

WRITTEN STATEMENT
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U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD
TO THE
OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
ON

Whistleblower Reprisal and Management Failures
at the US Chemical Safety Board

JUNE 18, 2014

Thank you for inviting me to submit testimony to the Oversight and Government Reform Committee. I regret that I am unable to appear before the Committee today due to a pre-existing family obligation. I was nominated by President Obama in March 2010 and confirmed by the Senate in June 2010 to a five-year term ending in June 2015. My academic training is in chemistry and radiological sciences.

When I was initially appointed to the Chemical Safety Board (CSB) I believed, and continue to believe, that the unique mission of the CSB is critical in helping to prevent future catastrophic chemical incidents. The CSB is a very small agency with a very sizable mission. The CSB does not have enforcement authority and can't issue fines and most importantly the investigations are not focused on finding blame – rather the goal is to identify the underlying causes of the accident with the purpose of preventing future similar accidents. I have found that most stakeholders – regulators, companies, labor unions – are supportive of the work of the CSB and are using our reports and videos in an effort to learn from these tragedies.

With all the good that the agency has done and continues to do in the area of high hazard accident prevention today's hearing is focused on the management of the agency. I will focus my testimony on two questions: Are there management challenges at the CSB? and Are there opportunities for improvement?

I. Are there management challenges at the CSB?

Criticism of the management of investigations, the timeliness of reports and the quality of the reports has come from several sources including key stakeholders¹, media², and the CSB's Inspector General.³ One challenge that the Board has had since it was initially funded in 1998 is balancing the number of accidents that can be investigated with the limited resources. While resource limitations have impacted the agency's ability to complete investigations in a timely manner, it is clear that management deficiencies—including an untenable turnover rate-- have also contributed to the inefficiencies in completing investigations. Several of these management challenges are discussed below.

¹ United Steelworkers letters (December 9, 2011 and November 8, 2013) and public comment by Mike Wright at CSB meeting on January 17, 2013.

² Center for Public Integrity investigative report "As critics press for action, Chemical Safety Board investigations languish", April 17, 2013, and BNA article by Robert Lafolla, "IG report faults safety board management for failure to close accident investigations, August 21, 2013

³ IG report "US Chemical Safety and Hazard Investigation Board Needs to Complete More Timely Investigations", July 30, 2013, (13-P-0337).

The EPA Inspector General’s Report on Timeliness of Investigations

The July 30, 2013 Inspector General’s report concluded that “CSB did not meet its objective to complete timely investigations.” The IG found that CSB did not meet its objectives for timely completing investigations due in part to a lack of performance indicators, a backlog of open investigations and a high staff turnover rate. Additionally the IG noted that “CSB does not have a published FY 2011 or 2012 agency performance plan (CSB refers to it as an annual action plan) as required by GPRA 2010, and its individual performance plans (plans used to monitor staff performance) do not define timeliness requirements for key phases of the investigation process.”

The report assessed the impact of senior investigative staff turnover on investigations, by noting: “Staff with investigative experience, particularly experience with CSB[’s] approach to investigations, is essential in improving the timeliness and maintaining the quality of the CSB reports.” During 2011 and 2012 the CSB lost 7 investigative staff including two of the three investigative supervisors who together had 16 years of agency experience. In response to the IG report, CSB management stated that “[t]he primary barrier [to completing investigations] is the lack of resources available to the agency as a whole, and the need to constantly reshuffle investigators among multiple new projects.”⁴ The constant juggling of investigators from one project to another and the time required to train new staff has adversely affected the average time to complete an investigation. At the end of 2012 the CSB had a backlog of 19 investigations; nine of the investigations were more than 3 years old. Currently there are 17 open investigations; 8 are more than 4 years old; 3 are more than 5 years old.

