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CHEMICAL SAFETY BOARD

Recent Organizational Changes and Status of Operations

Statement for the Record by
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Mr. Chairman and Members of the Subcommittee:

We appreciate this opportunity to provide a statement for the record for use in the Subcommittee's hearing on the fiscal year 2001 budget request for the Chemical Safety and Hazard Investigation Board (the Board), an independent agency. Currently in its third year of operation, the Board's mission is to enhance the health and safety of the public, workers, and the environment by determining the causes of accidental chemical releases and using these findings to promote preventive actions by the private and public sectors. The authorizing statute provides for five Board members, including a chairperson, all appointed by the President. The staff includes investigators, attorneys, and program analysts. The Board is required to submit its budget request to the Congress and the Office of Management and Budget (OMB) concurrently. For fiscal year 2001, the Board has requested $9 million, an increase of $1 million over the prior year's funding. However, in the President's Budget, OMB requests $8 million for the Board.

Our statement is based on our work for Senators Bond and Lautenberg. As agreed with their staff, this work is focused on determining the status of the Board's (1) organization, (2) operations, and (3) efforts to update and develop plans, policies, and procedures for accomplishing the Board's mission. Our statement today reflects our preliminary findings. We expect to complete our work and issue a final report in June 2000.

In summary, to date we have found the following:

The Board is currently operating under a significantly different organizational structure than was in effect during most of its first 2 years of operation. This new structure requires a majority vote of the Board members for substantive management decisions and delegates some specific responsibilities, such as personnel matters, to individual Board members. In contrast, during the first 2 years of operation, the Chairman had individually made substantive management decisions. The current structure represents an interim solution to address two governance issues: the lack of an appointed chairperson since January 2000 and disagreements concerning the roles of the chairperson and Board members. In addition, the Board has implemented an

organizational realignment that dedicates an increased proportion of the Board's staffing resources to its investigations and safety programs, rather than supporting activities. However, only 7 of the 17 investigative and safety positions are currently filled because of, among other things, difficulties in recruiting qualified staff.

In terms of operations, the Board has made minimal progress in addressing the backlog of incomplete investigations that existed as of April 1999, when we last reported on the Board.[1] Specifically, since then, only one of nine outstanding investigations has been completed, and no new investigations were initiated. The Board has made progress in developing needed plans, policies, and procedures, such as those for awarding and managing contracts and selecting incidents to investigate. However, the agency's strategic plan, required by the Government Performance and Results Act, will not be completed until September 2000.

Background

Chemical incidents--the accidental release of toxic and hazardous chemicals--occur frequently and often have serious consequences. However, according to Board officials, reliable national statistics on the number of accidents, injuries, and deaths do not exist.[2] The Board is an independent agency created under the Clean Air Act Amendments of 1990.[3] The act directed the Board to (1) investigate and report on the circumstances and the probable causes of chemical incidents resulting in a fatality, serious injury, or substantial property damages; (2) recommend measures to reduce the likelihood or the consequences of such accidents and to propose corrective measures; and (3) establish regulations for reporting accidental releases.

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[1] Chemical Safety Board: Status of Implementation Efforts (GAO/T-RCED-99-167, Apr. 29, 1999).
[2] In 1999, the Board compiled statistics from five federal databases, which indicated that about 60,000 chemical incidents occur each year, resulting in about 2,300 injuries and more than 100 deaths. However, the Board recognizes there are serious limitations with these statistics and is developing a plan to determine a more reliable estimate.
[3] 42 U.S.C. section 7412 (r)(6). The Board did not become operational until 1998 because of funding constraints.

The Board has no enforcement authority and a very limited regulatory role. According to a relevant legislative committee report, the Board is modeled after the National Transportation Safety Board, which retained the lead role in investigating transportation-related chemical incidents.

The Board is to consist of five members, including a chairperson, appointed by the President and confirmed by the Senate. The chairperson is the Chief Executive Officer (CEO) of the Board. As of February 2000, the Board has four members but does not have an appointed chairperson.

To accomplish its primary mission, the Board has conducted both full-scale investigations of chemical accidents as well as limited investigations, called reviews. In our April 1999 statement for the record before the Subcommittee on Veterans Affairs, Housing and Urban Development, and Independent Agencies, Senate Committee on Appropriations, we identified a backlog of incomplete investigations. Furthermore, we determined that significant portions of the Board's actual and planned resources were dedicated to activities, such as external relations, that did not directly support the conduct of its investigations.

