United States General Accounting Office

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Report to Congressional Requesters

July 2000

CHEMICAL SAFETY BOARD

Improved Policies and Additional Oversight Are Needed

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Abbreviations

CEO	Chief Executive Officer
DOE	Department of Energy
DOT	Department of Transportation
EPA	Environmental Protection Agency
GSA	General Services Administration
NRC	Nuclear Regulatory Commission
NTSB	National Transportation Safety Board
OPM	Office of Personnel Management
OSHA	Occupational Safety and Health Administration

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United States General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-285501

July 11, 2000

The Honorable Christopher S. Bond
Chairman, Subcommittee on VA, HUD,
and Independent Agencies
Committee on Appropriations
United States Senate

The Honorable Frank R. Lautenberg
United States Senate

The Chemical Safety and Hazard Investigation Board (the Board) is 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 investigating 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. In 1999, the Chairman and the other members of the Board disagreed over their respective roles and responsibilities for managing the agency. The existing Chairman resigned his position as chair in January 2000 but remained a Board member. As of June 30, 2000, there were four Board members and the position of chairperson was vacant.

Concerned about the Board's management problems, you asked us to review the effectiveness of the Board in carrying out its mission. As agreed with your offices, our report addresses (1) the current status of the Board's organization and operations; (2) the Board's efforts to update and develop plans, policies, and procedures for accomplishing the Board's mission, including those aimed at ensuring the objectivity of its investigative activities; and (3) whether the Board would benefit from the independent oversight of an inspector general. In conjunction with the Subcommittee's appropriation hearings, we provided an interim statement for the record in April 2000, which presented the results of our work as of that date.[1]

[1]*Chemical Safety Board: Realigned Management Faces Serious Challenges (GAO/T-RCED-147, Apr. 12, 2000).*

Results in Brief

Since January 2000, the Board has been operating under a new organizational structure based on shared decision-making, which was not in effect during most of its first 2 years of operation. Continuing disagreements between three of the Board members and the former Chairman raise questions concerning the Board's future productivity and effectiveness. In terms of operations, the Board has made only limited progress in addressing the investigative backlog that developed after its first year, and it has not initiated a new investigation since March 1999. However, the realigned Board established eight priorities for the balance of fiscal year 2000 that support its primary investigative mission, including the completion of three investigative reports.

The Board has made some progress in developing needed plans, policies, and procedures to guide its activities. For example, the Board issued formal written procedures for awarding and managing contracts in December 1999. However, these policies were not in place when most of the Board's larger contracts ($100,000 or more) were executed, and Board officials have identified a number of contracting activities that appear to have provided limited benefit to the agency. Furthermore, the Board is revising its interim criteria for selecting incidents to investigate as well as its investigative protocol and is developing a strategic plan to both meet statutory requirements and update its business plan. The Board plans to have these plans and guides completed by September 2000. The Board's interim investigative protocol does not include needed policies and procedures that would help ensure objectivity and balance in its investigative work, such as those covering conflicts of interest. We are recommending that the Board adopt clear policies and procedures on potential conflicts of interest and consider other policies and procedures used by some other investigative agencies that also promote investigative impartiality and thoroughness.

The operational problems that the Board has experienced in its 2-1/2 years of existence—including governance and management conflicts, contracting expenditures of limited value, and the lack of basic operating policies and procedures—suggest that ongoing institutional oversight would be beneficial. While the Board could develop an in-house audit function or contract out for evaluations, we believe an option that offers the best potential for effective oversight would be for the Board to obtain the services of an existing office of inspector general. We are therefore recommending that the Board develop an agreement with an existing office

of inspector general that would provide for ongoing institutional oversight of the Board.

Background

Chemical incidents—accidental releases 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 in 1990 under amendments to the Clean Air Act.[3] The act directs 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 propose corrective measures; and (3) establish regulations for reporting accidental releases.

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 (NTSB), 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. The staff includes a chief operating officer, investigators, attorneys, and program analysts. The President's budget requested $8 million for the Board in fiscal year 2001, the same funding level provided in fiscal year 2000.

To accomplish its primary mission, the Board has conducted both full-scale investigations of chemical accidents as well as limited investigations, called reviews. In April 1999, we reported that the Board had a backlog of incomplete investigations and had not developed a plan to address the backlog.[4] We also reported that it had not put into place formal, written

[2]In 1999, the Board compiled statistics from five federal databases; these statistics 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 that these statistics have serious limitations and is developing a plan to determine a more reliable estimate.

[3]The Board did not become operational until 1998 because of funding constraints.

[4]*Chemical Safety Board: Status of Implementation Efforts* (GAO/T-RCED-99-167, Apr. 29, 1999).

procedures for its staff to follow in awarding and managing contracts. Finally, 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 and Operations

In December 1999, after almost 2 years of operations, 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. The Board has also increased the proportion of staffing resources to be allocated to its primary mission of conducting investigations and established eight priority actions for the balance of fiscal year 2000, including the hiring of investigations and safety staff. In terms of operations, since March 1999, the Board has made limited progress in addressing the investigative backlog that had developed after its first year, and it has not initiated a new investigation since that time. However, the Board plans to complete three investigative reports and initiate one investigation in fiscal year 2000. The more limited review program was terminated because of problems with both its design and implementation. The Board plans to initiate a new program addressing safety problems that are beyond the scope of any one particular incident under review and has initiated action to complete an agreement with NTSB, as required by the Clean Air Act, addressing their respective roles and responsibilities in investigating transportation incidents involving chemicals. Finally, contracting activities have primarily supported information technology and investigations, but, according to Board officials, the agency has received limited benefits for some of its contracts.

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; this request would have doubled the Board's funding to $16 million.[5] In addition, according to a Board directive, both the Chairman and the Board's 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.[6]

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 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 the Office of Management and Budget. 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.

[5]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.

[6]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.[7] 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. Also on December 1, 1999, 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.[8] This agreement expanded the roles and the responsibilities of the Board members. On June 26, 2000, the Department of Justice's Office of Legal Counsel concluded that the day-to-day administration of agency matters is the responsibility of the chairman but is subject to oversight by the Board as a whole, and that the Board's decisions would generally be controlling in disputes over the allocation of authority in specific instances.

