

July 8, 2021

Dear Chairperson Lemos,

We write to you on behalf of the 22 undersigned labor, environmental, community and scientific organizations over our growing concerns with the functionality and ability to execute the mission of the Chemical Safety and Hazard Investigation Board (CSB). We have compiled this list of recommendations to right the path of the CSB and assist in fulfilling the goals of protecting communities, workers, and our planet.

### **Recommendations for Preventing Chemical Disasters to the U.S. Chemical Safety and Hazard Investigation Board**

More than 180 major incidents occur on average each year at our nation's oil refineries, chemical plants, water and sewage treatment operations, and other facilities that use hazardous chemicals.<sup>1</sup> These incidents result in deaths and injuries, community evacuations and shelter in place orders, environmental contamination, and facility shutdowns with permanent job loss. Often, they disproportionately harm workers in these facilities and low income and people of color living near disaster sites. These incidents are preventable.

The U.S. Chemical Safety and Hazard Investigation Board (CSB) is an independent, non-regulatory agency whose unique mission is to investigate the causes of major chemical releases, issue reports, and make recommendations to prevent future incidents.

In the agency's 22-year history, CSB recommendations have helped lead to significant safety changes. For example, New York City adopted a new fire code that better addressed chemical risks; California adopted stronger rules for oil refineries that focused on hazard prevention and worker participation; revised national codes prohibit use of flammable gases to clean piping; and firefighters receive improved training for responding to chemical emergencies.<sup>2</sup>

Today, however, CSB needs to rebuild its investigative and recommendations capacity; set clear priorities for agency action; reform its governance policies; and increase public transparency and engagement.

To accomplish these objectives, this document outlines 21 practical and measurable actions. All are feasible with the current CSB budget of \$12 million.<sup>3</sup>

The proposed actions, discussed below, address:

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<sup>1</sup> [2020-02418.pdf \(csb.gov\)](#), page 10078.

<sup>2</sup> [https://www.csb.gov/assets/1/6/csb\\_key\\_successes.pdf](https://www.csb.gov/assets/1/6/csb_key_successes.pdf)

<sup>3</sup> [fy 2021 budget request.pdf \(csb.gov\)](#), page 3.

- A) Incident Investigations;
- B) Safety Studies;
- C) Safety Recommendations;
- D) Agency Governance; and
- E) Public Transparency and Engagement.

## **A) Incident Investigations**

### **Problem: A Record Backlog of Investigations**

CSB investigations and recommendations can help prevent future chemical incidents and their tragic consequences.

As of June 17, 2021, CSB had 19 open site investigations of incidents that in total killed 32 people, injured at least 87 people, led to thousands of residents sheltering in place or evacuating, and resulted in many millions of dollars in property damage (see Table 1 and CSB factual updates).<sup>4</sup> **The number of open investigations is the largest number in CSB history.**<sup>5</sup>

CSB is still investigating three incidents from 2016 and 2017.<sup>6</sup> During your term, which began April 23, 2020, the CSB Board has approved just one final report.<sup>7</sup>

In FY2020, CSB did not issue any new safety recommendations.<sup>8</sup>

There is no publicly available plan indicating how and when CSB will complete these 19 investigations and issue reports and recommendations to prevent future tragedies. It is also unclear if investigations have been terminated or suspended because of staffing constraints.

### **Requested Action**

- 1) Issue an accounting of the current investigative backlog and a plan explaining how CSB will complete each open site investigation, with a target date for issuing final reports and recommendations. Post the plan on the CSB website and update it periodically.

**Table 1**

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<sup>4</sup> [csb.gov, Investigations, Current Investigations.](https://www.csb.gov/investigations/current-investigations)

<sup>5</sup> This conclusion is based on discussions with former CSB Board Members and CSB staff.

<sup>6</sup> [csb.gov, Investigations, Completed Investigations.](https://www.csb.gov/investigations/completed-investigations)

<sup>7</sup> [csb.gov, Investigations, Completed Investigations.](https://www.csb.gov/investigations/completed-investigations) The report on a hydrogen sulfide release which killed a worker and his spouse at the Aghorn Operating Waterflood Station in Odessa, Texas was approved on May 21, 2021. See [board action report dlc signed- notation item 2021-31.pdf \(csb.gov\)](https://www.csb.gov/assets/1/17/csb_impact_report_2021-final1.pdf?16624)

<sup>8</sup> [https://www.csb.gov/assets/1/17/csb\\_impact\\_report\\_2021-final1.pdf?16624](https://www.csb.gov/assets/1/17/csb_impact_report_2021-final1.pdf?16624)