Status of the Board's Organization

Recently, the Board changed its management responsibilities and functional alignment to address, among other things, conflicts that had arisen over the roles and responsibilities of the Board members. Specifically, in December 1999 and January 2000, the Board developed interim solutions to important organizational issues regarding the roles and the management responsibilities of the Board members. In addition, changes in functional alignment made in 1999 and early 2000 increased the proportion of staffing resources to be allocated to the Board's primary mission of conducting investigations and reduced staffing allocated for other activities, such as external relations and information technology.

Conflicts Arose Over the Roles and
the Responsibilities of Board Members

In 1999, the Chairman and the other members of the Board disagreed over their respective roles and responsibilities for managing the agency. In essence, the Chairman asserted that he had sole control over many significant agency decisions, while the other Board members believed that making these decisions was the collective responsibility of the Board. Consequently, the Board members did not necessarily support the actions taken by the Chairman. For example, they were concerned about the initial fiscal year 2001 budget request the Chairman had sent to the appropriations committees in October 1999 that would have doubled the Board's funding to $16 million.[4] In addition, according to a Board directive, the Chairman and the Chief Operating Officer did not comply with requests from the other Board members for contracting documents that they wanted to review in order to identify the goods and services that had been provided under the contracts.[5]

The Board members asked the agency's General Counsel to provide a legal opinion on the roles and the responsibilities of Board members. In an August 1999 memorandum, the agency's Office of General Counsel concluded that, for a number of important agency functions, there should be at least some amount of shared responsibility between the Chairman and the other Board members. For example, the memorandum concluded that while the Chairman and his staff were responsible for preparing the agency's budget request, it must be approved by the full Board before being transmitted to the Congress and OMB. Similarly, the memorandum stated that while the use and the distribution of the agency's funds for contracting purposes falls within the scope of the Chairman's administrative functions, the exercise of this authority is subject to the oversight of the other Board members.

[4]On November 16, 1999, the Board members sent a letter to the appropriations committees to state their reservations about the budget request and ask that the Chairman's request be disregarded.
[5]The former Chairman told us that he did not agree with the Board members' assertion that they were denied access to contracting files.

In October 1999, the Board members accepted the General Counsel's opinion, but the Chairman requested further legal clarification before implementing the opinion. The Chairman interpreted the Board's authorizing statute as giving him authority, as CEO, over a number of agency functions, including all budget and contracting issues, subject to review only by the President and the Congress. In November 1999, the Board members requested an opinion from the Department of Justice's Office of Legal Counsel on the legal accuracy of the General Counsel's memorandum and agreed to be bound by the opinion.[6] In addition, on December 1, 1999, the Chairman also requested that the Office of Legal Counsel review the Board's authorizing statute to determine the precise roles and responsibilities of the chairperson and the Board, and he agreed to be bound by the Office's conclusion. On the same day, the Chairman and the Board members developed an agreement specifying the interim measures to be taken until the Department of Justice provided its legal opinion. This agreement expanded the roles and the responsibilities of the Board members.[7]

The Board's disagreement about its governance became a matter of public record, reported in newspapers and periodicals. In January 2000, the Chairman submitted his resignation as Chairman and CEO, effective January 12, 2000, but retained his position as a Board member. The President has not appointed a new chairperson, and the Board is currently operating without a chairperson and CEO.

On January 14, 2000, the Board members established and implemented interim operating procedures that delineate their roles and responsibilities whenever the position of chairperson is vacant. The procedures delegate specific responsibilities, such as personnel matters and allocating resources, to individual Board members. In addition, the procedures identify the specific responsibilities, including developing budgets and awarding contracts exceeding $10,000, that require a majority vote of the Board members for approval.

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[6]The former Chairman told us that prior to the November 1999 letter, he sought assistance from White House officials to help resolve the matter. The officials referred him to Justice's Office of Legal Counsel.
[7]On December 1, 1999, Senator Lautenberg sent a letter to the Board stating that his understanding of the statute creating the Board intended the Board as a whole to direct and approve the executive and administrative functions performed by the chairperson.