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

[7]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.

[8]On December 1, 1999, Senator Lautenberg sent a letter to the Board stating that his understanding of the statute creating the Board was that it intended the Board as a whole to direct and approve the executive and administrative functions performed by the chairperson.

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.

The procedures are in place, and the Board is operating and making decisions by majority vote. However, disagreements between three of the Board members and the former Chairman about the management of the Board continue to be aired in publications and raised with Members of Congress. A Board member acknowledged that the productivity and effectiveness of the Board is impaired by this on-going conflict to the extent that it requires the expenditure of time and effort to resolving the conflict rather than to managing the agency. In May 2000, the three Board members petitioned the President to remove the former Chairman from his position as a Board member, alleging malfeasance, inefficiency, and neglect of duty.

Realigned Board Has Established Priorities

After delineating their roles and responsibilities, in March 2000 the Board members established eight priority actions for the balance of fiscal year 2000 to better support the Board's primary investigative mission. The eight priorities are hiring investigations and safety staff, developing a staff training program, completing three investigative reports, revising the investigation protocol, revising the incident selection criteria, and initiating new investigations. In addition, during this fiscal year, the Board is committed to developing a strategic plan and personnel policies and procedures.

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 has assumed 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 27 staff, including the 4 Board members. 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 June 15, 2000

Office	Current staffing	Projected staffing by the end of fiscal year 2000
Board members and staff	6	7[a]
Chief Operating Officer	1[b]	2
Investigations and Safety Programs	8	18
General Counsel	3[b]	3
External Relations	2	2
Administration[c]	7	8
Total	27	40

[a]Currently, the Board's office includes the four Board members, one special assistant, and one program analyst. 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.

[c]The Office of Administration includes two positions that were formerly in the Office of Information Technology.

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.[9] 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

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

programs, compared with the current projections of 45 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, as of June 15, 2000, 10 of the18 positions planned for the Office of Investigations and Safety Programs were vacant, and 6 of these were investigative positions. However, according to a Board official, two investigators accepted job offers during the week of June 19, 2000. As a result, two of the six investigative vacancies are expected to be filled in July and August 2000. The other vacancies are for one program analyst, one technical writer, one library/researcher, and one administrative assistant. 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, one investigator resigned and another was terminated. In addition, another investigator has announced his intention to resign.[10]

The newly constituted Board is focusing on personnel management issues in fiscal year 2000. As reflected in its identified priorities for the fiscal year, the Board will concentrate on hiring and training qualified professional staff and retaining and retraining current staff. First, the Board obtained approval from the Office of Personnel Management (OPM) in March 2000 to reinstate through December 2000 special hiring authority (termed Schedule A) that the Board had been granted previously. According to Board officials, this special hiring authority, which it had until December 31, 1999, is typically granted to new federal agencies for a limited time period and expedites the hiring process.

In its letter to OPM requesting special hiring authority, the Board stated that it had an urgent need to expedite the hiring of investigative and safety personnel to complete its work backlog. The Board's letter stated that with some of its investigations more than 2 years old, it is under pressure from

[10]The position that will become available when this investigator resigns is not included as one of the six vacancies discussed above.

the Congress, stakeholders, and the public to complete the eight outstanding investigations as soon as possible. The letter acknowledged that the Board could face serious consequences, including the possible loss of funding, if it does not hire the additional staff needed to make substantive progress on its investigative backlog.

In addition to using the special hiring authority, the Board has developed and is implementing a new hiring plan that allows it to offer several financial incentives to better recruit qualified staff, such as paying travel and relocation expenses of new professional staff and providing a recruitment bonus plan. Board officials said progress in filling key technical positions is being made as a result of the new hiring plan. In addition to the two investigators who accepted job offers in June, the Board has recently hired a chemical safety recommendation specialist and a special assistant with an extensive background in chemistry. As of June 15, 2000, the Board was continuing to actively recruit investigators. A Board member had said previously that the Board's ability to complete its priority tasks would be jeopardized if new investigators were not on board by June 30, 2000.

In addition, the realigned Board has determined that it must develop personnel policies and procedures for its staff. The Board plans to develop needed policies on leave, office hours, and employee conduct and discipline, among others. The Board also plans to revise and implement a performance appraisal program. In most cases, according to Board officials, employees have not received performance appraisals, although the Board has employed most of them for more than 1 year.

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 started in 1998 have been completed. However, only one report has been completed since March 1999. Nevertheless, a number of its recommendations from the three completed reports have been implemented.[11]

Draft reports are in process for three investigations. Completion of these reports by September 30, 2000, represents three of the Board's eight priorities for fiscal year 2000. The Board has not decided what it will do about the other five outstanding investigations. Alternatives include developing investigative reports, 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 overreliance on contractors to investigate accidents. According to the Board, this overreliance on contractors resulted in some poor investigations and draft reports because of insufficient Board staff or inadequate procedures for monitoring the contractors' personnel to ensure their activities met the Board's investigative needs. In terms of future investigations, the Board plans to initiate one investigation 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 terminated the program in 1999 because it conflicted with the Board's independence by having the Board rely on the work of other agencies.

[11]To date, the Board has made 28 recommendations aimed primarily at encouraging industry and government agencies to upgrade safety procedures, training, and the communication of hazards. Fourteen of the recommendations have been agreed to and/or implemented; 10 are no longer applicable because they are directed to a company that did not resume manufacturing operations following the accident; and 4 remain open.

According to these officials, the Board cannot adopt the work of other organizations whose missions and mandates differ from its own because it cannot control or ensure the quality of the products prepared by others. Other problems identified with the program included the longer-than-anticipated time spent in collecting the information and drafting the reports as well as the possibility of duplicating the work done by other agencies. In July 1999, the Board decided to add the factual data about these reviews to an existing incident database it maintains.

