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U.S. Chemical Safety and Hazard Investigation Board

Issues Regarding Management Accountability, Control, and Direction Have Not Been Resolved



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PREFACE

This report presents the results of our review of the Chemical Safety and Hazard Investigation Board.

The report contains recommendations for corrective action. Accordingly, it is being sent to the Board members and Acting Chief Operating Officer of the Chemical Safety and Hazard Investigation Board.

The Inspections Division, Office of Inspector General, prepared this report. Questions may be addressed to Clifford N. Melby, Assistant Inspector General for Inspections, at (202) 646-3338. Key contributors to this report were Bill McCarron and Wynne Krause.

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EXECUTIVE SUMMARY

The Chemical Safety and Hazard Investigation Board (CSB) is the lead Federal agency for investigating accidental chemical releases at fixed facilities and reporting to the public on the causes of those accidents. A five-member Board appointed by the President, including a Chairperson, heads the CSB. Although the CSB was created under the Clean Air Act Amendments of 1990, the CSB did not receive funding or begin operations until January 1998. Currently, the Board has two vacancies, including a Chairperson, and is exercising shared decision-making authority. The CSB experienced significant management problems during its first three years of operation. In response to the concerns of Congress and GAO, the Board took some steps to improve operations. Nevertheless, serious problems remain.

Much work is needed to address management control issues, strengthen Board member accountability, and settle questions about the direction of the agency. First, the Board is without a Chairperson, and combined with the Acting status of the Chief Operating Officer (COO), both situations are hindering management of the agency. Board member/staff conflicts created by poorly defined roles and responsibilities are also impeding agency efficacy. Second, the Board needs to be more accountable to avoid diminishing the credibility of the agency: it must increase its efforts toward operating in the public eye per the “Government in the Sunshine Act” and cease atypical procurement practices.

Finally, the Board members need to solidify the agency’s management infrastructure and resolve the internal dispute over its mission. The anticipated hiring of a new COO should provide the impetus necessary for bringing organizational stability to day-to-day operations. But the Board and staff must first agree upon the agency’s basic mission and how best to carry it out before the agency can expect to operate in an effective and efficient manner.

The CSB agreed with all of the report’s recommendations. Once the recommendations are implemented, the CSB should see significant improvements in its management and organizational infrastructure, and the improvements should better position the agency to pursue its mission. The agency’s comments can be found in Appendix A.

BACKGROUND

The Chemical Safety and Hazard Investigation Board (CSB) is an independent agency about to enter its fifth year of operation. Headquartered in Washington, D.C., the CSB investigates accidental chemical releases at fixed facilities and reports to the public on their root causes. The CSB is also authorized to conduct general studies of chemical accident hazards. Through its reports, the CSB makes recommendations to Federal, State, and local entities as well as private industry to prevent future. The Board is authorized five members appointed by the President, including a Chairperson who heads the CSB. Although the CSB was created under the Clean Air Act Amendments of 1990, the CSB did not receive funding or begin operations until FY1998. Its first appropriation totaled \$4 million. In FY01, the CSB had an operating budget of \$7.5 million and 34 authorized permanent full-time employees.

The CSB experienced significant management problems during its first three years: the Chairperson and other Board members disagreed about their respective roles and responsibilities for managing the agency. In July 2000, the General Accounting Office reported that the CSB has a history of “management conflicts, failures, and inefficiencies that resulted in Board’s applying its scarce staff and funding resources to programs and activities that have provided little benefit while its primary investigative mission has faltered.”¹ The Chairperson resigned but remained a Board member until October 2000. Absent a Chairperson, the remaining three Board members (a fifth member was never appointed) adopted and continue to use interim governance procedures that call for shared decision-making authority.

In an effort to address its organizational problems, Board members: (1) voted to reassign the Chief Operating Officer (COO) to another position; (2) appointed the CSB’s General Counsel as Acting COO; (3) combined the Safety Recommendations and Investigative functions into one organizational unit; and (4) undertook actions to reorganize staff priorities and manage several EEO actions resulting from the reorganization and past Board practices. In March 2000, the Board established eight priority actions for the agency. They included hiring investigations and safety staff, developing an internal training program, issuing three investigative reports, revising the investigation protocol, revising incident selection criteria, and initiating new investigations.

¹ *Chemical Safety Board: Improved Policies and Additional Oversight Are Needed* (GAO/RCED-00-192, July 11, 2000).

OBJECTIVES, SCOPE, AND METHODOLOGY

In FY 2001, Congress designated the Office of Inspector General, Federal Emergency Management Agency, to serve as the cognizant Inspector General for the CSB. Based on survey work to become familiar with agency operations, we focused our inspection on organizational issues and challenges including: (1) the Board's shared decision-making authority; (2) vacancies in key management positions; and (3) management accountability and integrity. In addition, we assessed how the CSB is prioritizing its resources to carry out its mission. This is our first inspection report of the CSB. We are planning to review other aspects of CSB operations in the near future.

We reviewed the following:

- The CSB's legislative history including House and Senate Reports on Appropriations and hearings before Congressional Appropriations Subcommittees;
- Laws and regulations pertinent to the CSB and other Federal Boards and Commissions, including 42 U.S.C. § 7412(r)(6);
- CSB budget submissions, the Five-Year Strategic Plan, and Annual Performance Plans and Reports;
- 5 U.S.C. § 552(b), The "Government in the Sunshine Act";
- 31 U.S.C. § 1535, The Economy Act;
- Federal Acquisition Regulations, including subparts 1, 6, and 17;
- OMB Circular A-123, "Management Accountability and Control";
- Recent reports and testimony by the General Accounting Office on the CSB and other Federal Boards and Commissions;
- Several articles on the organization and governance of independent agencies;
- Board voting records, Board Action Reports, and selected Board orders;
- CSB website, records of public meetings, and regulations publicized in the Federal Register;
- Organizational chart and position descriptions; and
- Various documentation pertinent to CSB operations and procurements.

We interviewed CSB Board members, managers, and staff including current Board members; Special Assistants to the Board; the General Counsel and Acting Chief Operating Officer; Assistant to the COO; the Deputy Counsel; the Director, Financial Operations; Director, Management Operations;

Director, Congressional and Public Affairs; Director, Office of Investigations and Safety Programs; and Investigators.

We also conducted interviews with senior managers of seven Federal Boards and Commissions including the Nuclear Regulatory Commission, the National Transportation Safety Board, the Defense Nuclear Facilities Safety Board, the Consumer Product Safety Commission, the Occupational Safety and Health Review Commission, the Federal Housing Finance Board, and the Federal Energy Regulatory Commission. In addition, we reviewed the organizational structure of 24 other Boards and Commissions.

Our fieldwork was conducted from July 2001 to December 2001. Our inspection was conducted under the authority of the Inspector General Act of 1978, as amended, and according to the Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency.

RESULTS OF INSPECTION

We evaluated several organizational issues and challenges including (1) the Board's shared decision-making authority, (2) vacancies in key management positions, and (3) management accountability and integrity. In addition, we assessed how the Chemical Safety and Hazard Investigation Board prioritizes its resources to carry out its mission. This report discusses infrastructure, management, and other issues that imperil agency accountability, and internal disagreements about the agency's mission and how to achieve it.

I. INFRASTRUCTURE, MANAGEMENT, AND OTHER ISSUES IMPERIL AGENCY ACCOUNTABILITY

The CSB is without sufficient management accountability. Management accountability is the expectation that managers are responsible for the quality and timeliness of program performance, increasing productivity, controlling costs, and mitigating adverse aspects of agency operations, and assuring that programs are managed with integrity and in compliance with applicable law.² Agency accountability is imperiled because: (1) the Board does not have a chairperson; (2) the role of "Acting" Chief Operating Officer is compounding management problems; (3) Board members and managers have yet to establish a well-defined, collegial working relationship; (4) agency practices suggest declining attention to "Government in the Sunshine Act" requirements; and (5) atypical procurement practices are problematic. Board members, managers and staff must work together to improve these conditions and ensure the proper stewardship of its resources.

A. Board Does Not Have a Chairperson

Two years after public disagreement between the prior Chairperson and other Board members over their respective division of power, the agency still remains in an untenable governance situation. The prior Chairperson resigned on January 12, 2000, and the position has been vacant ever since. The

² *Management Accountability and Control* (OMB Circular No. A-123 Revised, June 21, 1995).

remaining three Board members now share executive and administrative powers. We question whether the Board, despite their intentions to overcome the situation, can adequately manage in a joint capacity without a Chairperson. Specifically, the current system hinders the agency's ability to function with efficiency and integrity by diminishing the checks and balances that are vital to accountability at the Board level and by undermining the administrative chain of command. We believe that the Board needs a Chairperson, a single accountable executive, to lead the agency.

While joint governance appears to have created a balance of power among the Board members, in practice it has jeopardized the Board's ability to balance administrative and substantive responsibilities. Historically, a Chairperson/Board relationship produces conflicts as members reconcile the Board's substantive authority with the Chairperson's administrative authority. Reporting on one such dispute, the GAO noted, "There is a natural tension between the goals of achieving administrative efficiency and safeguarding the independence and objectivity of a [Board's] substantive work."³ The tension serves as a management control, ideally causing members to balance each other as the Board reconciles what it wishes to accomplish substantively with what it is capable of accomplishing administratively. However, at the CSB, joint governance has removed healthy opposition among the Board members. For example, for the 58 Board votes occurring in the twelve months following the Chairman's departure, all votes made were undisputed.⁴ But the normal substantive-administrative tension between Board members and a Chairperson has not disappeared; rather, it continues to exist between Board members and staff, who lack the authority to counterbalance the Board (see page 14).

