

OFFICE OF SPECIAL REVIEW AND EVALUATION

# ADMINISTRATIVE INVESTIGATION DIRECTORATE



OFFICE OF INSPECTOR GENERAL  
U.S. ENVIRONMENTAL PROTECTION AGENCY



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September 7, 2022

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## Special Review of the U.S. Chemical Safety and Hazard Investigation Board Capabilities to Effectively Administer Its Programs and Operations

REPORT NO. 22-N-0056



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

THE INSPECTOR GENERAL

September 7, 2022

Steve Owens, Board Member and  
Interim Executive Authority  
Dr. Sylvia Johnson, Board Member  
U.S. Chemical Safety and Hazard  
Investigation Board  
1750 Pennsylvania Avenue NW, Suite 910  
Washington, D.C. 20006

Dear Mr. Owens and Dr. Johnson:

On June 16, 2022, the U.S. Environmental Protection Agency Office of Inspector General [initiated](#) this special review of the U.S. Chemical Safety and Hazard Investigation Board, or CSB, and its capabilities to administer its programs and operations effectively. The review was undertaken in response to the announced resignations of three senior-level officials at the CSB in May and June 2022: the Agency's managing director, a senior advisor, and then-Chairperson Dr. Katherine Lemos. At the time of these resignations, the Agency had already lost certain key senior personnel who had not been replaced, including the general counsel, the chief information officer, and the director of administration.<sup>1</sup>

The review included an examination of staffing levels, attrition, and reporting backlogs at the Agency. It also included an examination of board-related issues mentioned in Lemos's resignation letter.

In summary, as detailed in the enclosed report, the CSB's operations are challenged by vacancies in mission-critical positions and an inability to fully use the resources Congress allocated to the CSB. Further, CSB staff are concerned that leadership, internal review processes, and reporting backlogs are impeding the CSB's ability to accomplish its mission. There was also a conflict between the then-chairperson and the board on the division of responsibilities and authority over Agency operations. This conflict has since been resolved with the resignation of the then-chairperson and the adoption of a revised Board Order 28. We describe these issues in more detail below and identify key areas the board should consider as it prioritizes the CSB's work and develops the CSB's new strategic plan.<sup>2</sup> We have divided the results of our review between two sections in the main body of this report: the first discusses broader staffing, reporting, and other issues affecting the CSB workplace and operations; the second addresses the conflict surrounding the revision of Board Order 28.

You are not required to respond to this report because this report contains no recommendations. If you submit a response, however, it will be posted on the OIG's website, along with our memorandum commenting on your response. 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. Should

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<sup>1</sup> The Human Resources director, who had been hired in November 2021, had also announced her resignation effective June 2022, but she subsequently decided to remain at the Agency.

<sup>2</sup> The CSB does not have a current strategic plan in place; the last strategic plan was for [2017-2021](#).

you respond, do not include 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,



Sean W. O'Donnell

Enclosure

cc: David LaCerte, Senior Advisor and Executive Counsel, CSB  
Stephen Klejst, Executive Director of Investigations and Recommendations, CSB  
Michele Bouziane, Acting General Counsel, CSB  
Sabrina Morris, Acting Director of Administration, CSB

# ***Special Review of the U.S. Chemical Safety and Hazard Investigation Board Capabilities to Effectively Administer Its Programs and Operations***

## **Background**

The U.S. Chemical Safety and Hazard Investigation Board, or CSB, was created to conduct investigations of chemical incidents at industrial facilities and to make recommendations to prevent or mitigate future occurrences. The CSB's website states that the Agency's mission is to "drive chemical safety change through independent investigation to protect people and the environment." The CSB was authorized by the Clean Air Act Amendments of 1990 and began operations in 1998.

### ***CSB Components***

The CSB governing body is a board consisting of five members, including a chairperson. The president appoints these members to five-year terms with U.S. Senate confirmation. The Clean Air Act requires that board members be appointed based on technical qualification, professional standing, and demonstrated knowledge in relevant fields such as accident reconstruction, safety engineering, toxicology, or air pollution regulation. Dr. Katherine Lemos, the CSB's most recent chairperson, resigned on July 22, 2022. As of August 1, 2022, there were two appointed board members, one of whom was serving in the capacity of interim executive authority in the absence of an appointed chairperson.

The CSB is staffed by professionals dedicated to performing investigations and providing essential support functions. The CSB's main component offices are the Office of General Counsel; the Office of Administration, which is composed of the Finance, Human Resources, Information Technology, and Communication Divisions; and the Office of Investigations and Recommendations. As of August 1, 2022, the CSB had allocated 39 of its 44 full-time equivalent employee positions, or FTEs, for professional staff; it had staffed 27 of them.

