaluate the organization's progress toward meeting its goals and objectives.	28.88%	33.63%
I am held accountable for achieving results.	49.69%	69.85%
In my organization, leaders generate high levels of motivation and commitment in the workforce.	19.68%	22.10%

I Have the Materials and Equipment I Need to do My Job Right

22

CSB Federal View Point Survey	2013	2014
I have significant resources to get the job done.	24.17%	30.80%
I have enough information to do my job well.	50.15%	63.92%
Employees have a feeling of personal empowerment with respect to work processes.	27.50%	25.11%
My workload is reasonable.	24.23%	42.96%
My work unit is able to recruit people with the right skills.	34.82%	36.90%
The people I work with cooperate to get the job done.	60.43%	58.34%
Employees in my work unit share job knowledge with each other.	62.21%	65.84%

At Work, I Have the Opportunity to Do What I do Best Every Day

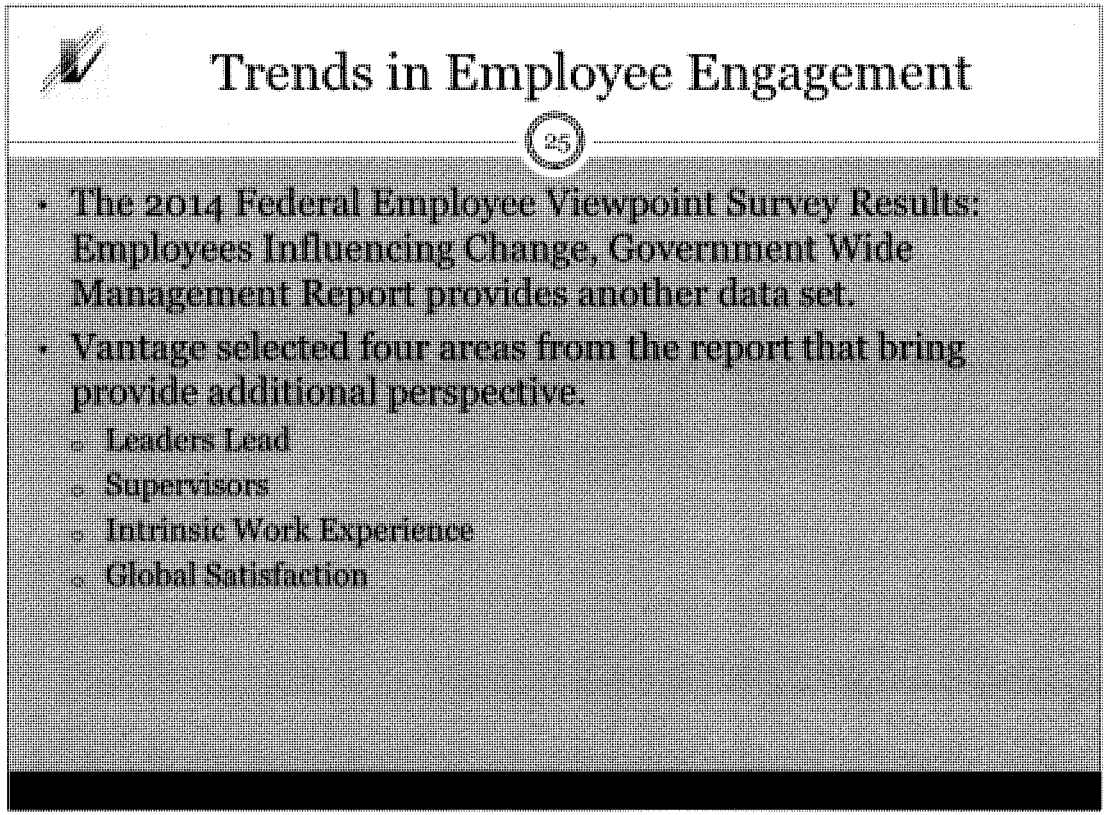
23

CSB Federal View Point Survey	2013	2014
I like the kind of work I do.	76.12%	84.66%
My work gives me a feeling of personal accomplishment.	69.94%	75.33%
My talents are used well in the workplace.	49.25%	51.47%
How would you rate the overall quality of work done by your work unit.	70.00%	77.46%
Employees are recognized for providing high quality products and services.	46.02%	40.99%
Creativity and innovation are rewarded.	26.53%	26.60%
My agency is successful at accomplishing its mission.	36.24%	40.39%

In the past 7 days, I Have Received Recognition or Praise for Good Work

24

CSB Federal View Point Survey	2013	2014
In my work unit, differences in performance are recognized in a meaningful way.	30.53%	38.21%
Awards in my work unit depend on how well employees perform their jobs.	36.58%	41.57%
Pay raises depend on how well employees perform their jobs.	18.28%	22.71%
Creativity and innovation are rewarded.	26.53%	26.60%
How satisfied are you with the recognition you receive for doing a good job?	40.05%	41.78%


Trends in Employee Engagement
25
• The 2014 Federal Employee Viewpoint Survey Results: Employees Influencing Change, Government Wide Management Report provides another data set.
• Vantage selected four areas from the report that bring provide additional perspective.
◦ Leaders Lead
◦ Supervisors
◦ Intrinsic Work Experience
◦ Global Satisfaction

Engagement Trend: Leaders Lead

26

Reference	2010	2011	2012	2013	2014
Small Agencies, Combined Average	57	56	54	55	52
CSB	33	20	39	22	26

Leaders Lead reflects the employees' perceptions of the integrity of leadership, as well as leadership behaviors such as communication and workforce motivation. It is made up of items:

- In my organization, senior leaders generate high levels of motivation and commitment in the workforce.
- My organization's senior leaders maintain high standards of honesty and integrity.
- Managers communicate the goals and priorities of the organization.
- Overall, how good a job do you feel is being done by the manager directly above your immediate supervisor?

Source: 2014 Federal Employee Viewpoint Survey Results: Employees Influencing Change Government-Wide Management Report

Engagement Trend: Supervisors

27

Reference	2010	2011	2012	2013	2014
Small Agencies, Combined Average	74	74	73	74	74
CSB	67	63	79	75	74

Supervisors reflects the interpersonal relationship between worker and supervisor, including trust, respect and support. It is made up of items:

- Supervisors in my work unit support employee development.
- My supervisor listens to what I have to say.
- My supervisor treats me with respect.
- I have trust and confidence in my supervisor.
- Overall, how good a job do you feel is being done by your supervisor?

Source: 2014 Federal Employee Viewpoint Survey Results: Employees Influencing Change – Government Wide Management Report

Engagement Trend: Intrinsic Work Experience

28

Reference	2010	2011	2012	2013	2014
Small Agencies, Combined Average	74	72	71	70	69
CSB	75	66	72	58	65

Intrinsic Work Experience reflects the employees' feelings of motivation and competency relating to their role in the workplace. It is made up of items:

- I feel encouraged to come up with new and better ways of doing things.
- My work gives me a feeling of personal accomplishment.
- I know what is expected of me on the job.
- My talents are used well in the workplace.

Source: 2014 Federal Employee Viewpoint Survey Results: Employees Influencing Change: Government-Wide Management Report

Engagement Trend: Global Satisfaction

29

Reference	2010	2011	2012	2013	2014
Small Agencies, Combined Average	69	66	62	61	59
CSB	62	42	55	41	38

The Global Satisfaction Index is made up of items:

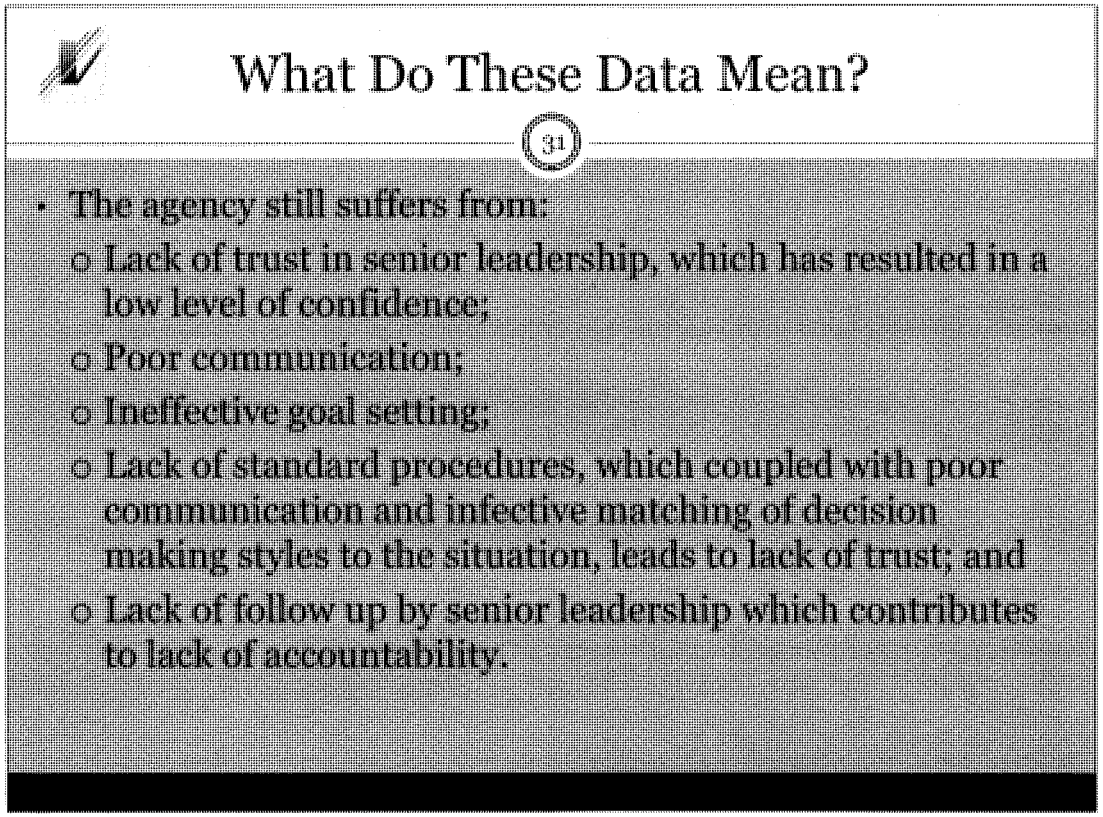
- I recommend my organization as a good place to work.
- Considering everything, how satisfied are you with your job?
- Considering everything, how satisfied are you with your pay?
- Considering everything, how satisfied are you with your organization?

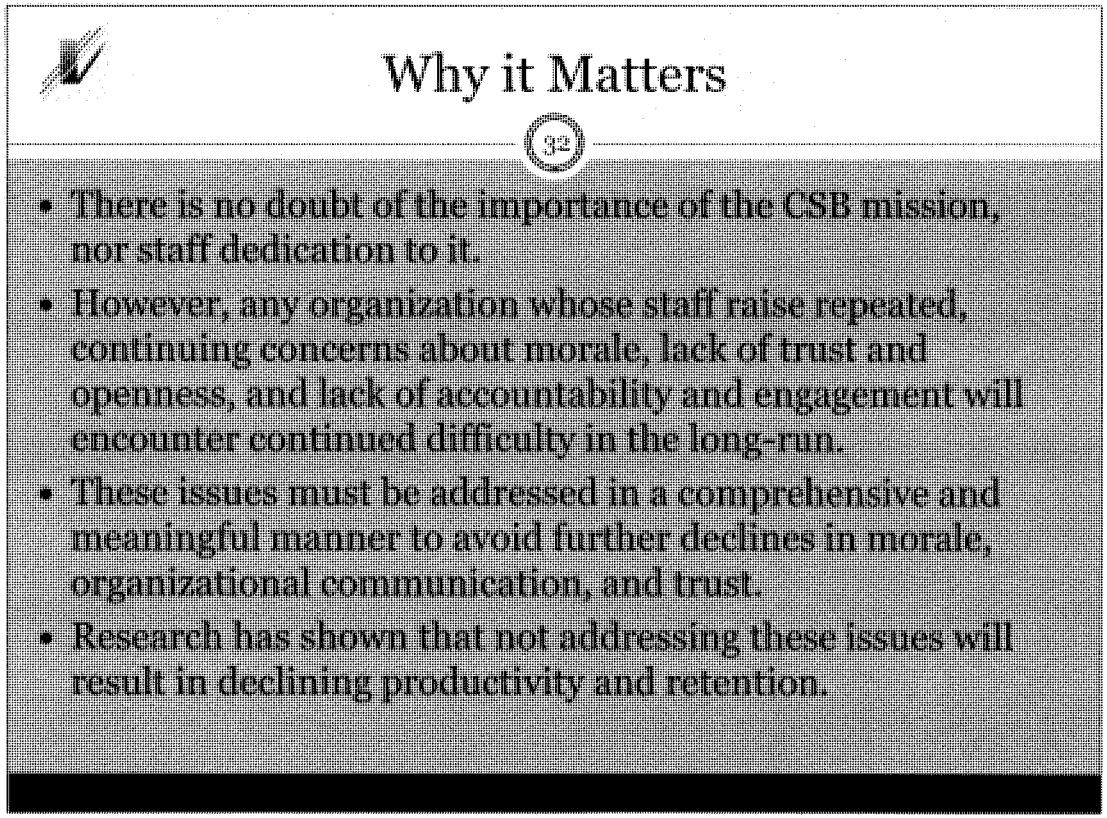
Source: 2014 Federal Employee Viewpoint Survey Results: Employees Influencing Change Government Wide Management Report

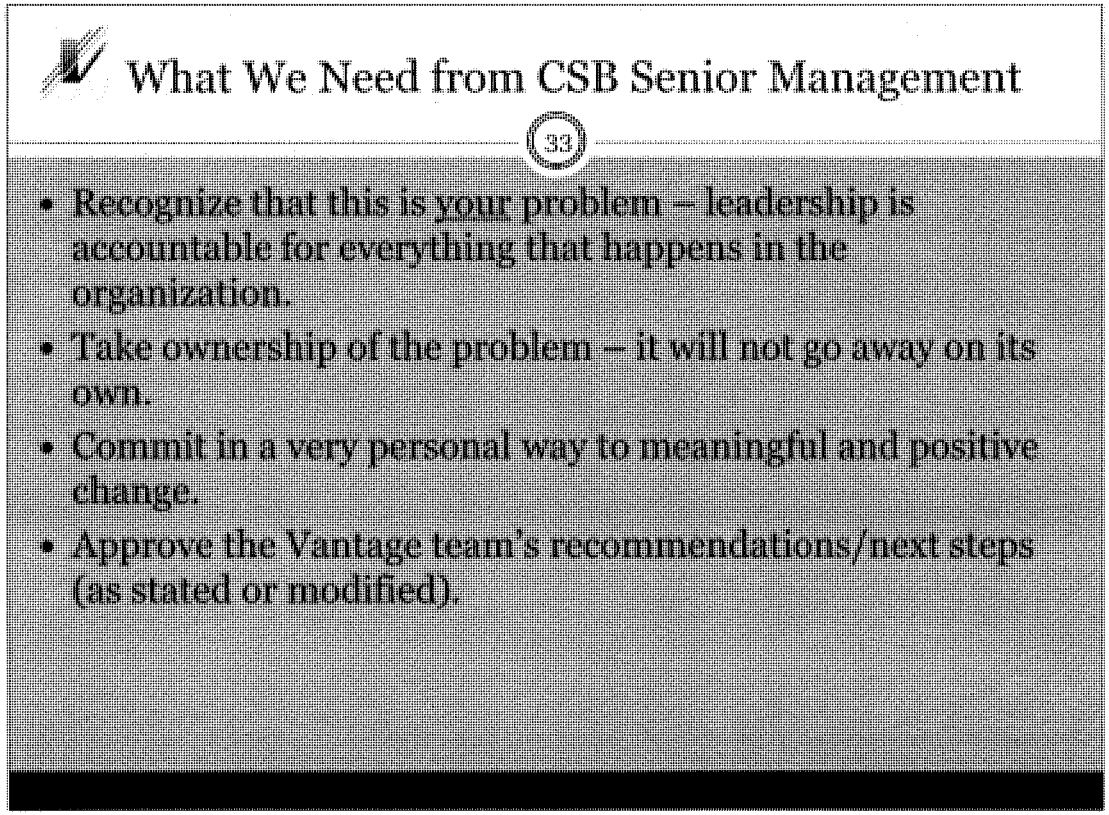
Best Places to Work Comparison

30

Agency	2014 Score	Change from 2013
U.S. Trade and Development Agency	87.9	9.5
Office of Navajo and Hopi Indian Relocation	86.8	N/A
Occupational Safety and Health Review Commission	78.7	3.3
Institute of Museum and Library Services	66.4	15.5
National Indian Gaming Commission	63.6	12.7
Office of Government Ethics	62.3	6.0
Postal Regulatory Commission	59.5	-7.1
American Battle Monuments Commission	58.4	N/A
Inter-American Foundation	40.4	9.0
Chemical Safety and Hazard Investigation Board	33.7	-2.9


What Do These Data Mean?
31
• The agency still suffers from:
o Lack of trust in senior leadership, which has resulted in a low level of confidence;
o Poor communication;
o Ineffective goal setting;
o Lack of standard procedures, which coupled with poor communication and infective matching of decision making styles to the situation, leads to lack of trust; and
o Lack of follow up by senior leadership which contributes to lack of accountability.


Why it Matters
• There is no doubt of the importance of the CSB mission, nor staff dedication to it.
• However, any organization whose staff raise repeated, continuing concerns about morale, lack of trust and openness, and lack of accountability and engagement will encounter continued difficulty in the long-run.
• These issues must be addressed in a comprehensive and meaningful manner to avoid further declines in morale, organizational communication, and trust.
• Research has shown that not addressing these issues will result in declining productivity and retention.


What We Need from CSB Senior Management
33
• Recognize that this is your problem – leadership is accountable for everything that happens in the organization.
• Take ownership of the problem – it will not go away on its own.
• Commit in a very personal way to meaningful and positive change.
• Approve the Vantage team's recommendations/next steps (as stated or modified).

