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

Wednesday, March 4, 2015

House of Representatives,  
Committee on Oversight and Government Reform,  
Washington, D.C.

The committee met, pursuant to call, at 9:00 a.m., in Room 2154, Rayburn House Office Building, Hon. Jason Chaffetz [chairman of the committee] presiding.

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

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

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

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

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

The EPA inspector general found violations of the Federal Records Act by senior Chemical Safety Board's officials, and we will be discussing this today. In January, the EPA inspector general reported that Chairman Moure-Eraso, General Counsel Richard Loeb, and Managing Director Daniel Horowitz knowingly violated the Federal Records Act by using private emails to conduct official Chemical Safety Board business, despite previous testimony and assurances to this committee

that they would not and had not been doing that for some time.

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

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

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

These problems were confirmed by an outside firm retained to review the Chemical Safety Board management. That firm found, quote,

"The agency still suffers from lack of trust in senior leadership, poor communication, ineffective goal setting, a lack of standard procedures, lack of trust, and a lack of followup by senior leadership, which contributes to a lack of accountability," end quote.

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

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

Employees at the Chemical Safety Board work hard and are devoted to the agency's goals -- goals have been beaten and demoralized. Nearly 50 percent of the employees have left since 2011. Moreover, the Chemical Safety Board, under its current leadership, cannot

effectively carry out its important mission. That's just not me as the chairman saying that. You get outside groups coming in who have paid a lot of money to come in and analyze the group. And we are going to read through some of their conclusions. It's not a pretty picture.

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

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

[Prepared statement of Chairman Chaffetz follows:]

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

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

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

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

Today I'm equally troubled to report that despite all of this feedback and all of these recommendations, things have not improved at the CSB. To the contrary, management problems at the agency appears to have gotten worse. Last September, the CSB hired another management consulting firm to address fundamental changes within the agency. This company, Vantage Human Resource Services briefed the Chairman and

Board members on its findings last month on February 12, 2015. We obtained a copy of Vantage's presentation, which was based on interviews with agency employees. Vantage found that 80 percent of CSB employees feel, quote, much, much frustration with top leadership -- 80 percent. That is astounding. That is absolutely a stunning fact.

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

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

personnel issue," end of quote.

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

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

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

I would also like to hear the perspectives of the other Board members and the Office of the Inspector General of what reforms are needed to get this agency back on track. CSB has a critical mission.

The agency was created to investigate industrial chemical accidents, and it has done landmark work, such as the 2014 report on the Deepwater Horizon explosion, but I remind all of you that we're better than that. We are better than where we are now and better than what has been happening in this agency. And so we owe it to the employees who are working hard every day to carry out the mission to ensure that significant and meaningful changes come out of this hearing.

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

[Prepared statement of Mr. Cummings follows:]

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Chairman Chaffetz. I thank the gentleman.

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

We will now recognize the panel of witnesses, including the Honorable Rafael Moure-Eraso, Chairman of the U.S. Chemical Safety Board; the Honorable Manuel Ehrlich, Board member of the United States Chemical Safety Board; the Honorable Rich Engler, Board member of the Chemical Safety Board; Honorable Mark Griffon, Board member of the Chemical Safety Board; Mr. Patrick Sullivan, assistant inspector general for investigations in the Office of Inspector General at the United States Environmental Protection Agency. Mr. Sullivan is also accompanied by Mr. Kevin Christensen, assistant inspector general for audit, whose expertise may be needed during the questioning. We would like you to be sworn in as well.

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

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

Thank you.

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

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

Mr. Moure-Eraso. Thank you.

Chairman Chaffetz. Please push the button.

STATEMENTS OF THE HONORABLE RAFAEL MOURE-ERASO, CHAIRMAN, U.S. CHEMICAL SAFETY BOARD; THE HONORABLE MANUEL EHRLICH, BOARD MEMBER, U.S. CHEMICAL SAFETY BOARD; THE HONORABLE MARK GRIFFON, BOARD MEMBER, U.S. CHEMICAL SAFETY BOARD; THE HONORABLE RICH ENGLER, BOARD MEMBER, U.S. CHEMICAL SAFETY BOARD; AND PATRICK SULLIVAN, ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS, OFFICE OF INSPECTOR GENERAL, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY KEVIN CHRISTENSEN, ASSISTANT INSPECTOR GENERAL FOR AUDIT, OFFICE OF INSPECTOR GENERAL, U.S. ENVIRONMENTAL PROTECTION AGENCY

**STATEMENT OF THE HONORABLE RAFAEL MOURE-ERASO**

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

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

I have worked together with other Board members and the staff to address the issues you raise. We have adopted a set of recommendations made by former Representative Henry Waxman aimed at improving the functioning of the Board. We have also formed an independent workplace

improvement committee that is functioning. As you know, we contracted with a consulting company, Vantage, to provide coaching and other services to help us improve internal communications.

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

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

The number of open investigations, which was as an all-time high of 22 in June 2010, when I began my term, is now down to 6. Five of those six remaining cases are on track to be completed by the end of the fiscal year, including the West Fertilizer explosion, the contamination of West Virginia drinking water, and the Deepwater Horizon blowout.

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

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

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

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

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

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

that remain. Thank you.

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

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

**STATEMENT OF THE HONORABLE MANUEL EHRLICH**

Mr. Ehrlich. Thank you, and good morning.

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

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

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

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

quality of the investigation reports and recommendations.

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

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

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

The Chair is facing internal opposition, tension, and criticism as he simply tried to undertake the basic functions of the agency. During my time at the agency, I witnessed employee actions that I have never seen in the private sector which have a very negative effect on the organization. An example is a situation the Chair referred to in

which two staff members intentionally doctored a report by our organizational consultant. They took out examples of progress being made and added in very negative comments about senior management, and they improperly instructed the contractor to keep their involvement secret.

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

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

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

[Prepared statement of Mr. Ehrlich follows:]

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

**STATEMENT OF THE HONORABLE MARK GRIFFON**

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

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

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

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

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

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

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

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

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

I believe the following actions should be taken. Number one, the entire motion made in the January 28, 2015, meeting should be rescinded. Two, Board Order 28, dated August 8, 2006, should be reinstated. Three, the Board should make a clearcut statement of policy that the CSB orders are the governing procedures of the agency. Four, the Board should make a commitment to hold monthly public business meetings. And five, the oversight and recommendations provided by the EPA IG are useful and the relationship with the EPA IG must be rebuilt. The agency's mission is very important, and these problems must be resolved. Thank you for your consideration.

Chairman Chaffetz. Thank you.

[Prepared statement of Mr. Griffon follows:]

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

#### STATEMENT OF THE HONORABLE RICH ENGLER

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

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

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

Excuse me. My learning process is not done, yet I already

conclude that major internal changes must occur for the CSB to best fulfill its critical mission. Foremost, changes are needed to resolve the controversy over CSB governance and the powers of the Chair in relationship to other members. The serious engagement of all CSB members in major decisions provides critical checks and balances and would result in the best decisions.

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

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

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

Some other changes are also urgently needed to accomplish the

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

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

I also think that the Board needs to adopt a new project-management-tracking system with clear objectives, benchmarks, and internal controls, that the Board must engage stakeholders, that there must be frequent well-publicized business meetings. And I reject any notion that carrying out the people's business by a public

agency is merely theater. And I look forward to a new relationship with the Office of Inspector General. And I will anticipate -- in fact, I'll do it right now -- I would seek a briefing from the inspector general on all the outstanding issues. And I look forward to rebuilding that -- that relationship.

Chairman Chaffetz. I thank the gentleman.

[Prepared statement of Mr. Engler follows:]

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

#### **STATEMENT OF PATRICK SULLIVAN**

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

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

I plan to discuss two matters related to CSB.

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

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

CSB declined to provide all the requested documents and provided some documents and emails in redacted form. This refusal of access to the OIG constituted a particularly serious or flagrant problem under

the IG act. And Inspector General Elkins was compelled to issue a 7-day letter to Chairman Moure-Eraso on September -- in September 2013. CSB nevertheless again refused to provide the emails and forwarded the IG's 7-day letter along with the CSB response to Congress.

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

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

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

at CSB. But we have yet to receive statements from the Chairman, Mr. Loeb, and Mr. Horowitz, which was asked for in August of 2014, certifying that they have fully complied with the OIG's request for documents.

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

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

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

Mr. Chairman, this concludes my prepared statement. My

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

Chairman Chaffetz. I thank the gentleman.

[Prepared statement of Mr. Sullivan follows:]

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

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

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

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

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

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

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

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

Mr. Walberg. At this time --

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

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

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

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

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

Mr. Moure-Eraso. I can send you to a letter that I sent through email in which I made the certification. If you want, I can quote it from it. It's right here. My letter say to Mr. Elkins, July 15, 2014,

last two paragraphs: Accordingly, I believe that all documents requested by your office covering the period to January 2012 to the present have been fulfilled. The CSB chief information officer was responsible for conducting and overseeing these searches, and based on his assurances and to the best of my knowledge and belief, the documents provided to your office satisfy all outstanding requests concerning this matter.

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

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

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

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

Mr. Moure-Eraso. That is not correct, no. That is not the case.

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

Mr. Sullivan. There were numerous discussions of CSB business,

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

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

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

Mr. Walberg. Okay. Thank you.

My time is expired.

Chairman Chaffetz. Thank the gentleman.

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

Ms. Kelly. Thank you, Mr. Chair, and I thank you and the ranking member for holding this hearing. Since 2010, the Federal Employee Survey results indicate dissatisfaction with the governance of CSB by senior management. CSB ranks near the bottom in a comparison of very small agencies with a high percentage of staff reporting that they would

not recommend the CSB as a good place to work.

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

Mr. Moure-Eraso. Yes, Congressman, I am aware.

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

Mr. Moure-Eraso. That is correct

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

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

Mr. Moure-Eraso. That's what the survey seemed to imply, yes.

Ms. Kelly. Excuse me?

Mr. Moure-Eraso. That's what the survey seems to indicate.

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

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

Mr. Moure-Eraso. I don't disagree with the results of the

survey, but I disagree with the statements that you mention from the former Board member.

Ms. Kelly. Okay. Why do you disagree?

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

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

Mr. Moure-Eraso. Yes. I think that the employee -- the employees disagree with my view.

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

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

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

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

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

Ms. Kelly. Okay. Thank you.

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

Mr. Moure-Eraso. That's correct, yes

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

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

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

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

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

Chairman Chaffetz. Thank you.

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

Mr. Gowdy. Thank you, Mr. Chairman.

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

What was the source of your ignorance?

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

Mr. Gowdy. Who did you -- who told you that with specificity?

Mr. Moure-Eraso. Well, I use -- saw the experience that

everybody used Gmail for certain communications.

Mr. Gowdy. Everybody?

Mr. Moure-Eraso. Everybody that communicated with me, yes.

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

Mr. Moure-Eraso. My understanding at the time is that communications through Gmail were acceptable and --

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

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

Mr. Moure-Eraso. In June 2010

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

Mr. Moure-Eraso. I told you, June 2010.

Mr. Gowdy. Six months? 12 months?

Mr. Moure-Eraso. Three months.

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

Mr. Moure-Eraso. No, that is not my answer. What I did --

Mr. Gowdy. Well, I'm reading -- I'm reading your answer, and your

answer was, At the beginning of my tenure, I used to write drafts or positions.

Mr. Moure-Eraso. Yeah, right. That is --

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

Mr. Moure-Eraso. When I was notified by my --

Mr. Gowdy. I really have --

Mr. Moure-Eraso. -- counsel that this was not a good recordkeeping practice --

Mr. Gowdy. I really am --

Mr. Moure-Eraso. -- I stopped doing it.

