

HEARING ON THE NOMINATIONS OF STEPHEN
A. OWENS, JENNIFER BETH SASS, AND SYLVIA
E. JOHNSON TO BE MEMBERS OF THE U.S.
CHEMICAL SAFETY AND HAZARD INVESTIGA-
TIONS BOARD

HEARING
BEFORE THE
SUBCOMMITTEE ON CHEMICAL SAFETY, WASTE
MANAGEMENT, ENVIRONMENTAL JUSTICE AND
REGULATORY OVERSIGHT
OF THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED SEVENTEENTH CONGRESS
FIRST SESSION
JULY 29, 2021

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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED SEVENTEENTH CONGRESS
FIRST SESSION

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HEARING ON THE NOMINATIONS OF STEPHEN A. OWENS, JENNIFER BETH SASS, AND SYLVIA E. JOHNSON TO BE MEMBERS OF THE U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATIONS BOARD

THURSDAY, JULY 29, 2021

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON CHEMICAL SAFETY, WASTE MANAGEMENT,
ENVIRONMENTAL
JUSTICE AND REGULATORY OVERSIGHT,
Washington, DC.

U.S. Senate Committee on Environment and Public Works Subcommittee on Chemical Safety, Waste Management, Environmental Justice, and Regulatory Oversight Washington, DC.

The committee, met, pursuant to notice, at 10:06 a.m., in room 406, Dirksen Senate Office Building, Hon. Jeff Merkley (chairman of the subcommittee) presiding.

Present: Senators Merkley, Wicker, Kelly, Capito, Ernst.

**OPENING STATEMENT OF HON. JEFF MERKLEY,
U.S. SENATOR FROM THE STATE OF OREGON**

Senator MERKLEY. Welcome, everybody. We now open the hearing of the Subcommittee on Chemical Safety, Waste Management, Environmental Justice, and Regulatory Oversight of the Senate Environment and Public Works Committee.

Welcome to today's hearing. We are here to examine the qualifications of three individuals nominated to serve as members of the U.S. Chemical Safety and Hazard Investigations Board, or better known as CSB. The CSB was created as part of the Clean Air Amendments Act of 1990 and became operational 8 years later in 1998.

For over the last two decades, the CSB has been tasked with investigating the root causes of industrial chemical accidents at fixed industrial facilities. The CSB then offers recommendations to facilities, to local and State governments, regulatory agencies, industry organizations, and labor groups on how to prevent future accidents. The result is improved chemical safety at these facilities.

The CSB has investigated a broad array of accidents: fires at chemical plants, a steam explosion of a 2,000-pound hot water storage tank that launched the storage tank like a rocket through the roof, and unfortunately killed an employee and critically injured another. The CSB has investigated the 2010 explosion of the BP

Deepwater Horizon rig in the Gulf of Mexico, which killed 11 workers and created the largest oil spill in American history. It has investigated the 2013 explosion at a Texas fertilizer plant that killed 15 and injured more than 200.

While the CSB may not be as well-known as other agencies like the Environmental Protection Agency, it plays a critical role in the health and well-being of our ecosystem and our industrial enterprises. People's lives depend on the Board's ability to do its job by making appropriate and timely recommendations, which is why it is unfortunate that over the past few years, the CSB has not been fully equipped to carry out its mission.

Every year, roughly 200 incidents occur that the Chemical Safety Board considers investigating, but it only has enough staff and funding to investigate a handful. It is understaffed currently, with about 20 investigative positions, but only about a dozen of them filled. It has the largest backlog in investigations than it has had in the last 5 years.

It has more than 100 open safety recommendations that have not been finalized. If they are not finalized, they are not passed on. If they are not passed on, they are not considered. If they are not considered, they are not acted on. If they are not acted on, the odds of additional accidents goes way up, and people get maimed, and people die. The Board's work needs to be able to go forward in an efficient and effective manner.

One of the challenges is it only has one Board member right now instead of five. Well, we are here to help address that today, and I so much appreciate the three of you stepping forward to bring your expertise to this task. It is important that the Board have a sufficient number of members to act, that it has the staff of inspectors and other positions to do its job in protecting our lives.

Earlier this year, Senator Klobuchar and I wrote to the Biden Administration, calling on them to fill these vacancies as a significant priority in protecting Americans, and so thank you to the Administration for proceeding to do so.

The nominees each bring with them a unique experience, life experience, work experience that will help guide the CSB in its work. Its work with local communities, with local governments, with other agencies, and with the scientific and chemical experts. The goal, of course, is getting the best possible recommendations.

The CSB does not write rules. It does not write regulations. It provides the nonpartisan, professionally developed scientifically informed recommendations for those agencies and companies to consider, so this is a really important role.

I would like to turn to my colleague, Senator Wicker, for any opening statement he would like to make.

**OPENING STATEMENT OF HON. ROGER F. WICKER,
U.S. SENATOR FROM THE STATE OF MISSISSIPPI**

Senator WICKER. Thank you, Chairman Merkley, and I appreciate your calling today's subcommittee hearing.

I want to welcome our three witnesses today. They all have been nominated to be members of the Chemical Safety and Hazard Investigation Board, or CSB. I appreciate their willingness to serve.

The CSB is an independent, non-regulatory agency charged with investigating the root causes of chemical accidents at industrial facilities. That is what they do. Congress created the CSB to investigate accidents, understand what went wrong, and help prevent them from happening again. This investigative work is vital for the safety of our Nation's facilities and our communities.

Since becoming operational in 1998, the CBS has investigated three accidents that occurred in Mississippi, a 2002 explosion that injured three workers, a 2006 explosion that killed three contractors and seriously injured another, and fortunately, one in 2016 did not result in injuries or fatalities.

The CSB works to investigate these types of incidents in order to prevent them from happening again. The work is important and can save lives. It is therefore critical that the Board be filled with chemical process safety experts. Today's hearing presents an opportunity to hear from each of them about their qualifications for this supportive role.