Federal Employee Survey Results Raise Concerns

The past three years of employee survey results clearly indicate dissatisfaction with the current approach taken by senior management at the CSB. In 2012 a comparison of very small agencies ranked CSB near the bottom (10th out of 12)⁵. Table 1 below indicates that over the past three years the agency continues to score poorly on questions related to senior management and leadership. Of particular concern are the last two questions indicating that in 2013 a high percentage of staff reported that they do not believe we are accomplishing our mission and that they would not recommend the CSB as a good place to work.

⁴ IG report “US Chemical Safety and Hazard Investigation Board Needs to Complete More Timely Investigations”, July 30, 2013

⁵ http://www.govexec.com/excellence/promising-practices/2013/03/12-best-small-agencies-work-government/61920/?oref=govexec_today_nl

Table 1: Results of Federal Employee Survey to Questions Regarding Leadership⁶

(Percent positive response)

	2013	2012	2011
In my organization, leaders generate high levels of motivation and commitment in the workforce.	20	19	11
My organization's leaders maintain high standards of honesty and integrity.	20	39	14
Managers communicate the goals and priorities of the organization	27	59	34
Managers review and evaluate the organization's progress toward meeting its goals and objectives.	28	47	26
Managers promote communication among different work units (for example, about projects, goals, needed resources).	23	57	19
Overall, how good a job do you feel is being done by the manager directly above your immediate supervisor/team leader?	24	40	22
I have a high level of respect for my organization's senior leaders	17	39	19
My agency is successful at accomplishing its mission.	36	61	41
I recommend my organization as a good place to work	31	58	35

⁶ Federal Employee surveys for 2011, 2012, 2013

(<http://www.csb.gov/UserFiles/file/2011%20Federal%20Employee%20Viewpoint%20Survey.pdf>,

http://www.csb.gov/assets/1/7/CSB_20_20Employee_20Survey2012_pdf.pdf,

http://www.csb.gov/assets/1/7/eOPF_Results_-_2013_-_Survey.pdf)

Conflicts with other Federal Agencies

Another factor that is impacting the agency's ability to complete investigations involves on-going conflicts with other federal agencies. In the last two years the CSB staff has been directly involved in disputes over site access, records sharing, timing of reports, and representation disputes with other federal agencies. Field coordination around evidence preservation and evidence testing agreements are handled by the CSB investigative staff working with their counterparts at the other federal agencies investigating an accident. Policy questions, however, such as requests for CSB records by another agency, request for the CSB to delay the issuance of a final report, and decisions to request legislative change or appropriation riders are decisions which must be dealt with by the Board. In one instance⁷, the Donaldson Enterprises Inc. investigation, the EPA Criminal Investigation Division requested that the CSB delay the release of its final report for several months during the pendency of a criminal trial involving an incident that killed 5 workers in Hawaii. The decision was made to release the report without the delay, and the Board was not made aware of this request until after the report was released.

CSB has found itself at odds in a number of other cases, including: a failure to honor an EPA Criminal Investigation Division request for records following a fire at the Chevron refinery in Richmond, CA that resulted in the CSB being subpoenaed by the Department of Justice; a dispute with the Bureau of Alcohol, Tobacco and Firearms (ATF) at West Texas over site access and investigative authority; and a dispute with California OSHA on attacks against that agency in the media during the early stages of the Chevron investigation. Most troubling, relations with the DOJ deteriorated to the point that it refused to represent the CSB in federal litigation over the subpoena of records in the Chevron refinery investigation, and a Federal District Court had to appoint outside counsel to represent CSB in the matter.

On August 1, 2013, President Obama signed Executive Order (EO) 13650, entitled "Improving Chemical Facility Safety and Security," which directs the Federal Government to improve operational coordination with state and local partners; improve Federal agency coordination and information sharing; modernize policies, regulations, and standards; and work with stakeholders to identify best practices. While the CSB was not included as a working group member, the EO specified that Memoranda of Understanding (MOUs) be established between EPA, OSHA, ATF and CSB.⁸ After ten months no MOUs have been finalized.

The CSB Chairman and senior management have been in a protracted disagreement with the EPA-IG over the production of documents related to an investigation. This disagreement escalated into the issuance of a "7 day letter" to the CSB on September 5,

⁷ E-mail from EPA CID to investigative staff dated November 27, 2012.