Mr. Gowdy. -- looking for a yes or no answer initially, and then you are welcome to explain. Did you use personal email after you had been on the job 3 months?

Mr. Moure-Eraso. Probably yes.

Mr. Gowdy. Probably yes or yes?

Mr. Moure-Eraso. Yes. I mean --

Mr. Gowdy. Okay.

Mr. Moure-Eraso. I didn't know that I couldn't.

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

Mr. Moure-Eraso. Yeah. I did know --

Mr. Gowdy. The answer is yes.

Mr. Moure-Eraso. -- I did recognize that it was not a good recordkeeping practice.

Mr. Gowdy. And then you went on to say --

Mr. Moure-Eraso. It was pointed out to me, and I ceased to do this.

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

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

Mr. Moure-Eraso. Yes, I transmitted --

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

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

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

Mr. Moure-Eraso. Well, the people that I write emails to and people that write emails to me, so --

Mr. Gowdy. Does "we" include you?

Mr. Moure-Eraso. Of course.

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

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

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

Mr. Moure-Eraso. I don't know --

Mr. Gowdy. -- you stopped it --

Mr. Moure-Eraso. -- the exact day.

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

Mr. Moure-Eraso. Mr. Congressman, I cannot tell you an exact day. I'm sorry.

Mr. Gowdy. Well, you gave Chairman Chaffetz an exact date.

Mr. Moure-Eraso. I said --

Mr. Gowdy. Under oath you said a year and a half ago --

Mr. Moure-Eraso. I said at the beginning of my tenure.

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

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

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

Mr. Moure-Eraso. If you look at the email that you are referring to --

Mr. Gowdy. I'm looking --

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

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

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

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

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

Chairman Chaffetz. The gentleman yields back.

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

Mr. Lieu. Thank you, Mr. Chair.

I'd like to discuss the motion that was approved at the January 28 public meeting convened by the CSB in Richmond, California. Eighteen of the agency's orders relating to personnel, contracting, budgeting,

and general administration of the Board were rescinded, including Board Order 28. Mr. Chairman, is that correct?

Mr. Moure-Eraso. Yes, it is.

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

Mr. Griffon. Yes, that is.

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

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

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

Mr. Engler. Yes, I would.

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

Mr. Griffon. Yeah. Yeah, I agree it's to restore power -- or put power in the Chair and take it away from the overall Board, yes.

Mr. Engler. Yes.

Mr. Lieu. Okay.

And, in 2000, the Department of Justice Office of Legal Counsel opinion agrees with you, and it states, and I quote, The day-to-day

administration of Board matters and execution of Board policies are the responsibilities of the Chairperson subject to Board oversight.

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

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

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

Mr. Engler. I agree as well.

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

I don't believe you. A person who has been humbled would not, about a month and a half ago, have consolidated power on the Board. When someone's embattled, when someone has shown dysfunctional leadership, they don't consolidate power. That is what dictators do. It's not what public officials in America do.

RPTR DEAN

EDTR HOFSTAD

[10:00 a.m.]

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

Mr. Moure-Eraso. If I may --

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

Mr. Moure-Eraso. Okay. Well, do you want --

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

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

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

Mr. Moure-Eraso. We -- as we normally do when there are serious chemical explosions, we convened what we call a deployment meeting, in which we collect information about the particular incident. We poll the senior department directors on the information that we have. We use an algorithm to put a number that will define the seriousness of

the consequence of the accident. And based on all those inputs, we make a decision if we are able to deploy or not to a particular accident.

And we went through all that process in Torrance.

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

Mr. Moure-Eraso. The timeline is within 24 hours of the accident.

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

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

Mr. Lieu. Okay. I will follow up with the CSB on that issue.

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

Mr. Moure-Eraso. Mr. Congressman --

Mr. Lieu. I yield back.

Mr. Moure-Eraso. Mr. Congressman, if I might -- if I may, these changes that happened in January the 28th were not for me. I have a few weeks left. They were put on the Board after 4 1/2 years of discussion of what is the way that governance will work on the Board. And they were put in place and voted in there by the new Board member -- were proposed by a new Board member and supported by me to

establish clear lines of authority and to put the way that the agency functioned to make it compatible with Federal law.

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

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

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

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

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

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

Chairman Chaffetz. Okay. Let's get --

Mr. Moure-Eraso. -- we're proposing a Board order that we agree on, that we're going to vote on, and then he voted "no" on it. And this discussion continued for a year.

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

Mr. Griffon?

Mr. Griffon. Yes, thank you, Chairman.

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

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

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

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

Chairman Chaffetz. We'll now recognize the gentlewoman, unless Mr. Lieu -- unless you -- or Mr. --

Mr. Cummings. Mr. Chairman?

Chairman Chaffetz. -- Cummings?

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

Mr. Engler. Thank you.

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

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

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

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

Chairman Chaffetz. Thank you.

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

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

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

Mrs. Lummis. Thank you, Mr. Chairman.

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

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

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

Mrs. Lummis. Who provided you --

Mr. Ehrlich. Well, I'd --

Mrs. Lummis. -- with that information?

Mr. Ehrlich. -- talked with the staff.

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

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

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

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

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

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

Mrs. Lummis. Okay.

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

Mr. Moure-Eraso. Yes, I did. We --

Mrs. Lummis. Okay.

So, Mr. Griffon --

Mr. Moure-Eraso. We have --

Mrs. Lummis. -- did you agree?

Mr. Moure-Eraso. If I can explain to you --

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

Mr. Moure-Eraso. Yes. You know we have --

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

Mr. Griffon. No, I didn't agree. And, in fact, we had an action

plan submitted to the Board, a draft action plan, in November that had actually incorporated all three of these as being part of our actions going forward.

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

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

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

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

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

Mrs. Lummis. And do you think that that evidence might have a

bearing on public safety, they might inform or instruct public safety in the future?

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

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

Mrs. Lummis. Mr. Engler, any idea why this -- why eliminate this?

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

Mrs. Lummis. Yeah.

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

Mrs. Lummis. Yeah. I think --

Mr. Engler. And that's been one of my challenges as a new Board

member, and I'm finding it, frankly, very difficult.

Mrs. Lummis. Yeah. We share your frustration.

Thank you, Mr. Chairman. I yield back.

Chairman Chaffetz. Thank the gentlewoman.

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

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

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

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

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

the motion was "inaudible."

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

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

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

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

Mr. Engler. Yes.

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

And a comment from an employee representative said this resulted

in "missed opportunities like this" -- in this action -- "truly putting workers and the public at risk."

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

Mr. Griffon. Yes.

Mr. Engler. Yes.

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

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

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

And I apologize if that appears harsh, but what good would it do

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

So I am at a complete loss as to why, when you tell me -- and you just said you only have a few weeks, but, in effect, you have a few months. When I read the Vantage report, which I think is terrific -- your last, as was said by a colleague -- and viewed incomparable agencies -- and you've actually gone down in the last year in terms of confidence of your employees. I look at the vote as 80 percent of the people directed at leadership as being dysfunctional as a vote of no confidence. Normally, when you get an 80 percent vote of no confidence, you leave.

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

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

But for the sake of the people we serve in a bipartisan fashion, I wish we would begin to rebuild this agency, and the only way to do

that, with all due respect to the Chairman and Mr. Ehrlich, is to get your resignations as soon as possible.

Thank you, Mr. Chairman. I yield back.

Mr. Moure-Eraso. May I respond --

Chairman Chaffetz. Thank you.

Mr. Moure-Eraso. -- to the Congressman?

Chairman Chaffetz. No.

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

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

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

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

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

Mr. Sullivan. Yes, sir. Yes, sir.

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

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

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

Mr. Meadows. But they are engaged with you?

Mr. Sullivan. Yes, sir.

Mr. Meadows. Okay.

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

Mr. Moure-Eraso. Yes, I have. I have --

Mr. Meadows. So have you defended your actions?

Mr. Moure-Eraso. I have, to tell them that we have immediately responded to the IG request and provided them with their request and that we have -- we are in compliance with the rules that were passed in terms of how to use nongovernmental mail that were passed by this committee and --

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

Mr. Moure-Eraso. Absolutely.

Mr. Meadows. Well, now, I'm a little troubled with that, because the chairman and Mr. Gowdy both have indicated that some of your testimony here before us before is not consistent with your actions.

Would you agree with that statement? That you make one statement here before us and do something else. Let me make it clear.

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

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

Mr. Moure-Eraso. They --

Mr. Meadows. Yes or no?

Mr. Moure-Eraso. -- are right here. They are right here. I informed to them that they have been put on the server and they are available.

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

Mr. Moure-Eraso. Absolutely. They are right here.

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

Mr. Moure-Eraso. The law --

Mr. Meadows. By using your personal email.

Mr. Moure-Eraso. -- as far as I understand it, was passed in November 2014. Immediately, as I was made aware of that law, I --

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

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

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

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

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

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

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

Mr. Meadows. Okay. I'm running out of the time.

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

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

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

Chairman Chaffetz. Thank you.

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

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

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

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

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

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

So, despite the concern for worker safety and public safety, there

was a decision to -- and, Mr. Ehrlich, in introducing a motion before the Board to cancel those investigations, you stated, and I quote, "There is no realistic opportunity to issue a CSB report" on these tragic incidents.

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

Mr. Griffon. That is correct, sir.

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

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

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

Mr. Lynch. Yeah.

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

Let me ask you about -- Mr. Griffon, were you there when they did this -- yeah, you were there when we did this hearing and they eliminated all these rules. Previously, there was a rule on any expenditure over \$50,000 required the Board members to approve it. But

then, with this most recent coup -- and it was a coup -- now the chairman has the ability to make expenditures over \$50,000 without Board approval.

What's up with that?

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

Mr. Lynch. Yeah.

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

Mr. Lynch. Right.

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

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

I will say, moving forward, I am very concerned about hydrofluoric acid, as I know many of the Board leaders and staff are. In fact,

relating back to the mission of the Board, the Oil Insurance Association pointed out in roughly 1974 that hydrofluoric acid use in alkylation units in oil refineries posed major, major dangers. The Oil Insurance Association was then the advisor to the petroleum industry.

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

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

Chairman Chaffetz. Thank you.

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

Mr. Mulvaney. Thank you, Mr. Chairman.

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

You said that it was the Federal Records Act that was adopted in November of 2014 that prompted you to change your practice. Yet, in June of 2014, which was before the Federal Records Act passed, you said, "We stopped that practice about a year and a half ago because we realized how problematic it was," end quote.

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

testimony?

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

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

Mr. Moure-Eraso. I mean, that was what the White House requested from us to comply with that --

Mr. Mulvaney. But, again, your --

Mr. Moure-Eraso. -- and we complied with that.

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

Mr. Moure-Eraso. No, of course not.

Mr. Mulvaney. All right.

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

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

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

Mr. Mulvaney. Okay, but that's not what you said. You said, "The Board was tell me I couldn't use my" -- did Mr. Ehrlich tell you

you couldn't use your emails?

Mr. Moure-Eraso. Mr. Ehrlich wasn't there.

Mr. Mulvaney. Okay. Who was on the Board at that time?

Mr. Moure-Eraso. Mr. Griffon, I believe.

Mr. Mulvaney. Okay. Who told you at that -- who on the Board told you you could not use your private emails, it was problematic?

Mr. Moure-Eraso. No one really --

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

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

Mr. Mulvaney. No, it was. It was.

Mr. Moure-Eraso. -- naturally, people --

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

Mr. Moure-Eraso. I have no recollection of that.

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

Mr. Moure-Eraso. At that time, no.

Mr. Mulvaney. Should you have known?

Mr. Moure-Eraso. I don't know. Probably I should --

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

Mr. Moure-Eraso. Well --

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

Mr. Moure-Eraso. I am testifying.

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

Mr. Moure-Eraso. That gentleman is general counsel of the agency.