Recommendations/Next Steps

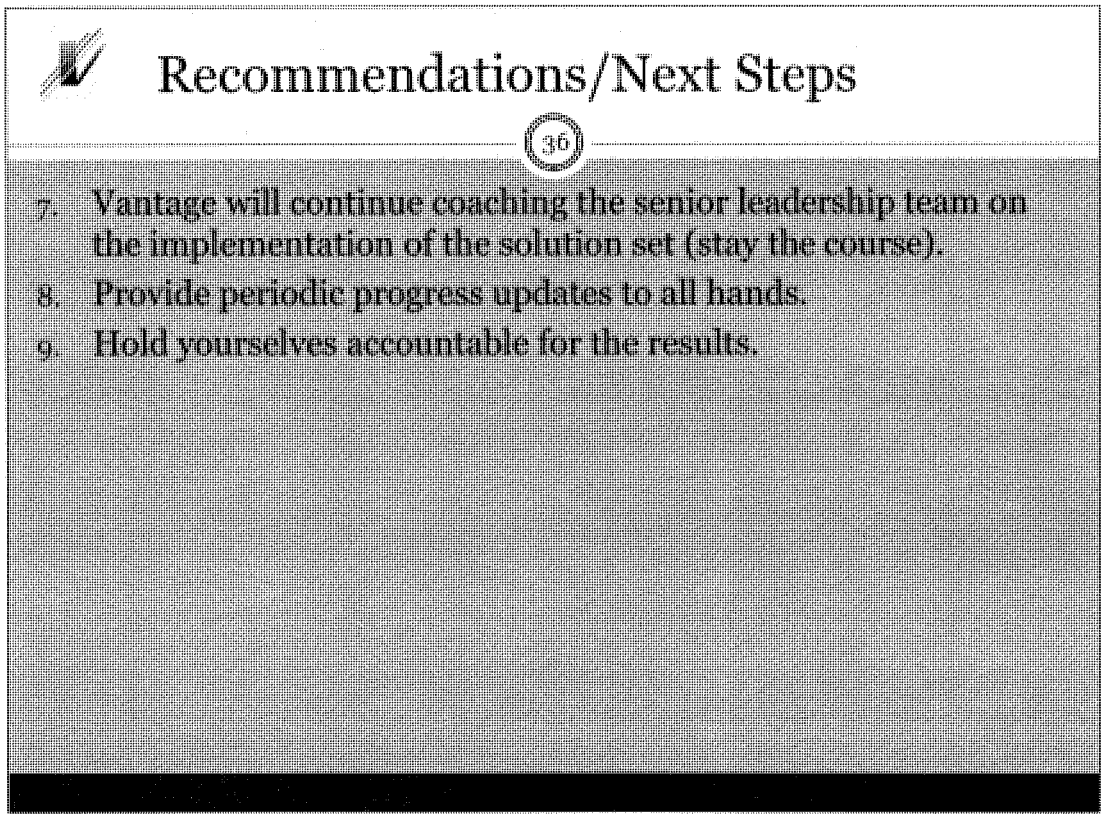
34

1. Work together to frame comprehensively the solution set for agency problems – the Vantage team will help, but you have to lead the effort.
2. The Vantage team recommends a two-day offsite with Board and senior managers to:
   a. Explore issues in greater detail
   b. Establish priorities
   c. Frame a comprehensive solution set
   d. Assign resources and responsibilities
   e. Establish timelines, indicators of success, and methods of follow up

Recommendations/Next Steps

35

3. After the offsite, continue working with Vantage to develop the solution set; involve the WIC -- they can provide input and serve as a sounding board.
4. Communicate with the agency about your efforts.
5. Once satisfied with the solution set, the CSB leadership team briefs the entire agency -- this will be a unique opportunity to "reset" the direction of the organization.
6. Implement the solution set -- which may include IDPs, coaching, training, change management, staff development, facilitated working sessions to guide product development, progress updates, guest speakers, etc.


Recommendations/Next Steps
36
7. Vantage will continue coaching the senior leadership team on the implementation of the solution set (stay the course).
8. Provide periodic progress updates to all hands.
9. Hold yourselves accountable for the results.

Actions and Recommended Timeline

37

Actions	Estimated Date
CSB Senior Leadership approves recommendations	February 12, 2015
Vantage plans the offsite	February 2015
Conference call with CSB Senior Leadership to discuss offsite planning	February 2015
Conduct offsite – which will include development of a framework for a comprehensive agency solution set	March 2015
CSB senior leadership and Vantage continue working together to complete the agency solution set	April 2015
CSB senior leadership conducts a "Visioning and Alignment" meeting with all hands to deliver the agency solution set (Vantage will assist in preparation)	April 2015
Begin implementation of the solution set	May 2015

Actions and Recommended Timeline

38

Actions	Estimated Date
CSB senior leadership provides progress report to all hands	Monthly
Vantage team continues to coach the Senior Leadership team on implementation and follow up	May – September 2015
Senior Leadership team directs an assessment of the solution set – may include surveys, interviews, focus groups, etc. Goals are to: 1) assess progress, and 2) identify ways to improve the solution set.	November – December 2015
Provide results of assessment to all hands	January 2016
Make adjustments to the solution set as needed	January 2016
Continue implementation of the solution set	January 2016 until goals are achieved

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The Carden Group

Path Forward Overview

U.S. Chemical Safety Board

Prepared for: The CSB
Prepared by: The Carden Group

July 10th, 2014

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Overview

Chad Carden and Rick Leffke of The Carden Group (TCG) met with all levels of the U.S. Chemical Safety Board (CSB) in Washington, DC, and Denver, CO as well as remote employees to uncover the internal challenges that hinder a positive work environment and stop positive progress toward the mission and vision of the CSB. The key insights uncovered are as follows:

Insights

The investment for CSB moving forward considers the following to be true:

- At all levels, there appears to be a distrust and an intentional lack of communication which leads to passive aggressive behavior that should be addressed to create a more positive overall work environment within the CSB.
- There is a necessity to conduct 1:1 meetings with Daniel and Rafael to understand the personal motivations for the positive and sustainable direction of the CSB. There is also a need for clarification of Daniel's perceived roles and responsibilities to maximize the use of his talents.
- It is strongly recommended that the CSB leadership and board resolve long-term standing issues and agree on a mutually beneficial way to move forward that has a real accountability system built in to ensure all agreements are met. The focus of moving forward will need to be on the establishment and commitment to common beliefs, values, and issues that will improve internal performance of the Board & Operations at the CSB.
- More detailed processes (i.e., investigation procedures) need to be identified, established, and executed at all levels of the CSB to create clarity and a sustainable work environment. These processes, roles, and responsibilities must be clearly communicated, agreed upon, and accountability should be demonstrated at all levels, starting with the Board and individuals at the leadership level.
- A long-term approach (12-18 months), with accountability measures, is necessary to create the needed behavioral change to provide an aligned and productive environment for the CSB. Action must be taken immediately to ensure sustainability.
- Creating small successes at all levels from the beginning of this project is crucial to demonstrate achievability and generate the momentum that has been lost over the last year and a half.
- In order to achieve the highest level of success, the CSB needs to demonstrate the willingness to change at all levels, beginning with top leadership and the Board Members. It's vitally important that everyone understands his or her own benefit when an initiative such as this gets underway.

- Alignment, of the organization, should be created from the top-down (Board Members), but executed from the bottom-up.
- Communications structure, language, formulas, processes, and protocols established and agreed upon at all levels need to be created to rebuild trust and create a sharing environment to better serve the staff, leadership, and the Board, allowing the mission of the CSB to flourish.
- TCG will rollout this initiative in several steps, with each step building on the last to create long-term sustainable success.
- In order to ensure success, it is recommended that the following be a starting place for this initiative:

1. **Alignment within the CSB**
    - Board Members
    - Sr. Level Leadership
    - Leadership
    - Staff
2. **Proven Processes For Predictable Results**
    - Investigation Processes
    - Internal Processes
    - Communication Processes
    - Development Processes
3. **Clear Communication**
    - Around Processes
    - Timelines
    - Expectations
    - Roles and Responsibilities (All Levels)
    - Value Premise (All Levels)
    - CSB Accountability
    - Personal Accountability
4. **Clarity**
    - Understanding of the mission, vision, values, and goals
    - Value Premise
    - Roles and Responsibilities
    - Accountability (All Levels)
    - Inspire a shared vision
    - Challenge the process in productive ways

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Outline of Proposal

TCG believes that a partnership and putting a proven success process in place takes a true commitment between the CSB and TCG. To accomplish a successful project, these four pillars are critical to make it happen.

1. **Commitment and Continuous Involvement from the Top** – Board Members and all key stakeholders must be involved in this project from the beginning of the project to the end of the project. They must not only set the vision & expectations of the project, but they must drive the vision & expectations at every level. This leadership team must have an unwavering level of commitment to the success of what we are trying to accomplish. The leadership must get complete buy in at all levels. The goal is to have everyone on the same page and moving towards accomplishing what matters most, which are the goals that we set out to achieve. If it matters at the top, it will matter to everyone.

2. **Gathering and Development of Best Practices** – TCG will gather and develop best practices around processes inside the CSB to support the goals outlined. This will allow TCG to gain even greater insights and build out relevant processes that will help foster a better CSB culture and work environment. Discovery could lead to additional recommendations not outlined in this document.

3. **Execution** – In the execution phase, this is where we ensure that we get the results that we set out to accomplish. Through learning sessions, executive coaching, development, and results reporting, we will guide the leadership team through the tactical execution of the game plan. Through the execution, we will ensure that everyone stays on the right track and makes positive progress. Over time, executing the right strategy, we will create the right habits/behaviors and results for the CSB.

4. **Accountability** – Through some type of agreed upon reporting system, TCG will create success metrics that will be tracked from the beginning of the project to the end of the project. TCG will create a vision and a sense of urgency around these critical "success metrics" and hold the leadership team accountable to achieve these goals. TCG will promote the visibility of the vision, the results we are looking to achieve, and those results will be score boarded throughout all levels of the organization. The documentation of these results will help us realize a tremendous ROI for the CSB. What gets measured gets done.

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TCG Recommendations: Project Plan

The following recommendations outline a scope of the project that will allow us to identify proven processes that have produced significant performance improvements with TCG clients. Based on what has previously been discussed, TCG has put together its recommendations on the best way to execute this project. The process outlined below combines goals, development, testing, coaching, and follow up to steadily improve the culture and organization as whole inside the CSB to produce the desired results. This outline also includes a detailed investment breakdown based on these recommendations for the CSB to consider.

Areas of Primary Focus Moving Forward

It is the belief of TCG that a multilayered approach to the issues facing the CSB be initiated. This approach would allow for the installation of key leadership/management components, documents, agreements, and skills covering three (3) specific levels at the CSB, the Board and Chairman, the Executive, and the Management and Staff. The recommendations are intended to be a starting point and as continued revilement of other conditions occur, additional recommendations will be made. This will be executed over a 7 month time period (12 months if the virtual option is added in).

Board Level Recommendations

- The Board Member's roles and responsibilities must be established in written form, agreed to, and approved by the Chair of The Board. The documented roles and responsibility serve as a clarifying document and a road map for acceptable habits/behaviors between the presiding Chairperson and all Board Members.
- Restoring Board Governance to ensure functionality of the Board and ultimately the CSB is mandatory. Agreements need to be established on how the Chairperson and Board Members need to work together with bilateral accountabilities in place ensuring collegial interactions.
- Leadership skills around communication styles between the Chairperson and Board Members need to be strengthened allowing for clarity and leadership versatility.
- The CSB vision needs to be re-established with clear expectations at all levels of the organization, of how everyone can contribute to the overall CSB direction.
- Clear expectations need to be established between the Board and the Chairperson to move the organization toward the overall CSB vision.
- The need for establishing agreed upon accountabilities for the execution of all documented agreements (i.e., 1.) The document created by the Chairperson and Board Members through an outside consultant dated April 22, 2014. & 2). The recommendations from the Inspector General) needs to be paramount.

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- Requests from outside sources need to be communicated to the Board in a timely manner creating a "No Surprise", transparent, and functional agency.

Executive Coaching for the Managing Director and the Chairperson

- Leadership insights and skills development for leading the CSB from the executive level needs to be provided.
- Strategies and action plans that build trust in the organization need to be established & executed creating "Safe Environments" to foster a retentive environment that will increase levels of personal performance.
- The creation of sustainable hiring practices to build the future of the CSB will need to be established.
- Tactics for interactions for leading throughout the organization need to be established in the following ways:
  - Establish personal and organizational vision.
  - Create clear expectations for achieving the vision.
  - Communication styles; creating leadership versatility.
  - Preparing for and handling difficult conversation.
  - Maintaining collegial environments through de-escalation of difficult situations.
  - Coaching people to higher levels of performance and creating accountability.
  - Re-visioning for the CSB (internal branding the "CSB Way). Establish the non-negotiable standards for the values of the CSB.
  - Conducting effective 1:1 developmental meetings establishing a proven process for "people development" throughout the organization.
  - Skills in giving critical feedback through strength-centered feedback that allow people to continue to develop their skills and add higher value to themselves and the CSB.
  - Versatility in leadership by learning to flex to the different communication styles.
  - Reflective listening skill enhancement in order to enhance, not only the respect of others, but to also increase the overall contribution from others.

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Staff/Manager Development

- Vision/Values, understanding the "why" we do what we do from the level of organization is pertinent. Creating alignment from a personal vision to the vision of the organization will be key.
- Co-Creating values to operate with the CSB.
- Creating clarity through the use of "expectations conversations" around the vision of the individual's position at the CSB and the CSB overall.
- The goals of this project should be established around personal development, project execution, and performance.
- There should be standardized project operating procedures and protocols within the CSB to efficiencies in the execution of the investigations to assist in the reduction project timelines.
- There should be communication tactics, such as:
  - Communication styles - Learning to flex and create leadership versatility within CSB.
  - Planning for and executing difficult conversations to reduce the tension and adverse conditions within the CSB.
  - Maintaining collegial environments through de-escalation of difficult situations.
- Managing people and performance to increase the effectiveness of coaching others to higher levels of performance will need to be established.

Step 1: Vision and Alignment Meeting

A critical success factor of this project is to obtain clear focus on a shared vision of project success and get that vision on paper, so it can be shared at all levels of the organization. One core belief of TCG is that the foundation must be understood from a viewpoint of the "current situation" as the project proceeds. We must be able to work with the CSB, as a whole, to create a clear path forward that everyone can agree upon. This meeting would quantify the project goals and identify 3-4 key objectives that we want to accomplish. We will also create clear accountabilities for the various people involved in the project that will be necessary to insure the project's success. We will also confirm a timeline and schedule it at this initial meeting.

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Step 2: Development of Processes

TCG must spend time inside the CSB doing more discovery that will lead to developing processes that will create clarity and accountability inside the CSB. Processes will be developed with the CSB, and must help create a more positive environment. More discovery time will lead to the following processes to be developed:

- Investigation Processes
- Internal Processes
- Communication Processes
- Development Processes For All Levels
- Leadership Processes

Step 3: Communication and Clarity at All Levels

An "all hands" meeting will allow everyone to buy into the path forward and see the "WIIFM" (What's In it For Me) and are excited about the direction of the CSB.

Step 4: Three Level Development

TCG will execute the development of the program at all levels and create a consistent language and proven processes at all levels inside the CSB.

- The Board and Board Member Alignment and Agreement
- Leadership Development
- Staff Development

Step 5: Continuous Improvement and Implementation

TCG & the CSB will implement a follow-up process to ensure sustainability and accountability on habits/behaviors that will continually move the CSB forward.

The most important component of this initiative is follow up and accountability. The success of any improvement initiative is directly tied to the quality and consistency of the follow up. This initiative is no different. TCG has a unique approach when it comes to the follow-up methods that create an environment of accountability. It is critical that we set high expectations, make it clear what needs to be done on a daily basis, and inspect what we expect.

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The reason most organization improvement projects are not very effective is that they often lack formal follow up. It is clear to us that the CSB will significantly benefit from having an ongoing sustained third party auditor to hold all levels accountable for the implementation of their learned skills, processes, and routines. The most effective way to achieve this is for TCG to provide continuous support through continued in-person coaching. Also there is an option available for the CSB to leverage and use TCG's engaging, effective, and relevant virtual interactive development platform now or in the future.

The virtual platform can be leveraged by the CSB from the beginning or the CSB can leverage this option in "phase 3" once processes, development, and coaching is already in place. Virtual interactive development should be used to enhance live development and can be used in a variety of ways including:

- Re-engage the workforce as to what has already been learned.
- Reinforce the topics covered during the development.
- Full-session workshop available 24/7 for onboarding or absent employees.
- Test, track, and monitor who is learning and who is not.
- TCG's proprietary interactive technology helps increase learning penetration from 20% - 80% by leveraging all learning sensory attributes, using various interactive mediums and activities.
- Virtual training that improves the user's experience by emulating the dynamics of a one-on-one session.
- Employee engagement that increases from the use of real-life examples with multiple outcomes.
- Making sure comprehension is maximized by deploying a unique, profile-driven learning plan using skill level, time in title, function, etc.

The primary objective of combining virtual, interactive training with live development is to ensure that what is taught is actually learned; and then implemented to maximize long-term sustainable results. TCG does this by providing the following:

- Expert facilitators who deliver a highly-engaging, dynamic, and interesting learning experience.
- An individualized development process using preset profiles and interactive questions to ensure more experienced users don't lose interest or become disengaged, while others start with more basic fundamentals.
- Individualized testing and monitoring to ensure the material was actually learned with real-time tracking and response tools.

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- Targeted, informative messages that are provided anytime (strategy, insights, pre-course instruction, recognition, etc.)
- Consistency in messaging goals, vision, best practices, terms, etc. across the entire organization.
- Best practices that are leveraged for learning 24/7 from virtually anywhere, creating a more cost effective and flexible use of assets.
- Implementation that is quick and efficient in your business environment.

The follow up conducted by TCG is the most critical investment that the CSB will make in this project. After the follow up period, it is the goal of TCG that the CSB has acquired and retained the necessary skills to sustain the project and make it part of the everyday culture and DNA of the CSB.

Notes from WIC employee discussions

As much as possible, these sentiments are recorded verbatim

COMMON LIKES:

- Everyone is committed to the CSB mission – **WIC note: this was a very common sentiment, almost everyone said this
- The small size of the agency allows for employees to converse with everyone, even people high in the organization (Board members)
- Impact of agency, independence
- We are a technical resource for industry
- Worked in industry, nice to see our agency bring industry issues to light
- My team has good internal communication – essential to getting the job done
- Likes everyone, good people work here
- Looks forward to coming to work and socializing with coworkers
- Likes Webex
- Likes work within their group, good chemistry
  - Group has a mix of skills and work methodologies that blend to get the job done.
- People treat each other as adults
- No "widget counting"
- Less minute scorekeeping for smaller tasks
- Enjoys working in their department now, didn't always feel that way
- Investigators are given freedom to choose their own tasks and paths with investigative work (not all teams are like that)
- Some investigators report that they are provided all the training they ask for.
- Still get out fairly credible reports
- Lots of talented people - bright & hardworking
- Like the individuals I work with, both inside and outside of CSB. They are very experienced and knowledgeable.
- Feel like you have an impact and can change policy
- Dream job – making a difference at policy level
- Issuing reports with recommendations for significant change
- Small organization, not a lot of bureaucracy
- Flexibility with hours and telework
- Energy leadership class has been very good, helps to better respond to things that are out of my control and stay out of drama.
- IT, Library, and other support functions work well

Concerns/Areas for Improvement

LACK OF PROCEDURES:

- **WIC NOTE each of the following were very common statements: We need more order and guidance at all levels, more than just the investigation protocol
  - Existing procedures should be followed, or revised as needed. In addition, new procedures should be developed.
- Action Plans are needed
  - Everything seems reactionary. There are no plans, just chaos and flying by the seat of the pants

  - A reasonable plan needs to be set with planned activities to execute the work. Project management needed at the highest level of the organization to manage the uncertainty that happens with investigations.

- **WIC NOTE- this was also a very common sentiment: Find a way to get beyond preferential treatment for some employees. No one wants to talk about the lack of fairness surrounding telework, but it exists.

- Need procedures to follow and established Board Orders for:
  - What products look like (investigations)
  - The health and safety board order isn't followed during a deployment (field H&S officer)
- Board order 40 (investigation procedure) isn't followed – every team has a different style
- There is no clear definition of CSB products (bulletins, case studies, reports)
- Products need a proper internal and external reviews
- Discussed NTSB's method of following procedures; they get reports out faster
  - Process is different, but could be a model for CSB
- Need to implement after-action reviews when cases close
- Everything should be institutionalized so that newer investigators learn from historical agency actions
- If the agency loses a key person, it's hard to fill that place. Need institutional knowledge. This is something we preach to industry but we don't follow ourselves
- There is a breakdown of communication between recommendations and investigative teams
  - Need more involvement from recommendations department earlier in the product life cycle
- There has been less focus on environmental aspects of incidents
  - Hard to investigate
  - Focus is mostly on OSHA, not EPA
  - Does not understand the focus on lab incidents
- Product review process for investigation products needs to improve, the speed and rigor of review is usually guided by a press conference date which results in pressure to rush through a review (angers our reviewers and results in sloppy last minute editing)

- Hiring Plans are needed
  - Very unclear why CSB is hiring positions in the order they are done. Why are certain skill sets hired?
  - What will the new staff be doing?
  - What are development plans for new hires and existing staff?
  - Feels like CSB is not interested in retention/development, management thinks they will simply replace those who leave
  - Why is there no hiring for other key functions, such as records management, screening/data mining, and environmental?
- Work load is unreasonable, often works beyond 40 hour work-week
  Would like to see more employee participation in decision-making

DC AND DENVER/INTER-OFFICE OFFICE DYNAMICS:

- DC is very disconnected from Denver. It is much easier to interact with DC. **WIC NOTE: some employees stated the opposite (easier to interact with Denver). We need more opportunities for both offices to communicate.

