



June 19, 2015

The Honorable James Inhofe  
Chairman  
Senate Committee on Environment and Public Works  
410 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Barbara Boxer  
Ranking Member  
Senate Committee on Environment and Public Works  
456 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Inhofe and Ranking Member Boxer:

The Project On Government Oversight is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government.

POGO has watched with concern as internal discord has arisen at the U.S. Chemical Safety Board (CSB), hindering the agency's effectiveness. As you know, the CSB's last chairperson resigned under pressure, and this month the Board itself will fall to just two members when Board Member Mark Griffon's term comes to an end.

It now appears this discord has reached a critical point. According to a report by *Government Executive*, Board Member Rick Engler recently sent a note to the staff announcing that the Board has delegated him with interim executive and administrative authority, pursuant to Board Order 003.<sup>1</sup> Citing sources familiar with the proceedings, the report said that Griffon and Engler approved this decision through an urgent, private vote,<sup>2</sup> over the objections of the third Board member, Manny Ehrlich. Furthermore, the report said, Griffon and Engler voted to remove the 180-day expiration date contained in Board Order 003, meaning Engler can continue to act with

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<sup>1</sup> U.S. Chemical Safety and Hazard Investigation Board, *Interim Operating Protocol During a Vacancy in the Position of Chairperson*, CSB Order 003. [http://www.csb.gov/assets/Record/Board\\_Order\\_003-Chairman\\_Vacancy.pdf](http://www.csb.gov/assets/Record/Board_Order_003-Chairman_Vacancy.pdf) (Downloaded June 17, 2015)

<sup>2</sup> Memorandum from Kara Wenzel, Assistant General Counsel, Chemical Safety and Hazard Investigation Board, to CSB Board Members, regarding "Urgent Notation Item 2015-39," June 17, 2015. [http://www.csb.gov/assets/Record/BAR\\_Notation\\_Item\\_2015-39.pdf](http://www.csb.gov/assets/Record/BAR_Notation_Item_2015-39.pdf) (Downloaded June 18, 2015)

this delegated authority until the Senate confirms a presidentially appointed chairperson to head the agency.<sup>3</sup>

Jeff Ruch, Executive Director of Public Employees for Environmental Responsibility (PEER), told *Government Executive* this move amounts to a “governance takeover without public notice, and with truncated public comment and the absence of any quorum.”<sup>4</sup> In a public comment on a recently proposed CSB rule, PEER argued that the rule was “not promulgated in good faith” because there was no chairperson in place. PEER also raised concerns that the two CSB Board members who supported the rule “wish to negate the remaining authorities of a Presidentially-appointed chair, or allow themselves to effectively chair the agency without receiving a Presidential appointment to do so.”<sup>5</sup>

POGO has learned that the CSB’s General Counsel recently advised Board Member Griffon that he planned to consult with the Justice Department’s Office of Legal Counsel about the governance dispute. A few days later, Board Member Engler placed the General Counsel and the CSB’s Managing Director on administrative leave, according to an email posted by PEER.<sup>6</sup> We are concerned that the timing of this administrative action was more than mere coincidence.

Simply put, the CSB is an agency in crisis. We fear that the gridlock among CSB Board Members will only further jeopardize the morale and retention of the agency’s scientists and engineers. While many of the problems that have plagued the agency cannot be fixed overnight, new political leadership, particularly at the chair level, will go a long way to turn things around. In that light, we urge the Committee to promptly confirm a new chairperson who can work to resolve the CSB’s challenges and restore its vigor. New blood will hopefully help to resolve the toxic atmosphere at the agency so that the CSB can move away from the power grabs and political infighting and refocus on its core mission.

The CSB plays an indispensable role in investigating the causes of major chemical accidents and reporting its findings and recommendations to Congress, other executive branch agencies, and companies. The CSB currently has investigations underway in multiple states where accidents have killed or injured workers, emergency responders, and members of the public, and released hazardous substances into communities. This vital work must be overseen by a confirmed chairperson who has the trust of Congress, CSB staff, and the various groups that have a stake in the agency’s mission.

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<sup>3</sup> Charles S. Clark, “Disputed Power Maneuver Divides Chemical Safety Board,” *Government Executive*, June 15, 2015. <http://www.govexec.com/management/2015/06/disputed-power-maneuver-divides-chemical-safety-board/115339/> (Downloaded June 17, 2015) (Hereinafter “Disputed Power Maneuver Divides Chemical Safety Board”)

<sup>4</sup> “Disputed Power Maneuver Divides Chemical Safety Board”

<sup>5</sup> Public Comment from Jeff Ruch, Executive Director, Public Employees for Environmental Responsibility, to Kara Wenzel, Assistant General Counsel, Chemical Safety and Hazard Investigation Board, regarding proposed rule entitled “Organization and Functions of the Chemical Safety and Hazard Investigation Board” (80 FR 27276), June 12, 2015.

<sup>6</sup> Public Employees for Environmental Responsibility, “COUP DÉTAT [sic] AND PURGE BEFALLS CHEMICAL SAFETY BOARD,” June 18, 2015. <http://www.peer.org/news/news-releases/coup-d%E2%80%99%C3%A9tat-and-purge-befalls-chemical-safety-board.html> (Downloaded June 18, 2015)

In March 2015, the President nominated Vanessa Allen Sutherland, the chief counsel of the Pipeline and Hazardous Materials Safety Administration, to be the new chairperson of the CSB. Your Committee held a hearing to consider her nomination on April 22. Unless there is reason to doubt her qualifications, we urge the Committee to promptly report Ms. Sutherland's nomination to the full Senate for consideration and, we hope, confirmation in the next several weeks.

Sincerely,

A handwritten signature in cursive script that reads "Danielle Brian".

Danielle Brian  
Executive Director

cc: White House Office of Presidential Personnel