I would note, earlier this week, the American Chemistry Council sent a letter expressing concern that "None of the nominees has the necessary experience or expertise to meet its mission." That is a direct quote. This committee has long held a high standard for these positions.

As a matter of fact, at a previous hearing, in a question for the record, my colleague and friend Senator Cardin asked the following of a past CSB nominee who was considered by this committee: "You do not appear to have the relevant private sector experience in chemical safety processes. What specific knowledge do you bring to this position that is directly relevant to the subject matters that the Chemical Safety Board considers?"

That was a quote from our Democratic colleague from Maryland, Senator Cardin. I think that is a question worth asking each nominee today, and I look forward to getting to know more about their experiences.

Thank you, Mr. Chairman.

Senator MERKLEY. Thank you, Ranking Member Wicker.

I would like to now introduce our nominees.

Dr. Jennifer Sass is a Senior Scientist at the Natural Resources Defense Council, where she has served since 2001. Since 2008, she has served as part-time faculty at the George Washington Milken School of Public Health. Much of Dr. Sass's work is focused on understanding and explaining the science behind toxic chemical regulation and advocating for regulations that are consistent with science, health policy, and environmental law.

She frequently provides testimony in scientific briefings for Members of Congress, as well as Federal advisory committees, and is a lecturer at George Washington University's Department of Environmental and Occupational Health. Dr. Sass was a Board Member of the National Toxicology Program Board of Scientific Councilors. She holds multiple degrees from the University of Saskatchewan College of Medicine and a post-doctoral certificate from the University of Maryland College of Medicine.

Dr. Sylvia Johnson currently works for the National Education Association in the Government Relations Department, where she leads her legislative work on safe reopening of schools. Previously,

she served as Assistant Director of Legislative Affairs for UAW, the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America. We just prefer to call them UAW.

Prior to working in the legislative department, Dr. Johnson worked as an occupational epidemiologist where, in addition to her work on work-related health studies, she conducted hazard assessments and investigated incidents involving the death of workers due to either chemical biological, or physical exposures. Dr. Johnson graduated from Fayetteville State University with a Bachelor of Arts degree in Geography and double minors in mathematics and physics. She earned a Master of Science from Virginia Commonwealth University in biomedical engineering and a Ph.D. from Old Dominion University in urban health services research.

I will now turn to Senator Kelly, who is not here, so I will introduce our third individual.

Steve Owens is an attorney with Squire Patton Boggs, LLP in Phoenix, Arizona, where he focuses on environmental safety and health issues. From 2009 to 2011, Steve served as the U.S. Environmental Protection Agency Assistance Administrator for the Office of Chemical Safety and Pollution Prevention. As the Assistant Administrator for OCSPP, Steve was responsible for managing EPA's regulatory programs on chemicals and pesticides under the Toxic Substances Control Act, known here as TSCA.

Prior to joining EPA, Owens was Director of the Arizona Department of Environmental Quality from 2003 to 2009, where he made addressing climate change, protecting children's environmental health, and working closely with Arizona's tribal nations top priorities. Mr. Owens graduated with honors from Brown University in 1978 and received his law degree in 1981 from Vanderbilt Law School, where he was Editor in Chief of the Vanderbilt Law Review.

Mr. Owens served as council to the Subcommittee on Investigations and Oversight of the U.S. House Committee on Science and Technology. During 1985 to 1988, Mr. Owens was Chief Council and later, State Director for then-U.S. Senator Al Gore. From 1999 to 2002, Mr. Owens served as a member of the Joint Public Advisory Committee of the North American Commission on Environmental Cooperation.

He is a former member of EPA's Clean Air Act Advisory Committee and EPA's Children's Health Protection Advisory Committee, as well as a former President of the Environmental Council of the States, the National Association of State Environmental State Directors.

Welcome to each of you, and we will now hear from the nominees themselves. I think, checking with my team, are we asking for 5 minutes of presentation? If you go a little bit long, I will kind of suggest you wrap it up. Thank you.

So, let us start with Ms. Sass.

STATEMENT OF JENNIFER BETH SASS, NOMINEE TO BE A MEMBER OF THE U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATIONS BOARD

Ms. SASS. Thank you, Senator.

Chairman Merkley, Ranking Member Wicker, members of the subcommittee, thank you for your consideration of my nomination for the U.S. Chemical Safety and Hazard Investigation Board. I am honored to be nominated by President Biden and, should I be confirmed, to have the opportunity to take up public service as a member of the Board.

With me today are my son, Nathan, and his girlfriend, Christina, both now living in California, and my husband, Michael.

My father, who lives in Canada, served in the U.S. military, as did all his brothers and then went on to graduate studies at Cornell University in the field of occupational health and safety, and eventually into government health and safety work. I credit my parents with instilling in my brother and me a strong work ethic, integrity, and commitment to public services. My parents, family, and friends are tuning in to these proceedings via webcast.

I am a senior scientist at the Natural Resources Defense Council, where, for the past two decades, I have worked to advance policies and practices to better protect the health and safety of American families in all the places that they live, learn, work, and play. I provide policy strategy, scientific review, and oversight of materials generated for our work to characterize the potential impacts of chemicals on human health and the environment.

My work informs decisionmakers and stakeholders, including chemical manufacturers, product manufacturers, and other downstream businesses that use chemicals: retailers, academic researchers, doctors and other health care workers, outdoor fishing, hunting, and recreation enthusiasts, and others.

On an almost daily basis, I engage in some form of risk analysis. I help formulate environmental health strategies. I work to build successful networks and partnerships across diverse stakeholders and interests.

I also have a part-time faculty position at George Washington University in the Department of Environmental and Occupational Health, where I teach graduate-level science policy classes. Last year, I was awarded a departmental commendation for teaching excellence. In addition to academic teaching, I provide scientific peer review for numerous professional journals and have published over 50 articles in scientific journals.

