

WRITTEN STATEMENT

BY MARK A. GRIFFON

BOARD MEMBER

U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

TO THE

OVERSIGHT AND GOVERNMENT REFORM COMMITTEE UNITED STATES  
HOUSE OF REPRESENTATIVES

ON

Rebuilding the Chemical Safety Board:  
Finding a Solution to the CSB's Governance and Management Challenges

March 4, 2015

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 June 2010 to a five year term ending in June 2015. My academic training is in chemistry and radiological sciences.

When I was initially appointed to the Chemical Safety Board (CSB) I believed, and continue to believe, that the unique mission of the CSB is critical in helping to prevent future catastrophic chemical incidents. With all the good that the agency has done and continues to do in the area of high hazard accident prevention the on-going management and governance problems continue to negatively impact the workplace morale and the efficiency and credibility of the agency's work.

I would like to focus my testimony on 2 key issues: 1) 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 2) the failure to honor commitments made to this committee in the June 19, 2014 hearing pursuant to Congressman Waxman's recommendations.

#### 1. Board Action in Richmond, California

In Richmond, California on January 28 the Board held a public meeting. The only specific item listed in the federal register posting was the Board's consideration and vote of the final Chevron investigation report. After a presentation of the report to the Board we heard public comments from the audience and then went to a vote on the report. After a unanimous vote to approve the report at about 10:30 PM most everyone, including me, thought the meeting was coming to a close. Quite to my surprise at this time Board Member Ehrlich began to summarize a 22 page motion which included fundamentally modifying the governance of the agency, dissolving 18 Board Orders, establishing a new Board Order for scoping of investigations and cancelling three investigations – the Citgo refinery incidents in Corpus Christi, Texas; the explosion at the Horsehead facility in Monaca, Pennsylvania, and the explosion at the Silver Eagle refinery in Woods Cross, Utah.

This motion was not shared with me prior to the meeting and there was no specific mention of this topic being on the agenda for the meeting in Richmond. I made an attempt to table the matter based in part on the fact that I had been given no time to review the proposal and to give an opportunity for Board Member Engler, who was confirmed the same day as Mr. Ehrlich and was due to be sworn in in approximately two weeks, to have an opportunity to deliberate and vote on these major policy changes and important investigations. My efforts to table the mater failed and the motion passed in a 2-1 vote. The urgency of taking up this sweeping motion just prior to Mr. Engler joining the agency has not been explained.

The resulting Board Order on governance (Board Order 2015-1) is a step backwards for the governance of the agency. This new Board Order eliminates 18 Board Orders

purportedly in an effort to streamline out of date rules and improve management efficiency. The actual effect was the removal of important Board checks and balances that have stood the test of time.

Specific checks and balances that were eliminated include: the board role in the development of the budget<sup>1</sup>; board approval of use and distribution of appropriated funds as detailed in the operations budget<sup>2</sup>; board authority regarding expenditures greater than \$50,000<sup>3</sup>; board authority with regard to the appointment of heads of administrative units<sup>4</sup>; board authority with regard to career senior executive service appointments<sup>5</sup>, the board role in the approval of statements to Congress or the President<sup>6</sup>; the board role in performance review of the direct reports to the chair<sup>7</sup> and oversight over board member foreign travel authorization<sup>8</sup>.

The importance of these authorities was discussed in a letter from Senator Lautenberg in 1999 shortly after the agency was established. Senator Lautenberg played a key role in enacting the authorization for and securing the initial funding for the Agency.

In this letter to the Board dated December 1, 1999<sup>9</sup> (attached) on the issue of governance of the CSB Senator Lautenberg says:

‘As stated in the statute, “the Chairperson shall be the Chief Executive Officer of the Board and shall exercise the executive and administrative function of the Board” (Section 112(r)(6)(b)). There is no doubt in my mind, however, that he or she must perform those functions under the direction and approval of the Board as a whole.’

The letter goes on to list some specific functions that must be performed by the Board as a whole.