	Corporation Name	Location	Incident Date	Deaths	Approximate # of Injuries
1					
9	Yenkin-Majestic Paint & OPC Polymers	Columbus, Ohio	April 8, 2021	1	8
1					
8	Foundation Food Group	Gainesville, Georgia	January 28, 2021	8	12
1					
7	Optima Belle LLC	Belle, West Virginia	December 8, 2020	1	NI
1					
6	Wacker Polysilicon	Charleston, Tennessee	November 13, 2020	1	3
1					
5	Evergreen Packaging Mill	Canton, North Carolina	September 21, 2020	2	NI
1					
4	Bio-Lab	Conyers, Georgia	September 14, 2020	0	NI
1					
3	Bio-Lab	Lake Charles, Louisiana	August 27, 2020	0	NI
1					
2	Wendland 1H Well	Burleson County, Texas	January 29, 2020	3	NI
1					
1	Watson Grinding	Houston, Texas	January 24, 2020	2	NI
1					
0	TPC Group	Port Neches, Texas	November 27, 2019	0	2
9	Philadelphia Energy Solutions	Philadelphia, Pennsylvania	June 21, 2019	0	5
8	AB Specialty Silicones, LLC	Waukegan, Illinois	May 3, 2019	4	1
7	KMCO LLC	Crosby, Texas	April 2, 2019	1	2
6	Intercontinental Terminals	Deer Park, Texas	March 17, 2019	0	0
5	Kuraray America	Pasadena, Texas	May 19, 2018	0	21
4	Husky Energy	Superior, Wisconsin	April 26, 2018	0	11
3	Didion Milling	Cambria, Wisconsin	May 31, 2017	5	14
2	Loy Lange Box	St. Louis, Missouri	April 3, 2017	4	1
1	Sunoco Logistics Partners	Nederland, Texas	August 12, 2016	0	7
			<b>Total</b>	<b>32</b>	<b>87</b>

NI = Not indicated by CSB on website.  
Table does not include any off-site  
evacuations and any property damage.

Source: [csb.gov](http://csb.gov), Investigations, Current  
Investigations.

### Problem: Investigative Staff Vacancies

The core of CSB's mission is to conduct on-site investigations of the technical and underlying causes of chemical incidents and to make recommendations for preventing them to facility

management, trade associations, unions, professional safety organizations, government agencies and other entities.

CSB's investigative capacity is broken. CSB now has 12 (or even fewer) staff members dedicated to investigations, down roughly nine staff from earlier periods.<sup>9</sup> The CSB's 2019 Federal Employment Viewpoint Survey found that nearly 50% of the employees surveyed believed that CSB was unable to recruit staff with appropriate skills.<sup>10</sup>

While cumbersome federal requirements have been blamed for the slow pace of hiring new investigators, CSB also appears to have taken inadequate steps to address known obstacles.

### **Requested Actions**

- 2) Issue a staff recruitment, training, and retention plan. Post this plan on the CSB website.
- 3) Request "direct hiring authority" and/or other measures from the U.S. Office of Personnel Management to help accelerate staff recruitment and hiring.

### **Problem: Inadequate Skills and Experience of Investigative Staff**

Most, if not all, current CSB investigators are engineers. While engineering (and particularly chemical engineering) is one key expertise, CSB needs investigation teams with diverse expertise and experience to conduct effective investigations that consider *all* causes of incidents, including production and cost-cutting pressures, inadequate management oversight, deficient worker and union participation, and gaps in government regulation and enforcement.<sup>11</sup>

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<sup>9</sup> <https://republicans-energycommerce.house.gov/wp-content/uploads/2021/05/Bipartisan-Letter-to-Dr.-Lemos.pdf>, page 2.

<sup>10</sup> 2019 Federal Employee Viewpoint Survey, Annual Employee Survey Report: Chemical Safety and Hazard Investigation Board, Office of Personnel Management, 2019.  
[www.csb.gov/assets/1/6/2019\\_opm\\_fevs\\_aes\\_chemical\\_safety\\_and\\_hazard\\_investigation\\_board.pdf](http://www.csb.gov/assets/1/6/2019_opm_fevs_aes_chemical_safety_and_hazard_investigation_board.pdf)

<sup>11</sup> The Organization for Economic Cooperation and Development suggests that "The team should have a diverse membership with participants from different disciplines, with different skills, including members with knowledge of the specific installation subject to the investigation." OECD Guiding Principles for Chemical Accident Prevention, Preparedness and Response; Guidance for Industry (including Management and Labour), Public Authorities, Communities, and other Stakeholders, 2<sup>nd</sup> Edition, Organization for Economic Cooperation and Development, 2003. The Center for Chemical Process Safety says that a team approach with individuals that have diverse skills and perspectives is more likely to be objective and produce high quality investigations. Guidelines for Investigating Process Safety Incidents, Third Edition, Center for Chemical Process Safety, Wiley, 2019, Chapter 6, Building and Leading An Incident Investigation Team, page 97.  
<https://books.google.com/books?id=ljqUDwAAQBAJ&pg=PA97&lpg=PA97&dq=chemical+incident+diverse+team&source=bl&ots=8SMgNlgevo&sig=ACfU3U38kLcwM78BGkPEXkFO8wKxQxiPpw&hl=en&sa=X&ved=2ahUKewjG3YObqrPmAhUQjVkkHWYxCKQQ6AEwCXoECAoQAQ#v=onepage&q=chemical%20incident%20diverse%20team&f=false>  
The Occupational Safety and Health Administration suggests that "A multi-disciplinary team is better able to gather the facts of the event and to analyze them and develop plausible scenarios as to what happened, and why." OSHA, Compliance Guidelines and Recommendations for Process Safety Management, February 8, 2013.  
[https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_id=9763&p\\_table=STANDARDS](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=9763&p_table=STANDARDS)