### ***CSB Investigation Process, Ongoing Investigations, and Recommendations***

The CSB investigation process starts by identifying incidents for potential investigation, considering injury, loss of life, and property damage. The CSB receives notification of incidents through various mechanisms, including the National Reporting Center and the [Accidental Release Reporting rule](#), which requires prompt reporting to the CSB of accidental releases of regulated or extremely hazardous substances that result in a death, serious injury, or substantial property damage. Considering the recommendation of professional staff, the CSB chairperson makes the decision on which incidents to investigate and deploys CSB resources.

The CSB investigative staff includes chemical and mechanical engineers, industrial safety experts, and other experienced specialists with expertise in the chemical industry. These personnel would also deploy, at the direction of the chairperson, to any new chemical incidents. From April 2020 through May 2022, the CSB received 153 incident reports that included 24 fatalities, 90 serious injuries, and 62 instances of substantial property damage. According to the CSB's fiscal year 2023 budget request, the Agency received information on approximately one reportable chemical incident a week that falls under the CSB's purview, or about 52 incidents per year.

Based on the findings from its investigations, the CSB can make recommendations for preventing future accidents to key stakeholders, including government entities, safety organizations, trade associations, and equipment manufacturers. Although these recommendations are not mandatory, the CSB works with government and private entities to advocate for their implementation. Recommendations are considered “open” while in progress and “closed” when the CSB determines that sufficient evidence of appropriate action has been provided. According to the CSB’s website as of August 1, 2022, the CSB has made 869 recommendations since 1998 and closed 782, or 90 percent.

## **Historical Challenges**

In July 2000, two years after the CSB began operations, the U.S. Government Accountability Office identified management and operational challenges at the CSB.<sup>3</sup> For example, the Government Accountability Office found that investigation staff vacancies persisted and that progress had been slow in initiating and completing investigations. Further, in past OIG reports, we noted that the CSB had experienced chronic leadership issues, such as tension among board members and disputes over the chairperson’s authority. Most recently, we identified the inability to seat new board members as the biggest risk to CSB operations.<sup>4</sup> This special review highlights that many of the same or similar challenges continue.

## **Scope and Methodology**

We conducted this special review from June through July 2022 in accordance with the *Quality Standards for Federal Offices of Inspector General*, issued by the Council of the Inspectors General on Integrity and Efficiency. Those standards require that our work adhere to the highest ethical principles of integrity, objectivity, confidentiality, independence, and professional judgement.

This multidisciplinary review examined the CSB’s capabilities to effectively administer Agency programs and operations, including staffing levels, attrition, and leadership. We interviewed 36 percent, or 12, of the 33 CSB employees who were onboard at the time of our fieldwork, including board members, managers, and staff.<sup>5</sup> We also conducted a survey of all CSB employees to gather their perspectives on a variety of issues, including work environment and impediments to achieving the CSB’s mission. The results of this survey are detailed in Appendix A. We received complete survey responses from 30 of the 33 CSB employees onboard at the time of survey issuance, a 91 percent response rate. We reviewed relevant documentation, including budget requests, performance and accountability reports, workforce planning documents, and staffing data, as well as the applicable legal authorities governing board voting and the division of authorities between the CSB board and the then-chairperson.

## **CSB Staffing, Resources, and Other Workplace Issues**

### ***The CSB Is Challenged by Staffing and Attrition Issues***

The CSB has been unable to recruit and retain a full workforce and expend the resources Congress has allocated to it. In FY 2021, the CSB was allocated 38 FTEs, including professional staff and board members, as shown in Table 1. During FY 2021, the CSB had nine professional staff departures, including its director of human resources, director of administration, general counsel, chief information officer, and

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<sup>3</sup> Government Accountability Office, *Improved Policies and Additional Oversight Are Needed*, Report No. GAO/RSED-00-192, July 2000.

<sup>4</sup> EPA OIG, *CSB’s FY 2022 Top Management Challenges*, Report No. 22-N-0003, November 10, 2021.

<sup>5</sup> Despite the OIG’s repeated requests, Lemos did not make herself available for an interview.

records management specialist. This left the Agency with 29 employees at the end of FY 2021. Within the last two years, the CSB has only issued seven vacancy announcements, and as of June 30, 2022, it still had nine staff vacancies. It is unlikely that the CSB will be fully staffed before the fiscal year ends on September 30, 2022.

Understaffing is a historical problem at the CSB. Table 1 shows that since FY 2018, Congress has allocated the CSB significantly more FTEs than it has been able to bring on board, as well as more resources than it has been able to expend. For example, in FY 2021, the CSB was allocated 24 percent more FTEs and 17 percent more resources than it was able to expend. By comparison, for FY 2021 at the U.S. Environmental Protection Agency, the difference between allocated and expended FTEs and resources was less than 1 percent. Table 1 also highlights that since FY 2018 the CSB has not operated with a full board of five members, as specified by law.