Safety Studies Are Planned

Although not among the Board's eight identified priorities for fiscal year 2000, the Board plans to establish a program—modeled after an NTSB program—to develop safety studies to better understand the nature and causes of specific safety problems that are beyond the scope of any one incident under investigation. The Board plans to initiate one safety study during fiscal year 2000. As of June 2000, the Board had not selected the study to be initiated, but officials said it would likely evolve from one of the three investigations to be completed in fiscal year 2000. Board officials said that the safety studies selected would likely stem from the research needs identified in recommendations the Board develops in its investigative reports. They indicated they would receive, at a minimum, iput from other parties to ensure the studies are useful.

Required Agreement With NTSB Has Not Been Completed

Other federal agencies, including the Occupational Safety and Health Administration (OSHA), NTSB, and the Environmental Protection Agency (EPA), have responsibilities for responding to and/or investigating chemical incidents. The Board is required by its authorizing statute to coordinate its activities with these agencies. Furthermore, the Clean Air Act requires the Board to enter into an agreement, called a memorandum of understanding, with NTSB to ensure the coordination of functions and to limit the duplication of activities.[12] The agreement must designate NTSB as the lead agency for investigating accidents that are transportation-related. The Clean Air Act also requires the Board to enter into an agreement with OSHA to limit the duplication of investigation activities. The Board developed an agreement with OSHA in 1998 that establishes policy and general procedures for cooperation and coordination and for minimizing duplication so that each agency can carry out its specific statutory requirements in an efficient and effective manner.[13]

However, the mandated agreement between NTSB and the Board has not been completed. Board officials told us the agreement was not made final last year, in part because NTSB did not follow through with its stated plan to return a final version of the draft agreement to the Board by the end of August 1999. After we discussed this issue with Board officials, the Board sent a letter to the Chairman of NTSB on June 6, 2000, discussing, among other things, the need to complete the draft agreement.

[12]42 U.S.C. 7412(r)(6).

[13]Although the Clean Air Act does not mandate the Board to enter into a similar agreement with EPA, the Board did so in 1999.

Board officials told us that the Board would generally not be involved in transportation-related accidents and believe it is very unlikely that the Board and NTSB would investigate the same incident. The officials said that because NTSB has primary jurisdiction for transportation incidents, and because of the Board's limited resources, the Board is appropriately directing its attention to accidents at fixed facilities. However, they indicated that the Board could not rule out being involved in an extraordinary transportation incident. We note that while Board officials have said that it is unlikely they would investigate a transportation accident, one of the incidents that the Board chose to analyze under its review program was a pipeline accident, a transportation area for which NTSB has primary investigative responsibility.[14]

Some Contracting Activities Have Provided Limited Benefits

Since it began operations in January 1998, the Board has obligated about $4.7 million to 13 contracts, purchase orders, and agreements of $100,000 or more.[15] A significant portion of these contracting obligations—$2.4 million—have supported information technology, such as the creation of data systems and databases, compared with $1.4 million for investigative support. These activities were contracted before the management realignments in December 1999 and January 2000 and the establishment of contracting policies and procedures in December 1999. Prior to the management realignments, contracting actions were the responsibility of the former Chairman and the former Chief Operating Officer, and the other Board members did not have a role in reviewing or approving contracts. In addition, these contracts were made prior to being directed—in the House conference committee report accompanying the Board's fiscal year 2000 appropriations bill—to spend the preponderance of its resources, including contract resources, on investigations and safety instead of on information technology or external affairs.

[14]Board officials said that they determined that NTSB was not going to investigate this accident before they undertook the review.

[15]Information as of March 2000. Contracts for office space or telephone charges are not included.

According to Board officials, the agency has received limited benefits for some of its contracting activities. For example, the Board is not currently using—and may never use—the $636,000 Incident and Investigation Information System developed by Oak Ridge National Laboratory in 1999 that would catalog information from the Board's accident investigations.[16] The officials said that the investigation and safety program staff who would use this system had limited input into its design. According to Board officials, the system is overly complex and an off-the-shelf database may better meet the Board's needs. While the Board plans to formally evaluate the system to determine its value to the Board, this evaluation is on indefinite hold because of higher priority work for fiscal year 2000.

In addition, the realigned Board has been reviewing its information technology projects and has determined, among other things, that it has overcapacity in information technology. As a result, in June 2000, the Board decided to reduce its information technology budget for fiscal year 2000 by $1.3 million—more than 15 percent of its total annual appropriation—either by not funding or by reducing funding to various contracts.

Similarly, Board officials also acknowledged that other contracting activities may be of limited value to the Board, such as the following:

- **Baseline of chemical accidents**. The Board spent more than $450,000 under two contracts to develop a 10-year baseline of chemical accidents. However, the Board believes these statistics have serious data quality limitations and is developing a plan to determine a more reliable estimate of the universe of chemical accidents.
- **Pressure relief systems**. The Board paid about $326,000 for information on pressure relief systems that are used in chemical processing operations. Board officials said that the information from the study appears to be of limited use to them. A Board member stated that while the agreement was designed to assist the Board's investigators and safety staff in their work, the work proposal was not reviewed by the Board members or the safety and investigations staff for design, purpose, and outcomes. As a result, the product is of lesser value than could have been attained if input from the users and the

[16]This information system was developed by the Department of Energy's Oak Ridge National Laboratory under an interagency acquisition agreement between the Board and the Department.

Board members had been obtained. The Board member said that the other pressing priorities have precluded the Board from completing its review of the information provided under the agreement. He said, however, that the agency needs to develop procedures for the internal technical review of goods and services provided to the Board under contracts and agreements.

- **Use of contractors to investigate incidents**. As discussed earlier, Board officials also believe that the agency relied too heavily on contractors to investigate accidents, resulting in some poor investigations and draft reports. They attribute this primarily to insufficient Board staff or inadequate procedures to monitor the contractors' personnel to ensure their activities met the Board's investigative needs.

In addition, given its limited productivity and workload changes, we questioned the Board about its use of funds to develop an informational video demonstrating the Board's purpose and activities. As of March 2000, the Board had paid $80,000 of the $160,000 obligated in 1998 for the video. One Board member told us that he did not believe it was appropriate to develop a video at this time. In response to our questions about the views of the other Board members on the need for a video, he said he would raise this issue at the next meeting of the Board. In April 2000, the Board decided it was not appropriate to develop a video. According to Board officials, the contractor is entitled to recover incurred costs and profit on the work already completed because the contract is being terminated for the convenience of the government. The Board is currently determining what this amount should be.