Mr. Mulvaney. Okay. Is he testifying today? Is he under oath? Did he just --

Mr. Moure-Eraso. I don't know. You are running --

Mr. Mulvaney. -- feed you the answer to that question I gave you?

Mr. Moure-Eraso. -- the hearing here.

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

Mr. Moure-Eraso. I didn't hear, no.

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

Mr. Moure-Eraso. No, I couldn't hear him.

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

Mr. Moure-Eraso. I am paying attention to you. I --

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

Mr. Moure-Eraso. I don't know.

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

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

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

Mr. Moure-Eraso. As far as I can tell, yes.

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

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

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

Mr. Moure-Eraso. Probably, yes.

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

Mr. Moure-Eraso. I don't know.

Mr. Mulvaney. Okay.

You retire in 15 weeks.

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

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

Mr. Sullivan. Yes, Mr. Mulvaney, we did.

Mr. Mulvaney. Okay. Thank you very much. And I wish I had more time to explore that.

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

Mr. Moure-Eraso. I am committed to see -- to see the work of the Chemical --

Mr. Mulvaney. Okay.

Mr. Moure-Eraso. -- Safety Board finished --

Mr. Mulvaney. Do you believe --

Mr. Moure-Eraso. -- and I believe that the reports that we still have on line have to be finished --

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

Mr. Moure-Eraso. I don't have an opinion on that.

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

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

Mr. Mulvaney. Thank you, Mr. Chairman.

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

Mrs. Lawrence. Thank you, Mr. Chairman.

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

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

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

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

Mr. Griffon. No.

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

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

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

Mr. Griffon. Right. This was along the same lines. We -- Dr. Rosenberg and myself requested that. We attempted to make a motion

in a public meeting to have another meeting. We also later did a written motion for the same request, to simply have a business meeting to hear the status of all open investigations and what our path forward was so that the Board actually had some input into where these investigations were going.

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

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

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

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

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

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

Mrs. Lawrence. You know, it has been --

Mr. Engler. Could I add --

Mrs. Lawrence. -- demonstrated today that there are -- Mr. Engler, did you have a comment?

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

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

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

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

Mr. Moure-Eraso. Congressman, this action plan with the elements that Mr. Engler mentioned is in place. We have presented to the Board. It has been distributed to the Board. It's not simply a list of investigations. It's a prioritized list in which we say which

ones are going to be finished first, second, and third and why, and also establish points in the schedule of when different things are going to be finished. That is --

Mrs. Lawrence. Thank you. I think that clearly defines where there is a breakdown, and what you perceive as a real, accountable investigation plan -- and I feel strongly that this Board has an obligation to do that.

And I yield my time, Mr. Chairman.

Chairman Chaffetz. Thank the gentlewoman.

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

Mr. Buck. Thank you, Mr. Chairman.

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

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

Mr. Buck. Okay. That's two sentences but still good.

Tell me who is responsible for that.

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

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

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

manner.

Mr. Buck. Okay.

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

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

Mr. Buck. Okay.

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

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

Mr. Buck. Okay. So say it -- say that again. What is the directive?

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

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

Mr. Sullivan. Well, it really depends.

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

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

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

Mr. Sullivan. Yes.

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

Mr. Sullivan. You can see --

Mr. Buck. Coming from a Yahoo account or --

Mr. Sullivan. Right.

Mr. Buck. -- coming from some other kind of account.

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

Mr. Buck. Okay.

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

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

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

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

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

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

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

Mr. Sullivan. Yes.

Mr. Buck. -- resources?

Mr. Sullivan. It's required training.

Mr. Buck. Okay.

I yield back. Thank you.

Chairman Chaffetz. I thank the gentleman.

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

Ms. Norton. Thank you, Mr. Chairman.

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

And I understand, Mr. Sullivan, that you wanted to make sure that

the Chairman had turned over all of his emails from his personal records that reflected government business. Isn't that right?

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

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

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

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

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

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

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

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

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

Ms. Norton. And the point is to make sure there are no additional

records, that you have all the records?

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

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

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

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

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

Mr. Moure-Eraso. Yes. I affirm that.

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

Thank you very much, Mr. Chairman.

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

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

Chairman Chaffetz. Without objection, so ordered.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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

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

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

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

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

Mr. Moure-Eraso. I sent him a letter certifying that I have sent --

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

Mr. Moure-Eraso. I didn't. I sent the letter --

Chairman Chaffetz. Thank you. And this is part of the ongoing frustration --

Ms. Norton. Mr. Chairman, can I reclaim my time for a moment --

Mr. Chaffetz. Sure. Sure.

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

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

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

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

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

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

Mr. Moure-Eraso. Yes.

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

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

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

Mr. Moure-Eraso. It was thought that it was volunteer, so I said, look, the issue is certification or send the materials. I have given a certification in the form of a letter. I have sent the material. I have given my word that I sent the material. I have my chief information officers doing the searches, getting the information, and transferring. I -- I followed the advice.

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

Mr. Moure-Eraso. Well --

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

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

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

Mr. Moure-Eraso. Well, I thought that my letter speak for myself for giving a certification of --

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

Mr. Moure-Eraso. I didn't.

Chairman Chaffetz. Go ahead.

Mr. Cummings. Just one question.

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

Mr. Moure-Eraso. Well, I -- I have -- I asked for legal advice on this. This is a pretty serious matter.

Mr. Cummings. Yeah, it's a very serious --

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

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

Mr. Moure-Eraso. As far as I'm concerned, yes.

Ms. Norton. Mr. Chairman, could I ask if --

Mr. Cummings. Do we have that --

Ms. Norton. -- the advice was from the lawyer who's with him today?

Mr. Moure-Eraso. No.

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

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

Mr. Moure-Eraso. Yes. I have it here.

Mr. Cummings. Oh, good. May I -- can we get a copy of that?

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

Without objection, so ordered.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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

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

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

Mr. Walker. Thank you, Mr. Chairman.

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

Mr. Moure-Eraso. I'm sorry?

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

Mr. Moure-Eraso. Yes.

Mr. Walker. -- in your opening statement?

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

Mr. Moure-Eraso. I don't remember now.

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

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

It seems to me from what I'm hearing that you're just trying to

survive another 15 weeks. Is that fair?

Mr. Moure-Eraso. I have work to do.

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

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

Number one, Dr. Rosenberg said, "The criticism was never accepted." Agree or disagree?

Mr. Moure-Eraso. Disagree.

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

Mr. Moure-Eraso. Disagree.

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

Mr. Moure-Eraso. Disagree.

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

Mr. Moure-Eraso. Disagree.

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

Mr. Moure-Eraso. I disagree.

Mr. Walker. Disagree?

And that she would literally have to have meetings -- for concerns were being intimidated -- she would actually have to have meetings in

ladies' rooms. Agree or disagree?

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

Mr. Walker. Okay.

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

Mr. Moure-Eraso. I disagree. As a matter of fact, what we have to see is what is the product of the agency, what we accomplish, what we produce. I pointed out, in the last 8 months, we have to produced eight world-class reports on safety. And that is our core mission, that's what we do, and that's what we do right.

Mr. Walker. Do you --

Mr. Moure-Eraso. A place that has a toxic work environment probably cannot produce world-class --

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

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

Mr. Walker. Uh-huh.

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

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

Mr. Moure-Eraso. I would say about an eight.

Mr. Walker. About an eight.

Mr. Moure-Eraso. Uh-huh.

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

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

RPTR KERR

EDTR SECKMAN

[11:00 a.m.]

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

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

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

Mr. Moure-Eraso. I would like to have -- to have more resources in order to be able to cover more of these chemical accidents.

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

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

Mr. Walker. Okay. With that, I yield back.

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

Mr. Connolly. Thank you, Mr. Chairman, and welcome back, Mr. Moure-Eraso.

Mr. Engler, you have called for the rescission of the Board decision of January 28. Is that correct?

Mr. Engler. Yes.

Mr. Connolly. And why do you think it should be rescinded?

Mr. Engler. Because I think it was not considered in an open and fair way, and I don't mean -- it's not a personal matter that no one called me up prior to a formal appointment by the President and asked me what I thought. It seems to me when you change major procedures, policies, that there is an obligation as a public entity to interact with the public, to not -- and frankly, I'm -- I'm quite familiar with the -- some of the New Jersey laws we have on this. I need a briefing. One of the things I wasn't briefed on, on the Sunshine Act. I don't know whether there was a technical violation or a -- just a violation of the intent of that, but major change by agencies needs to be done with public notice, the opportunity for public comment, public hearings, and it has to be an ongoing process, and I endorse a call of Member Griffon --

Mr. Connolly. Would you --

Mr. Engler. -- for public meetings.

Mr. Connolly. Thank you. Would you say that the decision to rescind made on January 28 was a pretty profound decision?

Mr. Engler. Yes.

Mr. Connolly. Because?

Mr. Engler. Because it seemed to upend a whole series of Board policies, including on budget. So, before I arrived on the scene, to look carefully at budgets because, frankly, I feel like I'm accountable to the public for how the agency spends its money. I then find out that, no, I'm not.

Mr. Connolly. Okay. Thank you so much.

Mr. Chairman, Mr. Chairman of the CSB, you voted to rescind, on that date, 18 Board orders. Is that correct?

Mr. Moure-Eraso. Yes, that's correct.

Mr. Connolly. And one of those Board orders was Board Order 23, which established policies and procedures for hiring and selecting career appointments to the SES, the Senior Executive Service. Is that correct?

Mr. Moure-Eraso. That is correct.

Mr. Connolly. And also, that order also established the Executive Resources Board within your agency that -- and that board conducts the hiring process and makes recommendations of best qualified candidates to the Board. Is that correct?

Mr. Moure-Eraso. The old Board order, yes, it has something like that in the old Board order, yes.

Mr. Connolly. Uh-huh. Why did you decide to vote to essentially eliminate the Executive Resources Board?

Mr. Moure-Eraso. Because the -- that order is in conflict with the Office of Personnel Management procedures for the choosing of SES. Under the procedures of the Office of Personnel Management, the appointment authority for SES in a Federal agency is the head of the agency.

Mr. Connolly. Well, what --

Mr. Moure-Eraso. In this particular -- in the old order that you are referring to, they say that the appointment authority was on the Board. It has to be a vote to accept an SES.

Mr. Connolly. Mr. Sullivan --

Mr. Moure-Eraso. That the evaluation of the person has to be also doing by the whole Board arrive on the one person.

Mr. Connolly. Okay. Hold that thought.

Mr. Sullivan, I was under the impression OPM regulations actually require having an Executive Resources Board. Is that not correct?

Mr. Sullivan. I am not -- I don't know, sir. Sorry.

Mr. Moure-Eraso. May I make --

Mr. Connolly. I've got the regulation right here: 3393, career appointments, subsection B, each agency shall establish one or more Executive Resources Boards, et cetera, et cetera.

So that seems to contradict exactly what you just said, Dr. Moure-Eraso.

Mr. Moure-Eraso. Yeah, we do have an Executive Resources Board, as a matter of fact. We have established one for SES as hiring. That is part -- you are correct, that is part of the OPM regulations.

Mr. Connolly. But you just said in answer to my question that in rescinding Board Order 23, the Executive Resources Board went away. Would that --

Mr. Moure-Eraso. No, no. I misspoke. There was an additional board, internal board that was created for Board Order 23, and that is what it was, not on the Office of Personnel Management. There is an additional board created internally.

Mr. Connolly. An additional board.

Mr. Moure-Eraso. Yeah.

Mr. Connolly. Is it also not true that the CSB recently entered into a contract with a private company to handle the agency's recruiting and hiring of senior executives?

Mr. Moure-Eraso. Yes.

