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U.S. Chemical Safety and Hazard Investigation Board

Fiscal Year 2022 Top Management Challenges



Report Contributors:

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Abbreviations

C.F.R. Code of Federal Regulations
CSB U.S. Chemical Safety and Hazard Investigation Board
EPA U.S. Environmental Protection Agency
OIG Office of Inspector General
U.S.C. United States Code

Cover Image: The current status of CSB board members. (EPA OIG image)

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Office of Inspector General U.S. Environmental Protection Agency **At a Glance**

22-N-0003
November 10, 2021

What Are Management Challenges?

The Reports Consolidation Act of 2000 requires each inspector general to prepare an annual statement summarizing what the inspector general considers to be “the most serious management and performance challenges facing the agency” and to briefly assess the agency’s progress in addressing those challenges.

For fiscal year 2022, we examined whether the U.S. Chemical Safety and Hazard Investigation Board addressed the three management challenges we previously identified in Report No. [20-N-0218](#), issued July 6, 2020. We determined that only one remained a top management challenge for the CSB.

This report addresses the three CSB goals:

- *Prevent recurrence of significant chemical incidents.*
- *Advocate safety and achieve change.*
- *Create and maintain an engaged, high-performing workforce.*

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[List of OIG reports.](#)

Fiscal Year 2022 U.S. Chemical Safety and Hazard Investigation Board Management Challenges

What We Found

Management Challenge (initially identified in fiscal year 2019): *Accomplishment of CSB Mission Is Impaired Until New Board Members Are Confirmed*

The Clean Air Act Amendments of 1990 authorized the creation of the CSB and established a board of five members, including a chairperson, that is responsible for major budgeting decisions, strategic planning and direction, general oversight of the CSB, and approval of investigation reports and studies. Due to term expirations and a board member resignation, the chairperson was, as of September 30, 2021, the only remaining board member. However, the Senate is making progress toward the confirmation of new members.

Having only one board member impairs the function of the CSB, as all functions rest with that one member, which creates internal control vulnerabilities in terms of separation of duties and workload management. Board Order 028, *Board Member Roles and Responsibilities*, delineates executive and administrative functions of the board based on the Clean Air Act Amendments of 1990. The order outlines the specific authorities of the chairperson and the duties of the board as a whole. The order does not address a situation when the only member of the board is the chairperson. Regardless, workload limitations arising from one board member attempting to perform the work of five impair the board’s ability to fulfill its responsibilities without risk of internal control concerns. The lack of five board members may prevent the CSB from achieving its stated mission to “drive chemical safety change through independent investigation to protect people and the environment.”

The lack of board members continues to be the biggest risk to CSB operations.



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

THE INSPECTOR GENERAL

November 10, 2021

Katherine A. Lemos, PhD
Chairperson and Chief Executive Officer
U.S. Chemical Safety and Hazard Investigation Board
1750 Pennsylvania Avenue NW, Suite 910
Washington, D.C. 20006

Dear Dr. Lemos:

Enclosed is the Office of Inspector General's fiscal year 2022 management challenges report for the U.S. Chemical Safety and Hazard Investigation Board. The Report Consolidation Act of 2000 requires that I prepare an annual statement summarizing what the Office of Inspector General considers to be the "most serious management and performance challenges facing" the CSB. This statement is also to briefly assess the CSB's progress in addressing these challenges. We used audit, evaluation, and other analyses of CSB operations to arrive at the issue presented.

We retained one of the three challenges that we reported in our previous CSB management challenges report: [OIG Report No. 20-N-0218](#), issued July 6, 2020. This challenge, *Accomplishment of CSB Mission Is Impaired Until New Board Members Are Confirmed*, has an elevated urgency due to the four vacancies on the board and the associated issues attributed to this condition. We no longer classify the other two issues identified in the previous report as "top management challenges." One of these, *CSB Has Not Developed Policy on Board Member Responsibilities*, has been largely addressed by revisions to Board Order 028, although we do believe the revised order may still raise internal control concerns, which we address in the retained challenge. The other, *CSB Must Continue Operations During the Coronavirus Pandemic*, continues to be a concern, but the CSB is adjusting, like other agencies, to work in a pandemic environment.

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.

Sincerely,

A handwritten signature in blue ink that reads "Sean W. O'Donnell".

Sean W. O'Donnell

Enclosure

cc: David LaCerte, Acting Managing Director, Senior Advisor and Executive Counsel, CSB
Bruce Walker, Senior Advisor to the Chairman and CEO, CSB

Background

The U.S. Chemical Safety and Hazard Investigation Board is authorized by the Clean Air Act Amendments of 1990 and became operational in January 1998. The CSB is an independent federal agency charged with investigating chemical incidents and hazards.¹ According to the CSB [website](#), its mission is to “drive chemical safety change through independent investigation to protect people and the environment.” The CSB examines all aspects of significant chemical incidents, including the cause (for example, equipment failure) and root cause (for example, why the equipment failed). The CSB does not issue fines or citations but does make recommendations to plants; regulatory agencies, such as the Occupational Safety and Health Administration and the U.S. Environmental Protection Agency; industry organizations; and labor groups. According to the CSB, Congress designed the CSB to be nonregulatory and independent of other agencies so that its investigations might, where appropriate, review the effectiveness of regulations and regulatory enforcement.

The CSB is headquartered in Washington, D.C. In response to the coronavirus pandemic, the CSB eliminated its physical office presence in Denver, Colorado, and all employees began working remotely from locations nationwide.