It is not unusual in Federal agencies for the Chairperson's seat to be vacant. The majority of agencies we interviewed have statutory provisions for empowering one Board member to act in the Chairperson's capacity when the seat is vacated. Even those agencies without statutory guidance have seen fit to establish protocols to that effect. For example, the Occupational Safety and Health Review Commission has a directive that enables the Chairperson to appoint an Acting Chair to serve at his/her pleasure, and absent a Chairperson, the General Counsel administrates the agency per a formal delegation.

CSB statutes are silent on what to do in the absence of a Chairperson, but the Board has broad authority to carry out its mission. According to its statutes, "the Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties." The prior

³ *International Trade Commission: Administrative Authority is Ambiguous* (GAO/NSIAD-92-45, February 25, 1992).

⁴ The votes addressed subjects ranging from investigative reports to budget reallocations, and they were circulated as notation items, which do not allow for the Board to discuss and build consensus prior to voting. Discussions would have to occur at a public meeting, per the Sunshine Act (see page 19).

Chairperson's resignation presented the remaining Board members with a dilemma. The CSB stated that extensive discussions were held with representatives of White House Counsel and the Justice Department's Office of Legal Counsel (OLC), who advised the CSB's General Counsel to respect Presidential prerogative and instruct the Board not to designate one of its members as an interim Chairperson. Thus, the Board instead opted by vote on January 14, 2000, to adopt interim governance procedures with shared decision-making authority. It delegated executive and administrative functions reserved for the Chairperson among the three remaining Board members. Specifically, one Board member was delegated procurement, one was delegated personnel, and one was designated as the agency spokesperson. We believe the Board has gone to great lengths following a tumultuous start-up period to share decision-making authority so it obtains consensus on all decisions and avoids creating further controversy. But the management of the agency did not benefit by this course of action.

The division of administrative power is unprecedented among today's Federal Boards and Commissions. The Board assumed responsibility for executive and administrative duties that Congress never intended; as studies have established, practical limitations prevent such an arrangement from being genuinely workable.⁵ Moreover, Board members agree they never envisioned assuming these responsibilities. Notwithstanding that the Board members were appointed for their expertise in the chemical and safety fields and not their administrative abilities, the concept of shared executive and administrative authority is naturally flawed. The outcome was predictable: they are overextended in the agency's administrative affairs.

The role of the Chairperson is a distinct one and critical to the organization's overall well-being. CSB statutes place day-to-day administration of the Board in the Chairperson's hands, while conferring on the Board as a whole responsibility for certain core functions of the agency.⁶ In a legal opinion to address the dispute between the prior Chairperson and the other Board members, the Department of Justice's Office of Legal Counsel articulated that the Chairperson is subject to the oversight of the Board. But the DOJ also observed that:

To be sure this does not mean that the Board, exercising its oversight authority and its powers to make substantive decisions and 'such procedural and administrative rules as are necessary to the exercise of its functions and duties,' may or should attempt to address itself to the plethora of minute

⁵ *General Management of the Executive Branch*, The Commission on Organization of the Executive Branch of the Government (February 5, 1949). For a brief summary of major studies regarding independent agencies, see *Consumer Product Safety Commission: Administrative Structure Could Benefit from Change* (GAO/HRD-87-47, April 9, 1987).

⁶ 42 U.S.C. § 7412(r)(6) (Supp. 1990).

*administrative problems bound up with the operation of a complex organization. Some degree of managerial discretion is inherent in the concept of an executive or administrative office, and the statutory assignment of the Board's executive and administrative functions to the chairperson necessarily vests the chairperson with a degree of managerial autonomy on which the Board, in the proper exercise of its powers, cannot trench. Likewise, some day-to-day aspects of the Board affairs may be so unrelated to the board's effective execution of its statutory responsibilities that they cannot be said to be proper objects of the full Board's authority.*⁷

In short, in writing statutes like the CSB's, Congress sought to place day-to-day direction and internal administration of multi-member boards and commissions in a chairperson's hands both to safeguard members' substantive responsibilities and to prevent what one observer described as "splintered management."⁸

Intentionally or not, the Board is not adhering to this guidance. The Board members are regularly absorbed in administrative matters, from initiating procurements to crafting position descriptions. One Board member stated that he spends 50 percent or more of his time on administration. Another indicated 30-40 percent. Board members in other agencies typically do not spend more than 10 percent of their time on administrative matters. Simply stated, Board members carry out numerous administrative tasks that never even come to the attention of their peers in other independent agencies. The Board has not sufficiently separated itself from day-to-day aspects of the agency that could have been more efficiently managed by the Chief Operating Officer and staff if authority were properly delegated, and many issues we raise in our report center around this problem.

What the Board envisioned as an interim solution has continued for more than two years. We acknowledge the position became vacant during a year in which there was a change in administration; these circumstances are beyond the Board's control and legitimate reasons for an extended vacancy. To redress the situation, the CSB should designate an Acting Chairperson or Vice Chair. The Board may find the Consumer Product Safety Commission's practice of voting to rotate the position annually to be a possible alternative.

⁷ Randolph D. Moss, "Division of Powers and Responsibilities Between the Chairperson of the Chemical Safety and Hazard Investigation Board and the Board as a Whole," memorandum from Department of Justice Office of Legal Counsel to CSB General Counsel, June 26, 2000.

⁸ Marshall J. Breger and Gary J. Edles, "Established by Practice: The Theory and Operation of Independent Federal Agencies," *Administrative Law Review* 52 (fall 2000).

Recommendation

We recommend that the Board:

1. In the absence of a Chairperson, establish the necessary protocol to assign to one Board member on an interim basis executive and administrative functions including the authority to appoint and supervise the staff, distribute business among the agency's personnel and administrative units, and control the preparation of the agency's budget and the expenditure of funds. The CSB should also seek specific guidance from the OLC concerning the permissibility of designating a single member of the Board to be responsible for the executive and administrative functions during the period that the chairmanship is vacant. The CSB should also consider seeking legislation that would definitively resolve this crucial issue.

Management Comments and IG Analysis

The CSB agreed with our recommendation and plans to seek an opinion from the OLC on the legality of appointing an acting Chairperson. After receiving our draft report, the CSB provided additional documentation and clarification that it initially attempted to vest executive authority in a single Board member and that it was dissuaded by the OLC and the White House.

Until now, the CSB has relied primarily on the OLC's informal advice, which was based on analysis of another board. However, the precedent does not speak to whether it is permissible for a board to designate a single member to be responsible for executive and administrative functions on an interim basis during a vacancy in the chairmanship. The OLC stated that its guidance might not apply to a board that was clearly intended by Congress to function without interruption, notwithstanding a vacancy in the chairmanship, and that filling the vacancy was necessary to prevent the interruption. We believe that the CSB can make a substantial case that it falls within this exception, given its important public safety responsibilities and because its legislation expressly assigns the executive and administrative functions to the Chairperson.

We generally concur with the CSB's response. We support its plans to seek a legal opinion and modified our recommendation accordingly. However, until the opinion is rendered, we affirm our recommendation that the CSB implement a more efficient interim solution by delegating executive and administrative authority to one member rather than to three. Ideally, however, we believe that the CSB will benefit by statutory changes that either provide for the President to nominate a Vice Chair, as

is the case with the National Transportation Safety Board on which the CSB is modeled; clarify the Board's authority to designate an acting Chairperson; or authorize the CSB to designate a single member to carry out the executive and administrative functions of the Board when a vacancy exists in the chairmanship. This vacancy question is capable of repetition, and it needs to be addressed with both short-term and long-term solutions.

B. Acting Status of the Chief Operating Officer Compounds Management Problems

In the absence of a Chairperson, an experienced chief operating officer should be able to oversee the agency, maintain administrative efficiency, and respond to Board members' substantive and administrative concerns. However, the Chief Operating Officer (COO) has functioned in an Acting capacity for two years, unable to fully assume the role, because (1) Board members delegated limited authority to the COO and (2) the COO has had to maintain concurrent responsibilities as the agency's General Counsel. The lack of a full time COO, with clear and meaningful authority, has compounded management problems brought about by the lack of a Chairperson. Uncertainty surrounding the COO's role and authority has resulted in fractured management, a weakened chain of command, Board member intervention in routine administration, and intermittent Board member exclusion of legal and administrative input from the Acting COO/General Counsel.

Management responsibilities that typically fall under an independent agency's senior staff executive include strategic and performance planning, public/government affairs and outreach, financial and administrative operations, human resources, policy development, and some programming. All of the executives we interviewed outside the CSB had broad delegations of authority for matters like these, often through regulation, and they had extended the delegations further down the chain of command. Delegations support OMB's management control standard of organization, which "align[s] staff and authority with the program responsibilities to be carried out, improving both effectiveness and accountability."⁹ Additionally, all the executives described their agency's working culture as "bottom-up" or "collegial," with staff developing issues and raising them through the senior executive to the Board's or Commission's attention when warranted. Examples of administrative issues that rise beyond the executive's attention to the Board include organizational structure, senior and political hiring, major budget allocations, and strategic planning. According to its organizational chart and position descriptions, the CSB's COO shares responsibilities similar to his peers.

⁹ OMB Circular No. A-123 Revised.

