

TESTIMONY OF BETH ROSENBERG
BEFORE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
ON

Whistleblower Reprisal and Management Failures at the US Chemical
Safety Board

June 19, 2014

Beth Rosenberg
Former CSB Board member
Beth.rosenberg@tufts.edu

Chairman Issa, Ranking Member Cummings, Members of the Committee. I was requested to testify today regarding my tenure as a Board Member of the U.S. Chemical Safety Board (CSB). I was nominated by President Obama and confirmed by the Senate on Jan. 1, 2013 for a 5 year term. I resigned as of May 31, 2014 after 17 months. For the previous 16 years I was a Professor at Tufts University School of Medicine where I taught occupational and environmental health in the Public Health program.

The mission of the board is unique and important: to investigate the root causes of major incidents in chemical facilities and oil refineries, and to make recommendations based on the evidence to prevent those incidents from happening again.

The CSB faces certain challenges in fulfilling its mission that are beyond its control. It is intended to be an expert advisory body, similar to the National Transportation Safety Board, but it has no means—other than the weight of its evidence--to ensure its recommendations are implemented. With current staffing and resources, it cannot possibly investigate all the incidents and deaths that it should.

But there are 4 major challenges that are within the control of agency leadership that must be addressed.

1. **There is a chilled atmosphere.** Staff has been formally discouraged from talking to board members according to an email from the Managing Director.¹ Some staff said they were nervous about being seen talking to me, so we met outside of the agency. There are no opportunities for staff and board members to discuss issues openly. Those whose opinions differed from those of senior leadership or the Chair are marginalized and vilified. At the CSB, disagreement is seen as disloyalty. Criticism is not welcome and staff fear retaliation.
2. **Governance is ineffective.** Board members are excluded from core policy making functions. For example, Board Member Griffon and I learned about the senior management's decision to stonewall documents that were requested by the EPA Inspector General and the issuance of a "7 day letter" in the press. We saw the CSB's response to the IG after it was sent. As part of an Executive Order on Chemical Facility Safety and Security, the President called on the CSB to enter into Memorandum of Agreement with several agencies. This was spurred by complaints lodged with the White House about interagency conflicts in the course of CSB investigations. After negotiations with the Department of Justice (DOJ) were underway, we were briefed, but had no say in determining the CSB's position. This is troubling, because the

¹ email from Horowitz to the staff, Subject: Communications with the board members Nov. 1, 2011

DOJ has the discretion to enforce the CSB's subpoenas, and cooperation is essential. Other matters involving interagency-relations, such as how to deal with demands for CSB records from EPA, or whether a report should be delayed for a few months because another agency is in the midst of a criminal prosecution were decided without a vote of the Board. Board Member Griffon and I did not know about the disposition of these policy issues until after the fact. Finally, it is the position of the CSB's General Counsel that the Board's Orders, despite being voted upon and serving as the basis for orderly conduct, have no legal significance; they are sometimes circumvented which contributes to agency dysfunction.

3. **There is a lack of accountability** both from the staff to the Board and the Board to the public. The agency has a backlog of investigations partially due to understaffing, but mainly due to lack of planning. There is no comprehensive investigation plan to deal with the backlog. The action plan consists of a list of unfinished investigations, but they are not prioritized, nor is there any discussion of the priorities.

In a public meeting in July of 2013, Mr. Griffon and I made a motion to have a public meeting to get a status report on all open investigations, and to clarify the scope and timeline for the reports. With the current governance model, a request by the majority of the board is treated as irrelevant, so still, there is no plan. The absence of a plan is a major contributor to low staff morale because staff don't know the priorities and complain about getting yanked from one project to the next as priorities shift.

Our fundamental job as board members is to set high standards for quality of evidence, analysis and recommendations. Yet, when Mr. Griffon and I raised questions about the lack of data supporting a recommendation to restructure safety regulation of the nation's oil refineries, we were portrayed as delaying the report, disrespecting the investigators, "and siding with the worst and most unfair critics of the CSB".²

4. **There is a lack of transparency.** The Board rarely conducts a deliberative public meeting. Almost all votes on agency matters are taken in private through a notation vote. Public meetings are almost exclusively productions choreographed to maximize media coverage, but where public questions and comments are largely ceremonial; they have no impact because the investigation reports are already finalized. Regular Sunshine Act meetings would be a way to interact with, and be accountable to, our stakeholders and other members of the public.

² Email from Rafael Moure-Eraso to CSB all Jan. 16, 2014 2:18 pm

There are obvious ways to deal with all of these problems. Instead, a work improvement group was formed, and facilitators and consultants have been hired. I came to realize that these were hollow gestures, intended to deflect criticism while fundamentally changing nothing. The staff of the CSB, and the American people, deserve better.

Thank you for your consideration.

Attachments:

Horowitz – Communication with Board

Moure-Eraso email – Last night vote on CSB Chevron Regulatory report

daniel.horowitz@csb.gov
www.safetyvideos.gov
www.youtube.com/uscsb

From: "Horowitz, Daniel" <Daniel.Horowitz@csb.gov>

Subject: Communications with the board members

Date: November 1, 2011 5:35:26 PM EDT

To: "Banks, Johnnie" <Johnnie.Banks@csb.gov>, "Brown, Anna" <Anna.Brown@csb.gov>, "Cohen, Hillary" <Hillary.Cohen@csb.gov>, "Gomez, Manuel" <Manuel.Gomez@csb.gov>, "Holmstrom, Don" <don.holmstrom@csb.gov>, "Lau, John" <John.Lau@csb.gov>, "MacKenzie, Cheryl" <cheryl.mackenzie@csb.gov>, "McCormick, Amy" <Amy.McCormick@csb.gov>, "Parasram, Vidisha" <Vidisha.Parasram@csb.gov>, "Robinson, Bea" <Bea.Robinson@csb.gov>, "Tillema, Dan" <Dan.Tillema@csb.gov>

All-

One of the advantages of working in a small collegial agency such as the CSB is the ability to directly work across organizational lines with many different people, including board members, on important projects, reports, and documents relating to our investigations and other areas under the Board's jurisdiction. All of our work is important, and the energy, enthusiasm, and innovative thinking brought to projects is one of the things that makes working at the CSB such a privilege.