⁸ Executive Order 13650, August 1, 2013, section 4c, states: "Within 90 days of the date of this order, the Working Group shall consult with the Chemical Safety Board (CSB) and determine what, if any, changes are required to existing memorandums of understanding (MOUs) and processes between EPA and CSB, ATF and CSB, and the Occupational Safety and Health Administration and CSB for timely and full disclosure of information. To the extent appropriate, the Working Group may develop a single model MOU with CSB in lieu of existing agreements."

2013. I was unaware of the issuance of the letter and was not consulted or informed of the response until after the agency replied.

Each of these disputes has consumed substantial agency focus. Had all Board Members been fully included, we could have intervened and pursued ways to bridge differences, rather than ramp up unproductive interagency conflict.

Investigation Planning

The lack of an investigation plan is affecting the efficiency of work at the CSB, according to the IG⁹. Since 2011 I have requested a written investigative plan¹⁰, requested an internal meeting of the Board to discuss the need for a plan¹¹, and requested a public business meeting to get a status report of all ‘open’ investigations¹²¹³. The latest attempts by the majority of the Board to have a public business meeting to get a status report on open investigations was effectively blocked by the Chairman through a procedural maneuver.¹⁴ Additionally, stakeholders¹⁵ and members of Congress¹⁶ have expressed frustrations with delays in completing investigations and have made numerous requests for investigation plans.

⁹ IG report “US Chemical Safety and Hazard Investigation Board Needs to Complete More Timely Investigations”, July 30, 2013, (13-P-0337).

¹⁰ Letter from Mark Griffon and John Bresland to Chairman Moure-Eraso dated 12/12/2011 regarding several management issues including the need for investigations planning, concern over staff retention and concern of poor federal employee survey results

¹¹ Email dated November 18, 2011 to the CSB Chairperson

¹² Mark Griffon statement at public meeting on January 17, 2013 urging for public business meetings including a presentation of a plan for dealing with investigative backlog

¹³ Motion made by Member Rosenberg, seconded by Member Griffon to have a business meeting to discuss investigation status and written vote (notation vote #2013-50) making the same proposal

¹⁴ The Chairman did not allow a vote in a public meeting on a motion made by Member Rosenberg and seconded by Member Griffon; The Chairman then calendared a notation vote (written vote) to delay the vote until a future public meeting (Notation vote 2013-50 (http://www.csb.gov/assets/Record/BAR_Notation_Item_2013-50.pdf)).

This issue has not yet been voted on and no Board meeting discussion of the status of investigations has occurred.

¹⁵ Letter from USW dated December 9, 2011, comments made during January 17, 2013 public meeting, and comments made at USW Health and Safety Conference, September 27, 2013.

¹⁶ Letters from Washington State Congressional delegates: A December 21, 2012 letter expressed concern that that “the Board has redirected personnel and resources from this investigation in order to work on other, more recent accidents and incidents”; an April 2, 2013 letter expressed concern with continued delays in the investigation; and an April 23, 2013 letter asking the Chairman for a workplan (staffing, tasks, and timeline) for completion of the investigation.

II. Are there opportunities for improvement?

I believe there are actions that could improve the CSBs ability to effectively and efficiently complete its mission work.

Investigative Protocol and Comprehensive Investigations Plan

The IG made a recommendation to the Board to develop a performance plan compliant with the Government Performance and Results Act (GPRA) requirements¹⁷. I support this recommendation. A published agency performance plan, linked to overall agency goals as outlined in the agency strategic plan, would allow for evaluation of the agency's performance and would provide for a more direct link of the day-to-day work to the overall goals and mission of the agency. It would also allow for accountability of management to the Board and the Board to the public.