## **Requested Action**

- 4) In addition to engineers with process safety experience, hire investigators with expertise in such fields as toxicology, industrial hygiene, environmental, occupational, and public health, human factors, and economics/risk assessment. New staff should also be recruited from diverse backgrounds, including corporate process safety departments, labor union safety initiatives, etc. and not just those with chemical industry experience.

## **Problem: Reliance on Corporate Information**

CSB disaster investigations are first conducted on-site, where independent investigators examine the incident scene, conduct interviews with workers and managers to learn the facts, and secure physical evidence.

CSB now appears to be conducting “desk audits”, in addition to its 19 open on-site investigations. One source states that “We understand that the CSB presently has approximately 30 open desk investigations.”<sup>12</sup> These limited investigations, however, appear to rely entirely on information supplied by facility management, with no apparent plans for CSB to interview on scene workers and community residents or to make corporate data publicly available for scrutiny. If this desk audit approach is continued, CSB is missing the vital role of workers, and their representatives, participation, will likely get the wrong facts, findings, and conclusions. Desk audits are fundamentally at odds with CSB’s role as an independent agency that conducts its own investigations, as well as agency past practice.

## **Requested Action**

- 5) Stop reviewing incidents through “desk audits” unless management incident investigation reports, union investigation reports, other information received about the incident, and any CSB assessment are posted on CSB’s website with a disclaimer that fully explains CSB’s limited investigative approach.

## **Problem: Involvement by ICE Will Harm CSB Investigations**

If workers are afraid to be witnesses during CSB investigations, CSB’s findings and reports will be fundamentally deficient.

CSB is currently investigating an incident at the Foundation Food Group poultry plant in Gainesville, Georgia where six workers died and 12 were hospitalized after a leak of liquid nitrogen in January 2021.<sup>13</sup> A report from the Project on Government Oversight (POGO) alleges that there was “highly unusual” communication between the Immigration and Customs Service (ICE) and a CSB senior official about the immigration status of workers.<sup>14</sup> POGO’s report states

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<sup>12</sup> <https://news.bloomberglaw.com/pfas-project/the-chemical-safety-board-quietly-expands-its-incidents-review>

<sup>13</sup> [csb.gov, Investigations, Current Investigations.](https://www.csb.gov/investigations/current-investigations)

<sup>14</sup> <https://www.pogo.org/investigation/2021/02/specter-of-ice-looms-over-investigation-of-fatal-poultry-plant-disaster/>

that “plant workers—many of whom are undocumented—fear being arrested or monitored by ICE while going to and from witness interviews.

The U.S. Department of Labor, OSHA’s parent agency, has a Memorandum of Understanding (MOU) with ICE’s parent agency, the Department of Homeland Security (DHS), which limits ICE enforcement activity during federal Investigations of safety violations, wage theft and other labor law violations.<sup>15</sup> “Effective enforcement of labor law,” the MOU states, “is essential to ensure proper wages and working conditions for all covered workers regardless of immigration status.”<sup>16</sup> There is no such memorandum in effect between DHS and CSB.

### **Requested Action**

- 6) Negotiate a CSB Memorandum of Understanding with the Department of Homeland Security, to prevent ICE enforcement activity at facilities with open CSB investigations.

### **Problem: CSB Continues to Omit the Names of Victims in Reports**

Those who die in chemical incidents are human beings and deserve to be recognized as part of the complete historical record that CSB reports compile.

In January 2018, five workers died in an explosion and fire at the Pryor Trust gas well in Pittsburg County, Oklahoma. Killed were Josh Ray, Cody Risk, Matthew Smith, Roger Cunningham, and Parker Waldrige.<sup>17</sup> The CSB omitted their names from its final report issued June 12, 2019.<sup>18</sup>

On September 12, 2019, however, the CSB Board voted to amend Board Order 47 to include the names of those killed in future agency reports *and* to update the already issued Pryor Trust report with this information.<sup>19</sup>

This Board vote is apparently being ignored. The Pryor Trust report was never updated<sup>20</sup> and the latest CSB report, on a hydrogen sulfide release which killed a worker, Jacob Dean, and his spouse, Natalee Dean, at the Aghorn Operating Waterflood Station in Odessa, Texas, in October 2019 omits their names.<sup>21</sup>

And despite being in effect, Board Order 47 no longer appears on CSB’s website.<sup>22</sup>

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<sup>15</sup> <https://www.nilc.org/wp-content/uploads/2020/10/DHS-DOL-MOU-2011-12-07.pdf>

<sup>16</sup> *Ibid*, page 1.