Mr. Connolly. Was that contract awarded to a long-time friend and associate of your general counsel, Mr. Loeb?

Mr. Moure-Eraso. We have -- we're authorized to have three SESes, and at the time we only have one, so I thought it was important to initiate the process to recruit another SES member. And so, since this issue is so delicate and there has to be beyond any reproach, the process, I did hire a consultant with extensive experience on SES, that was a former SES, to conduct the search to choose an Executive Resource Board that is already chosen and to start -- to start the process of -- open a search for an SES that has been initiated.

Mr. Connolly. Thank you. Mr. Chairman, my time is up, but I do want to say I think there are so many issues here, One does not know where to begin. I am deeply troubled at what is -- looks like the politicization of the hiring process and cronyism and, frankly, a very cloudy, if not illegal, meeting that took place on January 28 with, as Mr. Engler said, profound implications in the management of this agency. And it ought to concern all of us.

With that, I yield back.

Chairman Chaffetz. Great. Thank you.

I'm actually now going to recognize myself. I have not taken 5 minutes.

Mr. Moure-Eraso, I want to play a clip of a hearing from last time.

[Video shown.]

Chairman Chaffetz. So that would have put the date back in January 13. Did you use your personal email after January 13 -- or January 2013, I should say?

Mr. Moure-Eraso. Mr. Chairman, I have to look at my --

Chairman Chaffetz. It's a yes or no. It's a yes --

Mr. Moure-Eraso. I have to look at my records. I don't know

Chairman Chaffetz. When is the most recent time that you used your personal email?

Mr. Moure-Eraso. I have to look at --

Chairman Chaffetz. For work?

Mr. Moure-Eraso. -- my records. I cannot answer you.

Chairman Chaffetz. You can't tell us that you just haven't?

Mr. Moure-Eraso. I have to look at my records.

Chairman Chaffetz. Let me ask the inspector general. What's the most recent time you've seen him using his personal email for work-related business?

Mr. Sullivan. August of 2013.

Chairman Chaffetz. There is some information that suggests you may have emails as late as 2014. Would that be accurate or inaccurate, Mr. --

Mr. Moure-Eraso. I assume that Mr. Sullivan has probably a document that says so.

Chairman Chaffetz. So you did use your email even though you

testified to us. You testified. And then, even after that, you used it, your personal email.

Mr. Moure-Eraso. I said that -- I didn't give you a date. I can't -- I couldn't give you an exact date of when this is done.

Chairman Chaffetz. The -- you said the CIO, chief information officer, had gone through this. Did you give the chief information officer your password to your personal Gmail account?

Mr. Moure-Eraso. Yes.

Chairman Chaffetz. And did you let the CIO go through all of your personal emails on your Gmail account?

Mr. Moure-Eraso. Yes.

Chairman Chaffetz. Did that also happen for Managing Director Daniel Horowitz and General Counsel Richard Loeb?

Mr. Moure-Eraso. You have to ask them.

Chairman Chaffetz. Well, you sent letter. You just handed us this letter.

Mr. Moure-Eraso. Yeah.

Chairman Chaffetz. So, tell me, what -- I'm trying to read through it real quick. You just gave it to us. So what's your hesitation in signing this document that's given to you by the inspector general? I still don't understand that.

Mr. Moure-Eraso. My lawyer told me that I shouldn't volunteer when I don't have to. So I am not volunteer.

Chairman Chaffetz. Your document here, July 15, 2014, says, These documents were produced based on a search of both CSB and personal

email accounts of the individuals from whom the documents were requested, and the document request was above and beyond you.

Mr. Moure-Eraso. So what is the question?

Chairman Chaffetz. Did they or did they not have the CIO check their personal emails, Mr. Horowitz and Mr. --

Mr. Moure-Eraso. As far as I know, yes. My knowledge is that --

Chairman Chaffetz. This is -- this is the pattern with you. Is once you're presented with facts, then you just change your story, but you don't give us candid testimony the moment that you're asked.

Let me go back to something. I don't want you --

Mr. Moure-Eraso. If I don't know something, I cannot tell you yes or no.

Chairman Chaffetz. Let me go to something specific. I want to warn you with the sternest words I can possibly do. This is whistleblower information. You're going to be able to figure out who this person is, unfortunately, but I don't want this person's name used in this public format. Do you understand?

Mr. Moure-Eraso. Uh-huh.

Chairman Chaffetz. Let me ask you about this Vantage report. The Vantage report was produced on -- to the Board, or to -- to you -- let me get the exact date -- February 11 of 2015. That presentation was from 3:30 to 4:30 that afternoon. There was a person who was the person of record interacting with Vantage. When was that switch made to change the person of record interacting with at Vantage?

Mr. Moure-Eraso. I understand within 24 hours or 48 hours.

Chairman Chaffetz. Eight minutes, 8 minutes. So you get a very -- you get the Vantage report, which is not very flattering. I mean, several members have gone up through this, and 8 minutes after you get bad news, you move, you change this employee away from being the contact of record.

Mr. Moure-Eraso. I will characterize it this way. I use -- I use -- have reason to believe that the report has been tampered with and that the report was not a piece of that that I could trust, an integral objective evaluation of my agency. I have spent a lot of money contracting these people to give accurate information.

Chairman Chaffetz. What evidence do you have of that, and when will you provide it to this committee?

Mr. Moure-Eraso. I'm sorry?

Chairman Chaffetz. When will you provide that information to this committee? If you have evidence of it, I want to know what it is, and I want to know when you're going to give it to me and --

Mr. Moure-Eraso. As a matter of fact, I have a --

Chairman Chaffetz. When are we --

Mr. Moure-Eraso. -- a number of emails. When the committee request us for information.

Chairman Chaffetz. I'm requesting it right now. When are you going to give it to me?

Mr. Moure-Eraso. We sent -- we send it to you what I believe is 2,000 pages of emails, of interaction between Vantage --

Chairman Chaffetz. Let's go back --

Mr. Moure-Eraso. -- and CSB.

Chairman Chaffetz. Let's go back --

Mr. Moure-Eraso. And you know, if you just look at what those emails said, if you will, you know. I have -- I have here --

Chairman Chaffetz. Hold on. Hold on. Our committee interacted with this same person who was changed as the contract of record. That happened on February 25 of 2015. Two days later, that person was demoted -- 2 days. Less than 48 hours, he's demoted.

Mr. Moure-Eraso. The reasons were, you know, I found an email from this person that said, quote, "to the -- to Vantage, will not say anything about progress," end of quote. Also, it says, Put in the slide saying leaders appear to be backing away from external advice and accompanying committees. As a result, in the document, it says, Senior leaders are backing away from external advice.

My issue is, you know, is this a report of an independent objective consultant of professionals advising me, or is it simply they are basically transmitting --

Chairman Chaffetz. I think it's because --

Mr. Moure-Eraso. -- the appearance of a hostile establishment.

Chairman Chaffetz. I don't think you want to hear the truth. It's not like you've had one report. You've had Board members. You've had people quit. You have almost 50 percent of your people from 2011 who have actually quit and moved on. We're losing good people, decent people, who work hard for a living, who provide expertise that this government needs in order to do its job. And they can't stand you and

the way you manage this place.

We heard this repeatedly for hours. We shouldn't have to have the Chemical Safety Board come before this committee twice. This person meets with our committee staff, and less than 48 hours, he's demoted. He presents you bad information that you don't want to see in the Vantage report, and 8 minutes later, he is taken off the case. That is not a coincidence, in my opinion.

Mr. Moure-Eraso. I have asked -- I have asked the inspector general to look at the relationship between the contractor and this person because I believe they compromise the integrity of the statements that they are claiming to have objectively --

Chairman Chaffetz. Last question.

Mr. Moure-Eraso. -- evaluated.

Chairman Chaffetz. Last question. The workplace improvement committee, how many times did they meet in 2014?

Mr. Moure-Eraso. They meet very frequently. I will say more than 10 times since they have met, yes.

Chairman Chaffetz. And I got to tell you it's not -- well, my time is more than -- more than expired, but nothing has ever been finalized. They're looking at low-hanging fruit. You don't want them to talk about management issues, and I got to tell you, I think we're very united in this. Until you leave this organization, these problems are going to persist. There is something rotten to its core, and it is you. And I believe -- I didn't -- I didn't start in that position, but I can tell you between you, Managing Director Daniel Horowitz, and General Counsel

Richard Loeb, this is a dysfunctional, unfair, and unproductive organization. And good people are suffering. And I will do everything I can, in conjunction with my ranking member here, to make that change sooner rather than later.

This has continued to fester. We need help from the White House and this administration, but good, decent people need help. I am calling upon them.

I think you should be fired. I think the other two should be fired, but have the decency to actually step down and move this government forward.

I yield back.

Mr. Cummings. Thank you very much, Mr. Chairman.

The -- Mr. Chairman Moure-Eraso, your agency hired a management consultant company, Vantage Human Resources, to examine the challenges to CSB.

On February 12, 2015, Vantage provided you with a presentation that included results of interviews they conducted with CSB employees. Frankly, that report was devastating. Vantage found that 80 percent of CSB employees felt, quote, "much frustration with top leadership," end of quote. Vantage also found that 47 percent of employees had, quote, a perception of a climate where senior leadership discourages dissenting opinions.

Let me ask you about what happened directly after the briefing, and I'm going to follow up on some of the things that the chairman was saying.

On that day, February 12, 2015, your managing director, Daniel Horowitz sent an email removing the contracting officer from the Vantage contract and designating himself instead. Were you aware of this removal action, and did you approve of it?

Mr. Moure-Eraso. Yes. I found out that this report that I was counting on to help to do the work that we have was compromised and that the person that was in charge of it has interfered on the report, and I approved of removing him of having anymore responsibilities of running this contract.

Mr. Cummings. Are you sure that the -- I mean, what -- now, so how did you find out that information?

Mr. Moure-Eraso. I found out that information because we look at communications that were sent to you, to the committee, that you requested and emails in which there are secret communications between the CSB contracted officer and --

Mr. Cummings. But wait a minute, you didn't get the communications till later, did you?

Mr. Moure-Eraso. I got the communications because -- I got the communications when I --

Mr. Cummings. Mr. Horowitz -- Mr. Eraso.

Mr. Moure-Eraso. Yeah.

Mr. Cummings. I want you to listen to me. You got the communications later, did you not? And I want to remind you, you are under oath now.

Mr. Moure-Eraso. Yeah, I read the communications in the last 3

or 4 days. This happened 2 weeks ago, you know. It's a very fast-moving situation and --

Mr. Cummings. Well, now I'm really confused. I thought you just said -- I asked you how did you find out, and you said you read some communications, and that was the basis of your approval.

Mr. Moure-Eraso. Yes.

Mr. Cummings. Is that right?

Mr. Moure-Eraso. Could I explain to you --

Mr. Cummings. Of course.

Mr. Moure-Eraso. -- how it happened? When -- when I read the -- what Vantage presented to me, and I inquired to Vantage what were the communications that it had with the staff, he refused to give me clear information about it. And I found it strange that information about progress that we have done about the Washington report and the problems that we have gone about steps that we have taken in the nine points -- in nine points, programs that I have to improve issues, none of those things that were progress on the management of the agency appeared in the report.

And I got suspicious about that because I have provided directly that information to Vantage, and they say that it was very important information to include what progress has been done. When that was missing and when -- when he says that he was not commenting with anybody that -- that that hasn't any of that information additional on the report, I thought that the report was incomplete and the report was --

Mr. Cummings. But that was your opinion, right?

Mr. Moure-Eraso. Exactly.

Mr. Cummings. And you hired -- well, you hired Vantage to look at this agency and render their opinion. They talked to employees. They put in the report what they thought was appropriate, and so now you're telling me that you approved that action because you suspected that -- I mean, well, first of all, it didn't have everything you wanted in it and --

Mr. Moure-Eraso. What I did, if I may, Congressman --

Mr. Cummings. Yeah.

