

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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August 7, 2018

The Honorable John F. Kelly
Chief of Staff
The White House
Washington, D.C. 20500

Dear General Kelly:

Over the past several years, the governance of the U.S. Chemical Safety and Hazard Investigation Board (CSB) has suffered from substantial mismanagement issues, and requires new leadership. We recommend the President nominate a new Chairman.

In 2014, the Committee initiated an investigation into the disclosure of whistleblower identities and related document access issues at the CSB after Environmental Protection Agency (EPA) Inspector General Arthur Elkins Jr. sent a rare “seven-day letter” highlighting the CSB’s refusal to cooperate with an investigation into related matters.¹

On June 19, 2014, the Committee released a joint report with the House Committee on Science, Space, and Technology.² The report described an “agency in disarray.”³ Findings included a toxic work environment, routine failures to complete investigations and reports in a timely manner, a culture of whistleblower retaliation, and a rejection of proper governance processes.⁴

The Committee convened a hearing to examine the extent of the problems at the CSB and obtain assurance from CSB’s leadership those management failures would be addressed.⁵ During the hearing, then-CSB Chairman Rafael Moure-Eraso denied staff who disagreed with him were marginalized, despite their testimony to the contrary,⁶ and characterized his refusal to cooperate with the EPA Office of Inspector General (OIG) as “an obscure legal point that . . . the lawyers could deal with.”⁷ In light of Chairman Moure-Eraso’s refusal to take responsibility for the

¹ STAFF OF H. COMM ON OVERSIGHT & GOV’T REFORM AND H. COMM. ON SCI., SPACE, & TECH., 113TH CONG., WHISTLEBLOWER REPRISAL AND MANAGEMENT FAILURES AT THE U.S. CHEMICAL SAFETY BOARD 12 (2014).

² *Id.*

³ *Id.* at 84.

⁴ *Id.* at 10.

⁵ *Whistleblower Reprisal and Management Failures at the U.S. Chemical Safety Board: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 113th Cong. (2014).

⁶ *Id.* at 51.

⁷ *Id.* at 52.

CSB's troubles, then-Chairman Darrell Issa and Committee on Science, Space, and Technology Chairman Lamar Smith sent a letter to President Barack Obama on July 7, 2014, calling for a change in leadership.⁸

On March 5, 2015, the Committee held a second hearing to probe the CSB's abysmal employee morale, further assess the lack of management accountability, and seek answers from Chairman Moure-Eraso regarding the EPA OIG's finding he and other senior staff members violated the Federal Records Act.⁹ While testifying under oath at both hearings, Chairman Moure-Eraso made inconsistent statements about accessing the email accounts of CSB employees, the CSB's "production of emails to the Environmental Protection Agency's Office of Inspector General," and his use of a personal email account.¹⁰

Due to the discrepancies in Chairman Moure-Eraso's testimony, the Committee sent a bipartisan criminal referral for perjury to the Department of Justice.¹¹ The Committee's investigation culminated in request for removal of Chairman Moure-Eraso and two other senior staff members,¹² and in March 2015 he resigned at the request of the White House.¹³ Members of the Committee hoped his departure would facilitate the drastic improvement needed at the agency.¹⁴

Since Chairman Moure-Eraso's resignation, the Committee has continued to monitor the agency's progress. The Subcommittee on Government Operations examined the CSB's low employee satisfaction ratings at an April 16, 2015, hearing.¹⁵ On February 20, 2018, the Subcommittee on the Interior, Energy, and Environment asked the OIG to investigate a CSB Board Member's potential violations of anti-lobbying provisions.¹⁶ Most recently, the Committee

⁸ Letter from Darrell Issa, Chairman, H. Comm. on Oversight and Gov't Reform et al., to Barack Obama, President (July 7, 2014).

⁹ *Rebuilding the Chemical Safety Board: Finding a Solution to the CSB's Governance and Management Challenges: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 114th Cong. (2015).

¹⁰ Letter from Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform and Elijah Cummings, Ranking Member, H. Comm. on Oversight & Gov't Reform, to Loretta Lynch, Attorney Gen., Dep't of Justice (July 8, 2015).

¹¹ *Id.*

¹² Letter from Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform et al., to Barack Obama, President (Mar. 18, 2015).

¹³ Roberta Rampton & Timothy Gardner, *Head of U.S. Chemical Safety Board Resigns: White House Official*, REUTERS, Mar. 26, 2015, <https://www.reuters.com/article/us-usa-obama-chemicals/head-of-u-s-chemical-safety-board-resigns-white-house-official-idUSKBN0MM31620150326>.

¹⁴ Timothy Cama, *Obama's Chemical Agency Chief Resigns Under Pressure*, THE HILL, Mar. 26, 2015, <http://thehill.com/policy/energy-environment/237164-chemical-agency-chief-resigns-under-pressure>; Press Release, H. Comm. on Oversight & Gov't Reform, Chaffetz, Cummings Issue Statement on Chemical Safety Board Chairman Dr. Rafael Moure-Eraso's Expected Resignation (Mar. 25, 2015), <https://oversight.house.gov/release/chaffetz-cummings-issue-statement-chemical-safety-board-chairman-dr-rafael-moure-erasos-expected-resignation/>.

¹⁵ *The Worst Places to Work in the Federal Government, Hearing Before the Subcomm. on Gov't Operations of the H. Comm. on Oversight & Gov't Reform*, 114th Cong. (2015).

