

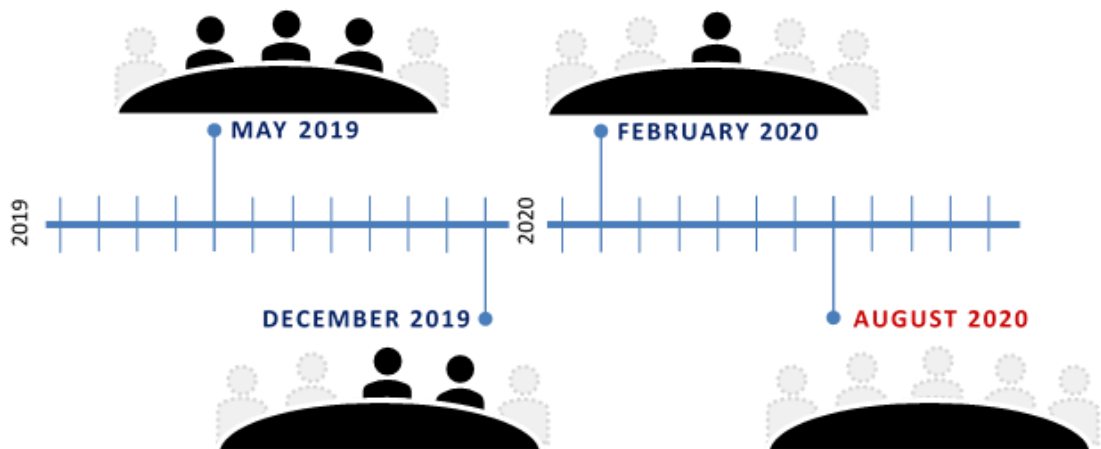


U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

# FY 2019

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



## Abbreviations

CFR	Code of Federal Regulations
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 Image:** Without new members by August 2020, the CSB governing body cannot carry out its mission or meet its goals; for the current three members, their terms are set to expire in December 2019, February 2020 and August 2020, respectively.  
(EPA OIG image)

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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, and 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 (OIG) identifies the issues we consider to be the U.S. Chemical Safety and Hazard Investigation Board's (CSB's) major management challenges each fiscal year. In fiscal year (FY) 2018, we identified two CSB management challenges (Report No. [18-N-0208](#), issued June 4, 2018). One has been closed, while the other remains a challenge for FY 2019.

### This report addresses the following CSB goal:

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

Address inquiries to our public affairs office at (202) 566-2391 or [OIG\\_WEBPOSTINGS@epa.gov](mailto:OIG_WEBPOSTINGS@epa.gov).

List of [OIG reports](#).

## Fiscal Year 2019 U.S. Chemical Safety and Hazard Investigation Board Management Challenges

Based on our continuous work, we have identified two management challenges for the CSB for FY 2019. One is new, while the other is a continuing challenge previously identified in FY 2018.

**The CSB faces two challenges in FY 2019 that, if not addressed, may impede its ability to efficiently and effectively achieve its mission or meet its goals.**

### **Management Challenge (New): Without New Members by August 2020, the CSB Governing Body Cannot Complete Its Mission or Meet Its Goals**

The Clean Air Act Amendments of 1990 authorized the creation of the CSB and established a board of five members responsible for major budgeting decisions, strategic planning and direction, general agency oversight, and approval of investigation reports and studies. Each board member is appointed by the President and confirmed by the U.S. Senate for a term of 5 years. However, as of May 2019, the governing body consisted of only three members, with their terms expiring in December 2019, February 2020 and August 2020, respectively. It took an average of 10.5 months to confirm the current members after they were nominated. Following this timeline, there is a risk that if no new members are nominated and confirmed in the next several months in anticipation of expiring terms, the governing body will not have enough members to maintain full functionality by February 2020 and may even have no members by August 2020.

### **Management Challenge (Continuing): The CSB Has Not Developed Guidance on Board Member Responsibilities**

This challenge was formerly called *The Position of CSB Chairperson Lacks Authority to Hold Board Members Accountable*. In FY 2018, we reported that there were multiple instances when a board member acted inconsistently with established practices or inappropriately provided information to outside entities. In December 2018, the board reported to us that there have been no new incidents. Several people we interviewed—including board members, the acting General Counsel and the Senior Advisor—attributed this development to better communication among staff and board members.