Mr. Moure-Eraso. What I did is say, I would like to see communications between the CSB contract -- contract manager and the contractor. I read the communications, and that is when I -- what I am reading to you when I saw direct interference of the contract officer was trying to change the conclusions of the report. As a matter of fact, there was a previous version of the Vantage report in which all the positive things appear, and in the second, all were erased.

Mr. Cummings. Yeah, you're -- you're -- I think you are right now hurting yourself, but I want to clear this thing up.

Mr. Chairman, the chairman took 10 minutes. So we usually try to have equal time.

Again, the very same day, your managing director, Horowitz, sent you an email. And we now have a copy of that email. In it, he asked for your permission to go through the former contracting officer's emails. The problem is, he doesn't say why he wanted to do this. He simply says that he wants to, quote, examine a confidential personnel

issue.

So you approved that request, right, just based on that?

Mr. Moure-Eraso. I approved that because not based on the interview that I have with Vantage and the interview that I have with the person that made the -- that --

Mr. Cummings. All right. Let me ask you this.

Mr. Moure-Eraso. -- made the report.

Mr. Cummings. During your term as chairman, how many times have you approved a request from staff to go through an employee's emails? How many times have you done that?

Mr. Moure-Eraso. That I remember, probably this is -- this is -- the time, I have to refresh my memory

Mr. Cummings. Let me ask you, do you -- do you think there was another time?

Mr. Moure-Eraso. It might be at least once before another time.

Mr. Cummings. Can you tell us when that was?

Mr. Moure-Eraso. I don't remember. I have to look at my records.

Mr. Cummings. Why did you sign off on a request this significant, allowing someone to go through another employee's email, without specific information about why?

Mr. Moure-Eraso. When -- when there is what I consider that there might be some legal problems or that something is going to be detrimental of the agency, I will like to know what is happening, yeah, and I did --

Mr. Cummings. So you're saying that you would approve every single request under those circumstances that you just stated?

Mr. Moure-Eraso. No, not every single request, a request that I believe the integrity of the agency is at stake.

Mr. Cummings. Sir, this is a serious legal point. Let me ask you this. The meeting you all held -- were hearing in February 2014 that examined surveillance of employee emails of the Food and Drug Administration. At that hearing, the inspector general recommended that the agency document the reasons for initiating, reviewing, and approving electronic monitoring, including opinions of legal counsel. Did you seek legal counsel before authorizing a search of these employee emails?

Mr. Moure-Eraso. Yes.

Mr. Cummings. And your counsel, is he copied on it?

Mr. Moure-Eraso. Oh, yes. I mean, he -- I requested --

Mr. Cummings. He's not. He's not

Mr. Moure-Eraso. -- the authority. I have verbal conversations with him about all of these developments.

Mr. Cummings. So but you didn't send -- you didn't provide him with a copy. Did you seek his advice?

Mr. Moure-Eraso. I sought his advice, yes.

Mr. Cummings. And who is your legal counsel? Who is that?

Mr. Moure-Eraso. Mr. Loeb.

Mr. Cummings. Is that the gentleman sitting behind you?

Mr. Moure-Eraso. Yes.

Mr. Cummings. All right. Now, why would you want -- so you're saying you didn't exclude him from it. You just didn't send him a copy.

Mr. Moure-Eraso. I discussed the issue with him, and I was told that I have the authority to do that under our rules, and I did it.

Mr. Cummings. You know, this makes it sound like you are retaliating against employees. And I got to tell you, I've sat here now for the last 2 or 3 hours, and this is painful. This is painful, and it's got to be painful for you when you get a Vantage report which basically says that the leadership is the problem.

And you know, I mean, have you thought about it? I mean, you've had several members ask you to take an early retirement. Have you considered that? I mean, for the good of the organization.

Most people who truly care about an organization -- and this organization does some very, very important work, but it seems as if, and the Vantage report bears this out, that you're not the right person to be the head of this, sir.

And I know that -- I know you've got a lot of pride and all that kind of stuff, but this is much bigger than you.

Mr. Moure-Eraso. Mr. Cummings, but you know, you are -- you're saying that Vantage report said some negative stuff. My problem is I would very much want to believe what the Vantage report is, but, you know, the report has been compromised, the report has been interfered with. I will like to have to -- I have asked for an investigation if this report is objective, if this report deserves to be used, and the conclusions are correct. That is my problem.

Mr. Cummings. Thank you, Mr. Chairman.

Mr. Meadows. [Presiding.] I thank the ranking member, and I

would agree with him that you need to really evaluate this. I think the chairman, the ranking member have both been extremely eloquent but also piercing with their words, and my recommendation, for the good of the organization, is to take an early retirement.

And so the chair recognizes the gentleman from Georgia, Mr. Hice.

Mr. Hice. Thank you, Mr. Chairman.

And I agree with my other colleagues. This is extremely painful. It seems like with every question, the hole gets deeper and deeper and darker and darker along the way.

I would like to continue walking down this path a little bit further on the Vantage report and direct my questions, Mr. Griffon, to you.

You are familiar with the Vantage study, I assume.

Mr. Griffon. Yes. Yes, I am familiar with it.

Mr. Hice. Okay. Do you -- do you know the primary reason why the study was requested in the first place?

Mr. Griffon. We had a prior group that did an assessment, the Cardon Group, and the reason we did the followup was at the recommendation of the Cardon Group that they need -- that we needed to have another management consultant to help us look through the problems and make recommendations to reform.

Mr. Hice. So I can take from that the Cardon Group recognized that the problems likewise are deep and dark and they wanted more affirmation, and so that's --

Mr. Griffon. Yes.

Mr. Hice. -- kind of what --

Mr. Griffon. Yes.

Mr. Hice. Okay. What is the primary problem that both of these studies, but let's focus on the Vantage, concerning the Chemical Safety Board, what is the primary issue that they discovered?

Mr. Griffon. The primary issues point to senior leadership and the failure of senior leadership, failure of senior management, and there's several things about faulty communication, no ability to have dissenting views. All these things are very consistent with previous employee surveys we've seen, also the testimony of other Board members, very consistent.

Mr. Hice. All right. But it basically came down to leadership.

Mr. Griffon. Yes.

Mr. Hice. And we have not one but two studies saying the same thing.

Mr. Griffon. Yes.

Mr. Hice. All right. Mr. Griffon, what is your reaction to the findings that the Board and, more specifically, that Mr. Moure-Eraso is the problem?

Mr. Griffon. I'll just say that I've -- at this point, I've lost all confidence in the chairman.

Mr. Hice. And you're not the only one, it appears. So you would agree wholeheartedly with the outcome of the study?

Mr. Griffon. Yes. I actually got a briefing from the head of Vantage in which he told me that the only way to fix this organization is going to involve a Marshall Plan, and I think that's pretty accurate.

Mr. Hice. Okay. You referred to, just a moment ago, several different issues, from a lack of collaboration to a lack of accountability to creating an environment that discourages dissenting opinions, a host of issues, and from the study, staggering, over 80 percent or somewhere in that category of people who were interviewed, agreed that we have a serious problem at leadership with all of these issues. How do you explain these general themes? I mean, they are -- it appears from the questioning and the testimony that these things were wide in the open, right out in the open.

Mr. Griffon. Yes. And, you know, I think, you know, all this starts with leadership, and I think if -- hopefully going forward, leadership will realize that the Board has to lead together. The chairman has to work with the Board instead of going around Board orders, marginalizing Board members, et cetera.

Mr. Hice. It appears the root has been discovered. We just need to pull it up.

Mr. Chairman, I am going to cease continued questions, but I would ask for unanimous consent to enter a copy of the Vantage report into the record.

Mr. Meadows. Without objection, so ordered.

[The information follows:]

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Mr. Hice. And I yield my time. Thank you.

Mr. Meadows. I thank the gentleman from Georgia. The chair recognizes the gentleman from Oklahoma, Mr. Russell.

Mr. Russell. Thank you, Mr. Chairman.

And Mr. Chairman, ranking member, members of the committee, I'm concerned that this problem, even if Dr. Moure-Eraso does do the honorable thing and the needed thing of stepping down, that this problem will perhaps perpetuate itself with the creation of a Senior Executive Service position for the managing director. And so my question to you, Dr. Moure-Eraso, is did the Chemical Safety Board announce the creation of a Senior Executive Service position as managing director?

Mr. Moure-Eraso. Yes, we have that.

Mr. Russell. Was it announced just yesterday?

Mr. Moure-Eraso. It was announced, yes.

Mr. Russell. Yesterday?

Mr. Moure-Eraso. Yes, it was

Mr. Russell. Dr. Eraso, numerous whistleblowers have stated that you fast-tracked the creation of this new SES position to make sure that Mr. Horowitz would be put in it before you left the Chemical Safety Board. Was this position created --

Mr. Moure-Eraso. It's absolutely untrue.

Mr. Russell. -- for Daniel Horowitz?

Mr. Moure-Eraso. It's absolutely untrue. This is -- as a matter of fact, that's the reason why I have an outside consultant to come in to run the campaign to open a --

Mr. Russell. So this position was put up on the Board for review, and then we have a Mr. Horowitz changing his title to senior advisor to the Deepwater Horizon investigation, and he did that on March 2. Is that true?

Mr. Moure-Eraso. He has that position.

Mr. Russell. He changed his title so he would what, qualify for the position?

Mr. Moure-Eraso. The position is open for anybody that wants to -- I mean, the system of the Office of Personnel Management is that you open a position in the Federal Government for anybody to apply.

Mr. Russell. So let me understand the sequence of attack here. Draconian policies can be furthered by creating an SES position as managing director. Position is posted up on the Board for anyone, as you state, to apply, and magically, Mr. Horowitz changes his title so he somehow positions himself, and now it is your intention to hire him for this position. Is that about right?

Mr. Moure-Eraso. The position of managing director have always existed at different times in the -- in the -- in the organization.

Mr. Russell. But this one is a new position. Is that correct, the managing director?

Mr. Moure-Eraso. The managing director has existed since September 2011.

Mr. Russell. And so now you are intending to -- what -- even after you retire, continue your toxic work environment as was stated in these survey --

Mr. Moure-Eraso. What I intended to do --

Mr. Russell. -- position?

Mr. Moure-Eraso. Open the position to be --

Mr. Russell. How far do the --

Mr. Moure-Eraso. -- in the --

Mr. Russell. -- go into this organization that you have to have a grip on it even after you would leave, whether honorably or dishonorably in 15 weeks, that you would continue to set everything in motion so that you keep your little web in control of something so vital to the country? Is that -- is that the intention, or do I have it wrong?

Mr. Moure-Eraso. You have it wrong.

Mr. Russell. I see. Okay. And after listening to all of the testimony and the answers given so far, we'll let the people of the United States be the judge there.

Mr. Griffon, Mr. Engler, Mr. Ehrlich, given the lack of confidence in senior leadership that has been highlighted in the HR consulting report, you know, I think back to when I was in the military, if I got a command climate survey as a commander of 1,000 soldiers and it said that 80 percent of my soldiers thought I was incompetent to lead and then it was followed up with a Board and testimony and then I would have to come back and show some type of gain, whether 3 months, 6 months later, or something of that nature, and yet the follow-on reports were even worse and then I was called on the carpet before, I would be relieved of command. I mean, it would be just absolutely -- that would

be the result. I would be relieved of command. Do you think that hiring Mr. Horowitz for an SES position is a good idea at this time, given the climate that the command safety board has?

Mr. Griffon, please.

