

STAFF REPORT



**WHISTLEBLOWER REPRISAL AND MANAGEMENT FAILURES
AT THE U.S. CHEMICAL SAFETY BOARD**

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I. Executive Summary

The U.S. Chemical Safety and Hazard Investigation Board (CSB) is an independent agency charged with investigating chemical accidents. In the fall of 2012, the EPA Inspector General began investigating allegations that CSB General Counsel Richard Loeb learned the identities of several CSB whistleblowers who filed complaints with the U.S. Office of Special Counsel (OSC). The whistleblowers—all of whom worked in the Office of General Counsel—had been exposed to retaliation by virtue of the leak. In fact, because of the likelihood that managers may retaliate against whistleblowers who file complaints with OSC, federal law requires OSC to protect the identities of complainants.

In light of the seriousness of the allegations against Loeb, and the OSC employee who leaked information to him, it was imperative that Loeb and CSB Chairman Dr. Rafael Moure-Eraso fully cooperated with the IG's investigation. They did not. Instead, Loeb—with Moure-Eraso's consent—refused to provide key documents to the Inspector General, citing attorney-client privilege. The EPA IG discovered that CSB leadership used personal e-mail accounts to conduct official business to avoid scrutiny from investigators. Loeb's novel—and mistaken—application of attorney-client privilege to documents that may have implicated him in the leak, and his and his colleagues' use of personal e-mail accounts to avoid scrutiny, caused the IG to eventually bring the matter to the attention of Congress.

On September 5, 2013, EPA Inspector General Arthur A. Elkins, Jr. sent a “seven-day letter” to Congress regarding CSB's refusal to cooperate with his leak investigation. Section 5(d) of the Inspector General Act, as amended, requires IGs to report immediately to the agency head whenever the IG becomes aware of “particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs or operations.”¹ Reports made pursuant to Section 5(d) of the IG Act are commonly referred to as “seven-day letters.”² Because IGs typically reserve the use of a seven-day letter for only the most urgent matters, Congress—and the House Committee on Oversight and Government Reform specifically—takes these matters very seriously.

In response to the seven-day letter, the Committee sought more information regarding CSB's unwillingness to cooperate with the EPA IG's leak investigation. According to the EPA IG, the documents that are being withheld would reveal how Loeb came to know the identities of the CSB whistleblowers. Loeb, in turn, claimed that the documents he is withholding are protected by attorney-client privilege. He argued that if CSB turns over these documents to the IG, CSB would waive the attorney-client privilege with regard to the documents, thereby allowing third-party complainants to obtain the documents in litigation. This position is, unsurprisingly, not supported by case law, and is contrary to the clear and unambiguous language of the Inspector General Act of 1978, which guarantees that all IGs have complete and unfettered access to any documents and information relevant to any audit or investigation. Loeb's and More-Eraso's posture towards the IG investigation created the appearance that CSB leadership

¹ Inspector General Act of 1978, as amended, Pub. L. 110-409 [hereinafter IG Act].

² *Id.*

was attempting to cover up the leak. At the very least, their position with respect to the documents being sought by the IG indicated that they feared a lawsuit from the whistleblowers whose identities had been revealed. At the very least, this was a red flag that CSB was suffering from mismanagement.

Once the Committee began its investigation of the seven-day letter allegations, it became clear there were in fact serious management deficiencies at the CSB. The Committee conducted ten transcribed interviews of current and former CSB employees, received several briefings, and reviewed several hundred documents produced by the EPA OIG, the OSC, and the CSB. To date, it is unclear whether CSB has provided the Committee with a complete production of relevant documents, given its lack of full cooperation with the Committee's investigation. The deficiencies uncovered during the course of the investigation and outlined in this report led the Committee to conclude that CSB is failing to fulfill its mission under Chairman Moure-Eraso's leadership.

Dr. Rafael Moure-Eraso was nominated to the CSB by President Obama in March 2010 and confirmed by the Senate in June 2010. Chairman Moure-Eraso's term will expire in 2015 as CSB Board Members serve fixed terms of five years. Since Dr. Moure-Eraso took over as Chairman in June 2010, at least nine employees—investigators and attorneys—have left the agency, which has approximately 40 employees in total. Current and former CSB employees informed the Committee that under Moure-Eraso's "bullying" and "abusive" leadership, the current work environment is "toxic." Employees fear retaliation for any action perceived as questioning the chairman or assisting other Board Members. Many employees believe they have faced retaliation, including being stripped of their responsibilities.

In February 2011, Chairman Moure-Eraso—without Board approval—unilaterally hired Richard Loeb to a newly created position, Counsel to the Chairman of the Board. The manner in which Moure-Eraso hired Loeb, as well as his treatment of then-General Counsel Chris Warner—discussed in detail in Sections VIII and IX—foreshadowed Moure-Eraso's contempt for both his fellow Board members and for opinions that differed from his own.

The attrition of experienced investigators has stalled major investigations involving fatalities for years. For example, in April 2010, a fire and explosion at a Tesoro refinery in Anacortes, Washington killed seven people. Then-CSB investigator Rob Hall traveled to the site, began investigating, and completed a draft report on the causes of the incident. When he left CSB in March 2011 because of the toxic work environment, the CSB restarted the investigation from square one. Apparently, there was no one at CSB who could pick up where Hall left off. Waste, redundancy, and lack of continuity are telltale signs of mismanagement. Now, four years later, the Tesoro investigation is finally closed. On May 1, 2014, CSB released the final report on the Tesoro tragedy.

The delay in the issuance of a final report on Tesoro is directly related to the lack of collegiality among Board members. The CSB is made up of five board members. Presently, the Board has only two members, with Moure-Eraso serving as Chairman. The other member is Mark Griffon. The three remaining seats are vacant. Dr. Beth Rosenberg resigned from the

Board on May 31, 2014, after serving just over a year. Upon her departure, Dr. Rosenberg told *Bloomberg BNA*:

I feel I can do more good from outside the agency than within it . . . [a]s a board member, I expected the opportunities to influence the workings and priorities of the agency to be greater than they were. The ill-defined role of board members in relation to the chair, as well as in relation to the staff, made it difficult to have any meaningful influence. . . . I'm looking forward to going back to an academic environment where open debate is valued.³

In line with Dr. Rosenberg's sentiment, current and former CSB employees made it clear to Committee investigators that Moure-Eraso's heavy-handed tactics have led to the deterioration of collegiality among CSB Board Members.

Apart from witness testimony received by the Committee, press reports relating again to the Tesoro investigation show the contentious nature of the situation among the Board Members. The Board was scheduled to vote on the final report on January 30, 2014, but Chairman Moure-Eraso and CSB Managing Director Daniel Horowitz unilaterally decided to postpone the vote, choosing instead to hold a "listening session." Both Congressman Rick Larsen (WA-02) and U.S. Senator Patty Murray (WA) were critical of the delay.

Additional factors in the CSB's failure to fulfill its mission were the financial and personnel costs of the Deepwater Horizon investigation. After initially determining that CSB did not have the expertise to investigate the explosion and resulting oil spill that occurred in the Gulf of Mexico in April 2010, CSB leadership initiated an investigation in response to a request from then-House Energy and Commerce Committee Chairman Henry Waxman. Now, four years later, the CSB released just two volumes of its anticipated four volume series on May 1, 2014. The agency has spent millions on outside experts, expenses related to litigation with the company that owned the oil rig, and personnel resources. Yet, inexplicably, the investigation continues.

The Committee's investigation found that the toxic work environment created by Chairman Moure-Eraso caused attrition, which in turn set back CSB's investigations of various chemical accidents across the country. CSB's inability to issue timely recommendations in the wake of often-deadly chemical accidents puts public safety at risk. Former CSB Board Members and staff testified that the toxic work environment arose shortly after Dr. Rafael Moure-Eraso became the Chairman. As Chairman, Moure-Eraso rarely interacted with CSB staff or fellow Board members. And when he did, he was dismissive and disrespectful causing the previously collegial atmosphere at the agency—which had been a key to the Board's effectiveness since its inception—to deteriorate.

Chairman Moure-Eraso acted primarily through Managing Director Daniel Horowitz and General Counsel Richard Loeb. The three worked closely to enforce their own collective view

³ Robert Iafolla, *CSB Member Resigns in Frustration: Chair Expects Vacancies to Be Filled Soon*, *Bloomberg BNA*, (May 27, 2014).

of how the CSB should operate, often in spite of the relevant statutes, regulations, and Board orders governing the CSB. For example, in 2000, the U.S. Department of Justice Office of Legal Counsel (OLC) issued the “Moss Opinion,” which effectively dictated that when the agenda of the Chairman is at odds with the agenda of the Board, the Board’s decisions control. The CSB subsequently passed what became known as “Board Order 28,” which resolved that Board Members are entitled to a say in substantive policy decisions and certain administrative functions. Board Order 28 effectively resolved that the Chairman cannot exceed his or her intended role as “chief among equals.” According to witnesses—and their own testimony—Moure-Eraso, Horowitz, and Loeb applied Board Order 28 and others selectively and relegated the Board’s role to merely approving investigative reports. In fact, during his transcribed interview with the Committee, Loeb questioned the validity of many Board Orders.

The mission of CSB is to investigate chemical accidents, make recommendations to prevent future accidents, and ensure that its recommendations are implemented. Moure-Eraso’s leadership style—which includes an utter disregard for the collegial tradition of the Board—drove away all the experienced investigators, effectively rendering the CSB unable to issue any recommendations and fulfill its mission. Therefore, it is imperative that a change in leadership take place to allow this struggling agency to regain focus on safety issues and provide necessary guidance to industry.

II. Table of Names

Chemical Safety Board

Rafael Moure-Eraso

Chairman, Chemical Safety Board

Dr. Rafael Moure-Eraso was nominated to the CSB by President Obama in March 2010 and confirmed by the Senate in June 2010. Prior to his appointment to the CSB, Dr. 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 a member of the faculty for 22 years and Chair of the department for the last five years. He has been a Certified Industrial Hygienist for Comprehensive Practice (CIH) since 1985. Prior to joining the University, 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). 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).

The CSB has declined under Chairman Moure-Eraso's leadership. During his tenure as Chairman, the Board has experienced a marked slowdown in the release of accident reports. Chairman Moure-Eraso's term will expire in 2015 as CSB Board Members serve fixed terms of five years.

Daniel Horowitz

Managing Director, Chemical Safety Board

As Managing Director of the Chemical Safety Board, Daniel Horowitz oversees agency staff involved with investigations, recommendations, public affairs, incident selection, and screening. Prior to being named Managing Director of CSB he served as CSB's Director of Congressional, Public and Board Affairs and as a Special Assistant to the Board. Prior to joining CSB, Horowitz was a research scientist at Metabolix from 1995-2000, and served as an American Chemical Society Congressional Fellow from 1994-1995.

Dr. Horowitz, along with Dr. Moure-Eraso and Mr. Loeb, has micromanaged the agency's investigations.

Richard Loeb

General Counsel, Chemical Safety Board

Richard Loeb was originally hired by Chairman Moure-Eraso to be the Chairman's counsel in March 2011, but soon replaced Christopher Warner as General Counsel in October 2012. Prior to joining CSB, Loeb served as the Executive Director of the Occupational Safety and Health Review Commission from 2005-2011, and Executive Secretary and Counsel in the Executive Office of the President, Office of Management and Budget from 1987-2005.

The Board attempted to block Loeb's initial hiring at CSB in February 2011 via a Board order, to which Moure-Eraso objected.

Christopher Warner

Senior Adviser to the Chairman, Chemical Safety Board

Christopher Warner previously served as the agency's General Counsel under multiple chairpersons. Dr. Moure-Eraso attempted to fire Mr. Warner unilaterally, and after the Board blocked him, Moure-Eraso later demoted him. Warner retired from the CSB in May 2014.

John Vorderbrueggen

Former Investigation Supervisor, Chemical Safety Board

During his tenure as an investigation supervisor at the CSB, John Vorderbrueggen oversaw investigations into a number of high-profile industrial accidents. Mr. Vorderbrueggen left CSB for a position at another safety agency because he believed that Dr. Moure-Eraso, Dr. Horowitz, and Mr. Loeb were micromanaging his investigations.

Rob Hall

Former Investigator, Chemical Safety Board

During his time with the agency, Hall investigated several high-profile industrial accidents, including the Tesoro refinery explosion in Anacortes, Washington. Mr. Hall left the agency in 2011, also citing a toxic work environment during Dr. Moure-Eraso's tenure as Chairman.

Jeff Wanko

Former Investigator, Chemical Safety Board

Jeff Wanko rose to be an unofficial supervisor due to agency attrition under Dr. Moure-Eraso's tenure. Mr. Wanko left the agency in 2011 for a position with OSHA, citing the toxic work environment created by Dr. Moure-Eraso and Dr. Horowitz.

Employee A, Employee N, and Former Board Member X

Two CSB employees and one former Board Member requested to remain anonymous because they fear retaliation from the Chairman and his closest advisors, Richard Loeb and Daniel Horowitz. These three individuals will be referred to as Employee A, Employee N, and Former Board Member X.

III. Findings

- The CSB has failed to cooperate with the EPA Inspector General’s investigation.
- Moure-Eraso and Horowitz created a toxic work environment that resulted in the departure of at least nine experienced employees from the CSB. Because experienced employees left CSB, investigations dragged on for years.
- Moure-Eraso and Horowitz have mismanaged investigations to the detriment of public safety in certain industries. This gross mismanagement resulted in the waste of taxpayer dollars.
- The broken relationship between Chairman Moure-Eraso and the other Board Members has delayed the release of important investigative reports.
- Current and former CSB employees agree that Chairman Moure-Eraso retaliated against whistleblowers. As a result, all employees fear retaliation at the hands of the Chairman.
- Chairman Moure-Eraso’s disregard for the proper Board governance processes caused CSB employees and fellow Board Members consternation, leading to an unproductive work environment.

IV. Background on the Chemical Safety Board

The Chemical Safety and Hazard Investigation Board is an independent agency charged with investigating chemical safety accidents.⁴ The CSB was authorized under the Clean Air Act Amendments of 1990, and it became operational in January 1998.⁵ Congress did not intend CSB to be a regulatory agency, but instead to serve as the Federal Government's chemical safety expert. Essentially, Congress created CSB to provide input and recommendations to stakeholders and to investigate accidents involving hazardous chemicals. The Senate Report that accompanied the Clean Air Act amendments stated:

The Board is not a regulatory agency, but is to function as a source of expertise at the center of the chemical accident prevention and response programs of the Federal Government. It will investigate serious accidents and handling of extremely hazardous substances and will make recommendations with respect to accident prevention measures which may be promulgated by the agencies with regulatory authority. The Board may also serve as a point of communication among the various Federal agencies to improve the effectiveness of accident prevention programs and reduce the burden of duplicative requirements on regulated entities.⁶

The Senate stressed that the purpose of the CSB was “to investigate accidents to determine the conditions and circumstances which led up to the event and to identify the cause and or causes so that similar events might be prevented.”⁷

To fulfill its mission, the CSB provides recommendations and issues investigative reports. These reports are fundamental to the CSB's mission. Congress expects the CSB to issue these reports in a timely manner. The Senate Report accompanying the legislation that created the CSB stated:

The Board is required to issue a report on each investigation it conducts which will describe the event and identify the cause or probable cause. **These reports are a statement of the Board (not staff) and are to be issued on a majority vote of the Board and should be issued in a timely manner, usually within 6 months of the accident unless a prolonged investigation of contributing causes is necessary.**⁸

⁴ U.S. Chemical Safety & Hazard Investigation Board (CSB), Mission, <http://www.csb.gov/about-the-csb/mission/> (last visited May 2, 2014).

⁵ *Id.*

⁶ S. REP. NO. 101-228, at 207-208 (Dec. 20, 1989).

⁷ *Id.*

⁸ *Id.*

In March 2010, President Obama nominated Rafael Moure-Eraso to be Chairman of the CSB, and the Senate confirmed his nomination in June 2010.⁹ Prior to his nomination, Moure-Eraso spent 22 years as a professor at the University of Massachusetts Lowell. Moure-Eraso also served for 15 years as an Industrial Hygienist Engineer with two international unions, the Oil, Chemical and Atomic Workers Union and the United Automobile Workers.

V. Background on the Committee’s Investigation of CSB

Section 5(d) of the Inspector General Act, as amended, requires IGs to report immediately to the agency head whenever the IG becomes aware of “particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs or operations.”¹⁰ The agency head, in turn, is to transmit the IG’s report, with the agency head’s comments, to the appropriate congressional committees within seven calendar days. Reports made pursuant to Section 5(d) of the IG Act are commonly referred to as “seven-day letters.”¹¹ Because IGs typically reserve the use of a seven-day letter for only the most urgent matters, Congress—and the House Committee on Oversight and Government Reform specifically—takes these matters very seriously.

On September 5, 2013, EPA Inspector General Arthur A. Elkins, Jr. sent a seven-day letter to Congress. Elkins raised concerns about the CSB’s cooperation with the EPA OIG’s ongoing investigation into whether an OSC employee improperly revealed the names of several CSB whistleblowers to CSB’s general counsel.

If true, because agency management had become aware of their identities, whistleblowers had become exposed to reprisal. The seven-day letter and a subsequent briefing by the EPA OIG’s office caused the Committee to initiate its own investigation into the disclosure of the identity of agency whistleblowers and related document access issues. Over the course of the investigation, documents and testimony obtained by the Committee showed serious management deficiencies at CSB. The sections below will set forth the relevant history of the CSB in order to give context to the Committee’s investigation.

A. CSB Leadership Mishandled the Revelation of the Identity of an Office of Special Counsel Whistleblower

On September 5, 2013, EPA IG Arthur A. Elkins Jr. transmitted a seven-day letter to Chairman Moure-Eraso.¹² Elkins drafted a seven-day letter because of CSB’s “refusal to provide records to the Office of Inspector General.”¹³ The OIG had been seeking documents related to

⁹ CSB, About the CSB, Chairman Rafael Moure-Eraso, <http://www.csb.gov/about-the-csb/chairman-rafael-moure-eraso/> (last visited May 1, 2014).

¹⁰ Inspector General Act of 1978, as amended, Pub. L. 110-409 [hereinafter IG Act].

¹¹ *Id.*

¹² Letter from Hon. Arthur A. Elkins Jr., Inspector General, EPA, to Hon. Rafael Moure-Eraso, Chairman, CSB (Sept. 5, 2013) [hereinafter Elkins Letter, Sept. 5, 2013].

¹³ *Id.*

its investigation of certain CSB operations for at least three months. In fact, the EPA OIG was investigating an allegation that someone had leaked the identity of a CSB employee, who was communicating with OSC, to CSB management. Disclosure of the identity of an OSC complainant or whistleblower violates federal law.¹⁴ CSB refused to provide the requested documents to the OIG, citing attorney-client privilege.¹⁵ The EPA IG subsequently transmitted the seven-day letter to Congress pursuant to Section 5(d) of the IG Act.

1. EPA OIG's Investigation of the Unlawful Disclosure of a Whistleblower's Identity

On September 18, 2013, the EPA OIG briefed Committee staff on several issues related to the CSB. According to OIG staff, OIG received an anonymous statement that prompted the leak investigation. In this anonymous statement, dated September 24, 2012, a CSB employee described a conversation that occurred during a meeting between Richard Loeb, CSB General Counsel, Chairman Moure-Eraso, and possibly two other individuals.¹⁶ The anonymous CSB employee stated:

Mr. Loeb also reported that [a senior OSC attorney] provided him with numerous details about complaints filed at OSC against Chairman Moure Eraso. According to Mr. Loeb, [the senior OSC attorney] told him that virtually the entire CSB Office of General Counsel (OGC) had filed complaints. Mr. Loeb elaborated that the filers were all of the attorneys in OGC, except for [CSB attorney]. According to Mr. Loeb, [the senior OSC attorney] also told him about the contents of the OSC complaints filed by the OGC attorneys. . . . Mr. Loeb also said that [the senior OSC attorney] had told him not to 'lose any sleep over' the CSB complaints to OSC, because they are just going to sit and the investigation of them isn't going anywhere soon. According to Mr. Loeb, [the senior OSC attorney] told him that [the OSC investigator assigned to evaluate the complaints] had been given a lot of other work to keep him busy.¹⁷

The allegations—that Loeb became aware of the identities of CSB whistleblowers and that this senior OSC attorney advised Loeb that OSC was not taking any meaningful action—prompted the EPA OIG to investigate an apparent violation of OSC's statutory obligation to maintain whistleblower confidentiality.