**Table 1: Historical snapshot of CSB resources**

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022 (as of 6/30/22)
Budget allocation	\$11 M	\$12 M	\$12 M	\$12 M	\$13.4 M
Net outlays	\$10.6 M	\$9.9 M	\$10.5 M	\$10 M	\$7.9 M
Difference between budget allocation and net outlays (percentage)	\$0.4 M (4%)	\$2.1 M (18%)	\$1.5 M (13%)	\$2.0 M (17%)	*
Budgeted/allocated FTEs	48	47	40	38	44
No. of actual FTEs at end of period	32	31	34	29	33
No. of professional staff	29	28	33	28	30
No. of board members	3	3	1	1	3**
Separations—professional staff	9	6	3	9	4
Separations—board members	1	0	3	0	0
Total vacancies at end of period, or difference between allocated FTEs and actual FTEs (percentage)	16 (33%)	16 (34%)	6 (15%)	9 (24%)	11 (25%)

Source: The CSB. (EPA OIG table)

\* Not provided since fiscal year has not yet ended.

\*\* FY 2022 data are as of June 30, 2022; thus, the number includes the then-chairperson, who resigned on July 22, 2022.

According to interviews and survey results, bringing new staff on board and retaining current staff have been challenging. CSB attrition rates in FY 2019, FY 2020, and FY 2021 were 19 percent, 18 percent, and 29 percent, respectively, for an average of 22 percent over these three years.<sup>6</sup> For comparison, the EPA’s average annual attrition rate FY 2019–2021 was 7 percent. The CSB’s inability to hire and retain staff contributes to the large gap between the resources allocated to the CSB and the resources it has been able to expend. This gap has averaged 16 percent of the CSB’s budget FY 2019–2021, as shown in row three of Table 1.<sup>7</sup>

<sup>6</sup> The attrition rate is calculated as the total number of separations divided by the average of the number of employees, including board members, at the beginning and end of the fiscal year.

<sup>7</sup> Another reason the CSB provided for not expending all its allocated resources has to do with the obligated money needed for some contracts that may not ultimately be used. For example, the CSB uses contracts to manage external expertise in areas such as blast analysis or metallurgy. Based on the chemical accidents that occur over the year, these services may not ultimately be needed but the resources must still be obligated.

Several common explanations for staffing issues at the CSB were identified from our interviews and OIG survey results, including:

- Leadership indecision and top-down control on all hiring matters and priorities.
- Low morale from current staff since the then-chairperson arrived at the Agency.
- Lack of leadership and communication from senior management.
- Workplace culture/toxic environment.
- Missing staff in key positions, such as chemical incident investigators and the general counsel.
- Inability to recruit and retain investigators at lower grade-level positions.
- Lack of redundancy for key positions, such as human resources, given Agency size.
- Workload/report backlog.

CSB leadership has called mission-critical chemical incident investigators the “lifeblood of the Agency.” But according to CSB staff, these positions have been chronically challenging both to fill and to retain. Since we initiated our review on June 16, 2022, two chemical incident investigators announced their resignations. As of August 1, 2022, the CSB had 12 chemical incident investigators working on 17 open investigations; there are five remaining investigator vacancies for FY 2022. Five additional investigator vacancies have been authorized for FY 2023. Limited staffing levels have impeded progress in concluding investigations and issuing reports. In interviews and survey responses, employees cited other factors described in the report backlog section below, such as lack of training and frequently changing internal processes, as impediments to completing investigations. Survey respondents cited staff turnover as contributing to reports stagnating, as it is difficult for a new employee to pick up a report midway through.

### Status of Key Positions and Vacancies

Many key CSB leadership positions remain vacant, some for many years. These vacancies pose challenges to the CSB’s ability to ensure a shared vision for the Agency and to effectively administer Agency operations:

- *General counsel.* The general counsel acts as the chief legal officer for the Agency and directs all necessary legal functions and operations. At the time of our fieldwork, this position had been vacant since November 2020. The board only recently appointed an acting general counsel on July 27, 2022.<sup>8</sup> At the time of our fieldwork, no permanent general counsel position vacancy had been announced.
- *Managing director.* The managing director is supposed to function as the principal day-to-day operating management official of the CSB. The position directly supervises the directors of administration and investigations and exercises general supervision over all civil service personnel within those component offices. The CSB did not have a managing director from July 2019 to February 2022. The last managing director started in February 2022 and abruptly resigned in May 2022, citing differences with senior staff and other internal conflicts. At the time of our fieldwork, the position remained vacant and the executive counsel had been serving as acting managing director; there has not been a vacancy announcement for backfilling the position.
- *Director of administration.* The director of administration has responsibility for overseeing the work of the Finance, Human Resources, and IT Divisions. The position has been vacant since February 2021. An acting director of administration was recently appointed on July 27, 2022. As

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<sup>8</sup> Prior to this appointment, the executive counsel asserted that he was serving as acting general counsel, but the OIG received conflicting information on this point.

of August 1, 2022, the recruitment package for the director of administration vacancy had been developed and, according to the CSB, the vacancy announcement is scheduled to be posted soon.