However, as the CSB has not yet developed a constructive Board/Chairperson relationship, neither has it forged a lasting, appropriate Board/COO relationship. Removing the CSB's first COO and taking the staff's advice to stabilize the agency quickly by appointing from within, the Board named the General Counsel as Acting COO in February 2000. Although the Board notation vote appoints him to the position in full capacity, Board members did not delegate the full authority of the position because of its implied temporary nature and their expectations of how much one person could accomplish in both jobs. The only official delegations the COO holds allow him to execute an interagency agreement with the Bureau of Public Debt and to manage job applicant travel.

Initially, the desire to restore order overshadowed the problems inherent in an arrangement where the line between the Board's and COO's executive authority and responsibility is poorly drawn. But two years of this "interim" solution have made its inefficiency more apparent. Many of the functions and duties identified by the COO position description are instead being carried out by the Board, leading to delays in hiring, disagreements over resource allocation and staff assignments, and duplication of efforts in resource, information, and personnel management. Exemplifying the overlap, during the past year the Board has:

- Issued or prevented corrective feedback to staff.
- Delayed for weeks a previously approved internal reorganization of the Office of Investigations and Safety Programs.
- Revised press releases and low-level position descriptions.
- Written contract documents.
- Disputed the guidance of the staff writer/editor on report grammar.

These actions have occurred even though the CSB staff responsible for these tasks are officially organized under the Acting COO/General Counsel.

Moreover, as the Board has retained control over tasks that in other agencies have been delegated to the COO and beyond, the Board has also begun occasionally to exclude the Acting COO/General Counsel from its meetings and decision-making. Perceiving him to be "overburdened" and citing a conflict of interest between the COO and General Counsel roles, the Board members have acted in a manner that suggests they undervalue his input as the agency's chief administrative and legal counselor. During our interviews and internal discussions, several staff noted that the Board circumvented the Acting COO/General Counsel, ignoring or not affording him opportunity to provide guidance on issues ranging from legal compliance to resource prioritization.¹⁰ But considering that a Board member acknowledged that the

¹⁰ Facilitated Board/staff discussions occurred in June, November, and December 2001.

General Counsel serves “to guard the institution” in the long run, his exclusion can only decrease the integrity of agency administration.

Finally, perhaps because the Board and staff—including the COO himself—view his appointment as temporary, there has been little effort to formalize a more efficient, long-term Board/COO relationship. When the agency wrote its strategic plan in the summer of 2000, the agency set a performance goal to “Clearly Delineate Roles, Responsibilities and Accountabilities for Board Members and Staff.” However, during the facilitated meetings, staff pointed out that the Board still needed to delegate authority to the COO and strengthen the chain of command, but no actions have been taken (see page 11).

Having an Acting senior executive for more than a year, let alone one who simultaneously holds full General Counsel responsibility, is a uniquely difficult situation that has become counterproductive for the CSB. We are encouraged that, after securing a second SES position, the agency announced its search for a permanent COO in December 2001. However, given the months the search will take, we urge the agency not to accept lingering inefficiencies that were identified more than a year ago. The agency must repair faulty organizational controls. As the GAO pointed out, “A good internal control environment requires that the agency’s organizational structure clearly define key areas of authority and responsibility and establish appropriate lines of reporting.”¹¹ Here the CSB needs to take strides in order to enable the current and future COOs to succeed in furthering the agency’s best interests. We are also encouraged that during the agency’s most recent facilitated meetings, the agency drafted operating agreements in which the Board will delegate procurement and personnel decisions to the COO and the agency will publish a regulation defining Board organization in spring 2002.¹² Clearly defining and then enforcing delegated authority is a critical task.

Recommendation

We recommend that the Board:

1. Delegate to the Chief Operating Officer the authority to effectively manage the day-to-day operations of the CSB. The delegation should be consistent with the duties set forth in the COO’s position description.

¹¹ *Standards for Internal Control in the Federal Government* (GAO/AIMD-00-21.3.1, November 1, 1999).

¹² Cindy Zook, “CSB Operating Agreements,” memorandum to the CSB Board and senior staff, December 10, 2001.

Management Comments and IG Analysis

In correspondence separate from its response to our draft report, the Board provided justification for some of the specific administrative items over which it retained control, but it also acknowledged “over investment” in administrative affairs. To correct the situation, the CSB intends to codify a broad delegation of authority to the COO via an internal Board Order, which will be drafted by April 30, 2002.

We believe the proposed delegation will substantially improve the day-to-day management of CSB operations. The delegation will include administrative and operational functions, strategic planning, oversight of all substantive investigation and safety mission-related programs, policy development and implementation, program integration and management, and advisory services. The CSB indicated it may need up to two months to take corrective action. This is an important issue that the Board should address as quickly as possible.

C. Board Member/Staff Relationship Lacks Clarity, Collegiality, and Unity

The Board and staff have yet to establish a well-defined, collegial working relationship. The challenges of building an effective team of appointees and careerists with shared authority and common purpose are not exclusive to the CSB.¹³ But considering the CSB’s well-documented history of internal conflict, small size, limited resources, and start-up responsibilities, the agency has a unique urgency to establish an environment in which members observe organizational roles, maintain open lines of communication, are responsive to others’ feedback and initiatives, and share philosophy and priorities. Nevertheless, this cooperative work climate has not emerged, even though the agency identified relationship needs in its 2001-2005 strategic plan and conducted several facilitated meetings beginning in June 2001. As a result, the agency suffers from a fractured chain of command, blocked lines of communication, opposition between the Board and staff, and a climate of distrust—none of which enhance the effectiveness of the agency.

Rooted in statute, agency roles and responsibilities are extended to staff through regulations regarding organizational structure, written delegations of authority, protocols, and program-specific guidelines. The Nuclear Regulatory Commission found, for example, that the more “roles and

¹³ See Judith E. Michaels, *Becoming an Effective Political Executive: 7 Lessons from Experienced Appointees*, The PricewaterhouseCoopers Endowment for the Business of Government (January 2001).

responsibilities are defined, the more the emphasis is on working together, collectively, in support of the agency's mission."¹⁴ All the agencies we interviewed claimed that there should be a "bottom-up" culture that empowers employees and enforces management controls including delegation of authority, organizational alignment, and separation of duties. The CSB's strategic plan mirrors this understanding. According to the plan, "defining and formalizing the roles, responsibilities and accountabilities of staff and Board members is an essential step for ensuring the success of the CSB."¹⁵ Thus, over the past two years, the CSB has outlined organizational roles through board orders, new position descriptions, limited delegations of authority, and policy revisions in areas including investigative procedures and incident selection.

Board members and staff both indicated to us, however, that the formal policies they have to guide their relationship are inadequate and loosely observed or unenforced. In early 2001, the staff approached the Board and requested to address the relationship, but concerns remained tabled until the Board attended a staff-sponsored, facilitated retreat in June 2001. At the retreat, participants aired issues including:¹⁶

- The agency lacked consensus about the appropriate level of Board oversight regarding routine administration. Staff recommended that Board limit its involvement to public meetings and monthly and quarterly briefings, with the flexibility for the COO also to raise to its attention "significant issues ... things that would impact the [Board] or the agency." In contrast, the Board recommended continued use of Board briefings and other formal and informal meetings, which typically occur much more frequently. The agency agreed that the Board needed to clarify when Board members spoke individually or jointly.
- The agency lacked consensus on the appropriate amount of Board member involvement in ongoing investigations. The Board requested updates on progress bi-weekly or daily, often in detail. Also, the Board issued feedback and work requests directly to investigators without involving the COO and Director of Investigations and Safety Programs, which sometimes resulted in conflicting guidance and increased work. One side proposed that communication should be limited in order to reinforce the chain of command and ensure participants' scientific objectivity; but another side supported collegial

¹⁴ *Special Evaluation of the Role and Structure of the NRC's Commission* (NRC OIG/99E-09, December 23, 1999). This report primarily addressed collegial interaction between the Chairperson and Commissioners.

¹⁵ *2001-2005 Strategic Plan to Congress*, U. S. Chemical Safety and Hazard Investigation Board (September 29, 2000).

¹⁶ Sandra Wood, *Offsite Report to the U. S. Chemical Safety Board* (June 26, 2001).

discussion and information sharing. The staff noted, “A skeleton outline of these [investigative] policies and procedures currently exists but it is too general and must be developed more fully.” At what level, by what means, and how quickly documents are circulated for Board review and approval were also concerns.

- Several staff noted that they lacked “the authority to implement the policy or task in the most efficient and effective manner.”
- Everyone agreed that the Board should avoid appropriating managers’ roles by issuing work requests and corrective feedback directly to staff without using the chain of command.

Overall, comments from the retreat suggested that the ambiguous relationship between Board and staff led to inefficiency by creating friction, duplication of efforts, and increased workload; but the comments also suggested that the agency had identified the major shortfalls and would work toward greater clarity and collegiality.

Nevertheless, the friction and inefficiencies did not abate. Moreover, the Board and managers remarked to us that an oppositional stance was developing between them, with both often closed to the other’s ideas and input. For example, the Board pushed to develop plans concerning data collection and performance reporting, changes supported by the CSB statute and the Government Performance and Results Act but resisted by staff. At the same time, rather than informing the staff and building consensus, the Board met more often independently and issued directions without or contradictory to managerial input.¹⁷

For example, in filling one senior position, the Board rejected the recommendation of a senior staff panel to hire a particular candidate or initiate a new search; instead the Board selected a candidate the panel found unsuitable. In another example, citing budgetary concerns, the Board jointly decided in April 2001 to freeze investigative hiring. Even though staff argued that the CSB needed more investigators, would not achieve its training goals without hiring a training coordinator, and carried a budget surplus of \$700,000 or more, hiring did not resume until December 2001. The Board has similarly imposed its authority regarding several specific procurements and outreach initiatives (see page 23). This pattern contrasts with David Welborn’s observation of federal agencies: “[S]taff recommendations are quite influential in decision making, and realistically, Commissioners cannot be expected to depart regularly and extensively from the recommendations provided by the

¹⁷ Board discussions resulting in decisions have Sunshine Act implications (see page 19).

staff.”¹⁸ The Board and staff opposition highlights an increasingly apparent mission rift (see page 30).

