



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL



FY 2018

U.S. Chemical Safety and Hazard Investigation Board Management Challenges



Abbreviations

CSB	U.S. Chemical Safety and Hazard Investigation Board
EPA	U.S. Environmental Protection Agency
FY	Fiscal Year
OIG	Office of Inspector General
U.S.C.	United States Code

Cover photos: *Left:* The CSB Chairperson making a presentation in September 2017 before the Contra Costa County (California) Community Awareness and Emergency Response Group. *Right:* A public meeting that the CSB held in September 2015 in Houston, Texas, regarding an accident. (CSB photos)

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At a Glance

What Are Management Challenges?

According to the GPRA Modernization Act of 2010 (“GPRA” stands for “Government Performance and Results Act”), major management challenges are programs or management functions, within or across agencies, that have greater vulnerability to waste, fraud, abuse and mismanagement, where a failure to perform well could seriously affect the ability of an agency or the federal government to achieve its mission or goals.

As required by the Reports Consolidation Act of 2000, the Office of Inspector General is providing the issues we consider as the U.S. Chemical Safety and Hazard Investigation Board’s (CSB’s) major management challenges for fiscal year 2018.

This report addresses the following CSB goal:

- *Create and maintain an engaged, high-performing workforce.*

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Listing of [OIG reports](#).

Fiscal Year 2018 U.S. Chemical Safety and Hazard Investigation Board Management Challenges

Based on our continuous audit work, we have identified two management challenges for the CSB that were not in our fiscal year 2017 report: the lack of authority that the position of CSB Chairperson has over board members, and the impact of budget uncertainties on the morale of staff.

The CSB faces two management challenges that, if not addressed, may seriously impede the agency’s ability to achieve its mission efficiently and effectively.

The Position of CSB Chairperson Lacks Authority to Hold Board Members Accountable

Historically, the CSB has been plagued with leadership issues such as tension among board members, disputes over the Chairperson’s authorities, and complaints of alleged abuses by board members or the Chairperson. The position of CSB Chairperson does not have the statutory authority to take corrective action against other board members for inappropriate behaviors or to hold them accountable. The CSB intends to add enforcement mechanisms to its internal policies. However, because the CSB structure was established by law and its board members and Chairperson are presidential appointees, the authority to address these issues and make changes lies with Congress. The CSB should strengthen its internal policies and also request that Congress assess these issues and make the necessary changes to provide the Chairperson with the authority to correct inappropriate or destabilizing behaviors by board members.

Budget Uncertainties and the President’s Proposals to Eliminate the CSB Negatively Impact Efforts to Attract, Hire and Retain Staff

The CSB should continue to work with Congress toward achieving funding needs wherever possible. The President’s budget for fiscal year 2019 proposed eliminating the CSB. Although Congress has continued to fund the CSB and the CSB Chairperson stated that Congress has no plans to eliminate the CSB, this budget uncertainty impedes the CSB’s ability to attract, hire and retain staff.

Prior Management Challenge Removed

As a result of corrective actions taken by the CSB and additional justification provided by the CSB, we removed the challenge cited in our fiscal year 2017 report that the CSB should address human resources management issues. The CSB provided documents and information supporting that it has completed all but one of the 18 recommendations from a 2015 Office of Personnel Management report. This included revising its Performance Management System. For the remaining recommendation—to establish a Human Capital Plan—the CSB has developed and drafted such a plan and intends to implement it in fiscal year 2019.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

June 4, 2018

The Honorable Vanessa Allen Sutherland
Chairperson and Board Member
U.S. Chemical Safety and Hazard Investigation Board
1750 Pennsylvania Avenue NW, Suite 910
Washington, D.C. 20006

Dear Ms. Sutherland:

Enclosed is the Office of Inspector General's (OIG's) fiscal year 2018 management challenges for consideration as part of the U.S. Chemical Safety and Hazard Investigation Board's (CSB's) Federal Managers' Financial Integrity Act review. The Reports Consolidation Act of 2000 requires our office to report what we consider the most serious management and performance challenges facing the CSB. We used audit, evaluation and investigative work and additional analysis of CSB operations to arrive at the issues presented.