- *Chief information officer, or CIO.* The CIO has responsibility for leading efforts to provide IT support to the entire Agency and to ensure CSB compliance with applicable IT security requirements. The position has been vacant since August 2021 when the then-CIO resigned. Since then, the CSB’s IT staff has consisted of one employee, the deputy CIO. The CIO vacancy was announced in January 2022. According to the CSB, a candidate has been selected but has not been onboarded.
- *Records management specialist.* A records management specialist has responsibility for maintaining and storing the Agency’s records in accordance with relevant laws. This position has been vacant since June 2021. At the time of our fieldwork, no individual was identified as taking on the duties of the records management specialist. No announcement had been made to fill the position.

The latest CSB succession plan provided to the OIG was from 2017 and appears to be outdated. For example, it shows deputies acting in the general counsel, director of administration, and CIO roles. However, at the time of our fieldwork, only the deputy CIO role was filled, and the deputy general counsel and deputy director of administration positions no longer existed. There is also no reference in the plan to the executive counsel taking on the general counsel or managing director roles. Further, the CSB was working on a Workforce Analysis Report that would examine hiring, retention, and attrition. The report would include data on overall workforce strength and mission-critical occupations.

### Report Backlog and Other Challenges Threaten the CSB’s Capabilities

Unclear internal processes and staffing issues have caused challenges affecting the CSB’s ability to conduct and support timely investigations. As shown in Table 2, the CSB completed one investigation in FY 2020, three in FY 2021, and three in FY 2022, while there were 16, 13, and 17 backlogged investigations waiting to be closed in FY 2020, FY 2021, and FY 2022, respectively. Table 2 summarizes this information, as well as data on the number of safety recommendations issued.

**Table 2: CSB investigative report and recommendations snapshot**

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022 (as of 6/30/22)
Ongoing investigations/backlog	9	6	16	13	17
New incident deployments*	4	4	7	5	0
Completed investigations	3	3	1	3	3
Reports issued	3	3	1	3	0
Safety recommendations issued	11	26	0	20	0

Source: The CSB. (EPA OIG table)

\* New incident deployments are not included in the number of ongoing investigations/backlog.

According to the CSB’s Office of Investigations and Recommendations, the average time to complete an investigation in the past five years, including the issuance of an investigative report, was 22 months. One CSB employee noted that every day a report is delayed is a day that vital information is being withheld that could help a company improve its safety measures and reduce deaths. According to staff interviews, the delays and bottlenecks experienced with issuing reports have led to the CSB no longer providing factual updates, another type of product the CSB used to issue as part of the investigative report process.

The purpose of these updates was to timely communicate the initial facts associated with an investigation that would be helpful to the company and community and would enable them to start acting prior to the issuance of the final investigation report, which may take many years to complete. The last [factual update](#) on the CSB's website was for the November 2019 TPC Group explosion and fire and was issued in October 2020. The final investigative report for this incident was pending as of July 2022.

Staff interviews and survey results highlighted key issues impacting the CSB's ability to conduct investigations and issue timely reports, including:

- The report process is not managed efficiently, and new processes were imposed that impeded communication between senior leadership and staff.
- Communication about format and process to staff writing reports was frustrating, and expectations of senior leadership were not clear.
- Board Order 40 outlines the investigative process, including report development, but it is outdated and does not reflect changes to processes that senior leadership put in place.
- A typical investigation takes 12–24 months to complete. However, some reports required another 18 months for revision to adhere to new requirements, which changed frequently.
- Staff cited silos between offices as well as between staff and senior leaders as impediments to the timely issuance of reports. Staff noted that silos were not necessary given that the CSB is such a small organization.
- Adequate training is lacking, and new staff are not familiar with CSB processes.

Staff noted that leadership did not take action to address these challenges; however, with recent changes in board members and senior leadership, they were optimistic that they would be addressed.

The Office of Investigations and Recommendations' new goal, as of July 2022, is to reduce the average time to complete investigations to 18 months by revising the report review process. According to CSB staff interviews, CSB leadership revised the report review process and investigative report structure in Spring 2021 to mirror the National Transportation Safety Board's process and structure. However, leadership did not provide formal documentation for major changes to the process, such as an expanded legal review, and did not update applicable board orders to reflect the changes. Additionally, leadership has not finalized standards that would describe the expectations of the legal review. Staff noted that having written guidance and a more static process would help clarify expectations.