Allegations of such cavalier treatment of whistleblower identities required further examination by the Committee. Loeb testified that no one at OSC revealed the identities of OSC complainants to him. He stated:

¹⁴ 5 U.S.C. 1213(h) states, in pertinent part: "The identity of any individual who makes a disclosure described in subsection (a) may not be disclosed by the Special Counsel without such individual's consent unless the Special Counsel determines that the disclosure of the individual's identity is necessary because of an imminent danger to public health or safety or imminent violation of any criminal law."

¹⁵ *Id.*

¹⁶ Statement by Anonymous Employee, CSB, to Office of Inspector Gen., EPA (Sept. 24, 2012).

¹⁷ *Id.*

Q. [D]id you ever have a conversation with anyone working at OSC where he or she told you the name of an OSC complainant?

A. No, no one from OSC, **no OSC employee has ever disclosed to me the names of the seven original complainants.** I don't want to say that no one has ever disclosed the names of the other three since they sent pieces of paper to me with their names on it, but no one has ever told me verbally or in any other manner, semaphore, any system, the names of the OSC complainants, except through the document request process that occurred sometime, I'm guessing, after October of 2012.¹⁸

2. CSB Leadership Fails to Cooperate with the EPA OIG's Investigation

FINDING: The CSB has failed to cooperate with the EPA Inspector General's investigation.

In the course of his investigation into the unlawful disclosure of the identities of CSB whistleblowers, EPA IG Elkins requested records and communications “in furtherance of an OIG law enforcement investigation.”¹⁹ CSB management refused to turn over a tranche of key documents, claiming they were privileged attorney-client communications. In a cover letter attached to the seven-day letter when the CSB provided it to Congress, Chairman Moure-Eraso defended that position. He stated:

The CSB believes that the IG is not entitled to CSB communications with its attorneys concerning a live dispute, which are covered by the attorney-client privilege.

* * *

There is also an additional problem presented by the IG's demands for communications protected by the attorney-client privilege, which is that if the CSB turns attorney-client privileged communications over to the IG, the CSB will likely lose the privilege vis-à-vis third party litigants including the allegedly aggrieved CSB staff members who are litigating against the CSB over the same subject matter.²⁰

The CSB's position, as highlighted above, is unprecedented. Executive Branch departments and agencies generally require employees to comply with ongoing OIG investigations. For example, an April memorandum from Interior Secretary Sally Jewell advised Interior Department

¹⁸ Transcribed Interview of Richard Loeb, at 18 (Jan. 27, 2014) [hereinafter Loeb Tr.].

¹⁹ Elkins Letter, Sept. 5, 2013.

²⁰ Letter from Raphael Moure-Eraso, Chairman, CSB, to Rep. Darrell Issa Chairman, H. Comm. on Oversight & Gov't Reform, et al. (Sept. 12, 2013).

employees to cooperate with OIG investigations, even with regards to information “that may be privileged, confidential or otherwise exempt from disclosure.”²¹

That the EPA IG has jurisdiction to investigate the CSB is undisputed. Annual appropriations bills include language that makes clear “the individual appointed to the position of Inspector General of the Environmental Protection Agency shall, by virtue of such appointment, also hold the position of Inspector General of the [Chemical Safety] Board.”²²

In her memo to Interior Department employees, Secretary Jewell cited the IG Act as the basis for her position that the IG was entitled to otherwise-privileged communications.²³ The language in the IG Act is clear and unambiguous. The IG Act states that inspectors have “access to all records, reports, audits, reviews, documents, papers, recommendations or other material available to the applicable establishments which relate to programs and operations with respect to which that Inspector General has responsibilities.”²⁴ There is no exception for the agency to withhold attorney-client communications or to cite any other common law privileges in withholding documents.

EPA IG Elkins correctly pointed out in his seven-day letter that allowing agencies to withhold information based on a claim of privilege “could effectively preclude OIGs from fulfilling the very watchdog mission that Congress provided for with this authority.”²⁵ Furthermore, Moure-Eraso’s claim that producing the documents in question to the IG would be considered a waiver of the attorney-client privilege is mistaken because a court would be unlikely to consider a disclosure to the IG to amount to a waiver of the privilege. The IG is technically part of the agency, and therefore any disclosure to the IG would not waive the privilege.

CSB’s top officials did not back off of their position, despite an effort to resolve the dispute internally. According to the OIG, CSB’s refusal to hand over the documents, requested as part of an OIG law enforcement investigation, “interferes with the ability of the OIG to carry out its statutory responsibilities.”²⁶ For this reason, the Committee took an interest in the dispute. It quickly became clear that the CSB—under the leadership of Raphael Moure-Eraso—is suffering from management deficiencies that undermine the purpose for which Congress created the Board.

²¹ Memorandum from Hon. Sally Jewell, Sec’y, U.S. Dep’t of the Interior, to Deputy Sec’y, et al., re: Cooperation with the Office of Inspector General (Apr. 25, 2013) [hereinafter Jewell Memorandum].

²² Pub. L. No. 112-74, 125, Stat. 786 (2011).

²³ Jewell Memorandum.

²⁴ IG Act.

²⁵ Elkins Letter, Sept. 5, 2013.

²⁶ *Id.*

VI. The Committee’s Investigation Uncovers Management Deficiencies at the Board

FINDING: Moure-Eraso and Horowitz created a toxic work environment that resulted in the departure of at least nine experienced employees from the CSB. Because experienced employees left CSB, investigations dragged on for years.

Congress created the CSB to “investigate accidents to determine the conditions and circumstances which led up to the event and to identify the cause and or causes so that similar events might be prevented.”²⁷ Given the critical importance of this mission, weaknesses at the CSB negatively affect public safety. Unfortunately, the leadership of Chairman Moure-Eraso and his top managers is diminishing the CSB’s effectiveness.

A. The Quality of CSB Investigations Has Suffered Under Moure-Eraso’s Leadership

The quality and pace of CSB investigations and related reports have deteriorated under Chairman Moure-Eraso. Specifically, Moure-Eraso’s mismanagement is causing investigations to take longer and cost more than they did under previous leadership. Jeff Wanko, a former CSB investigator who now works for the Occupational Safety and Health Administration, testified that the failure to release investigative reports undermines CSB’s mission. He stated:

Q. So the failure to get these reports out and to get the story out is basically the failing to fulfill the mission of the CSB?

A. Yes, absolutely, 100 percent.²⁸

The sluggish production of CSB reports and resulting increase in associated costs show how Moure-Eraso’s leadership has negatively affected the CSB’s overall mission and purpose.

1. Moure-Eraso and His Top Lieutenants Created a “Toxic” Work Environment

The CSB was established as an agency headed by a collegial body composed of five members, with a staff consisting of investigators, technical experts, and other advisors positioned to provide input to the Board Members. Before Moure-Eraso became Chairman, the Board functioned as intended.²⁹ There were open communications between staff, the Board, and the Chairmen at the CSB. The environment drastically changed under Moure-Eraso.

²⁷ S. REP. NO. 101-228, at 207-208 (Dec. 20, 1989).

²⁸ Transcribed Interview of Jeff Wanko, at 15 (Dec. 18, 2013) [hereinafter Wanko Tr.].

²⁹ Transcribed Interview of Former Board Member X, at 14 (Dec. 12, 2013) [hereinafter Former Board Member X Tr.].

According to witnesses interviewed by the Committee, Moure-Eraso alienated the agency's investigators by ignoring them. The witnesses testified that Chairman Moure-Eraso only communicates with General Counsel Richard Loeb and Managing Director Dr. Daniel Horowitz. Witnesses also testified that Moure-Eraso has only minimal, if any interaction with his fellow Board Members.

Former Board Member X told Committee investigators that Moure-Eraso's communication with his colleagues was poor. He/She said Board Members questioned the staff attrition at CSB, but Moure-Eraso never provided them with any information. Moure-Eraso ran the Board by communicating only with Loeb and Horowitz. Former Board Member X stated:

Q. And how would you characterize Chairman Moure-Eraso, based on your interactions with him?

A. He's kind of a dual personality in a way. He can be friendly on a one- one- basis if you're in an informal situation, but he can be very secretive in a business sense in terms of -- in my two and a half years with him, working in the office next door to him, he probably came into my office no more than five times to discuss something with me. So he'll come in, he'll close the door and he would interact with -- basically, with Dr. Horowitz and Richard Loeb and with -- and little or no interaction with the board members, which was very frustrating because you would wonder what was going on and you see people leaving because they're not happy with the management.³⁰

CSB employees raised questions about various aspects of the agency's investigations with management. According to witnesses, their questions were not well received. Management's reaction to questions from CSB employees led senior investigators to look for new jobs. According to Rob Hall, a former CSB investigator and now a director at National Transportation Safety Board (NTSB), several seasoned engineers left CSB during Moure-Eraso's chairmanship. The defection of this vast amount of institutional knowledge and memory made it difficult to complete investigations. Hall testified:

Q. And because of all the abuse and the toxic nature and the, just the totality of the circumstances, there [have] been quite a few [instances] of attrition is that fair to say?

A. Oh, yes.

Q. Okay.

A. There, in a couple of months, there was . . . well over 100 years of experience that walked out the door with myself, John

³⁰ Former Board Member X Tr. at 111-112 (Dec. 12, 2013) (emphasis added).

Vorderbrueggen and Jeffrey Wanko, and there are three senior investigators that walked out the door.³¹

Moure-Eraso also alienated career CSB employees in other ways. Rob Hall told Committee investigators that Moure-Eraso and managing director Daniel Horowitz inappropriately questioned the credentials of senior engineers. Hall testified:

- Q. Okay. And you said you left the CSB in March of 2011. **Why did you leave the CSB?**
- A. **The work atmosphere had become very toxic. There were a number of things that I was working on, as well as other investigators were working on, that became sidelined. There were what I considered inappropriate questioning of the credentials of the investigators through Dr. Horowitz and Dr. Moure-Eraso. The investigators internally were questioned as to their competence to do the job where they were putting faith in unfounded outside statements about certain accident investigations that just were not scientifically supportable.**³²

The management style and criticisms levied by Moure-Eraso and Horowitz ultimately led many CSB investigators to seek new employment.

2. CSB's Toxic Work Environment Caused an Exodus of Highly Skilled Investigators

Witnesses repeatedly told the Committee that Moure-Eraso created a dysfunctional and toxic work environment, leading to attrition of experienced engineers and investigators. Since Moure-Eraso took over the chairmanship of CSB, at least nine investigators and employees resigned or requested to be transferred from the Washington, D.C. office. The roster of 11 investigators in June 2010 dwindled to three by early 2013.³³ Those who departed during this time included two supervisors with more than 16 years of experience.³⁴

Employee A described the CSB as a “ghost town” because so many employees have left the agency for other jobs. He/She stated:

When Moure took over, we had a full three floors at the CSB coming up with activity. It's a ghost town now. People have left. People have transferred out to Denver. Several people work at home. A couple in Houston, one in New York, one in Boston. Like if I were to take you all

³¹ Transcribed Interview of Robert J. Hall, at 79-80 (Dec. 2, 2013) (emphasis added) [hereinafter Hall Tr.].

³² Hall Tr. at 8 (emphasis added).

³³ Memorandum from Mark Griffon, Board Member, CSB (January 2, 2013).

³⁴ *Id.*

back to our office right now, it's still a working hour, you would be lucky to see two or three people in the whole place.³⁵

The attrition at CSB began in 2011, shortly after Moure-Eraso took over as Chairman. Jeff Wanko, an engineer and former CSB investigator, testified:

Q. [T]he **most recent exodus being the folks that left in the first half of 2011**[?]

A. Right. Okay.

Q. [B]ecause that is when Rob Hall left, correct, and John?

A. John, me, [REDACTED], Jim . . . Yeah, us four [left the CSB].³⁶

Other employees followed. Experienced investigators left the CSB in droves. Current and former CSB employees stated that the Chairman's management style was the reason for the exodus of highly skilled employees. As a result, productivity plummeted. Investigations were restarted from scratch, and others languished for years. Employee A testified:

Q. **And why is it that the investigations take longer, or the reports take longer?**

A. **Mismanagement is one reason. I think Moure's style caused a lot of people to just leave the agency, and that has left many investigations languishing for years**, including Tesoro, which is a refinery accident in Washington that killed eight people; including an incident at Citgo in Houston involving the release of hydrofluoric acid, which is one of the most dangerous chemicals there is.

When investigators leave, then it is like a start-over. I don't know how many have been dropped since Moure started, but you can go down the list, and **I think by any measure the productivity is much worse.**³⁷

A number of former employees told Committee staff they left the CSB because of the toxic work environment under Chairman Moure-Eraso. John Vorderbrueggen, another former senior investigator at CSB and now a section chief again at NTSB, told the Committee that several "top notch" engineers left CSB because of the toxic work atmosphere created by Moure-Eraso. Specifically, he stated:

Q. **Have a lot of people left?**

³⁵ Transcribed Interview of Employee A, at 103 (Dec. 13, 2013) (emphasis added) [hereinafter Employee A Tr.].

³⁶ Wanko Tr. at 75.

³⁷ Employee A Tr. at 21-22.

- A. **Oh, absolutely.** And that's the sad thing. ...
- Q. So at one point CSB found it important to have people who had experience in the industry and that were engineers?
- A. Absolutely.
- Q. As investigators? They needed that experience?
- A. Absolutely. And if you look at the early reports, there was no understanding of the process of making products in an industrial application.
- Q. Do you feel -- well, let me ask you this: **Have a lot of these people left because of the work environment?**
- A. **Pretty much exclusively.**³⁸

Former CSB investigator Hall also told Committee investigators he was desperate to leave his job at the CSB. He was so desperate to leave that he took a pay cut and a demotion to find a new job. Hall also told Committee investigators it was his impression that his colleagues left the CSB for the same reasons. He stated:

- Q. **And you mentioned that there were several investigators that left. Was that due to the largely to the toxic work environment?**
- A. **That was primarily the toxic work environment. As for myself, it got to the point that I was unable to find another GS 15 position, so, at the time, I took a GS 14 position as a downgrade, cut in pay, just to get out of the CSB.**³⁹
- Q. So, John Vorderbrueggen [also] left the CSB. Are you -- do you know why he left?
- A. For the same reasons I left. **It became a toxic work environment, which is also why Jeffrey Wanko left, [REDACTED] left. We had a number of people that -- that all left at the same time or roughly the same time.**⁴⁰

³⁸ Transcribed Interview of John Vorderbrueggen, at 83-85 (Jan. 8, 2014) (emphasis added) [hereinafter Vorderbrueggen Tr.].

³⁹ Hall Tr. at 25 (emphasis added).

⁴⁰ *Id.* at 21 (emphasis added).

Along with the investigators, CSB attorneys also left because of the untenable work environment. According to Hall, an advisor attorney, left after he observed the manner in which senior CSB officials treated his colleagues. Hall testified:

A. [REDACTED], who was an advisor attorney. Those were part of his [Chris Warner's] staff. [REDACTED] **eventually left the CSB, as well.**

Q. And in your opinion --

A. Some 2 years after I left, so but he **eventually got so bad that he had to get out of there.**⁴¹

The loss of this much institutional knowledge crippled CSB's viability, putting its mission in jeopardy. Former Board Member X testified about the effects of attrition:

And as a result . . . what we talked about is people were leaving, people did leave. And then that builds upon itself because you got fewer people to do the investigations, so you finish up with this issue of investigations taking a long time to be completed.⁴²

After investigators left, there were simply not enough skilled investigators remaining to clear the backlog or start new investigations. According to Chris Warner, former CSB General Counsel: "[CSB] had so many departures that **all of a sudden there's no one around who actually knows what's going on.**"⁴³

Warner told the Committee that Horowitz treated senior investigators very poorly, making them want to leave the agency. In turn, their subordinates sought new jobs. As a result, reports remained unfinished. Specifically, Warner stated:

I don't know the agenda. . . . **Daniel is incredibly smart and knows that and [he] went after both [Rob] Hall and [John] Vorderbrueggen, lead investigators with 30 years experience, and basically treated them like they were first-year investigators that had -- didn't know what they were doing.** And they became so incensed on how they are being treated or second-guessed that **they just said, "We're not putting up with it. We're leaving."** And of course the investigators under them followed.

Now, why [Daniel Horowitz] picked a fight with them I can't tell you. But certainly why we haven't gotten stuff go, **you can't have that many**

⁴¹ *Id.* at 77 (emphasis added).

⁴² Former Board Member X Tr. at 40-41.

⁴³ Transcribed Interview of Christopher W. Warner, at 127-128 (Dec. 4, 2013) (emphasis added) [hereinafter Warner Tr.].

people -- investigators leave with that ability and think that you're going to ever get your mission accomplished.⁴⁴

Warner further observed that the investigators left because they did not want to work for Moure-Eraso and Horowitz. Reports languished in their absence. According to Warner:

- Q. How long is the average investigation at the Chemical Safety Board, a well-run investigation from start to completion?
- A. It -- it's differed whether it's a case study, whether it's a full investigation with a long report. ... **The cases have languished for a variety of reasons, most notably because most of the senior investigators and middle managers and some of our younger investigators have been run off by -- or have left because they did not want to work with Horowitz or Moure. And when you lose that many key people, all the investigations they had ongoing have no one available to carry out that work.**⁴⁵

3. The Exodus of Experienced Staff Has Stalled CSB Investigations

FINDING: Moure-Eraso and Horowitz have mismanaged investigations to the detriment of public safety in certain industries. This gross mismanagement resulted in the waste of taxpayer dollars.

Since Moure-Eraso became CSB Chairman in June 2010, investigations have stalled, languished, or ceased due to inactivity.⁴⁶ Former Board Member X testified:

- Q. [D]o you feel like the pace of investigations has slowed in recent years?
- A. Oh, yes. Yes. And I think that's certainly the opinion on the outside also. **Not only has the pace of investigations slowed, but what they would call the quality of investigations has deteriorated as well.**⁴⁷

Former CSB investigator Hall testified that “[u]nder the current chairman . . . I saw multiple activities, including investigations, stalled and things just stopped.”⁴⁸ Former General Counsel Warner stated that the CSB’s productivity “has dropped significantly in the last three or four years.”⁴⁹

⁴⁴ *Id.* at 102-103 (emphasis added).

⁴⁵ Warner Tr. at 19-20 (emphasis added).

⁴⁶ Vorderbrueggen Tr. at 96-97.

⁴⁷ Former Board Member X Tr., at 66.

⁴⁸ Hall Tr. at 40-41.

⁴⁹ Warner Tr. at 24.

Prior to Moure-Eraso's chairmanship, the Board's goal was to complete an investigation within a year to a year and a half.⁵⁰ Former CSB investigator John Vorderbrueggen testified: "[u]nder all prior leadership, there was a push to make sure we got things out in a timely manner."⁵¹ Another witness stated: "I think we talked earlier that we [CSB] are just no longer producing timely investigations. **It used to be that having an investigation open for 2 years was unacceptable.**"⁵²

For example, the CSB investigation of a 2005 explosion at the BP Texas City refinery, in which 15 workers were killed and 180 others were injured, was completed in approximately two years given its complexity.⁵³ Former CSB investigator Hall testified that "there was this enormous pressure from the chairman to complete that investigation."⁵⁴ Another current CSB employee, Employee N, stated:

So we all set a goal of trying to get [CSB investigations] under a year. That wasn't quite realistic, but that was our goal and rarely did we have one exceed 2 years, including we did a big investigation of BP, Texas City, 2005 that killed, I think, 12 people. It was a massive investigation, and that one we completed in 2 years. **Today, I think our average investigation is 3 or 4 years old.**⁵⁵

4. Some CSB Investigations Had To Restart from Square One

Under Moure-Eraso's tenure, when an investigator in charge left the CSB for another job opportunity, the investigation restarted from square one in many cases. The poor management of the CSB caseload has been detrimental to the agency. To ensure continuity, CSB management should have ensured that more than one investigator was assigned to each case. Employee A testified:

Q. Now, when investigators leave the CSB, is it typical that an investigation that they were working on would start over, or is that something new under Moure Eraso?