As a science policy expert, I have served on Federal science advisory committees, including the National Toxicology Program's Board of Science Councilors and also a member of the President's Council of Advisors on Science and Technology on the working group to evaluate the Federal nanotechnology strategy. My time on these committees has established effective working relationships with experts from government, academia, and the private sector, always based on honest, respectful engagement, open communication, and transparent information sharing.

The Chemical Safety and Hazard Investigation Board is both a scientific and a policy agency. The role of the agency is to make effective recommendations to prevent future similar incidences. It must gather all relevant information from the facility under investigation, from industry and trade associations, from subject matter experts, from the community, workers, government agencies, elected officials, and others. To be successful, the Board needs to main-

tain positive relationships with all stakeholders to ensure that accurate, timely information is effectively gathered and shared.

Congress has made it clear that the Chemical Safety and Hazard Investigation Board has bipartisan support when it functions well and accomplishes its mandate to deliver timely reports and meaningful recommendations that support prevention strategies.

I am confident that I will be successful in carrying out my duties as a member of the Board to support its mission, should you deem me worthy of the task.

Thank you.

[The prepared statement of Ms. Sass follows:]

Statement of Jennifer Beth Sass
Nominee for Member, Chemical Safety and Hazard Investigation Board
Before the
Senate Committee on Environment and Public Works
Subcommittee on Chemical Safety, Waste Management, Environmental Justice, and
Regulatory Oversight
July 29, 2021

Chairman Merkley, Ranking Member Wicker, Members of the Subcommittee, thank you for your consideration of my nomination for the U.S. Chemical Safety and Hazard Investigation Board. I am honored to be nominated by President Biden, and – should I be confirmed – to have the opportunity to take up public service as a member of the Board.

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My father, who now lives in Canada, served in the U.S. Military, as did all his brothers, before going on to graduate studies at Cornell University in the field of occupational health and safety, and eventually government health and safety work. I credit my parents with instilling in my brother and me a strong work ethic, integrity, and commitment to public service.

I am a senior scientist at the Natural Resources Defense Council, where for the past two decades I have worked to advance policies and practices to better protect the health and safety of American families in all the places that they live, learn, work, and play. I provide policy strategy, scientific review, and oversight of materials generated in our work to characterize the potential impacts of chemicals on human health and the environment.

My work also informs decision-makers and stakeholders, including: chemical manufacturers; product manufacturers and other downstream businesses that use chemicals; retailers; academic researchers; doctors and other health care workers; outdoor fishing, hunting, and recreation enthusiasts; and, others. On an almost daily basis, I engage in risk analysis, help formulate environmental health strategies, and work to build successful networks and partnerships across diverse stakeholders and interests.

In addition to my work at the Natural Resources Defense Council, I have a part-time faculty position at George Washington University, in the Department of Environmental and Occupational Health. Last year I was awarded a departmental commendation for teaching excellence. In addition to teaching graduate-level science policy classes, I provide scientific peer review for numerous professional journals, and have published over 50 articles in scientific journals.

I have also served on federal science advisory committees, including the National Toxicology Program's Board of Science Counselors, and as a member of the President's Council of Advisors on Science and Technology workgroup to evaluate the federal nanotechnology strategy. In both cases, my time on these committees has resulted in establishing effective working relationships

with experts from government, academia, and the private sector, based on honest, respectful engagement, open communication, and transparent information sharing.

The Chemical Safety and Hazard Investigation Board is both a scientific and a policy agency. The role of the agency is to make effective recommendations to prevent future similar incidences. It must gather all relevant information from the facility under investigation, industry and trade associations, subject matter experts, the community, workers, other agencies, elected officials, and others. To be successful, the Board needs to maintain positive relationships with all stakeholders, to ensure that accurate information is gathered in a timely manner.

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Thank you

Senate Committee on Environment and Public Works
Hearing Entitled, "Hearing on the Nominations of Stephen A. Owens, Jennifer Beth Sass,
and Sylvia E. Johnson to be members of the U.S. Chemical Safety and Hazard Investigations
Board"
July 29, 2021
Questions for the Record for Jennifer Beth Sass Ph.D.

Senator Markey:

1. The Chemical Safety Board (CSB) currently has 20 open investigations, including one from an incident nearly five years ago in 2016. This is the largest backlog of open investigations in the CSB's history. There is also no publicly available plan for how and when the CSB will complete these investigations, leaving communities, workers, and the American public with no information about investigations concerning their safety.

- a. As a CSB board member, what would you do to address this backlog?

The investigation backlog is a very concerning issue on both sides of the political aisle. In a bipartisan letter from the House Committee on Energy and Congress sent to CSB Chairman Lemos this past spring, May 20th, the Committee wrote that, "a mounting backlog could potentially result in some recommendations from older investigations being outdated by the time they are finally issued. Furthermore, last year, the CSB did not approve any new recommendations. The reasons for these delays must be understood." The letter asked CSB to provide Congress with status updates on open investigations and other information to help address the investigation backlog.

If confirmed I would look forward working with you and your staff, and others in Congress, to provide Congress with an investigative plan that includes a review of the available staffing and other resources so that the CSB is best positioned to use its resources wisely to complete its tasks and support its mission.

- b. Would you be supportive of the CSB issuing a public accounting of its current investigations with targeted dates for completion?

Yes, I would.

In the May 20th bipartisan House Congressional letter to CSB, the Committee asked CSB to provide it with, "the expected timeframe for completing each investigation" and other information relevant to understanding the nature and reasons for the backlog. If confirmed, I would look forward to working with your office and others in Congress to issue a public update on the status and expected timeframe for addressing open investigations.

2. At CSB meetings prior to March 5, 2021, there have historically been opportunities for public comments and questions. However, recently, including at the meetings on March 5, 2021 and April 2, 2021, there have not been opportunities for the public to provide comments.
 - a. If confirmed, would you commit to working to restore opportunities for public comments and questions during public CSB meetings, including quarterly business meetings and meetings discussing specific investigations?