At a public meeting on July 29, 2022, CSB board members recognized the substantial backlog, "probably the biggest in the history of the Agency," and stated that the board is committed to reducing it. The board also announced the CSB's plan to resume issuing factual updates on its investigations in progress. On August 2, 2022, the CSB published an [investigation closure plan](#) that included estimated semiannual calendar periods for when specific incident investigations would be closed.

### Other Impacts to CSB Capabilities

A lack of internal processes has also affected the CSB's review of incidents reported under the Accidental Release Reporting rule. These are incidents that met the rule's reporting criteria and that the CSB decided not to conduct a full investigation of, but that may still merit limited investigation and reporting. According

to our interviews, the CSB lacks a formal process to evaluate these incidents, as well as a formal process for finalizing the products when a limited investigation is conducted.<sup>9</sup> At the time of our fieldwork, over 150 incidents had been reported since March 2020, the date the Accidental Release Reporting rule took effect, and the CSB had not closed out any of them. The Agency had conducted limited investigations of some of the incidents and created some draft products but had not made any decisions on whether to finalize and issue such products.

Finally, understaffing has impacted the CSB's IT capabilities. At the time of the previous CIO's departure in August 2021, CSB senior leadership was notified that the CSB was in imminent danger of unrecoverable IT errors and that a single point of failure within the IT department existed. The cause was described as a history of chronic understaffing, which the CIO's departure underscored. According to our interviews, the CSB has not fully addressed the concerns raised in August 2021, which has affected the CSB's IT capabilities and Agency operations. For example, at times the IT servers have not been timely backed up and replaced, and necessary security scanning and patching procedures have not been performed. Additionally, many CSB field staff have old laptops that need to be replaced, and investigators have encountered issues accessing their files. Furthermore, the OIG's ongoing audit of the CSB's cybersecurity program, [initiated](#) on June 14, 2022, has identified issues that may have significant impact on the confidentiality, integrity, and availability of the Agency's IT resources. These specific issues will be reported on separately.

### The CSB Workplace Continues to Struggle with Recurring Issues

The OIG's survey results echo recurring issues raised in past CSB employee surveys on workplace climate. The CSB's most recently obtained results from the Office of Personnel Management's Federal Employee Viewpoint Survey were consistent with the results of our review.<sup>10</sup> The top three items with the highest percentage of *negative* responses from the FY 2019 Federal Employee Viewpoint Survey were:

- My work unit is able to recruit people with the right skills. (55 percent)
- Managers promote communication among different work units. (55 percent)
- How satisfied are you with the information you receive from management on what's going on in your organization? (54 percent)

Respondents to the OIG's 2022 survey cited senior leadership most frequently (14 of 30) as the *top challenge to their ability to get work done*. Other frequently cited categories were the report review process (four of 30) and personnel resources (three of 30). See Appendix A, Question 4 for the full results. Leadership was also cited as the *most critical issue that needed to be addressed to improve the CSB*, with 50 percent (15 of 30) respondents citing that as the top concern in response to an open-ended survey question. Internal processes/bureaucracy and staffing/recruitment were the two other most frequently cited categories of critical issues, as shown in Table 3 and Appendix A, Question 8.

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<sup>9</sup> As described to the OIG, the goal of these types of investigations, referred to as "desk investigations," is to provide useful safety information and lessons to the people who can use such data to improve safety at their facilities. The information can also be used to develop a public summary of the events, additional safety alerts, periodic summaries of top themes or developing trends, and other safety advocacy products.

<sup>10</sup> Under 5 C.F.R. part 250, subpart C, executive agencies are required to conduct an annual survey of their employees. The Office of Personnel Management's Federal Employee Viewpoint Survey fulfills this obligation for agencies that participate. The CSB participated in the Federal Employee Viewpoint Survey in FY 2019, FY 2020, and FY 2022 but did not participate in FY 2021. The CSB was also unable to locate CSB-specific Federal Employee Viewpoint Survey results for FY 2020.

**Table 3: Categories of responses to the OIG’s survey question on the most critical issues needing to be addressed by the CSB**

	Number	Percent
Leadership	15	50.00
Internal processes/bureaucracy	6	20.00
Staffing/recruitment	5	16.67
Communication	3	10.00
Morale	1	3.33
<b>Total respondents</b>	<b>30</b>	<b>100.00</b>

Source: EPA OIG survey results. See Appendix A, Question 8. (EPA OIG table)

In terms of job satisfaction, 66 percent of respondents (20 of 30) were satisfied with their job and 33 percent (ten of 30) were not satisfied. Of the ten respondents who were not satisfied, leadership was the most frequent factor cited (six of ten). See Appendix A, Questions 1 and 2. Further, while 53 percent of respondents (16 of 30) plan to be working for the Agency in two years, 47 percent selected “No” or “Not sure.” See Appendix A, Question 7. This may be a result of the state of flux CSB employees are facing, given the leadership uncertainty, internal process changes, staffing, and other issues identified during our review.