<sup>17</sup> <https://kfor.com/news/jury-awards-20-million-to-families-of-men-killed-in-rig-explosion/>

<sup>18</sup> <https://www.csb.gov/pryor-trust-fatal-gas-well-blowout-and-fire/>

<sup>19</sup> [https://www.csb.gov/assets/record/board\\_action\\_report\\_-\\_notation\\_item\\_2019-622.pdf](https://www.csb.gov/assets/record/board_action_report_-_notation_item_2019-622.pdf)

<sup>20</sup> <https://www.csb.gov/pryor-trust-fatal-gas-well-blowout-and-fire/>

<sup>21</sup> <https://www.eenews.net/stories/1063594445> and <https://www.csb.gov/csb-releases-final-aghorn-investigation-report/>

<sup>22</sup> [csb.gov](https://www.csb.gov), About CSB, Open Government, Board Orders.

## Requested Action

- 7) Update and post on the agency website the policy *Accident Victim and Family Communication Program* (Board Order 47) to include Board ordered changes approved on September 12, 2019 to include the names of victims. Update all final investigation reports issued since September 12, 2019 to include the names of victims.

## **B. Safety Studies**

### **Problem: A Release of Hydrofluoric Acid Poses an Enormous Safety Risk**

If released to the atmosphere, hydrofluoric acid (HF) can form a dense, low-lying vapor cloud that can travel great distances. Like other powerful acids, HF can cause deep severe burns and damage the eyes, skin, nose, throat and lungs. HF entering the body through a burn or lungs can cause internal damage throughout the body. At high exposures, HF can kill. The Occupational Safety and Health Administration and the Environmental Protection Agency regulate HF as highly toxic.

A 2014 report by the Environmental Justice and Health Alliance for Chemical Policy Reform found that more than 17 million U.S. residents lived in the vulnerability zones of fifty U.S. oil refineries that operate HF alkylation units to make gasoline components.<sup>23</sup>

At Exxon-Mobil (Torrance, California in May 2017)<sup>24</sup> and Husky (Superior, Wisconsin in April 2018)<sup>25</sup>, there were likely near misses involving a potential HF release resulting from impact of debris on or near vessels holding HF. At PES (Philadelphia, Pennsylvania in June 2019),<sup>26</sup> leaking process fluid formed a large ground-hugging vapor cloud which ignited, causing a massive fire and explosions. More than 5,000 pounds of HF was released. Surrounding communities were put at risk. The refinery was permanently shut-down and more than 1,000 jobs were destroyed.<sup>27</sup>

On April 23, 2019, CSB requested that the U.S. Environmental Protection Agency update a 1993 HF study and assess the effectiveness of their Risk Management rule to ensure refinery safety

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<sup>23</sup> <https://comingcleaninc.org/assets/media/images/Reports/Who's%20in%20Danger%20Report%20FINAL.pdf>  
Page 34, Table 13.

<sup>24</sup> [https://www.csb.gov/assets/1/20/exxonmobil\\_presentation\\_2016.01.pdf?15595](https://www.csb.gov/assets/1/20/exxonmobil_presentation_2016.01.pdf?15595)

<sup>25</sup> [https://www.csb.gov/assets/1/6/husky\\_factual\\_update.pdf?16317](https://www.csb.gov/assets/1/6/husky_factual_update.pdf?16317)

<sup>26</sup> [https://www.csb.gov/assets/1/20/pes\\_factual\\_update\\_-\\_final.pdf?16512](https://www.csb.gov/assets/1/20/pes_factual_update_-_final.pdf?16512)

<sup>27</sup> <https://www.phila.gov/media/20191202091559/refineryreport12219.pdf>, page 14.

and the viability of adopting safer, commercially viable alkylation technologies.<sup>28</sup> Five months later, EPA refused CSB's request.<sup>29</sup>

### **Requested Actions**

- 8) Complete the CSB reports on the Husky and PES incidents, including analyses of the potential near misses involving HF acid.
- 9) Conduct a study of alternatives to HF acid alkylation in oil refineries that addresses potential technology and regulatory gaps and issue safety recommendations.

### **C) Safety Recommendations**

#### **Problem: Current Process Safety Rules Fail to Protect Workers and Communities**

“Process safety” focuses on preventing fires, explosions and releases in chemical process facilities. It often involves addressing the risks to workers and communities of multiple chemicals in interconnected processes at sites that operate continuously, 24 hours a day, at high pressures and temperatures.

Elements of process safety include process safety information; process hazard analysis; assessing safer alternatives; operating procedures; training; mechanical Integrity; management of change; pre-startup safety reviews; management of change; compliance audits; incident investigations; and workers and union participation.