Yes, I would.
3. It is also CSB policy that the public be notified 60 days in advance of quarterly public business meetings. Recently, this has not been the case, and the CSB has given the public as little as seven days' notice.
 - a. As a CSB board member, would you commit to giving the public 60 days' notice for meetings?

Yes, I would. It is current CSB policy that the Chairperson should provide 60 days advance notice of scheduled meetings, and to the extent possible, include the time, place, tentative agenda and other information. (see CSB Order 001 Quorum, Voting, and Meeting Procedure, p. 9)

Ex-Officio Capito:

1. If confirmed, what do you hope to accomplish during your time at CSB?

The CSB has always enjoyed bipartisan support because it conducts thorough, thoughtful, smart root-cause analyses, making recommendations that make the whole sector safer. This supports a strong local and federal economy, protects industries and industry jobs, local communities, local businesses, environment, and health. Senator, if confirmed, my goal is to support the CSB in its mission by working with CSB staff, the Chair and Board, and all stakeholders to make recommendations that advance safety across the sector.
2. CSB identifies its key chemical safety advocacy initiatives through its list of "Drivers of Critical Chemical Safety Change" or "Critical Drivers List." If you were asked to add one priority issue to the Drivers of Critical Chemical Safety Change on your first day, what would you add?

An increasingly critical area of interest to the CSB, the chemical industry and communities are secondary technical disasters, such as toxic air releases, that result from

a natural disaster such as storms and floods. These are called ‘natural-technical’ or ‘natech’ risks, and include such CSB priority investigations as the 2017 Arkema Texas chemical plant fire and explosion that was the disastrous result of critical refrigeration systems being disabled due to flooding from Hurricane Harvey. After that incident, the CSB asked the American Institute of Chemical Engineers (AIChE) Center for Chemical Process Safety (CCPS) to write industry guidance, and in 2020 it issued the *Assessment of and Planning for Natural Hazards* monograph. This guidance is promoted by CSB’s Chairman Lemos as a, “prime example of how the CSB and its recommendations have a national life-saving impact across the industry” (see CSB FY2020 Performance and Accountability Report, p. 7). If confirmed, I would look forward to working with the CSB Chairman, Board, and staff to build on its successes with addressing extreme weather facility preparedness, as a driver of critical chemical safety change.

3. What role should CSB play, if any, when state and federal agencies propose regulations?

The role of the CSB is to conduct incident investigations and issue recommendations to prevent similar future incidents. A critical focus of CSB activity is to get its recommendations adopted. Rules and regulations are one pathway by which CSB recommendations are implemented. In cases where CSB recommendations are incorporated into proposed regulations, the CSB may be engaged as appropriate to support the implementation of its recommendations. If confirmed, I commit to becoming fully informed of the CSB policies and practices regarding its appropriate engagement in the regulatory proposal process.

4. Is it appropriate for CSB to submit comments on the proposed rule?

Where a proposed rule is related to an existing CSB recommendation, it is appropriate for CSB to advocate for implementation of its recommendations. For example, Board Order 28, recently revised by Chairman Lemos, describes the duties of the Board to include: “Making and advocating for implementation of safety recommendations to Federal, State and local agencies, private organizations and members of the public pertaining to reducing recurrences of chemical incidents” (CSB [Board Order 28](#), revised April 2021).

5. If you believe CSB should write comments, what information should CSB rely on when drafting comments?

Since CSB would only be commenting on a proposed regulation, standard, or policy that addresses a CSB recommendation, then in those comments CSB should rely on its reports, hazard studies, and recommendations. CSB documents are generated through a consensus-driven process – in compliance with the Sunshine Act - and approved by the CSB Board.

For example, over the years, the CSB Board under various Chairs has provided public comments on EPA's Risk Management Plan proposed rule, including most recently Chairman Lemos, who emphasized three CSB recommendations relevant to the proposed rule: reactive hazards; inherently safer systems; and, extreme weather facility preparedness (see Letter from CSB to EPA, July 30, 2021, Docket ID EPA-HQ-OLEM-2021-0312-0095).

6. If you believe CSB should write comments, what is the appropriate process to achieve consensus among board members when drafting and submitting public comments?

Any CSB public comments would presumably be limited to information and analysis in CSB reports and recommendations, which are driven by CSB staff investigation findings, finalized by Board in a consensus-style process (in compliance with the Sunshine Act), and approved by at least a majority of the Board.

7. If confirmed, how will you balance ensuring the public has adequate safety information with protecting sensitive information where sharing could create security risks?

I understand that public access to information and protecting the nation's security are both priorities, and can on occasion be seen as in conflict. Certainly, working through these issues is very relevant to the work of the CSB, and to its stakeholders. If confirmed, I commit to working with the CSB Board to make informed decisions that protect Americans' safety and security.

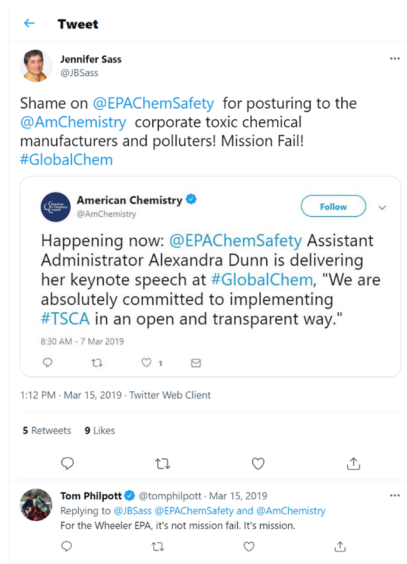
8. In your view, how is CSB different from a federal agency like the U.S. Environmental Protection Agency (EPA), and how will you account for those differences?

Unlike EPA, the CSB has neither regulatory nor enforcement authorities; that is, CSB does not assign blame. Instead, the CSB has a unique focus on root cause investigations of incidents, and making recommendations to prevent similar incidents in the future. Whereas EPA is more focused on Agency-specific regulatory and enforcement duties, the CSB is often in the position of examining issues that go beyond existing regulatory frameworks. To account for these differences, the CSB must ensure a timely flow of credible and relevant information with the facility under investigation, trade associations and other industry experts, emergency responders, workers, area residents, government authorities, and others. This is best done by working collaboratively with the facility and other parties as appropriate.