The breakdown in constructive communication extends throughout the agency. Both the Board and staff reported that staff either felt or actually had been restricted from talking openly with the Board or particular staff members. In this vein, the Office of Personnel Management found during a recent survey at the CSB:

*Just 6 of 20 respondents agreed that they could disclose mismanagement, waste of funds, abuse of authority, or danger to public health or safety without fear of reprisal, and just 6 of 20 agreed that they could disclose a suspected violation of law, rule or regulation without fear of reprisal.... Further, just 5 of 20 survey respondents reported that complaints, disputes or grievances are resolved fairly in their work unit.*¹⁹

Even if these concerns are more perception than reality, they suggest a working climate of distrust and restricted dialogue that poorly serves the interests of the agency. When agency members feel prohibited from voicing concerns, addressing problems, and contributing their best judgment to solving them, the agency’s overall strength is diminished. OMB has noted, “Effective communication within and between offices should be encouraged” in support of general management control standards, which include employee integrity and compliance with law.²⁰

Late in 2001 the CSB met again to improve the relationship between the Board and staff. With the help of facilitators, the agency defined roles and responsibilities and drafted operating agreements that address issues raised earlier, including division of authority. However, preliminary reports from staff suggest that these agreements are not being honored uniformly, which is unsurprising given that they have not been memorialized with formal Board approval and that the agency lacks the accountability systems to enforce them.

Subjective variables such as personality and collegiality, while critical to positive working relationships, are obviously difficult to control; and the CSB may more easily make progress by emplacing objective management controls to affect the variables it can. In a 2001 report on engaging agency employees, GAO noted six practices that increased efficiency and employee “buy-in,” one of which is delegating authority down to front-line employees.²¹ In addition

¹⁸ David M. Welborn, *Governance of Federal Regulatory Agencies* (Knoxville: The University of Tennessee Press, 1977).

¹⁹ *Human Capital Management Oversight Review: U.S. Chemical Safety and Hazard Investigation Board*, Office of Personnel Management (December 2001).

²⁰ OMB Circular No. A-123 Revised.

²¹ *Practices That Empowered and Involved Employees* (GAO-01-1070, September 14, 2001).

to establishing broader delegations, the CSB should follow through on its intent to refine various protocols, including (1) incident selection; (2) investigations; and (3) execution of procurement policies; but also (4) agency outreach; (5) responsibility for personnel actions; and (6) internal Board procedures. In refining these policies, particular attention should be paid to establishing accountability mechanisms, including separating duties and managing documentation. A seventh policy that also enhances accountability was recommended to the CSB in OPM's recent evaluation, that of establishing an administrative grievance system.²²

Finally, considering the range of management controls that the CSB needs to emplace or improve, we believe it will benefit by first developing an internal, written strategy to prioritize its efforts. OMB has emphasized the usefulness of this approach, going so far as to say, "The absence of such a strategy may itself be a serious management control deficiency."²³ OMB further recommends that agencies consider establishing a "senior management council" to review the agency's system of management controls, assess and report on deficiencies, and provide input on their improvement and priority. Otherwise, without the development of genuine respect and collegiality, aided by greater delegation of authority and better-defined protocols, CSB progress will continue to be encumbered by Board/staff disunity.

Recommendations

We recommend that the Acting Chief Operating Officer:

3. Develop a written strategy for identifying, prioritizing, and improving the agency's system of management controls. Particular attention should be paid to establishing accountability mechanisms, including separation of duties. This may be accomplished through a senior management council below the Board level consisting of managers and key staff, who would review controls, assess and report on deficiencies, and provide input on their improvement and priority.

Management Comments and IG Analysis

The CSB agreed to develop a strategy to improve management controls and to create a management council below the Board level to oversee operations. The CSB continues to hold monthly facilitated meetings and asserts that progress is being made to define and improve the Board/Staff relationship. For example, the CSB informed us that a team within the Office of Investigations and Safety Programs has been assigned to revise its protocols.

²² Office of Personnel Management.

²³ OMB Circular No. A-123 Revised.

We concur with the CSB's response. We are also encouraged by the Board's decision to create a management council to oversee and audit operations. Vesting responsibility to develop improvements in a staff council and developing a plan to prioritize work should increase the efficiency of the agency's continuing efforts.

D. Board Practices Indicate Declining Attention to the "Government in the Sunshine Act"

After four years of operation, the CSB has not published a regulation governing its responsibilities under the "Government in the Sunshine Act." In addition, Board members conduct nearly all business outside the view of the public. After the current leadership took control of the Board in 2000, one Board member noted, "[W]e have failed to produce a process by which you would have access to our decision making in public."²⁴ Board members stated their intention to pay more attention to the Sunshine Act by holding monthly public meetings, posting votes and transcripts on the CSB website, and publishing a regulation. The improvements made, however, were temporary or incomplete. The Board did not meet its FY2001 performance goal to issue the regulation; and although Board members meet frequently to discuss CSB business, only three public meetings have occurred in the past fifteen months.

For agencies like the CSB, the 1976 "Government in the Sunshine Act" declares that "every portion of every meeting shall be open to public observation" unless its subject falls within a limited number of exemptions. Practical application of the Sunshine Act requires agencies to strike a balance between holding all quorum meetings in public and preserving board members' ability to meet together in an efficient and collegial manner. To clarify the Act's application, in 1984 the Supreme Court defined Sunshine-covered "meetings" as quorum gatherings of only a certain type: discussions of "discrete proposals or issues" causing "reasonably firm positions" that "effectively predetermine official actions."²⁵ Under this definition, board members may hold exploratory, informational, and casual discussions without being subject to Sunshine requirements. Essentially, what defines a discussion as Sunshine material is not the quorum but the items discussed. The Senate noted that the responsibility for cautious adherence to the Act rests

²⁴ U.S. Chemical Safety and Hazard Investigation Board Sunshine Act Meeting (December 9, 1999).

²⁵ FCC vs ITT World Communications, Inc., 466 US 463 (1984). The NRC adopted this definition as part of its Sunshine Act regulation, which withstood a DC Circuit Court challenge from Natural Resources Defense Council in 2000. Agencies do not need to label quorum gatherings as a "meeting" in order to be subject to the Act.

with the agency: “When two members constitute a quorum, the agency must be careful not to cross over the line and engage in discussions which effectively predetermine official actions.”²⁶ Additionally, the Sunshine Act also assigns responsibilities to agencies regarding how meetings may be closed to the public, how meetings should be publicized and recorded, and how agencies should establish and document Sunshine procedures.²⁷

Implementing the Sunshine Act should have been a priority issue during the CSB’s organizational phase as the agency sought to comply with legal requirements and earn public trust, particularly considering the agency’s previous governance struggle. Moreover, it should also have been a priority because in the absence of a Chairperson and broad delegations of authority, the current Board exercises far greater decision-making authority than its peers. At other agencies, much decision-making is carried out by the Chairperson and staff, and thus does not involve Sunshine Act requirements. Although the CSB Board has delegated some decision-making authority, for numerous matters the Board issues joint decisions; and with only three Board members, related discussions involve a quorum and potentially invoke the Sunshine Act. Weighing this unusual situation with the public’s right to observe agency decision-making, one would expect the CSB to be proactive in paying scrupulous attention to the Act.

Since the Chairman’s resignation, the Board met for eight public meetings and conducted the majority of its business through notation voting, in which documents are circulated for individual voting without discussion between Board members. The Board has never voted in public. In 2001, which included only one public meeting for general business, Board members completed over 40 notation votes on both administrative and substantive issues, including the agency performance plan, several rules, and investigations.²⁸ For example, in December 2001 the Board concluded and approved an investigative report on a fatal fire at the Bethlehem Steel Burns Harbor Mill. During the course of the investigation, the only related information made public was a press release at the investigation’s start in February 2001. A month after the Board approved the report, the CSB held a press conference for its release; the public was never afforded the opportunity to observe the Board’s decision-making process, although in the past the CSB has given public updates and held boards of inquiry for other investigations.

This near-exclusive reliance on notation voting is not itself a violation of the Sunshine Act. Courts have upheld notation votes as a legal way to conduct

²⁶ Senate Report No. 94-354 (1975).

²⁷ For example, agencies are required to document and submit annually to Congress a Sunshine compliance report. The CSB has never done so.

²⁸ The other public meeting in 2001 addressed solely the agency Recommendations Program. In late 1999, the Board announced it would hold monthly meetings; but in 2000, the Board shifted to meeting every other month; and finally in 2001, the Board held only two public meetings. The Board has never held an officially closed meeting.

business for any matter, and agencies are not obliged to meet. But neither is it a good practice according to our benchmarking. In the past, Congress criticized the Interstate Commerce Commission for excessive use of notation voting; and the GAO has also affirmed that agencies are prudent to hold meetings under the Sunshine Act.²⁹ For example, reporting on the FDA's over-the-counter drug review process, the GAO wrote, "We believe that, on balance, the process benefited by [the enactment of the "Government in the Sunshine Act"] and the increased public scrutiny of and participation in panels' deliberations. We believe the panels' reports have generally been better because of this input."³⁰ Moreover, rendering decisions by notation vote impedes full and open communication between Board members on issues of policy.