The Clean Air Act Amendments of 1990 provide for a CSB board that “shall consist of 5 members, including a Chairperson.” The board members are appointed by the president and confirmed by the U.S. Senate. The board’s chairperson serves as the chief executive officer and administrator. The board is responsible for major budgeting decisions, strategic planning and direction, general CSB oversight, and approval of CSB investigation reports and studies. Board members may also participate in accident investigations. Individual board members oversee the investigation and report writing for each incident examined by the CSB. The board must approve all report findings, determinations of root cause, and safety recommendations. According to the CSB’s [website](#), the board’s recommendations serve as the CSB’s principal tool for achieving positive change; however, compliance with CSB recommendations is voluntary.

The U.S. Chemical Safety Board 2017–2021 Strategic Plan set three goals:

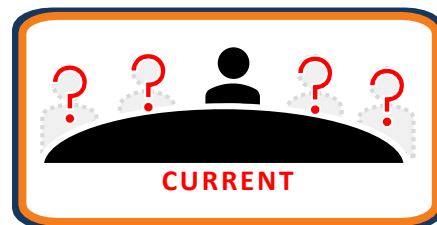
1. Prevent recurrence of significant chemical incidents through independent investigations.
2. Advocate safety and achieve change through recommendations, outreach, and education.
3. Create and maintain an engaged, high-performing workforce.

¹ 42 U.S.C. § 7412(r)(6).

CHALLENGE: Accomplishment of CSB Mission Is Impaired Until New Board Members Are Confirmed (initially reported as a challenge in fiscal year 2019)

OVERVIEW

According to the Clean Air Act Amendments of 1990, 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. Board members are term limited to five years. The statute permits removal of a board member, including the chairperson, for inefficiency, neglect of duty, or malfeasance in office. 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 regulation.
- Investigate (or cause to be investigated), determine, and report to the public in writing the facts, conditions, circumstances, and cause, or probable cause of any accidental release resulting in a fatality, serious injury, or substantial property damage.

In April 2020, two significant actions occurred that impacted the CSB's board. The first was the Senate confirmation of the current chairperson. The second was the resignation of the only other board member. As a result, the CSB's governing body has four vacancies, which leaves a single person to serve not only as the board's chairperson and chief executive officer but also as its sole member.

OUTLOOK: LACK OF BOARD MEMBERS IMPAIRS EXECUTION OF MISSION

Until new board members are appointed and confirmed, the board consists of only the chairperson, which challenges the CSB's ability to achieve its mission to "drive chemical safety change through independent investigation to protect people and the environment."

In an apparent response to our fiscal year 2020 CSB management challenges report,² the CSB revised Board Order 028 to finalize the roles and responsibilities of the chair and other board members, among other changes, but this revision does not address the impediment to board operations posed by an insufficient number of board members. As such, the basis of this challenge remains substantially the same since our fiscal year 2020 CSB management challenges report.

² OIG Report No. [20-N-0218](#), *FY 2020 U.S. Chemical Safety and Hazard Investigation Board Management Challenges*, issued July 6, 2020

The CSB governing body must obtain a quorum to meet its mission and goals because CSB staff do not have the authority to carry out board functions, including budgeting, planning, oversight, and approval of investigations. CSB regulatory language at 40 C.F.R. § 1600.5(a) provides the process to establish a quorum; however, the regulatory language lacks clarity. For example, it leaves open whether a single board member may constitute a quorum. If a quorum of one is permissible, then under the current circumstances, the chairperson would necessarily be exercising both (1) the executive and administrative authorities reserved for the chairperson and (2) the duties of the board. Such a situation, even if permissible, still presents internal control vulnerabilities for the CSB in terms of separation of duties and workload management.

Separation of Duties

Having a single board member is contrary to the U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government*, GAO-14-704G, issued September 10, 2014, which provides for the segregation of duties. It states that "[m]anagement divides or segregates key duties and responsibilities among different people to reduce the risk of error, misuse, or fraud."

In addition, consistent with the Clean Air Act, Board Order 028 authorizes the chairperson to individually exercise the executive and administrative functions of the board, including the preparation of the budget. The board as a whole, however, must still approve investigation reports and safety studies; make safety recommendations to federal, state, and local agencies pertaining to reducing recurrences of chemical incidents; and determine the causes or probable causes of chemical accidents. Having the chairperson serve as the sole board member is problematic because Board Order 028 specifically references board duties as separate from the chairperson's. A single person serving as "the Board as a whole" appears to negate the intent of separation of chairperson versus board duties.

Workload Management

As stated above, the Clean Air Act provides for five technically qualified board members who perform specified duties, such as serving as the principal spokespersons at accident sites and conducting community meetings, hearings, and boards of inquiry during accident investigations. Following the board's approval of accident investigation reports, board members play a significant role in advocating the adoption of the CSB's recommendations by industry, labor, government, and others. Board members also regularly participate in conferences, in safety forums, and on committees, and they meet with leaders of other federal agencies. A single board member is unlikely to have all the technical qualifications or the time to perform the required board duties. In addition, CSB staff cannot assume board-specific duties, leaving the single board member solely responsible to accomplish the duties of the board.

Without additional board members, the CSB's work to protect people and the environment is impaired.

WHAT REMAINS TO BE DONE

It appears progress is being made on this issue, as the Senate Committee on Environment and Public Works reported on September 22, 2021, that three board member nominations moved forward to the full Senate for consideration and confirmation votes. As of September 30, 2021, however, the timing for the full Senate confirmation votes was undetermined. Until the new board members are confirmed, the underlying circumstance has not changed since our last report. Also, the necessary actions for resolving this management challenge continue to lie outside of CSB control. To reduce the impact of this challenge on the CSB's mission and goals, the president should continue to nominate, and the Senate should confirm, qualified new members until the board is fully staffed.