In January 2000, to ensure that future contracting activities contribute to its overall goals, the Board approved interim operating procedures that require contracts exceeding $10,000 be approved by a majority vote of the Board members. In addition, one Board member is assigned the responsibility for supervising the use and expenditure of funds, including authorizing contracts between $2,500 and $10,000. A Board member said that this new policy will provide greater transparency of proposed contracting actions and avoid contracting for work of limited utility to the Board. In addition, the Board is changing the way it uses contracting support for its investigations. Rather than retaining contractors to perform the investigations, the Board is contracting for specific expertise or tests needed for investigations that are led by Board investigators.

Status of the Board's Efforts to Update and Develop Plans, Policies, and Procedures

In April 1999, we reported on two concerns about the Board's actions.[17] 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 by, for example, 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. As discussed earlier, 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. 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 some progress in complying with these directives. Specifically, on December 27, 1999, the Board issued formal written procedures for awarding and managing contracts. Also, as discussed above, in January 2000, the Board approved procedures that include requiring contracts exceeding $10,000 to be approved by a majority vote of the Board members. However, the procedures do not include guidance the Board recognizes is needed for its staff on the technical review of goods and services provided to it under contracts.

In addition, 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 obtain feedback from stakeholders from industry, public interest groups, government agencies, and labor unions on the strategic plan in July 2000 and complete it by September 2000.

[17] *Chemical Safety Board: Status of Implementation Efforts* (GAO/T-RCED-99-167, Apr. 29, 1999).

On December 27, 1999, the Board also issued interim procedures for selecting incidents to investigate. As of June 2000, the interim selection criteria were being reviewed and thus were not ready to be used in selecting incidents to investigate. Revising the selection criteria is one of the Board's eight priority actions for fiscal year 2000. The Board is revising the process for selecting incidents to investigate and plans to meet with stakeholders on the revised draft selection criteria in July 2000. One issue that the Board did not clarify in the interim selection criteria is the circumstances in which it would investigate a transportation-related accident. The Board receives numerous daily notifications of chemical accidents from the National Response Center, which include, at the Board's request, information on certain transportation accidents involving chemicals, including pipeline and highway accidents.[18]

EPA and stakeholders such as the Chemical Manufacturers Association and the American Petroleum Institute have also said that the Board should clarify its primary mission and clearly define the Board's role, if any, in transportation accidents. The Board's agreements with EPA and OSHA and its interim investigative protocol indicate the Board may conduct investigations of transportation accidents, but these documents do not provide guidance on the overall focus of Board investigations (fixed facilities versus transportation), nor do they indicate the circumstances in which the Board would consider investigating a transportation accident.

Finally, on December 27, 1999, the Board issued an interim investigative protocol that sets forth guidelines and procedures for the Board and the staff to follow in conducting and reporting on investigations. The protocol describes the activities necessary to conduct incident investigations from inception through publication and includes two companion documents: a set of detailed investigation procedures and a set of related investigation forms and references. The protocol was issued as "interim" because the Board recognized that it needed further development.[19] Revising the

[18]The National Response Center serves as the sole national point of contact for reporting all oil, chemical, radiological, biological, and etiological discharges into the environment anywhere in the United States and its territories. It also maintains agreements with a variety of federal entities to make additional notifications regarding incidents meeting established trigger criteria.

[19]As noted earlier, a House conference committee report directed the Board to complete its investigative protocol by December 31, 1999.

investigative protocol is one of the Board's eight priority actions for fiscal year 2000.

The Board acknowledges that parts of the protocol require policy decisions by the Board and that some of the policies and procedures need to be more fully developed. For example, the Board needs to decide when its investigators are to conduct interviews with accident witnesses alone and when joint interviews with other agencies may be appropriate. Currently, there is a conflict between the Board's interim procedures and its agreement with EPA. That is, the Board's interim procedures state both that it is the Board's policy to conduct interviews alone and that the Board prefers to interview witnesses separately. However, the Board's agreement with EPA states that interviews of witnesses will be conducted jointly with EPA as often as possible to avoid duplicative efforts.

Also, a Board official said that the Board must decide such issues as whether outside attorneys can be present when Board investigators are interviewing witnesses and what type of confidentiality assurances the Board can extend to interviewees. The Board plans to contract for expert assistance to improve the investigative protocol. A Board official told us that the focus of these improvements would be primarily on the procedures for conducting investigations.

Procedures Lack Specificity to Ensure the Objectivity of Investigations

The Board does not have regulatory or enforcement powers and must maintain a reputation for impartiality and thoroughness in order to convince its wide range of stakeholders—including chemical companies, labor unions, scientific organizations, and other agencies—to implement its recommendations. We found that the Board's investigative protocol lacks specificity in some areas that would help ensure objectivity and balance in investigative work. Specifically, the Board's interim investigative protocol either does not address or partially addresses (1) a potential for conflicts of interest, (2) the reporting of substantive disagreements among investigative team members, (3) the reporting of minority views of Board members in investigative reports and the handling of requests for reevaluations of investigations, and (4) a clear external peer review policy. Policies and procedures on these topics—which are included in the investigative policies and procedures of some other investigative agencies—promote objectivity by formalizing and standardizing agency practices that are aimed at eliminating the potential for bias on the part of investigators and board members and ensuring that the investigation consider all relevant findings and analyses.[20]

Conflicts of Interest

Conflicts of interest, or the appearance of conflicts of interest, could seriously hamper the Board's efforts to convince stakeholders to implement its safety recommendations. Conflicts of interest may include, but are not limited to, Board employees and contractors having a financial interest associated with the facility being investigated or having been previously employed or a consultant with the facility. Several protocols of other federal agencies and boards inform members of the investigative team about potential conflicts of interest by including statements or sections on how to help prevent them from occurring. For example, the Department of Energy's (DOE) investigative protocol states that each board member, adviser, and consultant must certify that he or she has no conflicts of interest. In addition, the protocol states who to contact for advice if there are concerns about potential conflicts of interest.