- Need to improve cooperation among the various teams
    - Team leads need to set examples of good cooperation and encourage their teams to do the same.
    - Need to empower employees to take a more active role in everything, especially communicating outside their teams.
- Should be more regular meetings that include DC and Denver (besides leadership team)
- CSB should encourage employees to try out different positions or work with different groups. DC people should work with Denver on a product; someone from Denver should work on recommendations, for example.
- Need more quorum meetings or agency meetings to find out what people are working on.
- Better link between investigations and recommendations, currently they are separate functions that should be intertwined.
- Perceived favoritism for Denver office. They receive more acknowledgement and more promotion opportunities.
- Denver investigations are allowed to do whatever they want, and sometimes DC team has to clean up their mistakes.
- DC team is held to stricter deadlines. More output is expected from DC than from Denver.
- Managing Director unable/afraid to manage Denver office director.
- One Denver team has not had to deploy in several years and this seems unfair because we are all overworked.
- Denver should be a satellite office. It has grown too big – should be reduced to one team through attrition.

TRAINING AND DEVELOPMENT:

- IDPs are a step in the right direction, but what about non-investigative job positions?
- Employees need more encouragement and direction when it comes to selecting training
    - Training is inconsistent within each team
    - Employees need to feel like CSB is investing in their success
- The CSB should encourage the development of in-house experts. If someone has a particular interest (for example environmental, emergency response) they should be sent to training for that subject matter, or receive a certification so they are the go-to person.
- We already have in-house experts (people with more experience who are not team leads currently) who are not being encouraged to share their skills (such as project management). These are squandered resources.
- More experienced employees do want to mentor, and younger employees want mentors.
- Misses CSB investigation lunch-and-learns – allowed for CSB employees to learn about older cases. We should start that program again.
- Employee is happy with the recently announced IDP, but recognizes need to develop options/opportunities for non-investigators
- Background and skill sets are not utilized in current position (does not work in an scientific role)
- Non-investigators would like to learn more about the investigations we conduct as an agency
- Would like to see greater cooperation among investigation groups and others

COMMUNICATION AND LEADERSHIP CONCERNS:

- **WIC NOTE- this was a common statement: communication from leadership seems disingenuous
- Statements coming out of the Issa hearings seemed propagandist, defensive and self-serving

- Silos exist in the organization
- Need to get everyone on the same page regarding our agency focus
- People at the top of the organization (e.g. Daniel and Rafael) are chasing news headlines instead of ensuring we have a legacy of doing good, technical work.
- Staff are afraid to make suggestions to Daniel because if he becomes annoyed with you, he freezes you out of future planning or subtlely takes responsibilities away from you.
- Daniel does not communicate his ideas/vision forward, when staff prompts this, he shrugs it off. However, Daniel sometimes communicates plans to staff several steps into a project, thinking they had already known about the project. It is very difficult to work this way.
- The agency has lost its scientific focus, this focus needs to come from the top
- Feels that the tone for behavior comes from leadership
- Feels that there are general communication issues agency-wide
- E-mail and other requests for communication not addressed or acknowledged
- Even without upper management issues, the CSB would be a tough place to work
- Most managers need extensive leadership training/situational leadership training – it is clear that many current managers have low emotional intelligence and do not understand how to effectively communicate and set examples
- Toxic environment, we treat each other quite poorly
- People need to step back from the brink and recognize that we are all in the same boat
- Need to learn how to treat people with respect and trust
- A lot of ill will seems to be located in investigations
- Several senior managers sorely need diversity/sensitivity training. In fact all employees would benefit from this.
- Code of Conduct generated a while ago by Carolyn Merritt, all employees signed it
- In the past the only thing that made things better was good solid leadership
- Consider adding a Code of Conduct to performance evaluations
- Need a device to get people back to being just basic people and acting like professionals
- "Illicit" communication and back roads are killing this agency
- One team started having daily, more targeted meetings, improved communication and helped team talk to each other
- Unity in goals and vision at the agency would help
- CSB used to have quorum meetings to get board involved, have meaningful action plans
- Need mentoring and development for people who want to become managers
- Agency should work on promoting higher performer employees. Right now the reward for a job well done is more work, impossible workload.
- Leadership does not value non-investigative staff as much as they should. We are rarely thanked for what we do. This results in investigative staff not valuing our support as much as they should and/or disdain for non-scientific/engineering skillsets.
- We need guidelines for CSB All e-mails
    - too many are sent each day, so none are read, Managing Director sends up to a dozen or so news links separately each day. It is clear he is very focused on media coverage to the detriment of running the agency. Why not have a media affairs person compile each into a daily or weekly digest?

COMMENTS ABOUT THE BOARD:

- No clear vision from the Board on what we should be focusing on as an agency
- Board Members should have more accountability checks.

- Board Members are not engaged with the staff. Each of them except RME are out of the office/out of communication more days than not, and we have no idea what they are doing, and they have no idea what we are doing.
- Need better communication with Board so they are not surprised when they review investigation products.
    - Board needs to reach out to employees in DC and Denver
- Need more Board meetings with investigators so they understand how a report is being developed, but Rafael discourages this because he doesn't trust other Board Members
- Instead of scoping there should be more frequent meetings with Board after deployments with meeting minutes captured.
- Board Members have inadequate management and technical qualifications. Those have to be better defined and communicated to White House staff making Board Member selections. CSB needs greater influence on Board member selection.
    - Does the White House have appropriate information for Chair nominations? Neutral information on necessary qualifications should be provided. The last three new Board Members came from the same place, the CSB Board needs diverse backgrounds (academics, industry, government, etc)
- We need to avoid lobbying and backdoor conversations with the new board members – they need to observe the workings of the agency without receiving prior opinions.
- Since 2007, there's been less Board control of investigation products, which can cause problems just before release of a product:
    - Staff has more power over direction of reports
    - Less accountability for investigators when they change direction of investigation or drop intended recommendation
    - Board reviews have become less rigorous
- Board does not appear to be focused or engaged. What changed?
    - Drifted after Carolyn Merritt retired
    - Movement from Board-managed processes to management council
    - Board was more attentive to progression of an investigation
    - Board members were issue oriented
    - Loss of COO
    - Report review not as rigorous

COMMENTS ON INVESTIGATIONS:

- Deployments – need to have a fair rotation schedule where it is clear who is on deck to deploy. We used to do this well, not sure why it stopped. Also need to value staff who do not deploy.
- Need to act more like a learning organization. CSB is a scientific organization and should be focused on research and learning, not getting reports completed on arbitrary timelines.
- Managing Director should delegate more authority to an Investigation Manager
- Investigation teams need help communicating with people that have different backgrounds (example given: engineers vs. attorneys)
- No clear path on evolution of recommendations in a report.
- Investigators do all of their own admin work because admin staff does not exist or is not competent, takes up numerous investigator hours that could go toward mission work
- People need to learn to take ISP Review process less personally:
    - Hesitancy of groups to have post ISP meetings – this is encouraging silo development

  - Need open communication between investigators (constructive meetings)
  - One staff member should not be the sole drafter of a report
- Need a formal program in place for investigators in the field
  - Emotional/traumatic support
  - Training/awareness for supervisors to recognize burn-out or other issues with team members on the road.
- The agency has become too media-focused to the detriment of investigations:
  - Role of CSB is a more academic and analytical institution
  - Too media-focused lately, we've been focused on Op-Eds and headlines when we should be focusing on data and not rushing to get stuff out there.
  - Not encouraging people to publish in academic or industry journals
- Need more resources for incident screening
  - We can't study trends if the data isn't there
  - We are too focused on the investigations backlog instead of spending time identifying interesting issues from screening data

GENERAL COMMENTS:

- Investigations should get together and discuss important topics specific to how we do our job, interesting topics that pertain to our work
- People waste a lot of time detailing with personality conflicts
- Agency needs guidance on how to communicate via email and in person
- There are a handful of people on staff that create problems, gossip and they are mostly responsible for the issues between offices and teams.
- There needs to be new positions at the agency and new skill-sets:
  - Allen needs help with technology and information
  - The incident screening function is barely alive and there is so much useful data out there but we lack the resources to do anything with it.
  - CSB has abandoned focus on environmental field (lack expertise)
- Reports and investigation products are taking longer to get done. Needs to be better project management and supervisor accountability.
- The agency needs to communicate the value of the two Houston employees, in the absence of a satellite office in TX.

- **WIC NOTE- several employees said this: need to have holiday party again, and other group/social activities
- Improves relationships when we conduct these type of affairs
- More morale boosting activities are needed but, cannot be "forced". Not many ideas, but wellness events such as lunchtime walks or other activities could be a start.

WHAT DO YOU THINK THE WIC CAN DO?

- Not much really
- Rely on senior staff to make corrections to behaviors that got us here
  - All feedback from these discussions is going back to the individuals that need to make the most changes, it is up to them.
- Despite proviso that input will be sanitized, difficult if not impossible to assure folks that contribute their thoughts won't be identified.

- Draws on the words of Carolyn Merritt, "Is what you're doing now advancing the mission of the agency?"
- It's up to the younger employees to create the internal rigor needed to keep the agency performing at high standards
- Need to establish a sense of personal pride in work we do
- We need to increase our expectation for high-quality work
- Keep doors of communication open
- Provide feedback to management
- Get the carpets cleaned in the DC office.
- Please don't have forced agency-sponsored activities; people aren't ready.
- Do some sort of team building with employees
    - Activities during work not related to work
    - Get people together to communicate about items other than work
    - Activities outside of work hours
- Have more meetings where communication is occurring, create friendlier interactions
- Bring back Code of Conduct or some other way to make people interact with respect
- Create some type of reward program for employees
- Create easier way for investigators to make travel and get reimbursed
- Work on onboarding to make sure new investigators have working electronics and PPE
- Get everyone educated, experienced, and trained
- Lots of people left over the past few years with no explanation. This is disconcerting; reasons for their departures need to be examined.
- More public meetings should be conducted so that CSB work and decisions are more transparent internally and externally.

Sample outtakes from more targeted questions:

"I try and stay of the drama. We have problems, but try not to let it get to us personally."

1. What four indicators would convey to you that things are changing for the better at the agency?

- Getting reports out—in the end it is the only thing our stake holders care about. We are measured by output.
- Would like to see governance issues improve—the relative distinctions between the roles of the chair and other board members.
- Not really sure...perhaps the "communication factor." How well are management issues communicated (i.e. we don't get notice of personnel changes until the people are already here or why is it taking so long to get people hired?)
- More communication issues...what actually comes out of the leadership team meetings? What plans are made during the meetings?
- Support from outside stakeholders that they are happy with our products—feedback from public meetings, interactions at meetings the board attends, interactions with people on the Hill and at meetings.
- Healthy and productive employees that could speak to each other.
- Active investigations and reports (not necessary # reports=healthy), but enough work so that investigators feel that there is progress and content with work.
- Leave a meeting with a to-do list instead of 3-hour marathon meetings that people leave with no path forward.
- Admin help for investigative/recommendations staff.

- People leaving for better opportunities, not because they are bitter about the CSB.

2. What does success look like in turning the agency around?
- We would have open communication and everyone feels like they could go and talk to their supervisors about an investigation and anything else. Some people do not feel like they have open communication with their advisors.
- Would have retreat-type events to get people to talk to each other more on a personal level too. This will build a community.
- Not everyone has a flexible work schedule and they could use it.
- We may not every be happy as a group (highly opinionated and strong personalities) so we need to look at fulfilling our mission. Not having investigations brought against the CSB or bad media reports.

3. What in your opinion was the root cause for things getting so bad that there was a need to create the WIC?
- Different views of approaching (accomplishing) the agency's mission. Not just the board members, but also the staff.
- Stronger office in Denver than DC and divisions between the offices.
- There used to be a different organizational structure with a different layer between investigators and board (Bill Hoyle and Steve Selk) and that seemed to help communication. They (Bill/Steve) managed the team leads, and appeared to led to a more structured reporting system because Bill/Steve were not always deploying and were able to keep maintaining from the office. It seems as though Daniel does not actually manage investigations, but does more reviewing reports and having a "big picture."
- Some team leads try and communicate what the board/Daniel need and want, so that is working, but board members should be able to come into an investigator's office to talk about the report. That would open up some of the communication lines.
- Lack of communication between the various groups about their mission.
- When new people come in, we should explain to people how the CSB is run. Do they take orders from the Board or Daniel or who? Seems to be confusion.

4. Do you have confidence that things will change for the better? If not, why not?
- We operate in a political environment. Agencies reflect the political realities of the appointees—we have three vacancies on the board and that could affect where we go and we will have to "go with the flow" and deal with what we have.
- "I think so." If leaders (i.e. Johnnie and Don) met on a weekly basis, this would help push the movement in the right direction. (WIC note: there is some confusion on Johnnie and Don's roles and how the roles relate to each other.)
- Yes. Several people are committed emotionally to have things change. Diversity on the board will help.

5. Can you point to any positive initiatives or events that have kept you motivated over the past few years?

- Flexible schedules are key and very important. We are doing a good job accommodating families and individuals. (We might need to let people know that these opportunities exist because not everyone feels they can and this causes some animosity.)
- The workforce is more diverse than it used to be, in a good way (not all males in their 50's).
- Flexible work schedules have helped retain people.
- Training activities are supported.
- Investigators are the ones put out in front, not just senior staff.

6. What should the agency focus on to improve morale? (Short, medium, and long-term)
- Board members have a more collegial relationship.
- More social events to keep people talking and connecting.
- Difficult to answer—seems like a nebulous thing we are trying to change. Staff needs to have more faith and trust in board in Daniel.

7. What interventions could have been initiated to turn the tide before things got really bad at the agency?
- Openness and transparency. For example, in deployment meetings where we say we aren't going to deploy, but then a decision is made behind closed doors to deploy.

8. Are there any agency-sponsored activities/initiatives that would help foster a greater sense of camaraderie?
- Meetings between Denver and DC could help—there are investigators who simply do not know each other.
- Retreat? Not sure, but maybe.

9. Which systems or practices currently in place work really well at the agency? Is there anything that your team is doing that you think is positive and should be implemented for the entire agency?
- Degree of professionalism and employee enthusiasm. Staff highly motivated and committed.
- Investigators are extremely technically competent people.
- One investigator thinks the DC team works really well together. When they have disagreement, they talk about it and don't think people hold the issues against one another.
- We have meetings to talk about what we will be doing.
- People are enthusiastic about the WIC.
- Invested time/money into the consultant.

10. Is there a "best practice" method that you are aware of for obtaining input from employees that is non-threatening and capable of ensuring that true, unfettered information is getting to the right person or group in this organization to affect real change?
- Don't see any issues with people being afraid to give different points of view. Doesn't feel that some people are willing to express their point of views, but doesn't feel like it happens in his groups.

11. Do you trust group interviews such as the recent OPM structured session? Why? Why not?

- No idea. Maybe not in Denver, but feels in DC that people are willing to listen to more points of view.
- No. It was a complete joke. We didn't get any clarification of the point of the meeting, and had expected a person to be physically present rather than a teleconference.
- No trust at all.

12. What are some barriers or obstacles that you feel keep you from being able to accomplish department or team goals?
- Board members—without a collegial and friendly relationship, we can't actually get work completed.
- Tension between OGC and investigators, particularly concerning our legal rights and policies.
- Too many meetings. Start to feel like "when am I going to write my report?" Could there be a better way to manage our time?
- WebEX scheduling and glitches cause meetings to start late (maybe a 30 minute refresher training on WebEx).
- A "one stop" location to access information on training. This location (maybe on our Safetynet) would include a list of links to specific training programs that we've done in the past and ones that would be good for future use. People don't know what training is available and this might help clarify things. This site should be regularly updated with new suggestions for training, etc. This might be something that HR can coordinate and manage.
- Unclear directions for what we need. Would be easier if we could define what we want because there are so many different points of view it is difficult to even get started.
- For report releases and the internal review processes are very negative. We need to improve this.

13. What do you think should be a priority or an area of focus for the WIC this year?
- Get people to relax more in our dealings with our colleagues. Treat people how you would like to be treated.
- Management consultants and what are we actually doing as a result of that.
- Monitor the suggestions from the first round of WIC and even the new ones coming up. How can we track those recommendations? Can we implement the philosophy from our own recommendations department into tracking the WIC's recommendations? Need to do more than just collect information as part of WIC.
- Harness the personal upset and make something happen.

14. From your perspective, what could help improve trust and communication within your department or within the agency?
- It will be difficult to build trust because of the many divergent views in the agency.
- Feels this is a personal response.
- Getting people to not run outside the agency (to Congress, IG, media, other stakeholders) to complain.

15. Can you recall a time when you felt that things were running more smoothly at the agency or within your department? What was different then? What do you feel that we are lacking now?
- Has changed with personalities changing (it is smoother now).
- There has always been turmoil. People think it was better, but really we have romanticized the past. There was never a peaceful time.

Congress of the United States

Washington, DC 20515

July 7, 2014

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

On June 19, 2014, the Committee on Oversight and Government Reform held a hearing entitled "*Whistleblower Reprisal and Management Failures at the U.S. Chemical Safety Board*," to examine waste and mismanagement at the U.S. Chemical Safety and Hazard Investigation Board (CSB). This hearing was the culmination of an eight month joint investigation by the Committee on Oversight and Government Reform and the Committee on Science, Space, and Technology. The findings of the joint investigation with respect to the leadership of CSB Chairman Rafael Moure-Eraso were disconcerting. It was our hope that at the June 19 hearing, Chairman Moure-Eraso would address our concerns and restore confidence that the CSB is accomplishing its important mission. He did not. We are writing to bring the findings of the joint investigation, and the hearing record, to your attention so that you can consider whether Chairman Moure-Eraso is the right person to continue to lead the CSB.

The joint investigation found that under Chairman Moure-Eraso, CSB leadership engaged in a pattern of hostility toward career staff and whistleblowers who reported concerns to the U.S. Office of Special Counsel. Chairman Moure-Eraso took extraordinary steps to thwart an Office of Inspector General investigation into whistleblower retaliation, including using appropriated funds to hire outside counsel to assist his effort to withhold key documents from the IG. This incident is symptomatic of the larger problem that is plaguing the CSB: a hostile work environment that is undermining the agency's ability to investigate industrial chemical accidents efficiently and effectively.

The joint investigation further determined that Chairman Moure-Eraso is responsible for creating a work environment at CSB that caused an exodus of highly-experienced career investigators. This, in turn, caused the quality and pace of chemical accident investigations to slow. Investigations languished for years, and the CSB failed to perform its most important function—to release timely recommendations that might prevent future catastrophic accidents that result in deaths, injuries, and property damage.

The hostile work environment at the CSB is a byproduct of Chairman Moure-Eraso's posture towards his colleagues on the Board and his hostility towards staff with dissenting opinions. Moure-Eraso manipulated and ignored internal agency regulations and protocols enacted to ensure the CSB would function as a collegial, non-partisan, independent agency. Simply put, the CSB is an agency in crisis.

During the June 19, 2014, hearing, a former Board member testified that she resigned because, under Moure-Eraso's leadership, the "dysfunction" at CSB reached an intolerable level, and she had "no hope of it improving."[1] In her words, "[t]he agency is broken; it needs to be rebuilt."[2]

Chairman Moure-Eraso's testimony on June 19, 2014, did not inspire confidence that he can fix the agency. Rather than acknowledge the challenges that have diminished the effectiveness of the CSB, Moure-Eraso was defiant. He attempted to shift the blame and downplay the significance of his battle with the IG. For instance, rather than pledging to cooperate with the IG's ongoing investigation of whistleblower retaliation allegations relating to Moure-Eraso and his top lieutenants, Moure-Eraso described his battle with the IG as "an obscure legal point that is being discussed that IG and the lawyers could deal with."[3] Chairman Moure-Eraso's testimony heightened our concerns to such an extent that a bipartisan group of Committee Members suggested that he should be replaced.