A. That can vary, but, certainly, **I think that is a hallmark of mismanagement. Typically, you should have somebody -- more than one person on a case that can pick up and handle it. Apparently, they hadn't taken that precaution.** But then again, you don't drive people off. In my opinion, that is what he has done.⁵⁶

⁵⁰ Former Board Member X Tr. at 46.

⁵¹ Vorderbrueggen Tr. at 97.

⁵² Transcribed Interview of Employee N, at 22 (Jan. 30, 2014) [hereinafter Employee N Tr.].

⁵³ *Id.*

⁵⁴ Hall Tr. at 39.

⁵⁵ Employee N Tr. at 22-23.

⁵⁶ Employee A Tr. at 22 (emphasis added).

Chemical accidents involving fatalities leave grieving families and co-workers with many questions as to what went wrong. The slow pace of CSB investigations and the “restarts” due to attrition, left the families of the deceased without a resolution or explanation. Unfortunately, the experienced CSB investigators who could provide answers were, under Moure-Eraso’s leadership, leaving the agency. Hiring new people does not immediately improve the situation, as it takes time to replace the experience and expertise lost through attrition. Warner testified:

Q. Have they -- **has the CSB attempted to fill these vacancies with investigators to move these investigations along?**

A. They have tried, but **we've lost so many people and it's very hard redoing the investigations.** And when you lose the type of seasoned people that we've lost, when you bring on a person who's never worked in a plant it's night and day in what they can produce.⁵⁷

One witness testified that this loss of experienced personnel under Moure-Eraso’s tenure has “greatly impaired” the agency’s future, asking, “How many more people can you lose? How many experienced people can you lose?”⁵⁸

The current managing director, Horowitz, confirmed the attrition and acknowledged the toll it has taken on the agency’s productivity. He testified:

Q. You mentioned attrition in the D.C. office. Could you elaborate on that a little bit? How many folks?

A. Sure. I don't know the exact count. **When the new chairman came in there was a bit of an exodus of certain of the investigators.** It is all voluntary. And that left us with fewer. Some people requested transfer out of D.C. to Denver. **So that also had an impact [on the productivity].**

Q. What is your understanding of why there was an exodus of investigators when the new chairman took over?

A. Well, I can't speak for others, necessarily, but there were certainly some differences of philosophy about how the investigations should be done or what they should focus on. **And . . . there were frictions at that time.** I don't think, from my perspective as the managing director -- this was an agency that didn't have a managing director for a number of years. . . . And actually, my philosophy of investigations was a little bit different as well. But

⁵⁷ Warner 20-21 (emphasis added).

⁵⁸ Employee A Tr. at 103.

they just decided they preferred to work in other agencies or do other things.

* * *

Q. -- a number of folks had left in a short amount of time frame, shortly after [Moure-Eraso became Chairman] --

A. That's been a significant challenge for the agency because in our experience once a team has started a case, and they are the ones who have been out to the site, seen the arrangement of the equipment, the damage, actually conducted the witness interviews, it can be difficult and very much more time consuming for other teams to reconstruct that. **And so there was these departures there were these departures in 2011 -- and that set back some of the cases that those team leads had been leading.**⁵⁹

Throughout the Committee's investigation, witnesses who left the agency and current employees repeatedly observed that overbearing management practices under Moure-Eraso and Horowitz accounted for the exodus. Questioning credentials, failing to communicate, and creating a toxic work environment led to the mass attrition at CSB and slowed the pace of investigations dramatically. Essentially, the actions of Moure-Eraso and Horowitz have left the CSB with low employee morale, low head count, and a failed mission to the detriment of public safety.

5. Stalled CSB Investigations Have a Negative Effect on Industry Safety

According to CSB's mission statement, safety recommendations "are the Board's principal tool for achieving positive change."⁶⁰ Several witnesses testified that the CSB has not been fulfilling its mission since Moure-Eraso became Chairman because the release of safety recommendations has not been a priority. Jeff Wanko, former CSB investigator, told the Committee that the CSB focuses on the media coverage surrounding a deployment to an incident site, but lacks follow-through on the investigation.⁶¹ Another witness testified that the CSB would "overcommit the resources that were available to get out there and get the press, but then had little interest in completing on the rear end because there wasn't the interest in the investigation."⁶²

Managing Director Horowitz testified that there are currently 13-14 "open" investigations at the CSB.⁶³ He expected some to be completed, while observing that others "have died off

⁵⁹ Transcribed Interview of Daniel M. Horowitz, at 24-25, 35 (Jan. 22, 2014) (emphasis added) [hereinafter Horowitz Tr.].

⁶⁰ CSB, Mission, *available at* <http://www.csb.gov/about-the-csb/mission/> (last visited Mar. 26, 2014).

⁶¹ Wanko Tr. at 9-10.

⁶² Hall Tr. at 37.

⁶³ Horowitz Tr. at 28.

through inactivity.”⁶⁴ CSB’s habit of delaying the issuance of investigative reports during Moure-Eraso’s chairmanship has compromised public safety at factories and chemical plants. The industry needs prompt action in order to make meaningful changes. Investigative findings and recommendations released years after an accident may be moot due to improvements in process and technology.

The CSB’s investigation of the April 2010 fatal explosion and fire at the Tesoro refinery in Anacortes, Washington is illustrative. In that case, CSB did not release any recommendations until May 1, 2014, over four years after the accident.⁶⁵ Former CSB investigator Rob Hall, who ran the Tesoro investigation, testified:

But the fact that the [Tesoro] investigation has failed to yield a product at [the time of the testimony], . . . the window is closed on doing anything. **Had there been a more timely investigation, something that got out . . . within the first year or year and a half, it might have had some impact.** But not at this point in time.⁶⁶

Vorderbrueggen testified that a significant lapse in time results in a loss of interest in CSB recommendations among industry stakeholders. He also testified that observers of the CSB’s work have lost faith in the agency’s ability to execute its mission. Specifically, he stated:

Q. What are the repercussions of the delay in completing these investigations?

A. Well, as time goes by, **you lose industry interest partly.** You know, to write about something that occurred 5 years ago and to say it occurred because they didn't have proper hot work permits, for example, it loses credibility. **I mean, you've got to strike while the iron is hot. The industry won't respond when the iron is [not] hot.** They don't respond -- they just, Okay, here comes another CSB report, and somebody, those people that get recommendations are going to have to deal with them, and everybody else goes on their way, and their credibility in industry, I've heard -- **and again it's anecdotal for all intents and purposes, but the industry just has lost all faith [in the CSB].** I mean, they love the videos, but they're seeing nothing happening, and they just -- oh my gosh, **CSB, they're not going to get anything done, we've lost value.**

Q. **Is it fair to say that has a negative impact on public safety?**

⁶⁴ *Id.*

⁶⁵ CSB, Press Release (Jan. 29, 2014), *available at* <http://www.csb.gov/csb-investigation-finds-2010-tesoro-refinery-fatal-explosion-resulted-from-high-temperature-hydrogen-attack-damage-to-heat-exchanger/>.

⁶⁶ Hall Tr. at 81 (emphasis added).

- A. **Oh, absolutely** because there are certain things in here I'm sure that would be critical lessons learned, and they should have been issued, they absolutely should have been issued.⁶⁷

The CSB's ability to bring about industry change diminishes over time. Shortly after an accident occurs and an investigation commences, the entire industry—from fertilizer manufacturers to sugar refineries—is interested in the results and recommendations from CSB experts. Hall, now with NTSB, testified:

[W]hen you have an incident, there is a lot of interest. There is a lot of interest for new laws, there is a lot of interest for regulations, there is a lot of interest in the industry. You know, other companies that do the same thing really want to know because they want to fix it.

* * *

Also, part of the problem with the languishing investigations is **we really have a window of opportunity, when we have an incident, to effect change, and that window of opportunity shrinks as time passes.** And once you go beyond a year or 2 years, your ability to effect change is really limited.⁶⁸

B. CSB's Stalled Investigations of Tesoro and Hoeganaes

In the view of many CSB employees, two specific CSB investigations—Tesoro and Hoeganaes—have taken twice as long as necessary. In fact, on May 1, 2014, over four years after the accident, CSB issued the report on the Tesoro investigation.⁶⁹ These investigations document the inefficiency that has plagued CSB since Chairman Moure-Eraso's tenure began. Moure-Eraso's inability to build a consensus amongst the Board has crippled the agency's productivity.

1. The CSB Investigation of the Tesoro Refinery in Anacortes, Washington

Shortly after midnight on April 2, 2010, a catastrophic rupture of a heat exchanger at the Tesoro Refining and Marketing Company's petroleum refinery in Anacortes, Washington caused an explosion and fire that fatally injured five workers at the scene and left two others badly burned.⁷⁰ Those who died and were injured had worked together as a team at the refinery before the accident. Specifically, three Tesoro workers died at the scene: Daniel J. Aldridge, 50;

⁶⁷ Vorderbrueggen Tr. at 96-97 (emphasis added).

⁶⁸ Hall Tr. at 37 (emphasis added).

⁶⁹ U.S. Chemical Safety and Hazard Investigation Board, *Investigation Report, Catastrophic Rupture of Heat Exchanger (Seven Fatalities)*, (May 2014), available at www.csb.gov/assets/1/7/Tesoro_Anacortes_2014-May-01.pdf.

⁷⁰ Jack Broom & Sara Jean Green, *Five dead in Anacortes refinery explosion and fire*, SEATTLE TIMES, Apr. 2, 2010.

Matthew C. Bowen, 31; and Darrin J. Hoines, 43.⁷¹ Four more workers were flown to the hospital, where two died: Kathryn Powell, 28; and Donna Van Dreumel, 36.⁷² The remaining two victims, both initially hospitalized in critical condition with extensive burns, were Matt Gumbel, 34; and Lew Janz, 41. Both later died from their injuries. Despite the severity of the explosion and the injuries, it took CSB over four years to issue a final report.



Smoke and fire caused by the Tesoro explosion (photo credit: zestco.com)

More than four years later, the investigation is only recently complete, even though then-investigator-in-charge Rob Hall had completed a draft report by the time he left CSB in early 2011. Former CSB investigator Wanko cited Tesoro as a prime example of incomplete investigations at CSB. He stated, “Rob Hall, I mean, he, the team and Rob nailed that investigation, and it's still . . . nowhere near finished.”⁷³ CSB witnesses further testified that the root cause of delays in the Tesoro investigation and final report are the actions of Chairman Moure-Eraso’s and Managing Director Horowitz.

In the early stages of the Tesoro investigation, Hall believed that the CSB should issue urgent recommendations to the Tesoro Refinery to be implemented immediately while the full investigation was underway.⁷⁴ CSB occasionally used urgent recommendations to put facilities on notice and to force them to take interim steps to improve the immediate safety of their workers in the wake of an accident.⁷⁵ Moure-Eraso, however, chastised Hall for sending an e-mail with his draft

work to all the Board Members. Hall testified:

And I was discussing that we were moving towards issuing urgent recommendations and a safety advisory. We had a meeting on the urgent recommendations, which included the -- most of the staff. There was a -- it was called an ISP review meeting, which is the -- ISP was Investigation and Safety Programs, but it was basically a peer review meeting of the developed product, where you resolve comments. During that meeting, myself and my team resolved comments on the urgent recommendations, and it was decided that a safety advisory should be issued.

Due to the looming timeframe, it was discussed in the meeting that it would be developed and sent to the board members, all board members for review. This was clearly articulated in the meeting as my practice in these

⁷¹ *Id.*

⁷² *Id.*

⁷³ Wanko Tr. at 10.

⁷⁴ Hall Tr. at 9.

⁷⁵ *Id.*

meetings was to summarize action items at the end of the meetings, and it was summarized.

A couple of days later, I had the completed draft safety advisory as well as the revised urgent recommendations and sent it to all the board members, **at which point I received a chastising e-mail, which is in this package that I will provide you from Dr. Moure Eraso, indicating that he had to approve it first before it could go to the full board.**⁷⁶

In an e-mail to Hall, Moure-Eraso wrote, “I was surprised you decided to send your last draft of the Tesoro Urgent Recommendation and Safety Alert for Board review before I had a chance to look at the results of our last discussion on September 2nd.”⁷⁷

⁷⁶ Hall Tr. at 9-10 (emphasis added).

⁷⁷ E-mail from Rafael Moure-Eraso to Rob Hall, et al. (Sep. 8, 2010).

Hall Robert

From: Moure-Eraso, Rafael
Sent: Wednesday, September 08, 2010 6:31 PM
To: Hall, Rob; Bresland, John; Griffon, Mark; Horowitz, Daniel; Wark, William; Wright, William
Cc: Vorderbrueggen, John; Holmstrom, Don; Gomez, Manuel; Soderberg, Melody; Wanko, Jeffrey; Evans, Roger; Warner, Chris; Morgan, Christina
Subject: RE: Tesoro Urgent Recommendation and Safety Advisory

Follow Up Flag: Follow up
Flag Status: Completed

Dear Rob:

I was surprised you decided to send your last draft of the Tesoro Urgent Recommendation and Safety Alert for Board review before I had a chance to look at the results of our last discussion on September 2nd. My understanding of our process is that the Chair sends a draft of a report for board consideration, not the Investigation Supervisor. I understand the pressures of time on this issue but we need to have an orderly procedure of the transmittal of documents to the board.

Rafael

Rafael Moure-Eraso, PhD, CIH
Chairperson and CEO
U.S. Chemical Safety Board
2175 K Street NW, Suite 400
Washington DC, 20037

Telephone: 202 261 7600

From: Hall, Rob
Sent: Wednesday, September 08, 2010 11:12 AM
To: Bresland, John; Griffon, Mark; Horowitz, Daniel; Moure-Eraso, Rafael; Wark, William; Wright, William
Cc: Vorderbrueggen, John; Holmstrom, Don; Gomez, Manuel; Soderberg, Melody; Wanko, Jeffrey; Evans, Roger; Warner, Chris; Morgan, Christina
Subject: Tesoro Urgent Recommendation and Safety Advisory

All,

Attached please find the Tesoro draft urgent recommendation and Safety Alert for first Board review. Please feel free to contact me with any questions. We would appreciate your comments as soon as possible so that we can send it to the company for CBI next week and share it with the USW Local, Washington DOSH, and OSHA and still issue by the end of the month. Our goal is to have this issued before Tesoro restarts the refinery in October. DOSH expects to issue their citations on September 28, 2010.

Chairman Moure-Eraso's insistence on maintaining tight control on all information provided to his colleagues on the Board delayed the final report. It also demonstrated his desire to shut investigators out of the report approval process. Hall testified:

- A. The chain that I sent, I wanted to be sure to provide . . . a complete picture, so it includes multiple copies of like a safety advisory and the urgent recs because it was sent to each of the board members who then in fact replied. There were only minor comments from the board members, but after Dr. Moure Erasos e-mail, he refused to move it forward.

Q. After what e-mail?

A. The one where I was chastised for sending it to the full board. It [the urgent recs and investigative report on Tesoro] just died. He didn't move it forward. It was not issued. [At the time of testimony], the CSB has not issued anything on the Tesoro investigation, any public document.⁷⁸

Moure-Eraso's distrust of the investigative staff fostered a poor working environment in which seasoned investigative staff were subject to Horowitz's micromanaging and second-guessing. Former CSB Investigator John Vorderbrueggen testified:

A. Rob was the IIC [investigator in charge] on Tesoro, that's in Washington State, and this was after the draft report had been developed, had been peer reviewed, I had peer reviewed it, and it involved six or seven fatalities at the refinery, and the issue was what was the failure mechanism of the pipe, why did the pipe rupture when it did, and as I mentioned early in the summary of my career, I've been involved in piping system design, pressure systems design, hazardous material work . . . for, back then it was 30 plus years, and Rob the same. I hired Rob in 1987, and Rob and I have been working together almost ever since then, either he was my direct report and now I am his direct report over at NTSB, but Rob and his team had developed a comprehensive report with probable cause for Tesoro. It had been peer reviewed, I had reviewed it, others had reviewed it, and I have no idea why but Daniel rejected it. He decided that he wanted an outside third party review of this report, which would have delayed it because we were ready, it was ready to go to the board, and Rob said, Daniel, we don't understand why you're rejecting . . . highly skilled technical analysis of the accident, and basically Daniel said because, he says, I don't accept your answer.

Q. He didn't give any firm reason?

A. He really didn't, as I recall . . . I kind of -- it was really Rob and Daniel in this situation, but I was there, and I was as disgusted, but **Daniel was really--Daniel was directing everything, all of his criticisms directly at Rob and basically saying, I reject your expertise, I don't care if you're a registered professional engineer, I don't care if you've got 30 plus years of experience, I don't accept your answer,** I want an outside third party independent review of your answers, and it was partly on how Daniel approached it as well as it was just the flat out accusations

⁷⁸ Hall Tr. at 11 (emphasis added).

that he didn't consider any of Rob's technical expertise credible, and that was the first time that had ever come up.

I mean, . . . Daniel and I would have disagreements on conclusions and on how things should be stated on maybe a recommendation, and sometimes they were heated, but in the end we would all reach consensus, but it never was in, you don't know what the hell you are talking about . . . he never did that, but for some reason on Tesoro, all of a sudden he just--Daniel just rejected outright the whole technical conclusions of the report, and basically accused Rob and indirectly accused me because I had peer reviewed it, and we said, Daniel, how dare you tell us we don't know what we are talking about. We consider ourselves essentially, I think we consider ourselves reasonable experts or highly knowledgeable in the field, and Daniel said I don't care; I want the report sent out for outside review. I don't accept your conclusions. Rob ultimately got up and left, and I sat there, and I'm going, now what do I do.

Q. **So do you recall how long that delayed the report by?**

A. **Years.**⁷⁹

2. Moure-Eraso and Horowitz Delayed the CSB Vote on the Tesoro Investigative Report

FINDING: The broken relationship between Chairman Moure-Eraso and the other Board Members has delayed the release of important investigative reports.

The CSB Board was scheduled to vote on the long-awaited final report addressing the Tesoro incident on January 30, 2014. Instead, Chairman Moure-Eraso and Managing Director Horowitz decided to hold a “listening session,” to delay the vote. In response to this holdup, Representative Larsen wrote a letter to Moure-Eraso condemning the additional delay:

I am exasperated to hear about the U.S. Chemical Safety Board’s (CSB) sudden change to the previously scheduled January 30 meeting in Anacortes to investigate the April 2010 explosion at the Tesoro refinery. Yesterday, the CSB put notice in the Federal Register canceling the public board meeting to consider the report on the accident, and in its place scheduled a “listening session.” My understanding is that CSB will provide no advance copies of the draft report on the accident to the public until the meeting occurs. Additionally, the notice indicates that CSB will limit public input at the session. . . . I urge you to do at least the bare

⁷⁹ Vorderbrueggen Tr. at 76-78 (emphasis added).

minimum to meet your agency's mandate: issue the draft report quickly and schedule a public meeting in Anacortes after enough time has passed for the public to consider the report's recommendations.⁸⁰

Additionally, Senator Murray also criticized the CSB's continued delays on Tesoro, as the CSB's failure to fulfill its mission directly affects her constituents. The families of the deceased and injured workers are left without answers. Senator Murray issued a press release on the matter, stating:

The draft report released today is an important step in the process of avoiding another tragedy, but I am extremely frustrated that after nearly four years, the Chemical Safety Board has still failed to produce a final report. **This delay is emblematic of poor leadership at CSB, which continues to be a disservice to workers, companies, and the economy. Without dramatically improved performance, substantial leadership changes at CSB will be necessary.**⁸¹

The CSB report was finally issued over four years after the tragic explosion.