Yet the Board itself acknowledged the importance of communication during a June 2001 retreat: "Board members have grown to appreciate the need and effort to pursue consensus at the [Board] level."³¹ Although the Board members issue final decisions individually through notation vote, which is not uncommon, the CSB is unique in that its Board members are frequently in communication to manage the agency via e-mail, telephone, bi-weekly staff briefings, and weekly teleconferences. Without a functional Sunshine Act compliance program, there is a probability that these discussions, which the Board sees as informational, fall under the definition of matters that must be discussed only at Sunshine Act meetings. For example, during a staff briefing in July, the Board members jointly discussed and overruled a specific staff recommendation not to deploy investigators to the Atofina chemical spill. Because the Board members chose to discuss a discrete proposal resulting in official agency action, this matter had Sunshine Act implications. Furthermore, both the Board and staff reported that the number of these Board discussions has risen during the past year, with staff increasingly excluded and unable to monitor compliance with the Act.

Contrasting the CSB's consideration of Sunshine Act issues in late 1999 and late 2001, we believe the CSB needs to reverse its current conduct. The proliferation of Board discussions, combined with the CSB's reduction in public meetings and failure to publish a Sunshine regulation, leads us to conclude that the agency needs a Sunshine Act compliance program. The CSB should consider several pertinent good practices that we noted during our benchmarking interviews:

²⁹ Senate Transportation Subcommittee, Hearing No. 98-1034, Part 2, PP 429-629 (April 4, 1984).

³⁰ *FDA's Approach To Reviewing Over-The-Counter Drugs Is Reasonable, But Progress Is Slow* (GAO/HRD-82-41, April 26, 1982).

³¹ Wood.

- Clarifying in regulation the agency’s definition of “meeting,” such as to include teleconferences and exclude informational briefings given by staff to the Board.
- Conducting meetings on a regular basis, such as bi-weekly or monthly.³²
- Posting meeting transcripts, voting records including notation votes, and Sunshine Act compliance reports on the agency website.
- Employing a mechanism to verify that quorum discussions occur in Sunshine meetings when appropriate, by:
 - Including the agency’s General Counsel or representative in all quorum discussions to monitor discussion content and assist in Sunshine Act compliance; and
 - Maintaining records for all quorum discussions via notes, minutes, or recordings.

This last practice, which enables the agency to establish proactively that it adheres to Sunshine requirements, has been specifically recommended by the American Bar Association.³³ In sum, the leadership needs to exercise strict attention to ensuring public access to “the fullest practicable information” regarding its decision-making processes, as the Sunshine Act requires.

Recommendation

We recommend that the Board:

4. Publish regulations that comply with the requirements of the “Government in the Sunshine Act.” The regulation should: (a) specify what mechanism the CSB will use to protect public rights during quorum assemblies, such as having General Counsel present, (b) clarify whether any items of Board business, such as investigative reports, necessitate public discussion and cannot be accomplished by notation vote alone, (c) clarify whether the CSB will hold regular meetings and under what types of exceptions it would cancel or schedule additional meetings, such as Boards of Inquiry, (d) require the CSB to publish votes and public meeting transcripts on the web, (e) establish the public reading room as promised by the CSB’s FOIA regulation, and (f) direct the CSB to submit an annual Sunshine report to Congress.

³² The CSB’s 1999 internal order on “Quorum, Voting, and Meeting Procedures” specifies that the General Counsel will publish each October an annual meeting schedule that includes a minimum of one meeting per month.

³³ *Annual Report of the American Bar Association*, Vol. 112, No. 1 (February 16-17, 1987).

Management Comments and IG Analysis

The CSB agreed to publish a Sunshine Act regulation by May 1, 2002. In the meantime, the agency plans to establish a FOIA reading room and to implement an interim Sunshine Act Compliance program. Also, the CSB held a Sunshine Act meeting on February 27, 2002, at which the agency briefed the public on the status of performance goals 1.1, 1.2, and 1.3 from its strategic plan and efforts towards hiring a permanent COO.

We concur with the CSB's response. We are encouraged by the Board's immediate attention to this responsibility, one that is critical toward building public trust. Further, we welcome the Board's efforts to resume using Sunshine Act meetings as a forum for Board members to communicate openly with each other regarding agency initiatives. At the same time, until the Board receives a Chairperson or delegates greater decision-making authority to the COO, the Board must be conscious that all Board discussions of specific agency actions must occur only during public meetings.

E. Atypical Procurement Practices Are Problematic

The level and manner of Board member involvement in agency procurements is atypical to Federal Boards and Commissions. It diminishes the objectivity and independence of Board decisions and interferes with the effective administration and oversight of agency operations. In the past, several poorly managed procurements drew GAO criticism, and the current Board members revised procurement policies and procedures by retaining more authority themselves. The Board's scope of authority, however, is too broad. It has allowed Board members to shepherd questionable acquisitions through the agency's procurement process and engage potential contractors in an imprudent manner. Moreover, circumstances surrounding selected procurements have resulted in a high level of internal strife and fed the lack of collegiality between Board members and career staff. These problems also reflect the ongoing mission struggle within the agency.

The CSB statute grants broad procurement authority "without regard to section 5 of title 41 to enter into contracts, leases, cooperative agreements or other transactions as may be necessary in the conduct of the duties and functions of the Board with any other agency, institution, or person."³⁴ In other words, the CSB is not required to advertise an invitation for proposals in a public place such as Commerce Business Daily. The CSB staff use this exemption if a minimum of three responsible and qualified sources can be identified from whom to solicit proposals or quotes, or if a sole source acquisition is justified. Whenever the CSB determines advertising is

³⁴ 42 U.S.C. § 7412(r)(6) (Supp. 1990).

necessary or appropriate for an acquisition, the requestor contacts for further guidance the procurement officials at the Bureau of Public Debt (BPD), which provides franchise procurement services to the CSB for acquisitions exceeding \$2,500.³⁵ The CSB usually executes one of four common types of procurements: micro-purchase, simplified acquisitions, contract acquisitions, or interagency acquisitions. Being independent of the CSB, the BPD provides additional checks and balances during the acquisition process.

Currently, the scope of procurement authority exercised by the Board is felt throughout the entire organization. Any contract over \$2,500 comes before a Board member for review, and contracts over \$10,000 require review by the complete Board. To illustrate, one Board member's approval is required to renew the agency's subscription to Congressional Quarterly and cable TV services, while the full Board is needed to approve items such as overtime, temporary help, legal services, and relocation expenses for new investigators. Compared to practices employed by Federal Boards and Commissions, CSB Board member involvement in procurement issues is excessive. For example, the Federal Finance Housing Board is not involved in procurement issues. The National Transportation Safety Board initiates procurements only for individual Board member staff offices. The Consumer Safety Product Commission receives briefings on contracts greater than \$100,000. We were told during interviews that other Commission members rarely, if ever, initiate procurements of a substantive nature.

Also atypically, the Board has circumvented the chain of command and respective decision-making authority of its managers by directing unpopular acquisitions through the procurement process. CSB policies stipulate that all staff involved with an acquisition must ensure that purchase of the item or service is prudent and proper, in view of actual need and office priorities. Thus senior staff including the General Counsel advised against several acquisitions, citing weak justifications, questionable project cost-benefits, other mission priorities, and the appearance of ethical conflicts; however, Board members nevertheless initiated and pursued the initiatives. We found little evidence of resistance from fellow Board members.

Selected procurement actions appear to justify staff concerns:

- One Board member spearheaded an initiative to acquire the services of the Safety and Chemical Engineering Education Committee (SACHE) to help host a workshop whereby undergraduate professors would evaluate the quality of CSB reports as teaching tools. For \$10,000, the CSB was given the opportunity to present the results of an investigation for an hour to the professors, who in turn completed a feedback survey that was made into a report. Career staff opposed the

³⁵ *CSB Directive #720: Acquisition of Supplies and Services*, U. S. Chemical Safety and Hazard Investigation Board (December 27, 1999).

workshop on the grounds that it hinted of an ethical conflict, was questionable as a sole source procurement, and was not related to the CSB's investigative mission. For example, the Board member involved has past associations with individuals in SACHE's parent organization, the Center for Chemical Process Safety (CCPS); but he did not recuse himself from the approval process. During the process, the BPD raised concerns that the CSB did not provide adequate justification and required them to modify their initial request. Finally, reviewing the deliverable purchased for \$10,000, we, CSB staff, and one Board member concluded that the Committee's written report provided information of limited value to the CSB.