¹⁶ Letter from Blake Farenthold, Chairman, Subcomm. on the Interior, Energy, & Env't, H. Comm. on Oversight & Gov't Reform, to Arthur Elkins, Jr., Inspector General, Environmental Protection Agency (Feb. 20, 2018).

requested information from the CSB regarding its suddenly-improved employee satisfaction scores on the 2017 Federal Employee Viewpoint Survey (FEVS) after years of dismal ratings.¹⁷

Recent reports indicate mismanagement and improper conduct continue to undermine the CSB's mission. On June 4, 2018, the OIG issued a report on agency management challenges and concluded the CSB "continues to be plagued with leadership issues."¹⁸ The OIG noted complaints about a Board Member who did not conform to established agency practices and improperly shared information with outside entities on multiple occasions.¹⁹ According to the report, CSB emails revealed inappropriate activities by the Board Member, including apparent favoritism toward a certain stakeholder.²⁰ The same Board Member provided independent, public comments on a proposed EPA rule, which may have created the impression the comments represented the full Board's positions.²¹ Additionally, some CSB managers believe the Board Member "leaked" the CSB's fiscal year 2019 budget request to a news reporter before it was officially provided to Congress.²² Not only are these activities inappropriate, but they foment mistrust among CSB staff and distract from the agency's public safety mission.

The Board's shortcomings have measurably affected the CSB's ability to hire and retain employees. The OIG's review, for example, found CSB career staff "are frustrated and feel disrespected."²³ The number of investigative staff has dropped from twenty to ten in the last two years, and employees cite "harassment, devaluing technical staff, and removing rigor from the investigative process" as sources of dissatisfaction.²⁴ Other news reports identified "accusations that the board's leadership pressured staff to report higher morale on a federal survey"²⁵ and claimed experienced investigators departed the agency due to concerns they were being "pushed out."²⁶

As of June 2018, the CSB also had not hired any new investigators during Chairperson Vanessa Allen Sutherland's tenure—even though it "returned [funding] to the federal government every year."²⁷ Sutherland told the OIG the CSB's workforce challenges stemmed

¹⁷ Letter from Trey Gowdy, Chairman, H. Comm. on Oversight & Gov't Reform, and Greg Gianforte, Chairman, Subcomm. on the Interior, Energy, & Env't, H. Comm. on Oversight & Gov't Reform, to Vanessa Allen Sutherland, Chairperson, Chemical Safety and Hazard Investigation Bd. (May 29, 2018).

¹⁸ ENVTL. PROT. AGENCY, OFFICE OF THE INSPECTOR GEN., REP. NO. 18-N-0208, FY 2018 U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD MANAGEMENT CHALLENGES 2 (2018).

¹⁹ *Id.* at 1.

²⁰ *Id.* at 2.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Jeff Johnson, *Chemical Safety Board Chair to Resign*, CHEMICAL & ENGINEERING NEWS, May 22, 2018, <https://cen.acs.org/safety/industrialSafety/Chemical-Safety-Board-chair-resign/96/web/2018/05>.

²⁵ Sam Pearson, *Lack of Union Complicates Personnel Issues at Chemical Board*, BLOOMBERG, Nov. 6, 2017, <https://www.bna.com/lack-union-complicates-n73014471737/>.

²⁶ Matt Dempsey, *Loss of Investigators Slows Key Federal Chemical Agency*, HOUSTON CHRON., June 8, 2018, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Loss-of-investigators-slows-key-federal-chemical-12978972.php>.

²⁷ *Id.*

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from budget uncertainty and the Administration's proposal to eliminate funding for the agency.²⁸ However, many of the agency's management challenges, as well as Sutherland's control of the agency, predate this Administration and its proposal.²⁹

On May 21, 2018, Sutherland announced her resignation.³⁰ Upon her departure at the end of June, the Board membership dwindled to three of the statutorily prescribed five members.³¹ The remaining board members—who have either contributed to or presided over ongoing mismanagement at the CSB—recently selected Dr. Kristen Kulinowski to serve as the Interim Executive Authority.³² However, permanent new leadership is needed to stabilize this agency and address such extreme managerial challenges.

We recommend the President nominate a new Chairman who possesses the qualifications, experience, and integrity necessary to address the longstanding dysfunction at the CSB. Given the agency's history, the current transition could plunge the agency into further chaos, and a leadership void could embolden the remaining Board Members to engage in more inappropriate behavior. However, it also provides a crucial opportunity to reverse the CSB's troubled course and confront the pattern of management abuses. Thank you for your attention to this matter.



Trey Gowdy

Sincerely,



Greg Gianforte
Subcommittee on the Interior, Energy,
and Environment

cc: The Honorable Elijah E. Cummings

The Honorable Stacey E. Plaskett
Subcommittee on the Interior, Energy, and Environment

²⁸ ENVTL. PROT. AGENCY, OFFICE OF THE INSPECTOR GEN., *supra* note 17, at 4.

²⁹ Chemical Safety and Hazard Investigation Bd., Vanessa Allen Sutherland, <https://www.csb.gov/about-the-csb/board-members/cha/> (last visited June 12, 2018).

³⁰ Johnson, *supra* note 24. See also Charles S. Clark, *Chemical Safety Board Chair Resigns Unexpectedly*, GOV. EXEC., May 22, 2018, <https://www.govexec.com/management/2018/05/chemical-safety-board-chair-resigns-unexpectedly/148402/>. The agency provided no explanation for Chairperson Sutherland's early departure. Press Release, Chemical Safety and Hazard Investigation Bd., Chairperson Vanessa Allen Sutherland Announces Resignation (May 21, 2018), <https://www.csb.gov/chairperson-vanessa-allen-sutherland-announces-resignation/>.

³¹ Clark, *supra* note 29; 42 U.S.C. § 7412(r)(6)(B) (2011); Johnson, *supra* note 24.

³² Press Release, Chemical Safety and Hazard Investigation Bd., Dr. Kristen Kulinowski to Serve as Interim Executive Authority (June 12, 2018), <https://www.csb.gov/dr-kristen-kulinowski-to-serve-as-interim-executive-authority/>.