According to the Board's General Counsel, the Board has reviewed potential conflicts of interest at the Board. For example, he said that the Office of General Counsel evaluated the potential for conflict of interest for a Board member assigned as the primary overseer of an accident

[20]We reviewed the investigative protocols of the National Transportation Safety Board, the Department of Energy, and the Nuclear Regulatory Commission and a draft Environmental Protection Agency/Occupational Safety and Health Administration investigative guide.

investigation at a company owned by the Board member's former employer. In addition, according to a Board official, the Board reviews the terms of work included in contracts to determine if the contractors may have any conflicts of interest. Board employees are also required to receive annual ethics training and complete the standard annual financial disclosure reports required of federal employees. The Office of General Counsel reviews the financial disclosure reports.

However, the Board does not have formal, written policies on conflicts of interest that would guide the reviews of potential conflicts by the Office of General Counsel. Written guidance would help ensure the consistency and thoroughness of conflict-of-interest reviews and would provide clear and consistent guidance to the staff and Board members on actual or perceived conflicts of interest, including actions required to mitigate potential conflicts. Because the Board has recently determined that it will focus its recruitment efforts on individuals with experience in the oil and chemical process industries—ones that it will likely be investigating—it will be increasingly important for the Board to have clear, consistent conflict-of-interest guidance.

Staff Disagreements on Investigations

During an investigation, disagreement between staff members and/or management may occur on the facts or analysis of the case. According to Board officials, divergent opinions of team members on investigations are expected and welcome during the investigation. However, the goal is for team members to come to an agreement before the draft report is sent forward for approval. If no agreement can be reached at the team level, the current investigative protocol states that the matter should be first taken to the Director of Investigations and Safety and if not resolved at that level, then taken to the Chief Operating Officer for resolution. However, the protocol does not indicate that the inclusion of a record of such disagreements can be made part of the official investigative file.

A systematic process for resolving professional differences of opinion can help avoid the perception that an investigator's findings are inappropriately discounted. The Board has had to address an allegation by a former Board investigator that investigators were in some cases being pressured to change findings or recommendations inappropriately. In this case, the Board investigated this allegation and concluded on the basis of, among other things, statements from its investigative staff, that it was not substantiated.

We believe a process, such as one used by the Nuclear Regulatory Commission (NRC), regarding professional differences of opinion would be helpful to the Board both in ensuring that objectivity is maintained and in responding to any similar allegations in the future. Specifically, NRC's investigation protocol requires each team member's concurrence on investigative reports, signifying that each team member has reviewed the report and that any differences of opinion have either been resolved or are documented in an appendix. This policy appropriately places a responsibility on team members to disclose any outstanding differences of opinion before the report is issued, allowing the decisionmakers to evaluate these views. The policy establishes accountability for issues and can protect NRC from allegations that known, relevant information was not appropriately considered.

Minority Views of Board Members and Requests for Reevaluations

The NTSB investigative manual identifies the procedures to be followed if all its board members do not concur on a report, including the option for publishing the minority opinions in the final report. In contrast, Board officials told us that they do not believe the minority views, if any, of its Board members on investigative reports should be published in final investigative reports because doing so would seriously hamper the Board's ability to have recommendations accepted and acted upon. Thus, the investigative protocol does not provide for publishing dissenting opinions of Board members in investigative reports. We found, however, that Board officials have not discussed with NTSB officials their experience in publishing minority views in investigative reports, including how this practice affects their ability to convince stakeholders to implement recommendations. Such discussions may help the Board clarify the pros and cons of this policy, which offers the potential to enhance its reputation for objectivity, thoroughness, and openness. In response to our questions, a Board member acknowledged that such a discussion would be useful.

Another NTSB procedure that may be relevant to the Board provides that all parties involved with the investigation or other interested persons may petition for reconsideration of all or part of the analysis, conclusions, or probable cause(s) identified in a published report. NTSB reviews such petitions following established criteria to determine whether to grant them in entirety or in part or to deny them. In contrast, the Board's investigative protocol does not address the circumstances in which the Board would reconsider a published report.

Peer Review

Peer review—the critical evaluation of scientific and technical work products by independent experts—is an important mechanism for

enhancing the quality, credibility, and acceptability of scientific and technical reports. While the Board utilizes independent expert assistance and peer review, its investigative protocol does not provide a clear policy statement on its use of independent review. A section of the protocol (separate from the investigative procedures) states only that the Board may contract for technical review by recognized outside experts. Furthermore, the tasks currently specified in the Board's investigative procedures under the topic "legal review and vetting of the report" do not address the use of outside experts. This section states that the factual content portion of reports will be provided to the "appropriate parties" to help ensure accuracy. This guidance is implemented by providing copies to the affected company, the employee's union, and, in some cases, to other government agencies involved in the incident investigation, for reviews for factual accuracy and confidential business information. Finally, we found that the Board's issued reports do not identify the expert reviews that were obtained.

We recognize that there are different peer review approaches the Board could adopt. For example, a comprehensive peer review approach is incorporated in a draft EPA/OSHA investigative protocol that requires independent review of draft investigative reports before final reports are issued. Alternatively, peer review can be obtained on specific investigative issues. Nonetheless, the Board's peer review approach is not clearly defined in its investigative protocol. That is, the protocol does not indicate whether expert technical reviews are generally required and whether the technical reviews are to encompass the investigative report as a whole or are to be limited to discrete technical elements. In addition, the protocol does not address the disclosure in the relevant investigative reports of the expert reviews obtained.

