

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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March 18, 2015

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

We are writing to request that you exercise your statutory authority to remove Dr. Rafael Moure-Eraso, the current Chairman of the U.S. Chemical Safety and Hazard Investigation Board (CSB), as well as CSB General Counsel Richard Loeb and Managing Director Daniel Horowitz.

The statute authorizing the CSB vests you with the authority to remove Board members and agency staff. Specifically, 42 U.S.C. § 7412(r)(6)(B) states that “[a]ny member of the Board, including the Chairperson, may be removed for inefficiency, neglect of duty, or malfeasance in office.” In addition, 42 U.S.C. § 7412(r)(6)(R) states that “the President may remove any member, officer or employee of the Board for inefficiency, neglect of duty or malfeasance in office.”

Based on new evidence obtained by the Committee, we believe this standard has clearly been met for these three individuals. After holding several hearings, reviewing thousands of documents, and interviewing multiple current and former CSB employees, it is clear that the CSB is in a state of turmoil. It is vital that you act to immediately remove the toxic leadership that is undermining the agency’s critical safety mission.

Most recently, on March 4, 2015, the Committee held a hearing, entitled “*Rebuilding the Chemical Safety Board: Finding a Solution to the CSB’s Governance and Management Challenges.*” The Committee had hoped that witnesses would testify about improvements with respect to the culture and effectiveness of the CSB. Instead, the Committee heard testimony indicating that the Chairman, Mr. Loeb, and Mr. Horowitz committed malfeasance, neglect of duty, and that their actions are impacting the agency’s efficiency. The CSB seems to be in worse condition than ever before.

For example, the Committee is concerned that Chairman Moure-Eraso and Mr. Horowitz committed malfeasance when they approved the search of an employee’s email without any specific reason other than to “examine a confidential personnel issue.”¹

It appears that Chairman Moure-Eraso was untruthful under oath in his testimony to the Committee. At the hearing on March 4th, Chairman Moure-Eraso stated definitively that he consulted with his General Counsel, Mr. Loeb, before allowing the search of an employee’s email.² However, Mr. Loeb claims never to have been consulted about the email search.³ Mr. Loeb sent an email to Committee staff following the

¹ *Rebuilding the Chemical Safety Board: Finding a Solution to the CSB’s Governance and Management Challenges: Hearing Before the H. Comm. on Oversight and Gov’t Reform* (Mar. 4, 2015).

² *Id.*

³ *Email from CSB General Counsel Richard Loeb to Oversight and Government Reform Committee Staff* (Mar. 4, 2015).

hearing that said, "I was never consulted, in writing, verbally or otherwise, on the decision to review the [employee] emails."⁴

This is especially troubling in light of the pattern of retaliation against whistleblowers and other employees at CSB. On February 12, 2015, senior CSB leadership received a briefing from an outside firm regarding the culture at CSB.⁵ The report was highly critical of senior CSB leadership.⁶ Minutes after the briefing, Mr. Horowitz removed the employee who managed the engagement with the outside firm and instead assigned himself as the contracting officer.⁷ That employee was summarily demoted just days after speaking with Committee staff about his concerns.⁸ Unfortunately, this is merely the most recent example of retaliation against employees by Chairman Moure-Eraso and his senior staff.⁹

Chairman Moure-Eraso and Board member Manuel Ehrlich recently made highly questionable changes to the governance of CSB that disenfranchised other Board members and consolidated decision-making authority with the Chairman and his staff. On January 28, 2015, at the end of an unrelated meeting, the Board suddenly and without proper notice passed a sweeping 22-page motion that reversed many long-standing orders that operated as a check to the power of the Chairman and ensured the proper functioning of the Board.¹⁰ Board member Mark Griffon called the move "a step backwards for the governance of the agency."¹¹

Mr. Griffon was not informed that the motion would be considered. The failure to notify Mr. Griffon represented a serious neglect of duty by the Chairman, Mr. Loeb, and Mr. Horowitz. The motion was also timed to prevent input by a new member of the Board, Rick Engler, who had been confirmed by the Senate but was not yet sworn in. Since then, Mr. Engler has advocated for the repeal of the order.¹²

The motion offered by Mr. Ehrlich also cancelled three accident investigations. Cancelling an investigation is a significant action, and Mr. Griffon should have had the opportunity to hear the rationale for the decision and to deliberate whether to support the action. The passing of this motion has been widely criticized by past and current Board members, industry, and labor unions.¹³ Mr. Ehrlich also testified that many of the items in his 22-page motion were put together by CSB senior staff, including Mr. Horowitz and Mr. Loeb.¹⁴

A 2014 survey by the Office of Personnel Management demonstrated inefficient performance by Chairman Moure-Eraso and his senior staff. CSB employees rated their satisfaction with senior leadership a 26 out of a possible 100, half of the average score for similar small agencies.¹⁵ In the same survey, overall employee satisfaction was dead last across the entire federal government.¹⁶ These problems were confirmed by an outside firm retained to review CSB management. That firm found:

⁴ *Id.*

⁵ *Rebuilding the Chemical Safety Board: Finding a Solution to the CSB's Governance and Management Challenges: Hearing Before the H. Comm. on Oversight and Gov't Reform* (Mar. 4, 2015)

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Chevron Richmond Refinery Fire Public Meeting, U.S. Chemical Safety Board, Jan. 28, 2015, available at <http://www.csb.gov/assets/1/19/0129CSB-Chevron1.pdf>. (last accessed Mar. 10, 2015).

¹¹ *Rebuilding the Chemical Safety Board: Finding a Solution to the CSB's Governance and Management Challenges: Hearing Before the H. Comm. on Oversight and Gov't Reform* (Mar. 4, 2015) (prepared statement of Mark Griffon, Board Member, U.S. Chemical Safety and Hazard Investigation Board).