### **Prior Management Challenge Removed**

We no longer consider a management challenge identified in FY 2018—*Budget Uncertainties and the President's Proposals to Eliminate the CSB Negatively Impact Efforts to Attract, Hire and Retain Staff*—to be a management challenge. Congressional committees expressed bipartisan support for the agency in 2018, and the CSB reported that it is now able to attract, hire and retain staff.



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

OFFICE OF  
INSPECTOR GENERAL

May 20, 2019

Kristen Kulinowski, Ph.D.  
Interim Executive Authority and Board Member  
U.S. Chemical Safety and Hazard Investigation Board  
1750 Pennsylvania Avenue NW, Suite 910  
Washington, D.C. 20006

Dear Dr. Kulinowski:

Enclosed is the Office of Inspector General's (OIG's) fiscal year 2019 management challenges report 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 to be 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 challenge *Without New Members by August 2020 the CSB Governing Body Cannot Complete its Mission or Meet its Goals* due to the expiring terms of the existing board members and the time it has historically taken to nominate and confirm board members. We renamed a challenge from fiscal year 2018 to *The CSB Has Not Developed Guidance on Board Member Responsibilities* because the board has not fully completed its corrective actions. We removed the fiscal year 2018 challenge *Budget Uncertainties and the President's Proposals to Eliminate the CSB Negatively Impact Efforts to Attract, Hire and Retain Staff* because of support expressed for the CSB by Congress and the agency's determination that it has been able to hire qualified staff.

You are not required to provide a written response to this final report. Should you choose to provide a 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 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](http://www.epa.gov/oig).

Sincerely,

A handwritten signature in blue ink that reads "Charles J. Sheehan".

Charles J. Sheehan  
Deputy Inspector General

Enclosure

cc: Manuel H. Ehrlich Jr., Board Member, CSB  
Rick Engler, Board Member, CSB  
Anna Brown, Director of Administration and Audit Liaison, CSB  
Tom Zoeller, Acting General Counsel, CSB

## Background

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The U.S. Chemical Safety and Hazard Investigation Board (CSB) was created under the Clean Air Act Amendments of 1990 and is the independent federal agency charged with investigating chemical incidents and hazards.<sup>1</sup> The CSB examines all aspects of chemical incidents, including the cause (e.g., equipment failure) and root cause (e.g., determining why the equipment failed).<sup>2</sup>

The CSB began operations in fiscal year (FY) 1998 and is headquartered in Washington, D.C. There is also a CSB field office in Denver, Colorado, and employees work remotely from other locations. The agency is managed by a board, which is composed of five members who are appointed by the President and confirmed by the U.S. Senate. The board's Chairperson serves as the Chief Executive Officer and is responsible for agency administration. The board is responsible for major budgeting decisions, strategic planning and direction, general agency oversight, and approval of investigation reports and studies for the agency. Board members may participate in accident investigations. In practice, individual board members oversee the investigation and report writing for each incident examined by the CSB. All report findings, determinations of root cause and safety recommendations must be approved by the board.

The CSB 2017–2021 Strategic Plan has three goals:

1. Prevent recurrence of significant chemical incidents through independent investigations.
2. Advocate safety and achieve change through recommendations,<sup>3</sup> outreach and education.
3. Create and maintain an engaged, high-performing workforce.

### CSB FY 2018 ACTIVITY

The CSB released the following three reports in FY 2018:<sup>4</sup>

1. **Chlorine Release and Community Shelter-in-Place in Atchison, Kansas.**  
The CSB found that sulfuric acid was inadvertently uploaded from a tanker truck into a fixed sodium hypochloride tank that produced chlorine gas. The plume led to a shelter-in-place for thousands of residents ([report](#) issued January 3, 2018).



Chemical release plume at plant in Atchison, Kansas. (CSB photo)

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<sup>1</sup> 42 U.S.C. § 7412(r)(6).

<sup>2</sup> FY 2018 CSB performance information can be found in the *CSB Performance and Accountability Report*.

<sup>3</sup> Compliance with CSB recommendations is voluntary.

<sup>4</sup> Information about completed CSB investigations can be found on the CSB's "Completed Investigations" [webpage](#).