Institutional Oversight of the Board's Operations and Programs

Although the Board's history suggests the need for ongoing oversight, the Board is not subject to institutional oversight of its operations and programs. To obtain the benefits of oversight, the Board could establish an in-house audit and investigations unit, contract out for evaluations of its operations and programs, or obtain the services of an existing office of inspector general. We believe obtaining the services of an established office of inspector general offers important advantages over the first two options by, for example, offering the potential for the greatest degree of audit independence. However, this approach could also have serious limitations if it is not structured to give the inspector general the authority, among other things, to initiate audits. For example, NTSB has obtained

inspector general assistance using voluntary agreements that did not permit the inspectors general to initiate audits. While this approach has helped NTSB to some extent, the experience suggests that broader inspector general oversight—enabling an inspector general to initiate investigations as well as to perform audits in response to agency requests and providing a hotline for agency employees—could be more effective in helping to prevent fraud, waste, and abuse.

Board's History Demonstrates a Vulnerability to Waste and Mismanagement and a Need for Oversight

The Board's experience to date suggests the need for ongoing, institutional oversight of its operations and programs. Specifically, the Board's short history is dominated by management conflicts, failures, and inefficiencies that have resulted in the Board's applying its scarce staffing and funding resources to programs and activities that have provided little benefit while its primary investigative mission has faltered. In the short term, institutional oversight could assist the Board in developing sound policies and procedures and in ensuring they are developed and implemented in a timely fashion. Such assistance could help address a serious shortcoming—the lack of a basic administrative infrastructure, including policies and procedures to guide staff—that has contributed to the Board's problems and which still remains. In the longer term, ongoing institutional oversight could help ensure that the Board's policies and procedures are being implemented and that the Board's operations are efficient and effective. In addition, with institutional oversight, the Board could obtain guidance and assistance on sensitive matters, such as those that have arisen from its governance conflicts.

For example, the Board sought inspector general assistance on its own initiative, in part because it recognized that an investigation into alleged irregularities relating to an interagency acquisition agreement accepted by the former Chairman and the former Chief Operating Officer needed to be independent in both appearance and fact.[21] Specifically, in December 1999, the Board requested assistance from DOE's Inspector General to resolve problems it was experiencing with DOE for work to be performed by DOE's Oak Ridge National Laboratory under an interagency acquisition. The issues included billing discrepancies and the potentially inappropriate use of an interagency agreement to acquire goods and services.[22] However, the DOE Inspector General declined to conduct an investigation to address the Board's allegations, primarily because the agency's officials determined that the Board's allegations did not indicate wrongdoing or fraud on the part of DOE or its contractors. Rather, the DOE Inspector General believed that the Board's allegations indicated poor project management oversight of the contractor and potentially the inappropriate use of an interagency acquisition—problems stemming from the Board's actions rather than from DOE or its contractors.

Several Options Exist for Institutional Oversight

To provide on-going, institutional oversight of its operations and programs, the Board could adopt one of several approaches. For example, the Board could establish an in-house audit and investigations unit, contract out for evaluations of its operations and programs, or obtain the services of an existing office of inspector general. While the first two options may be appropriate in some cases, we do not believe either is appropriate for the Board for several reasons.

An in-house unit does not appear practical because of, among other things, the continuing management conflicts at the Board that could hamper the effectiveness of this unit and the limited staffing that would reasonably be allocated to this function at an agency of this size. While a very small unit could potentially provide needed oversight of the Board, we believe benefits would be better ensured with a larger staff of varied expertise. Such benefits could also be achieved by contracting out the audit and investigative function. However, considering the Board's past contracting

[21]Board officials also told us they did not have the resources internally to pursue the matter.

[22]As of June 2000, $2.3 million has been obligated under this agreement, referred to as a work-for-others agreement, entered into in fiscal year 1998.

problems, the numerous priorities the Board is trying to accomplish to demonstrate it is a viable agency, and the limitations of contracting both in terms of audit independence and the potentially limited duration of the contracting relationship, we do not believe this approach offers the optimal way for the Board to obtain institutional oversight.

Obtaining the services of an established office of inspector general offers several important advantages over in-house or contracted audit and investigative support, provided that the arrangement is appropriately structured. First, of the three options, this approach offers the potential for the greatest degree of audit independence from the Board. In addition, this approach would allow the Board to benefit from the varied expertise of staff at an existing office of inspector general. While maintaining objective independence, such staff are to accomplish the mission of these offices by (1) conducting and supervising audits and investigations of programs and operations and (2) providing leadership and coordination and recommending policies to promote economy, efficiency, and effectiveness and to prevent and detect fraud and abuse. In addition, offices of inspector general offer a continuity of oversight over time, and they are required to keep agency heads and the Congress informed about problems and deficiencies existing at the agencies—important aspects that contracting may not provide.

We recognize that the Board would likely have to allocate funding to reimburse an office of inspector general for oversight services. Given the problems that have arisen in the Board's 2-1/2 years of operation, however, we believe that such funding is appropriate. Funding may be available from the information technology savings the Board has identified, and the Board can include an allocation for inspector general oversight in its budget requests.

NTSB's Experiences Provide Insights for an Effective Inspector General Model

While we believe the use of an existing office of inspector general offers the best potential for effective institutional oversight, we recognize that this approach could also have serious limitations if it is not structured, for example, to give the inspector general the authority to initiate audits. In this regard, the Board can benefit from the experience of NTSB—the agency that provided the organizational model for the Board. Like the Board, NTSB does not have a designated inspector general to provide institutional oversight. However, NTSB has had agreements with the Office of the Inspector General of both the General Services Administration (GSA) and Department of Transportation (DOT) to provide oversight

assistance. According to the DOT Inspector General, these agreements allowed NTSB to request specific assistance from these offices but did not allow the Inspector General to initiate work, follow up on agency responses to its reports, or provide a hotline for agency staff to report allegations of fraud, waste, or abuse.

The DOT Inspector General has indicated that these limitations in inspector general oversight may have contributed to recent cases in which NTSB employees forged records and embezzled funds. For example, NTSB employees had raised concerns to the Chief Financial Officer that users of a financial system were not complying with internal controls, but the Chief Financial Officer did not take appropriate steps to address the problems they had identified. If NTSB had had an institutional oversight organization, the employees who reported irregularities to the Chief Financial Officer would have had an in-house channel (a hotline) to pursue. In addition, a prior GSA Inspector General report had identified internal control weaknesses that, had they been corrected, could have prevented the embezzlement. However, NTSB did not implement them. According to the DOT Inspector General, the likelihood of NTSB taking effective corrective action would have been greater if the GSA Inspector General had been in a position to follow up on its audit results.