¹² *Id.* (prepared statement of Rick Engler, Board Member, U.S. Chemical Safety and Hazard Investigation Board).

¹³ *Id.* (written testimony submitted by the United Steelworkers, the American Chemistry Council, former board member Beth Rosenberg, former board member William Wright, former board member William Wark, former board member Gerald Poje, former board chairman John Bresland).

¹⁴ *Id.*

¹⁵ 2014 Federal Employee Viewpoint Survey Results, Government-wide Management Report, U.S. Office of Personnel Management, available at http://www.fedview.opm.gov/2014files/2014_Governmentwide_Management_Report.PDF (last accessed Mar. 10, 2015).

¹⁶ *Id.*

The agency still suffers from: lack of trust in senior leadership; poor communication; ineffective goal setting; lack of standard procedures; lack of trust; and lack of follow-up by senior leadership which contributes to lack of accountability.¹⁷

This issue is important because morale has reached the point where it affects the retention of qualified staff to carry out investigations of serious chemical accidents which in turn impacts the efficiency of the agency. For example, one then-CSB investigator began working on an accident in 2010 and completed a draft report on its causes.¹⁸ When he left CSB almost a year later because of the adverse work environment, the CSB restarted the investigation from the beginning, as the CSB did not have staff capable of continuing the investigation. The investigation was not completed until 2014.¹⁹

In addition, in January 2015, the Inspector General of the Environmental Protection Agency (EPA IG) reported violations of the Federal Records Act by senior CSB Officials. Specifically, the EPA IG reported that Chairman Moure-Eraso, Mr. Loeb, and Mr. Horowitz knowingly violated the Federal Records Act by using private emails to conduct official CSB business. The IG's findings contradict testimony from Chairman Moure-Eraso. On June 19, 2014, Chairman Moure-Eraso testified to the Committee that his use of private email ceased a year and a half prior.²⁰ However, the EPA IG found evidence that use of private emails continued throughout 2013.²¹ The IG found that Mr. Loeb purposefully avoided using his official email account "because certain disgruntled employees (at least one) had access to CSB servers."²²

The EPA IG also found other problems at the CSB, such as failure to properly ensure that acquisitions over \$50,000 receive Board approval, failure to complete investigations in a timely manner, and failure to follow Office of Management and Budget requirements to comply with internal audit findings.²³

Documents and testimony obtained by the Committee show that CSB's problems have been primarily driven by Chairman Rafael Moure-Eraso, Managing Director Daniel Horowitz, and General Counsel Richard Loeb. Throughout the Committee's investigation, their names have come up countless times in the context of conversations with current and former employees regarding mismanagement and the toxic work environment at the CSB.

The CSB's critical safety mission is too important to be undermined by ineffective leadership. We have lost confidence that Chairman Moure-Eraso and his top lieutenants are capable of engineering a turnaround. We appreciate your decision to nominate a new Chair rather than reappointing Moure-Eraso for a second term. However, we urge you to strongly consider additionally addressing this serious issue by removing Chairman Moure-Eraso rather than waiting for his term to expire, and his lieutenants, Mr. Loeb and Mr. Horowitz. Thank you for your attention to this matter.

¹⁷ *Briefing to Senior Leadership, U.S. Chemical Safety Board Organizational Development Consultation*, Vantage Human Resource Services, Inc., Feb. 12, 2015, on file with author.

¹⁸ *Whistleblower Reprisal and Management Failures at the U.S. Chemical Safety Board*, Staff Report, H. Comm. on Oversight & Gov't Reform and H. Comm. on Science, Space, & Technology (June 19, 2014), available at <http://oversight.house.gov/wp-content/uploads/2014/06/CSB-FINAL-REPORT-Redact-version.pdf> (last accessed Mar. 10, 2015).

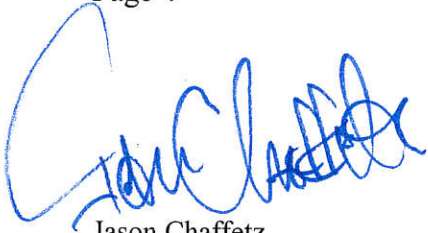
¹⁹ *Id.*

²⁰ *Whistleblower Reprisal and Management Failures at the US Chemical Safety Board: Hearing Before the H. Comm. on Oversight and Gov't Reform* (June 19, 2014).

²¹ Memorandum from Hon. Arthur Elkins, Inspector Gen., U.S. Environmental Protection Agency, to President Barack Obama (Jan. 16, 2015).

²² *Id.*

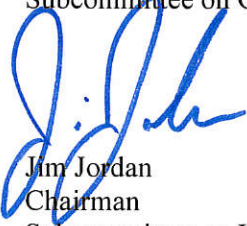
²³ *Rebuilding the Chemical Safety Board: Finding a Solution to the CSB's Governance and Management Challenges: Hearing Before the H. Comm. on Oversight and Gov't Reform* (March 4, 2015) (prepared statement of Patrick Sullivan, Assistant Inspector General for Investigations, Office of the Inspector General, U.S. Environmental Protection Agency).



Jason Chaffetz
Chairman



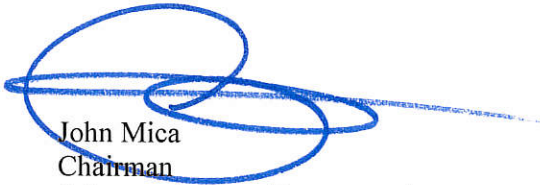
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Cynthia M. Lummis
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Subcommittee on the Interior



John Mica
Chairman
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