For example, in response to Chairman Moure-Eraso's attempt to justify his management style, Rep. Gerald Connolly said:

> **This is about a staff that is out of control. This is about a dysfunctional culture. This is about lack of leadership at the top, Dr. Moure-Eraso.** This is about a board not doing its job and a staff substituting itself for the board, which is supposed to be the governance of the agency; and **no wonder the public must have some eroding confidence in your ability to fulfill your mission.**
>
> * * *
>
> **[Y]our reaction, sir, since February 10th and today, under oath before this Committee, I think raises serious questions about your fitness to hold your job.**[4]

During a discussion about the CSB's failure to complete an investigation into an August 2012 fire at the Chevron refinery in Richmond, California, Rep. Jackie Speier stated that the delay "shows a lack of ability to do the job."[5]

With respect to where the blame lies for CSB's various shortcomings, Rep. Jason Chaffetz stated, "I think several people have cited that most of that management problem resides in one particular situation."[6]

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[1] *Whistleblower Reprisal and Management Failures at the U.S. Chemical Safety Board: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (June 19, 2014).
[2] *Id.*
[3] *Id.*
[4] *Id.* (emphasis added).
[5] *Id.*
[6] *Id.*

Chairman Darrell Issa summarized the feelings of many on the dais that day when he stated that a change in leadership at CSB is necessary. He stated:

> I believe there has been a strong case made in our investigation, a strong case made here today, and I think Mr. Connolly made a strong case in his discussion with you. **You have failed in your requirement to be a chief executive. You failed in your requirement to be a board leader. You failed in your requirement to hire people who faithfully do the job in the way expected of an independent agency.**
>
> **You have failed to deliver the kind of results in the way of timely resolution of your basic charter,** which is to do these investigations and bring them to conclusion in a way in which industry and the American people know that the changes, so it doesn't happen again, are continuing. Six and a half years to close something out, four years to close something out, that is four years of vulnerability on whatever caused these horrific incidents to occur.
>
> Therefore, I personally will do something I don't do. I don't do it with cabinet officers, I don't do it regularly. **But I really believe it is time you go, that you really need to ask whether or not, in your last year, you can actually undo the damage of your first five.**[7]

Additional information obtained by the Committees after the hearing has also called into question Chairman Moure-Eraso's commitment to restoring trust in the CSB. On several occasions during his testimony on June 19, 2014, Moure-Eraso claimed to be following Energy and Commerce Committee Ranking Member Henry Waxman's recommendation to establish a "Work Improvement Committee (WIC)."[8] In response to questions from Ranking Member Cummings, Moure-Eraso stated:

> We established a group, an independent group, freely open group that we call the Work Improvement Committee, that has been chosen among all the staff, that have been meeting since December, and that we have assigned a management consultant . . . to establish processes and systems to improve the quality of work in the agency.[9]

It is our understanding that the WIC disbanded months ago. And, not until after the June 19, 2014 hearing did Chairman Moure-Eraso ask for nominees to serve on a new WIC. The joint investigation of the CSB is ongoing, and we are evaluating the veracity of Moure-Eraso's claims with respect to the WIC, as well as a number of his statements during the hearing. The joint investigation is also monitoring CSB management to ensure that there is no retaliation against employees who provided information to Congress.

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[7] *Id.* (emphasis added).
[8] *Id.*
[9] *Id.*

CSB has a vital public safety mission—to investigate industrial chemical accidents, report on the causes of the accidents and make recommendations to prevent future tragedies. Chairman Moure-Eraso's leadership is making it difficult for the agency to fulfill its mission. Immediate change in CSB leadership is necessary to allow this besieged agency to heal and regain focus on its public safety mission. Enclosed for your reference is a copy of the joint staff report regarding the CSB, entitled "*Whistleblower Reprisal and Management Failures at the U.S. Chemical Safety Board*". Thank you for your attention to this matter.

Sincerely,

Darrell Issa
Chairman
Committee on Oversight and
Government Reform

Lamar Smith
Chairman
Committee on Science, Space,
and Technology

John L. Mica
Member of Congress

Michael R. Turner
Member of Congress

Jason Chaffetz
Member of Congress

Paul A. Gosar
Member of Congress

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform

The Honorable Eddie Bernice Johnson, Ranking Member
Committee on Science, Space, and Technology

THE GOVERNMENT IN THE SUNSHINE ACT

5 U.S.C. § 552b

§ 552b. Open meetings

(a) For purposes of this section--

(1) the term "agency" means any agency, as defined in section 552(f) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) the term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e); and

(3) the term "member" means an individual who belongs to a collegial body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

(c) Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to--

(1) disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relate solely to the internal personnel rules and practices of an agency;

(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a

criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) disclose information contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) disclose information the premature disclosure of which would--

(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action.

except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(d)(1) Action under subsection (c) shall be taken only when a majority of the entire membership of the agency (as defined in subsection (a)(1)) votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c), or with respect to any information which is proposed to be withheld under subsection (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote

of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: Provided, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e)(1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(f)(1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the agency. The agency shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (8), (9)(A), or (10) of subsection (c), the agency shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(2) The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any person, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section and to require the promulgation of regulations that are in accord with such subsections.

(h)(1) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (b) through (f) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held or in which the agency in question has its headquarters, or in the District Court for the District of Columbia. In such actions a defendant shall serve his answer within thirty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of the transcript, electronic recording, or minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the parties, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section or ordering the agency to make available to the public such portion of the transcript, recording or minutes of a meeting as is not authorized to be withheld under subsection (c) of this section.

(2) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section and afford such relief as it deems appropriate. Nothing in this section authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, enjoin, or invalidate any agency action (other than an action to close a meeting or to withhold information under this section) taken or discussed at any agency meeting out of which the violation of this section arose.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

(j) Each agency subject to the requirements of this section shall annually report to the Congress regarding the following:

(1) The changes in the policies and procedures of the agency under this section that have occurred during the preceding 1-year period.

(2) A tabulation of the number of meetings held, the exemptions applied to close meetings, and the days of public notice provided to close meetings.

(3) A brief description of litigation or formal complaints concerning the implementation of this section by the agency.

(4) A brief explanation of any changes in law that have affected the responsibilities of the agency under this section.

(k) Nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions set forth in subsection (c) of this section shall govern in the case of any request made pursuant to section 552 to copy or inspect the transcripts, recordings, or minutes described in subsection (f) of this section. The requirements of chapter 33 of Title 44, United States Code, shall not apply to the transcripts, recordings, and minutes described in subsection (f) of this section.

(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof required by any other provision of law to be open.

(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title.

BOARD ORDER 028

U.S. Chemical Safety and Hazard Investigation Board

SUBJECT: EXECUTIVE AND ADMINISTRATIVE FUNCTIONS OF THE BOARD

CONTENTS

1. **PURPOSE.** This Order establishes the manner in which the Board shall exercise its executive and administrative functions through the position of the Chairperson.

2. **EFFECTIVE DATE.** This Order is effective upon passage by the Board.

3. **SCOPE.** This Order applies to the Board and its individual Members.

4. **REFERENCES.** This Order is based upon 42 U.S.C. § 7412(r)(6)(B) and (N).

5. **POLICY.** The Chairperson exercises the executive and administrative functions of the Board either directly or through delegations of authority to employees as described in this order.

6. **SPECIFIC AUTHORITY.** Upon being sworn into office, the Chairperson shall exercise the executive and administrative functions of the Board, and possesses the following specific authorities:

   a. **Personnel Administration**

      1) Authority over all personnel matters and personnel actions, including, but not limited to, the appointment and supervision of staff employed by the U.S. Chemical Safety and Hazard Investigation Board (CSB), except that the appointment of the head of any major administrative unit of the CSB or of the Chief Operating Officer of the CSB requires a majority vote of the Board.

      2) Authority over the distribution of business among the personnel employed by the CSB and among the administrative units of the CSB.

   b. **Use and Expenditure of Funds**

      1) Authority to control the use and expenditure of funds, including the power to authorize and execute contracts and interagency transfers in an amount not to exceed $50,000.

      2) Authority to control the preparation of the CSB budget, except that final approval of the budget and submission or transmission of the budget as described in 42 U.S.C. § 7412(r)(6)(R) requires a majority vote of the Board.

   c. **Settlement Authority**

      After prior consultation with the Board Members, General Counsel, and Director of Financial Operations, authority to take all appropriate action, including but not limited to the execution of agreements and the expenditure of funds in an amount necessary, to settle and resolve pending or potential claims against the CSB. Such matters include disputes of any kind within the authority of the CSB to settle or resolve by written agreement, including but not limited to those which may be

filed or have been filed with administrative agencies that process or adjudicate federal employment disputes. Administrative claims under the Federal Tort Claims Act are processed in accordance with 40 C.F.R. § 1620. The Chairperson's settlement authority under this provision is not limited by section 8 of this Order or the provisions of other Board Orders.

d. **Investigations**

Authority to authorize the initiation of an accident investigation and the deployment of investigators, subject to a vote by the Board to recall the investigators and cancel the investigation.

e. **Conduct of Board Meetings**

Authority to preside at meetings where a quorum of Board Members is present, consistent with the Sunshine Act and the CSB regulations implementing the Act.

f. **Official Communications**

1) Authority to supervise and authorize the response to all inquiries from Congress, the media, and the public concerning the Board and/or the CSB, except as specifically excluded by this Order.

2) Authority to supervise the preparation of all official statements and other communications concerning, or on behalf of, the Board and/or the CSB, except as specifically excluded by this Order.

3) Authority to make and/or authorize all statements, written communications, and pronouncements on behalf of the Board and/or the CSB, except as specifically excluded by this Order.

7. **RESTRICTION ON THE EXERCISE OF THE EXECUTIVE AND ADMINISTRATIVE FUNCTIONS OF THE BOARD.**

The Chairperson shall be governed in the exercise of his or her functions by all applicable Federal statutes and regulations and by the regulations, orders, and rules of the Board.

8. **EXCLUSIONS.** All Board business which does not fall within the executive and administrative functions of the Chairperson as described in this Order shall be decided by the Board, in accordance with the relevant provisions of Order 001. Items that must be approved by the Board include, but are not limited to, the following:

a. Investigation reports;

b. Safety studies;

c. Regulations, rules, or orders of the Board;

d. Final approval of the budget and submission or transmission of the budget as described in 42 U.S.C. § 7412(r)(6)(R);

e. Final approval of the operating budget of appropriated funds;

f. Contracts, interagency transfers, or other expenditures exceeding $50,000;

g. Appointment of the head of any major administrative unit;

h. Final CSB strategic plans; and

i. Statements to Congress or the President on behalf of the Board.

9. **REDELEGATION.** The Chairperson may redelegate any of his or her executive and administrative functions (except presiding at Board meetings) to one or more CSB employees, consistent with all applicable Federal statutes and regulations, and the regulations, orders, and rules of the Board.

U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

August 5, 2002

Amended, August 8, 2006

Chemical Safety And Hazard Investigation Board

Job Title: Managing Director
Agency: Chemical Safety and Hazard Investigation Board
Job Announcement Number: CSB-SES-2015-1339922-VR

SALARY RANGE:	$121,956.00 to $168,700.00 / Per Year
OPEN PERIOD:	Tuesday, March 3, 2015 to Tuesday, March 17, 2015
SERIES & GRADE:	ES-0301-00
POSITION INFORMATION:	Full Time - Permanent
DUTY LOCATIONS:	1 vacancy in the following location: Washington DC, DC View Map
WHO MAY APPLY:	United States Citizens
SECURITY CLEARANCE:	Public Trust - Background Investigation
SUPERVISORY STATUS:	Yes

JOB SUMMARY:

The U. S. Chemical Safety and Hazard Investigation Board (CSB) is an independent, non-regulatory scientific agency that promotes the prevention of major chemical accidents at fixed facilities. Its mission is accomplished through a variety of statutorily directed means including: incident investigation and reporting; performing research and conducting special studies on chemical safety; developing and communicating recommendations for improved chemical safety to the public and private sectors; and strengthening the effectiveness of governmental and non-governmental agencies in accident prevention and safety promotion.

This position is in the Senior Executive Service (SES), a small elite group of top government leaders. SES members possess a diverse portfolio of experiences including strong skills to lead across organizations. As a Senior Executive, you will influence the direction of innovation and transformation of the federal government and lead the next generation of public servants.

As the Managing Director (MD), the incumbent is responsible for ensuring the effective and timely implementation of Board decisions. Functioning as the principal day-to-day operating management official of the CSB, the MD directs and oversees all management functions, required by CSB programs and activities.

For more information about CSB, please visit our website at http://www.csb.gov.

TRAVEL REQUIRED
- Occasional Travel
- 25% or less

RELOCATION AUTHORIZED
- No

KEY REQUIREMENTS
- US Citizenship is required.
- You will be subject to a background and suitability investigation.
- Direct Deposit is required.
- Selective Service registration required for male applicants, unless exempt.
- Public Financial Disclosure (SF-278) required.
- Relocation expenses are not authorized.

- Designated and/or Random Drug Testing required.

DUTIES: Back to top

*Serves as the Managing Director (MD) reporting directly to the Chairperson of the U. S. Chemical Safety and Hazard Investigation Board (CSB).

*Responsible for ensuring the effective and timely implementation of Chair and Board decisions.

*Functioning as the principal day-to-day operating management official of the CSB, the MD directs and oversees all management functions, required by CSB programs and activities, which the Chair or Board has placed within the MD's responsibilities.

*Oversees all substantive investigation and safety mission-related programs.

*Directs and oversees strategic planning to meet the Board's objectives, business planning,financial and administrative operations, and program evaluation.

*Manages policy development and implementation, program integration and management, and advisory services within the MD's authority.

QUALIFICATIONS REQUIRED: Back to top

As a basic requirement, applicants MUST demonstrate progressively responsible leadership experience that is indicative of senior executive level managerial capability and directly related to the skills and abilities outlined under Executive Core Qualifications and Technical Qualifications. Typically, experience of this nature will have been gained at or above the GS-14/15 grade level in the Federal service or its equivalent with state or local government, the private sector, or non-governmental organizations. Failure to meet this basic qualification requirement and all executive and technical qualification factors automatically disqualifies an applicant.

You must clearly show that you possess the experience, knowledge, skills and ability to perform the duties of an executive. To be considered for this position, all applicants must address each of the executive core qualifications and technical listed below. If you are currently serving under a career Senior Executive Service appointment, are eligible for reinstatement into the Senior Executive Service, or have successfully completed a Senior Executive Service Candidate Development Program approved by OPM and been certified by OPM, you will only need to submit a narrative statement covering each of the technical qualifications listed below. Your examples should be clear and concise, and emphasize your level of responsibilities, scope and complexity of programs managed, program accomplishments with results of your actions, policy initiatives and level of contacts. **EACH TECHNICAL QUALIFICATION AND EACH ECQ SHOULD BE ADDRESSED SEPARATELY.** It is highly recommended that you follow the format provided at http://www.opm.gov/ses/references/GuidetoSESQuals_2012.pdf (Adobe Acrobat required). **Narrative statements should not exceed 2 pages for each individual technical and each individual ECQ. Please note if you do not address the Executive Core and Technical Qualifications in the narrative format, you will not be considered for this position.**

Technical Qualifications:

1. Senior-level experience in conducting and reporting on investigations of chemical accidents at industrial facilities. This experience must demonstrate a thorough knowledge and understanding of basic chemical processing, allied technology, and underlying systems of chemical safety.

2. Senior-level experience in preparing and reviewing recommendations to plants, regulatory agencies such as the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA); industry organizations; and labor groups to improve the effectiveness of chemical industry regulations.

Executive Core Qualifications:

ECQ 1 - LEADING CHANGE: You must have demonstrated an ability to bring about strategic change, both within and outside the organization, to meet organizational goals. Inherent to this ECQ is the ability to establish an organizational vision and to implement it in a continuously changing environment.

Leadership Competencies: Creativity & Innovation, External Awareness, Flexibility, Resilience, Strategic Thinking, Vision

ECQ 2 - LEADING PEOPLE: You must demonstrate the ability to lead people toward meeting the organization's vision, mission, and goals. Inherent to this ECQ is the ability to provide an inclusive workplace that fosters the development of others, facilitates cooperation and teamwork, and supports constructive resolution of conflicts.

Leadership Competencies: Conflict Management, Leveraging Diversity, Developing Others, Team Building

ECQ 3 - RESULTS DRIVEN: This core qualification involves the ability to meet organizational goals and customer expectations. Inherent to this ECQ is the ability to make decisions that produce high-quality results by applying technical knowledge, analyzing problems, and calculating risks.

Leadership Competencies: Accountability, Customer Service, Decisiveness, Entrepreneurship, Problem Solving, Technical Credibility

ECQ 4 - BUSINESS ACUMEN: This ECQ involves the ability to manage human, financial, and information resources strategically.

Leadership Competencies: Financial Management, Human Capital Management, Technology Management

ECQ 5 - BUILDING COALITIONS: This ECQ involves the ability to build coalitions internally and with other Federal agencies, State and local governments, nonprofit and private sector organizations, foreign governments, or international organizations to achieve common goals.

Leadership Competencies: Partnering, Political Savvy, Influencing/Negotiating

FUNDAMENTAL COMPETENCIES: The following competencies are the foundation for success in each of the Executive Core Qualifications: Interpersonal Skills, Oral Communication, Integrity/Honesty, Written Communication, Continual Learning, Public Service Motivation.

HOW YOU WILL BE EVALUATED:

Applicants who meet all the mandatory Technical and Executive qualifications will be evaluated by a panel of SES members to determine the degree to which they possess each of the listed qualifications. This evaluation will determine which applicants are best qualified. Total background, including experience, education, awards, self-development, and training will be reviewed. This information will be obtained from the application package, including the required narrative statements for the Technical and Executive Core Qualifications described above.

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BENEFITS:

The Federal Employees Health Benefits Program has many plans to choose from all at very reasonable rates, which can be paid from pre-tax income. The Federal Employee Retirement System is one of the premier retirement programs in the nation. The program features three components: a retirement pension; the Thrift Savings Plan (an employee controlled investment program); and Social Security. Federal Employee Group Life Insurance offers numerous life insurance policy options covering employees and dependents. The leave program offers exceptional time off benefits including annual leave, sick leave, an employee emergency leave donation program, Family Friendly Leave, Family Medical Leave, and 10 paid holidays per year. For general information on major benefits offered to most Federal employees, visit https://help.usajobs.gov/index.php/Pay_and_Benefits

OTHER INFORMATION:

Financial Disclosure: The applicant selected for this position will be required to file a Financial Disclosure Report, SF-278, and the supplemental form, Confidential Statement of Employment and Financial Interest, DI-278. All forms must be filed within 30 days after the selection for this position.

Background Investigation: The sensitivity level of the position requires completion of a successful background investigation of the selectee. Prior to appointment, all applicants tentatively selected for this position may be required to submit to urinalysis to screen for illegal drug use.

Senior Executive Service Probationary Period: If you are selected for this position, you will be required to serve a one year SES probationary period, if one has not previously been completed.

NOTE for Current and/or Former Political Appointees: Effective January 1, 2010, OPM must authorize any employment offers we make to current or former (within the last 5 years) political Schedule A, Schedule C, or Non-career SES (political) employees in the executive branch. If you are currently, or have been within the last 5 years, a political Schedule A, Schedule C, or Non-career SES employee in the executive branch, you ***must*** disclose that to the Human Resources Office.

Pay Statement : Recertification of the CSB Senior Executive Service Performance Management Appraisal System is pending. With recertification, the pay range is $121,956 to $183,300.