Current Functional Alignment Emphasizes Investigations, but Many Positions Are Vacant

During fiscal year 1999 and the early part of fiscal year 2000, the Board made organizational changes to better carry out its mission. Among other things, the Board increased the proportion of staffing resources to be allocated to its investigative function. However, because of difficulties in recruiting qualified staff, many vacancies exist in the Office of Investigations and Safety Programs. The Board also shifted several key personnel. The former Chief Operating Officer has been assigned to an interim position of special assistant to a Board member, and the General Counsel is assuming the position of Chief Operating Officer in addition to his legal responsibilities. Also, on February 2, 2000, the Board named a staff member to the position of Director of the Office of Investigations and Safety Programs.

Increased Resources Allocated for Investigations and Safety

Currently, the Board has 26 staff, including the 4 Board members and a special assistant to the Board. The Board expects to grow to a staff of 40 by the end of fiscal year 2000, with almost all of the growth in the areas of investigations and safety. Table 1 identifies the Board's offices and staffing allocations, both current and planned.

Table 1: The Board's Current and Projected Staffing Levels, by Functional Office, as of February 15, 2000

Office	Current staffing	Projected staffing by the end of fiscal year 2000
Board Members and staff	5	7[a]
Chief Operating Officer	1[b]	2
Investigations and Safety Programs	7	17
General Counsel	3[b]	3
External Relations	2	2
Information Technology Services	4	4
Administration	4	5
Total	**26**	**40**

[a]Currently, the Board has four members and one special assistant. Projected staffing includes the fifth Board member as provided by the Board's authorizing statute.
[b]The head of the Office of General Counsel also serves as the Chief Operating Officer. This individual is included only in the staffing allocated to the Office of General Counsel.

The projected staffing differs markedly from the staffing associated with the Board's budget request for fiscal year 2000. Specifically, in February 1999, the Board expected to grow to a staff level of 60 by the end of fiscal year 2000, compared with current plans to grow to 40 staff.[8] In addition, last year a greater proportion of staff was planned for organizational units that did not directly support the Board's investigative mission. For example, last year, 33 percent of the Board's projected staffing resources at the end of fiscal year 2000 was allocated to investigations and safety programs, compared with the current projections of 43 percent. Currently, the Board plans to allocate two staff to the Office of External Relations compared with the planned allocation of nine staff a year ago.

Vacancies Exist in the Investigations Area

As shown in Table 1, 10 of the 17 positions planned for the Office of Investigations and Safety Programs are vacant. Six of them are for investigators, and the other vacancies are for two program analysts, one library/researcher, and one administrative assistant.

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[8]The Board's budget request for fiscal year 2000 was $12.5 million. However, the Congress provided $8 million for fiscal year 2000. This amount does not support the planned staffing growth to 60 staff.

Board officials told us that the vacancies exist because of recruitment difficulties and the loss of two investigators. According to the Board, potential recruits with the requisite chemical safety skills--primarily from the oil and chemical process industries--are highly paid and typically located in areas far from Washington, D.C. Board officials said that it has been difficult to get prospective staff to relocate. In addition, the Board has found that it takes 6 months or longer to recruit and hire staff. This time frame for hiring staff is longer than the Board anticipated. Moreover, according to Board officials, two investigators resigned, including the Director of Investigations.

The newly constituted Board has stated its intent to focus on personnel management issues in fiscal year 2000. The Board will concentrate on retaining and retraining current staff and on hiring and training qualified professional staff. In its fiscal year 2001 budget request, the Board acknowledged that it may not be able to achieve its fiscal year 2000 hiring goals. The Board has also acknowledged that the governance problems and the management difficulties stemming from them contributed to staff turnover.[9] In addition, the Board believes that more initiatives than the agency could effectively handle were undertaken hastily in its first year of operation in an effort to quickly demonstrate that the Board was meeting its congressional mandate.

Status of the Board's Operations

The Board has not made progress in addressing its investigations backlog this past year and has not initiated a new investigation since March 1999. In addition, the more limited review program was terminated because of problems encountered in performing these reviews. The Board plans to initiate two investigations in fiscal year 2000 and four or five investigations each year beginning in fiscal year 2001.

[9]In addition to the resignations of two investigators, Board officials said that three staff from other offices have resigned.