Process safety regulations in the U.S., however, are out of date. CSB identifies process safety modernization as an advocacy priority on its website.<sup>30</sup> CSB has supported strengthening Occupational Safety and Health Act's Process Safety Management of Highly Hazardous Chemicals (PSM) standard<sup>31</sup> and Section 112(r) of the Clean Air Act's amendments Risk Management Plan (RMP) rule.<sup>32</sup> The RMP rule covers approximately 12,500 U.S. facilities that use extremely hazardous substances.<sup>33</sup>

In 2017, the EPA made modest improvements to the RMP rule.<sup>34</sup> In 2019, however, the Trump Administration rescinded important provisions of the 2017 RMP rule on safer technology and

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<sup>28</sup> [https://www.csb.gov/assets/1/6/letter\\_to\\_epa\\_4.23.2019.pdf?16464](https://www.csb.gov/assets/1/6/letter_to_epa_4.23.2019.pdf?16464)

<sup>29</sup> <https://www.inquirer.com/business/pes-philadelphia-refinery-fire-hf-hydrofluoric-csb-report-stalled-20210326.html>

<sup>30</sup> CSB.gov, Advocacy Priorities, Drivers of Critical Safety Change, Process Safety Management for the 21<sup>st</sup> Century.

<sup>31</sup> [https://www.csb.gov/assets/1/6/csb\\_rficommments1.pdf](https://www.csb.gov/assets/1/6/csb_rficommments1.pdf)

<sup>32</sup> [https://www.csb.gov/assets/1/6/epa\\_rfi2.pdf](https://www.csb.gov/assets/1/6/epa_rfi2.pdf)

<sup>33</sup> Regulatory Impact Analysis, Reconsideration of the 2017 Amendments to the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7), U.S. Environmental Protection Agency, April 27, 2018, page 8.

<sup>34</sup> <https://www.govinfo.gov/content/pkg/FR-2017-01-13/pdf/2016-31426.pdf>



alternatives analyses, third-party audits, incident investigations, and public access to information.<sup>35</sup>

EPA's own analysis admits that this rollback would disproportionately and negatively impact people of color and low-income communities near industrial facilities.<sup>36</sup>

CSB submitted comments to EPA opposing their 2017 action.<sup>37</sup>

These rollbacks are under review by the Biden EPA and they are considering whether to restore the 2017 rule and to propose additional prevention measures.<sup>38</sup> Reforming the RMP and PSM regulations would be high impact policy changes that could help safeguard workers and communities across the nation.

California in 2017 adopted refinery safety rules that offer important precedents for national reform of PSM and RMP, including a greater focus on preventing hazards through the "hierarchy of controls" and enhanced worker and union collaboration.<sup>39</sup>

### Requested Action

10) Designate meaningful reform of RMP and PSM as CSB's top advocacy priority and allocate staff resources towards this end.<sup>40</sup>

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<sup>35</sup> [https://www.epa.gov/sites/production/files/2019-11/documents/final\\_risk\\_management\\_program\\_reconsideration\\_final\\_rule\\_fact\\_sheet.pdf](https://www.epa.gov/sites/production/files/2019-11/documents/final_risk_management_program_reconsideration_final_rule_fact_sheet.pdf)

<sup>36</sup> Ibid, Regulatory Impact Analysis, EPA, page 80. EPA specifically stated that *Based on analysis of RMP data and other studies, EPA concludes that there is evidence that risks from RMP facilities fall on minority and low-income populations, to a significantly greater degree than those risks affect other populations. Therefore, EPA believes that this action may have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).*

<sup>37</sup> [csb.gov, About CSB, Open Government, Public Comments](https://www.csb.gov/about-csb/open-government/public-comments). Scroll down to CSB Comments on the Environmental Protection Agency (EPA) Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act, Section 112(r)(7). July 20, 2018.

<sup>38</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/> and <https://www.epa.gov/newsreleases/epa-announces-public-listening-sessions-risk-management-plan-rule-0>

<sup>39</sup> See <https://aiche.confex.com/aiche/s18/meetingapp.cgi/Paper/511230> and [https://www.epw.senate.gov/public/index.cfm/hearings?id=9A92B90F-DE5F-5477-7177-CCD5A1AEF682&Statement\\_id=34575FD7-8E6F-4B2C-9424-3E707DBA8AAF](https://www.epw.senate.gov/public/index.cfm/hearings?id=9A92B90F-DE5F-5477-7177-CCD5A1AEF682&Statement_id=34575FD7-8E6F-4B2C-9424-3E707DBA8AAF)

<sup>40</sup> EPA is currently holding public listening sessions and seeking "solicit comments and suggestions from stakeholders pertaining to the review of EPA Risk Management Program (RMP) regulation revisions completed since 2017 and to address new priorities, as directed under Executive Order 13990: Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," including on the important issues of climate risks and environmental justice. EPA, Notice, 86 Fed. Reg. 28,828 (May 28, 2021); see also EPA Press Release, <https://www.epa.gov/newsreleases/epa-announces-public-listening-sessions-risk-management-plan-rule-0>. The Occupational Health and Safety Administration is participating in the listening sessions "to foster continued coordination with the EPA." *Id.* EPA has announced that it is "developing a regulatory proposal to revise the RMP regulations at 40 CFR part 68." *Id.* at 28,829. EPA has also announced in the Spring 2021 Regulatory Agenda that it plans to publish a proposed rule by September 2022, and publish a final rule by August 2023. (<https://www.reginfo.gov/public/do/eAgendaViewRule?publd=202104&RIN=2050-AH22>). The CSB should provide

11) Assess how the 2017 California refinery PSM and RMP rules offer valuable precedents for national reforms.