2. **Hot Work Explosion in DeRidder, Louisiana.** The CSB found that contractors were conducting hot work activities<sup>5</sup> near a 100,000-gallon tank that contained flammable atmosphere and ultimately exploded, resulting in three contractor fatalities and seven other contractors being injured ([report](#) issued April 24, 2018).

3. **Chemical Fire and Facility Flooding from Hurricane Harvey in Crosby, Texas.** The CSB found that three refrigerated trailers containing organic peroxides, which are unstable at some temperatures, burned in two separate fires when the trailers lost refrigeration and caused evacuations within a 1.5-mile radius ([report](#) issued May 24, 2018).



Explosion damage at the Packaging Corporation of America facility in DeRidder, Louisiana. The bottom-right corner of the photograph shows the upside-down foul condensate tank base. The explosion separated the tank from its base. (CSB photo)



First refrigerated trailer to burn (shown smoldering) at the Arkema Crosby, Texas, chemical facility after flooding from Hurricane Harvey in August 2017. (CSB photo)

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<sup>5</sup> Hot work refers to welding, brazing, cutting, soldering, thawing pipes, torch-applied roofing and chipping operations, or the use of heat guns or spark-producing power tools.

## ***CHALLENGE: Without New Members by August 2020, the CSB Governing Body Cannot Complete Its Mission or Meet Its Goals***

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### **BACKGROUND**

According to the Clean Air Act Amendments of 1990,<sup>6</sup> the CSB governing body shall have the following composition and responsibilities:

- Five members—including a Chairperson—appointed by the President and confirmed by the U.S. Senate.
- Investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause of any accidental release resulting in a fatality, serious injury or substantial property damage.



The Chairperson and the other board members are the governing body of the CSB. As of May 2019, the CSB governing body had three members and two vacancies. However, the terms of the three members will expire in December 2019, February 2020 and August 2020, respectively. The average time that had been taken to confirm the three current board members was 10.5 months from the time they were nominated, and that estimate does not include the time needed to search for and identify qualified individuals for nomination. Following this timeline, even if potential new members had been nominated in May 2019, the governing body would have only two members by December 2019. As another member's term expires in February 2020, it is possible that the governing body would only have one member at that time and thus would not have full functionality. Further, the third existing member's term expires in August 2020, so it is possible that the board will have *no* members at that point. In addition, the CSB currently does not have a presidentially appointed Chairperson, only an Interim Executive Authority.<sup>7</sup>

CSB regulatory language at 40 CFR § 1600.5(a) establishes how many board members constitute a quorum in certain circumstances. However, the regulatory language lacks clarity, such as by leaving open whether a single board member may constitute a quorum. Regardless, it is clear that allowing the board to reduce to one or zero members will deeply impair the ability of the board to conduct such critical business as deciding which investigations to open and the finalization of reports.

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<sup>6</sup> 42 U.S.C. § 7412(r)(6).

<sup>7</sup> After the prior Chairperson resigned in June 2018, the board members internally selected an Interim Executive Authority, as the administration did not select a Chairperson or install an interim Chairperson.



## CHALLENGE

As of May 2019, there was a risk that the CSB could have a governing body consisting of one member by February 2020 and have no governing body by August 2020 because of the time it takes to select, nominate and confirm a board member. With one member, it is uncertain whether a quorum can be established. However, the governing body must obtain a quorum to meet its mission and goals because staff do not have the authority to carry out functions such as budgeting, planning, oversight and approval of investigations.

Congress has documented its support of the CSB mission to the current administration. In an August 2018 letter to the White House Chief of Staff, the Chairman of the House Committee on Oversight and Government Reform and the Chairman of the Subcommittee on the Interior acknowledged the management challenges facing the CSB and urged the administration to select new members, including a Chairperson, to improve CSB management. In an October 2018 letter to the White House Chief of Staff, the Chairman of the Senate Committee on Environment and Public Works and the Chair of the Subcommittee on Clean Air and Nuclear Safety also acknowledged the management challenges facing the CSB and urged the administration to fill the Chairperson position and other governing body vacancies. The Senate letter made these additional statements:

- The CSB has investigated chemical accidents at industrial facilities since 1998.
- The CSB has issued corrective measures to the facilities and made recommendations to the U.S. Environmental Protection Agency, the U.S. Department of Labor's Occupational Safety and Health Administration, and other agencies.
- Congress has continued to fund the agency with broad bipartisan support.
- Until Congress decides to eliminate the agency, it is imperative that the President and not CSB members select the CSB leader.
- The President should nominate someone from outside the agency to be the Chairperson.