3. Investigation of the Hoeganaes Plant in Gallatin, Tennessee

In early 2011, CSB launched an investigation into a flash fire at the Hoeganaes plant in Gallatin, Tennessee. John Vorderbrueggen was appointed CSB investigator in charge (IIC) because of his experience with prior combustible dust incidents similar to what occurred at Hoeganaes. Despite Vorderbrueggen's experience and senior position, Managing Director Daniel Horowitz began micromanaging the investigation from his Washington, D.C. office. Former CSB investigation supervisor Rob Hall testified:

There was a second investigation just -- just after this occurred with John Vorderbrueggen . . . Vorderbrueggen was investigating a fire that occurred at a plant in -- Tennessee. It was Hoeganaes . . . During that investigation, Daniel Horowitz, very uncharacteristically, began micromanaging the investigation. John Vorderbrueggen was an investigation supervisor, -- as I was, had been at the CSB about 2 years longer than I was, extremely competent investigator, one of the most productive that they had. [Horowitz] began uncharacteristically micromanaging them. He consulted outside consultants without the knowledge of the [investigator-in-charge] and in violation of policies within the CSB as to not share investigative information with nondisclosure agreement. We also looked to have agreements to put in place that there was no conflict of interest. One of the parties that he shared information with--subsequently, we found, had a conflict of interest, but he was sharing this information--with these parties,

⁸⁰ Letter from Rep. Rick Larsen to Rafael Moure-Eraso, Chairman, CSB (Jan. 24, 2014).

⁸¹ U.S. Senator Patty Murray, Press Release, Murray Statement on Safety Board Report on Anacortes-Tesoro Tragedy (Jan. 30, 2014), <http://www.murray.senate.gov/public/index.cfm/2014/1/murray-statement-on-safety-board-report-on-anacortes-tesoro-tragedy> (emphasis added).

kind of doing his own investigation at the desk, at his desk back in Washington.⁸²

While it was typical in any investigation to provide brief daily updates, Horowitz conducted phone calls with the Hoeganaes team lasting two to three hours. Vorderbrueggen testified:

But when we got to Hoeganaes for whatever reason -- and I had no problem with a daily discussion and giving Daniel, I mean he was my boss. I have no problem I had no problem, and to this day I don't have a problem telling my boss here is what we did, here is our plan, do you have any general comments, and getting feedback. But the real problem was these were 2 and 3 hour marathon sessions and they were second guessing every last thing that we did. And this was after working 12, 14 hours and Daniel sent an e-mail we need to do it at 5 o'clock or whatever time it may be.⁸³

Even though Horowitz lacked the technical expertise and had never visited the accident site, he continued to second-guess and critique Vorderbrueggen's investigation. Vorderbrueggen testified:

Q. What qualified Daniel Horowitz to critique all of this the way he did?

A. In my humble opinion, nothing.

Q. How much experience does he have?

A. Daniel -- and, again, I haven't read his resume in many years, but Daniel is a Ph.D. chemist. Now, granted, we were the Chemical Safety Board. That's a misnomer, totally a misnomer. We are the industrial accident safety board; that's really what the Chemical Safety Board did.

* * *

Daniel's experience in understanding chemical accidents and industrial accidents didn't occur until he joined the Chemical Safety Board, and he joined probably -- I joined in 2002. I think he joined in 1999 or 2000. So he had a couple more years on me, I'll give him that, but he was not an accident investigator. He was congressional and public affairs director; that was his title, and he

⁸² Hall Tr. at 14-15.

⁸³ Vorderbrueggen Tr. at 51.

did a great job at that...So he didn't have the background to tell us that this was a better way to do an investigation.⁸⁴

Horowitz asserted himself in matters for which he lacked formal knowledge and created superfluous work for the investigation team, prolonging the investigation. Vorderbrueggen testified:

Q. Was there any disagreement about potential causes of the incident?

A. Oh, yeah. Again, Daniel is sitting in Washington, D.C., with no information other than what we tell him over the telephone and he is trying to tell us--he is trying to say oh, I think the cause is probably this, the cause is probably that, and I said, Daniel, you are not here. You don't know...**and then the other thing is after I got done--after we finished this marathon--like I said, one of those conference calls lasted 2 hours--I then had to summarize everything that we had just discussed in an e-mail.** So I spent another hour or so just taking my handwritten notes that I was scribbling down and saying okay, here is what we did, here is what we didn't do, here is why we didn't do it, here is what we are going to do.⁸⁵

C. The Labor Union Conflict

Ultimately, in a meeting with Vorderbrueggen, Horowitz removed him from the Hoeganaes investigation as the IIC.⁸⁶ Witnesses struggled to understand the reasons for the removal. One possible reason is that Horowitz replaced Vorderbrueggen with union-friendly investigators, including former United Steel Workers Union member Johnnie Banks.⁸⁷ Just prior to the accident at Hoeganaes, the plant had successfully thwarted an attempt to unionize the facility. Rob Hall testified:

Q. Okay. What was the reason Mr. Horowitz gave for removing Mr. Vorderbrueggen?

A. He didn't think that he was focusing on the right things in the investigation, but you know, an early investigation is fact gathering, and you gather all the facts that are pertinent to the investigation. There was also some question that came up, and this will be detailed in these documents. The Hoeganaes plant had recently -- there was an attempt to unionize the plant, and they had recently not -- had recently defeated that unionization effort.

⁸⁴ Vorderbrueggen Tr. at 29-33.

⁸⁵ *Id.* at 54-55.

⁸⁶ *See infra* Section VIII(A)(3) at 64.

⁸⁷ *See* Vorderbrueggen Tr. at 122-123.

When John Vorderbrueggen was replaced, he was replaced with a member from the CSB that was a former member of the USW and came out of the chemical workers that were absorbed by the USW.

Q. USW is what?

A. United Steel Workers. As well as the other investigation supervisor, Donald Holmstrom, who used to be a USW organizer, both went, and it just looked highly -- it -- from an ethics standpoint, it did not look proper that you would send two union folks in to do the investigation at a plant that had just defeated an organization effort. I don't know what the motivation was, you know. I wasn't part of those decisions. I just think from the -- from the outside looking in, it just did not appear -- did not have the appearance of being above board.⁸⁸

After removing Vorderbrueggen, Horowitz hired an outside investigator to redo Vorderbrueggen's work. As a result, CSB failed to produce a timely final report with adequate safety recommendations related to the Hoeganaes fire. Vorderbrueggen testified:

A. [Jim, an outside expert] went, and he looked at the standard, and the standard said you should have 4 feet of separation between item A and item B. And [Jim] says, Oh, there's only 3 foot 6, so he did a very specific go/no go check sheet type of inspection against a standard that had nothing to do with why the accident occurred, but yet Daniel -- and I have a copy of that, and that is part of that, but it was like a 30 page -- they probably paid \$30,000 for it. And it gave them nothing, and that's what I kept trying to tell Daniel. I don't need [Jim] here now. I would rather wait and use [Jim] to help analyze for most importantly why didn't this accident become an engulfed building, collapsed fire with 20 or 30 people because that's what it had the potential.

But, like I say, it was kind of ironic that Daniel sent Jim into this deadly hazardous facility that he accused me of doing. He sent five or six CSB investigators into this building to do things that he had said I had done unsafely. That's all part of that.

Q. You said that he essentially started the investigation over.

A. **They essentially started it over.**

Q. So how long did it actually take to complete?

⁸⁸ Hall Tr. at 15.

* * *

- A. It was well over a year past that. And the other interesting thing and very sad thing about this is they never addressed the real opportunity to improve safety at that facility. One of the early things that Marc and I had observed was the condition of the uniforms that the workers were wearing. They were uniforms provided by a uniform service. They were fire resistant uniforms because they did work around molten steel and hydrogen gas and all kinds of things, and the condition of the uniforms to me looked like could these really provide the flame resistance? And they're only good -- fire retardant clothing is only good for a very short period of time.

* * *

And Daniel blew it off in every discussion I had with him, both on site and when we returned, and they never pursued it. So that element of that investigation was not pursued, and in fact, if you look at the recommendations that were ultimately done on that, they're pretty weak.

They don't really cover the real opportunities to improve worker safety.⁸⁹

Former CSB investigator Jeff Wanko confirmed that the quality of the Hoeganaes investigation deteriorated after Horowitz interfered and removed Vorderbrueggen. Wanko testified:

- Q Do you have any other examples of products where you have seen the quality fallen off or deteriorated?

- A I mean, I read them as necessary. Certainly one that I'm heavily involved in from OSHA's response is on the Hoeganaes steel dust or iron dust incident or incidents. The issues that the CSB brought out during that investigation are not the ones that we or the industry really considers helpful. There were deaths where gentlemen were wearing fire retardant clothing, yet the CSB did not explore why they died of burns but were wearing fire retardant clothing. What was it about their fire retardant clothing that did not protect them in this case? And there was a second case, a subsequent flash fire where an engineer was also wearing fire retardant clothing and he lived, and the CSB completely ignored the issue.⁹⁰

⁸⁹ Vorderbrueggen Tr. at 29-31 (emphasis added).

⁹⁰ Wanko Tr. at 84-85.

D. The Long and Costly Deepwater Horizon Investigation Negatively Affected Other CSB Investigations

The CSB's investigation of the April 2010 Deepwater Horizon oil spill has expended a massive amount of manpower and money, diverting these resources from other critical CSB investigations. CSB issued preliminary findings on July 24, 2012⁹¹ and on May 1, 2014, issued the first two volumes of a four volume series.⁹² CSB asserts the remaining two volumes will be issued later in 2014.

Shortly after the Deepwater Horizon oil spill occurred in April 2010, CSB assessed whether it would conduct an investigation. On June 8, 2010, House Energy and Commerce Committee Chairman Henry Waxman sent a letter to CSB requesting the agency to investigate Deepwater Horizon.⁹³ On June 18, 2010, CSB responded that it will proceed with an investigation into the accident.⁹⁴

Nearly four years have passed, however, since CSB began its investigation into Deepwater Horizon. Despite this length of time and the fact that millions of dollars have been spent on the investigation, the CSB has only just released two volumes of a four volume final report. Moreover, the massive amount of resources CSB has dedicated to the Deepwater Horizon investigation has contributed to a backlog in other CSB investigations and limited the CSB's capacity to begin new investigations. CSB itself acknowledges this fact in its FY 2015 Budget Request, which states:

[T]he burden of the ongoing Deepwater Horizon investigation, a backlog of older cases, and the substantial use of resources associated with several large deployments during 2013 have further strained the CSB's ability to initiate investigations.⁹⁵

The CSB Budget Request blames CSB's involvement in the Deepwater Investigation, and the subsequent consequences, on Congress. The Budget request further states:

⁹¹ See CSB, Press Release, CSB Investigation: At the Time of 2010 Gulf Blowout, Transocean, BP, Industry Associations, and Government Offshore Regulators Had Not Effectively Learned Critical Lessons from 2005 BP Refinery Explosion in Implementing Safety Performance Indicators (July 24, 2012), <http://www.csb.gov/csb-investigation-at-the-time-of-2010-gulf-blowout-transocean-bp-industry-associations-and-government-offshore-regulators-had-not-effectively-learned-critical-lessons-from-2005-bp-refinery-explosion-in-implementing-safety-performance-indicators/>.

⁹² See CSB, press Release, Statement by CSB Chairperson Rafael Moure-Eraso on Fourth Anniversary of Deepwater Horizon Tragedy in Gulf of Mexico; CSB Investigation Reports to be Released at June 5th Public Meeting in Houston, Texas (April 2014), <http://www.csb.gov/statement-by-csb-chairperson-rafael-moure-eraso-on-fourth-anniversary-of-deepwater-horizon-tragedy-in-gulf-of-mexico-csb-investigation-reports-to-be-released-at-june-5th-public-meeting-in-houston-texas/>.

⁹³ Letter to John Bresland, Chairman, U.S. Chemical Safety Board from Henry Waxman, Chairman, H. Comm. on Energy and Commerce, and Bart Stupak, Chairman, Subcomm. on Oversight and Investigations (June 8, 2010).

⁹⁴ Letter to Henry Waxman, Chairman, H. Comm. on Energy and Commerce and Bart Stupak, Chairman, Subcomm. on Oversight and Investigations, from John Bresland, Chairman, U.S. Chemical Safety Board (June 18, 2010).

⁹⁵ CSB, Budget Justification, Fiscal Year 2015, at 4, http://www.csb.gov/assets/1/7/FY_2015_Budget_Justification_-_FINAL.pdf.

Congress requested the CSB undertake the Deepwater Horizon investigation because of its unique position to address needed improvements to offshore major accident prevention. . . . When the CSB received this request, the agency indicated that an investigation of this scale and complexity is beyond anything the CSB has previously conducted, and is beyond current resources. However, additional funds to complete this investigation were never received.⁹⁶

As of December 2013, CSB's Deepwater Horizon investigation has cost \$4.25 million.⁹⁷ This is an extraordinary amount considering that CSB's entire FY 2014 budget was \$11 million.⁹⁸ Former CSB General Counsel Christopher Warner testified that the investigation "has just been a black hole for money and resources."⁹⁹ Former CSB investigator Wanko testified that the Deepwater Horizon investigation stands out both in terms of time and money. Wanko stated:

Q. Do you know when you looked at those financials approximately how much money was being drained on a monthly or quarterly basis in Deepwater Horizon?

A. The numbers were reported monthly, and **it was over \$100,000 a month being spent on Deepwater Horizon.**

Q. How does that compare to other investigations?

A. Mark Bogdan, who was one of the accountants there, had done sort of a[n] . . . average full investigation, average cost of a full investigation, average cost of a case study, average cost of a safety bulletin. **The average cost of a full investigation, I believe, was around \$400,000 maybe. So we are talking four times -- I mean, just it is hard to even grasp how you could spend \$100,000 in a month on that.** And . . . the average timeframe of an investigation was about 18 months. So you figure 18 months, \$400,000, versus \$100,000 a month for Deepwater Horizon, quite a bit greater being spent on that.¹⁰⁰

CSB Members have questioned the duration and cost of the Deepwater Horizon investigation, especially given its effect on other CSB work. The investigation has led to a rift in the Board. Wanko testified that at least one Board Member, Mr. Wright, wrote to CSB Managing Director Horowitz asking for specific information related to the Deepwater investigation. Wanko testified:

⁹⁶ *Id.* at 11.

⁹⁷ *Id.* at 12.

⁹⁸ *Id.* at 4.

⁹⁹ Warner Tr. at 128.

¹⁰⁰ Wanko Tr. at 11-12 (emphasis added).

- A. Then there was certainly some rumblings from the Board . . . Mr. Wright especially, that he was very concerned with -- I think he'll term it **bankrupting the agency on that single investigation. He was concerned with the amount of money that was being spent, with the fact that there were really no plans on how to staff and finish up that investigation.** And so that's when things started to seemingly sour amongst the Board, and they got to a point where they weren't speaking. Dr. Moure was not speaking to Mr. Wright and Mr. Wark. So yes, so governance was an issue quite a bit.

There was a point where Mr. Wright wrote a very pointed memo to Dr. Horowitz asking him a number of things about the Deepwater investigation budget, plans for completion, what was the purpose of it . . . just all of those things. . . . And Dr. Moure instructed Dr. Horowitz not to answer his questions. And so those questions went unanswered. They were very good questions, though.

Q. **Who instructed who not to answer?**

- A. **Dr. Moure instructed Dr. Horowitz to not answer Mr. Wright's questions.** And . . . it was public, and Bill sent it to everybody. So that was as public as possible. And those questions never got answered. So that really started souring things as far as I can tell with the Board.¹⁰¹

E. While the Deepwater Investigation Drags On, CSB's Investigations Backlog Grows

The Board realizes that its focus on the Deepwater Horizon investigation came at the expense of other investigations.¹⁰² A January 2, 2013, memorandum written by Board Member Mark Griffon to a U.S. Senate staffer set forth numerous concerns with CSB's current management, including the resulting backlog of investigations. The memo stated:

I am raising these issues due to my concern on the effect these issues are having on the agency's very important mission. **The identified issues are affecting the ability for the agency to complete investigations in a timely manner, the ability to produce quality, in-depth investigations and the ability to push forward on important safety improvements at major hazard facilities across the United States.**¹⁰³

¹⁰¹ *Id.* at 25-26.

¹⁰² *See, e.g.*, Warner Tr. at 145-146 ("And then the board as we went along got really cold feet on what was going on and the cost and what it was doing to all our investigations. . . .").

¹⁰³ Memorandum from Mark Griffon, Board Member, U.S. Chem. Safety & Hazard Investigation Bd., to Prof'l Staff Member, S. Comm. on Health, Educ., Labor, & Pensions (Jan. 2, 2013).

CSB Managing Director Horowitz, who was in favor of the Deepwater investigation, has acknowledged that it has adversely effected other CSB investigations. Horowitz testified:

Q. So it seems that the Deepwater Horizon investigation has definitely impacted the status of other investigations?

A. **That's absolutely true.**¹⁰⁴

Because the CSB investigation began nearly four years ago, the impending partial release of the CSB final report, diminishes the impact of any of its findings. Former Board Member X testified:

So in the meantime, **there were probably five or six other organizations, agencies that were doing an investigation of the Deepwater Horizon incident, and all -- as far as I know, all of those were completed and relatively quickly, maybe within a year.** So now the Chemical Safety Board, three and a half years, maybe four years later, is coming out with an investigation now and I -- **I don't know how it will be received,** what -- what people will think about it, or will it just sort of be a -- it'll just be interesting to see what the response is to it.¹⁰⁵

Former investigator Hall told the Committee that any report CSB issues related to Deepwater will likely be ineffectual because the accident has faded from public focus. Hall testified:

[I]f the CSB were to finally complete their Deepwater investigation today, I doubt they would affect much change. You know, everybody else has moved on from Deepwater except the CSB. And so . . . from that standpoint, there is a problem.¹⁰⁶

Former investigator Vorderbrueggen also noted that the CSB is lagging behind its federal counterparts in issuing its findings related to Deepwater Horizon. He testified:

Deepwater Horizon, **they've spent millions of dollars on that accident, and it's not issued yet [at the time of testimony], and yet there's been dozens of Federal reports issued. It's unbelievable that [CSB's] report's not out.**¹⁰⁷

Given the problems that have plagued CSB as a result of the Deepwater Horizon investigation, CSB would have been better off if it had stuck to its original decision not to investigate. Former Board Member X stated:

¹⁰⁴ Horowitz Tr. at 33 (emphasis added).

¹⁰⁵ Former Board Member X Tr. at 43 (emphasis added).

¹⁰⁶ Hall Tr. at 37 (emphasis added).

¹⁰⁷ Vorderbrueggen Tr. at 90-91 (emphasis added).

Well, in hindsight, looking back on it three and a half years and with all of the resources that have been taken up and all of the issues that have come up and the fact that four or five other agencies have done investigations and have completed those investigations, **I think it would have been resources better spent not doing the investigation.** But that's a personal opinion.¹⁰⁸

VII. Governance Problems at the Chemical Safety Board

Former CSB Board Members and staff testified that governance problems arose shortly after Dr. Rafael Moure-Eraso became the Chairman. Interaction between the Chairman and CSB staff declined significantly, and the collegial atmosphere of the agency, a key characteristic since the Board's inception, rapidly deteriorated. Upon her resignation from the Board on May 31, 2014, Dr. Beth Rosenberg declared, "I'm looking forward to going back to an academic environment where open debate is valued."¹⁰⁹ Considering Dr. Rosenberg's connection to Chairman Moure-Eraso began at the University of Massachusetts-Lowell, before she joined the Board, her sentiment speaks volumes about Chairman Moure-Eraso's heavy-handed and cloistered management style. Chairman Moure-Eraso acted primarily through Managing Director Daniel Horowitz and General Counsel Richard Loeb. The three worked closely to enforce their own collective view of how the CSB should operate, often in spite of the relevant statutes, regulations, and Board orders governing the CSB. Consequently, the CSB experienced many management problems under the current leadership.