I appreciate the fact that none of you are reticent about candidly expressing your views among one another relating to our work. However, in some cases, I believe this enthusiasm needs to be tempered by the realization that keeping your supervisors abreast of your communications, particularly with board members, is essential to maintaining a collegial and cooperative spirit within the agency. It is also a common courtesy that should be accorded to your colleagues, particularly within the supervisory chain.

In some cases, I am learning of proposals and recommendations, not from direct reports and their staff, but rather from board members and others outside the regular "chain of command." Although I do not normally like to emphasize these matters - and prefer use of the collegial model - sending proposals and recommendations directly to board members without providing me a chance to review and approve them lacks professionalism and courtesy, and undermines basic principles of sound management and appropriate workplace conduct.

Accordingly, I expect all managers and supervisors to keep me abreast of recommendations and proposals they would like to send to board members, and to seek my input before proceeding to convey these recommendations directly to the Members. This is not an attempt to stifle responsible discussion or debate, but rather to avoid situations where staff appear to be communicating in an uncoordinated manner or ad hoc manner. It is also a matter of professional responsibility and courtesy that we should extend to one another.

Again, I understand that all of you have strongly held views on our work, and for that I am grateful. This enthusiasm, however, cannot substitute for the normal courtesies I expect all of you to extend to your colleagues as well as me when trying to influence the work of the Board. As I evaluate the performance of each of you, I will place a premium on clear and collegial communications, and remind you of your responsibilities to keep each other (and me) abreast of work developments in a professional manner.

Thank you.

DH

--

Daniel M. Horowitz, Ph.D.
Managing Director

From: [Moure-Eraso, Rafael](#)
To: [CSB All](#)
Subject: Last night vote on the CSB Chevron Regulatory Report
Date: Thursday, January 16, 2014 2:18:34 PM

To CSB all:

Yesterday by a 2 to 1 vote the Board postponed a decision to approve the CSB Chevron Regulatory Report. In my view this vote is a serious drawback for the CSB mission. The vote to defer issuance of the report included a request by a majority of the Board to the investigative team to address questions that were not previously presented, and which were introduced at the end the meeting (prior to a vote on the report itself). These additional items include the convening of an "expert panel" to assess certain aspects of the safety case (similar to the Baker Panel that addressed safety management issues after the BP Texas City disaster in 2005). The Board majority has requested that the "expert panel" study approximately a dozen questions related to the recommended Safety Case Regime that have been largely discussed -- some of them in prior drafts of the Chevron Regulatory Report and in the responses of the team to the public comments.

I am concerned about the resources, in terms of both time and money, that consideration of these additional issues will engender for the agency. The Baker Panel cost an estimated \$30 million and was paid for by BP. I do not believe the CSB has the resources to convene a "Baker type" panel even on a "micro scale." Moreover, such an expert panel, when convened by a federal agency is subject to the provisions of the Federal Advisory Committee Act, which entails substantial preparation, compliance and administrative issues -- not to mention the time involved in reaching a consensus among FACA panel members to resolve substantive issues. To have this resolved in 120 days--as stated in the postponed proposal --is an illusion.

The Chevron investigative team has been engaged in researching all aspects of the Safety Case Regime, both nationally and internationally, since 2010. I believe there is no technical and engineering group in the U.S. that can match the expertise on Safety Case that has been accumulated by the CSB staff.

One board member who voted to defer issuance of the final report told the press that the member's intention is "To make the report stronger." Another member stated a reason for deferring issuance of the report is that, "More study is needed" and that, "A little more work will get us there."

My view is that delaying a final vote has very serious consequences for the CSB.

First, I believe that it gives almost no credit to the immense work conducted by the CSB Chevron Investigative team to produce a first class engineering document on the Safety Case Regime and to address innumerable public comments on the Safety Case. It also ignores the cumulative knowledge and expertise developed by the CSB staff, which I believe are second to none in the U.S.

Second, by not approving the report, a majority of the Board are in effect supporting opposition to the safety case concept expressed by the Chevron Company, the America Petroleum Institute, the America Chemistry Council and industry consultants. In effect they are siding with the worst and most unfair critics of the CSB.

Third, after 40 years of practicing in the field of occupational safety and health, including the scientific disciplines that compromise this field, I have often heard the clarion call of the "need for further study and analysis." In my judgment, such calls for "additional study" only delay or impede needed fundamental changes. It is equivalent to "kicking the can" down the road.

I have already spoken with Mayor McLaughlin of Richmond, who expressed to me her profound disappointment in last night's vote. She believes that the Board's decision plays into the hands of those who oppose fundamental changes in safety management and will only further harm the workers and the community she so deeply cares about.

I would like to recognize and commend the excellent work done by the CSB Chevron Investigation

team, and express my disappointment in the vote of the Board, which I believe does not fairly reflect the findings and recommendation contained in their excellent draft final report.

Let's keep up the good work.

Rafael Moure-Eraso, Ph.D., M.S. ChE