E-Verify : The Interior Business Center is an active participant in the E-Verify employment eligibility program which is administered by the Department of Homeland Security.

Geographic Location : This position will be filled in Washington, DC.

Work Schedule: This position will be filled as full-time.

Relocation Expenses: Travel, transportation, and relocation expenses for this position will not be paid.

EEO Policy Statement
The United States Government does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, marital status, disability, age, membership in an employee organization, or other non-merit factor.

Reasonable Accommodation Policy Statement
Federal agencies must provide reasonable accommodation to applicants with disabilities where appropriate. Applicants requiring reasonable accommodation for any part of the application and hiring process should contact the hiring authority directly. Determination on requests for reasonable accommodation will be made on a case-by-case basis.

Legal and Regulatory Guidance
Privacy Act – Privacy Act Notice (P.L. 93-579): The information requested here is used to determine qualifications for employment and is authorized under Title 5 U.S.C. 3302 and 3361.
Selective Service – If you are a male applicant born after December 31, 1959, you must certify that you have registered with the Selective Service System, or are exempt from having to do so under the Selective Service Law.
Veteran's Preference - Veteran's Preference does not apply to the SES.

HOW TO APPLY: Back to top

To apply for this position, you must complete the occupational questionnaire and submit the documentation specified in the Required Documents section below.

The complete application package must be submitted by 11:59 PM (EST) on Tuesday, March 17, 2015 **to receive consideration.**

- To begin, click **Apply Online** to create a USAJOBS account or log in to your existing account. Follow the prompts to select your USAJOBS resume and/or other supporting documents and complete the occupational questionnaire.
- Click the **Submit My Answers** button to submit your application package.
- It is your responsibility to ensure your responses and appropriate documentation is submitted prior to the closing date.
- To verify your application is complete, log into your USAJOBS account, https://my.usajobs.gov/Account/Login, select the **Application Status** link and then select the **more information** link for this position. The Details page will display the status of your application, the documentation received and processed, and any correspondence the agency has sent related to this application. Your uploaded documents may take several hours to clear the virus scan process.
- To return to an incomplete application, log into your USAJOBS account and click **Update Application** in the vacancy announcement. You must re-select your resume and/or other documents from your USAJOBS account or your application will be incomplete.

If you need assistance in applying on-line, please contact the HR Office representative listed in the "Agency Contact Info" section of this vacancy announcement.

REQUIRED DOCUMENTS:
You MUST submit the following documents for this vacancy announcement. Failure to submit all required documents will result in loss of consideration for this position.

1. **REQUIRED** Your resume – it must contain information sufficient to make a valid determination that you fully meet the specialized experience requirements as stated in this vacancy announcement. Insufficient information will result in a not qualified rating.

2. **REQUIRED** A narrative statement addressing each of the Executive Core Qualifications (ECQ) and Technical Qualifications – experience (paid and unpaid), education, training, awards, and/or self-development activities as related to each. **Each ECQ and each technical qualification must be addressed separately.** It is highly recommended you follow the format provided at http://www.opm.gov/ses/references/GuidetoSESQuals_2012.pdf (Adobe Acrobat required). **The ECQ narratives must not exceed 10 pages in total. Technical Qualification narratives must not exceed 2**

pages per qualification. If you do not provide narratives of the ECQs and Technical Qualifications, you will not be considered.

OR

If you are a graduate of an approved SES Candidate Development Program, you must include a copy of the OPM certification of eligibility and a narrative statement addressing only the Technical qualifications.

OR

If you are a current or former SES member, you must submit documentation of your SES status and a narrative statement addressing only the Technical qualifications.

3. **REQUIRED** If you are a current Federal employee, a copy of a recent SF-50, Notification of Personnel Action, that indicates Federal status, grade, tenure, and type of service. Please remove your social security number and date of birth. If you are a current or former (within the last 5 years) political Schedule A, Schedule C, or Non-Career SES employee, please submit documentation of your appointment, including a copy of your SF-50.

4. **HIGHLY RECOMMENDED** A copy of your most recent annual performance appraisal (from either the Federal or private sector). Please remove your social security number.

5. **HIGHLY RECOMMENDED** Candidates are requested to complete the DI-1935, Applicant Background Survey, on a voluntary basis. Information will be used solely to review compliance with Federal law. Failure to complete this form will not affect consideration. The form can be found online at http://www.doi.gov/diversity/di1935.htm .

You are encouraged to apply online. Applying online will allow you to review and track the status of your application.

NOTE: If you applied online and your application is complete, do not fax the paper application (1203FX) as this will overwrite your prior online responses and may result in you being found ineligible.

If you completed the occupational questionnaire online and are unable to upload supporting document(s):

1. To fax your documents, you must use the following cover page http://staffing.opm.gov/pdf/usascover.pdfand provide the required information. The Vacancy ID is **1339922.**
2. **Fax your cover page and documents to OFFICE OF PERSONNEL MANAGEMENT at 1-478-757-3144. (Do not fax your cover page, resume, or supporting documents to the Interior Business Center.) Faxed documents submitted with missing information will not be processed.**

If you cannot complete the Application Package online, you may fax all of your materials. The complete application package must be submitted by 11:59 PM (EST) on **Tuesday, March 17, 2015** to receive consideration. Keep a copy of your fax confirmation in the event verification is needed.

To complete the occupational questionnaire and submit via fax:

1. Click the following link to view and print the occupational questionnaire View Occupational Questionnaire.
2. Print the 1203FX form, follow the instructions and provide your responses to the occupational questionnaire items http://www.opm.gov/forms/pdfimage/opm1203fx.pdf.
3. Fax all six pages of the completed 1203FX form along with any supporting documents to 1-478-757-3144. Your 1203FX will serve as a cover page for your fax transmission.

Note: If you submit more than one application package for this vacancy, only the last one submitted will be considered. If you re-submit a package, **all** application package documents must be re-submitted in order to be considered for the position.

AGENCY CONTACT INFO:

Veronica T. Robinson
Phone: (202)219-0135
Email: VERONICA_ROBINSON@IBC.DOI.GOV

Agency Information:
Interior Business Center
1849 C Street NW
Washington, DC
20240
USA

WHAT TO EXPECT NEXT:

Applications will be reviewed to determine if you meet the Technical and Executive Core Qualifications. Qualified candidates will be referred to the Senior Executive Resources Board to identify the best qualified candidates. These candidates will be referred for further consideration to the hiring manager. You will be notified of the outcome after final approval of the selectee.

Note: If you are selected and have not previously served in the SES, your qualifications must be certified by a Qualifications Review Board (QRB) at the Office of Personnel Management. The QRB will review your ECQs to ensure you meet the qualifications for entry into the SES.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 16 2015

THE INSPECTOR GENERAL

MEMORANDUM

SUBJECT: Chemical Safety and Hazard Board

FROM: Arthur Elkins, Inspector General,
Environmental Protection Agency

TO: The President

On or about February 6, 2013, the U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG)[1] received information which alleged that Rafael Moure-Eraso, Chairman, Chemical Safety and Hazard Investigation Board (CSB);[2] Richard Loeb, General Counsel, CSB; and Daniel Horowitz, Managing Director, CSB, were conducting official CSB business via non-government email accounts.

Based upon the foregoing information, my office initiated an investigation which found information sufficient to support a conclusion that CSB Chairman Moure-Eraso, Loeb and Horowitz used private, non-government email systems[3] to communicate on CSB matters and by using this approach those communications were not preserved as official records. Title 36 CFR Chapter XII—National Archives and Records Administration, Part 1236, states:

> Agencies that allow employees to send and receive official electronic mail messages using a system not operated by the agency must ensure that

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[1] *See Consolidated Appropriations Act of 2012, Pub. L. 112-74* ("notwithstanding any other provision of law, the individual appointed to the position of Inspector General of the [EPA] shall, by virtue of such appointment, also hold the position of Inspector General of the [CSB]").

[2] U.S. Chemical Safety and Hazard Investigation Board. Accessed at http://www.csb.gov

[3] During the course of this investigation, the OIG made requests to CSB for communications pertaining to official CSB matters that were sent via non-government email systems, which include the emails in question. CSB declined to provide all the requested documents and emails, and provided others that were heavily redacted versions. This refusal of access to the OIG constituted a "particularly serious or flagrant problem" under the Inspector General Act, and the OIG was therefore compelled to pursue the statutory remedy of issuing a "7-day letter" to Chairman Moure-Eraso, which it did on September 5, 2013. CSB nevertheless again refused to provide the emails to OIG and chose instead to forward the IG's 7-day letter to Congress, as required by the Inspector General Act. The House Oversight and Government Reform Committee held a hearing on these and related matters on June 19, 2014. Following the hearing, the Committee directed CSB to turn over the emails, which CSB subsequently did.

> Federal records sent or received on such systems are preserved in the appropriate agency recordkeeping system.[4]

Chairman Moure-Eraso's rationale for this purposeful circumvention was that he was seeking legal advice from Loeb concerning draft communications being prepared for the rest of the CSB Board. Moure-Eraso did not believe he could trust a CSB employee working within the CSB's Office of General Counsel who he believed could access the CSB email network. Loeb, General Counsel for the CSB, stated that he had never informed the CSB's FOIA office that there were CSB work-related communications being sent, via non-government email, between Moure-Eraso and himself. These communications on non-government email systems about official government business would never be able to be searched or found in response to a FOIA request, and therefore, would not be made available to the public.

The investigation found that Moure-Eraso, Loeb and Horowitz did not ensure that official business they conducted on non-governmental email systems was preserved on agency systems and that they purposefully employed non-governmental systems so certain CSB business did not appear on CSB systems. The investigation found evidence sufficient to conclude that these actions were in violation of the Federal Records Act and the implementing NARA regulations as well as inconsistent with the Executive Memorandum on Transparency and Open Government dated January 21, 2009.[5]

This investigation has not resulted in any basis for criminal prosecution. Rather, because you appoint Chairman Moure-Eraso and he is head of the agency with no one higher at CSB to whom he reports, I am presenting this Report of Investigation for your determination of what administrative action may be warranted.

If I can provide any additional information, please do not hesitate to contact me at (202) 566-0847.

Attachment

I. Report of Investigation

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[4] 36 CFR 1236.22(b). The Federal Records Act, 44 U.S.C.§ 3101, makes the head of each federal agency responsible to preserve records of the essential transactions of the agency. The National Archives and Records Administration is responsible for overseeing agencies' adequacy of documentation and records disposition and practices, and implements these Federal Records Act requirements under regulations set forth in 36 CFR.part 1236.

[5] White House Memorandum, Subject: Transparency and Open Government, January 21, 2009.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF THE INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS
1301 CONSTITUTION AVE, NW
EPA WEST BUILDING
WASHINGTON, DC 20004

REFERRED FOR ACTION REPORT OF INVESTIGATION CONCERNING

MOURE-ERASO, RAFAEL, POLITICAL APPOINTEE, CHAIRMAN, CSB (ET AL)
OI-AR-2013-ADM-0068

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Distribution:

Barack Obama
President of the United States

[redacted]
Special Agents
Office of Professional Responsibility

Approved by:

[redacted]
Special Agent in Charge
Office of Professional Responsibility

Reviewed by:

Patrick Sullivan
Assistant Inspector General
Office of Investigations

OI-AR-2013-ADM-0068

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

CASE NO.:	OI-AR-2013-ADM-0068	**DATE OPENED:**	4/15/2013
CASE TITLE:	MOURE-ERASO, RAFAEL, POLITICAL APPOINTEE, CHAIRMAN, CSB (ET AL)	**CASE AGENT:**	[redacted]
CASE CATEGORY:	EMPLOYEE INTEGRITY	**OFFICE:**	OFFICE OF INVESTIGATIONS - HEADQUARTERS
JOINT AGENCIES:	NONE		
JURISDICTION:	WASHINGTON, DC		

SECTION A - NARRATIVE

Introduction

On or about February 6, 2013, the U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG)[1] received a complaint alleging that Rafael Moure-Eraso (Chairman Moure-Eraso), Chairman, Chemical Safety and Hazard Investigation Board (CSB);[2] Richard Loeb (Loeb), General Counsel, CSB; and Daniel Horowitz (Horowitz), Managing Director, CSB, were conducting official CSB business via non-government email systems . (Exhibit I)

Synopsis

This investigation found information sufficient to support a conclusion that CSB Chairman Moure-Eraso, Loeb and Horowitz used private, non-government email systems[3] to communicate on CSB matters and by using this approach those communications were not preserved as official records. Title 36 CFR Chapter XII—National Archives and Records Administration, Part 1236, states:

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[1] *See Consolidated Appropriations Act of 2012, Pub. L. 112-74* ("notwithstanding any other provision of law, the individual appointed to the position of Inspector General of the [EPA] shall, by virtue of such appointment, also hold the position of Inspector General of the [CSB]").

[2] U.S. Chemical Safety and Hazard Investigation Board. Accessed at http://www.csb.gov/

[3] During the course of this investigation, the OIG made requests to CSB for communications pertaining to official CSB matters that were sent via non-government email systems, which include the emails in question. CSB declined to provide all the requested documents and emails, and provided others that were heavily redacted versions. This refusal of access to the OIG constituted a "particularly serious or flagrant problem" under the Inspector General Act, and the OIG was therefore compelled to pursue the statutory remedy of issuing a "7-day letter" to Chairman Moure-Eraso, which it did on September 5, 2013. CSB nevertheless again refused to provide the emails to OIG and chose instead to forward the IG's 7-day letter to Congress, as required by the Inspector General Act. The House Oversight and Government Reform Committee held a hearing on these and related matters on June 19, 2014. Following the hearing, the Committee directed CSB to turn over the emails, which CSB subsequently did.

> Agencies that allow employees to send and receive official electronic mail messages using a system not operated by the agency must ensure that Federal records sent or received on such systems are preserved in the appropriate agency recordkeeping system.[4]

Chairman Moure-Eraso's rationale for this purposeful circumvention was that he was seeking legal advice from Loeb concerning draft communications being prepared for the rest of the CSB Board. Moure-Eraso did not believe he could trust a CSB employee working within the CSB's Office of General Counsel who he believed could access the CSB email network. Loeb, General Counsel for the CSB, stated that he had never informed the CSB's FOIA office that there were CSB work-related communications being sent, via non-government email, between Moure-Eraso and himself. These official government business communications would never be able to be searched or found in response to a FOIA request, and therefore, would not be made available to the public.

The investigation found that Moure-Eraso and Loeb did not ensure that official business they conducted on non-governmental email systems was preserved on agency systems and that they purposefully employed non-governmental systems so certain CSB business did not appear on CSB systems. The investigation found evidence sufficient to conclude that these actions were in violation of the Federal Records Act and the implementing NARA regulations as well as inconsistent with the Executive Memorandum on Transparency and Open Government dated January 21, 2009.[5]

This investigation has not resulted in any basis for criminal prosecution. OIG presents this Report of Investigation to the President for his determination of what administrative action may be warranted because Chairman Moure-Eraso is appointed by and serves the President.

Impact

The CSB conducted official government business in violation of a federal statute, regulation and Presidential instruction that exist to ensure that the public can observe the workings of its government and that records of governmental actions are preserved. Such action diminishes the integrity of the agency, its program functionality and the public trust in the CSB.

Details

Investigation Disclosed Allegations Supported

Allegation 1: Chairman Moure-Eraso used a non-government email system to communicate on official CSB matters and did not preserve the communications as official records.

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[4] 36 CFR 1236.22(b). The Federal Records Act, 44 U.S.C.§ 3101, makes the head of each federal agency responsible to preserve records of the essential transactions of the agency. The National Archives and Records Administration is responsible for overseeing agencies' adequacy of documentation and records disposition and practices, and implements these Federal Records Act requirements under regulations set forth in 36 CFR part 1236.

[5] White House Memorandum, Subject: Transparency and Open Government, January 21, 2009.

OI-AR-2013-ADM-0068

Allegation 1 Findings: Supported. Chairman Moure-Eraso used a non-government email system to communicate on official CSB matters and did not preserve the communications as official records.

Allegation 1 Investigative Results: On March 7, 2013, Chairman Moure-Eraso was interviewed, with counsel present, by EPA OIG Special Agents concerning his use of a private, non-government, email account to send official CSB correspondence.

Specifically, Chairman Moure-Eraso was asked why he did not use a regular CSB account. The Chairman responded that he wanted "legal advice" from Loeb on draft communications he was preparing for the CSB Board before he sent out his final communication. Chairman Moure-Eraso further said he wanted to "Avoid [the] danger of OGC seeing;" that the "General Counsel [redacted] was not a friend of mine;" there was a "hostile environment;" and "I did not feel that I trust (sic)."

Chairman Moure-Eraso elaborated that he mostly used his personal Gmail account for "advice" concerning hostile emails he was receiving from CSB Board Members. Chairman Moure-Eraso stated that he sent CSB communications via his Gmail account to get Loeb's "legal opinion" regarding how to deal with the CSB Board Members' hostile communications. Chairman Moure-Eraso stated that, for the majority of these communications with Loeb, he used his personal Gmail account.

Chairman Moure-Eraso was asked if Loeb ever advised him to set up a private email account. He responded that "he [Loeb] would recommend in some communications with him that I could use that [private] account." Chairman Moure-Eraso said he also communicated with Loeb on this private account concerning things that were not CSB related. Moure-Eraso was asked why Loeb recommended he set up a private Gmail account. He responded that the "general idea, [sic] some things that might not be matters of federal accounts." Chairman Moure-Eraso stated that the private email account that he was referring to was [redacted]@gmail.com. (Exhibit 2)

On March 8, 2013, Loeb was interviewed, with counsel present, by EPA OIG Special Agents concerning his use of a private, non-government, email account to send official CSB correspondence. Loeb stated that he and Chairman Moure-Eraso "did communicate" on official CSB matters via his private Gmail account. Loeb stated he helped edit CSB letters, which were sent to him by Chairman Moure-Eraso from his private email account. Loeb was asked whether he responded back to Chairman Moure-Eraso's CSB work-related communications via the private email. Loeb stated that he did "reply" by the private email method in which he received the email.

Loeb was asked whether he ever recommended to Chairman Moure-Eraso that he communicate with Loeb on CSB matters using a private Gmail system rather than communicate using the CSB governmental email system. Loeb confirmed he "did suggest" and "did recommend" that Chairman Moure-Ersao get a Gmail account. Loeb "told him [Moure-Eraso] to get a Gmail account" because, at the time, Moure-Eraso was using a "UMass Lowell account," and Loeb did not think it was a "good idea" to use a private employer's email system. Loeb explained that Chairman Moure-Eraso was a "novice" computer user and may have just used the "drop down" when sending out email from his private Gmail account (Exhibit 3).

Chairman Moure-Eraso was asked if he communicated with [redacted] a private attorney who was representing CSB, using his gmail account concerning CSB matters. Chairman Moure-Eraso stated "Yes," but that it was Loeb who engaged in "99 percent" of the communications with [redacted].