- Notwithstanding the lack of value produced by the first SACHE workshop, the Board planned to conduct a second workshop, using SACHE as the facilitator. In resistance, the General Counsel issued guidance concerning unauthorized commitments, preferential treatment, and avoiding actions that would create the appearance of an ethical conflict. Nevertheless, the Board appointed one of its Special Assistants as the Contracting Officer's Technical Representative in order to expedite the contract. Initially, funding was never allocated for SACHE II; instead, the Board reallocated Board 'travel' money to 'other services' without identifying the SACHE workshop as the program it is. SACHE II, which was cancelled in September 2001, was postponed until late 2002.
- In the spring of 2001, Board members clashed with career staff over defining the CSB's relationship with the American Institute for Chemical Engineers (AIChE). First, the CCPS, a subcomponent of AIChE, sought endorsements of its publications from the Board. In the interest of preserving independence, the General Counsel recommended that Board member not provide this endorsement. Subsequently, one Board member sought to strengthen its relationship with industry by securing membership in the CCPS. Citing a precedent set by the Environmental Protection Agency, the Board asked the General Counsel for a legal opinion that would enable the Board to pay CCPS \$50,000 for an ex officio membership. It came to our attention that private corporations pay less for full voting membership. The General Counsel and other staff exerted much effort to ensure the agency avoided endorsing CCPS publications. However, the General Counsel was unable to prevent membership. In January 2002, Board members voted to obtain membership at a cost of \$7,000.
- The Board attempted to 'backfill' with a contractor responsibilities carried out by the then-Deputy Director, Congressional and Public Affairs. In a meeting with CSB managers, a private vendor with public affairs experience advised the CSB to document its need for a

particular employee belonging to the vendor's company to ensure it would receive the contract. Incorporating this guidance, the CSB prepared a statement of work. During review, the BPD rejected the solicitation on the basis that such services should be provided by a small business, which eliminated the targeted vendor. The Board abandoned efforts to rewrite the statement of work and hire this vendor.

- In the summer of 2001, the Board tried to obtain the services of a public affairs firm to facilitate a roundtable meeting in West Virginia. The location was recognized for its abundance of chemical plants, scene of a major chemical incident, and respective congressional interest in CSB affairs. Following a meeting between a Board member, CSB staff, and former congressional staffers from West Virginia who worked for a public relations firm, the CSB sought a sole-source contract with their firm for the event. A CSB employee arranged for one of the firm's employees to write the statement of work. Other CSB staff and the BPD subsequently disqualified the vendor because of its involvement and directed the CSB instead to seek a small business. The Board dropped the initiative.

Procurement issues and other challenges confronting the CSB are best exemplified by the circumstances surrounding the Board's recent decision to enter into a governmental interagency agreement with the National Institute of Environmental Health Sciences (NIEHS). Career staff opposed the interagency agreement directed by the Board.

- Dovetailing with a planned conference next spring in Nashville, Tennessee, for NIEHS grantees, the CSB committed \$50,000 to help fund a two-day extension of the conference for the broad purpose of "furthering the prevention of accidental releases through wider use of CSB accident investigation reports as tools for training employees in process safety." Specifically, the workshop extension will develop consensus guidelines on the utilization and usefulness of investigative findings of the CSB. The conference's primary audience consists of emergency responders, although the CSB plans to invite a contingency from the chemical industry. The NIEHS will assure logistical support for organizing and managing the workshop. The organizational work is being done through two subcontractors of the NIEHS.

The Board member who was most involved in the agency's participation in this workshop once worked for NIEHS. Following infrequent meetings that began more than a year ago, the Board member verbally informed NIEHS officials to begin event preparations prior to the Board approving the agreement. The Board member involved directed staff to draft documentation to execute the

interagency agreement, even though the staff did not understand the objectives of the agreement. One staff member remarked, “The program description is not clear, to the point that I do not understand how a finding can be made that the CSB is legally authorized to acquire these services.” To hasten completion of the interagency agreement, Board members voted to revise the agency’s procurement protocol so that a Board member could approve the Determination and Findings (D&F).³⁶ The Board also voted to allocate and transfer \$50,000 to the NIEHS. These two votes occurred at the same time, *before* the Board member had approved the D&F, which followed within 24 hours.

We do not believe the rationale contained in the D&F meets the federal requirement to “set forth enough facts and circumstances to clearly and convincingly justify the specific determination made.”³⁷ For instance, the D&F states that the \$50,000 is reasonable for convening a planning committee, developing a “straw man” proposal, convening a two-day conference with more than 100 participants, and preparing a final report. However, it fails to show how this figure was generated and by whom. CSB staff, and the Board member who approved it, were unable to provide these details, and the CSB would be obligated to reimburse NIEHS for actual costs.³⁸ In addition, we do not share the Board’s view that the CSB has an urgent need to “achieve an important consensus on how to make better use of CSB reports for training important constituencies for accident prevention.” Finally, it is not clear how the NIEHS’s “unique expertise and specialized knowledge not available with the CSB or private sector” are essential to the purpose and outcome of this event. CSB managers do not dispute whether the NIEHS is a leader among Federal agencies for training hazardous materials workers and emergency response personnel, but are skeptical of how much it might benefit the CSB in this capacity.

Overall, we believe it is critical that Board members avoid making promises to other entities that might misrepresent or bind the CSB and avoid any activity that might jeopardize the Board’s credibility, regardless of potential value to the agency. Last year the General Counsel advised a Board member and a CSB staff person about adhering to high behavioral standards “to act affirmatively in the public’s trust.” General Counsel went on to say:

³⁶ A Determination and Findings is a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contracting actions. The “determination” is a conclusion or decision supported by the “findings.” The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

³⁷ 48 C.F.R. 17.503.

³⁸ The ordering agency must pay the performing agency the actual costs of the goods or services provided; see 31 U.S.C. § 1535(b).

In addition, to avoid potential ethics violations in the future, Board members and other staff must recuse themselves from selection process when potential contractors could be considered 'a friend.' The selection of a contractor and the award of a contract or purchase request must be done at arm's length to ensure procurement integrity. While it is allowable for a Board member or other staff to identify CSB requirements and identify potential contractors to bid on contracts, an impartial individual should make the selection.³⁹

To summarize, efforts by Board members to steer CSB procurements are undermining the acquisition process and damaging collegiality within the agency. Board members have spurned counsel and created a system in which the only real management control is the approval of the Board majority, or two people. Issues surrounding procurements have sparked significant debate within the agency about its mission and how to achieve it. Board members and staff have not demonstrated that they can constructively resolve their disagreements and achieve consensus over such matters.

Recommendation

We recommend that the Board:

5. Revise policies and procedures to reduce Board member involvement in the soliciting and awarding of contracts. Such measures should include vesting administrative aspects of the procurement process in the Acting COO and raising the minimum procurement amount requiring Board approval.

Management Comments and IG Analysis

The CSB agreed to make appropriate revisions to policies and procedures by May 31, 2002, to reduce Board Member involvement in the soliciting and awarding of contracts. Key revisions will include vesting administrative aspects of the procurement process in the COO and limiting Board Member involvement in the procurement process to the final approval of goods or services valued at \$50,000 or more. The CSB will also rescind the SACHE, CCPS, and NIEHS initiatives.

³⁹ Chris Warner, "Procurement Integrity," memorandum to Board members and Board assistants, April 17, 2001.

We concur with the CSB's response. In follow-up comments, the CSB emphasized that Board members' personal ties had not influenced procurement decisions. Nevertheless, whenever Board members have personal ties to a prospective vendor, they should recuse themselves in order to avoid the appearance of an ethical conflict. The CSB agreed to develop procedures to recuse members from meeting with prospective bidders. We believe they should expand this procedure to address procurements that are not competitively bid as well.

II. BOARD MEMBERS AND CAREER STAFF DISAGREE ABOUT THE AGENCY'S MISSION AND HOW TO ACHIEVE IT

The Board and senior staff disagree about the agency's mission and how to achieve it. The ongoing struggle revolves around (1) whether the CSB should, in addition to conducting investigations, also perform outreach, promotion and prevention activities, and (2) how should the CSB prioritize its resources between them. Senior managers want the CSB to direct its resources into its investigative work. The Board, while it supports investigations, asserts that outreach activities are also needed. Their positions are especially evident in draft updates to the agency's Performance Plan.

We reviewed the agency's statutes and legislative history, and both attach greater importance to conducting investigations. Congress and GAO have both directed the CSB to emphasize investigations. Also borne from this debate is a question of whether the CSB has a role as "trainer-educator" in the chemical and safety industry; this question warrants further review. The Office of Investigations' infrastructure is still developing and the CSB is still learning how to manage its investigations. For these reasons, we concluded that the agency should focus on investigations.

We are certain that the issues discussed in Part I of our report are inextricably linked to the philosophical differences of opinion among Board members and staff.

A. Mission Struggle: Investigations Versus Preventive Outreach

The CSB's Board and senior managers have different opinions about the division of resources between investigative and non-investigative activities. Senior managers, citing the relatively few number of investigations completed to date and still-developing infrastructure, assert that the CSB should channel its program resources into producing investigative reports. But the Board, while acknowledging that investigations are necessary, maintains that it is vital that the CSB translate them into outreach programs and stakeholder partnerships to convey "lessons learned." In contrast, senior managers contend that the agency's outreach should concentrate on advocacy for CSB report recommendations, and they argue that the educational outreach activities promoted by the Board are either premature considering the CSB's infancy, or at best tangential to the mission. The continued disagreement is inhibiting the cooperation necessary to resolve organizational, management, and administrative issues.

In September 2000, the CSB submitted its first 5-year Strategic Plan to Congress. The agency's mission goal—promote the prevention of chemical accidents—is supported by three performance goals. In designated order of importance, they are:

1. Produce timely, high quality investigation reports, recommendations and other investigative reports;
2. Develop effective outreach and partnerships with stakeholders; and
3. Develop and implement a system for chemical accident data collection and analysis that can be used to measure prevention effectiveness.

Board members and career staff agree on the centrality of conducting investigations. However, they are at odds over the importance of the last two goals as well as over numerous planned action items to implement them. Last fall, the agency's Strategic Planning Team, made up of career staff, proposed performance plan action items for fiscal years 2002-3 and submitted them to the Board for comment. The Board responded that the plan lacked adequate mechanisms for directing and allocating staff resources toward outreach and data goals, and it directed that the plan be modified to:

- Designate a staff lead for an Outreach Program;
- Develop an overarching strategy for outreach activities, including outreach directives and initiatives such as training conferences, and training programs for universities and industry;
- Design and implement surveys on prevention outreach; and
- Develop and implement a system for chemical accident data collection analysis, including hiring a full-time data analyst/program manager.