- “Approval and submittal of the Board’s budget request to Congress;
- Approval of the use and distribution of funds appropriated to the Board;
- Approval of appointments of the heads of major administrative units under the Board; and
- Approval of the general policies, regulatory decisions, findings and determinations by which the Chairperson shall carry out his or her duties.”

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<sup>1</sup> Board Order 38, Preparation and Submission of CSB Budget Requests

<sup>2</sup> Board Order 28, Executive and Administrative Functions of the Board

<sup>3</sup> Board Order 28, Executive and Administrative Functions of the Board

<sup>4</sup> Board Order 28, Executive and Administrative Functions of the Board

<sup>5</sup> Board Order 23, Senior Executive Service (SES) Staffing

<sup>6</sup> Board Order 28, Executive and Administrative Functions of the Board

<sup>7</sup> Board Order 10, Performance Appraisal Program

<sup>8</sup> Board Order 45, Foreign Travel

<sup>9</sup> Senator Lautenberg letter to Board dated December 1, 1999.

The surprise action taken on January 28, 2015 in Richmond, California removes many of these important checks and balances and has the potential of jeopardizing the mission of the agency.

I was disappointed with the process and the result and disappointed that, rather than honor the recommendations of Congressman Waxman in his May 2, 2014 letter to the Board to improve communications and trust, two members of the Board, made a calculated decision to pull off these sweeping changes without notice, late at night in a meeting in California. This was a shock to everyone in the agency and a further blow to employee morale.

## 2. CSB actions subsequent to Congressman Waxman's recommendations

In a May 2, 2014 letter from Congressman Waxman to Chairman Moure-Eraso<sup>10</sup> Congressman Waxman put forward several recommendations to begin to address some of the management problems.

These recommendations, which I considered a reasonable starting point toward improving agency management, have not been fulfilled.

I offer the following observations:

- The recommendations called for the CSB to develop an investigations plan by July 30, 2014. A staff proposal to evaluate all open cases and develop a plan for completion or termination of cases was rejected by senior management and the Chairman. Instead of a systematic evaluation of all open investigations and the development of a plan the backlog of cases was addressed, in part, by the unnoticed vote in Richmond California to terminate three investigations. According to a 2013 IG report, the lack of an investigation plan is affecting the efficiency of work at the CSB<sup>11</sup>. Since 2011 I have requested a written investigative plan<sup>12</sup> and requested a public business meeting to get a status report of all 'open' investigations<sup>1314</sup>. All requests were effectively blocked and to date there is no overall investigations plan.
- A plan for completing the investigations protocol, as called for in the Waxman recommendations, has never been provided to the Board. This is particularly troubling since this protocol has been under revision since I joined the Board in

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<sup>10</sup> Congressman Waxman letter to the Board dated May 2, 2014.

<sup>11</sup> IG report "US Chemical Safety and Hazard Investigation Board Needs to Complete More Timely Investigations", July 30, 2013, (13-P-0337)

<sup>12</sup> Letter from Mark Griffon and John Bresland to Chairman Moure-Eraso dated 12/12/2011 regarding several management issues included the need for investigations planning and concern over poor federal employee survey results.

<sup>13</sup> Mark Griffon statement at a meeting on January 17, 2013

<sup>14</sup> Beth Rosenberg motion in public meeting and written Notation item #2013-50

2010. Finalizing this protocol and standardizing the process from deployment to final investigation report would improve the quality and relevance of our investigations.

- The Waxman recommendations also mentioned that there was a debate over the powers of the Chairman versus the Board members under Board Order 28. Board Order 28, Executive and Administrative Functions of the Board, specifies the authorities of the Chairman and the Board as a whole. Rather than attempt to modify Board Order 28 based on a majority vote of the Board the Chairman unilaterally declared Board Order 28 invalid based on a CSB Office of General Counsel opinion.<sup>15</sup> It was further invalidated in the motion passed in the January 28, 2015 meeting. It should be noted that late last year the EPA IG initiated an investigation into agency governance, including the invalidation of Board Order 28. I welcome the independent, objective review.
- Finally, a recommendation intended to improve communications between the Chairman and individual Board members called for one on one meetings with the Chairman and each Board member on a regular basis to provide updates on topics which are not typically discussed in staff Leadership meetings. This recommendation, intended to improve communication and trust on the Board was not honored. This is best illustrated by the lack of any communication with me regarding the pending sweeping motion, including terminating three investigations, planned for January 28<sup>th</sup> 2015 public meeting.