We added the challenges "The Position of CSB Chairperson Lacks Authority to Hold Board Members Accountable" and "Budget Uncertainties and the President's Proposals to Eliminate the CSB Negatively Impact Efforts to Attract, Hire and Retain Staff" to this report. We removed the human resources management challenge cited in the fiscal year 2017 management challenge report as a result of the CSB's responsiveness in addressing the issue.

You are not required to provide a written response to this final report. Should you choose to provide a final response, we will post your response on the OIG's public website. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification. We will post this report to our website at www.epa.gov/oig.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", written in a cursive style.

Arthur A. Elkins Jr.

Enclosure

cc: Mr. Manuel H. Ehrlich Jr., Board Member, CSB
Mr. Rick Engler, Board Member, CSB
Dr. Kristen M. Kulinowski, Ph.D., Board Member, CSB
Ms. Anna Brown, Director of Administration and Audit Liaison, CSB
Ms. Kara Wenzel, Acting General Counsel, CSB

CHALLENGE: The Position of CSB Chairperson Lacks Authority to Hold Board Members Accountable

BACKGROUND

The U.S. Chemical Safety and Hazard Investigation Board (CSB) was created under the Clean Air Act Amendments of 1990.¹ The board is composed of five members² who are appointed by the President and confirmed by the U.S. Senate. The statute permits only the President to remove a member, for inefficiency, neglect of duty or malfeasance in office.³ Board members serve fixed terms of 5 years. The board's Chairperson serves as the Chief Executive Officer and is responsible for agency administration. The full board is responsible for major budgeting decisions, strategic planning and direction, general agency oversight, and approval of investigation reports and studies.

The Clean Air Act provisions creating the board require that board members be appointed on the basis of technical qualification; professional standing; and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, toxicology or air pollution regulations. Board members may participate in accident investigations. All investigation report findings, determinations of root cause, and safety recommendations must be approved by the board.

CSB Board Order 028 establishes the Chairperson's executive and administrative functions, including authority over all personnel matters and the ability to supervise or authorize CSB official communications except those that require full board approval. Board members serve as the principal spokespeople at accident sites and conduct community meetings, hearings and boards of inquiry during accident investigations. The day-to-day conduct of investigations and the preparation of draft reports is largely delegated to the CSB's professional staff, which includes engineers, safety specialists and attorneys. Following board approval of accident investigation reports, board members play significant roles in advocating the adoption of recommendations by industry, labor, government agencies and other organizations. Board members regularly participate in conferences and safety forums and on committees, and meet with leaders of other federal agencies. Board members also contribute written works to scholarly journals and trade publications and present papers at professional meetings and other venues.

CHALLENGE FOR THE CSB

President Obama nominated the current CSB Chairperson in March 2015 and the Senate confirmed the Chairperson's nomination in August 2015. During the nearly 3 years since the Chairperson was confirmed, CSB board members and managers said there have been multiple instances when a board member acted inconsistently with established practices or inappropriately provided information to entities outside the CSB.

¹ 42 U.S.C. § 7412(r)(6).

² There are currently four CSB board members; the fifth position is vacant.

³ 42 U.S.C. § 7412(r)(6)(B).

We reviewed correspondence between CSB board members, managers and staff, including emails and associated attachments such as internal memorandums. The correspondence also included messages between a board member and external parties, such as a labor union worker and a news reporter, that discussed or made reference to news articles related to the CSB. The materials reviewed illustrated the inappropriate actions by the board member, and the materials also contained responses conveying frustration from CSB personnel impacted by those behaviors. For example, a board member sought to post information to the CSB website and send it to a specific stakeholder instead of allowing responsible staff to post the information so that it was available to all stakeholders. On another occasion, a board member made independent comments on a rule proposed by the U.S. Environmental Protection Agency (EPA), which were then publicly shared by the EPA as a part of the rulemaking process. These independent comments were made prior to the CSB drafting an official position and could have given the impression that the comments represented the board's position as a whole. The individual board member, on the advice of the CSB's acting General Counsel, wrote to the EPA that the prior submission did not reflect the comprehensive view of the CSB. Later, the CSB developed and submitted to the EPA docket an official comprehensive comment letter. The behaviors mentioned above by the board member were counter to maintaining transparency and respecting CSB staff and their responsibilities.