9. In the hearing, I asked, "In 2019, you tweeted 'Shame on the EPA Chemical Safety Office for posturing to the American chemistry council corporate toxic chemical manufacturers and polluters! Mission Fail!' This was in response to a tweet documenting

that the head of EPA's Chemical Office spoke to the industry about her commitment to 'implementing TSCA in an open and transparent way.' Why is that posturing?" You responded stating that you "do not recall the full context of that." The tweet is included below. Can you please explain your position?

As a public interest scientist at NRDC, I've been an advocate for environmental health science policies, which involves taking sides and engaging in discussions around policy and politics. As a CSB Board member, my role would be different; the success of the CSB depends on the ability of its Board and staff to engage productively and respectfully with industrial facilities under investigation, the chemical industry and its trade associations, government agencies, Congress, and others. If confirmed, I would bring to the role of Board member a proven track record of working collaboratively and respectfully with industry partners and diverse stakeholders, focusing on the science. If confirmed, I commit to work in a non-partisan, transparent and respectful manner with CSB stakeholders and the public.



10. During the hearing, you stated that you would commit to "try and improve transparency [of the Chemical Safety Board] where possible." Soon after the hearing, in which I asked you about the tweet above, you deleted your previously public-facing Twitter account, @JBSass. A number of those tweets were related to environmental issues. (Examples of

tweets saved by the Committee prior to your deletion of the account follow.) Why did you decide to deactivate your Twitter account following my questioning?

My past two decades of work as a public interest scientist has included taking policy positions and making public statements (in a non-partisan issues-focused manner, as my tweets demonstrate). I attempted to use twitter as a social media tool for my work as a public interest scientist at NRDC, but I found it wasn't a good fit – I rarely read it and even more rarely posted on it - so I stopped using it, and recently deleted it.

As a scientist, I prefer to delve into information in a more thoughtful way, verifying factual claims and trying to understand the larger context. The roughly dozen or so tweets I posted annually over several years is not a full or fair assessment of my scientific and policy work, which is detailed more fully in my peer reviewed publications, service on stakeholder and science committees, testimony to Congress, and federal agency comments.

As I move through the nomination process for the CSB Board, as a public servant – should I be confirmed – I would ensure that my words and deeds supported the goals and activities of the CSB and its Board, which include working productively with chemical facilities under investigation, industry trade associations, government entities, Congress.




Jennifer Sass
@JBSass

Scientist, activist, adventurer, envirowatchpuppy. All opinions are mine; re-tweet does not necessarily mean endorsement.

📍 Maryland, USA 📅 Joined December 2012

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Jennifer Sass @JBSass · Apr 29, 2020

Congress: Abandon Fossil Fuels, Not Fossil Fuel Workers
nrdc.org/experts/bettin... via [@nrdc](#)



Congress: Abandon Fossil Fuels, Not Fossil Fuel Workers
 Here are five ways the economic stimulus can help fossil fuel workers and communities transition into new industries.
[nrdc.org](#)

🗨️ 🔄 ❤️ 📤

Jennifer Sass Retweeted

NRDC 🌍 🐦 @NRDC · Feb 7, 2019

3 key themes in #GreenNewDeal framework by @RepAOC & @SenMarkey:

- ✅ Achieve net-zero greenhouse gas emissions.
- ✅ Establish a safe and healthy environment for all.
- ✅ Promote equity and justice for workers, frontline communities, and vulnerable populations.




There's now an official Green New Deal. Here's what's in it.
 A close look at the fights it picks and the fights it avoids.
[vox.com](#)

🗨️ 62 🔄 221 ❤️ 425 📤





Jennifer Sass @JBSass · Feb 7, 2019


Green New Deal Rises to Scale of Climate Challenge [on nrdc.org/2DjdKja](https://nrdc.org/2DjdKja) via [@nrdc](#)

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Jennifer Sass @JBSass · Mar 5, 2019


OIL AND GAS: Deadly pipelines, no rules [eenews.net/stories/106012...](https://www.eenews.net/stories/106012...) via @EENewsUpdates






Jennifer Sass @JBSass · Mar 15, 2019


States and Retailers: The Chemical Industry Is Lying to You on.nrdc.org/2F4HEll via @nrdc








States and Retailers: The Chemical Industry Is Lying...
The chemical industry wants to convince states, retailers and the public that the Trump EPA is ...
on.nrdc.org


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Jennifer Sass @JBSass · Jun 28, 2017

EPA chief met with Dow Chemical CEO before deciding not to ban toxic pesticide fw.to/0oRZ1Xg

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Jennifer Sass @JBSass · Feb 17, 2017

Thank you @SenatorCollins for voting against Pruitt - Rock On! Environment and health are not for sale! Boo to @Sen_JoeManchin D-WV :(



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Senator MERKLEY. Thank you very much.
Ms. Johnson.

**STATEMENT OF SYLVIA E. JOHNSON, PH.D., NOMINEE TO BE A
MEMBER OF THE U.S. CHEMICAL SAFETY AND HAZARD IN-
VESTIGATION BOARD**

Ms. JOHNSON. Chairman Merkley, Ranking Member Wicker, and members of the subcommittee, I am Sylvia Johnson, and I would first like to thank you for the opportunity to appear before you for my nomination by the President to the U.S. Chemical Safety and Hazard Investigation Board.

Family with me here today, I have my big brother Anthony, who is a retired Air Force veteran after serving 29 years. He retired at the top of the ranks for enlisted members as a Chief Master Sergeant. I also have my cousin Tamra Louis, who is an Army veteran. My other two brothers and numerous family and friends are joining via livestream.