Since I arrived at the agency, the agency's investigative protocols have been under revision. Two key parts of the protocol, the process for determining the scope of an investigation and the process for internal and external report review, have been under discussion for over two years. Staff and lead investigators have reported to me that they are often frustrated with changing goals and priorities and last minute insertions into final reports. I believe that having an agreed upon scope early in the investigation would result in a greatly improved process and products since the staff would know what was expected of them and the Board would not be surprised at the end of the process.

Board Decision Making

Questions about the role of the Board vs the role of the Chairman have been raised since the CSB was initially funded in 1998. In 2000 the CSB requested a DOJ opinion which reviewed the statute and delineated board member and chairman responsibilities. An opinion was issued by the Office of Legal Counsel on June 26, 2000¹⁸. Subsequently, the CSB's Board promulgated Board orders on governance that reflect the DOJ legal opinion. Since I have been on the Board, the Board's role in overall policy decisions, mission decisions and administrative oversight has been eroded. This has been done, in part, by bypassing or selectively implementing the Board orders on governance. The Board has been excluded from key policy decisions including draft proposals for legislative reform, proposals to eliminate the EPA IG oversight through an appropriations rider, decisions regarding federal agency data requests and requests to delay CSB reports. I believe the Board must implement governance reforms to ensure the Board Members have a means to raise and deliberate on policy matters, based on majority board decisions. Finally, it would be helpful if there was a clear-cut statement of policy that CSB Board Orders, in conjunction with Agency regulations, are the governing

¹⁷ IG report "US Chemical Safety and Hazard Investigation Board Needs to Complete More Timely Investigations", July 30, 2013, (13-P-0337), recommendation number 2.

¹⁸ DOJ Moss Opinion, June 26, 2000.

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

A 2-1 decision by the Board to postpone a vote on whether to adopt the so-called “safety case model” for oil refinery regulation until additional questions were considered by an expert panel were essentially dismissed by the Chairman and staff – asserting that the formation of an expert panel was unnecessary and cost prohibitive¹⁹. It is troubling that a directive of the Board was effectively vetoed, particularly when the Board is responsible for assuring that regulatory recommendations are backed by adequate data.

Improve Accountability

Since I have been a board member I have voted more than 200 times via notation voting (in private), while only about 20 votes have been taken in public meetings. I believe the CSB should conduct its business in public meetings, unless a matter arises which makes this impracticable. In this way stakeholders can monitor the Board’s work, provide valuable input, and help improve accountability. Ideally, the Board could schedule and conduct monthly Board business meetings. In 2002, the CSB committed to holding monthly public meetings in response to a FEMA OIG report. ²⁰ I believe the CSB should again make this commitment. Regular business meetings should include the following: Status and scope of all current and proposed investigations, status of recommendations, and policy matters such as proposed legislation, congressional communications and oversight, policy positions taken with respect to other federal and state agencies, and public communications.

Create an Open and Trusting Workplace

The CSB must create an open, trusting, workplace where employees feel comfortable to report concerns and contribute dissenting opinions. Consideration should be given for development of a process for formally dealing with dissenting professional opinions as is done at other agencies such as the Nuclear Regulatory Commission²¹ and the National Aeronautics and Space Administration (NASA)²². Ultimately such a process would strengthen the CSBs investigation reports and recommendations and help improve morale.

¹⁹ Email from Rafael Moure-Eraso dated 1/16/14.

²¹ NRC Directive 10.159 “Differing Professional Views and Opinions”

²¹ NRC Directive 10.159 “Differing Professional Views and Opinions”

²² NASA Space Flight Program and Project Management Handbook, 2014.

Develop a strategic hiring plan and staff retention plan

When I first arrived at the CSB I was very impressed by the talented and experienced staff that we have at our agency. The level of education along with the experience and the diversity of the staff is so important to what we do. Unfortunately in the last three and a half years many experienced investigators have left the agency. The Board should develop a long term hiring plan to assure the agency maintains the appropriate diversity of skills necessary to conduct major accident hazard investigations.

I welcome the opportunity to the improve management at the CSB, working with the Committee, the EPA IG and the CSB Chairman.

Mark A. Griffon
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Chemical Safety Board

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

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

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

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