More recently, based on information provided by CSB managers, a party inside the CSB "leaked" the CSB's fiscal year (FY) 2019 budget request to a news reporter in early February 2018 before it was officially released to Congress. Some CSB managers believe that the person who leaked the budget request was a board member. These behaviors did not follow the proper chain of command, were potentially unethical, and showed a lack of accountability.

The Chairperson is the recognized chief executive officer of the board. However, the CSB's authorizing legislation does not create a supervisory role for the Chairperson with respect to the other board members. Without the authority for the Chairperson to take corrective actions against board members, an environment exists that may enable "rogue" behaviors that can potentially impede the CSB's mission and lower the morale among the CSB's career staff. Based on the documentation we reviewed, the CSB career staff are frustrated and feel disrespected.

WHAT REMAINS TO BE DONE

Historically and to date, the CSB has been and continues to be plagued with leadership issues such as tension among board members, disputes over the Chairperson's authorities, and complaints of board members. There were also extensive complaints regarding alleged abuses by a prior Chairperson.

According to the Chairperson, the board plans to finalize board member roles and responsibilities in an official policy to include internal enforcement guidelines for situations in which board member behavior deviates from established policy. Also, the board intends to improve onboarding materials for incoming new members, which will include clear guidance on expectations, roles and responsibilities.

The CSB should complete its plans to finalize board member roles and responsibilities and improve onboarding materials for incoming new members. However, because the CSB structure was established by law and its board members and Chairperson are presidential appointees, the authority to fully address these issues and make changes lies with Congress. The CSB should request that Congress assess these issues and make the necessary changes to provide the position of the CSB Chairperson with the authority to address inappropriate or destabilizing board member behaviors.

CHALLENGE: Budget Uncertainties and the President's Proposals to Eliminate the CSB Negatively Impact Efforts to Attract, Hire and Retain Staff

BACKGROUND

In March 2017, the President released his Budget Blueprint for FY 2018 and proposed to eliminate funding for the CSB. In March 2018, the President's proposed budget for FY 2019 called for eliminating the CSB and any funding to be provided would only be used to close the agency. For FY 2018, Congress provided the CSB with \$11 million in funding, about \$600,000 less than the prior year. There were no provisions for closing or eliminating the CSB. Based on interactions with staff of the House and Senate Appropriations Committees, the CSB Chairperson said the committees have no current plans to eliminate the CSB but the FY 2019 budget may reduce its funding.

CHALLENGE FOR THE CSB

Although proposed long-term budget cuts have had an impact across the federal government, the CSB feels additional negative impact from the President's continued proposal to eliminate the agency. The CSB Chairperson said that the budget uncertainty has made staff consider leaving the CSB to work elsewhere or retire before they otherwise would. Further, the heightened budget concerns make the already difficult tasks of staff retention and recruitment even more challenging. According to the Chairperson, the CSB has been unsuccessful in recent months in filling several positions. The potential candidates cited the possible elimination of the agency as a risk factor in their decision not to accept a position with the CSB. Further, recent retirements of senior investigators are being factored into the Human Capital Plan to be implemented in FY 2019, but there is little else CSB officials believe they can do to relieve the situation.

A news media article published in April 2018 stated that CSB employees were voting to unionize and join the American Federation of Government Employees. The President's repeated plans in his budget requests to abolish the agency were cited by a union representative as a primary reason that CSB employees wanted to unionize. In early May 2018, the majority of CSB employees voted to unionize, and all non-supervisory, non-managerial employees will be represented by the American Federation of Government Employees. The CSB Chairperson said the board will interact with the union on issues that are subject to collective bargaining.

According to the CSB Chairperson, the CSB plays a unique and valuable role in contributing to chemical safety. The Chairperson noted that the CSB identifies root causes of chemical incidents and shares the findings broadly across industries to prevent future accidents. Also, the CSB investigations complement those of regulatory agencies such as the EPA or the Occupational Safety and Health Administration, as the root causes of an incident go beyond whether there was a violation of a regulation.

WHAT REMAINS TO BE DONE

The CSB should continue to work with Congress toward achieving funding needs wherever possible. We included this issue as a management challenge to highlight staffing and recruiting challenges that the CSB will continue to face.