Chairman Moure-Eraso stated further that it was Loeb who recommended [redacted] be hired by the CSB, and it was Loeb who made the arrangements. (Exhibit 2)

The following are examples of Chairman Moure-Eraso's use of a non-government email system to communicate on official CSB matters relating to the Deepwater-Macando investigation and the CSB case backlog:

Example 1: On August 21, 2013, Chairman Moure-Eraso sent an email via a private, non-government, email system to Loeb and Horowitz, stating:

> Pretty hard hitting stuff. Even [redacted] drank the Kool-Aid. I am at a lost [sic] of how to respond. [redacted] talks of resolving the issue in Griffons public meetings where we have to put in the agenda our "poor conduct". Are we really in a "terrible downward spiral"? Griffon, of course will love that. It seems to me that without discharging our enormous stone mill around of heads of Deepwater-Macondo investigation, we are not going to see the light of day. To have a final report by September 30 is becoming a matter of life or death. Same with TESORO. (Exhibit 4)

Example 2: On January 17, 2012, Chairman Moure-Eraso sent Loeb, via a private, non-government, email system , an email titled "Quorum" stating:

> Propose email
> Mark [this is CSB Board member Mark Griffon]
> At tomorrows [sic] Quorum meeting, we should try to continue the discussion about the backlog once we have scoped the Deepwater/Macando investigation. Once we are clear as possible of a timeline for DW/M we could consolidate the plans and timelines that were presented in the matrix of our last quorum meeting. That would determine the priorities for investigation teams. That is on line [sic] with what we discussed in the last quorum meeting. About our backlog and "anticipated impact on chemical safety" and how to "avoid backlogs in the future" I will welcome to hear any ideas you want to share with the group about those issues. There are still a few hours to prepare a presentation. (Exhibit 5)

This evidence, including his own admissions, demonstrates that Moure-Eraso, in multiple instances, conducted official CSB business on personal email systems, and he did not preserve those communications on an appropriate agency recordkeeping system. This supports a conclusion that these actions violate the Federal Records Act, the implementing NARA regulations, and the Executive Memorandum.

Allegation 2: Loeb used a non-government email system to communicate on official CSB matters and did not preserve the communications as official records.

Allegation 2 Findings: Supported. Loeb used a non-government email system to communicate on official CSB matters and did not preserve the communications as official records.

Allegation 2 Investigative Results: Loeb stated that he and Chairman Moure-Eraso "did communicate" on official CSB matters via his private Gmail account. Loeb stated he helped edit CSB letters, which were sent to him by Chairman Moure-Eraso from his private email account. Loeb was asked whether he

responded back to Chairman Moure-Eraso's CSB work-related communications via the private email. Loeb stated that he did "reply" by the private email method in which he received the email. Loeb stated that "to the extent I can," he communicated on "CSB email."

On August 13, 2013, EPA OIG Associate Counsel [redacted] memorialized a phone conversation [redacted] had with Loeb via telephone. [redacted] stated in part:

> Mr. Loeb stated that CSB officials "were not using personal email accounts in order to conduct business off CSB servers," but then Mr. Loeb immediately stated that they actually "did purposefully and for a time, use personal emails to keep information off the CSB servers because certain disgruntled employees (at least one) appeared to have access to CSB servers" and that they (CSB) was (sic) concerned about that person having access to certain emails. (Exhibit 6)

The following are examples of Loeb's use of a personal, non-government email system to communicate on official CSB matters, which relate to CSB responses to the Office of Special Counsel investigation and an Equal Employment Opportunity matter:

Example 1: On February 23, 2012, Loeb in an email to Horowitz, via a non-government email system titled "OSC" [Office of Special Counsel], stated, in part:

> That said, I just spent 45 minutes on the phone with [redacted] at OSC. [redacted] is not going to [redacted] any longer from the case. [redacted] thinks the case is a waste of time and that the OSC attorney/investigator assigned to the matter is just pursuing it because it interests [redacted] and because [redacted] has gotten so much input from various people at the CSB. [High level OSC employee] said that [redacted] (whose name [redacted] gave me) realizes that this is just a political witch hunt. However, apparently [redacted] does not [redacted] the investigator [redacted] (that's not [redacted] style). [redacted] thinks we may be able to shut this down with some well written letters to OSC through [redacted] especially if they are addressed to the right people at OSC. (Exhibit 7)

Example 2: On July 7, 2012, Loeb in an email to Chairman Moure-Eraso and Loeb, via a non-government email system, titled "[redacted] OSC" stated:

> [redacted]/OSC Attorney/Investigator] Began a one-year detail to [redacted] effective [redacted] 2012. Will not be back at OSC until [redacted] 2013. I will contact [redacted] on Monday to ask [redacted] to check "official" status of the complaints. (Exhibit 8)

Example 3: On May 21, 2012, the following email was forwarded "FYI" from Loeb to Chairman Moure-Eraso via non-government email systems. The original email was titled "DWH" and was sent from Loeb, via a Gmail account, to Mark Griffon, via a Comcast account:

> Mark
> I agree with you that the [redacted]
> [redacted] My legal concern is that we are essentially saying that [redacted]

[redacted] That's a legal test that means [redacted]

Rcl (Exhibit 9)

Loeb was asked if he had ever informed the CSB's FOIA office that there were CSB work-related communications being sent, via private email, between Chairman Moure-Eraso and himself. Loeb responded that he had not.

This evidence demonstrates that Loeb, in multiple instances, conducted official CSB business on personal email systems, and he did not preserve those communications on an appropriate agency recordkeeping system. This supports a conclusion that these actions violate the Federal Records Act, the implementing NARA regulations, and the Executive Memorandum.

Allegation 3: Horowitz used a non-government email system to communicate on official CSB matters and did not preserve the communications as official records.

Allegation 3 Findings: Supported. Horowitz used a non-government email system to communicate on official CSB matters and did not preserve the communications as official records.

Allegation 3 Investigative Results: In a sworn statement dated February 12, 2013, Horowitz addressed his use of non-government email systems and stated: "No one has instructed [me] to create a private email for government use. However, I have sometimes communicated about CSB topics on private email; for example, in communicating from my home or when travelling." (Exhibit 10)

On March 7, 2013, Chairman Moure-Eraso, when interviewed by EPA OIG Special Agents, stated that Horowitz, to a lesser degree, also used his private email to communicate regarding CSB matters. (Exhibit 2)

The following are two examples of Horowitz's use of a personal, non-government email system to communicate on official CSB matters. These examples relate to draft communications for the CSB Chairman to third parties:

Example 1: On January 8, 2012, Horowitz sent an email to Chairman Moure-Eraso and Loeb, via non-government email, concerning a draft email to be sent from Chairman Moure-Eraso to the CSB Board Members. Horowitz stated:

> Very nice
> I might use a term other than "delicate persomel situation" which somehow suggests that I myself am in a tenuous position vis a vis the chair
> How about "This only compounds an already troubling legal situation into which you have placed the agency." (Exhibit 11)

Example 2: On January 11, 2012, Loeb sent an email to [redacted] Conununications [a public affairs company contracted with the CSB], Horowitz, and [redacted] [CSB

Communications Director] via non-governmental email, discussing an attached draft letter for Chairman Moure-Eraso, which was being sent to [redacted] United Steelworkers.

In the email Loeb, in part, states: "I don't not [sic] think that [redacted] should be included (I have deleted in the text. It suggests that a [redacted] (Exhibit 12)

Horowitz responds via non-governmental email: "Pls let's send this – we need to move on" (Exhibit 13).

This evidence demonstrates that Horowitz conducted official CSB business on personal email systems and he did not preserve those communications on an appropriate agency recordkeeping system. This supports a conclusion that these actions violate the Federal Records Act, the implementing NARA regulations, and the Executive Memorandum.

Disposition

This Report of Investigation is being sent to the President of the United States, Barack Obama for review and any action deemed appropriate.

SECTION B – PROSECUTIVE STATUS

ADMINISTRATIVE/CRIMINAL/CIVIL ACTION(S):

The foregoing allegations were investigated as an administrative, not criminal, matter. On August 12, 2014, the EPA OIG contacted the Public Integrity Section, Department of Justice, for a consultation and, based upon the facts provided to the Public Integrity Section regarding the OIG's administrative investigation, the allegations will not be referred for prosecution.

SECTION C – POSSIBLE APPLICABLE LAWS, REGULATIONS, AND POLICIES

1. 44 U.S.C. Sec. 3101 Federal Records Act. The head of each Federal agency shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

2. 36 CFR 1236.22(b). Agencies that allow employees to send and receive official electronic mail messages using a system not operated by the agency must ensure that federal records sent or received on such systems are preserved in the appropriate agency recordkeeping system.

3. White House Memorandum: Transparency and Open Government, January 21, 2009
   - Government should be transparent.
     - ...My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use.

EXHIBIT	DESCRIPTION DUE TO THE VOLUMINUS NATURE OF THE DOCUMENTS WHICH SUPPORT THE FOLLOWING EXHIBITS, THEY ARE PROVIDED AS ELECTRONIC ATTACHMENTS TO THIS REPORT OF INVESTIGATION ON A CD MARKED "***EPA OIG CASE OI-AR-2013-ADM-0068: Exhibits, Contains information protected by the Privacy Act and is FOR OFFICIAL USE ONLY***"	Attached PDF
1.	Complaint Initiation; Chemical Safety Board Employees use of Private Email for Official Communications; COMP-2013-104	CSB Complaint Email REDACTED.pd
2.	Memorandum of Interview, Rafael Moure-Eraso dated March 7, 2013	MOI Moure-Eraso.docx
3.	Memorandum of Interview, Richard Loeb, dated March 8, 2013	MOI Loeb.docx
4.	Email dated August 21, 2013 @ 11:57PM from Rafael Moure-Eraso to Loeb and Horowitz	Email August 21, 2013 (E6).pdf
5.	Email dated January 17, 2012 @ 11:49AM from Rafael Moure-Eraso to Richard Loeb and Daniel Horowitz	Email January 17, 2012 (E8).pdf
6.	Email dated August 13, 2013, by EPA OIG Associate Counsel [redacted] memorializing phone conversation with Richard Loeb	[redacted] Email dated August 13 2013.pdf
7.	Email dated February 22, 2012 @ 4:28PM from Richard Loeb to Daniel Horowitz	Email February 22, 2012 (E11).pdf
8.	Email dated July 7, 2012 @ 6:58PM from [redacted] to Richard Loeb and Daniel Horowitz	Email July 7, 2012 (E12).pdf
9.	Email dated May 21, 2012 @ 5:53PM from Richard Loeb to Rafael Moure-Eraso	Email May 21, 2012 (E7).pdf
10.	Sworn Statement. Daniel Horowitz, dated February 12, 2013	Horowitz Sworn Statement.pdf

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11.	Email dated January 8, 2012 @ 10:44AM from Daniel Horowitz to Richard Loeb and Rafael Moure-Eraso	Email January 8, 2012 (E15).pdf
12.	Email dated January 11, 2012 @ 9:35AM to [redacted], Daniel Horowitz, and [redacted]	Email January 11, 2012 (E16).pdf
13.	Email dated January 11, 2012 @ 10:44 AM to Richard Loeb, [redacted]	Email from Horowitz dated Jan

THE WHITE HOUSE
WASHINGTON

February 2, 2015

Rafael Moure-Eraso, Ph.D.
Chairman
U.S. Chemical Safety and Hazard Investigation Board
2175 K Street, NW Suite 400
Washington, DC 20037-7650

Dear Chairman Moure-Eraso:

The enclosed January 16, 2015 Memorandum and Report of Investigation from the EPA Inspector General ("IG Report") details disconcerting allegations and findings related to email practices at the Chemical Safety and Hazard Investigation Board ("CSB") that run afoul of the Federal Records Act ("FRA"). It is essential that agency heads lead by example and promote a culture of compliance with the FRA.

The IG Report concludes that federal records reside on non-official electronic messaging accounts belonging to you and two senior CSB personnel. It is imperative that you take immediate action to forward these and any other federal records that may reside on any of your non-official electronic messaging accounts to an official CSB account. It is also imperative that you instruct CSB personnel to take immediate action to do the same. The FRA establishes certain notification requirements in the event that federal records are permanently lost or destroyed. CSB must take appropriate steps to determine whether such a notification is necessary.

Immediate action is necessary to ensure that CSB is complying with federal law, and carrying out its important mission in a transparent manner that fosters public trust and confidence. I look forward to receiving swift confirmation that all federal records residing on non-official messaging accounts have been forwarded to a CSB account or have otherwise been preserved consistent with the FRA.

Sincerely,

W. Neil Eggleston
Counsel to the President

Enclosures

cc: The Honorable Arthur Elkins, Inspector General, Environmental Protection Agency

The Honorable David S. Ferriero, Archivist, National Archives

Statement of Compliance

I, _____, was asked by the Office of the Inspector General of the United States Environmental Protection Agency (EPA) to provide certain official CSB communications to the EPA Inspector General pursuant to Section 6(a) of the Inspector General Act, as amended, 5 U.S.C. App.3., initially on July 22, 2013 (or appropriate date, see EPA OIG letter to CSB dated July 22, 2013 attached).

In good faith, I have made a diligent search of all records of communications pertaining to official CSB matters in my possession, custody, or control, or which are otherwise available to me, and provided those materials to the EPA OIG.

Specifically, my methodology to collect email records included conducting a search of my personal email account, which is _____ on (Date(s)). In conducting my search, I used the following search terms: Jason Zuckerman, Peter Broida, Daniel Horowitz, Christopher Warner, Office of Special Counsel, OSC, SC, Special Counsel.

I also developed the additional search terms based upon my review in order to make sure my search included the full scope of email communications pertaining to official CSB matters: _____, _____, _____.

The materials provided to the EPA OIG are genuine, complete, and in full compliance with the request made by the EPA Inspector General. After receiving the initial request from the EPA OIG for the above-refereneed documents, I took no intentional action to destroy, delete, or remove any official CSB email communication in my possession.

I state that the foregoing is true and correct.

_____
(Signature)

_____
(Name)

_____
(Title)

_____
(Date)

_____
(City and State)

WITNESS:

_____
(Signature)

_____
(Name and Title)

_____
(Date)

Statement of Congressman Gerald E. Connolly (VA-11)
Committee on Oversight and Government Reform
Rebuilding the Chemical Safety Board:
Finding a Solution to the CSB's Governance and Management Challenges
March 4, 2015

Today's hearing is the second in a series of oversight proceedings focused on the severe and damaging mismanagement of the U.S. Chemical Safety and Hazard Investigation Board ("Chemical Safety Board" or "CSB"), an independent Federal agency tasked with investigating significant industrial chemical accidents, by CSB Chairman Rafael Moure-Eraso, General Counsel Richard Loeb, and Managing Director Daniel Horowitz. In recent months, allegations have been lodged against CSB asserting that the agency is deeply mismanaged, and that the Chairman and his staff engage in whistleblower retaliation. Even more troubling, information has come to light in the course of this Committee's oversight that confirms the validity of these troubling accusations.

At the June 19, 2014 hearing held by this Committee, *Whistleblower Reprisal and Management Failures at the U.S. Chemical Safety Board*, I observed that Chairman Moure-Eraso's support of stunning attempts to shut down open debate during public board hearings and interfere with the proper functioning of the CSB, and his subsequent defense of such actions, raised serious questions over the Chairman's fitness to continue leading the CSB. Regrettably, in preparing for this morning's hearing, I have not found any information that would make me question my earlier judgment, which was not arrived at lightly. In fact, I am more convinced than ever that it is in the best interest of the CSB, and indeed our Nation, which needs a well-functioning CSB, that Chairman Moure-Eraso and his senior leadership resign from the Board.

In its prepared testimony, the Environmental Protection Agency's Office of Inspector General ("OIG") notes that after completing its investigation of the CSB, the OIG concluded, "...Chairman Moure-Eraso, Mr. Loeb and Mr. Horowitz used private, nongovernmental email systems to communicate on CSB matters, and those communications were not preserved as official records. Further, our investigation found that Chairman Moure-Eraso and Mr. Loeb **purposefully employed nongovernmental systems so that certain CSB business did not appear on CSB systems [emphasis added]."**

Even more troubling, the OIG will testify this morning that, "In light of the executive leadership positions and public trust held by Chairman Moure-Eraso, Mr. Loeb and Mr. Horowitz within the federal government, on August 20, 2014, the EPA OIG requested that they complete a voluntary statement that they had fully complied with the OIG's requests for documents. Such a statement would provide Chairman Moure-Eraso, Mr. Loeb and Mr. Horowitz an opportunity to address and confirm the actions that they took to conduct searches on their nongovernmental

email accounts and to ensure all official CSB communications had been retrieved and returned to the CSB record systems. **As of this date, the EPA OIG has received no statement of compliance from Chairman Moure-Eraso** [emphasis added]." This fact is simply stunning and absolutely unacceptable.

The bottom line is that leading the CSB, and serving in the agency's top staff leadership roles, represent privileged opportunities to serve the public. However, this public service cannot be effectively carried out in the absence of public trust. And no information has come to light yet that would change my conclusion that public trust in the management of CSB is incompatible with Chairman Moure-Eraso, Mr. Loeb, and Mr. Horowitz, retaining their influential positions at the agency.

Further, based on the testimony this morning of CSB Members Rick Engler and Mark Griffon, I may also expand the field of CSB officials that need to resign to include CSB Member Manuel Ehrlich, who appears to have conspired with Chairman Moure-Eraso to jam through Board Order 2015-1 on a 2-1 vote, which to an unprecedented degree, consolidates power over key budgetary, personnel, and contracting decisions with the Chairman, and almost certainly would have failed to pass had Mr. Engler had a chance to vote on the order.

Finally, I want to close by noting that in the lead up to today's hearing, Chairman Moure-Eraso and his staff appear to have orchestrated a series of misleading, strategic leaks to the media that attempt to tarnish legitimate congressional oversight. Rather than honestly engage in self-reflection and commit to serious reform, these individuals appear to be doubling down on a deeply troubling campaign that seeks to whitewash the overwhelming evidence that Chairman Moure-Eraso, Mr. Loeb, Mr. Horowitz, and perhaps now Mr. Ehrlich too, have failed to effectively lead the CSB, poisoned the agency's culture, caused the departure of many skilled career investigators and specialists, and violated the public trust in refusing to comply with oversight investigations and recently terminating three unfinished investigations.

As described by a former founding CSB Member, "Newly appointed and just three weeks on the job, board member Manny Ehrlich introduced and won a sweeping motion that terminated three unfinished investigations. For an organization whose primary purpose is to initiate, conduct and complete investigations into catastrophic events, failure to complete an investigation is **tantamount to having its own catastrophic management failures** [emphasis added]."

My hope is that this morning's hearing may finally cause Chairman Moure-Eraso to recognize that it is in the best interests of the CSB for him to immediately step down and allow the agency to make a complete break from its current state of scandal and disrepair. The dedicated men and women of the CSB deserve fresh leadership, and the American people deserve a strong and effective Chemical Safety Board.

U.S. Chemical Safety and Hazard Investigation Board

SUBJECT: Senior Executive Service (SES) Staffing

CONTENTS

1. **PURPOSE.** This Order establishes policies and procedures for the conduct of the merit staffing process for initial Senior Executive Service (SES) career appointments to the Chemical Safety and Hazard Investigation Board (CSB). This Order also establishes an Executive Resources Board (ERB) within the CSB, for the purpose of conducting the SES merit staffing process. This Order further establishes policies and procedures for the operation of the ERB, and the selection and conduct of its members.

2. **EFFECTIVE DATE.** This Order is effective upon passage by the Board.

3. **SCOPE.** The provisions of this Order apply to: the merit staffing process for initial SES career appointments to the CSB; the ERB; subordinate panels of the ERB; Board Members; and CSB employees who are members of the ERB and its subordinate panels, or otherwise involved in the merit staffing process.

4. **REFERENCES.** This Order is based upon section 3393 of Title 5 of the United States Code and section 317.501 of Title 5 of the Code of Federal Regulations.

5. **POLICY.** It is the policy of the Board that initial appointments to career SES positions within the CSB shall be made in full compliance with the merit staffing process established by Federal statute and regulation for such appointments, and with the merit system principles. It is further the policy of the Board that the CSB ERB, and its subordinate panels, shall at all times operate within the boundaries of applicable statutes and regulations; and that members of the ERB, and its subordinate panels, shall conduct themselves professionally, competently, ethically, and with scrupulous fairness.

   The Board hereby provides that the competition for SES positions within the CSB shall be fair and open, all candidates for such positions shall be rated and ranked on the same basis, and selection for such positions shall be based solely on qualifications and not on political or other non-job-related factors.