A. CSB Management Ignores the Moss Opinion and Board Orders

In 2000, CSB sought clarification from the U.S. Department of Justice Office of Legal Counsel (OLC) on the proper roles of and relationship between the Chairman and the Board. OLC responded with what is referred to as the "Moss Opinion," which specified how boards relate to chairmen and the responsibilities of each.¹¹⁰ A later opinion reiterated the guidance in 2002. Former CSB General Counsel Chris Warner testified:

We as the Board agreed to be bound by the Moss opinion, and it basically had three parts as I look at it. It validated legislative history and the provisions of the act, it looked at general board commission law and said consistent with all of this the majority rules, and that the board itself has great ability and the chair, although he's the chief executive, carries out that at the will of the board.¹¹¹

¹⁰⁸ Former Board Member X Tr. at 75.

¹⁰⁹ Iafolla, *supra* note 1 (emphasis added).

¹¹⁰ Memorandum from Randolph D. Moss, Acting Assistant Att'y Gen., Office of Legal Counsel, U.S. Dep't of Justice, Division of Power & Responsibilities Between the Chairperson of the Chemical Safety & Hazard Investigation Board & the Board as a Whole (June 26, 2000), *available at* <http://www.justice.gov/olc/chemsafetyboardopinionfinal.htm> [hereinafter Moss Opinion].

¹¹¹ Warner Tr. at 11.

Through the Moss Opinion, OLC delineated the roles of the Chairman and CSB Board Members and validated the authority vested in the Board as a whole. The opinion stated:

We believe that, under the [Clean Air] Act and general principles governing the operation of boards, the day-to-day administration of Board matters and execution of Board policies are the responsibilities of the chairperson, subject to Board oversight, while **substantive policymaking and regulatory authority is vested in the Board as a whole. In disputes over the allocation of authority in specific instances, the Board's decision controls**, as long as it is not arbitrary or unreasonable.¹¹²

The Moss Opinion dictates that when in doubt, the Board's decisions control.

1. Board Order 28

Pursuant to the Moss Opinion, CSB drafted and approved "Board Order 28," establishing procedures for Board operations.¹¹³ Specifically, it established the manner in which the Board would exercise its executive and administrative functions through the chairperson. Based on the Clean Air Act Amendments of 1990,¹¹⁴ Board Order 28 is consistent with OLC's ruling on the proper governing structure of the CSB.

The Chairman is the Board's chief executive, but the Chairman's authority has limitations. The statute, as interpreted by the Moss Opinion, gives the Board policymaking and regulatory authority. The ability of CSB Board Members to set Board policy through Board orders ensures that the Chairman does not exceed his or her intended role as "chief among equals." Board Order 28 provides that Board Members are entitled to a say in substantive policy decisions and certain administrative functions.¹¹⁵

The Chairman usurps the Board's statutory authority when he or she declines to execute Board orders. Witnesses testified that the Board operated smoothly and followed the Moss Opinion until 2010, when Chairman Moure-Eraso took over. Former CSB General Counsel Chris Warner stated:

After the Moss opinion came out the [B]oard adopted a variety of [B]oard orders. The act provides for the [B]oard to establish their own rules. And recommendations and indeed the IG over the last 14 years has -- maybe 50 to 60 percent of all their recommendations have been on implementing board procedures and rules, et cetera.

¹¹² Moss Opinion, at 2.

¹¹³ CSB, Board Order 28, Exec. & Admin. Functions of the Board, *available at* http://www.csb.gov/assets/Record/BO_28.pdf (Aug. 5, 2002) [hereinafter Board Order 28]. The Order was amended on August 8, 2006.

¹¹⁴ 42 U.S.C. §7412(r)(6)(B) and (N).

¹¹⁵ Board Order 28.

For -- up until 2010, the [B]oard followed that opinion and it wasn't really until 2011 when Loeb was hired that the [B]oard started -- **Moure just dismissed the board orders, and [he dismissed] [B]oard [O]rder 28 that specifically delineated what the board's responsibilities and what his responsibilities were.**¹¹⁶

2. Horowitz and Loeb Unilaterally Deemed CSB Board Orders Invalid

CSB Managing Director Horowitz and General Counsel Loeb developed their own interpretation of the statute, seeking to relegate the Board's role to merely approving investigative reports. They both acknowledged in their testimony that the Board has the ability to set its own policy, but denied the validity of certain Board orders—in particular, Board Order 28. In fact, under Moure-Eraso's tenure the CSB has only adhered to Board Order 28 selectively. Horowitz testified:

Q. So does the Board follow [Board Order 28] now?

A. I would say they follow some of it.

Q. What does that mean?

A. I mean, we've tried, I think, and I think the Chairman has tried as a matter of comity, to try to get Board approval on larger contracts, things like that. **I don't know that it's been followed on all personnel matters; for example, on the appointment of the general counsel.** I think it was followed when I was appointed managing director, I guess.

Q. How many times would you say has it not been followed? More than 50?

A. I don't know.

Q. Did the repudiation of this begin with Chairman Eraso's tenure?

A. No. I don't think that's quite correct, but I don't -- I mean, different chairmen have exercised varying amounts of personnel authority. They have consulted to different degrees with the Board. I don't think there is a hard and fast rule. **But I think my observation is that he [Chairman Moure-Eraso] does not believe he should follow all aspects of it and that he has some inherent personnel authorities as chairperson.** That's my perception of what he's done.¹¹⁷

¹¹⁶ Warner Tr. at 12 (emphasis added).

¹¹⁷ Horowitz Tr. at 91-92 (emphasis added).

Chairman Moure-Eraso's refusal to acknowledge the Board's authority to set policy in the form of Board Orders stands in stark contrast to the Clean Air Act and the Moss Opinion. The most egregious instance of this recalcitrance was Chairman Moure-Eraso's unilateral decision to hire General Counsel Loeb. The Chairman acted in direct violation of the Board Order 28 provision that requires a Board vote on any action to fill a senior executive service (SES) position.¹¹⁸

Current CSB leadership insists that the validity of Board orders is tenuous because many of them are outdated. Loeb testified:

Q. There are Board orders, is that correct?

A. There are something called Board orders, yes.

Q. And does the Board follow those generally?

A. It's a mixed bag. Many of the Board orders are outdated. They make reference to statutes and regulations that are—don't exist any longer or were long ago modified. So those . . . we do not follow those. We allow the superseding statutes or regulatory provisions to govern. In other cases, some of the Board Orders, at least in my judgment, are somewhat questionable as to their validity.¹¹⁹

The statute and the Moss Opinion make clear that Board orders are not left to the Chairman's discretion. The Chairman has the authority to submit changes to Board orders for a Board vote, but he cannot simply ignore them. Despite the issues CSB leadership has with some of the Board orders and particularly adherence to Board Order 28, the Chairman has never made any serious attempt to alter them.¹²⁰ Employee N testified:

[I]f Moure thinks it should be different, what he should be doing is changing the Board orders, not just ignoring them, and I think at one point he tried to back in 2011, he was saying that this was all a political problem with Wright and Wark. Let's just wait until they leave, and then we will—they just can move forward.

I think in November of that year, Moure had a notation item to change some of the Board orders where you could lift approval levels for contracts, and change some of the things he wanted to do. Mr. Bresland . . . calendared that saying these are huge issues for the agency. We need to have some discussion. You just presented me with this. Here are my specific concerns. Can we please talk about it? And that was never discussed. There was never a follow-up meeting on it [board governance].¹²¹

¹¹⁸ Board Order 28.

¹¹⁹ Loeb Tr. at 11.

¹²⁰ Horowitz Tr. at 93-95.

¹²¹ Employee N Tr. at 50-51 (emphasis added).

The Committee's investigation has shown that Chairman Moure-Eraso is not interested in following well-established procedure. Rather he has systematically disregarded the limits of his role set by the authorizing statute. Instead of operating through the proper channels to change specific Board orders, the Chairman has chosen to act in a dictatorial manner that undermines his colleagues. An effective chairman should work cooperatively with the Board toward fulfilling the CSB's mission.

B. Improper Handling of the CSB Budget and Spending

To justify their disregard for other Board Members' views, Chairman Moure-Eraso and Managing Director Horowitz blamed politics for their disagreements with Board Members. Witnesses testified that Horowitz would often discount Board Members' opinions and concerns by citing political reasons, and Horowitz used politics as justification for dispensing with Board orders.¹²² On May 3, 2011, Moure-Eraso sent an e-mail to Employee N regarding the CSB's annual operating budget alleging that the CSB's budget had been "impounded."¹²³ The e-mail directed the Employee to immediately execute the appropriation and budget:

¹²² Horowitz Tr. at 109.

¹²³ E-mail from Rafael Moure-Eraso to Employee N, et al. (May 3, 2011).

-----Original Message-----
From: Moure-Eraso, Rafael
Sent: Tuesday, May 03, 2011 10:24 PM
To: [REDACTED]
Cc: Horowitz, Daniel; Nguyen, Dai; Bogdan, Mark
Subject: Budget

May 4, 2011

To: [REDACTED]
From: Rafael Moure-Eraso, Ph.D., Chairperson and CEO
cc: Daniel Horowitz, Ph.D., Managing Director
Dai Nguyen, Financial Specialist
Mark Bogdan, Financial Officer
Subject: FY 2011 Budget Execution

"I hereby direct you to execute . . ."

Earlier today, Mr. Wright purported to calendar the CSB's operating budget for FY 2011, thereby attempting to effect an impoundment of Congressionally authorized and directed obligational authority. There remain fewer than five months in the fiscal year and in order to avoid a violation of the "Impoundment Control Act," 2 U.S.C. 681 et seq., I hereby direct you to execute the CSB's FY 2011 appropriation and budget as approved by Congress and signed by the President on April 15, 2011 (Public Law 112-10).

Specifically, all personnel costs, rental payments, and other periodic payments that the CSB must make to satisfy its continuing obligations shall continue to be made. In addition, your office shall certify funds availability (assuming that funds have been made available pursuant to Public 112-10) for all individual contracting actions of \$50,000 or less. For the purpose of this memo, a funding action is defined as any individual obligational activity (including travel) whose purpose is to obligate no more than \$50,000 via contract, purchase order, purchase card, or task or delivery order, including an order issued under a blanket purchase agreement (BPA). It does not include interagency agreements with other Federal agencies which shall continue to be obligated as ongoing liabilities of the CSB regardless of dollar amount. In addition, each funding action of \$50,000 or less shall be regarded as an individual funding action regardless of the overall amount of funding provided to any contractor under a contract or BPA.

Any funding actions for contracts or similar items should be coordinated with and approved by the Managing Director. For smaller funding actions, Dr. Horowitz may further delegate this authority, if he wishes.

Since there is some urgent need to pay current obligations, please execute the actions described in this memo as soon as you receive it. Contact me in the phone tomorrow if you have any questions. Thank you.

As required by Board Order 28, Board Members are supposed to approve an annual operating budget once they receive the appropriation specifying how the money will be spent. Employee N testified:

- A. In this case, [Board Member Wright] had some questions about the budget that had been presented. Specifically, that year, we didn't give the Board members as much detail as we had in prior years. I think we just gave them summary level information; whereas, in

prior years, we'd given them down to line items so they could see what we were spending on.

Q. Uh-huh.

A. So Mr. Wright calendared it [the budget] because he had questions that he wanted answered. I think he calendared it on May 3. May 4th, which was the next day, I received this memo from Dr. Moure, which was kind of shocking. I, for better or worse, had never heard of the Impoundment Act. **I'd just never seen anything like this. We had always had our monies approved by the Board prior to that**, so I was asking Chris and Ray [for] advice [on] really can I—can I do this [follow the e-mail directives], because my understanding was we needed to have the Board approve the budget.

One thing that I thought was interesting, too, about the timing of this was the notation item for the budget actually had a voting period, I think, through May 11th, so just—I was really curious why—if Mr. Wright had calendared it, why didn't Dr. Moure and Daniel try to answer some of his questions during the voting period. Instead, just the day after it got calendared, he said, **"Go forth and spend the money."**

* * *

Q. He says, at the end of the e-mail, Chairman Moure says, "Contact me in the phone tomorrow if you have any questions." Did you ever try to follow up with the Chairman or Dr. Horowitz?

A. I talked with Daniel about how to proceed with this. It was a very strange meeting with Daniel. He—he had this big political problem between the Board members, that Wright and Wark were mad that Mr. Bresland was no longer the chairman, they were just being difficult to Dr. Moure.

Q. Is that what Daniel told you?

A. Told me.

Q. Okay.

A. I hadn't seen any evidence of that, but that was what he said. He said, **"You know, we just need to spend the budget and do things, so just—just, you know, follow orders, do it, do what you're told to do , and if you have any problems with it, just put a memo to the file."**¹²⁴

¹²⁴ Employee N Tr. at 31-33 (emphasis added).

Horowitz dismissed the legitimate concerns of presidentially-appointed Board Members as political differences of opinion. Witness testimony and documents portray senior CSB leadership as close-minded, uncompromising individuals focused *not* on the welfare of the agency and public safety but on the implementation of their own agenda and consolidation of power. Moure-Eraso abused his responsibilities as CSB Chairman when he failed to even attempt to discuss Board Member Wright's valid concerns about the budget.

While current CSB leadership has refused to recognize the Board's authority to offer opinions on most substantive policy matters, it has recognized the Board's role in approving investigative reports. Unfortunately, the process of approving investigative reports has become contentious under Chairman Moure-Eraso.

When the final report on the investigation of the August 2012 Chevron incident in Richmond, California was presented to the Board in January 2014, Board Members Mark Griffon and Beth Rosenberg expressed their concerns with some of the report's recommendations. They voted to postpone voting on the report to allow time to address their concerns. In retaliation for exercising such due diligence, Chairman Moure-Eraso accused the Board Members of behaving recklessly, against the interests of public safety.¹²⁵ Board Members Griffon and Rosenberg defended their actions in an e-mail to Moure-Eraso¹²⁶:

¹²⁵ E-mail from Rafael Moure-Eraso, Chairman, CSB, to All CSB employees (Jan. 16, 2014).

¹²⁶ E-mail from Mark Griffon to Rafael Moure-Eraso (Jan. 20, 2014).

From: [Griffon, Mark](#)
To: [Moure-Eraso, Rafael](#)
Cc: [CSB All](#)
Subject: Decision to postpone Chevron Regulatory Report
Date: Monday, January 20, 2014 10:04:33 PM

Rafael:

The Board's reputation is based on producing bulletproof reports that are beyond reproach. The proposal for a fundamental regulatory model change is extremely complex and therefore necessitates that a very high bar be set for the Chevron Regulatory report. In addition, further investigation and, if justified, recommendations are needed to address possible changes to the current programs for CalOSHA and the Contra Costa ISO.

Because of the holiday period rush, the staff was not given enough time to adequately research and analyze significant public comments, which brought up important concerns about the safety case regime. Many of these comments are posted on the CSB website.

In addition, at the public meeting many experts and stakeholders raised serious questions about our report, including USW's refinery industry safety expert Kim Nibarger, the environmental justice leader Dr. Henry Clark, Cal-EPA, congressman George Miller as well as industry representatives.

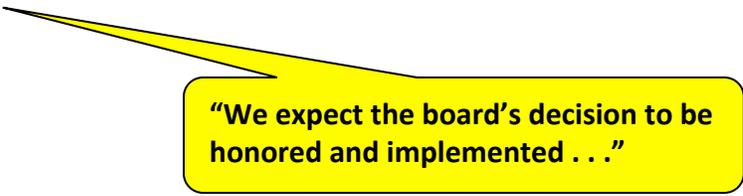
We did not reject the report. We postponed voting on the report by 120 days so that the staff has adequate time, in consultation with experts, to address important issues that will make the report and its ambitious recommendations much stronger.

We expect the board's decision to be honored and implemented, and look forward to working with you and the staff.

Thank you,

Mark Griffon

Beth Rosenberg



“We expect the board’s decision to be honored and implemented . . .”

C. The Controversial “Safety Case Regime” Approach to CSB Investigations

The aforementioned e-mail underscores CSB Board Members’ concern with the “safety case regime”—a philosophy Chairman Moure-Eraso has embraced and has vehemently sought to apply to CSB’s investigative approach. The safety case regime is a controversial approach throughout the industry.¹²⁷ Former investigators testified that steadfast adherence to the safety case regime could prove detrimental to CSB. Wanko, now with OSHA, testified:

¹²⁷ According to the Norwegian safety organization, DNV, the safety case approach is a documented demonstration that the facility owner has identified all major safety and environmental hazards, estimated the risks, and showed how all of these are managed achieving a stringent target level of safety, merging both prescriptive and performance requirements. See Robin Pitblado, *Will the U.S. Warm Up to the Safety Case Approach*, DNV GL, http://www.dnv.com/industry/maritime/publicationsanddownloads/publications/offshoreupdate/2011/01_2011/WilltheUSwarmuptothefuturesafetycaseapproach.asp (last visited May 6, 2014).

A. **It seems that [Moure-Eraso and Horowitz] have an agenda, and to me that's just completely wrong. They should be agendaless and neutral and just go where the facts go.** But it seems that they are, for some reason, very taken with a couple concepts. One is inherently safer technology and one is the safety case model from Europe. Some of the folks higher up, maybe Daniel and Rafael, are very taken with these concepts and they will do anything to get those concepts into the reports, whether or not they fit. And that is a problem, a big problem.

And the stakeholders are, if they are not already, they are going to start shutting [out] the CSB. If all they get out of the CSB is a recommendation to . . . do the safety case, . . . redo how we regulate in the United States and initiate the safety case, because it doesn't help. They are not being a help.¹²⁸

* * *

Q. So is the concern then there would be an onerous restriction on industry because they don't have the back and forth?

A. Well, it's -- there's an opinion within the -- at the CSB that the safety cases, the be all and end all of process safety. And this was the recommendation. This was the one big recommendation I know of from the Chevron case that came out yesterday, that they have recommended to the State of California that they retool their entire regulatory, safety regulatory system and require a safety case. There's thought and argument that the safety case is the regulatory model that the United States should be going to within the Chemical Safety Board because it's . . . better than what we have now.

Again, it's an agenda item, and do the facts in the case really point to a complete revamp of how we regulate in the United States? The interesting note, . . . I led the Caribbean Petroleum investigation. There was a very similar incident to the Caribbean incident in the U.K. back in 2005. It's the Buncefield incident . . . lots of damage. No fatalities. Buncefield was under the safety case. They did not envision this incident in their safety case. . . . What that means is the safety case is not perfect.¹²⁹

The safety case regime came up again in the final report on the four-year-long investigation of the Tesoro refinery in Anacortes, Washington, which started in April 2010. The Board was scheduled to vote on the final report on January 30, 2014, but Chairman Moure-Eraso

¹²⁸ Wanko Tr. at 76-77 (emphasis added).

¹²⁹ Wanko Tr. at 91-93

and Managing Director Horowitz decided to maneuver that vote into a “listening session,” effectively delaying the actual vote by at least 45 days. They did not consult the rest of the Board prior to setting this course of action. In response, Board Members Rosenberg and Griffon wrote a letter to Representative Rick Larsen to offer an explanation as to why the Chairman may have delayed the critical vote. They stated:

As you may know, a week ago the agency’s Board voted 2-1 to postpone approval of a recommendation for California to undertake a wholesale replacement of its process safety management regulatory regime for oil refineries. This recommendation was tied to CSB’s investigation of the August 2012 fire at the Chevron refinery in Richmond, California. The vote was postponed for 120 days to allow for the full consideration of written and oral comments regarding the adoption of a ‘safety case’ regime from the report on the Chevron fire. These two separate investigations [Chevron and Tesoro] are now linked by a common recommendation to adopt the “safety case” for refineries, **which could explain why the CSB Chairman unilaterally changed the January 30th meeting from a hearing into a ‘listening session’ . . . It is simply inexcusable that multiple commitments made to you and others are not being honored.**¹³⁰

The letter written by Rosenberg and Griffon signals a significant fracture in the Board’s working relationship with CSB Chairman Moure-Eraso. The Chairman did not consult the Board regarding the decision to delay the vote. In fact, Board Members only found out about the schedule change through press accounts.¹³¹ Chairman Moure-Eraso insisted on delaying the investigation further to ensure the advancement of his safety case agenda. Once again, the Chairman acted in his own self-interest, not the interest of the CSB and its mission.

