



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

The EPA OIG's Oversight of the U.S. Chemical Safety and Hazard Investigation Board

**Statement of Patrick Sullivan
Assistant Inspector General for Investigations**

**Before the Committee on Oversight and Government Reform
U.S. House of Representatives**

March 4, 2015

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Good morning, Chairman Chaffetz, Ranking Member Cummings and members of the committee. I am Patrick Sullivan, Assistant Inspector General for Investigations for both the U.S. Environmental Protection Agency (EPA) and the U.S. Chemical Safety and Hazard Investigation Board (CSB). Thank you for inviting me to appear before you today.

I plan to discuss two matters relating to the CSB. The first is a report of investigation (ROI) that Inspector General Arthur Elkins sent to the President of the United States on January 22, 2015, addressing conduct by CSB Chairman Rafael Moure-Eraso and two of his senior staff members. On February 3, 2015, Inspector General Elkins reported the highlights of our ROI to this committee, and on February 24, 2015, this Office of Inspector General (OIG) provided a Privacy Act redacted version of the ROI for inclusion in the committee hearing record. The second matter that I will address relates to some of our work on governance issues at the CSB.

Overview of the EPA OIG

The EPA OIG is charged with conducting investigations and audits related to programs and operations at the EPA and the CSB. The EPA OIG operates with separate budget and decision-making authority from these agencies, and neither EPA nor CSB senior leaders may prohibit, prevent or obstruct us from conducting our work.

OIG's Report of Investigation on the CSB

First, I will provide a brief overview and timeline of the events that have led us to the present point concerning the CSB's document productions and its use of nongovernmental email systems for official communications. On or about February 6, 2013, the OIG received information alleging that CSB officials (Rafael Moure-Eraso, Chairman; Richard Loeb, General Counsel; and Daniel Horowitz, Managing Director) were conducting official CSB business via nongovernmental email accounts. During the course of this investigation, the OIG made requests to the CSB for communications pertaining to official CSB matters that were sent via nongovernmental email systems. The CSB declined to provide all of the requested documents and emails, and provided some documents and emails in a redacted form.

This refusal of access to the OIG constituted a "particularly serious or flagrant problem" under the Inspector General (IG) Act, and IG Elkins was therefore compelled to pursue the statutory remedy of issuing a "Seven Day Letter" to Chairman Moure-Eraso on September 5, 2013. The

CSB nevertheless again refused to provide the emails to the OIG. The CSB forwarded the IG's Seven Day Letter, along with the agency's response, to Congress, as required by the IG Act.

On June 19, 2014, this committee held a hearing on the foregoing and related matters. Following the hearing, the committee directed the CSB to turn over the emails, and the CSB subsequently provided the OIG with a number of responsive emails.

After receiving the additional and unredacted communications, my office completed its investigation and found information sufficient to support conclusions that Chairman Moure-Eraso, Mr. Loeb and Mr. Horowitz used private, nongovernmental email systems to communicate on CSB matters, and those communications were not preserved as official records. Further, our investigation found that Chairman Moure-Eraso and Mr. Loeb purposefully employed nongovernmental systems so that certain CSB business did not appear on CSB systems.

On January 22, 2015, the EPA OIG sent the above-referenced ROI (dated January 16) to the President via the White House Counsel. Though it is unusual to provide an ROI to the President, it was our only option because Chairman Moure-Eraso is a presidential appointee and effectively reports to no one else. On February 9, 2015, Chairman Moure-Eraso responded in writing to the White House Counsel concerning the ROI. We are currently waiting for the President's determination as to whether the CSB response is adequate or disciplinary action is warranted.

At various times, Chairman Moure-Eraso and Mr. Loeb both explained that, subsequent to their interviews by this OIG's investigators in March 2013, action was taken to correct the use of nongovernmental email systems for official CSB communications. In his February 9, 2015, letter to the White House Counsel, Chairman Moure-Eraso stated:

All the individuals, [sic] who are cited in the OIG's "Memorandum and Report of Investigation" of January 16, 2015, have zealously abided by the IG's e-mail preservation recommendations since the OIG first made us aware of the issue (March 2013 . . .).

Additionally, on July 11, 2014, Mr. Loeb stated in an email to the OIG Counsel:

Subsequent to the interviews of CSB staff with IG staff that were held in early March 2013, I advised the Chair and other staff to cease using non-government accounts for CSB business.