6. **DEFINITIONS.**

   a. **Appointing authority** – the Board, which has the authority by law to make appointments to the SES.

   b. **The Board** – the multi-member board which heads the CSB. To avoid confusion in this Order, the term "the Board" never refers to the ERB.

   c. **Board Member(s)** – an individual member or members of the multi-member board which heads the CSB. To avoid confusion in this Order, the term "Board Member(s)" never refers to members of the ERB.

   d. **Chairperson** – the Chairperson of the CSB, or in the absence of a Chairperson, the Board Member delegated personnel authority.

e. **Crediting plan** – a predetermined (before posting of the vacancy announcement) set of criteria, based upon the executive and technical qualifications required for a position, used to evaluate and assign scores to candidates' applications. There is only one crediting plan for any given position.

f. **Days** – all references to "days" in this Order are to calendar days.

g. **Executive Resources Board (ERB)** – a panel of CSB employees responsible, by law, for conducting the merit staffing process for career appointments to SES positions.

h. **Merit staffing** – the process by which an agency recruits for and selects an applicant for a vacancy in the SES.

i. **Personnel consultant** – the individual or firm under contract with the CSB to provide professional, expert advice on Federal personnel management issues. If no such contract is in place while the staffing process is being conducted, responsibilities assigned by this Order to the personnel consultant shall be performed by a personnel specialist employed by the CSB or the CSB's servicing personnel agency.

j. **Qualifications Review Board (QRB)** – a panel comprised of current members of the SES, which is convened by the Office of Personnel Management to certify the executive qualifications of individuals tentatively selected by agencies for initial career appointment to the SES. Through independent peer review, QRB members ensure that all new executives have a broad perspective of government and solid executive skills.

k. **Score sheets** – forms used to record the results of application evaluations and interviews. Several different score sheets are used at various stages in the selection process, as noted throughout this Order.

l. **Servicing personnel agency** – the government agency or agency component contracted by the CSB to perform certain personnel management functions for the CSB.

7. **RESPONSIBILITIES.**

a. **The Board** – sets general policy for the SES staffing process; establishes the CSB ERB; appoints CSB employees to the ERB; sets general policy and procedures for the operation of the ERB and the conduct of its members; based upon recommendations from the ERB, selects for interview and ultimately selects candidates to fill SES positions; and fulfills other responsibilities as specified in this Order.

b. **The ERB** – conducts the SES merit staffing process in accordance with all applicable statutes and regulations, general Board instructions, and this Order.

8. **ETHICS AND INTEGRITY.**

a. **Merit system principles.** The merit system principles (5 U.S.C. § 2301) provide a statutory benchmark for the fair and appropriate conduct of the SES merit staffing process. These principles state, among other things, that "selection . . . should be determined solely on the basis of relative ability, knowledge and skills, after fair and open competition which assures that all receive equal opportunity." Moreover, "all employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition . . . ." Furthermore, "all employees should maintain high standards of integrity, conduct, and concern for the public interest."

b. **Prohibited personnel practices.** The prohibited personnel practices (5 U.S.C. § 2302) specifically set forth actions that may not be taken in carrying out personnel actions. Several of the prohibited practices, listed below, are of particular note in the SES selection process.

(1) A government employee shall not "deceive or willfully obstruct any person with respect to such person's right to compete for employment."

(2) A government employee shall not "influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment."

(3) A government employee shall not "grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment . . . for the purpose of improving or injuring the prospects of any particular person for employment."

c. **Standards of conduct.** The Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635) are another source of guidance on the proper conduct of official duties. All CSB personnel involved in the SES merit staffing process should keep in mind the following general principles established by the standards of conduct:

(1) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(2) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(3) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards . . . .

d. **Application to SES staffing process.** In light of the above principles and standards, Board Members and members of the ERB should limit their contact and communication with applicants or potential applicants to matters such as factual information that is publicly available in advertising or the vacancy announcement, and general information about the selection process. Potential applicants may be told how to apply and whom to contact for additional information. Actual applicants should be referred to a neutral contact, such as a designated personnel specialist in the CSB's servicing personnel agency and/or the CSB personnel specialist responsible for administrative support of the selection process. Because of their roles in rating, ranking, and selecting candidates, Board Members and members of the ERB or the preliminary rating panel (PRP) are not neutral contacts. It is government-wide policy that all applicants have equal access to information about the selection process. Board Members and other CSB employees who have contact with applicants (or potential applicants) should be extremely careful about the kind of information they give and receive, and when they have contact with applicants (or potential applicants), to avoid giving anyone an unfair advantage. The best approach may be to answer questions about particular vacancies or the SES selection process by referring to the vacancy announcement and the OPM website. Board Members and employees cannot directly accept resumes or referrals of candidate names. Potential applicants and people who know of potential applicants should be directed to the vacancy announcement. Board Members and employees who receive unsolicited resumes, application materials, and/or requests for information should refer such items to the personnel specialist assigned to the selection process.

e. **Guidance.** Any questions about appropriate conduct in the merit staffing process should be directed to the CSB Designated Agency Ethics Official.

9. **ESTABLISHMENT OF THE EXECUTIVE RESOURCES BOARD (ERB).** The Board hereby establishes within the CSB an Executive Resources Board (ERB), and charges the ERB with the responsibility of conducting the merit staffing process for initial SES career appointments to the CSB. The role of the ERB is to coordinate and manage the merit staffing process from early planning, through the recruiting and evaluation of candidates, to the point at which it recommends the best qualified candidates to the Board. As directed by the Board, the ERB may also provide support to the Board's selection process. The CSB ERB shall be governed by applicable statutes and regulations, general Board instructions, and the provisions of this Order. Members of the ERB shall be appointed by the Board from among the employees of the CSB, in accordance with the procedures contained in section 10 of this Order.

10. **APPOINTMENT AND SERVICE OF ERB MEMBERS.**

a. **Appointing authority.** The Board shall appoint the members of the CSB ERB.

b. **Source of members.** Members of the ERB must be appointed from among the employees of the CSB. Board Members and non-employees of the CSB cannot be appointed to, or otherwise serve on, the ERB.

c. **Number and qualifications of members.** The ERB shall have at least three members. The Board shall determine, in its sound discretion, the appropriate number and qualifications of such members. Factors the Board may take into account in making these determinations include the complexity of the SES staffing process and the managerial and technical expertise of prospective ERB members.

d. **Initial appointment procedure.** The Chairperson and Board Members may each propose one CSB employee for appointment to the ERB, if there are to be as many ERB members as there are Board Members. If there will be fewer ERB members than the number of Board Members, the Chairperson shall choose first, followed by the remaining Board Members in descending order of length of service on the Board. If there will be more ERB members than the number of Board Members, the selection order stated in the preceding sentence will be repeated until all ERB slots are filled. The Board shall act on proposals for ERB membership and appoint members of the ERB by notation item. The notation item shall indicate by name each employee appointed. A Board Member whose proposed appointee is rejected by the Board may make an alternate proposal.

e. **Chair.** The Board shall designate, by notation item, one of the members of the ERB as the Chair of the ERB. The Chair of the ERB shall direct the operations of the ERB, within the limits of authority conferred by the Board and this Order. The Chair of the ERB will also be the point of contact between the ERB and the Chairperson of the Board. The Board may change the Chair of the ERB at any time and for any reason, by notation item.

f. **Service of members.** Members of the ERB shall continue to serve until their resignation from the ERB, deactivation of the ERB, or removal by the Board for cause (i.e.: any reason that is not legally impermissible). If a member of the ERB ceases to be a CSB employee, that member's term of service automatically ends at the close of business on his/her last official day of duty at the CSB. The Board shall fill a vacancy on the ERB as soon as possible after the vacancy occurs. Proposals of employees to fill a vacancy shall first be made by any Board Members, in descending order of seniority, who did not participate in the initial appointment procedure described in subsection d., above. If there are no such Board Members, proposals shall be made by the Chairperson, and then by the other Board Members in descending order of seniority.

(1) Resignation. A member of the ERB may resign at any time by tendering a written notice of resignation to the Chairperson of the Board.

(2) Deactivation. See section 11 of this Order.

(3) Removal. The Board, by notation item, may remove a member of the ERB for cause. The notation item shall indicate the member to be removed by name and set forth the reasons for the removal.

11. **DURATION OF THE ERB's ACTIVITIES.**

a. It is Board policy that the ERB should remain active as long as is necessary to complete the staffing process for a particular SES position, and that the ERB should be activated as soon as the need to fill an SES position is identified. The ERB should remain active until after an Office of Personnel Management (OPM) Qualifications Review Board (QRB) has approved the selected candidate, and that person has commenced official duty with the CSB. After the occurrence of these events, the ERB may be formally deactivated by the Board.

b. Activation and deactivation of the ERB shall be ordered by the Board, by notation item.

c. The terms of ERB members end upon deactivation of the ERB. When the ERB is reactivated, the Board must reappoint members to the ERB. These members must be appointed in accordance with section 10 of this Order, but need not be the same individuals who previously served on the ERB.

12. **GENERAL OPERATION OF THE ERB.**

a. The Chair of the ERB shall schedule meetings of the ERB as necessary to carry out the functions and activities of the ERB. The Chair of the ERB is the point of contact between the ERB and the Chairperson of the Board.

b. Meetings of the ERB shall generally be called with a written agenda provided in advance to the members of the ERB. Meetings may be conducted either formally or informally, at the discretion of the Chair of the ERB. The ERB shall conduct its business by consensus whenever possible. As necessary, it will make required decisions by majority vote (see Sections I and IV.E.1. of Board Order 001). Any and all disputes as to meeting procedure shall be resolved with reference to Robert's Rules of Order.

c. If requested by the ERB, the Chairperson of the Board may direct appropriate CSB staff to provide necessary administrative support to the ERB.

13. PRELIMINARY RATING PANEL (PRP). To contribute to the efficiency and effectiveness of the SES merit staffing process, the ERB shall delegate the preliminary rating of applications to a subordinate preliminary rating panel (PRP), unless the ERB determines that such a panel is not appropriate for a particular position. In that case, the ERB shall request an exception from the requirement for a PRP from the Chairperson. The ERB remains responsible for overseeing the work of the PRP, ensuring that it is functioning in accordance with instructions from the ERB, the provisions of this Order, and the following guidelines and procedures:

    a. **Establishment of the PRP.** The ERB shall establish the PRP by majority vote of ERB members.

    b. **Selection authority.** The ERB shall select the members of the PRP. Each Board Member may recommend one potential PRP member to the ERB. At the ERB's request, Board Members may also issue, on behalf of the ERB, an invitation to the potential PRP member they have recommended, subject to the ERB's final approval. If the selected members are not Federal government officials or employees at the time of selection, such members may be appointed temporarily as experts under the authority of 5 U.S.C. § 3109 and 5 C.F.R. Part 304. Alternatively, the services of PRP members who are not employed by the Federal government at the time of selection may be procured using the micro-purchase authority provided by Federal procurement regulations.

    c. **Source of members.** Members of the PRP may be appointed from any source, including CSB employees, employees or officials of other Federal, state, or local government entities, or individuals in the private sector. Board Members cannot be appointed to, or otherwise serve on, the PRP.

    d. **Number and qualifications of members.** The PRP shall have at least three members. The ERB shall determine the exact number. The SES positions being filled may require that the person filling the position have both executive and technical qualifications. Members of the panel should be expert in at least one of the two areas and at least competent in the other two. The PRP should have at least two members competent in each of the two areas required for the SES position being filled, so as to enable them to rate candidates according to criteria based on those qualifications.

    e. **Initial appointment procedure.** The ERB shall first consider and vote on for appointment to the PRP those individuals, if any, recommended by Board Members. If there are no Board recommendations, or if those recommendations are rejected, the Chair of the ERB shall so inform the Chairperson of the Board and provide the reasons for such rejections. The Chair of the ERB should not disclose to the Chairperson of the Board the votes of individual ERB members on the acceptance or rejection of Board recommendations. Board Members may then make second recommendations; if these are rejected by the ERB, each member of the ERB may then propose one person for appointment to the PRP. The Chair of

the ERB shall have first choice, followed by the remaining ERB members in descending order of length of Federal service. The ERB shall approve or disapprove all appointments by majority vote. A member of the ERB whose proposed appointee is rejected by the ERB may make an alternate proposal.

f. **Organization.** There shall be no chair or vice chair, nor any other hierarchical organization of the PRP. The PRP shall not hold meetings. The PRP members shall perform their functions, as described in this Order, independently of each other.

g. **Service of members.** Members of the PRP shall continue to serve until their resignation from the PRP, termination of the PRP, or removal by the ERB for cause. The ERB shall fill a vacancy on the PRP as soon as possible after the vacancy occurs. Vacancies shall be filled in accordance with the procedures in subsection e., above.

(1) Resignation. A member of the PRP may resign at any time by tendering a written notice of resignation to the Chair of the ERB.

(2) Termination. The ERB may, by majority vote, rescind its delegation of the rating function and terminate the PRP.

(3) Removal. The ERB may, by majority vote, remove a member of the PRP for cause. A memorandum shall be prepared setting forth the reasons for the removal.

14. **RECRUITMENT.**

a. **Source of recruitment.** The minimum source of recruitment to fill a SES position by career appointment is all groups of qualified individuals within the civil service. The Board may direct that the source of recruitment be expanded to also include qualified individuals outside of the civil service. It is the policy of the Board that CSB SES vacancies shall be open to all qualified candidates, inside and outside of the civil service.

b. **Duration and content of announcement.** By law, announcements of SES vacancies to be filled by initial career appointment must be included in the OPM SES vacancy announcement system for at least 14 calendar days, including the date of publication. However, it is the policy of the Board that announcements for CSB SES vacancies shall remain open for at least 45 days. The ERB shall ensure, before posting, that the vacancy announcement contains a complete and accurate description of the materials required for a complete application.

c. **Recruitment firms.** A commercial recruiting firm or nonprofit employment agency may be used to recruit for SES vacancies. The use of such a firm or agency must fully comply with Subpart D of Part 300 of Title 5 of the Code of

Federal Regulations. The Chairperson shall decide whether to use the services of a recruiting firm or employment agency. A contract for such services may not be awarded until after the vacancy announcement and crediting plan for the SES position have been approved by the ERB. The firm or agency may not contact any potential candidate before the vacancy announcement is publicly posted, nor may it contact any potential candidate after the closing date of the vacancy announcement.

15. APPLICATION REVIEW PROCESS.

a. **Initial screening.** The ERB shall designate the CSB administrative support staff or the CSB's servicing personnel agency to perform an initial screening of all applications received for an SES position. The screening shall consist of reviewing each application to determine whether it was received prior to the submission deadline, and whether it meets all requirements of the vacancy announcement (including all required forms, documents, narrative statements, etc.). Applications which are submitted after the deadline and/or missing any required material shall be set aside and will receive no further consideration. Applications which are complete and timely shall be forwarded by the screener(s) to the ERB. Applications should be screened and forwarded to the ERB on an ongoing basis, as they are received. Screening should be complete, and all applications in the ERB's possession, no later than 5 days after the closing date of the vacancy announcement.

b. **Preliminary rating and ranking.** In accordance with section 13 of this Order, the ERB will delegate the preliminary rating of applications to a preliminary rating panel (PRP). The scores submitted by the PRP will be tabulated and put into rank order by the ERB's administrative support staff. The rating and ranking process will be conducted according to the following procedures:

(1) Communications.

(a) The input of the PRP into the selection process is strictly limited to the panel's submission of scored applications to the ERB. The panel members shall make no other communications (including, but not limited to, suggestions, opinions, and/or recommendations about individual candidates) pertaining to the selection process to members of the ERB, Board Members, or other CSB employees.

(b) The prohibition stated in the preceding paragraph does not apply to requests by the PRP to the ERB for technical clarification of the crediting plan or evaluation procedures. All such requests should be made and answered in writing. Alternatively, the Chair of the ERB may conduct a meeting or teleconference with the PRP members to answer requests for technical clarification. Minutes should be kept of any such meeting or teleconference. The Chair of the ERB is the point of contact for all

requests for technical clarification. Prior to the start of the rating panel's work, the Chair of the ERB will provide each panel member with written instructions for their tasks.

(2) Rating. As soon as possible after the closing date of the vacancy announcement, but not later than 10 days after that date, the ERB will distribute copies of each application that passed the initial screening (see subsection a., above) to the PRP. Each member of the PRP will receive a copy of every candidate's application. The PRP members will then review and score, independently of each other, each candidate's application, evaluating their executive and technical qualifications in accordance with the crediting plan. The PRP members shall not discuss, confer on, or otherwise collaborate on the rating of the applications. The PRP members shall neither compare nor attempt to reach a consensus on applicants' scores. Upon completing their ratings of every application, the PRP members shall each submit their scored applications to the ERB for tabulation and ranking. The preliminary rating of applications should be completed no later than 21 days after the date on which applications were distributed to PRP members.

(3) Ranking. The ERB will delegate to the CSB administrative support staff the actual tabulating and ranking of preliminarily scored applications. The support staff will receive from the ERB, no later than 3 days after their receipt by the ERB, all copies of each application – each with a total score assigned by each of the PRP members. For each application, the support staff will calculate an average total score by adding together the total scores assigned by each PRP member and dividing the sum by the number of PRP members. After calculating an average total score for every application, the support staff will put the applications in order of rank from highest to lowest average total score. The support staff will not break ties in rank based on identical average total scores. Instead, the support staff shall indicate the rank at which there is a tie and which applicants are tied, then continue the ranking at the point where the next lower-scored applicant would fall if there was no tie (e.g.: if three applicants are tied for rank position five, indicate that fact, then rank the next-lower scored candidate at position eight). The support staff will return the rated and ranked applications, all preliminary score sheets for each application, and a list of every applicant in order from highest to lowest rank, to the ERB for its review. The support staff should return these materials to the ERB no later than 7 days after receiving them.

Before conducting the tabulating and ranking as described above, the support staff shall check each application for mathematical errors in scoring. If such an error is discovered, the support staff shall return that application to the ERB. The ERB shall immediately review the scoring of that application, and correct the score, if the mathematical error is confirmed. The corrected application shall then be returned to the support staff for tabulation and ranking.

c. **ERB review.** After completion of the preliminary rating and ranking of applications, the ERB will independently review each application, according to the following procedures:

(1) Communications.

(a) *With the PRP.* Communications between the ERB and the PRP shall be strictly limited to the receipt by the ERB of the PRP's scored applications. Members of the ERB shall make no other communications (including, but not limited to, requests for suggestions, opinions, and/or recommendations about individual candidates) pertaining to the selection process to PRP members. Notwithstanding this restriction, the ERB may provide to the PRP written instructions and written answers to requests for technical clarification of the crediting plan or evaluation procedures.

(b) *With the Board.* Communications between the ERB and the Board shall be limited to those communications clearly necessary to the ERB's function of carrying out the SES merit staffing process. Under no circumstances shall there be any communication between the ERB and the Board pertaining to the qualifications, experience, or desirability of any candidate(s), or related matters, except within the context of formal, written recommendations on candidates or a formal, written certification of most-qualified candidates.

(2) Review. The reviews described below should be completed no later than 14 days after the date the ERB receives the rated and ranked applications from the support staff.

(a) *De novo review.* The ERB will conduct a complete and independent re-review of at least those applications ranked one through ten, inclusive, based upon the average total score calculated from the scores assigned by the PRP. Prior to the posting of a vacancy announcement, the ERB may decide to conduct a de novo review of more than the top ten applications (e.g.: top 15 or top 20). The number of applications to be reviewed de novo cannot be changed after the position is publicly posted. Each member of the ERB will review and re-score (using the crediting plan and a score sheet developed by the CSB's personnel consultant), independently of each other, each of the top ranked candidate's applications, evaluating their executive and technical qualifications in accordance with the crediting plan. The ERB members shall not discuss, confer on, or otherwise collaborate on the numerical scoring of the applications during this review phase. The ERB members shall neither compare nor attempt to reach a consensus on applicants' numerical scores during this review phase. Upon completing their scoring of the applications, the ERB members shall each forward their scored applications to the administrative support staff for tabulation and ranking.