#### D) Agency Governance

**Problem: Chair Lemos has Attempted to Eliminate “Majority Rule” to determine major Board policies.**

CSB is a very small agency that has a budget to fund about 46 positions, including up to five Board Members. Oversight of CSB policies, budget, and major operations by the Board Members is a critical function that helps to ensure that the agency is fulfilling its mission and serving the public interest.

Before April 1, 2021, Board Order 28 defined the *Executive and Administrative Functions of the Board*.<sup>41</sup> For example, it established the powers of the Chair over specific management and administrative issues and the powers of the other Board Members to vote on final investigative reports, recommendations, recommendations status changes, **and** important agency policies, such as budget.

As the sole CSB Board Member, on April 1, 2021 you voted to eliminate Board Order 28 on the *Executive and Administrative Functions of the Board*<sup>42</sup> and to replace it with a new Board Order 28 on *Board Member Roles and Responsibilities*.<sup>43</sup>

This unilateral action attempts to eliminate the authority of other Board Members, including three whose nominations are now pending before Congress, to have any power over agency regulations, rules, and Board Orders; the agency budget and transmission of the budget to Congress; and statements to Congress or the President.

By making such draconian changes to well-established Board policy, you ignored a bedrock legal principle for independent government Boards that “the majority rules” and defied established legal opinion.<sup>44</sup> Board Members must have explicit authority – as they did in the prior version of BO 28 – to vote on matters central to CSB’s direction and operation, including agency regulations, rules, and Board Orders; major budget matters and contracts; and statements to

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all available new information on RMP facilities and incidents to EPA and OSHA, including on the important issue of climate risk assessment and mitigation measures, as part of this process, as well as detail on the CSB’s important recommendations to EPA on ways to prevent incidents and ways that the RMP should be expanded.

<sup>41</sup> This older version of CSB Board Order 28 is not archived on CSB’s website. It can be accessed at the Wayback Machine, an independent Internet archive at

[http://web.archive.org/web/20201017004438/http://www.csb.gov/assets/record/board\\_order\\_028\\_-\\_final\\_approved\\_3\\_22\\_18\\_\(1\).pdf](http://web.archive.org/web/20201017004438/http://www.csb.gov/assets/record/board_order_028_-_final_approved_3_22_18_(1).pdf)

<sup>42</sup> [https://www.csb.gov/assets/record/board\\_action\\_report\\_-\\_notation\\_item\\_2021-30.pdf](https://www.csb.gov/assets/record/board_action_report_-_notation_item_2021-30.pdf)

<sup>43</sup> [https://www.csb.gov/assets/record/b0\\_028docx.pdf](https://www.csb.gov/assets/record/b0_028docx.pdf)

<sup>44</sup> <https://www.justice.gov/file/19391/download>

Congress and the President. Moreover, new Board Members should be part of discussions to help determine their appropriate roles and specific duties.<sup>45</sup>

### **Requested Action**

12) After meaningful input from new Board Members and opportunities for public comment on a draft regulation, issue a new CSB **regulation** (or regulations) to address **both** the *Executive and Administrative Functions of the Board and Board Member Roles and Responsibilities*.

## **E) Public Transparency and Engagement**

### **Problem: Elimination of Opportunities for Public Participation at Meetings**

Public transparency and engagement are widely accepted as foundational to a democratic government.<sup>46</sup>

During CSB business meetings before March 5, 2021, there were opportunities for public comments and questions.<sup>47</sup> At business meetings on March 5, 2021 and April 2, 2021, however, you did not provide such opportunities.<sup>48</sup>

You also did not allow for public comments or questions during the May 4, 2021 public meeting to adopt the report on the two deaths at the Aghorn Waterflood Station in Texas in 2019, also conflicting with CSB past practice.<sup>49</sup>

### **Requested Action**

13) Restore opportunities for public comments and questions during all CSB public meetings, including quarterly business meetings and meetings discussing specific investigations.

### **Problem: Violating CSB's Policy for Notice of Public Meetings**

In the past an occasional CSB practice was to post the tentative dates of quarterly business meetings on the agency website.<sup>50</sup> Current CSB policy states the public is supposed to be notified of its quarterly public business meetings no less than 60 days in advance, when

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<sup>45</sup> Attempts to disenfranchise of other Board Members and consolidation of power by the Board Chair has been a recurrent issue in CSB history. For events in 2015, for example, see: <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2015-03-18.Chaffetz%20EEC%20etc%20to%20Obama%20re%20CSB.pdf>, page 2.