More positively, as described in Table 4, CSB respondents to the OIG’s survey were consistent in describing the people and the importance of the mission as the most positive aspects of their work or workplace that contribute to the CSB achieving its mission.

**Table 4: Categories of responses to the OIG’s survey question on the most positive aspects that contribute to the CSB achieving its mission**

	Number	Percent
People/team	12	40.00
Mission/work	12	40.00
Work flexibility/remote work	2	6.67
Other	4	13.33
<b>Total respondents</b>	<b>30</b>	<b>100.00</b>

Source: EPA OIG survey results. See Appendix A, Question 9. (EPA OIG table)

## The Conflict Over the Scope of the Board’s Authority

In reviewing the CSB’s ability to administer its programs, we examined a conflict that arose between then-Chairperson Lemos and other board members regarding the division of authority between the chairperson and board. When two new members were appointed to the board in February 2022, Lemos took the position that the board had no role in certain executive and administrative functions of the Agency, such as personnel matters and the proposed budget, and that the chairperson alone had responsibility for such matters. The new members disagreed with that position and attempted to work with Lemos to broaden the board’s integration into the functioning of the Agency, but Lemos opposed their efforts. The issue reached a turning point on May 17, 2022, when the board voted to revise the CSB’s Board Order 28, a key CSB policy setting forth the responsibilities of the chairperson and the board. The voting was suspended when Lemos voted to calendar the issue for discussion at a public meeting. The OIG received complaints of procedural irregularities in the voting. Additionally, in her resignation letter, Lemos alleged that the “recent priorities of the Board” had negatively affected the Agency’s ability to focus on its mission. We conducted a targeted review to determine whether the board vote was conducted in accordance with applicable voting rules and federal regulations. We also analyzed whether the proposed revisions to Board

Order 28 were consistent with the CSB's enabling statute and other relevant authorities governing the allocation of responsibilities between the chairperson and the board.

As explained below, the suspension of the board vote was consistent with 40 C.F.R. § 1600.5(b), and there is no inconsistency between the revision of Board Order 28 and the CSB's enabling statute. The issues examined here were resolved after Lemos's departure from the Agency on July 22, 2022, and the board's formal adoption of the revised Board Order 28.

### **Statutory and Regulatory Background**

Under the CSB's enabling statute, the board is given a range of powers and responsibilities relating to the investigation, monitoring, and reporting of accidental chemical releases from stationary sources. 42 U.S.C. § 7412(r)(6)(C)–(S). The board is also given ultimate responsibility for the functioning of the Agency. *Id.* § 7412(r)(6)(N) (“The Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties.”). The enabling statute also created the position of chairperson to serve as chief executive officer of the Agency and to “exercise the executive and administrative functions of the board.” 42 U.S.C. § 7412(r)(6)(B).

Congress left vague the division of responsibilities between the chairperson and the board, but the Justice Department's Office of Legal Counsel, or OLC, analyzed the question in a June 2000 memorandum. *See* “Division of Powers and Responsibilities Between the Chairperson of the Chemical Safety and Hazard Investigation Board and the Board as a Whole,” 24 Op. O.L.C. 102 (June 26, 2000) (OLC Memorandum). The OLC concluded that the existence of the chairperson position did not preclude the board from involvement in administrative matters affecting the Agency. *Id.* The board's power to administer the Agency included not just high-level policy matters but also “any number of Board activities or day-to-day aspects of Board business.” *Id.* at 105. And where there is a dispute between the board and chairperson as to the division of responsibilities, the board has the final word: “In disputes over the allocation of authority in specific instances, the Board's decision controls, as long as it is not arbitrary or unreasonable.” *Id.* at 103.

Board votes are generally to take place in public meetings subject to the Government in the Sunshine Act. 40 C.F.R. § 1600.5(b). However, federal regulations set forth a process for voting in writing outside the context of board meetings, a process that is called notation voting. *Id.* In notation voting, if a member votes to “calendar” an item for discussion at a public meeting, then the board “must consider the calendared notation item at a public meeting of the Board” within 90 days of the original vote. *Id.* Despite this language, CSB Board Order 1, “Board Quorum and Voting,” allows for a notation item to be marked as requiring “urgent action.” § 8(b)(2). Urgent notation items are considered adopted or disapproved as soon as the affirmative or negative votes of a majority of the participating board members are received by the Office of General Counsel. *Id.* § 8(b)(3)(b).

### **The Conflict**

Two new board members, Dr. Sylvia Johnson and Mr. Steve Owens, began their terms on February 3, 2022. According to Johnson and Owens, Lemos made it clear at the start of their tenure that she had a narrow view of board members' responsibilities. They both described how Lemos told them that the members were limited to three tasks: voting on recommendations, voting on investigative reports, and advocating for the Agency. They were not to have a vote on matters such as budgeting or staffing decisions.