A House bill (H.R. 2910) passed in September 1999 contains a provision addressing institutional oversight of NTSB.[23] Specifically, it would give the DOT Inspector General the authority to oversee the financial management and business operations of NTSB, including internal accounting and administrative control systems, to determine compliance with federal laws, rules, and regulations. Under the bill, NTSB would reimburse the inspector general for the costs associated with carrying out these activities. In testimony before the Congress, NTSB stated that it strongly favors having the ability to resort to independent, expert assistance as a means of quality assurance and improved performance, and the DOT Inspector General agreed that institutional oversight of the NTSB is appropriate.

[23]The related Senate bill, S. 2412, was reported out of the Committee on Commerce, Science and Transportation in June 2000 with a similar provision.

Given the small size of the Board and the fact that it could benefit from timely and ongoing institutional oversight, an approach similar to the one being considered for NTSB appears to be appropriate for the Board as well. That is, an existing office of inspector general could provide the Board with timely and necessary oversight, rather than a separate office of inspector general for the Board, which would have to be created.[24] Furthermore, benefiting from the NTSB experiences, the designated office of inspector general could be structured to provide the inspector general with the authority to initiate audits and investigations; provide a hotline for reporting fraud, waste or abuse; follow up on agency responses to its recommendations; and report to the agency head and the Congress on existing problems and deficiencies at the Board.

In terms of possible offices of inspector general to assume this role, one option would be the Department of the Treasury's Office of the Inspector General because the Board currently is contracting with Treasury's Bureau of the Public Debt for various support services. According to Board officials, however, the Department of the Treasury's Office of Inspector General has told the Board that it was not interested in providing hotline services to the Board. Other options include, but are not limited to, the Offices of Inspector General at the Federal Emergency Management Agency, EPA, and DOT.

Conclusions

The Board's initial steps since the management realignments in December 1999 and January 2000 appear to be appropriately targeted to addressing the problems that we identified in April 1999. The priorities the Board has established for fiscal year 2000, including the hiring of six qualified investigators and the completion of three investigative reports, are critical ones that the Board must accomplish to demonstrate that it is a viable agency capable of accomplishing its important safety mission in an efficient and effective manner. The Board's unique chemical safety mission must be accomplished by persuasion rather than through regulatory or legal powers. It is therefore incumbent upon the Board to develop and consistently use policies and procedures that can help ensure objectivity and thoroughness. If the Board is perceived as being either biased or incomplete in its investigative work, its effectiveness will be diminished or

[24]The Congress has created separate offices of inspector general for some small agencies and boards, including the Federal Housing Finance Board, the Federal Labor Relations Authority, and the Federal Maritime Commission.

even lost. The Board could better ensure objectivity if it had clear policies and procedures addressing issues such as potential conflicts of interest, substantive disagreements among investigation team members, the minority views of Board members, requests for reconsidering aspects of issued reports, and the nature and extent of external peer review that is to be obtained and the identification of such reviews in its investigative reports.

On-going, institutional oversight by an existing inspector general could enhance the Board's ability to carry out its mission and better protect the government's financial interests. The Board is clearly at risk for fraud, waste, and abuse, as evidenced by its contracting expenditures of limited value, lack of basic policies and procedures, poor productivity, and governance and management conflicts. NTSB's experience suggests that such oversight would be most effective if a designated inspector general for the Board had the authority to initiate investigations, follow up on them, and provide a hotline to report any allegations of suspected fraud, waste, or abuse.

Recommendations

We recommend that the Board develop and implement clear policies and procedures on potential conflicts of interest and consider other policies and procedures that would further promote investigative impartiality and thoroughness, such as ensuring substantive disagreements among investigative team members are appropriately identified and addressed, the reporting of minority views of Board members in investigative reports, the handling of requests for reconsideration of aspects of issued reports, and external peer review.

To provide the Board with the benefits of independent institutional oversight and to protect the government's financial interests, we recommend that the Board develop an agreement with an existing office of inspector general, giving that office the authority to investigate the Board's operations and programs, monitor agency responses to its recommendations, report to the Board and the Congress about weaknesses and deficiencies, and provide a hotline to report instances of suspected fraud, waste, or abuse. We further recommend that the Board notify the Congress in the event that it is unable to negotiate an agreement for these services with an existing inspector general.

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, and budgeting; policies and procedures; programs; personnel data; and contract files. We also interviewed Board employees, including Board members, attorneys, investigators; and officials from stakeholder organizations, including the Chemical Manufacturers Association, the American Petroleum Institute, and the Center for Chemical Process Safety. To report on the Board's procedures aimed at ensuring the objectivity of its investigative activities, we reviewed the Board's interim investigative protocol and held discussions with Board members and the investigative staff. We also reviewed the investigative policies and procedures of other agencies that conduct similar investigations, including the National Transportation Safety Board, the Nuclear Regulatory Commission, the Department of Energy, and the Environmental Protection Agency.

Our examination of whether the Board would benefit from independent oversight of an inspector general relies, to a great extent, on the results of this review of the Board as well as our earlier review in 1999. We also examined the experience of NTSB in obtaining institutional oversight.

We conducted our work from January through June 2000 in accordance with generally accepted government auditing standards.

Agency Comments

We provided a draft copy of this report to the Board for its review and comment. In commenting on the report, Board officials agreed with both of our recommendations, stating that the observations and recommendations in the report will help to strengthen the Board's operations. However, the Board believed it needed to clarify that the problems cited in the report were the result of the prior Chairman's tenure and that the decisions and actions were made under his sole authority. The report clearly identifies the relevant dates or time periods associated with the operational activities discussed in the report and with the Board's organizational changes, including the former Chairman's resignation as Chair. For example, we point out that prior to the management realignments in December 1999 and January 2000 and the establishment of contracting policies and procedures in December 1999, contracting actions were the responsibility of the former Chairman and the former Chief Operating Officer, and the other Board members did not have a role in reviewing or approving contracts. Accordingly, we believe our report's discussion of these matters was fair and complete.