<sup>46</sup> For example, see

[https://obamawhitehouse.archives.gov/realitycheck/the\\_press\\_office/Transparency\\_and\\_Open\\_Government](https://obamawhitehouse.archives.gov/realitycheck/the_press_office/Transparency_and_Open_Government)

<sup>47</sup> See transcripts of CSB business meetings for January 29, 2020, April 29, 2020, September 2, 2020, October 29, 2020, and earlier meetings at [www.csb.gov](http://www.csb.gov), About the CSB, Open Government, CSB Business Meetings.

<sup>48</sup> See transcripts of CSB business meetings for March 5, 2021 and April 2, 2021 at [www.csb.gov](http://www.csb.gov), About the CSB, Open Government, CSB Business Meetings.

<sup>49</sup> See video of meeting on May 4, 2021 at <https://www.csb.gov/videos/?SID=3606>

<sup>50</sup> For example, see <https://www.csb.gov/csb-announces-dates-for-public-business-meetings-for-2020/>

feasible.<sup>51</sup> For 2021 meetings, however, CSB ignored its own policy and provided approximately just seven days and the most minimal public notice to comply with Federal Register notice rules. Such late notice discourages CSB stakeholders from planning to participate in these meetings and from learning about agency work.

### **Requested Actions**

- 14) Follow CSB policy to provide 60 days advance public notice of quarterly business meetings.
- 15) Develop an annual calendar of tentative dates for CSB's quarterly public business meetings and post it on the agency website.

### **Problem: No Public Input in CSB Planning**

The GPRAMA Modernization Act of 2010 (GPRAMA) requires federal agencies to prepare strategic agency plans (ASP) which operate on a four (fiscal) year basis.<sup>52</sup> CSB's current plan for 2017-2021 expires September 30, 2021.<sup>53</sup>

Under GPRAMA, agencies must consult with nonfederal stakeholders at least once every four years when developing the plan. (Agencies also must confer with appropriate congressional committees every two years, irrespective of their work on an ASP).

CSB has not held a dialogue with multiple stakeholders since June 10, 2015 and there is no indication that it plans to hear stakeholder perspectives as part of developing a new strategic plan.<sup>54</sup>

### **Requested Actions**

- 16) Conduct a public forum to hear stakeholder perspectives and encourage dialogue on a draft FY 2022-2026 CSB strategic plan.
- 17) Conduct an annual CSB stakeholders meeting, beginning in FY2023, involving representatives of industry, labor, environmental, environmental justice, public health, scientific, professional safety, family, and other organizations.

### **Problem: Uncertain Disclosure of Chemical Incident Data**

There are few data sources where the public can learn about major chemical incidents.

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<sup>51</sup> [https://www.csb.gov/assets/record/board\\_order\\_001-quorum\\_voting\\_and\\_meeting\\_procedures12-17-19.pdf](https://www.csb.gov/assets/record/board_order_001-quorum_voting_and_meeting_procedures12-17-19.pdf), pages 9-10.

<sup>52</sup> <https://www.congress.gov/bill/111th-congress/house-bill/2142>

<sup>53</sup> [https://www.csb.gov/assets/1/6/csb\\_strategic\\_plan11.pdf](https://www.csb.gov/assets/1/6/csb_strategic_plan11.pdf)

<sup>54</sup> See the transcript of this meeting at <https://app.box.com/s/07tgkeihhfrod014ei3m1pi37945je53>

CSB's reporting rule, issued in February 2020, requires prompt reports to CSB from facility owners or operators that have a chemical release that results in a death, serious injury or substantial property damage.<sup>55</sup>

In this rule, CSB pledged to publicly disclose incident information stating that "...the CSB recognizes the public interest in learning from initial accidental release information. The CSB occasionally receives FOIA requests for incident screening information. After appropriate review, the CSB has disclosed this information and will continue to do so."<sup>56</sup>

CSB also stated in the rule that "With the adoption of this final rule, the CSB will also devote additional resources to the collection and processing of initial accidental release information. In light of this, the CSB will proactively disclose, subject to any Federal statutory prohibitions on such disclosure, initial incident information, as defined in this rule at § 1604.4, at least once per year."<sup>57</sup>

To be of more timely public use, incident information should be posted quarterly.

### **Requested Action**

18) Post incident reports quarterly on CSB's website.

### **Problem: Complying with President Biden's Policies on Racial Equity**

On September 22, 2020, President Trump issued Executive Order 13950, *Combating Race and Sex Stereotyping*.<sup>58</sup> This Order sought to block CSB and other federal agencies from teaching "divisive" concepts about race and prohibited federal contractors and subcontractors from providing workplace diversity training.