This dispute over allocating resources to data and outreach missions has apparently always been a concern at the CSB. Two years ago, immediately following the prior Chairperson's resignation in January 2000, CSB staff presented a status report to a Board member that expressed their concerns about the trend toward more outreach activities, discussed numerous flaws in the organization, and recommended courses of action for the Board. The first issue they identified was the need to redefine and come to a consensus on the CSB's mission. In the memorandum, staff charged that:

...For the past two years the CSB has not acted as though conducting investigations...were... its primary mission. In its organizational structure, staffing choices, and public presentations, it has acted as though it was a sort of general safety advocacy/public relations and data collection/analysis agency that also occasionally conducted investigations. Budget and staffing decisions during the past two years confirm that there has been a gross misallocation of resources.

Staff recommended a re-prioritization, including strengthening the Office of Investigations, properly allocating resources to fund the mission, and fulfilling other Congressional and budgetary promises. But during our interviews, senior managers indicated that problems in setting priorities persist. Senior managers do not share the Board's current commitment to outreach initiatives, believing instead that the CSB must first build credibility by completing a substantial number of accident investigations. They note that Congress and stakeholders have encouraged the agency to complete more reports. Moreover, staff also claim that historically, Board member outreach activities often have not been strategic but conceived in isolation without full Board support or staff knowledge. In short, staff feel frustrated with the CSB's current direction.

Also frustrated, Board members are seeking a balance between the CSB's investigative and non-investigative work because they view investigations in a broader context. Board members informed us that investigations are narrowly targeted toward accident participants, and the reports have limited value unless they are used to teach larger audiences.⁴⁰ The Board also feels that training outreach is important "because we need to have something that we can measure" regarding the agency's success, or the impact of investigations on preventing accidents. The Board's vision could be summarized by a Board member's comments during last year's appropriation hearing: "[T]he investigations are just a means to a much larger activity that engages the Board, which is to translate those investigations into prevention by outreach."⁴¹ The Board is eager to transform CSB operations to meet these expectations; for example, another Board member remarked at the hearing, "Most of our work as Board members has been on building the investigative program, we ourselves have delayed our normal activity, which should be to go out and teach the lessons to the most appropriate audiences on preventive approaches. Our hope is...to have enough resources this year to start to expand what has been a lagging function of the Board..."

The procurement initiatives we discussed previously depict the expansion of outreach activities desired by the Board but opposed by career staff. While we recognize the career staff's desire to promote investigative work, we also acknowledge that it is not clear that Board outreach activities, which were not very costly, conflicted with or detracted from investigations. The extent of the trade-offs, or opportunity costs, cannot be quantified because the CSB lacks a well-defined system to measure, track, and prioritize the time, costs and benefits of investigations and other resource expenditures. For example, the FY03 budget request highlighted what may have been a trade-off: the CSB

⁴⁰ Although the Board perceives that recommendations are limited to impacting accident participants, the CSB's statutory authority requires the agency to issue recommendations not only to participants but also to regulatory agencies and "other interested persons."

⁴¹ House Appropriations Subcommittee Hearing (May 1, 2001).

attributed its slow hiring of investigators to insufficient funds, yet at the same time the agency pursued new, non-investigative procurements at Board direction.

It is evident that the CSB needs to identify the trade-offs clearly and prioritize its resources. How the Board ultimately deals with the staff's reluctance to cooperate with its strategic emphasis on outreach remains to be seen. The Board is still developing its strategic outreach plan. But the lack of consensus on two of the agency's three primary mission goals does not bode well for their future implementation.

Recommendation

We recommend that the Chief Operating Officer:

6. Develop and implement a system that links strategic planning to resource allocation decisions and measures performance in a way that balances productivity and costs with desired outcomes.

Management Comments and IG Analysis

The CSB agreed with our recommendation. The COO is taking the lead to develop a system linking strategic planning to resource allocation and measuring performance. The CSB noted that it is now monitoring progress on performance goals using work plans, and the agency is developing a system to track staff hours to performance goals that will be in place by April 30, 2002.

We concur with the CSB's response. We believe these steps will be key elements in facilitating strategic decisions and improving the agency's results-based performance. We look forward to the CSB providing additional information about this new system.

B. Agency Mission Emphasizes Investigations

The CSB's statutory authority clearly sets forth that the agency is to conduct investigations and make recommendations based on those investigations. The 1990 Clean Air Act Amendments authorized the formation of the CSB with five duties:

1. To investigate serious accidents and report to the public on their circumstances and causes;

2. To make recommendations to Congress, Federal, State, and local agencies and “other interested persons” regarding steps to prevent or minimize accident consequences. This duty includes proposing rules and orders for EPA and OSHA to develop;
3. To establish requirements for reporting accidents;
4. To coordinate its activities with other health and safety agencies; and
5. To review and make recommendations on the use of hazard assessments and risk management plans in preventing chemical accidents. The CSB is also authorized to conduct research and studies regarding actual and potential hazards.

Further clarification of the CSB’s mission is evident in its legislative history. According to the Senate legislative history, the CSB was created for purpose of “finding the cause or probable cause of chemical accidents and recommending requirements or orders which will prevent accidents in the future.”⁴² The CSB is patterned after the NTSB, which also investigates, determines, and publicizes accident causes. Like the NTSB, the CSB lacks the authority to create and enforce regulations; instead, it uses its investigative findings to recommend preventive measures for regulatory agencies and other groups to carry out. Unlike regulatory agencies that also investigate chemical accidents, including EPA and OSHA, the CSB was designed to look beyond faults in regulatory compliance and identify the root causes of accidents, “whether or not those causes were in violation of any current and enforceable requirement.”⁴³ Its independence then enables it to apply that knowledge base to “stimulating regulatory action” and coordinating the Federal approach to chemical accident prevention.⁴⁴ The Senate noted, “The principal function of the Board is to establish a foundation for regulatory action that will trigger rule-making on an appropriate schedule.”⁴⁵

During recent hearings and testimony, Congress and GAO have also attached considerable importance to conducting investigations. Both have criticized the CSB for completing too few investigations. In FY2000, GAO noted an imbalance between investigations and external relations work: “...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.”⁴⁶ During the FY2001 Senate Appropriations hearing, committee members articulated their concerns to the Board that investigations were few and far between, and costly. One

⁴² Senate Report No. 101-228 (1989). The history notes that the CSB should adopt an “all-cause,” not single-cause, approach to investigations.

⁴³ Senate Report No. 101-228. The Senate sought to supplement “investigations conducted by agencies with dual responsibilities [that] tend to focus on violations of existing rules as the cause of the accident almost to the exclusion of other contributing factors for which no enforcement or compliance actions can be taken.”

⁴⁴ Senate Report No. 101-228.

⁴⁵ Senate Report No. 101-228.

⁴⁶ Senate Appropriations Subcommittee, Hearing No. 106-888 (April 12, 2000).

Senator observed, “[W]e have to get results. And the results are not three investigations over 3 years and \$18 million.”⁴⁷ The Board assured committee members that the agency’s “highest emphasis” would be placed on investigative and safety programs. Nevertheless, during the next year’s hearing before its House Appropriations subcommittee, the CSB drew similar criticism from a Representative, “I do think it is legitimate for this committee to, particularly in the context of a very contentious personality or management conflict that has gone on for three years, be a little impatient about the product that you are producing for the amount of money that we are appropriating.” He went on to say that the agency should be getting beyond administrative and management obstacles, and personality conflicts, and “getting down to business and producing a product for the \$7.6 million that you are requesting.”

Combining statutory guidance, legislative history, and congressional intent, overwhelming weight is given to the core function of conducting investigations. The CSB’s primary performance goal adequately emulates this guidance. On the other hand, these references do not provide nearly as much support for the CSB’s second and third performance goals of pursuing outreach activities and data collection and analysis. In addition to their germane responsibilities of investigating, issuing periodic reports, and establishing reporting requirements, there is a reasonable expectation that Board members should be keeping the public informed and serving as advocates for its recommendations. But as we discussed, the Board is looking forward to a broader role for the CSB in the chemical safety arena. It has advocated educational outreach targeted toward undergraduate professors, emergency responders, workers, and managers in order to leverage the CSB’s “lessons learned.” Consequently, the potential exists for the CSB’s educational efforts to overlap with that of other public and private entities. For example, both OSHA and EPA statutes include responsibilities for developing or regulating training, and prominent professional and academic groups run training programs.⁴⁸ During the 1999 appropriations hearing, one Representative cautioned, “I do not think we need two agencies doing the same thing, and they [OSHA] certainly target those issues [of worker training]. ... And if you do have finite resources, it is extremely important to me that you ... not repeat or duplicate what is already being done.”⁴⁹ It is a legitimate question whether the Board’s authority includes a trainer-educator role.

More important, irrespective of that authority, other factors suggest the CSB should delay its educational efforts in general. First, the CSB is still in the process of learning how best to complete investigations. Second, although there has been some progress, the CSB has yet to implement a program to follow up on its recommendations and maximize its preventive outreach to the

⁴⁷ *Ibid.*

⁴⁸ For examples, see 42 U.S.C. § 7412(7)(A) and 29 U.S.C. § 651.