I grew up in rural North Carolina, raised by my parents, Herbert and Annie Johnson, who believed in the dignity of hard work and instilled in me the same. Although they did not have the opportunity to go to college, they understood the value of education and ensured that we could graduate from college and pursue our goals.

My parents are deceased now, but their influence on me is indelible. My mother worked in a shirt factory, and I remember her coming home covered in cotton dust every day. Unfortunately, she became ill and had to quit her job.

I remember her sleeping in a chair due to a debilitating lung condition that made breathing difficult. Watching my mother suffer and witnessing her death at the age of 61 left me wishing that her work environment had been safer.

There were no Federal protections, regulations, or even recommendations during her time at the factory. My mother's experience inspired me to search for answers, become an occupational epidemiologist, and endeavor to make factory working conditions safer for all workers.

Passion for public service is as deeply ingrained in me as my passion for science. My dad exemplified service to family, community, and Country. He served in the military during the Korean War in a segregated Army, but that did not diminish his pride in having served. After leaving the Army, for the next 60-plus years, he was a small business owner, first in logging and then in trucking.

He also served as a County Commissioner in Bladen County, North Carolina for 12 years and was Chairman of the Board during his final term. My dad's dedication to community and Country continue to motivate me to improve the lives of others.

I am honored and humbled to be nominated. If confirmed, I will be guided by the principles that have defined my training and career: improving and protecting public health and safety for all people.

My work in this area spans more than two decades, starting with earning a Master of Science degree in biomedical engineering with a concentration in industrial hygiene. As a doctoral student, I researched the health effects of lead poisoning in young children.

My professional experience includes investigating industrial manufacturing accidents, hazard recognition and mitigation, and understanding the connections between government agencies and health and safety.

As an Occupational Epidemiologist in the Health and Safety Department for the United Auto Workers, I conducted workplace hazard assessments and investigated incidents involving worker deaths due to chemical, biological, and physical exposures. I have sat with grieving worker who lost a colleague to an industrial accident, and it is a gut-wrenching experience. In every hazard investigation I led, I worked with management to fix unsafe conditions so that employees were protected and the work continued.

I have worked on legislative efforts to assist those who were sickened by contaminated drinking water in Flint, Michigan. Given that my doctoral dissertation research was focused on childhood lead poisoning, I was all too familiar with the health risks of lead poisoning and how the government could assist in addressing the crisis.

Most recently, as a legislative representative with the National Education Association, I am part of a health and safety team focused on keeping educators and their students safe at school.

Health and safety issues remain a tenet of my career in legislation and advocacy. For me, promoting adequate funding for OSHA and EPA is paramount.

If confirmed to the CSB, I dedicate myself to its mission to drive chemical safety change through independent investigations to protect people and the environment. This aligns with my personal calling and is a tribute to what I learned from my parents. Workplaces must be safe and healthy, and service to others is a privilege and an obligation.

Thank you again for this opportunity, and I look forward to answering your questions.

[The prepared statement of Ms. Johnson follows:]

Statement of Sylvia E. Johnson
Nominee for Member, Chemical Safety and Hazard Investigation Board
Before the
Senate Committee on the Environment and Public Works
Subcommittee on Chemical Safety, Waste Management, Environmental Justice, and
Regulatory Oversight
July 29, 2021

Chairman Merkley, Ranking Member Wicker, and Members of the Subcommittee, I am Sylvia Johnson. I would like to first thank you for the opportunity to appear before you for my nomination by the President to the U.S. Chemical Safety and Hazard Investigation Board (CSB).

With me today is my big brother Anthony, who retired after 29 years with the U.S. Air Force at the top of the enlisted ranks as a Chief Master Sargent. My other two brothers, Mike and Kenneth, are joining via live stream.

I grew up in rural North Carolina, raised by my parents, Herbert and Annie Johnson, who believed in the dignity of hard work and instilled the same belief in us. Although they did not have the opportunity to go to college, they understood the value of education and ensured that we could graduate from college and pursue our goals.

My parents are deceased, but their influence on me is indelible. My mother worked in a shirt factory, and I remember her coming home covered in cotton dust every day. Unfortunately, she became ill and had to quit her job. I remember her sleeping in a chair due to a debilitating lung condition that made breathing difficult. Watching my mother suffer and witnessing her death at the age of 61 left me wishing her work environment had been safer. There were no federal protections, regulations, or even recommendations during her time at the factory. My mother's experience inspired me to search for answers, become an occupational epidemiologist, and endeavor to make factory working conditions safer.

Passion for public service is as deeply engrained in me as passion for science. My dad exemplified service to family, community, and country. He served in the military during the Korean War, in a segregated Army, but that did not diminish his pride in serving. After leaving the Army, for the next 60-plus years, he was a small business owner—first in logging and then in trucking. He also served as a County Commissioner in Bladen County, North Carolina for 12 years and was Chairman of the Board during his final term. My dad's dedication to community and country continue to motivate me to improve others' lives.

I am honored and humbled to be nominated. If confirmed, I will be guided by the principles that have defined my training and career: improving and protecting public health and safety for all people.

My work in this area spans more than two decades, starting with earning a Master of Science

degree in Biomedical Engineering with a concentration in Industrial Hygiene. As a doctoral student, I researched the health effects of lead poisoning in young children. My professional experience includes investigating industrial manufacturing accidents, hazard recognition and mitigation, and understanding the connections between government agencies and health and safety.

As an Occupational Epidemiologist in the Health and Safety Department for the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), I conducted workplace hazard assessments and investigated incidents involving worker deaths due to chemical, biological, or physical exposures. I have sat with grieving workers who lost a colleague to an industrial accident, and it is a gut-wrenching experience. In every hazard investigation I led, I worked with management to fix unsafe conditions so that employees were protected, and the work continued.

I have worked on legislative efforts to assist those who were sickened by contaminated drinking water in Flint, Michigan. Given that my doctoral dissertation research was focused on childhood lead poisoning, I was all too familiar with the health risks of lead poisoning and how the government could assist in addressing this crisis.