Further, Mr. Loeb stated to congressional investigators:

After talking to the EPA IG, we switched everything over to the CSB account, so we do have that.¹

¹ U.S. House of Representatives Committee on Oversight and Government Reform and the U.S. House of Representatives Committee on Science, Space, and Technology, *Whistleblower Reprisal and Management Failures at the U.S. Chemical Safety Board* (Staff Report), June 19, 2014 (p. 84).

A later EPA OIG request for documentation from Mr. Horowitz turned up evidence of nongovernmental email communication among Chairman Moure-Eraso, Mr. Loeb and Mr. Horowitz. The date of this email, August 21, 2013, is relevant because it was sent after Mr. Loeb had stated to both congressional investigators and the OIG that the use of nongovernmental emails for official business had stopped.

Further, a review of the documents provided by Chairman Moure-Eraso, Mr. Loeb and Mr. Horowitz disclosed emails that were sent between Mr. Loeb and Mr. Horowitz via nongovernmental email accounts. Those emails were pertinent to a previously received allegation from a confidential source that a high-level employee in the Office of Special Counsel (OSC) had compromised the identities of whistleblowers at the CSB. When the allegation of unauthorized disclosure of protected information to the CSB was made, the EPA OIG and the FBI opened a criminal investigation. However, once the U.S. Department of Justice's Public Integrity Section declined to prosecute, the FBI dropped out of the case.

On June 27, 2014, the EPA OIG provided relevant information to the U.S. Office of Personnel Management's (OPM's) OIG, which continued the investigation because the OSC does not have an assigned Inspector General and the OSC agreed to have the OPM OIG serve in that capacity. The OSC has stated to my office that upon the conclusion of the investigation, we will be made aware of the investigatory findings so that the EPA OIG can evaluate whether there has been any misconduct by CSB employees requiring further investigation by us.

In light of the executive leadership positions and public trust held by Chairman Moure-Eraso, Mr. Loeb and Mr. Horowitz within the federal government, on August 20, 2014, the EPA OIG requested that they complete a voluntary statement that they had fully complied with the OIG's requests for documents. Such a statement would provide Chairman Moure-Eraso, Mr. Loeb and Mr. Horowitz an opportunity to address and confirm the actions that they took to conduct searches on their nongovernmental email accounts and to ensure all official CSB communications had been retrieved and returned to the CSB records systems. As of this date, the EPA OIG has received no statement of compliance from Chairman Moure-Eraso, Mr. Loeb or Mr. Horowitz.

The CSB has provided documents and eliminated redactions at this committee's direction. However, because of the apparent inconsistency between the assertions of Chairman Moure-Eraso and Mr. Loeb, and the identification of later official email communication on nongovernmental email accounts, as well as the absence of a statement that articulates the specific corrective action they have taken, I still cannot report with confidence that the CSB has provided the OIG with all of the documents requested in Inspector General Elkins' Seven Day Letter.

Governance Issues at the CSB

Before I describe what we have learned about ongoing governance issues at the CSB, I would like to mention some of the audits that the EPA OIG has conducted regarding the agency. First, our Office of Audit is mandated to conduct several annual assignments:

1. Improper Payments
2. Federal Information Security Management Act Report

3. Financial Statements Audit (contracted)
4. Purchase Card Risk Assessment
5. Management Challenges and Internal Control Weaknesses

Besides these mandatory assignments, we conduct discretionary reviews of the CSB. Recent examples include:

- *Early Warning Report: Not Following Internal Controls Put Acquisitions at Risk*, October 29, 2014, Report No. 15-P-0007. The CSB did not implement internal controls designed to ensure that acquisitions (interagency agreements, contracts and purchase orders) over \$50,000 receive board approval. We determined that more than \$1.9 million in CSB acquisitions are at risk because the board did not approve the acquisitions.
- *U.S. Chemical Safety and Hazard Investigation Board Needs to Complete More Timely Investigations*, July 30, 2013, Report 13-P-0337. The CSB does not have an effective management system to fully accomplish its strategic objective and meet its performance goal to conduct and complete timely, high quality incident investigations and safety studies to determine the causes of chemical incidents.
- *Audit Follow-up Process Needed for the Chemical Safety and Hazard Investigation Board*, February 1, 2013, Report 13-P-0128. The CSB needs to develop and implement a follow-up system as required by OMB Circulars A-50 and A-123, including establishing a policy that identifies an audit follow-up official, roles and responsibilities, required documentation, and reporting requirements, to allow for prompt resolution of recommendations and implementation of agreed-to corrective actions.
- *U.S. Chemical Safety and Hazard Investigation Board Should Improve Its Recommendations Process to Further Its Goal of Chemical Accident Prevention*, August 22, 2012, Report 12-P-0724. The CSB did not consistently achieve its goals and standards, as outlined in its current strategic plan, for timely implementation of its safety recommendations.
- *Chemical Safety and Hazard Investigation Board Did Not Take Effective Corrective Actions on Prior Audit Recommendations*, February 15, 2011, Report 11-P-0115. The CSB did not take timely corrective actions to address audit recommendations.