In response to your request to the Office of Inspector General for EPA,<sup>59</sup> on November 18, 2020 the OIG evaluated CSB's compliance with this Order. The OIG found that CSB had suspended all planned diversity and inclusion trainings as of November 9, 2020 and had not provided any employee diversity and inclusion trainings since November 2019.<sup>60</sup>

On January 20, 2021, as part of a new Executive Order, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, President Biden revoked Executive Order 13950.<sup>61</sup> His new Executive Order (EO) stated that "equal opportunity is the bedrock of

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<sup>55</sup> <https://www.csb.gov/assets/1/6/2020-02418.pdf>

<sup>56</sup> Ibid, page 10094.

<sup>57</sup> Ibid, page 10094.

<sup>58</sup> <https://www.federalregister.gov/documents/2020/09/28/2020-21534/combating-race-and-sex-stereotyping>

<sup>59</sup> [https://www.epa.gov/sites/production/files/2020-11/documents/epaig\\_notificationmemo\\_11-18-20\\_stereotyping.pdf](https://www.epa.gov/sites/production/files/2020-11/documents/epaig_notificationmemo_11-18-20_stereotyping.pdf)

<sup>60</sup> [https://www.epa.gov/sites/production/files/2020-12/documents/epaig\\_20201229-21-e-0043.pdf](https://www.epa.gov/sites/production/files/2020-12/documents/epaig_20201229-21-e-0043.pdf)

<sup>61</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

American democracy, and our diversity is one of our country's greatest strengths" and that "Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government. Because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity."

The new EO also states that "It is therefore the policy of my Administration that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."

Further, the EO states that "In carrying out this order, agencies shall consult with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs. The head of each agency shall evaluate opportunities, consistent with applicable law, to increase coordination, communication, and engagement with community-based organizations and civil rights organizations."

#### **Requested Actions**

- 19) Comply with President Biden's Executive Order 13985, including consulting with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs.
- 20) Develop a policy and video for communities that are disproportionately harmed by chemical incidents on how the CSB works and opportunities for engagement with the agency, focusing on the investigation process.

#### **Problem: CSB Lacks Clear Policies on Scientific Integrity**

The US Chemical Safety Board relies heavily on the use of science to inform its investigations and decisions regarding severe industrial chemical accidents. The CSB also is comprised of several scientific experts including mechanical and chemical engineers, industrial safety experts and investigators. Given the CSB's important science-based charge and mission, it is critically important that the science relied upon by the CSB remain independent and free from undue interference.

Currently, the CSB is without a scientific integrity policy that would help to ensure that the work it conducts remains free from political interference. Political interference in science-based decision making has occurred under every presidential administration at least dating back to President Eisenhower. However, the past four years saw an uptick in scientific integrity violations even at federal agencies with strong scientific integrity policies. Such violations

resulted in decisions made that were not informed by the best available science putting the public's health and safety at-risk. For these reasons, the Biden-Harris administration is working on strengthening scientific integrity<sup>62</sup> and evidence-based decision making across the federal government.

The US Chemical Safety Board should develop a scientific integrity policy that is enforceable to protect its scientific experts and their work from undue political interference. While the board currently follows guidelines<sup>63</sup> for "ensuring and maximizing the quality, objectivity, utility, and integrity of disseminated information," these guidelines lack enforcement even within the board itself. Because the CSB is charged with investigating severe industrial accidents that often involve injuries, fatalities, and destruction costing millions of dollars, it should work to maintain integrity in its science-based investigations and decisions for the public good.

### **Requested Actions**

21) The CSB should establish and enforce a scientific integrity policy that safeguards against improper political interference in the conduct of scientific research and in the collection of scientific or technological data, and that prevents the suppression or distortion of scientific or technological findings, data, information, conclusions, or technical results.

Please respond to our organizations with your ability to implement these reasonable recommendations within 30 days. You may send your response to the representatives listed below.

John Paul Smith  
United Steelworkers  
[jpsmith@usw.org](mailto:jpsmith@usw.org)

Allison Cain  
Union of Concerned Scientists  
[acain@ucsusa.org](mailto:acain@ucsusa.org)

Terry McGuire  
Earthjustice  
[tmcguire@earthjustice.org](mailto:tmcguire@earthjustice.org)

Respectfully,

United Steelworkers (USW)  
Union of Concerned Scientists  
Earthjustice  
AFL-CIO  
BlueGreen Alliance  
United Food and Commercial Workers International Union (UFCW)  
International Chemical Workers Union Council (ICWUC)

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<sup>62</sup><https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/memorandum-on-restoring-trust-in-government-through-scientific-integrity-and-evidence-based-policymaking/>

<sup>63</sup> <https://www.csb.gov/assets/1/6/finaldataqualityguidelines1.pdf>

Environmental Justice Health Alliance for Chemical Policy Reform (EJHA)  
Sierra Club  
Greenpeace US  
Coming Clean  
National COSH  
Coalition for a Safe Environment  
New Jersey Work Environment Council  
NAACP Branch #1069  
Community Dreams  
California Kids IAQ  
EMERGE  
Center for Progressive Reform  
Ohio Valley Environmental Coalition  
Air Alliance Houston  
California Communities Against Toxics