Most recently, as a legislative representative with the National Education Association (NEA), I am part of a health and safety team focused on the COVID-19 pandemic, particularly on educating NEA members on the safety and efficacy of vaccines so they can make informed decisions about the vaccine and protect themselves and their students.

Health and safety issues remain a tenet of my career in legislation and advocacy. For me, promoting adequate funding for the Occupational Safety and Health Administration, and the Environmental Protection Agency has always been a priority. These agencies must have the resources to carry out their crucial work.

If confirmed to the CSB, I dedicate myself to its mission to “drive chemical safety change through independent investigation to protect people and the environment.” This aligns with my personal calling and is a tribute to what I learned from my parents: Workplaces must be safe and healthy, and service to others is a privilege and an obligation.

Thank you again for this opportunity. I look forward to answering your questions.

Senate Committee on Environment and Public Works
Hearing Entitled, "Hearing on the Nominations of Stephen A. Owens, Jennifer Beth Sass,
and Sylvia E. Johnson to be members of the U.S. Chemical Safety and Hazard Investigations
Board"
July 29, 2021
Questions for the Record for Sylvia E. Johnson Ph.D.

Senator Markey:

1. The Chemical Safety Board (CSB) currently has 20 open investigations, including one from an incident nearly five years ago in 2016. This is the largest backlog of open investigations in the CSB's history. There is also no publicly available plan for how and when the CSB will complete these investigations, leaving communities, workers, and the American public with no information about investigations concerning their safety.
 - a. As a CSB board member, what would you do to address this backlog?

If confirmed to the CSB, I would seek to determine what has led to the backlog, get fully briefed on the report and recommendations process, determine how to work to address any issues around staffing and other resource shortages, make a determination on how to work with stakeholders to move reports and associated recommendations into practice in a timely manner.
 - b. Would you be supportive of the CSB issuing a public accounting of its current investigations with targeted dates for completion?

If confirmed, I would support the CSB issuing a public accounting of its current investigations with targeted dates for completion.
2. At CSB meetings prior to March 5, 2021, there have historically been opportunities for public comments and questions. However, recently, including at the meetings on March 5, 2021 and April 2, 2021, there have not been opportunities for the public to provide comments.
 - a. If confirmed, would you commit to working to restore opportunities for public comments and questions during public CSB meetings, including quarterly business meetings and meetings discussing specific investigations?

If confirmed, I am willing to work to restore opportunities for public comments and questions during CSB meetings.
3. It is also CSB policy that the public be notified 60 days in advance of quarterly public business meetings. Recently, this has not been the case, and the CSB has given the public as little as seven days' notice.
 - a. As a CSB board member, would you commit to giving the public 60 days' notice for meetings?

- b. If confirmed, I would support abiding by the Board order that requires 60 days advance notice.

Ex-Officio Capito:

- 1. If confirmed, what do you hope to accomplish during your time at CSB?

Should I be confirmed by the Senate, I am looking to leave the agency in a position of having the trust of the public, addressing the current backlog and seek to implement a process that would allow for a scientifically sound, data-driven approach to investigating chemical hazards in a timely way. If confirmed, I am committed to making scientific and technically driven decisions and doing this with the utmost integrity.

- 2. CSB identifies its key chemical safety advocacy initiatives through its list of “Drivers of Critical Chemical Safety Change” or “Critical Drivers List.” If you were asked to add one priority issue to the Drivers of Critical Chemical Safety Change on your first day, what would you add?

If confirmed by the Senate, I would likely spend the first few months acclimating myself to the agency and seeking advice and counsel from both internal and external sources. One area in which I am personally interested in is joint labor and management health and safety teams. These can prove to be critical in driving safety change. This can take the form of educating and training workers on workplace safety. Healthy workers typically result in fewer lost workdays. When workers and employers align themselves to create a safe environment, everyone wins. Safe jobs can lead to profitable companies. When workers and the employers alike are equally invested in how to mitigate hazards, productivity is high, as is the ability to produce and manufacture quality products and/or provide high quality services.

- 3. What role should CSB play, if any, when state and federal agencies propose regulations?

The CSB should share its expertise and “lesson learned” including any relevant reports and recommendations to the extent that they are relevant to the specific safety or health issue being addressed. As a statutory responsibility of the CSB is to “review the effectiveness of regulations and regulatory enforcement,” I am committed to upholding these principles.

- 4. Is it appropriate for CSB to submit comments on the proposed rule?

If the CSB is providing comments on a proposed rule within its statutory authority, all comments should be specific to safety and health, based in science, facts, and evidence-based data.

5. If you believe CSB should write comments, what information should CSB rely on when drafting comments?

The CSB should always rely upon science, facts, and evidence-based data.

6. If you believe CSB should write comments, what is the appropriate process to achieve consensus among board members when drafting and submitting public comments?

With any process that involves reaching consensus, the first order of business is collegiality and respect among colleagues. The submission of public comments should be settled and agreed upon prior to the need to having to undertake actual drafting. This should provide a roadmap on how to address areas where there may not be specific agreement.

7. If confirmed, how will you balance ensuring the public has adequate safety information with protecting sensitive information where sharing could create security risks?

If confirmed to the CSB, I am committed to the mission of the Agency to “drive chemical safety change through independent investigation to protect people and the environment.” In protecting people and the environment, the need for both public awareness and ensuring that facilities can safely operate is paramount. I am committed to getting briefed, making sure that the CSB uses its resources wisely, carries out its mission to advance safety across the sector, following the science, working with integrity, and in a collaborative fashion.

8. Have you interacted with the CSB in your roles at the National Education Association or at UAW? If so, what was the context of the interaction?

During my tenure at both the UAW and NEA, I have not had any interactions with the CSB.

9. I see that you conducted hazard assessments and investigated incidents when you first began working at UAW in 1999. How have you stayed up to date on the developments in process safety and chemical safety since then?