D. The General Lack of Collegiality at CSB

CSB leadership’s contempt for Board Members Griffon and Rosenberg, refusal to uphold Board orders, and numerous attempts to stifle dissent within CSB have cultivated a general lack of collegiality within the agency. Such an environment is detrimental to the organization. Former CSB staff investigators testified that a good relationship with the Chairman and the Board was essential to doing their jobs well. Infrequent interaction with Chairman Moure-Eraso made it difficult for staff and Board Members to develop a good working relationship. John Vorderbrueggen testified:

Q. So then would you say your job relied upon good relations with the Board?

A. Oh, absolutely. Absolutely.

¹³⁰ Letter from Beth Rosenberg and Mark Griffon, Board Members, CSB, to Rep. Rick Larsen (Jan. 27, 2014).

¹³¹ *Id.*

Q. And the Chairman?

A. Absolutely.

Q. Did things change in the way in which you interacted with the board and chairman when Moure Eraso became chairman?

A. Yes, it did. Chairman Moure Eraso, I mean, it probably was weeks before I even had -- when he came into the agency, it was weeks before we ever even had a discussion. I mean, he never reached out to -- certainly he did not reach out to me. He certainly didn't reach out to my staff. It was kind of like here's this new chairman.

Q. And that was a change from the other chairmen?

A. And that was definitely a change. We seldom--I had a few face to faces with him, but they were pretty much very, Hi, how are you? He might have a simple question on something. Never a sit down heart to heart discussion about issues with an accident. He really stayed one away from us, and it was more, he pretty much, all of that interaction was really with Daniel at that point because when Daniel moved in as the MD [managing director], he kind of took on that type of a role, and, again, he became MD after Moure Eraso came in, some months after that, and then Daniel kind of funneled everything, and very seldom did we have face time with Rafael.¹³²

Moure-Eraso's tenure as Chairman has transformed the CSB, which had previously welcomed the open exchange of ideas and opinions, into an agency where the staff is afraid to disagree with him for fear of retaliation or public ridicule. Employee N recounted an incident in which Managing Director Horowitz repeatedly chastised him/her for consulting with the White House Office of Management and Budget regarding the budgetary effects of sequestration and the government shutdown. Employee N testified:

Q. **But people do fear retaliation from Dr. Horowitz and Chairman Moure?**

A. **Yes. Yeah.** And if I can give just something specific with me. You know, as [REDACTED], and always had a very open policy with OMB, too, where if--we're a small agency . . . trying to wear a lot of hats, and as long as the agency existed, had always been able to just pick up the phone and talk to our [OMB] examiner if a question came up, because although CSB is an independent agency, I had been getting the advice from OMB.

¹³² Vorderbrueggen Tr. at 16-17.

We had two things come up in 2011. One, there was the possible shutdown that happened in April of 2011, and there were all kinds of conference calls and advice and what do you do and just a really stressful time. One of the issues that was a concern was -- at the OMB level was the appearance of senior agency officials were on travel, and there was a government shutdown, and what would that look like? We had one of our members, John Bresland, was supposed to be a keynote speaker over in the U.K., so I called our examiner to say, "And here's the situation, what should we do?"

Q. Your examiner at OMB?

A. At OMB to get his advice. I told Daniel [Horowitz] about it, and he got really irritated that I would go to OMB, that CSB should be setting its own policy. Okay. . . . [REDACTED]; it's very typical in my role to be talking with OMB.

Q. **How did you know he was irritated?**

A. **He balled me out in his office.** And then a few months later, when there was the potential sequester, OMB was asking for information on what would be the effect of a 5 to 10 percent discretionary spending cut. Well, I got this -- Daniel and Loeb were trying to split our budget between fixed cost and variable costs and cuts on all that, and I thought, well . . . CSB's budget is all discretionary. You know, you look at Article 132; it's all discretionary. There's no mandatory. There's fixed cost. There's rent, yes, but CSB as a whole is discretionary. So I talked to the contractor and the examiner [at OMB] just to see . . . what's-- what's mandatory and what's discretionary, so we can put together our numbers for you. **I got really balled out by Daniel [Horowitz] for doing that, that we are a small agency, we should be setting our own -- targeting our own course. We should be telling OMB what we're doing. We shouldn't be running to them for advice.** He even questioned me about timings of e-mails to OMB; "When did you talk to them?" And then when I got my performance evaluation that year, typically, I would have gotten maybe like a \$3,000 performance award. **He cut mine back to \$1,000, and the primary thing he cited was going to OMB and talking to outsiders.**¹³³

Former investigator Jeff Wanko recalled an instance during a leadership meeting when Horowitz singled him out for raising a concern about languishing investigations:

¹³³ Employee N Tr. at 37-39 (emphasis added).

- Q. Would you attend these meetings?
- A. Once I was named the acting -- I'm not going to go through that title again once I became that quasi supervisor I was invited to those meetings. And Roger Evans and I started what we--we were pretty incredulous that the status of investigations, the money that was being spent, the budgets, the plans for completion were not being discussed at the leadership team meetings, so we started bringing those financials that were made available once a month, we started bringing those to the leadership team meeting and made sure that was a topic of conversation. **And during one of those discussions, Dr. Horowitz said to me, a fool knows the cost of everything and the value of nothing, in front of everybody. And at that point I decided, well, if he is going to call me a fool in front of my peers, then it is no longer time for me to be employed here. And that was pretty much the tipping point.**¹³⁴

CSB leadership refused to recognize and take responsibility for problems within the organization. Ridiculing staff and discouraging them from identifying problems and presenting solutions are signs of unacceptably poor management. A drastic change of direction is needed to save the CSB from failure.

VIII. The Abusive and Hostile Work Environment at CSB

Among all witnesses, with the notable exceptions of Horowitz and Loeb, there was a consensus that the work environment at CSB was abusive, toxic, and hostile. One witness went so far as to describe the agency as “a sinking ship.”

A. CSB Mismanagement Forces Seasoned Investigators to Leave the Agency

On January 31, 2011, the first of multiple iron dust flash fires occurred at the Hoeganaes facility in Gallatin, Tennessee.¹³⁵ Headquartered in Cinnaminson, New Jersey, Hoeganaes is a worldwide producer of atomized steel and iron powders.¹³⁶ The accident killed two people. When chemical-related casualties occur, CSB staff deploys to the site to investigate. In the case of Hoeganaes, John Vorderbrueggen, a professional engineer based in the Washington, D.C. CSB office, who had investigated multiple dust fire incidents; and ██████████, his colleague, went to the Hoeganaes site to investigate.¹³⁷ They arrived a day after the accident and

¹³⁴ Wanko Tr. at 15-16 (emphasis added).

¹³⁵ Vorderbrueggen Tr. at 20.

¹³⁶ CSB, Case Study, Hoeganaes Corp., Gallatin, TN, at 2 (Dec. 2011), http://www.csb.gov/assets/1/19/CSB_Case_Study_Hoeganaes_Feb3_300-1.pdf.

¹³⁷ *Id.* at 21.

immediately started working long days to determine what happened. At the end of each day, Vorderbrueggen and [REDACTED] had a debriefing call with CSB leadership in Washington, D.C.¹³⁸

1. Horowitz and Moure-Eraso Micromanage the Hoeganaes Investigation

During the nightly debriefing calls, it became clear that Horowitz and Moure-Eraso were going to micromanage the investigation. Vorderbrueggen testified:

A. I had a long discussion with Daniel and Rafael because kind of the new mantra that Daniel and Rafael had adopted was they're going to call and talk to the IIC, the investigator in charge, every night and find out what we've learned, ask us questions, et cetera, et cetera, so this became routine.

Q. This is a departure from how things were done in the past?

A. It was. Now, in prior events, when I would report to my supervisor, it was -- it never was as long because I think the supervisor recognized we knew what the heck we were doing, and he didn't need to tell us . . . to flip the page every time it was time to flip the page, but **for whatever reason Daniel [Horowitz] decided to really get in and micromanage or attempt to micromanage the activities from Washington, not knowing what's going on at the site, not knowing the risks, not knowing the hazards, not knowing the people, and so it -- that investigation -- and this was the first one that had really gotten to this level of detail, Daniel [Horowitz], he was just micromanaging the heck out of this, and Rafael [Moure-Eraso] was, too.**

* * *

But -- and I know this is kind of a long story, **but he wrote a long memo criticizing me of many things**, and they're all wrong.¹³⁹

2. The Sixteen-Page Criticism of John Vorderbrueggen's Work

One tactic CSB leadership used was to question the credentials of experienced investigators, sometimes to the point of belittlement. When Vorderbrueggen and [REDACTED] returned from their on-site investigation of Hoeganaes, Vorderbrueggen, who was the investigator in charge, received a lengthy, unfounded memorandum from Horowitz criticizing his actions. Vorderbrueggen testified:

¹³⁸ *Id.* at 22-23.

¹³⁹ Vorderbrueggen Tr. at 22-23 (emphasis added).

- Q. So this is a memo to you from Daniel Horowitz regarding the Hoeganaes deployment?
- A. Yes, ma'am, yes.
- Q. He talks about removing you from the investigation?
- A. Yes.
- Q. Can you just explain what went on here?
- A. **If I could figure out what his intent was, I would.**¹⁴⁰

In the memorandum, Horowitz accused Vorderbrueggen of placing himself and his colleague, ██████, in danger by entering the plant where the accident occurred. Vorderbrueggen disagreed with this assertion. He stated:

It came down after a couple days, Daniel had decided that he was -- without telling me this, he had decided that he was totally dissatisfied with what we were doing . . . We had informed Daniel that we were returning to D.C. I believe on the next day. We were there about 4 or 5 days . . . I said, we are attempting [to work with TN OSHA], but that, there's no reason for us to stay on site. We've completed our onsite work. There's no reason for us to hang out in Tennessee. We've got a million other things to do. We had other investigations we were working on back in D.C. I made a decision that ██████ and I would return unless Daniel flat out said, Do not come back, and Daniel had the opportunity to direct me to stay in Tennessee, and he did not do that. **We get back to D.C., and about 2 days later, he called me into a meeting and told me that he was removing me as the IIC [investigator in charge] on that investigation.** That was on February 14th. So that was 2 weeks after the accident was when we sat down.

He called me in to a meeting. It was Daniel [Horowitz]. It was me and I believe Hillary Cohen, she took notes. **I think it was just the three of us as I recall.** [Hall also attended] **And he announced that he had lost faith in me and that he was removing me as the IIC on Hoeganaes. And he said I will give you a written explanation to that within the next day or so. That's the February 25th memo.** So it took him another week to generate this many page -- I forget how many pages it is, but he probably didn't put page numbers on it, but he's got 14 items of criticism and accusations and other things, including even doing things unsafe, and **that's what had me more frustrated than anything is he accused me of putting myself and my coworker in an unsafe**

¹⁴⁰ *Id.* at 19-20 (emphasis added).

condition. And I was furious with that because I would never do that.¹⁴¹

A seasoned investigator, Vorderbrueggen was perfectly capable of determining whether it was safe to enter the site to investigate. With regard to safety, Vorderbrueggen stated:

I felt safe, and I was comfortable that we were not putting me or my team in harm's way. And I have pulled people out of areas because I thought they were unsafe. And I was very confident. So that was probably my biggest criticism of Daniel [Horowitz]. But he pulled me off as the IIC and reassigned the IIC position to Johnnie Banks, who worked for me, which didn't really make a lot of sense, but that's what Daniel [Horowitz] decided to do.¹⁴²

Vorderbrueggen took issue with the accusations levied against him in the memorandum as well as the manner in which it was presented to him. Horowitz summoned Vorderbrueggen and some of his peers to a meeting and gave him the memorandum. Regarding Horowitz's behavior at this meeting, Vorderbrueggen testified:

Q. I want to go back real quick to that meeting that you were in with Rob Hall and Daniel Horowitz.

A. Okay.

Q. And that was it; it was you, Rob Hall, Daniel Horowitz and one other person?

A. There was one other. I'm almost certain there was one of Rob's direct reports. I don't think -- Hillary Cohen works for Daniel or works for somebody, and she's an administrative person. But I don't recall if she was there taking notes or not, but I'm almost certain there was at least a third person. Rob would remember, I don't honestly remember.

Q. In your opinion, from the way you described the incident earlier, in your opinion **would you characterize Daniel's [Horowitz] behavior as abusive?**

A. **Yes, absolutely. Absolutely.**¹⁴³

Vorderbrueggen, an experienced professional engineer, left the CSB. He has since risen through the ranks as an investigator at NTSB.

¹⁴¹ Vorderbrueggen Tr. at 24-25.

¹⁴² *Id.* at 26-27.

¹⁴³ Vorderbrueggen Tr. at 97-98 (emphasis added).

3. Vorderbrueggen's Removal from the Investigator-in-Charge Position

Former CSB investigator Hall observed that CSB management improperly questioned the judgment of senior investigators examining the Hoeganaes incident. Hall also noted that Horowitz began micromanaging the IIC's role and improperly consulted outside experts on the investigation. Hall stated:

There was a second investigation just -- just after this occurred with John Vorderbrueggen . . . Vorderbrueggen was investigating a fire that occurred at a plant in Tennessee. It was Hoeganaes. . . .

During that investigation, Daniel Horowitz, very uncharacteristically, began micromanaging the investigation. John Vorderbrueggen was an investigation supervisor, as I was, had been at the CSB about 2 years longer than I was, extremely competent investigator, one of the most productive that they had. **He began uncharacteristically micromanaging them. He consulted outside consultants without the knowledge of the IIC and in violation of policies within the CSB as to not share investigative information with[out a] nondisclosure agreement.** We also looked to have agreements to put in place that there was no conflict of interest. One of the parties that he shared information with subsequently, we found, had a conflict of interest, but he was sharing this information with these parties, kind of doing his own investigation at the desk, at his desk back in Washington.

He ultimately removed John Vorderbrueggen from the investigation and put a different investigation team in. **There are some lengthy back and forth memos in this regard that are available.**¹⁴⁴

Many witnesses the Committee interviewed believed that by questioning the competency of senior investigators, CSB management made junior employees question the security of their own jobs.

4. Mistreatment of Senior Investigators Hall and Vorderbrueggen Caused Jeff Wanko to Question His Employment

Horowitz's questioning of Hall's expertise worried CSB investigator Jeff Wanko, a professional engineer with both public and private sector experience. Wanko witnessed Hall take a lower position at a different agency just to get away from the CSB. Specifically, Wanko stated:

Q. Were there any other interactions that, similar to that, that you had with [Daniel Horowitz] or that you witnessed him treating other investigators that way?

¹⁴⁴ Hall Tr. at 14-15 (emphasis added).

A. Yeah. **He absolutely questioned Rob Hall's ability to perform metallurgy. And if I have a metallurgical question the first person I go to is Rob Hall.** And this was in the Tesoro investigation, and Rob was pointing to high temperature hydrogen attack, which turned out to be correct, and Daniel would not basically would not allow him to say that. He said he had to hire somebody . . . to hire an expert to make that determination and would not allow Rob. And Rob has sat on ASME Piping Committee, technical committees for 20 years. The man knows metal. And Daniel doesn't know s*** and had . . . no reason to question Rob's expertise in this area.

Q. Why do you think he questioned Rob Hall?

A. I don't know. Don't know. **Ultimately it led to Rob's departure, and certainly he made -- Rob made a decision to demote himself, go to NTSB, be an investigator.** And it was that severe enough a blow that he just said that's it, he doesn't care about money, he's out of there. Maybe that was Daniel's intent.¹⁴⁵

Wanko was not alone in this view. This is but one illustrative example of abuse perpetrated by the CSB Chairman and Managing Director that caused the resignation of seasoned CSB investigators.

B. Chairman Moure-Eraso's Attempt to Fire General Counsel Chris Warner

On more than one occasion, Chairman Moure-Eraso attempted to hire and fire whomever he chose, in violation of established CSB procedures. Chairman Moure-Eraso improperly hired Richard Loeb, the current CSB General Counsel, without the approval of a majority of the Board. As a result, CSB Board Members sought the advice of CSB's then-General Counsel, Chris Warner, as to how they could prohibit Chairman Moure-Eraso from making any further personnel decisions without their required approval. Acting as he had done since the inception of the CSB and consistent with his duties as General Counsel, Warner provided advice to the requesting Board Members.

After obtaining this advice from Warner, the majority of the Board passed a measure, referred to as a notation item, limiting Chairman Moure-Eraso's personnel authority on February 26, 2011.¹⁴⁶ The next day, a furious Moure-Eraso attempted to terminate Chris Warner's

¹⁴⁵ Wanko Tr. at 71-72 (emphasis added).

¹⁴⁶ A notation item, "consists of a transmittal memorandum, the draft document proposed for adoption, and pertinent attachments necessary for a full understanding of the document." U.S. EPA, OIG, U.S. Chem. Safety & Hazard Investigation Board Should Improve Its Recommendations Processs to Further Its Goal of Chemical Accident Prevention, Report No. 12-P-0724, at 10 (Aug. 22, 2012), http://www.csb.gov/UserFiles/file/20120822-12-P-0724_cert.pdf.

employment in response to the Board's action. Warner recounted the events of that day. He testified:

Q. Did the chairman ever acknowledge to you that he was wrong in attempting to try to fire you?

A. The chairman can play it any number of ways. "Oh, I wasn't trying to fire you, I was" -- I don't know. **I mean, it was very clear that he basically said, "I want your resignation on my desk by the end of the day," and left. And said, "You can go home and do it." And I went home and wrote up a letter and said I wasn't resigning. I had done nothing wrong.**¹⁴⁷

Instead of resigning his position, Warner returned to work, only to have Moure-Eraso demote him.

1. Moure-Eraso Exploits Warner's Proper Assistance to Board Members

Moure-Eraso sought autonomy over all CSB personnel actions. Early in his tenure, he wanted to hire an attorney into an SES position. According to witness testimony, there was neither funding nor a human capital plan in place that would justify the hiring of a new attorney. Moreover, Moure-Eraso had not discussed the prospect of hiring an SES employee with his colleagues on the Board.

When the CSB Board Members learned of Moure-Eraso's plan to add a new SES employee, they sought the advice of then-General Counsel Warner to stop it. Warner described the actions of the Board Members when he testified:

And then in February around the 10th they learned of, yes, he's doing some sort of secret hiring, and the board was sort of incensed and went to him and they tried to pass a notation vote that said, wait a minute, we have far greater needs here at the board than one more attorney. And they tried to pass a notation vote that would limit his ability to do these actions until there's a human capital plan and a variety of other things. The chairman calendared that and then in a conversation with Board Member John Bresland basically said, "Don't worry. We'll have a public meeting and we don't do anything until we have that public meeting."

He then went and told the director of human resources to move ahead in secret at all haste to hire this person no matter what and keep it very quiet. The board learned of that and felt that they had been lied to by the chairman, so they on their own asked me for a new voting number. I gave them that voting number, which would be 829(a) and

¹⁴⁷ Warner Tr. at 88-89 (emphasis added).

they subsequently passed, I think on February 16, what we call "829(a)" that said, "Chairman, no, you have" -- "You have personnel authority, but before you do these hires you must have a human capital plan," et cetera, et cetera. So it's slightly different than 829 and it specifically rescinded 829, the calendaring it, as permitted under the board orders.¹⁴⁸

Without Moure-Eraso's support, the Board passed what is referred to as notation item 829(a), requiring the CSB's human capital plan to reflect personnel actions. Moure-Eraso next began to lash out at Warner for assisting with the Board's actions.