(b) *Ranking.* The ERB will delegate to the administrative support staff the actual tabulating and ranking of the ERB-scored, top ranked applications. The support staff will receive one copy of each of the ERB-scored applications from each of the ERB members who actually scored the particular application, with each of those applications having a total score assigned by one of the ERB members who actually scored the application. (Because certain ERB members may need to recuse themselves from scoring individual applications, some applications may not be scored by every ERB member.) For each application, the support staff will calculate an average total score by adding together the total scores assigned by each ERB member who actually scored that particular application and dividing the sum by the total number of ERB members who scored that particular application. After calculating an average total score for each of the applications, the support staff will put the applications in order of rank from highest to lowest average total score. The support staff will not break ties in rank based on identical average total scores. Instead, the support staff shall indicate the rank at which there is a tie and which applicants are tied, then continue the ranking at the point where the next lower-scored applicant would fall if there was no tie (e.g.: if three applicants are tied for rank position five, indicate that fact, then rank the next-lower scored candidate at position eight). The support staff will then return the rated and ranked applications, all score sheets for each application, and a list of the ERB-scored applicants in order from highest to lowest rank, to the ERB. The support staff should return these materials to the ERB no later than 5 days after receiving them.

(c) *Limited review.* The ERB will conduct a limited review of those applications not among the top ranked, based upon the average total score calculated from the individual scores assigned by the PRP members. It is necessary for the ERB to perform this limited review on all applications that were eligible for consideration but not among the top-ranked. This review will consist of a check to ensure that the PRP members complied with merit system principles in assigning their scores, and that there was no clear error in the application of the crediting plan criteria. The ERB members shall discuss and confer on their review of the applications outside the top ranked, to ensure that there is no pattern of merit system non-compliance or technical error on the part of the PRP members.

16. **ERB INTERVIEWS.** The following process should be completed no later than 14 days after the ERB receives ranked applications back from the administrative support staff, following completion of the ranking described in section 15.c.(2)(b) of this Order.

a. **Selection for interview.** Based upon the average total score calculated from the scores assigned by the ERB members in their *de novo* review of applications, the ERB will select a certain number of top-ranked candidates with whom to conduct

telephone interviews. The ERB may select any number of top-ranked candidates for telephone interviews (e.g.: top-three, top-five, top-ten, etc.), but that number must be determined before the ERB begins its *de novo* review of applications.

b. **Interview format.** The ERB will conduct its interviews jointly (i.e.: each ERB member who has not recused himself/herself from evaluating a particular candidate will be present at the same time for each interview) by telephone. The ERB may determine the exact interview format (e.g.: areas for questioning, how many questions, who asks, etc.), but an identical format must be used for each candidate. The ERB shall develop one standard list of questions that will be asked, without substantial deviation, of each candidate. The questions should generally relate to the executive and technical qualifications for the position.

c. **Evaluation of interview performance.** The ERB members shall, as a group, develop a consensus evaluation for each candidate based on that candidate's interview performance. Before beginning its interview process, the ERB shall develop a formula for rating candidates' interview performance and for using the interview rating, in combination with the application score, to ultimately identify the best qualified candidates. After interviewing each candidate, the ERB will meet as a group to review and discuss the interview and reach a decision on the appropriate rating. A unanimous consensus decision on the rating is highly desirable and every effort should be made to reach one. If such a decision cannot be reached, the matter shall be put to a vote, in accordance with section 12.b. of this Order. For each candidate, the ERB shall record its interview rating in writing, along with a brief (no longer than one page) explanation of the basis for that rating.

17. **IDENTIFICATION OF BEST QUALIFIED CANDIDATES AND RECOMMENDATIONS TO THE BOARD.** Upon completing its interviews, the ERB must perform two additional steps. First, the ERB will identify to the Board the best qualified candidates, who will be subject to further consideration by the Board for selection. Second, the ERB will make written recommendations to the Board on every candidate whose application passed the initial screening (see section 15.a. of this Order). These two steps should be completed no later than 10 days after the date the ERB completes its candidate interviews. The following procedure shall be used to complete these steps:

a. **Identification of best qualified candidates.**

(1) In accordance with the procedures of this section, the ERB shall identify at least five candidates as best qualified, so as to warrant referral to the Board for consideration for selection.

(2) After completing its candidate interviews, the ERB shall meet as a group to determine who among the the interviewed candidates is best qualified for the position. The ERB's determination of which candidates are best qualified

shall be based upon the candidates' scores from the *de novo* review of applications and their interview evaluation rating. The ERB should develop a methodology for considering the application scores and interview ratings in making the best qualified determination. Such methodology shall be consistently applied to every interviewed candidate. The ERB shall also prepare a written narrative justifying its determination as to which candidates are best qualified. The number of best qualified candidates identified by the ERB may not exceed the maximum determined pursuant to subsection a.(2), above. A unanimous consensus determination as to which candidates are best qualified is highly desirable and every effort should be made to reach one. If such a determination cannot be reached, the matter shall be put to a vote, in accordance with section 12.b. of this Order.

(3) The ERB shall prepare a list of the candidates it identifies as best qualified, certify the list in writing, and forward it to the Board, along with the written justification of the best qualified determination and the complete application packages (including all score sheets) of the best qualified candidates.

b. **Recommendations.** The ERB shall make its recommendations on all the candidates who were not among the best qualified by forwarding to the Board the score sheets for each such candidate. Score sheets from the preliminary rating panel and the ERB (if applicable) shall be forwarded to the Board. Forwarding the score sheets fully satisfies the recommendation requirement; no additional documentation is necessary.

18. **BOARD ACTION.** In the SES merit staffing process, the Board is the appointing authority, which will select a candidate to fill the SES position. By law, the Board must make its selection from among the candidates certified as best qualified by the ERB. The Board will adhere to the following procedures in interviewing candidates and selecting an individual to fill the SES position:

a. **Communication.**

(1) With the preliminary rating panel. The Board and its individual Members shall not communicate in any manner with the members of the PRP regarding any aspect of the merit staffing process. Under no circumstances shall there be any communication between PRP members and Board Members pertaining to the qualifications, experience, or desirability of any candidate(s), or related matters, except within the context of formal, written ratings of candidates.

(2) With the ERB. Communications between the Board (or its individual Members) and the ERB (or its individual members) shall be limited to those communications clearly necessary to the ERB's function of carrying out the SES merit staffing process, and to the Board's oversight function. Under no circumstances shall there be any communication between the ERB and the Board pertaining to the qualifications, experience, or desirability of any

candidate(s), or related matters, except within the context of formal, written recommendations on candidates or a formal, written certification of most-qualified candidates.

(3) With other CSB employees. The Board and its individual Members shall not communicate in any manner with any other CSB employees involved in the SES merit staffing process regarding the qualifications, experience, or desirability of any candidate(s), except as expressly permitted by this Order.

b. **Evaluation and review of applications.**

(1) Prior to beginning its selection process, the Board will develop an evaluation formula by which to rate the candidates for selection. This formula should provide for taking into account the results of: the Board's review of applications, score sheets, and ERB interview results; the Board interview with the candidate; the results of the reference checks conducted by the ERB (see subsection d., below); and, if desired by the Board, the results of an employee panel interview with the candidate. The evaluation formula may be either quantitative or qualitative, as long as it allows for the objective and fair selection of a candidate to fill the position. The evaluation formula should be in writing and approved by notation item. The CSB's administrative support staff and outside personnel consultant will, in accordance with Board instructions, develop an application score sheet to record Board Members' evaluations of each candidate.

(2) Each Board Member will review, according to the evaluation formula, the application packages, all score sheets (preliminary rating panel and ERB), and ERB interview results of the candidates certified as best qualified by the ERB. Each Board Member will record his or her evaluations on a separate application score sheet for each candidate.

c. **Board Member interviews.**

(1) The Board will invite for interviews each of the candidates certified as best qualified by the ERB. If the Board does not wish to interview all of the best qualified candidates, it may select, by notation item, a lesser number of best qualified candidates to be invited for interviews. All candidates who are invited for a Board interview shall be asked to provide a list of references to the ERB, in accordance with subsection d., below.

(2) Prior to conducting the interviews, each Board Member will develop a set of standard interview questions. Each Board Member's questions may be different from the other Board Members', but each Board Member must use the same set of questions for each candidate he or she interviews. The questions should relate to the executive and technical qualifications for the position.

(3) Based on the interview questions developed by the Board Members, the CSB administrative support staff and the CSB personnel consultant will create score sheets for each Board Member to use in evaluating candidates' interview performance.

(4) Each Board Member will meet individually with each candidate, conducting the interview with his or her respective set of standard questions. During the interviews, Board Members should take notes of responses and impressions they wish to highlight on their score sheets. At a Board Member's request, a CSB administrative support or Board staff member may sit in on the interviews to take more extensive notes of candidates' complete responses.

(5) After each interview, Board Members should review their interview notes and complete, based on those notes, a score sheet for the candidate. All score sheets from Board Member interviews should be turned over to the CSB administrative support staff. The support staff will compile all the score sheets and provide each Board Member with a complete package of score sheets (i.e.: each Board Member will receive the sheets from the other Board Members' interviews, in addition to the sheets from his or her own interviews). The Board's interview score sheets, along with the score sheets prepared by the PRP and ERB, the ERB interview results, the reference check results, and the employee panel recommendation (if sought), will be used by the Board to make its final selection of a candidate to fill the position (see subsection f., below).

d. **Reference checks.** The candidates invited for interviews by the Board shall each be required to submit four references to the ERB. The references should include a candidate's immediate supervisor in his or her most recent position. After the Board Member interviews have been completed, the members of the ERB shall attempt to contact every reference. The ERB should develop a means for consistently checking and recording the comments of each candidate's references. After the reference checks are completed, the Chair of the ERB shall forward the results to the Chairperson of the Board for distribution to each Board member for use in the Board evaluation process.

e. **Employee panel interviews.**

(1) The Chairperson may require that each candidate who is invited for an interview by the Board also be interviewed by a panel of CSB employees.

(2) Each Board Member may select one CSB employee to sit on the employee interview panel. Board Members should attempt to achieve a mix of supervisory and non-supervisory employees in their selections. Selection is informal and does not require a vote. The Chairperson may delegate to the ERB the selection of panel members or may direct the ERB to select a certain number (determined by the Chairperson) of panel members in addition to

those selected by the Board Members. The Chairperson may also direct the Chair of the ERB to coordinate, as a non-interviewer, the employee panel interview process.

(3) The employees selected for the interview panel will meet in advance of the interview to develop a list of questions for the candidates. The employees shall create a set of standard questions that will be asked of all candidates. The questions should focus on areas of interest to both supervisory and non-supervisory employees, such as the candidates' general management philosophy and style, approach to interacting with supervisors, and plans for particular CSB offices.

(4) The employee panel will interview each candidate separately. During the interview, panel members may, if they wish, take notes of their impressions and the candidate's responses to questions. Panel members' recommendations on the candidates will be recorded on score sheets, which will be based on the agreed upon list of questions.

(5) Employee panel members will choose from among three recommendation categories for each candidate – "Highly Recommend," "Qualified," or "Do Not Recommend." After interviewing each candidate, each employee panel member should separately record his or her recommendation on the score sheet, which will be provided. After all panel interviews are complete, the panel interview score sheets for all candidates should be forwarded to the Chairperson of the Board for distribution to all Board Members.

(6) Except where disclosure is permitted by this Order, or otherwise required by law, candidates' responses to employee panel questions and panel members' evaluations of those responses are strictly confidential. Panel members shall not discuss with or otherwise reveal to each other, other CSB employees, or any person or entity outside the CSB, the candidates' responses, or their (the panel members') recorded or personal evaluations and impressions of those responses. Panel members shall not communicate to Board Members about these matters, except by way of the panel interview score sheet. Board Members shall not discuss or reveal any contents of the employee panel interview process (either candidates' responses or panel members' evaluations of those responses), except among themselves (the Board Members).

f. **Final selection.**

(1) The Board will make an independent determination of which one of the best qualified candidates should be selected to fill the position and recommended to OPM for an SES appointment. This determination shall take into account the results of: each Board Member's review of the application packages and PRP and ERB score sheets, the results of the ERB interviews, the results of the Board's interview(s), the results of the reference checks, and the results of

the employee panel interview(s), in the context of the evaluation formula developed by the Board.

(2) After reviewing the materials described in paragraph (1), above, any Board Member may propose a candidate for selection to fill the position. To make such a proposal, a Board Member should ask the Office of General Counsel to draft a notation item, which sets forth the name of the candidate proposed for selection and a brief recitation of that candidate's qualifications. The notation item will then be circulated and voted on in accordance with the procedures of Board Order 001. The proposed candidate is selected to fill the position when a majority of participating Board Members return the notation item with affirmative votes. If the proposed candidate is not selected, the proposing Board Member may resubmit the candidate's name, or any Board Member may propose a different candidate. This process continues until a proposed candidate has received the affirmative votes of a majority of Board Members.

(3) If the Board Members find that none of the best qualified candidates warrant proposal for selection to fill the position, the Board may direct the ERB to reopen the vacancy announcement and solicit additional applications. Such direction to the ERB shall be by notation item. New applications shall be evaluated through the staffing process described in this Order. In the event the vacancy announcement is reopened, new applications shall not be accepted from individuals who applied during the first round, nor shall applications received and evaluated during the first round be reevaluated.

19. **SUITABILITY INVESTIGATION.** The candidate selected to fill the SES position shall be required to submit to a suitability investigation. The selected candidate's final appointment is subject to and contingent upon a positive determination of suitability. The purpose of the investigation is to ascertain whether the selectee's character or conduct may have an adverse impact on the integrity or efficiency of the Federal service. As soon as possible after the Board has selected a candidate to fill the position, the Chair of the ERB shall initiate the suitability investigation and determination process, coordinating with OPM as necessary.

20. **CERTIFICATION AND SUBMISSION TO OPM.** After the Board selects a candidate to fill the SES position, several additional steps must be taken to complete the staffing process. These steps, described below, consist of completing two different certifications and submitting the selected candidate's package to OPM.

a. **Certification of executive and technical qualifications.** The Board must certify in writing the executive and technical qualifications of the candidate selected to fill the SES position.

b. **Certification of merit staffing compliance.** The ERB and the Board must certify in writing that all appropriate merit staffing procedures were followed in selecting the candidate to fill the SES position.

c. **Submission to OPM.** The selected candidate's application package must be submitted to OPM for presentation to a Qualifications Review Board (QRB). The QRB certifies that the candidate selected by the CSB possesses the necessary executive qualifications to qualify for a SES appointment. The CSB's selection of a candidate is not final until a QRB has approved that candidate's executive qualifications.

21. **RECORDKEEPING.**

a. In all phases of the SES staffing process, such records shall be kept as are necessary to adequately document the basis of qualifications, rating, and ranking determinations.

b. The CSB must retain for two years such documentation of the SES staffing process as OPM prescribes, to permit the reconstruction of merit staffing actions. Those records shall be maintained by the Board or its designee, who shall not be the individual whose hiring process the records pertain to.

U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

October 24, 2001

Revised, January 31, 2002

Revised, March 14, 2002

Revised, April 3, 2002

Revised, April 24, 2002

U.S. Chemical Safety and Hazard Investigation Board

Hon. Rafael Moure-Eraso
Chairperson

Hon. Mark Griffon
Board Member

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July 15, 2014

Honorable Arthur Elkins
Inspector General
U.S. Environmental Protection Agency
Washington, DC 20460

Dear Mr. Elkins:

This replies to your July 8, 2014, letter concerning "Missing and Deficient Documents." We have now forwarded to your staff all requested documents as specified in your letters of July 8, 2014, May 8, 2013, July 22, 2013, and as described in your letter of September 5, 2013. All documents have been produced in unredacted form.

These documents were produced based on a search of both CSB and personal e-mail accounts of the individuals from whom the documents were requested.

In addition, we updated our search to make it current as of July 14, 2014. This search revealed two more e-mail exchanges conducted on personal accounts, both of which occurred on December 17, 2013. It appears that at least one exchange involved use of both CSB and personal e-mail accounts at the same time, and another involved use of only personal accounts. It is my understanding that there may have been CSB server and/or other computer/communications issues at the time.

Accordingly, I believe that all documents requested by your office covering the period January 1, 2012 through the present have been fulfilled.

The CSB's Chief Information Officer was responsible for conducting and overseeing these searches, and based on his assurances, and to the best of my knowledge and belief, the documents provided to your Office satisfy all outstanding requests concerning this matter.

If you should have additional questions, please feel free to contact me.

Sincerely,

Rafael Moure-Eraso
Chairperson

U.S. Chemical Safety and Hazard Investigation Board

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Manuel H. Ehrlich, Jr.
Board Member

March 26, 2015

Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Re: Follow-Up Questions Related to the March 4, 2015 Hearing: "Rebuilding the Chemical Safety Board: Finding a Solution the the CSB's Governance and Management Challenges"

Dear Mr. Chairman:

Enclosed are responses to the post-hearing questions submitted by Congressman Gary Palmer that are contained in your March 12, 2015 letter to me.

1. When did you first learn of the motion you offered on January 28th. Prior to confirmation? Prior to assuming your seat on the board?

I was appointed to the Board by the President on December 22, 2014. Based on my observations during the first few weeks of my tenure, I questioned many of the inefficient management practices I saw. This was especially true for someone who had spent over 50 years in industry, much of that time in executive leadership positions.

I had no discussions concerning this issue prior to my confirmation or appointment to the Board.

2. Were you asked by anyone to submit the motion under your name?

I was not asked to submit the motion as a proxy for anyone. In reviewing board orders, I observed that many appeared to be designed to create a bureaucratic juggernaut -- exactly the opposite of my private sector experience.

3. *When did you first decide to offer the motion that was considered at the January 28th Chemical Safety Board meeting?*

I made the decision to offer the motion between the time of my first board meeting on January 15, 2015, and the time of the my second board meeting on January 28, 2015.

U.S. Chemical Safety and Hazard Investigation Board

4. ***Did you discuss the motion with CSB staff prior to being nominated or prior to assuming your seat on the board?***

No.

5. Were you asked by anyone to submit the motion under your name?

See answer to question 2.

Thank you for the opportunity to reply to your questions.

Sincerely,

Manuel H. Ehrlich, Jr.
Board Member

U.S. Chemical Safety and Hazard Investigation Board

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Mark Griffon
Board Member

March 26, 2015

The Honorable Jason Chaffetz, Chairman
House of Representatives Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Chaffetz:

Thank you for the additional question in follow-up to the House of Representatives Committee on Oversight and Government Reform March 4, 2015 hearing titled, "Rebuilding the Chemical Safety Board: Finding a Solution to the CSB's Governance and Management Challenges". Attached is my response to Representative Gary Palmer's question.

Sincerely,

Mark A. Griffon

cc: The Honorable Elijah Cummings, Ranking Member

U.S. Chemical Safety and Hazard Investigation Board

Question from Representative Gary Palmer (AL-06)

March 4, 2015 Hearing: "Rebuilding the Chemical Safety Board: Finding a Solution to the CSB's Governance and Management Challenges."

1. When did you first learn of the motion that was considered at the January 28th Chemical Safety Board meeting?

I first learned of the motion when Board Member Ehrlich made it at the end of the public meeting late in the evening on January 28, 2015 in Richmond, California. This meeting was called to consider the final report for the Chevron refinery investigation. After the Chevron investigation report was presented and voted on by the Board, Member Ehrlich began to summarize a multiple part motion that included fundamentally modifying the governance of the agency, dissolving 18 Board Orders, establishing a new Board Order for scoping investigations, modifying Board Order 22 on the Recommendations Program, and cancelling three investigations. After reading a summary of the motion, Member Ehrlich gave me a copy of the entire motion. This was the first I learned of the motion. Further, the Federal Register notice for the January 28, 2015 meeting did not mention that these issues, including cancelling three investigations, would be on the agenda.

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