Based on this completed audit work, we decided to conduct an audit examining more generally the governance issues at the CSB, including whether the CSB follows its own orders. The following audits of the CSB are ongoing:

- CSB Contracts: The objective is to determine whether the CSB effectively manages its contracts.
- CSB Purchase Card Risk Assessment and Compliance with Improper Payments: The objectives are to: 1) Perform a risk assessment of agency purchase card usage, as required by the Government Charge Card Abuse Prevention Act of 2012; 2) Determine compliance with the improper payments legislation for fiscal year 2014; and 3) Follow up on fiscal year 2013 Improper Payment Act audit findings and recommendations.

- **CSB Governance:** The objective is to determine if the CSB is following its internal controls through board actions. We are specifically reviewing the procedures governing leases and consulting contracts as well as a hotline allegation about Senior Executive Service recruiting actions. However, the OIG learned that a recent board vote abolished 18 existing board orders, thereby eliminating associated internal controls that were being reviewed as part of an ongoing OIG audit.

At this time, there are five CSB-oriented OIG audit reports issued between February 2011 and April 2014 with open or unresolved recommendations. The five reports collectively include 23 recommendations for improvement. Of those, seven recommendations have been closed. Eleven recommendations are still open, which means that the CSB agreed with the OIG's findings and is reportedly in the process of implementing corrective actions. Five are unresolved, which means that the OIG and the CSB are not in agreement. Under the Office of Management and Budget's Circular A-50 Audit Followup, agencies are supposed to establish a resolution process for such situations; however, the CSB has never established such a process, so "unresolved" findings remain as such.

Conclusion

I am here at the request of this committee to report on how the CSB has conducted itself in line with relevant laws and rules. Today I have laid out 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. While these may be tantamount to walking on quicksand, it is not the role of the EPA OIG to decide how the CSB conducts its business. It is up to Congress to judge whether appropriated money is being spent in the most economic, efficient and effective manner.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions that you or committee members may have.

Biography of Assistant Inspector General for Investigations Patrick Sullivan



Patrick Sullivan is the Assistant Inspector General for Investigations, Office of the Inspector General of the U.S. Environmental Protection Agency (EPA). He supervises the OIG's criminal investigative activities, including allegations of grant fraud, contract fraud, employee misconduct, threats directed against EPA officials and facilities, and other violations of federal law within the OIG's jurisdiction. He has more than 30 years of service in federal law enforcement with significant supervisory, administrative, intelligence, counter-terrorism and criminal investigative experience.

Prior to his appointment at the EPA-OIG, Mr. Sullivan served as a Deputy Assistant Director with the Transportation Security Administration's (TSA's) Federal Air Marshal Service. He supervised TSA's participation in the Joint Terrorism Task Force program, the Federal Air Marshals' intelligence program and the imbedding of Federal Air Marshals with the Federal Bureau of Investigation, the Central Intelligence Agency, Immigration and Customs Enforcement, and Customs and Border Protection. He also was responsible for supervising TSA's domestic and foreign law enforcement liaison activity.

Previously, Mr. Sullivan was an Assistant Director with the Government Accountability Office, Office of Special Investigations, where he worked on cases involving allegations of misconduct by high-level government officials as well as special investigations requested by congressional committees.

He spent more than 20 years in the U.S. Secret Service, where his last assignment was the worldwide supervision of counterfeiting investigations. He also was assigned to the U.S. Department of Justice, Organized Crime Strike Force, in Brooklyn, New York, where he worked cases targeting the traditional mafia crime families in New York City. Furthermore, he spent 4 years assigned to the Presidential Protection Division under Presidents Ronald Reagan and George H.W. Bush.

Early in his career, Mr. Sullivan worked for the FBI as an Investigative Assistant assigned to the surveillance of foreign intelligence officers engaged in suspected espionage and other intelligence activities directed against the United States.

He is a graduate of the John Jay College of Criminal Justice with a B.S. degree in Police Science and Criminal Justice. He is also a graduate of the Naval Postgraduate School, Center for Homeland Defense and Security, Executive Leadership Program and a member of the federal Senior Executive Service.