2. Moure-Eraso's Attempt to Fire Warner is Reprisal for Processing Board Notation Item 829(a)

One witness believed that Moure-Eraso was under the mistaken impression that Warner orchestrated the vote to limit Moure-Eraso's personnel authority. In fact, Warner, in his capacity as General Counsel, processed the notation item for a vote and wrote an action report on its passage. According to Former Board Member X, then-Board Member William Wark wrote notation item 829(a). Former Board Member X told Committee investigators that although Warner was just doing his job, Moure-Eraso's tried to fire him for it. Former Board Member X testified:

A. So then the next day [after the vote], apparently Dr. Moure-Eraso went into Chris Warner's office and said to him, "I understand you had something to do with the preparation and the approval of 829(a), and because of that, I've lost" -- quoting him, "I've lost my confidence in you and we ask for your resignation."

But as far as I know, Chris Warner had nothing to do with the actual writing of it. He had to process it because that was part of his job, but he didn't instigate it, as far as I can tell.

Q. **You said that Mr. Wark was the one that wrote the notation item?**

A. **I believe so, yes.**

Q. Do you know if he consulted Mr. Warner?

A. I don't know. I don't think so [H]e may have had to consult him in terms of putting together the documentation. Mr. Wark didn't write this [referring to the board action report].

Q. Right. And that's from Mr. Warner.

¹⁴⁸ Warner Tr. at 15-16 (emphasis added).

A. This is what they call a board action report, which is the report on the actual vote. The voting document itself, 829(a), is the one that has somehow disappeared. I don't know where it is or why it isn't on the board's webpage. **But Mr. Wark was the person who instigated that and got it circulated to the board members so we could vote on it. And then that led to Dr. Moure-Eraso going to Chris Warner and asking for his resignation.**

Q. Because he had assisted the board with the –

A. Because he assumed that he had assisted the board.¹⁴⁹

Employee A corroborated Former Board Member X's testimony regarding Chairman Moure-Eraso's motivation to fire Warner after the vote on notation item 829(a). In Employee A's view, Moure-Eraso tried to fire Chris Warner in retaliation for advising other Board Members on limiting Moure-Eraso's personnel authority. Employee A stated:

Q. And this vote that occurred, when Moure Eraso didn't participate in the vote, **this is what prompted him to attempt to fire Chris Warner, Chris Warner's involvement in this vote?**

A. **I think so.**¹⁵⁰

Employee A confirmed that Warner's actions were part of his obligation as General Counsel to serve the Board. Employee A testified:

Q. The firing of -- the attempted firing of Mr. Warner you said was in response -- **do you believe that was in response to him doing his job?**

A. **Yeah, absolutely.** I think the sequence there was around the Board's vote on 829, 829(a), which you had asked me about before the break. But I think the Board voted on that and, like, maybe the next day he is trying to fire Warner, in that time period.¹⁵¹

In addition to Former Board Member X and Employee A, several other witnesses stated that Chairman Moure-Eraso attempted to fire Warner for merely doing his job. Board Member Wark sent an e-mail to Moure-Eraso questioning his/her efforts to fire Warner:¹⁵²

¹⁴⁹ Former Board Member X Tr. at 94-96 (emphasis added).

¹⁵⁰ Employee A Tr. at 82.

¹⁵¹ *Id.* at 27.

¹⁵² E-mail from William Wark to Rafael Moure-Eraso, et al. (Feb. 17, 2011).

----- Original Message -----

From: Wark, William

To: Moure-Eraso, Rafael; Lau, John; Board; Kirkpatrick, Chris

Cc: Horowitz, Daniel

Sent: Thu Feb 17 10:33:48 2011

Subject: Re: Personnel Actions

Rafael,

I understand you're trying to fire Chris Warner for doing his job.

I don't know who you're listening to but you're getting bad advice. I suggest you may want to check with someone who is familiar with government personnel rules, regulations, and employee rights, because the heavy-handed, threatening nature of your conduct and ignoring Board actions duly voted by the majority, has you on very thin ice. In addition to violating any number of federal personnel laws and regulations (called "prohibited personnel practices"), your attempt to fire Mr. Warner is in direct violation of Notation Item 829A which suspended personnel actions in the agency.

I would further suggest that in the future you not send threatening emails to Board Members for doing their job.

Board Member Wark

Employee N also explained, in great detail, the background between Warner and Moure-Eraso. Employee N believed that Moure-Eraso never sought counsel from Warner because the two fundamentally disagreed on the Chairman's role. Like other witnesses, he/she believed Moure-Eraso lashed out after the Board voted on 829(a). Employee N testified:

When Dr. Moure came on, he, for some reason, believed much like the first chairman, that the chairman had the authority over everything, and the Board's role was very minimized. Chris Warner believed the Board was the one that ran the agency and set the high level policy. So there was a friction almost from the beginning between Moure and Warner over that fundamental point.

I think Moure didn't want to take any advice -- this is my opinion from Chris Warner early on because he just had a disagreement that Moure thought he was just in charge of everything and did not want to hear anything else.¹⁵³

Finally, Warner himself believed Moure-Eraso attempted to fire him as an act of reprisal for the assistance he gave Board Members in passing Board notation 829(a). Warner thought the

¹⁵³ Employee N Tr. at 16.

resulting limitation on Moure-Eraso's authority to hire and fire employees contributed to his attempt to end Warner's employment at CSB. Warner testified:

Q. So the attempted firing was reprisal?

A. Right.

Q. And that was a reprisal for what?

A. For raising the issues with the board about the [personnel] issues concerning Loeb.

Q. And the way he was hired you mean?

A. Yes.¹⁵⁴

3. Moure-Eraso's Attempted Firing of Warner Shocks Colleagues

Former CSB Investigations Supervisor Rob Hall informed the Committee about the dramatic events surrounding Moure-Eraso's attempted firing of Warner. He and his colleagues were shocked that Moure-Eraso forcibly removed Warner from the building. Hall was overcome with emotion when he described Moure-Eraso's attempt to fire Warner. Hall testified:

Q. Can you tell us what you observed during that instance?

A. Well, I was at work that day, and it was . . . the CSB in the building is actually on three different floors. I worked on the fourth floor. The chairman and Chris Warner were on the sixth floor. And then financial folks were in the basement. But no I just became aware because I got a call from Chris Warner.

Give me a second [witness begins to get choked-up and emotional]. He called me immediately afterwards, when he was already out of the building, explaining that he had been fired and thrown out of the building, asked me to make sure his staff knew.

Q. Take your time. Do you want to take a walk or?

A. No, I'm fine. I will be fine. **It is just, it was a huge shock at the time, and obviously, there is still some raw emotion there.**¹⁵⁵

Shock and fear reverberated throughout the agency. Employee morale suffered badly.

¹⁵⁴ Warner Tr. at 186.

¹⁵⁵ Hall Tr. at 76 (emphasis added).

4. Moure-Eraso's Attempt To Fire Warner Decimates Morale

News of Warner's firing spread throughout the agency. The ensuing shock among CSB employees sent morale into a tailspin. The firing incident may explain the attrition that has plagued the CSB under Moure-Eraso's tenure. John Vorderbrueggen stated:

Q. And then what effect, since you didn't directly observe it, **what effect did that anecdote [the recounting to the attempt to fire Warner] have on you and your colleagues?**

A. **The whole agency was flabbergasted. The work came to a screeching halt that day.** It happened fairly early in the day, as I recall, and I know that for the next 3 or 4 days we're all scratching our heads, and some of us are saying, Guys, it's out of our control, the best thing we can do is continue on and do our mission. I mean, I know I told my staff that. But at least for the first day, I mean, . . . we were dumbfounded, literally dumbfounded.¹⁵⁶

Moure-Eraso's attempt to bully and intimidate Warner was not the only instance in which he used such tactics. According to witnesses, Moure-Eraso also regularly sent intimidating e-mails to CSB staff. Employee A testified:

Q. And turning your attention back to this e-mail, the fourth line, he -- this is William Wark, mentioning **the "heavy handed threatening nature of your," as in Moure Erasos, "conduct." Do you believe that's an accurate characterization of Moure Erasos's conduct at CSB?**

A. Which line are you referring to?

Q. The fourth line where he says, "The heavy handed threatening nature of your conduct"?

A. Yeah, that - - that's him. That's Moure. **He's a bully.**

Q. Have you personally seen him bully any other employees?

A. Well, **I think he [Moure-Eraso] sent a bullying e-mail**, which was copied to everybody, to Manuel Gomez, whose employment status is now unclear. . . . **Moure sent him a very obnoxious e-mail back**, and then Loeb wrote an e-mail later for Moure to try to paper it over. I don't criticize Loeb for doing that, but it was very revealing of Moure's nature.¹⁵⁷

¹⁵⁶ Vorderbrueggen Tr. at 100 (emphasis added).

¹⁵⁷ Employee A Tr. at 29-30 (emphasis added).

5. Warner Refused to Resign Because Moure-Eraso's Actions Were Improper

Despite the oppressive nature of Chairman Moure-Eraso's improper actions, Warner did not tender a letter of resignation. Warner was confident that the Chairman's attempt to fire him was a prohibited personnel practice and Moure-Eraso could not fire him for simply doing his job. Warner later returned to work, refused to resign, and sent Chairman Moure-Eraso the following e-mail:¹⁵⁸

From: Warner, Chris
Sent: Thursday, February 17, 2011 5:11 PM
To: Moure-Eraso, Rafael
Cc: Bresland, John; Griffon, Mark; Wark, William; Wright, William; Elkins.Arthur@epa.gov; Bialek.Mark@epa.gov
Subject:

Dr. Moure:

You stated you wanted my resignation today due to a Board vote that occurred last night, and then sent me home for the day. I have **absolutely no intention of resigning my position as General Counsel of the CSB because of the Board's vote or for any other reason.** I have an exemplary record of performance here at the Board. I suggest you direct your concerns about the outcome of the vote to your fellow Board Members. Your statements today have caused me extreme anguish and physical suffering. I plan to go to the doctor tomorrow and take leave for the rest of tomorrow. I intend to be at work on Tuesday, February 22, 2011. I can be on call over the weekend for bona fide investigative emergencies as one attorney is ill and two others are on leave. Otherwise, I would appreciate some time to recuperate this evening and tomorrow.

Chris Warner

Warner's health suffered as a result of Moure-Eraso's actions. Furthermore, Federal Government personnel policies prohibited them.¹⁵⁹ Employee A testified that the attempt to fire Warner "was part of a string, which have all been reported to OSC."¹⁶⁰ Rob Hall also agreed; Hall testified:

Q. And you had mentioned that he had attempted to fire Chris Warner, but Chris Warner came back. And he is still working at CSB?

A. . . . **Chris Warner knew that the firing -- was illegal.** I know that he obtained counsel for himself and I guess was advised to keep going to work because it was an illegal personnel action, and he kept going to work.

Q. So what position did he have when he went back to work?

¹⁵⁸ E-mail from Chris Warner to Rafael Moure-Eraso, et al. (Feb. 27, 2011).

¹⁵⁹ Warner Tr. at 95.

¹⁶⁰ Employee A Tr. at 30 (emphasis added).

A. He still had the position of general counsel. Although, with the hiring of Richard Loeb, he had the position really in name only, but all of the general counsel work was shuffled off to Richard Loeb and I believe that Chris Warner worked on FOIAs until sometime more recently, where they did some sort of questionable personnel move that got Warner out of the general counsel position. . . .¹⁶¹

C. Moure-Eraso's Attempted Firing of Warner Had a Chilling Effect at CSB

Warner told Committee investigators that the chilling effect his attempted firing had on CSB caused the attrition that occurred in 2011. Warner told the Committee that Moure-Eraso's abusive behavior caused him to have a "mini heart attack," but his colleagues were supportive, given his years of distinguished service to the CSB. Warner stated:

Q. So the intent to --

A. -- Fire me.

Q. -- **fire you had a chilling effect on the entire agency?**

A. **Had an incredible chilling effect. Look at the number of people who left within a year of this happening. Most of the investigators.**

Q. What was the response of the staff after they learned about this attempt?

A. There was -- I had a lot of phone calls. I had some heart problems actually right around this time, so -- I lost part of my heart actually, so I had a little mini heart attack. I had a lot of people who came and said . . . "Stick in there. We're backing you up. You're correct."

The board members all sent e-mails protesting the action.¹⁶²

Warner noted that CSB Board Member Mark Griffon, a long time colleague of Moure-Eraso, has publically declared that he disagreed with Moure-Eraso's personnel actions. In the past, Griffon had used back channels to express his dissent. Warner stated:

¹⁶¹ Hall Tr. at 87 (emphasis added).

¹⁶² Warner Tr. at 89-90.

Even Board Member Griffon, if you asked him today whether he thought the vote was good or everything else, he would just -- he would agree with everything now. Back then he came on with Moure and was unwilling to publicly do anything openly that Moure didn't agree with.

But he would -- for that whole year in 2011 '12 he would go talk with staff and basically back up everything the staff was saying. He'd say, "I disagree. I disagree," but he would not publicly write anything. And it's only recently where he's said, "I've had it." He's gone to Congress, he's gone to Waxman, he's gone to the Attorney General. So, I mean, if you convince somebody that's known -- you for 30 years to just call it that's pretty -- pretty telling.¹⁶³

Additionally, Managing Director Horowitz admitted that Moure-Eraso's treatment of Warner had a chilling effect on other CSB employees. He testified:

Q. Do you think that the attempt to or at least asking Chris Warner for his resignation had a chilling effect on the agency, or other folks were fearful of retaliation because of it?

A. It was a tense and conflicted time. So I think it had . . . a lot of people were having a lot of upset feelings at that time about it, yes.¹⁶⁴

2. Moure-Eraso's Retaliatory Actions Amount to an Undeserved Demotion of General Counsel Warner

When Chairman Moure-Eraso realized that he could not fire Warner, he demoted him. In September 2012, Moure-Eraso removed Warner from the General Counsel's office, stripped him of his duties as General Counsel and limited his portfolio. This harsh demotion took place at the same time of Richard Loeb's appointment as CSB's new General Counsel. Former Investigation Supervisor Vorderbrueggen stated:

Q. Speaking of being blackballed, in your experience and observation, **did you observe reprisal against Chris Warner? Do you believe that's why he was demoted from --**

A. **Well, I think that in and of itself was reprisal. The fact that Rafael [Moure-Eraso] says -- number one, when he comes in and says you're fired to me that's reprisal, and then when Rafael discovered he couldn't fire him, he didn't have the legal right to, and he would never win that from what I understand, the fact that he took him out of his role as general counsel and**

¹⁶³ Warner Tr. at 90 (emphasis added).

¹⁶⁴ Horowitz Tr. at 87.

summarily appointed Richard Loeb, who had no -- Chris Warner has since 1997 experience with the Chemical Safety Board, and Chris Warner knew . . . what our mission is and what we need to do.¹⁶⁵

Moure-Eraso limited Warner's responsibilities to Freedom of Information Act and ethics issues. Employee A testified that this significant change in duties, although not a pay decrease, constituted a demotion.¹⁶⁶ Managing Director Horowitz, however, refused to admit such action was a demotion. Horowitz testified:

Q. So it was a demotion?

A. No.

Q. What does he do now?

A. Senior counselor to the chairperson.

Q. **And what is that [Senior Counselor to the Chairman] exactly?**

A. **His [Warner's] primary responsibilities are for freedom of information, agency ethics. He was already doing a lot of freedom of information work as general counsel.**¹⁶⁷

* * *

Q. **So you don't view this as a demotion?**

A. **I mean, I guess it's in the eye of --**

Q. **Once general counsel and now you're handling FOIA?**

A. **I mean, it's somewhat in the eye of the beholder, I guess.** All I can say is if I were in his shoes, I would be relieved. But I mean, I guess anyone can have a view on this.¹⁶⁸

A pervasive climate of fear ensued following Moure-Eraso's actions against Chris Warner. These actions had far-reaching effects.

¹⁶⁵ Vorderbrueggen Tr. at 105.

¹⁶⁶ Employee A Tr. at 82-83.

¹⁶⁷ Horowitz Tr. at 39.

¹⁶⁸ Horowitz Tr. at 39-40 (emphasis added).

IX. After the Demotion of Warner, Agency Employees Fear the Chairman's Retaliation in All Aspects of Their Work

FINDING: Current and former CSB employees agree that Chairman Moure-Eraso retaliated against whistleblowers. As a result, all employees fear retaliation at the hands of the Chairman.

The abusive and hostile work environment created by Chairman Moure-Eraso has instilled fear throughout the agency. Staff fear recriminations if they question the Chairman and his management team. Former Board Member X testified:

- Q. Did staff and Board Members feel like they could -- you had mentioned before the ability to discuss things with people with differing opinions and you were able to work together and come to a consensus on things. Did you feel that way under Chairman Moure-Eraso? **Did you feel like you could come and express an opposing opinion and you could have a civil conversation, or were people sort of afraid to do that?**
- A. **I think generally people would be afraid to do that because they might think there'd be some action taken against them because of that.**¹⁶⁹

Agency personnel have witnessed Moure-Eraso retaliate against several employees who contradicted or questioned him. After a senior OSC attorney purportedly revealed the names of CSB whistleblowers to CSB General Counsel Loeb, their fears of retaliation came true. Employee A told the Committee that whistleblowers whose names were revealed suffered reprisal. Specifically, Employee A testified:

- Q. **So that the names that were revealed to Loeb, have those employees had reprisal actions taken against them after that?**
- A. **Yes, I believe that would be accurate.** I know that -- well, I was -- again, there are employees, and there's Board Members. The employees I'm aware of were **Mr. Warner and myself and [REDACTED], and . . . we've suffered reprisals.** That's our belief. So we were left with the recourse of reporting our concerns to OSC. And the dilemma is . . . what do you do when the watchdog is corrupt? That is why I'm -- here. We're waiting. We're waiting for OSC to do something.

¹⁶⁹ Former Board Member X Tr. at 88-89 (emphasis added).

I think the IG probably did what they could. They issued a 7 day letter. And some of these issues aren't that complicated. The people either did what is alleged, or they have some other story.¹⁷⁰

Warner, one of these whistleblowers, related to the Committee that Moure-Eraso took adverse action against him upon learning of his whistleblower status. Specifically, Moure-Eraso stripped him of most of his professional responsibilities. Even though Warner was still officially the CSB's General Counsel, Moure-Eraso refused to communicate with him, instead choosing only to speak with Loeb. According to Warner, he became General Counsel in name only. Warner testified:

Q. **[W]ere there any adverse actions taken against you that you believe were related to the fact that your identity was now known as a whistleblower?**

A. Well, **absolutely** -- well, clearly everything that happened after that was accelerated. **I was not involved in most legal operations that occurred.** Moure would just go to Loeb. He wouldn't even make a pretense of asking general counsel on whether I have to get a vote or do this or that, and continued to go to Loeb on everything. So it was very clear during 2012 that **I was general counsel in name only.** . . .¹⁷¹

A. Even CSB Board Members Fear Retaliation from the Chairman

Chris Warner was one of the agency's first employees, and he has worked under every CSB Chairman. Unfortunately, Warner perceives a significant difference between the relationship Chairman Moure-Eraso has with the current board and the relationship between previous Chairmen and their Boards. Warner added that the current Board feels powerless and that agency staff is scared to say anything to Moure-Eraso, Loeb, and Horowitz. Warner testified:

Q. **During your time during the life span of the Chemical Safety Board, have you ever seen the board operate this way before or experience -- this level of toxicity in the workplace?**

A. **No, I haven't.** . . .

So no, I've never seen it like this at all. But more importantly, that everybody is confused. There were rules, there are procedures, there are board orders, people could -- yes, we have this protection. You could do this or that. Now the **Board Members** just throw up their hands and don't know what their rights are. They don't know what they can do and not do. They

¹⁷⁰ Employee A Tr. at 90 (emphasis added).