From February through April 2022, the board members discussed revising Board Order 28 with Lemos and the CSB's executive counsel to expand the board's authority to include matters involving Agency

operations.<sup>11</sup> According to Owens and Johnson, the executive counsel advised that such proposed revisions were a “nonstarter” for Lemos. The new board members told us that, by early May 2022, they had concluded that they were not making progress on the issue. On May 6, 2022, Owens submitted the revised board order to the Office of General Counsel to be voted on by the board using the urgent notation process. It was docketed as Notation Item 2022-31.

The proposed revision of Board Order 28 made several changes to the board’s oversight of Agency operations. It gave the board approval authority over the CSB’s proposed budget, strategic plan, and the use and expenditure of funds exceeding \$50,000. It gave the board the authority to vote on the appointment and removal of key staff members and took away the chairperson’s authority to issue reprimands to fellow board members for misconduct. The revision also barred the chairperson or any other board member from acting alone on any matter requiring a vote of the board as a whole.

On May 17, 2022, Notation Item 2022-31 was circulated for voting, and the two new board members submitted votes to approve the item. Lemos submitted her vote a few hours later, and she voted to calendar the item for discussion at a public meeting, pursuant to section 8(b)(1)(b) of Board Order 1. In the email transmitting her vote, Lemos stated that she had concerns about the procedure used for the voting and about the substance of the notation item. The CSB’s executive counsel informed the board that because Lemos had voted to calendar the matter, the voting was “suspended.”

## Analysis

The suspension of voting on Notation Item 2022-31 was consistent with the federal regulation governing CSB voting, 40 C.F.R. § 1600.5(b). While Board Order 1’s provision for urgent notation voting states that an item is adopted once a majority of the board members vote to approve, those procedures appear to conflict with the federal regulation’s requirement that voting is to be suspended when a member votes to calendar an item. As Board Order 1 explicitly states that the provisions in 40 C.F.R. part 1600 control when in conflict with the board order’s provisions, the suspension of voting on Notation Item 2022-31 was consistent with section 1600.5(b).<sup>12</sup>

The revisions to the board’s and chairperson’s responsibilities in the newly adopted Board Order 28 are consistent with the CSB’s enabling statute and the OLC Memorandum. The allocation of responsibilities in the revised order falls within the board’s broad authority to decide the scope of its duties and functions. The revision restores several areas where the board had previously exercised authority, including final approval authority for proposed budgets (Revised Board Order 28 § 6(b)(2)), strategic plans (*id.* § 9(e)), and expenditures exceeding \$50,000 (*id.* § 6(b)(1)). The elimination of the chairperson’s ability to issue letters of reprimand to fellow board members is consistent with the OLC’s determination that the chairperson is subject to board oversight, as is the requirement of board approval for the appointment or removal of key CSB personnel and the prohibition on a single member taking certain actions unilaterally. *Id.* § 4.

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<sup>11</sup> The proposed revision of Board Order 28 included giving back to the board certain responsibilities that had been taken away in Lemos’s April 2021 revision of the order, including approval authority for proposed budgets, strategic plans, and expenditures over \$50,000. The proposed revision also sought to take away the chairperson’s power to issue letters of reprimand to board members for misconduct.

<sup>12</sup> At the time of the voting, the executive counsel informed the Office of General Counsel that he would not sign off on a board action report, as required by Board Order 1, section 8(d), giving notification to the members that Notation Item 2022-31 had been adopted. However, on July 22, 2022, the day of Lemos’s departure from the Agency, the executive counsel signed the board action report and the May 2022 revision of Board Order 28 was considered adopted. The justification for reversing the previous suspension of Notation Item 2022-31 is beyond the scope of this review.

Although the revisions to Board Order 28 appear to be within the board's authority, certain provisions may prove to be impractical in the event the board ever finds itself with only a single member. Under revised Board Order 28, whenever the board consists of a single member, that member may not take any actions or give any approvals where the order requires approval of the full board. *Id.* A lone board member would thus lack the authority to appoint or remove key Agency personnel, including the heads of major administrative units of the Agency (*id.* § 6(a)(1)); to approve contracts in amounts greater than \$50,000 (*id.* § 6(b)(1)); to approve or submit the Agency's proposed budget (*id.* § 6(b)(2)); to approve investigative reports (*id.* § 8(a)); or to amend or revoke board orders (*id.* § 8(l)). These restrictions could present obstacles for keeping the Agency operating effectively during a time when the Agency has a single board member.