⁴⁹ House Appropriations Subcommittee Hearing (February 24, 1999).

primary audiences targeted by its investigative reports. Finally, the Board's investigative work to date does not suggest that educating individuals is the best use of the CSB's limited resources. Citing process safety management principles, both staff and Board members have informed us that 85 percent of major chemical accidents can be traced to management system failures, not worker or emergency responder error. During the Board of Inquiry regarding the Morton Specialty Chemical plant explosion, the Director, Office of Investigations and Safety Programs, explained: "[R]oot causes almost always are found or involve problems in management safety systems. In other words, an operator error is typically involved or often involved in any major chemical incident, but it's rarely a root cause. It's a symptom of an underlying problem in management systems."⁵⁰ CSB's root cause analyses in the Morton incident, the Sierra Chemical incident, and other reports support this position. If the Director's assertions are accurate, the CSB may apply its understanding of these systemic causes toward accident prevention in a technical and advisory role, as envisioned by Congress and its statutes.

In conclusion, the CSB statute does not specifically address a training role for the agency; and therefore we believe this matter deserves further review before the CSB invests its limited resources there. Taking into account that the CSB is in its fifth year of operation, we caution the CSB not to deviate from its investigative duty before its investigative infrastructure and capacity have fully developed.

Recommendation

We recommend that the Board:

7. Immediately prioritize agency resources to ensure successful execution of all action items related to its investigative performance goal.

Management Comments and IG Analysis

The CSB agreed with our recommendation. The CSB announced during its public meeting on February 27, 2002, that it had taken a hard look at its FY 2002 performance plan and decided to rescind allocations for the SACHE workshop, NIEHS conference, and CCPS membership. At the same time, Board members maintained that they view these outreach projects as a valuable use of CSB resources. Nevertheless, the agency decided not to undertake new outreach or data initiatives, including hiring, until it completes a review of its strategic plan, expected by June 30, 2002. The Board plans to

⁵⁰ U.S. Chemical Safety and Hazard Investigation Board: Public Review of Findings for the Morton Specialty Chemical Incident (July 18, 2000).

vet proposed revisions to the strategic plan through Congressional authorizing and appropriating committees.

We concur with the CSB's response and believe that this kind of directional oversight will be helpful. We suggest that the CSB explain in its action plan how it is executing its investigative performance goal.

C. Investigations Infrastructure Still in Development

Although there has been progress, the CSB's Office of Investigations and Safety Programs (ISP) is still developing the staff, training, and experience necessary to fully function and meet the needs of the agency. Therefore, the agency stands to benefit from devoting more of its resources to investigative reporting and infrastructure development. The agency is confronting its investigative workload while still building its investigations infrastructure. Second, although approved, the CSB has not implemented a formal program to follow up on the status of its investigative recommendations. In order to assess the effectiveness of its investigative work, CSB must have the capability to determine whether or not its recommendations have been implemented. This need outweighs any potential benefits of expanding outreach programs at this time.

The current ISP workload exceeds staff capabilities. According to previous budget submissions, the agency's plan is to complete a particular investigation within twelve months and three reports per year, increasing to six per year by 2005. The Bethlehem Steel Burns Harbor Mill report from December 2001 is the first that meets that goal, having been completed within ten months; and the CSB plans to issue two more reports by the end of the summer. The CSB sends a team of six or more investigators plus additional support staff to an accident site during the first weeks of a new investigation.⁵¹ Since the CSB has only nine investigators and four investigative support staff, the current workload—in particular, beginning new investigations while continuing others—overtaxes staff capabilities. Investigators are routinely pulled back and forth between projects, leading to project delays. For example, the report on the BP Amoco Polymers explosion stalled for several weeks because the majority of its team was pulled to work on the Motiva acid tank failure or the reactive hazards study. Building the investigations infrastructure to handle these challenges continues to be a concern for the agency.

Nevertheless, the CSB hired no investigators in the past twelve months, and only recently did the CSB issue its first set of two investigative position

⁵¹ *Initial Budget Request for Fiscal Year 2003*, U.S. Chemical Safety and Hazard Investigation Board (September 10, 2001).

announcements since the CSB's Schedule A hiring authority expired on December 31, 2000. The Board also announced one Recommendations Specialist position. Past experience has shown that hiring investigators is a lengthy process that can span six months or more. The Board decided not to fill the investigator/training coordinator position it created; however, staff maintain that this position is needed to manage the CSB's internal training program, which has yet to be formalized. Greater emphasis is needed on hiring. The agency needs a healthier balance of investigative and overhead positions; people in support positions outnumber investigators by a two to one margin. Not including Board members, the nine investigators account for 31 percent of the agency's resources while the remaining 20 career staff, or 69 percent, occupy indirect support positions.

Moreover, investigators are still learning how to do their job. Since its inception, the CSB has completed seven reports, a safety bulletin, and a case study. Staff are gradually gaining valuable experience in conducting root cause investigations, creating needed regulations, assessing protocols, and setting the precedents necessary to its future success. For example, during the Motiva investigation this past autumn the CSB dealt with the first challenge to its subpoena authority and with issues of witness sequestration. The staff needs time to develop expertise and to craft an integrated, formalized system for managing chemical investigations.

Also, the agency needs to implement its recommendations follow-up program. Partly because the lead recommendations specialist was reassigned to support the Motiva investigation, Board members did not adopt the recommendations program that the CSB presented to the public in September 2001 until December. But the follow-up program still remains idle. Besides illustrating the repercussions of understaffing, this missing element highlights a critical shortcoming in the agency's ability to translate investigative knowledge into accident prevention. Since it does not track report recommendations officially, the Board has not closed a single recommendation, which must be done by vote. Without a working recommendations program, the agency has not yet maximized its preventive outreach to the reports' primary audience, the recommendations recipients. Moreover, the CSB remains unable to attempt a formal assessment of the impact of its recommendations, which raises questions regarding how the agency will measure itself according to the Government Performance Results Act. Although the Board has suggested that educational outreach will improve the CSB's performance measurement, we believe the agency's limited resources could be better spent tracking the implementation of report recommendations.

While the CSB is still building its investigative knowledge base, the agency's work to date does not suggest that educating emergency responders, workers, and managers—a central feature of the Board's outreach activities—is the best use of the CSB's limited resources. It may be feasible for the CSB to isolate the ISP from its outreach activities so that other events do not conflict with

ongoing investigations, and the Board had voted to create a separate organizational unit for this purpose. We stated earlier that the impact of directing some resources to non-investigative work is not altogether known. However, the CSB needs to take a hard look at those outreach activities that are truly suitable to the agency and its mission. The Board should focus less on obtaining consensus guidelines to facilitate the use of incident investigative findings and reports, as noted in one initiative, and concentrate more on promulgating recommendations, regulations, or simply best practices, using its own recommendations. We caution the CSB not to deviate from its investigative obligations before its investigative capacity has fully developed. To that end, the CSB should dedicate its resources to meeting these critical challenges before extending its role in preventive outreach.

Recommendations

We recommend that the Board and Chief Operating Officer:

8. Make the agency's FY02 hiring plans a top priority, and to the extent possible, accelerate the hiring process for new investigators.

Management Comments and IG Analysis

Asserting that hiring staff within the Office of Investigations and Safety Programs is a top priority, the CSB has decided to petition OPM by March 31, 2002, for permanent Schedule A hiring authority for investigative positions. Under temporary Schedule A hiring authority, the CSB successfully hired investigators in FY 2000 and early FY2001.

We concur with the CSB's proposed actions and support the CSB's efforts to obtain permanent Schedule A hiring authority for these positions in order to reach the appropriate applicant pool in a more efficient manner. Previous investigator candidates whom the CSB hired were drawn from the private sector, and the competitive hiring process may artificially limit the applicant pool.

Recommendation

9. Curtail training-outreach initiatives until (a) the Board develops a Strategic Outreach Plan that takes into account the agency's statutory responsibilities, primary audience, and limited resources, and (b) its investigative function is fully operational. The plan should reflect the consensus of Board members, senior management, and staff.

Management Comments and IG Analysis

The CSB rescinded its current training-outreach initiatives and expects to finalize a strategic outreach plan by April 30, 2002. The CSB will also review its strategic plan to ensure that the CSB is focused on the successful execution of its investigative performance goal.

We generally concur with the CSB's response. We believe the linking of investigations and outreach is critical to the CSB's success. We look forward to reviewing the Outreach Plan to determine whether it adequately addresses our recommendation.

Recommendation

10. Implement a follow-up program for recommendations made in investigative reports, including monitoring recommendations, closing recommendations when corrective actions are taken, and periodically publishing the status of them. In order to better measure the impact of report recommendations, the program should be tied to the performance measures identified in the agency's strategic plan.

Management Comments and IG Analysis

The CSB agreed with our recommendation and outlined several steps it will undertake to enact its recommendations program, including:

- Voting to close out 20 recommendations by March 15, 2002;
- Implementing an internal tracking system for recommendations status including a database and electronic file system for correspondence and documentation by March 30, 2002;
- Holding a public meeting to formally close a number of other recommendations by May 31, 2002; and
- Implementing a publicly accessible database on the World Wide Web for CSB's recommendations status by October 2002.
- Including the percentage of recommendations adopted as a factor in measuring the effectiveness of CSB's mission accomplishment.

We concur with the CSB's response and the measures being taken to implement a viable follow-up program. A strong recommendations follow-up program based on investigative root-cause analyses should be the backbone of the CSB's accident prevention efforts.

APPENDIX A: CSB COMMENTS ON DRAFT REPORT