In addition, the Board stated that there is no on-going "governance" disagreement because the governance structure—based on majority voting—that has been in place since January 2000 is in compliance with the statutory interpretations of both its General Counsel and of the Justice Department. The opinion of the Justice Department was issued on June 26, 2000, after we had provided our draft report to the Board. We have revised our report to reflect this Justice Department opinion and to distinguish between governance conflicts and ongoing disagreements between three of the Board members and the former Chairman about the management of the Board. The Board's comments are provided in appendix I.

We are providing copies of this report to interested congressional committees; the Chemical Safety and Hazard Investigation Board; and other interested parties. Copies will also be made available upon request.

If you have any questions about this report, please contact me at (202) 512-6111. Individuals making key contributions to this report included Gregory P. Carroll, Harriet Drummings, Christine Fishkin, and Richard P. Johnson.

David G. Wood

David G. Wood
Associate Director,
Environmental Protection
Issues

Comments From the Chemical Safety and Hazard Investigation Board

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Board Member

June 30, 2000

David G. Wood
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Dear Mr. Wood:

Thank you for reviewing the operations of the U.S. Chemical Safety and Hazard Investigation Board (CSB). We are committed to carrying out the CSB's unique and important mission, and we appreciate your observations and recommendations as we focus the CSB's resources in a comprehensive attempt to overcome a legacy of mismanagement, which dates from the former Chairman's 27-month tenure as Chairman and Chief Executive Officer (CEO).[1]

Your report made two recommendations to the CSB. You recommended that the CSB develop and implement clear policies and procedures in the investigation protocol to further ensure impartiality and thoroughness. As we informed Congress in December 1999, as part of the ongoing endeavor to improve our investigation policies, the CSB will continue to refine and improve our investigation protocol this fiscal year. We will consider the additional policies and procedures you identified for ensuring impartiality and thoroughness in our investigations as part of this effort. We note that although we have not had written policies and procedures on the items you identified, all three of the CSB's investigation reports have been highly praised for their impartiality and thoroughness.

You also recommended that the CSB develop an agreement with an existing Office of Inspector General to provide institutional oversight of the CSB. We agree with your recommendation. In fact, as you reported, we have sought assistance from the Offices of

[1] Dr. Paul L. Hill, Jr., resigned as Chairman and CEO of the CSB on January 12, 2000, but has retained his seat on the Board.

Inspector General for the Departments of Energy and the Treasury. Although those attempts were unsuccessful, we will continue to seek assistance from an existing Office of Inspector General. We note that as an interim step, we have posted information on the General Accounting Office's FraudNET in common areas at the CSB so that employees can easily report allegations of fraud, waste, abuse, or mismanagement of federal funds to an independent entity.

Your report identifies many instances of mismanagement during 1998 and 1999 that resulted in the CSB's resources being applied to programs and activities that provided little benefit. At the same time, our primary investigative mission faltered. We agree with the information you presented, but must clarify that these problems were a result of Dr. Hill's tenure as the CSB's Chairman and CEO. You frequently refer to "the Board," when the decision or action you discuss was actually made under the sole authority of Dr. Hill. For example, you reported that the Board obligated $160,000 for a promotional video, but Dr. Hill authorized this project without the review or approval of the other Board Members. Budget submissions, major contracts, and even the attempted establishment of field offices were all undertaken by the former Chairman without Board involvement.

Until his resignation, virtually all Board decisions were made unilaterally by the Chairman, under the belief that the authorizing statute limited the other Board Members' function to approval of investigation reports and recommendations to other agencies. This view has now been conclusively rejected in an independent opinion by the Department of Justice Office of Legal Counsel.[2] The Justice Department determined that the Chairperson is fully accountable to the Board as a whole in the exercise of all his or her administrative and executive functions. Acting by majority vote, the Board as a whole has the power to make all substantive decisions; establish Board rules, policies, and practices; and determine which powers, beyond routine day-to-day administration, shall be delegated to the Chairperson.

As a result of Dr. Hill's pattern of abuse and mismanagement, we have taken the extraordinary step of petitioning the President for the removal of Dr. Hill from his position as a Board Member,[3] as you reported. However, there is no ongoing governance disagreement as suggested in your report. Since January 12, 2000, the Board has functioned in a legal manner according to majority voting rules and in compliance with the statutory interpretations of both our own General Counsel and of the Justice Department.

As you reported, the new management is taking action to address its investigative backlog, since Dr. Hill's resignation as Chairman and CEO on January 12, 2000. Beginning in February 2000, our General Counsel has assumed the additional duties of our Chief Operating Officer and has focused resources on the Board's core investigative mission. In addition, we placed the staff member who was largely responsible for the

[2] Memorandum to CSB General Counsel from Randolph D. Moss, Acting Assistant Attorney General, June 26, 2000.
[3] Copies of the petition should be requested from the White House Counsel's office.

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first three investigation reports in charge of the Office of Investigations and Safety Programs. We identified three priority investigations for completion this fiscal year, and assigned the appropriate staff and approved contract support to allow for their timely completion. In addition, the CSB has developed and implemented a strategic hiring plan, that has thus far resulted in hiring four highly qualified individuals to fill technical positions (two investigators, one chemical safety recommendation specialist, and a special assistant for the Board Members).

You also recognized that the CSB has issued formal written procedures for awarding and managing contracts, which will help ensure that the contracts are an effective means to achieving CSB goals. Finally, you reported that the CSB has reduced its budget for information technology projects and equipment by $1.3 million. A significant portion of this funding was reallocated to provide the Office of Investigations and Safety Programs with additional contract support; and for relocation expenses, recruitment bonuses, and retention allowances.

We are very proud of the progress the CSB has made in the past five months, and look forward to the accomplishments we expect to see in the coming months. We are also very excited as we prepare our strategic plan for the next five years. Observations and recommendations from your report will only help to strengthen the CSB's operations.

Gerald V. Poje Andrea Kidd Taylor Isadore Rosenthal

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