Mr. Griffon. I think, you know, I think the evidence speaks for itself as far as the problems with management, and I think it should involve a careful assessment of whether he is the appropriate person to --

Mr. Russell. Do you believe that it ought to have more time other than just be posted and then titles being changed and then people being recommended and then we just go from there, or do you think that this thing might ought to have some brakes put on it and get -- one, do you even need it? We look at the Veterans Affairs Administration and see the problem that our Senior Executive Services have created with the Secretary. That's a whole different issue, but now we are going to make a construct to potentially do that.

Mr. Engler, do you think that it's appropriate at this time?

Mr. Engler. I think that it needs to be a full, fair, and objective evaluation. I would -- given how fast other things have happened, I would urge things go slower but in accordance with Federal statutory and regulatory personnel requirements.

And if I could just add for the record, part of my briefing was very useful from the CSB staff. And I appreciate the CSB staff at updating me, but there were some notable exceptions to what was not included in my briefing that I think should have been. One was any

reference to the Cardon report. One -- another was any detailed review of the Vantage report, which in fact I had to request a copy of to get, which I did get. But then when I requested to have a conversation with the contract -- with the contractor over the last couple of days, apparently because of the -- I don't know how to characterize it as a sort of a counterattack on this committee, that because there's a request to the IG, now it's something that I don't have access to, I mean, this is making due diligence for me very, very difficult. And it's just an incredibly challenging position to be in as someone who cares very, very deeply about the mission of the Board, to have to encounter these obstacles in the first days of appearing here.

Mr. Russell. Well, my time is expired, and Mr. Chairman, I thank you for your patience, and I think I can speak for all of us that we are committed to try to help remove these obstacles.

Thank you, Mr. Chairman.

Mr. Meadows. I thank the gentleman from Oklahoma.

The chair recognizes the gentleman from Alabama, Mr. Palmer.

Mr. Palmer. Thank you, Mr. Chairman.

If you would, could we show the OMP -- the OPM survey and the CSB worker satisfaction slide. Thank you.

Chairman Moure-Eraso, if you look at these statistics on employee satisfaction, they indicate an agency in turmoil. In particular, it would appear from this that the satisfaction of your senior leadership, which in this case would seem to be yourself as Chairman, your top staff, such as Mr. Loeb and Mr. Horowitz, why do you think these numbers are

so low?

Mr. Moure-Eraso. You know, we run an agency, as was explained before, that has very little resources, that does have, I agree, leadership problems. We have a -- a Board that is -- functions without any agreement, and they are in constant conflict. All that create a situation that I believe the people and the staff feel that the leadership of the agency is not to their liking.

Mr. Palmer. Let me ask Mr. Griffon and the rest of the Board, but particularly Mr. Griffon, as long as you work with the Chairman, you might have some more detailed thoughts on this. Can you give us some insights into why you think these numbers are so low?

Mr. Griffon. Well, I think the number -- I think part of it is that the Board -- we've had the -- a series of maneuvers and operations and ways to get around orderly Board order -- Board orders are governance, and I think if the Board can make a commitment to say that we will all follow the Board orders, then a lot of the conflict on the Board would go away.

That certainly contributes to it, but I also think it goes deeper than that. It's the ways in which staff are not -- a fear of retaliation. There's a real fear of retaliation. There's not an openness for dissenting opinions to be shared, so it's much deeper than that. But this has gone on for quite some time. I guess my biggest disappointment is, even after the hearing in June, I urged everyone to reflect and let's try to reform. And I think instead, we continue to deflect and defend: It's lack of resources, lack of staff. It's

never management problems.

And I think they are -- the evidence is there. It's very clear. We have to accept them and try to actually reform the place.

Mr. Palmer. Yes, sir.

Mr. Ehrlich. I can't speak to the date that was gathered some time ago. What I can speak to is the issue of how data was handled in the Vantage study. In my --

Mr. Palmer. We already covered that, I think, earlier in the hearing.

Mr. Ehrlich. But I wasn't asked. You asked me why I -- what I thought was going on, and I'd like to tell you, sir.

Mr. Palmer. Go ahead.

Mr. Ehrlich. I have talked to almost everybody in the agency. I have a background in organizational diagnosis as well as chemistry. I think there are some issues, yes, but I know for a fact -- and the emails are forthcoming to the inspector general -- that a person inside, two people inside the agency told the contractor -- by the way, the contractor, who lied to us that nobody had ever seen this report up until the day it was presented -- we have data which will be submitted to you that says in fact that two people inside of the agency told the contractor to change the data so that it was in fact not very positive.

Mr. Palmer. That's noted. Thank you.

Mr. Ehrlich. You're welcome.

Mr. Palmer. Mr. Griffon, would you please briefly explain Board Order 28. On January 28, there was a motion which rescinded Board

Order 28 which established significant checks on the chairman. Would you explain that?

Mr. Griffon. Yeah. Board Order 28 came about after some -- some earlier arguments in the life of the Board, of governance on the Board, and it delineated the authorities of the chairman versus the Board as a whole, and it allowed for several checks and balances, including voting on budget allocation of funds as well as the appointment of heads of administrative units as well as large expenditures. And I think some of these I referenced in my opening statement that some of these principles were outlined by Senator Lautenberg when this initial dispute was going on. He thought that those checks and balances were very important, and I should also point out that, during a period of time under Carolyn Merritt, it seems that these Board orders, perhaps there were arguments here and there about them, but overall, they operated under those Board orders, and they were pretty productive, and I think that was working. And if you want to amend these, they should be done by the full Board, not --

Mr. Palmer. Quickly.

Mr. Griffon. -- in the dark of night.

Mr. Palmer. Do you believe that Chairman Moure-Eraso adhered to these, to Board Order 28?

Mr. Griffon. No. I think even when -- even when we were supposedly operating under Board Order 28, Chairman Moure-Eraso appointed a person to an administrative unit head, which I objected to, in violation of that Board order. It should have been a Board vote

for that position, and he -- he proceeded with the appointment unilaterally.

Mr. Palmer. Mr. Chairman, I would like to enter Board Order 28 into the record.

Mr. Meadows. Without objection, so ordered.

[The information follows:]

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Mr. Palmer. My time is expired. Thank you, Mr. Chairman.  
Thank you, the witnesses.

Mr. Meadows. I thank the gentleman.

The chair recognizes the gentleman from Texas, Mr. Hurd.

Mr. Hurd. Thank you, Mr. Chairman.

We all know the mission of the U.S. Chemical Safety Board is to investigate chemical accidents and issue timely findings and recommendations in order to prevent future accidents, and we are all here because the serious management deficiencies at the Chemical Safety Board have prevented this independent agency from fulfilling its mission. And my first question, Chairman Moure-Eraso, you know, the CSB plays a very important role in public safety. Members of this committee have expressed their concern, as my colleague from Virginia said, about the dysfunctional culture at CSB and your ability to remain as chairman.

And your current former Board colleagues have testified to the hostile climate at CSB. Former CSB Board Member Beth Rosenberg stated that those whose opinion differed from those of senior leadership or the Chair are marginalized and vilified. You have 15 weeks -- is that correct, sir -- left?

Mr. Moure-Eraso. Yes, 15.

Mr. Hurd. And you have said, I think, many of my colleagues have intimated or outright said they think it's time for you to step down. And you responded with you have work to do. What work do you think you can do to fix these major problems in 15 weeks?

Mr. Moure-Eraso. First of all, Mr. Congressman, I disagree with your premise that the core mission of the agency is not being fulfilled. As I expressed before, in the last 8 months, we have produced the eight excellent interview and reports with videos of our investigations. We have completed 22 investigations. The core mission of the agency is being made.

Mr. Hurd. Is that because of you or in spite of you?

Mr. Moure-Eraso. It's because the agency works, and the product that we have is the evidence that the agency works.

Mr. Hurd. And what do you plan on doing the remaining 15 weeks of your time?

Mr. Moure-Eraso. We still have three major reports that are in the process of being finished, and I would like to bring those reports to an end in the next weeks that I have.

Mr. Hurd. Mr. Ehrlich, question for you. On February 12, 2015, you submitted a letter to the editor of the National Journal claiming that the Office of Special Counsel never substantiated any claim of whistleblower retaliation by the CSB's management after years of inquiry. Can you explain how you arrived at this conclusion and what is the basis for this claim?

Mr. Ehrlich. Well, I understand that that came about in the -- in the hearing last year, and I asked the questions of the staff, was that information ever transmitted into the agency? And I was told no, and I accepted that on the face of it and accepted it to be true and wrote it in that article.

Mr. Hurd. And so do you have a change of opinion now?

Mr. Ehrlich. No, sir.

Mr. Hurd. Did the Board receive formal communication from the Office of Special Counsel?

Mr. Ehrlich. I don't know, sir.

Mr. Moure-Eraso. If I may, Congressman.

Mr. Hurd. Sure.

Mr. Moure-Eraso. The Office of Special Counsel has been investigated -- investigating the agency for 3 and a half years. They have come out with no findings. They have come out with no instances of retaliation, period.

Mr. Hurd. So noted. Thank you.

Mr. Ehrlich, last question for you. Have you ever used personal email to conduct official CSB business?

Mr. Ehrlich. Not that I haven't copied my own email on in my office.

Mr. Hurd. And who are you communicating that?

Mr. Ehrlich. At CSB.gov. I think I've sent emails from home on my personal email, but I copy my CSB.gov file.

Mr. Hurd. Great. Thank you.

And my last question is for inspector general Sullivan. What is the process of removing a Board member from the U.S. Chemical Safety Board or the Chairman?

Mr. Sullivan. Well, we would not be involved in any process of removal. What our role would be is to present the facts in a clear

and unbiased way, present them to the next level above to take -- to take the potential disciplinary action. In this case, our report of investigation was sent to the President because he is in effect Dr. Moure-Eraso's supervisor.

Mr. Hurd. Is it odd to have named the Chairman before -- 15 months before the end of someone's tenure?

Mr. Sullivan. Can you repeat your --

Mr. Hurd. In your opinion?

Mr. Sullivan. I didn't understand the question, Mr. Hurd.

Mr. Hurd. The fact that the President named a replacement Chairman yesterday, is that right, March 3, is that a common practice?

Mr. Sullivan. I don't know, sir.

Mr. Moure-Eraso. If I may, Congressman.

Mr. Hurd. Sure.

Mr. Moure-Eraso. The process is that the President nominates a person. What has happened is that the President nominated a person to be the Chairman. The process now has to follow by the Senate to confirm.

Mr. Hurd. Confirmation, right.

Mr. Moure-Eraso. But, at this time, all that we have is a name that the President has presented for consideration to the Senate.

Mr. Hurd. Thank you for that clarification.

I yield back the balance of my time.

Mr. Meadows. I thank the gentleman.

Mr. Ehrlich, let me clarify something that Mr. Hurd just brought

up. You are very confident when you said you only used your personal emails only if you copied your official email. Did you copy those personal emails to your official account at a much later time than when you were actually having it back and forth?

Mr. Ehrlich. Not to my recollection, sir.

Mr. Meadows. So -- but you were very clear in your answer to Mr. Hurd --

Mr. Ehrlich. I was.

Mr. Meadows. -- that you did that. So you are confident that each time that you copied -- when using your personal email, that you copied it, because you're under oath.

Mr. Ehrlich. I understand that, sir

Mr. Meadows. And you're confident of that. That's your testimony here today.

Mr. Ehrlich. It is. My recollection is that that is exactly true.

Mr. Meadows. Recollection is very different than what you told Mr. Hurd.

But we'll go ahead and recognize the gentleman from Georgia, Mr. Carter.

Mr. Carter. Thank you.

Thank you, Mr. Chairman.

And thank you, gentleman, for being here today. We appreciate your presence.

Let me ask you, Dr. Moure-Eraso, getting back to January 28 when,

the motion was made to consolidate some powers, do you think that was a pretty significant motion that was made that day? Pretty significant change; would you agree?