So, what is the remedy?

In the last year the agency has hired two management consultant firms and executive coaches and set up a workplace improvement committee purportedly to improve employee morale and make necessary management reforms. All of these efforts identified similar problems with senior management and leadership.

Rather than considering management problems, despite all the evidence, CSB leadership has continued to defend these shortcomings as merely a function of limited resources. In the last year, no management changes have been proposed to address the timeliness of completing investigations or employee morale. It is clear that the agency continues to deflect and defend rather than reflect and reform.

I believe the following actions should be taken:

1. The entire motion made in January 28, 2015 meeting should be rescinded.
2. Board Order 28, dated August 8, 2006, should be reinstated.
3. The Board should make a clear-cut statement of policy that CSB Board Orders, in conjunction with Agency regulations, are the governing procedures of the

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<sup>15</sup> OGC opinion dated June 2, 2014

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

4. The Board should make a commitment to hold monthly public business meetings<sup>16</sup>.
5. The oversight and recommendations provided by the EPA IG are useful and the relationship with the EPA IG must be rebuilt.
6. There has been needless friction with the Department of Justice, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Environmental Protection Agency, and the Occupational Safety and Health Administration. The Board must have a role in guiding the CSB's interaction with other agencies so that relationships are not needlessly degraded.

Finally, there must be an effort by leadership to improve the organizational culture. This change must start at the top. Leadership must create an open, trusting environment where dissenting opinions are respected. These changes, even with committed leadership, will take time. The agency's mission is very important and these problems must be resolved.

Thank you for your consideration.

Attachment

Senator Lautenberg Letter, December 1, 1999

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<sup>16</sup> Since I have been a Board member I have voted more than 200 times via notation voting (in private) while only about 25 votes have been taken in public meetings. In 2002 the CSB committed to holding monthly public meetings in response to a FEMA OIG report.

DEC. 1. 1999 1:29PM SENATOR LAUTENBERG

FRANK R. LAUTENBERG  
NEW JERSEY

United States Senate  
WASHINGTON, DC 20510-3002

COMMITTEE:  
APPROPRIATIONS  
BUDGET  
ENVIRONMENT AND PUBLIC WORKS  
INTELLIGENCE  
HELSINKI COMMISSION

December 1, 1999

The Chairman and Board Members  
U. S. Chemical Safety and Hazard Investigation Board  
2175 K Street N.W.  
Suite 400  
Washington, DC 20037-1809

Dear Mr. Chairman and Board Members:

I am writing to convey my understanding of the process by which the U.S. Chemical Safety and Hazard Investigation Board must govern itself, and specifically the extent to which the Chairperson is accountable to the Board in the performance of his or her duties. I do so in light of communications with each Board member which reveal sharp differences of opinion regarding Board governance. I base my understanding on the statute which created the Board (Section 112(r)(6) of the Clean Air Act) and on my own expectations both in drafting that statute and in subsequently advocating for the establishment of the Board.

As stated in the statute, "[t]he Chairperson shall be the Chief Executive Officer of the Board and shall exercise the executive and administrative functions of the Board." (Section 112(r)(6)(B).) There is no doubt in my mind, however, that he or she must perform those functions under the direction and approval of the Board as a whole. In order to be consistent with the statute, the following functions must be performed by the Board as a whole:

- approval and submittal of the Board's budget request to Congress;
- approval of the use and distribution of funds appropriated to the Board;
- approval of appointments of the heads of major administrative units under the Board; and
- approval of the general policies, regulatory decisions, findings and determinations by which the Chairperson shall carry out his or her duties.

I urge the Board to govern itself in this manner immediately.

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