## Conclusion

Vacancies in key positions and an inability to fully use the resources Congress allocated to it pose challenges for the CSB. These staffing issues, along with unclear internal investigative processes have led to investigative backlogs that impede the CSB's ability to accomplish its mission. CSB staff also identified CSB leadership as the top challenge in getting their work done and the most critical issue that the Agency needs to address. We highlight the following potential action items for the board to consider as it prioritizes the CSB's work and develops the CSB's new strategic plan:

- Improve the staff planning process to fully use allocated resources.
- Refine human resources capabilities to recruit and onboard staff in a timely manner.
- Fill key staffing vacancies in the Office of General Counsel, IT, and investigations.
- Update the CSB's succession plan to avoid mission interruptions after staff departures.
- Update internal procedures on the report review process to provide clarity to all employees, especially new investigators.
- Establish internal procedures and processes for other types of CSB products, such as desk investigations and factual updates.
- Ensure yearly participation in the Office of Personnel Management's Federal Employee Viewpoint Survey to solicit employee feedback.

Further, the conflict between the then-chairperson and the board on the division of responsibilities and authority over Agency operations has now been resolved. While the revised Board Order 28's expansion of the board's oversight responsibilities is consistent with the CSB's enabling statute and guidance from OLC, certain provisions may prove to be impractical in the event the board ever finds itself with only a single member.

## Data from the OIG's 2022 CSB Employee Pulse Survey

As part of our review of the CSB's capabilities to effectively administer its programs and operations, we sent out a survey to all 33 CSB employees who were employed at the Agency as of June 30, 2022. The survey opened on June 30, 2022, and closed on July 13, 2022. We received 30 complete responses, which is a 91 percent response rate. Responses were provided to us on an anonymous basis, with no identifying information collected or associated with individual responses. Aggregate quantitative data is provided below. We have omitted the full opened-ended responses to protect confidentiality.

All survey respondents were provided this question:

### Question 1: Overall, are you satisfied with your job?

	Number	Percent
Yes	20	66.67
No	10	33.33
<b>Total respondents</b>	<b>30</b>	<b>100.00</b>

The ten survey respondents who selected "No" were provided the following question:

### Question 2: With which one factor are you the most unsatisfied?

	Number	Percent
Workload	1	10.00
Work environment		
General Schedule-level management	1	10.00
Senior Executive Service or board member-level senior leadership	6	60.00
Travel funding resources		
Personnel resources		
Report review process		
Other	2	20.00
<b>Total respondents</b>	<b>10</b>	<b>100.00</b>

All survey respondents were provided questions 3 through 10:

### Question 3: Do you believe the CSB has the necessary resources, such as staff and travel funds, to accomplish its mission?

	Number	Percent
Yes	8	26.67
No	17	56.67
Not sure	5	16.66
<b>Total respondents</b>	<b>30</b>	<b>100.00</b>

**Question 4: Which one of these factors, if any, is the top challenge to your ability to get work done?**

	Number	Percent
Work environment		
General Schedule-level management	2	6.67
Senior Executive Service or board member-level senior leadership	14	46.67
Travel funding resources		
Personnel resources	3	10.00
Report review process	4	13.33
Other	7	23.33
Not applicable		
<b>Total respondents</b>	<b>30</b>	<b>100.00</b>

**Question 5: Are you likely to recommend the CSB as an employer?**

	Number	Percent
Yes	12	40.00
No	18	60.00
<b>Total respondents</b>	<b>30</b>	<b>100.00</b>

**Question 6: How long have you been employed with the CSB?**

	Number	Percent
Fewer than 4 years	18	60.00
4-6 years	3	10.00
Greater than 7 years	9	30.00
<b>Total respondents</b>	<b>30</b>	<b>100.00</b>

**Question 7: Do you plan to be working for the CSB in two years?**

	Number	Percent
Yes	16	53.33
No	3	10.00
Not sure	11	36.67
<b>Total respondents</b>	<b>30</b>	<b>100.00</b>

The OIG categorized the open-ended responses provided to questions 8 and 9 in the below tables. We have omitted the full responses to preserve confidentiality.

**Question 8: What is the most critical issue that needs to be addressed to improve the CSB?**

	Number	Percent
Leadership	15	50.00
Internal processes/bureaucracy	6	20.00
Staffing/recruitment	5	16.67
Communication	3	10.00
Morale	1	3.33
<b>Total respondents</b>	<b>30</b>	<b>100.00</b>

**Question 9: What are the most positive aspects of your work or workplace that contribute to the CSB achieving its mission?**

	Number	Percent
People/team	12	40.00
Mission/work	12	40.00
Work flexibility/remote work	2	6.67
Other	4	13.33
<b>Total respondents</b>	<b>30</b>	<b>100.00</b>

**Question 10: Please share any additional information about your answers above or matters related to this review.**

	Number	Percent
Answered	20	66.67
Not answered	10	33.33
<b>Total respondents</b>	<b>30</b>	<b>100.00</b>
<i>Responses omitted to preserve confidentiality.</i>		