¹⁷¹ Warner Tr. at 189-190 (emphasis added).

sort of **feel powerless**. They tell the staff they're powerless, and the **staff is scared about saying anything and everything to any of those three**.¹⁷²

Witnesses the Committee interviewed testified that Chairman Moure-Eraso, Managing Director Horowitz, and Richard Loeb essentially run the agency. Warner testified, “[b]asically it's Loeb, Horowitz and Moure basically run the place.”¹⁷³ Former Board Member X stated that the Chairman, Loeb, and Horowitz would make all the decisions, excluding the other CSB Board Members. Former Board Member X stated:

But you have to realize that his management style, from my perspective, was somewhat strange, unusual in that . . . [i]t was very noninclusive. It was very little in the way of discussion with the other board members. It was much more, again, as I say, **the chair, Dr. Horowitz and Richard Loeb would get together and come up with some conclusions as to the way things should be, without taking into consideration the opinions of the other board members**.¹⁷⁴

Employee A testified that the Board Members have serious reservations about the way Moure-Eraso has been running the board, but are afraid that Moure-Eraso's management may tarnish their reputations if they voice their concerns. Employee A stated:

Q. Do you know what Board member Rosenberg and Griffon's reaction has been to the way the Board has been run in the past year and a half?

A. I think they're disturbed. I think Griffon has been disturbed for quite a while. I think he's **raised concerns both internally and externally. And I think he's probably suffered a form of reprisal**. That's not the same as an employee, but **I understand that he's been smeared in various places**. You'd have to ask him for the details. I don't know, but that's what I've heard.

So there is a little fear there, I think, with Rosenberg and Griffon that their reputations will be sullied, or some other action will be taken by Moure and others working for him to hurt them, not physically but professionally. **And I think their concerns are very well founded**. That's my opinion.¹⁷⁵

B. Administrative Support Employees Fear for Their Jobs

¹⁷² Warner Tr. at 166-167 (emphasis added).

¹⁷³ *Id.* at 100-101.

¹⁷⁴ Former Board Member X Tr. at 88 (emphasis added).

¹⁷⁵ Employee A Tr. at 95-96 (emphasis added).

After the attempted firing and demotion of Counsel Warner, agency staff feared for their jobs. Former investigation supervisor Hall stated, “**after the chairman attempted to fire Chris Warner, I mean, that had a very chilling effect on the entire staff. . .**”¹⁷⁶ Further, Employee N told the Committee that this incident sent a clear message to CSB employees not to do anything of which the Chairman would disapprove. Employee N testified:

Q. -- after [the firing incident]? And when --

A. And that -- and if I can back up a little bit. [The firing of Warner] **had a very chilling effect** because most of the staff became aware of it, and it was a **very strong message to the entire agency, never ever question or do anything that Moure might not approve of.**

Q. Do you know of anyone specifically that left after this incident because of this chilling effect?

A. I don't think you can have a direct tie. **I think that the culture at CSB had very much changed.**

Q. After this incident?

A. **After that incident, and we started losing investigators, senior investigators.** Some of them said they did not want to work in that kind of an environment.¹⁷⁷

Shortly after Moure-Eraso's attempt to fire Warner, he directed Employee N to process a personnel action for Richard Loeb. Employee N had been with the CSB since its inception and was very familiar with CSB's hiring procedures. Thus, in an effort to avoid processing what he/she believed to be an improper personnel action, he/she contacted the General Counsel's office for advice. In the following e-mail, both the Human Resources Director, John Lau, and Employee N state they feared retaliation by Chairman Moure-Eraso and Managing Director Horowitz if they did not comport with the Chairman's directives. Employee N sent the e-mail to Chris Warner, CSB's General Counsel at the time. The e-mail demonstrates Employee N's palpable fear of retaliation.¹⁷⁸

¹⁷⁶ Hall Tr. at 75-76 (emphasis added).

¹⁷⁷ Employee N Tr. at 18 (emphasis added).

¹⁷⁸ E-mail from [REDACTED], CSB, to Chris Warner, General Counsel, CSB (Mar. 4, 2011) [hereinafter [REDACTED] e-mail].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. Moure-Eraso's Demotion of CSB Staff Extended Beyond the Office of General Counsel

Employee N has been with the CSB since 1998. He/She started with CSB as a program analyst and became [REDACTED] in 2000. In that role, he/she was the [REDACTED], among other responsibilities. As [REDACTED] at CSB, Employee N's primary role is to ensure that the Board is properly expending its funds in accordance with Board orders.

In the course of performing his/her duties during Moure-Eraso's tenure, Employee N noticed a number of irregularities, and questioned the expenditure of funds made without Board approval. Specifically, he/she questioned the validity of student loan payment increases on which the Board had not voted. Former General Counsel Warner testified:

I think I've documented a variety of things that have happened on [sic] **retaliation against individuals that have been raised to me or the IG. But those are typically the things. [REDACTED] raising issues about funding, board votes. You know, all of a sudden we're giving out student loan amounts that are six times higher than they were, but the board**

hasn't voted on it. There's no annual budget voted on at the board.

There's no board vote on awards. There's nothing else.¹⁷⁹

As a result of his/her actions, Employee N believes he/she suffered reprisal. In fact, similar to Warner and Employee A, Employee N saw his/her job responsibilities curtailed and transferred to Loeb.¹⁸⁰ Yet, he/she has chosen to remain at the agency. In spite of Employee N's willingness to stay on, a number of employees have left because they could no longer withstand the abusive work environment prevalent at CSB.

Further, in the summer of 2012, Managing Director Horowitz took away Employee N's role as [REDACTED], without any explanation whatsoever.¹⁸¹ Employee A testified to the Committee that Employee N's oversight role has been limited. Employee A confirmed that Employee N lost his/her position as [REDACTED], and lost a number of his/her other roles for the agency. Employee A also testified that Employee N received e-mails from management "putting [him/her] in [his/her] place."¹⁸²

Employee A also told Committee staff that Employee N's duties changed because he/she asked questions about financing and contracting issues.¹⁸³ Instead of answering Employee N's questions about certain expenditures, the Chairman and Loeb demanded that Employee N certify that funds existed—nothing more. Employee A stated:

Q. Do you know if, in fact, Employee N was retaliated against because of these issues?

A. Yes, I believe so. I think that in general . . . [REDACTED] would raise issues about financial matters, concerns, questions, like I did on the IT cap reply, and because of that, [his/her] role was changed, reduced. And I believe at one point [he/she] got an e-mail from somebody, maybe Loeb or Moure directly, just saying, look, your job is to certify whether or not we have funds, nothing else.¹⁸⁴

Witnesses told the Committee that CSB personnel who disagree with Moure-Eraso and his management style risk losing their jobs. Former General Counsel Chris Warner and others testified that Moure-Eraso and his management team marginalized Employee N and anyone else who disagreed with them.¹⁸⁵

Testimony further revealed a tendency on the part of Chairman Moure-Eraso to instruct CSB employees to take questionable actions. For example, Employee N was concerned that Loeb's hiring was improper since the budget did not account for this SES position. Employee N

¹⁷⁹ Warner Tr. at 106 (emphasis added).

¹⁸⁰ Employee N Tr. at 6-7.

¹⁸¹ *Id.* at 6.

¹⁸² Employee A Tr. at 34-35.

¹⁸³ *Id.* at 34.

¹⁸⁴ Employee A Tr. at 37.

¹⁸⁵ Warner Tr. at 101.

also raised concerns about the propriety of student loan payments. It was well within the scope of his/her duties for Employee N to voice such concerns. In both cases, the CSB management team either overlooked or completely ignored his/her concerns. In fact, they instructed Employee N to take actions he/she believed to be inappropriate. As it turned out, this was not limited to Employee N.

X. CSB Leadership Directs Employees To Take Improper Actions

FINDING: Chairman Moure-Eraso's disregard for the proper Board governance processes caused CSB employees and fellow Board members consternation, leading to an unproductive work environment.

A. Improper Contracting Practices

One provision of Board Order 28, discussed previously, governs the use and expenditure of CSB funds. Because Chairman Moure-Eraso and Managing Director Horowitz refuse to uphold Board Order 28, however, they frequently have to direct staff to act in spite of it. Specifically, Board Order 28 states the Chairperson possesses “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.”¹⁸⁶ This means any contract which exceeds \$50,000 requires Board approval. In March 2012, Chairman Moure-Eraso sought the Board’s informal approval for a five-year contract for public affairs support and video production services known as the “Sandy Gilmour Contract.” Employee N testified:

Q. Can you give any examples of that [improper expenditures] that we haven't already touched on?

A. Yeah, I know Richard Loeb and he sent me an e-mail that said basically, well, I know in the past you have concerned yourself with whether or not the Board approved a Notation Item, but you really don't need to do that. As far as particular procurements, I know that they started going out without Board approval. One of the biggest examples was we have a contract with Gilmour Communications for public affairs work.

After the 2011 operating budget got calendared we still needed to have a contract for that year's public affairs work. I asked if we had received a Board approval for that, and [I] kind of got no answer about it. I'm trying to piece back a few years, that Moure just wanted the members just to, via e-mail, or just sit down and say yes we think this is a good idea go ahead and fund it. But the

¹⁸⁶ Board Order 28 (emphasis added).

Board orders pretty clearly say you have to either have it approved in the operating budget or have it approved as a standalone notation item. You can't just say, oh yeah, that is a good idea. Let's do it.

Moure directed me to process that procurement without the Board approval. I was cc'd on an e-mail from John Bresland who had some concerns about it. I asked John Lau who was my supervisor what I should do. Within a couple of minutes I got an e-mail from Moure saying, just process it. Don't listen or take advice from anyone else.

Q. Did you process it?

A. Yes, and reported it to the IG.¹⁸⁷

Notation Item 662 governs the Sandy Gilmour Contract. In accordance with Board Order 28, Notation Item 662 states that the full Board must approve expenditures in excess of \$50,000. The requirement goes even further, requiring a formal Board vote. Then-Board Member John Bresland expressed his dismay with Chairman Moure-Eraso's attempt to subvert the process. The Chairman sought the Board's approval without the required vote. On March 9, 2012, Bresland sent the following e-mail to the Chairman:

¹⁸⁷ Employee N Tr. at 46-47 (emphasis added).

From: Bresland, John
Sent: Friday, March 09, 2012 10:17 AM
To: Moure-Eraso, Rafael; Board
Cc: Loeb, Richard C.; Horowitz, Daniel; Warner, Chris; [REDACTED]
Subject: RE: Sandy-Gilmour Contract-Follow up

Rafael,

This in response to your March 1 and March 5 e-mails regarding the Board approval of Sandy Gilmour contract.

Notation Item 662 for the execution of a contract for public affairs support and video production services was approved by the Board on November 14, 2008. The approved contract has a maximum year value of not to exceed \$6,743,178. In the same Notation Item the Board approved the allocation and expenditure of appropriated FY 2009 funds up to a fiscal year maximum of \$395,000.

The Board is required by Board Order 1 to approve "Contracts, interagency transfers, or other expenditures exceeding \$50,000". Since the approval of Board Order 1 in 2002 the Board has voted by Notation Item to satisfy this requirement. Board Order 28, originally approved in 2002, repeats this requirement in paragraph 8(f).

As I understand your March 1 e-mail, you are asking the Board to approve funding of \$278,000 for the public affairs support contract. I am prepared to vote by Notation Item on the funding of the \$278,000. However, in your March 5 e-mail you are asking the Board to express its concurrence on the expenditure of \$ 278,00 by e-mail. I am not prepared to do that. Board Orders 1 and 28 are very clear that Board approval is required for "expenditures exceeding \$50,000".

As an aside, I note that Board Order 28 requires Board approval of the "final operating budget of appropriated funds". A FY 2012 operating budget has not been approved by the Board. In FY 2010 the operating budget included the approval of the public affairs contract, thus eliminating the need for a

separate Notation item. A Notation Item for the FY 2012 operating budget should include the funding for the FY 2012 public affairs contract.

Let me reiterate that I am not prepared to approve the expenditure of \$278,000 by e-mail. It should be approved by a Notation Item or by a vote at a public meeting.

John

"[I]n your March 5 e-mail you are asking the Board to express its concurrence on the expenditure of \$278,000 by e-mail. I am not prepared to do that. Board Orders 1 and 28 are very clear that the Board approval is required."

As Employee N testified, he/she did not feel comfortable processing the request without Board approval because he/she knew doing so would violate Board Order 28. He/She contacted Deputy Managing Director John Lau for guidance, but received an e-mail from the Chairman minutes later ordering him/her to process the request:

From: Moure-Eraso, Rafael
Sent: Friday, March 09, 2012 10:41 AM
To: [REDACTED]
Cc: Lau, John; Horowitz, Daniel
Subject: Gilmour Contract

[REDACTED]

Notwithstanding any other advice or consultation which you may be following, I authorize and direct that you take action to commit and obligate the funds for the Gilmour contract per my e-mail of 5:43 pm on 3/8/2012. Please confirm that you are following this direction.

Thank you,

RME

In this manner, Chairman Moure-Eraso unilaterally approved the funds for the contract in direction violation of Board Order 28. By approving the funds, he demonstrated complete disregard for both CSB rules and the concerns and opinions of fellow Board Members. In a follow-up e-mail to the Chairman on this matter, then-Board Member Bresland described the Chairman's actions as "a blatant disregard" of the CSB approval process:

From: Bresland, John
Sent: Wednesday, March 21, 2012 1:42 PM
To: Moure-Eraso, Rafael; Board
Cc: Loeb, Richard C.; Horowitz, Daniel; Warner, Chris; [REDACTED]
Subject: RE: Sandy-Gilmour Contract-Follow up

Rafael,

In my March 9 e-mail (see below) to you I indicated that that approval of funding for the public affairs contract should be by Notation Item or by a vote of the Board Members at a public meeting. Mark Griffon, in a separate e-mail concurred with me.

Since sending you my March 9 e-mail I have determined that \$278,000 has been committed to fund the public affairs contract and that the Bureau of Public Debt has been instructed to obligate that sum. As you are aware, the Board has not approved this expenditure of the \$278,000, either by Notation Item or by a vote at a public meeting.

I am very concerned about this blatant disregard of the Chemical Safety Board's process for approving expenditures of more than \$50,000. Please take the necessary steps as soon as possible to rescind the commitment of the \$278,000 until the Board approves the expenditure.

"I am very concerned about this blatant disregard of the CSB's process for approving expenditures. . . ."

B. Improper Use of Personal E-mail for Official Board Communications

There is evidence that Chairman Moure-Eraso, Managing Director Horowitz, and General Counsel Loeb may have violated the Federal Records Act (FRA) by using personal e-mail accounts to conduct official CSB business. The FRA defines federal records as “documentary materials that agencies create and receive while conducting official business that provide evidence of the agency’s organization, functions, policies, decisions, procedures, and operations, or that contain information of value.”¹⁸⁸ Using personal e-mail to conduct official business creates a potential gap in the record. This Committee has investigated numerous instances of the inappropriate use of personal e-mail to conduct official business. Such use often occurs in an attempt to hide improper, inappropriate, embarrassing, and potentially illegal material from investigative entities such as inspectors general and Congress, as well as FOIA requesters.

Prior to the start of the EPA IG’s investigation of CSB, Moure-Eraso, Horowitz, and Loeb demonstrated scant knowledge of Federal Records Act. Horowitz testified:

Q. Do you use personal e-mail accounts ever to conduct business while you're at the CSB?

A. I have sometimes, or from home. But last year the IG raised it as an issue, and I have -- made a point to avoid it as much as possible.

Q. Well, when you do use your personal e-mail account, do you make sure to forward or -- copy it to your official account?

A. I never gave it much thought prior to the IG raising it. We don't have any policy, like--some agencies, on use. But when they raised it, I set up rules so that if I receive e-mail from work -- because a lot of times, like, an address will auto fill. It's forwarded back or I--reply back from my official account, so that it's --

Q. Well, you are aware of the Federal Records Act, though?

A. Yeah, yeah. No, I'm aware that it exists. I haven't read it or anything.¹⁸⁹

Horowitz’s attitude about the possible violations of federal law is consistent with the manner in which he has operated as CSB’s Managing Director. General Counsel Richard Loeb testified candidly that CSB’s express purpose in communicating via private e-mail accounts was to conceal deliberations among Moure-Eraso, Horowitz, and Loeb from the Office of General Counsel:

¹⁸⁸ 44 U.S.C. § 3301.

¹⁸⁹ Horowitz Tr. at 88-89.

Q. So what I hear you saying is that you sometimes were e-mailing with the Chairman--

A. Uh-huh.

Q. -- on personal e-mail?

A. Yes.

Q. And this was an exchange of drafts?

A. Always drafts, nothing ever final. And it would typically be a draft of something he was planning on sending to the Board or to a staff member or something.

Q. Okay. And my understanding, and please correct me if I'm wrong, is that there is a dispute with the EPA IG over the production of documents that includes personal e-mails between, I believe, you and possibly the Chairman to private counsel that's been retained by the agency and whether those documents are considered attorney-client privileged. Is that correct?

A. I believe that's true.

Q. So I guess I'm confused that that --

A. Well, the --

Q. My understanding is that those were e-mails that were conducted through the use of personal e-mail accounts.

A. Those initially were. They were done through personal e-mail accounts. And as I told others, the reason for that is there was a belief that our e-mail, particularly with respect to the Office of General Counsel, was not -- I don't want to use the word "secure," but not -- there was a belief that the Office of General Counsel could see those e-mails and that people -- there was no expectation -- I think it's been remedied, but there was a belief that people could get into other people's e-mails on the CSB system. Apparently, there had been some issues of that prior to my getting there. And e-mails were, I'm not sure quite how, but they were -- people got in.

So the concern was that when we retained Mr. Broida [the outside counsel for CSB], that we not initially put that on the CSB e-mail server, but we have retained everything as a record. So that is

retained as a record. After talking to the EPA IG, we switched everything over to the CSB account, so we do have that. And I would consider those e-mails to be attorney-client privileged with respect to advice Mr. Broida has given us. But I don't deny that there are official records of the CSB.¹⁹⁰

CSB leadership's use of private e-mail was part of its effort to completely shut out Board Members and staff of all CSB deliberations and decisions. It is another example of how Moure-Eraso, Horowitz, and Loeb are at odds with other CSB employees and the agency's authorizing statute – all in an apparent effort to maintain absolute power. Documents and materials obtained by the Committee show that they systematically disregard rules and regulations and abuse staff and other CSB Board Members. They do so as a means to advance their own agenda and ideology.

XI. Conclusion

The actions of a select few—Chairman Moure-Eraso, Managing Director Daniel Horowitz, and General Counsel Richard Loeb—have compromised the Chemical Safety and Hazard Investigation Board's mission and left the agency in disarray. Their actions, ranging from belittlement of staff and micromanagement of CSB investigations, to prohibited personnel actions and improper staff directives, are simply unacceptable. These practices must change without delay.

The CSB is charged with undertaking investigations into accidents which have often had tragic human consequences. Following an investigation, CSB is to issue insightful reports that provide analysis and explanation of the facts and circumstances of the specific incident. The agency must complete these investigatory reports as quickly as possible in order to provide answers and, if appropriate, effectuate positive change in the related industry. The toxic and abusive work environment at CSB caused a high rate of attrition, which has stymied the ability of CSB to provide any public safety benefit.

Current leadership mishandled the identity of whistleblowers and wasted millions of taxpayer dollars on redundant and lengthy investigations, some of which have been pending for years. Employees who raised questions about agency management or spending faced retaliation. Relations among the Board Members are strained to the extent that discussion and votes regarding investigations are not occurring in a timely manner. The crisis situation at the CSB cannot continue. To ensure that CSB gets back on track, CSB leadership needs to make drastic changes.

¹⁹⁰ Loeb Tr. at 41-43.