The CSB reported that the Interim Executive Authority had a meeting with the White House Office of Presidential Personnel in February 2019. The conversation concerned the roles and responsibilities of being a board member and what experiences should be considered for candidates for nomination. The CSB stated that it does not expect any consultation before nominations are made. However, given the amount of time necessary to identify, nominate and confirm a board member, there is a high risk that the governing body could be reduced to a level that would not allow a quorum required to govern CSB operations.

## **WHAT REMAINS TO BE DONE**

The actions necessary are outside the control of the CSB. If the CSB is to complete its mission and goals, under its current authority, the President must nominate new members and the Senate must confirm the members prior to February 2020.

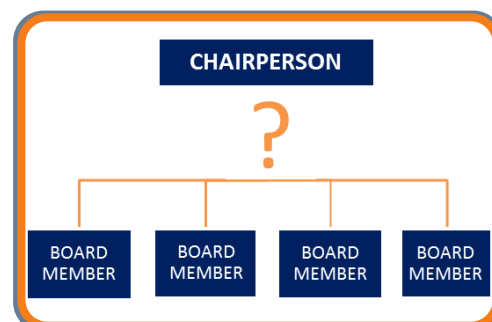
## ***CHALLENGE: The CSB Has Not Developed Guidance on Board Member Responsibilities***

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### **BACKGROUND**

The Clean Air Act requires that board members be appointed based on technical qualification; professional standing; and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, toxicology or air pollution regulations. The statute permits removal of a board member for inefficiency, neglect of duty or malfeasance in office.

Unless removed, board members serve fixed terms of 5 years.<sup>8</sup>



CSB Order 028 establishes the Chairperson’s executive and administrative functions, including authority over all personnel matters and the authority to supervise and authorize CSB official communications, except those that require full board approval.<sup>9</sup> Board members serve as the principal spokespersons at accident sites and conduct community meetings, hearings and boards of inquiry during accident investigations. The day-to-day conduct of investigations and preparation of draft reports are largely delegated to CSB professional staff, who include engineers, safety specialists and attorneys. Following board approval of accident investigation reports, board members play significant roles in advocating the adoption of the board’s recommendations by industry, labor, government and others. Board members regularly participate in conferences, in 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 through other venues.

### **CHALLENGE**

As identified in the Office of Inspector General’s *Fiscal Year 2018 U.S. Chemical Safety and Hazard Investigation Board Management Challenges* report (Report No. [18-N-0208](#)), issued June 4, 2018, board members and managers said there were multiple instances in FY 2018 when a board member acted inconsistently with established practices or inappropriately provided information to entities outside the CSB. Specifically, a board member publicized budget information before it was presented to Congress, attempted to share information with one stakeholder before sharing it with all stakeholders, and made comments on a proposed rule before a CSB position was developed.

In December 2018, the board members stated that there have been no new incidents of improper communications from board members. Several people we interviewed—including

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<sup>8</sup> 42 U.S.C. § 7412(r)(6)(B).

<sup>9</sup> For access to CSB orders, see the *Board Orders* [website](#).

board members, the acting General Counsel and the Senior Advisor—attributed this development to better communication among staff and the board members.

The lack of additional incidents in FY 2019 is a positive sign for the board; however, guidance is needed to define the roles of the board members. The CSB authorizing legislation does not create a supervisory role for the Chairperson with respect to the other board members. Without the explicit authority for the Chairperson to hold board members accountable, an environment exists that enables behaviors that impede the CSB's mission and lowers morale among CSB career staff.

### **WHAT REMAINS TO BE DONE**

To follow up on our FY 2018 management challenge on this issue, the board agreed as an interim step to take the following actions.

1. 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.
2. Improve onboarding materials for new members that will include clear guidance on expectations, roles and responsibilities.

However, these actions have not been completed. In addition, the authority to fully address the remaining FY 2018 management challenge and make changes lies with Congress because the CSB structure was established by law and the board members are presidential appointees. Therefore, the Office of Inspector General suggested that the CSB should request that Congress assess the issues and make necessary changes to give the Chairperson supervisory authority to hold board members accountable.