Progress Has Been Slow in Initiating and Completing Investigations

The Board investigates accidental chemical releases resulting in a fatality, serious injury, or substantial property damage. These investigations often involve extensive site visits, evidence collection, and analytical work. The Board started five full-scale investigations in 1998 and six in 1999, although none have been initiated since March 1999. Of the 11 investigations, 3 from 1998 have been completed. One report has been completed since March 1999.

Draft reports are in process for two investigations that were started in April 1998 and March 1999. The Board expects these two reports to be issued by the end of fiscal year 2000. The Board is in the process of reviewing the other six outstanding investigations to determine whether reports should be developed or other alternatives used, such as issuing summary reports or concluding the investigations without reports. In addition to the personnel issues discussed above, the Board believes one of the causes of the investigations backlog was an over reliance on contractors to investigate accidents. According to the Board, this over reliance on contractors resulted in some poor investigations and reports because of insufficient Board staff or inadequate procedures to monitor the contractors' personnel to ensure their activities met the Board's investigative needs.

In terms of future investigations, the Board plans to initiate two investigations during fiscal year 2000 and four or five investigations each year beginning in fiscal year 2001.

Review Program Has Been Terminated

The more limited review program was developed to provide information to prevent future incidents by using an approach that was less resource intensive than full investigations. The protocol for these reviews provided for a limited, office-based review of investigative reports prepared by the organizations that responded to the incident.

The Board initiated a total of 23 reviews in 1998 and 1999. However, Board officials told us that they effectively terminated this program in July 1999 when they decided to add the factual data about these reviews to an existing incidents database maintained by the Board and that the program was officially terminated in September 1999. This decision was made because of problems encountered in performing these reviews, including the longer-than-anticipated time spent in collecting the information and drafting the reports as well as the possibility of duplicating work done by other government agencies.

The Board's Plans, Policies, and Procedures

In our April 1999 statement for the Senate appropriations subcommittee, we identified two concerns about the Board's actions.[10] One concern related to the backlog of investigations and the fact that the Board had not updated its initial business plan to reflect the backlog and examine how to address this problem, for example, by reallocating existing and planned resources. The second concern stemmed from the problems with contracting that developed shortly after the Board began operations. We indicated the need for formal procedures for its staff to follow in awarding and managing contracts. The House conference committee report accompanying the Board's fiscal year 2000 appropriations act directed the Board to spend the preponderance of its resources, including contract resources, on investigations and safety instead of on external affairs or information technology.[11] This report also directed the Board to complete, by December 31, 1999, an updated business plan, formal policies and procedures for awarding and managing contracts, and formal procedures for selecting and performing investigations. The Board has made progress in complying with these directives. Specifically,

- On December 27, 1999, the Board issued formal written procedures for awarding and managing contracts.

[10]See footnote 1.

[11] H. Conf. Rep. No. 106-379, Oct.13, 1999.

- On December 27, 1999, the Board issued interim procedures for selecting incidents to investigate and an interim investigative protocol for conducting accident investigations.
- The Board requested an extension of time in developing an update to its business plan because of the former Chairman's announced resignation from that position and the related governance issues. This update will be accomplished by the development of strategic and performance plans required by the Government Performance and Results Act. On February 7, 2000, the Board provided a performance plan for fiscal year 2001 along with its budget request for fiscal year 2001. The Board plans to develop a strategic plan by September 2000.

Observations

The governance issues that arose in 1999 limited the Board's ability to effectively address the problems that we identified almost a year ago--the backlog of investigations and the lack of key plans, policies, and procedures to guide this new agency. The Board's initial steps since the management realignments in December 1999 and January 2000 appear to be appropriately targeted to addressing these issues. However, while the Board plans to provide more resources to its investigations and safety programs, it is not clear how the backlog will be addressed or when the agency will be in a position to realistically initiate any new investigations, given the agency's difficulties in hiring and retaining investigators.

Scope and Methodology

To review the status of the Board's efforts to carry out its mission, we reviewed documents supplied by the Board related to its organization, planning, budgeting, and programs; personnel data; and contract files. We also interviewed Board employees, including Board members, attorneys, and investigators. We discussed the contents of this statement with Board members, the Chief Operating Officer, and other Board staff, who generally agreed with the facts presented. Based on our discussions, we made some

minor revisions to reflect the clarifications the Board requested. We conducted our work from January through February 2000 in accordance with generally accepted government auditing standards.

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