Mr. Moure-Eraso. The only thing that was different about the meeting that we have in January 28 is that I have a clear majority that was backing the position. That was the only thing that was especially different.

Mr. Carter. I'm sorry, I didn't understand you.

Mr. Moure-Eraso. That I have a majority on the position that was presented in a motion. That was the only thing that was different in the --

Mr. Carter. I'm talking about the change that was made. The change, was it significant? Would you consider it significant --

Mr. Moure-Eraso. Yeah, the change, of course, it was significant, yes.

Mr. Carter. Who made it? Who made the motion?

Mr. Moure-Eraso. This is a process of 4 and a half years of discussion on the governance of leadership that we have.

Mr. Carter. No, no, no. Who made the motion?

Mr. Moure-Eraso. The motion was made by Board member Ehrlich.

Mr. Carter. By Mr. Ehrlich

Mr. Moure-Eraso. Yes.

Mr. Carter. Mr. Ehrlich, let me ask you, you made that motion on January 28, right?

Mr. Ehrlich. Yes, sir

Mr. Carter. When did you join the Board?

Mr. Ehrlich. I was appointed in December of 2014.

Mr. Carter. You were appointed in December of 2014, and then you made what is admittedly, by the director, a significant motion, a significant change. Is that correct?

Mr. Ehrlich. Yes.

Mr. Carter. Now, that's pretty quick. You're pretty aggressive there. Let me ask you, you were appointed. Who appointed you? How did you get appointed?

Mr. Ehrlich. I was nominated by the President, confirmed by the Senate.

Mr. Carter. Okay.

Mr. Ehrlich. Appointed by the President.

Mr. Carter. And during that confirmation process, did you ever -- did you ever discuss what you -- I mean, obviously, you've been thinking about doing this. Did you ever discuss that?

Mr. Ehrlich. Well, yes, I did. I watched what was going on when I came in. I did a lot of reading. I was provided with a lot of information before I came to Washington. And I saw this as an opportunity, as you do, for example, in a business environment to fix some things that didn't appear correct and clear the slate for Mr. Engler and I to move forward in June.

Mr. Carter. Did you discuss it with anyone before you made such a significant motion?

Mr. Ehrlich. I discussed it internally, yeah.

Mr. Carter. Internally. With who?

Mr. Ehrlich. With the Chair, with the managing director, a few of the people in the organization, staff members.

Mr. Carter. So you did discuss it with the Chair that you were going to make this motion, and I assume he was in agreement with that?

Mr. Ehrlich. Yes, sir

Mr. Carter. Was anyone in opposition to it? Did you talk to anyone who said, No, I don't think that's a good idea?

Mr. Ehrlich. I did not.

Mr. Carter. Okay. But you went ahead and did it anyway?

Mr. Ehrlich. I did.

Mr. Carter. You know, again, I find that -- that significant, to say the least. Did anyone help you with it, or you just came up with that on your own?

Mr. Ehrlich. Well, no, I got help internally to put some of the verbiage together, yes.

Mr. Carter. Who helped you?

Mr. Ehrlich. Managing director, general counsel, the Chair. I talked to some of the senior investigators, or one of the senior investigators.

Mr. Carter. So the Chair did help you in crafting this motion?

Mr. Ehrlich. At some level, yes, sir.

Mr. Carter. You know, that's -- that's pretty significant. It seems -- so would you -- would you say that you had an agenda when you came on the Board?

Mr. Ehrlich. Well, I had an agenda to the extent that I wanted to see the Board -- I wanted to see the agency function more smoothly. I wanted rules and regulations that were up to date. I wanted to apply a business model from my executive management that would help bring it up --

Mr. Carter. Okay. But were you aware of what existed at the time? I mean, after only 3 weeks, you know, I'm not sure how aware you could have been, and when I'm talking about then, I'm talking about the morale of the employees, about just what has obviously here been described as a very, very disruptive workforce.

Mr. Ehrlich. I have, and yes, I had talked to a number of employees in that period of time. And I understand where some of the problems were. And I felt that we could take action at the time, at the Board meeting, since it was the only one -- or the community meeting, since it was the only one scheduled, to correct some of the issues and move forward and clean the slate.

Mr. Carter. So understanding that a lot of the concern among the workforce and in the workplace was that of the director, instead you made a motion to give him even more power.

Mr. Ehrlich. Sir, I never -- when I talk to people -- first of all, I didn't give him any more power. He's not going to be there. It gave Mr. Engler and I the ability to -- and future Chairs for power. I never talked to anybody in the organization that had anything negative to say to me about the Chair. They had things to say about communication. There was no finger pointing as to who was responsible

or not. They had issues about the fact that we need to work on a -- on a protocol, on a style guide. All of these things, I would assume, had been discussed on Mr. Griffon's shift.

Mr. Carter. You would assume.

Mr. Ehrlich. Well, I know some of them were discussed, yes, okay. And just to clarify an issue from before, Mr. Engler and I had a discussion about going back and looking, for example, at an HF issue. In fact, we talked about how the research would be done on it because I understood that that created some issues. So we agreed that we were going to look at it and decide how we could move forward collegially.

Mr. Meadows. The gentleman's time has expired, but the chair is going to ask a followup question to this because the gentleman from Georgia is exactly right.

Mr. Ehrlich, it is troubling that you -- you are an unbelievable quick study. After being there just a couple of weeks, you made all of this unbelievable analysis. So who drafted the motion, Mr. Ehrlich?

Mr. Ehrlich. I was --

Mr. Meadows. Because I have reason to believe that it was not you that drafted the motion. Who drafted the motion?

Mr. Ehrlich. It was drafted within the organization --

Mr. Meadows. By who?

Mr. Ehrlich. -- and I agreed to it.

Mr. Meadows. By who?

Mr. Ehrlich. By the Chair, by the managing director, by --

Mr. Meadows. So let me understand this. The Chair drafts a

motion for you to make the motion to give the Chair more power.

Mr. Ehrlich. Not in -- not in its entirety. I wrote a lot of it and I had --

Mr. Meadows. Well, we've got the transcript, and we'll --

Mr. Ehrlich. I wrote the verbiage --

Mr. Meadows. -- follow it up.

Mr. Ehrlich. -- that --

Mr. Meadows. So did the general counsel -- did the general counsel draft the motion?

Mr. Ehrlich. No, but he talked to me about the verbiage.

Mr. Meadows. All right. So you drafted it?

Mr. Ehrlich. Yes.

Mr. Meadows. So if we subpoena your records, it will be a draft form in yours, Mr. Ehrlich? Is that your testimony? I would be careful there.

Mr. Ehrlich. I believe so, but I'm not 100 percent sure.

Mr. Meadows. So is your testimony that you drafted it or you didn't? I'm giving you a chance to back up.

Mr. Ehrlich. I signed off on the draft. I made --

Mr. Meadows. So you didn't draft --

Mr. Ehrlich. -- changes.

Mr. Meadows. You didn't draft it.

Mr. Ehrlich. So I needed -- I needed assistance from inside --

Mr. Meadows. Mr. Ehrlich, I will remind you that you are under oath, and when you -- you're the one that used the word "lie" earlier,

but when you do not tell the truth to this committee, it is a major deal. So did you draft it? Is that your testimony, yes or no?

Mr. Ehrlich. The final draft was mine, yes. Did I drew all of the drafts? No.

Mr. Meadows. All right.

The chair will recognize the gentleman from Wisconsin, Mr. Grothman.

Mr. Grothman. Okay. A followup question for you.

Mr. Meadows. Can the gentleman turn on his mic?

Mr. Grothman. Followup question for you. There was a meeting on January 28. Did you provide a 1-week notice of the Board vote on that meeting?

Mr. Ehrlich. I did not.

Mr. Grothman. Okay.

Mr. Moure-Eraso. If -- might I say, you know, when we have a public meeting, we have to put a public description of the meeting in the Federal Register. It was in the Federal Register according with law, and it was said in the Federal Register that we were to discuss the Chairman report and we were going to discuss administrative matters and vote on administrative matters. All that is in the Federal Register.

Mr. Grothman. Did you provide Board Member Griffon a copy of the motion prior to the hearing?

Mr. Moure-Eraso. No. There is not a custom in our agency to do that. As a matter of fact, I have experiences before in which a Board

orders -- I mean, proposals for voting are kind of sprung at the moment and voted immediately without providing copies to other Board members.

Mr. Grothman. Okay. So he didn't have an opportunity to review the motion prior to the vote?

Mr. Moure-Eraso. Well, all the issues that are related -- that appear in the motion have been in discussion for 3 and a half years -- issues of Board Order 28, as was mentioned, issues of how we are going to do the recommendations, issues of how we are going to do scoping of investigations, issues of what -- what have been produced in this for all investigations so that we could basically administrative close with the problem that we have already producing them. All those things have been in continuous discussion with Mr. Griffon.

Mr. Grothman. I would like to ask Mr. Griffon to comment on that, how much advance notice you were given.

Mr. Griffon. I had no notice of the motion, you know. Other issues have been under discussion for years, but if you can't get a majority to support amendments to Board orders, then they don't move, so that's the way a Board should operate. This was clearly a -- planned out when the Chairman had the votes.

Mr. Grothman. Okay. So you feel it was by design that you weren't given a copy of the motion? Would that be an accurate statement?

Mr. Griffon. Yeah, I can't come to any other conclusion, yeah.

Mr. Grothman. Okay.

Mr. Moure-Eraso, just one more question. Under the Sunshine Act, it requires agencies to make public announcements at least 1 week in advance of -- you should be noticing location, the time, and the subject matter of the Board meeting. Do you feel that you complied with that statute?

Mr. Moure-Eraso. Yeah, pretty much. The Federal Register notice that we put about the meeting speaks for itself. You can read it.

Mr. Grothman. Okay. I'll yield the rest of my time.

Mr. Meadows. So your testimony is you pretty much adhered to it, is that correct, Dr. Eraso, pretty much? I mean, so --

Mr. Moure-Eraso. Yeah. Well, I --

Mr. Meadows. On a scale of 1 to 10 with being completely, would you put it -- is that a 7?

Mr. Moure-Eraso. Well, I am unclear about what the Sunshine Act requirements are to discussion about administrative matters in public meetings. I am not clear about that.

Mr. Meadows. All right.

Thank you, Doctor.

The chair recognizes the gentleman from South Carolina, Mr. Mulvaney, for a few followup questions before we have closing remarks.

Mr. Mulvaney. I appreciate that, and I appreciate the panel staying and the chairman allowing the indulgence of. Just a couple of followup questions.

First, Dr. Moure-Eraso, the ranking member asked you why you

didn't sign the compliance statement when you turned over your email documents. I have your letter, which you provided earlier, and then I have the statement which isn't here, and there are two things I want to draw to your attention, the statement that you didn't sign.

This isn't the statement they asked you to sign. There's the introductory paragraph about who you are, who you asked, and by the inspector general to fill out some stuff. So if I mention -- the next sentence, In good faith, I have made a diligent search of all the records and communications, and you sort of say that in your -- in your letter.

Then you say -- the next thing in the section of the document you didn't sign asked you to affirm that your methodology to collect email records included conducting a search of personal email, which is such and such, and to use the following search term, "Jason Zuckerman," "Peter Broida," et cetera, et cetera. And your document that you did draft or your counsel drafted for you and that you signed said that you searched the names that the IG had requested, so so far so good.

Then the next paragraph of the document you didn't sign says, I also developed the additional search terms based upon my review in order to make sure my search included the full scope of email communications pertaining to official CSB matters. And there is places where you could have filled in the blank for additional search terms. Now, your letter didn't speak to that. Did you use any other search terms other than the names that were given to you by the IG?

Mr. Moure-Eraso. I used -- I think there was a long list, more than 1-page long. I cannot tell you each one of them, but you know,

there was a number of search terms that were used.

Mr. Mulvaney. No, well, I'll read them to you. And again, I'm not trying to trick you. The search terms were "Jason Zuckerman," "Peter Broida," "Daniel Horowitz," "Christopher Warner," "Office of Special Counsel," "OSC," "SC," and "special counsel." So I guess the question is, in the next paragraph of a document you didn't sign, there is an opportunity to disclose other search terms that you might have used in looking for the documents.

RPTR DEAN

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[12:02 p.m.]

Mr. Mulvaney. Did you use any search terms other than those I've just read to you in searching your documents?

Mr. Moure-Eraso. I might have. I mean, what happens is that when we use those terms we drew a blank. This is working with my chief information office at my computer. So we'll start using -- let's put some other terms to see what the IG is trying to find.

Mr. Mulvaney. When you searched those terms, you drew blanks in your private emails?

Mr. Moure-Eraso. The ones that you have in there, some of them, yes, I drew blanks.

Mr. Mulvaney. Okay. All right. That's interesting.

Mr. Moure-Eraso. Some for my Gmail, in which -- for instance, when I put "CSB" --

Mr. Mulvaney. Yeah.

Mr. Moure-Eraso. -- it drew a blank. When I put "Zuckerman," it drew a blank.

Mr. Mulvaney. Okay.

Mr. Moure-Eraso. So, you know, it was -- I wanted to be responsive, you know.

Mr. Mulvaney. All right.

The last paragraph says, "The materials provided to the EPA are

genuine and complete," and you say that in your document.

This is the last substantive sentence of the document you didn't sign: "I took no intentional action to destroy, delete, or remove any official CSB email communication in my possession." That's missing from here. Why is that?

Mr. Moure-Eraso. Yeah, it's missing. You are asking if I destroyed any document?

Mr. Mulvaney. No, I'm asking --

Mr. Moure-Eraso. The answer is no.

Mr. Mulvaney. Why didn't you put that in your letter?

Mr. Moure-Eraso. I guess -- it wasn't required for me to put that. But, you know, I --

Mr. Mulvaney. It wasn't required? No, it was required. It was in a document that they sent you. And you didn't sign this document.

Mr. Cummings asked you a question --

Mr. Moure-Eraso. Well, but you are talking about a document that I don't have. How could I answer the question?

Mr. Mulvaney. I can -- I just read it to you.

Mr. Moure-Eraso. -- without having it in front of me and having time to evaluate what you're asking, I cannot --

Mr. Mulvaney. You haven't looked at this document?

Mr. Meadows. Would the gentleman -- will the gentleman yield for just --

Mr. Moure-Eraso. -- probably months ago.

Mr. Mulvaney. Did you want to give him the document?

Mr. Meadows. Dr. Eraso, you're the one that gave that to us.

Mr. Moure-Eraso. No, I didn't.

Mr. Meadows. I'm not talking about the inspector general's report, but --

Mr. Moure-Eraso. I'm talking about Mr. Sullivan's document. I don't have Mr. Sullivan's document.

Mr. Meadows. But you've seen the document that they asked you to sign.

Mr. Moure-Eraso. Probably 6 months ago, yes.

Mr. Meadows. Okay.

Mr. Mulvaney. Dr. Moure-Eraso, did you intentionally, or I guess unintentionally, destroy, delete, or remove any official --

Mr. Meadows. Will the gentleman suspend for just a second?

Mr. Mulvaney. I'd be happy to.

Mr. Moure-Eraso. No. The answer is no.

Mr. Meadows. Will the gentleman suspend for just a second?

Dr. Eraso, the ranking member makes a very good recommendation. We think you ought to read the document right now. And I think that's a very fair request.

And, Mr. Mulvaney, if you'll give it to him.

Mr. Moure-Eraso. Thank you.

Mr. Mulvaney. You're welcome.

Mr. Moure-Eraso. So I guess you were asking about this last paragraph here?

Mr. Mulvaney. Yes, sir.

Mr. Moure-Eraso. It says, "The materials provided to the EPA are genuine, complete, and in full compliance with the request. I took no intentional action to destroy, delete, or remove any official CSB email communications in my possession."

The answer to that question is that's correct. I absolutely never took intentional action to destroy, delete, or remove any official CSB communications in my possession.

Mr. Mulvaney. All right. Then I think we leave open for now, Doctor, the question that the ranking member asked you, which is why you didn't sign the document. But I appreciate that.

Before we let you go, Mr. Ehrlich, you said some things just a few minutes ago that caught my attention. It was not part of my original questioning, but I'm fascinated by it.

What is a scoping document?

Mr. Ehrlich. A scoping document is a document that's used to determine the magnitude of an incident and from a numerical scale that's derived from it.

Mr. Mulvaney. When did you learn that? When did you learn what a scoping document was?

Mr. Ehrlich. Right after I came to the agency.

Mr. Mulvaney. Okay.

I'm looking at the motion that the gentleman from Georgia asked you about -- it's, I don't know, 10 pages double-sided -- that you said you offered after being there for about 3 weeks. Is that correct?

I guess, let me ask the question a different way.

Dr. Moure-Eraso, were you involved in drafting this document?

Mr. Moure-Eraso. I had discussions with Mr. Ehrlich about different details of the document.

Mr. Mulvaney. Were you involved in drafting this document?

Mr. Moure-Eraso. Drafting itself? No.

Mr. Mulvaney. Did you instruct somebody to draft all or part of it?

Mr. Moure-Eraso. I didn't instruct anybody.

Mr. Mulvaney. You've never asked anybody to draft any part of this amendment --

Mr. Moure-Eraso. I never --

Mr. Mulvaney. -- this motion?

Mr. Moure-Eraso. I never give instructions to anybody to draft that motion.

Mr. Mulvaney. No, that wasn't my question. Did you ask anybody to work on this motion?

Mr. Moure-Eraso. No.

Mr. Mulvaney. Who did?

Mr. Moure-Eraso. Mr. Ehrlich.

Mr. Mulvaney. So this is just your work.

Mr. Ehrlich. I worked with others on it because I needed to know the language and the format. I worked with the managing director, and I worked with general counsel.

Mr. Meadows. All right. I thank the gentleman from --

Mr. Mulvaney. Oh, I'm sorry. Yeah, I'm out of time. Thanks.

Mr. Meadows. -- South Carolina, whose time has expired.

I will say that the gentleman from Alabama has a followup question. We're going to ask him to submit it, and it is an answer that this committee does need. The gentleman from Alabama has it. He will submit it to you in writing. We ask for your response to be in writing.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Meadows. And because of the time, we go to the ranking member for his closing statement.

Mr. Cummings. Mr. Engler, what did you want to say?

Mr. Engler. Very briefly. Thank you. I just want to put two short points on the record.

Mr. Cummings. Sure.

Mr. Engler. One is that there was a process prior to this committee hearing to prepare for it, which involved going over voluminous documents and involving an outside consultant at some point to, frankly, spin what cannot be spun.

I want to go on the record to point out that I said -- and I believe this is pretty close to a precise quote -- I refuse to participate in this process.

I am dedicated to the mission of the agency. I want to move forward. I hope to be back here before your committee and to work with the inspector general, but based on whether we're accomplishing the mission of the agency, not whether we're taking steps that have been described today to interfere with the mission of the agency.

This agency has no credibility whatsoever to tell anyone outside the agency virtually anything if its internal practices around issues like the right to know, of not informing people about the actions of the agency -- when we expect corporations and government agencies and others to take steps to inform the public and inform workers what materials they're working with, what the risks are, and we can't set a standard for good practice here?

I pledge to you that that's why I'm here, that's what I'm going to work for. And I look forward to coming back to this committee and to being accountable to all the relevant stakeholders and the inspector general in the months ahead.

Mr. Cummings. Mr. Engler, I really appreciate that.

I see you shaking your head, Mr. Griffon. Do you feel the same way? Just yes or no, if you don't mind.

Mr. Griffon. Yes. Yes. Absolutely.

Mr. Ehrlich. And I feel the same way, sir.

Mr. Cummings. Very well.

I just -- I want to thank you for that, your statement. And after this long hearing, to hear that is refreshing.

And I think what happens in life so often is people can go in circles, and never getting off the merry-go-round. And going in those circles, you don't accomplish the things that you want to accomplish or fully accomplish.

And I think what has happened is that we've gotten this -- the leadership here has basically become dysfunctional and has been dysfunctional for a long time. And it's interesting that the employees know that. They know it, and they figured it out. And it affects their lives. They're probably good people trying hard to be the very best that they can be. They take their jobs very seriously, and they want to make sure that they address the kind of important issues that you deal with. They want to do it effectively and efficiently. But then they're almost blocked and they're distracted, in many instances,

because of all of this stuff that's happening at the top.

And so, again, Mr. Chairman Moure-Eraso, I would ask that maybe, you know, when you get a chance after you leave here today, that you give some thought to taking an early retirement and let this agency go forward so it can do the things that it needs to do.

And I want you to understand, I don't say that lightly. Very rarely have I asked anybody from this dais to leave. But I just think that this is so important. And I do think that you need to put a mirror up and ask the question, is it me? And I think the Vantage report and the findings and a lot of what we've heard here today points to you. And I hope that you'll consider that.

Again, I thank you all.

Mr. Meadows. I thank the --

Mr. Moure-Eraso. May I respond or --

Mr. Meadows. We are just doing closing statements at this point. You've had more than enough time to share your perspective, Dr. --

Mr. Moure-Eraso. Thank you very much.

Mr. Meadows. -- Eraso. And so, I think at this point it is important that we bring this to a close under a number of different issues.

One is, Mr. Engler, thank you. Thank you for your comment. It's not easy when you're on a Board to make those kind of comments, so thank you so much for hopefully giving us a fresh start.

And to the employees, who may or may not be watching this particular hearing -- the ranking member and I were talking about this

while some of the other questioning was going on. We've got your back. And whether it's a whistleblower that is receiving retaliation or whether it's other issues within this agency that have not been properly handled, I can tell you that the ranking member and the chairman of the full committee, Mr. Chaffetz, are committed to working hand-in-glove to make sure that the employees get treated fairly.

Some of what I've heard here today is very discouraging and would certainly make for very low morale, because what ultimately this has been about is the truth and power. And, sadly, both of those have been left, really, in the hands of the wrong people. And I find that very troubling. And so I'm looking forward to a new day where we'll have a new Chairman come before this committee and, indeed, everything would look a little bit brighter.

I'm going to ask for unanimous consent for the following items to be put in the record: the letter from the American Chemistry Council to the committee; a letter from the United Steelworkers to the committee; a letter from the former CSB Board member William Wright to the committee; a letter from the former CSB Board member Gerald Poje to the committee; a letter from the former CSB Board member William Wright, a second one, to the committee; written testimony from the former CSB Board member Beth Rosenberg to the committee; a letter from the former CSB Board member William Wark to the committee; a letter from the former CSB Board member John Bresland to the committee; February 12, 2015, Vantage report titled "Briefing to CSB Senior Leadership"; July 10, 2014, Carden Group report titled "U.S. Chemical

Safety Board Path Forward Overview"; July 7, 2014, letter to the President; Government in Sunshine Act 5 U.S.C. 522b; Chemical Safety Board Order No. 28; and a job posting on the USAJOBS for the new Senior Executive Service position of managing director at the Chemical Safety Board, posted on March the 2nd, 2015; and the January 16, 2015, memo from the EPA inspector general to the President; and a February 2nd letter from the White House Counsel to this CSB Chairman.

Without objection, those will be entered into the record.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Meadows. And, with that, this committee hearing is adjourned.

[Whereupon, at 12:16 p.m., the committee was adjourned.]