I worked in the UAW’s Health and Safety Department until 2004, and after leaving that department, I have maintained knowledge of process safety by staying abreast of chemical and process safety through information provided by the Occupational Safety and Health Administration (OSHA), as well as the literature more generally.

10. If confirmed, how will you utilize your background in epidemiology as a Board Member?

Having worked in occupational epidemiology specifically, if confirmed, I bring an understanding of researching hazardous industrial incidents. Epidemiology often requires looking back and reconstructing a set of events that may have led to a hazard and/or development of disease, and most importantly: preventing future adverse events. Those skills directly transfer to reconstructing what factors (human and otherwise) may be a root cause of a chemical-related hazardous event. If confirmed, I will use my skills at understanding data, critical thinking, and analysis. Further, epidemiology is an evidence-based discipline that requires the ability to follow facts and make data-driven decisions to prevent future injury, harm, or disease. A background in epidemiology also gives me the necessary skills to understand the potential for mitigating factors and unintended consequences that may arise in a manufacturing facility.

11. Have you gained technical experience from your roles as a legislative representative and lobbyist for the National Education Association and United Auto Workers that directly translates to work at the CSB?

The technical knowledge I have gained in working as a lobbyist for both the NEA and the UAW centers around an understanding of the legislative and policy considerations that can lead to better cooperation among the federal government and the private sector in protecting public health, the environment, and workers. While at the UAW, I worked on the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Lautenberg Chemical Safety Act) legislation, which amended the Toxic Substance Control Act (TSCA), which gave the Environmental Protection Agency the tools necessary to ensure the safety of chemicals and significantly strengthen health protections for the public. In addition, I worked on legislation to provide the resources that both the Occupational Safety and Health Administration (OSHA) and the EPA needed to protect workers and the environment.

Having spent time on the front lines of health and safety and having worked jointly with management teams, followed by now having been a part of the legislative process in crafting laws to protect workers and the public, I have an even clearer understanding that it is in the best interest of all stakeholders to work together to develop solutions that allow for assurances of safety and health as well as a robust manufacturing environment.

Senator MERKLEY. Thank you, Dr. Johnson.
Mr. Owens.

STATEMENT OF STEPHEN A. OWENS, NOMINEE TO BE A MEMBER OF THE U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATIONS BOARD

Mr. OWENS. Thank you, Senator Merkley, Ranking Member Wicker, and members of the subcommittee.

If I may, at the beginning, introduce a couple of members of my family that are here with me, my wife Karen Owens, who is there, along with our son, Ben Owens. Our other son, John Owens, lives in Arizona and, unfortunately, couldn't be with us here today in person, but he is with us in spirit.

I want to thank you for holding this hearing and for giving me the opportunity to be here. I am extremely honored to be nominated by President Biden to be a member of the Chemical Safety and Hazard Investigation Board.

The Chemical Safety Board is a small agency, but it has a very big and very important mission: conduct investigations and make recommendations that help ensure that chemical facilities are operated safely and that the people who work in them and the families who live near them are protected from chemical disasters.

I grew up in a poor family in Memphis, Tennessee, and I was talking with Senator Wicker about earlier. We lived in public housing for a time when I was young, and I had part-time jobs to help make ends meet.

I worked my way through college and law school with the help of work-study jobs and student loans. I was fortunate to be admitted to Brown University, where I graduated with honors, and then attended Vanderbilt Law School, where I was Editor in Chief of the Vanderbilt Law Review.

I am currently an attorney in Phoenix, Arizona, where I practice environmental, safety, and health law. My practice includes issues and regulations relating to chemical safety, safe chemical practices, and the production, management, and safe use of chemicals at facilities.

I have always had a deep commitment to public service. During the Obama-Biden Administration, I served as the Assistant Administrator of the U.S. Environmental Protection Agency in charge of the Office of Chemical Safety and Pollution Prevention. As Assistant Administrator, I oversaw EPA's chemical regulatory programs, including implementation of the Toxic Substances Control Act, the primary Federal law regulating the chemical industry in this Country.

Our mission at EPA was to ensure the safety of chemicals, the safe production and use of chemicals, and the reduction of risk from chemicals to children, families, consumers, workers, and other vulnerable populations. Among our efforts, we prepared Action Plans on priority chemicals, issued new rules to limit risks from existing chemicals, and required testing on high-risk chemicals.

We launched the Chemical Data Reporting Rule, which requires chemical manufacturers to provide more detailed and more comprehensive data on their chemicals. We also developed a framework for prioritizing chemicals for evaluation, which led to EPA's chem-

ical “work plan” that was incorporated into the 2016 amendments to the Toxic Substances Control Act by this Congress.

We also increased transparency for chemical information and expanded public access to health and safety data on chemicals. We began the effort to reduce unnecessary confidentiality claims and declassify information where confidentiality is no longer warranted. We made the TSCA Inventory available to the public online and created a searchable data base that gives the public access to thousands of health and safety studies and other chemical information that has been submitted to EPA.

We also worked with tribal leaders to establish the National Tribal Toxics Council to expand safer chemical initiatives in Indian Country and address unique chemical exposures on tribal lands and Alaska Native villages.

Before joining EPA, I served as Director of the Arizona Department of Environmental Quality, where I guided the department’s efforts on chemical safety and its role in responding to chemical hazards and other emergency situations. I made protecting children’s health and reducing children’s exposure to toxic pollutants a top priority, and we worked very closely with Arizona’s tribal leadership to reduce toxic exposures on reservation lands in our State.

We increased the department’s emergency response capabilities and activities. We placed a high priority on providing immediate localized air quality monitoring, data collection and emergency response support wherever there was a fire, explosion, or other episode at a facility where chemicals were present in order to protect the health and safety of the surrounding community and of the first responders.

We also worked closely with Arizona’s law enforcement and homeland security officials to ensure the security of critical infrastructure in our State, including potentially at-risk chemical facilities, and I served on the Executive Oversight Committee of the Arizona Counter-Terrorism Information Center.

My experiences have underscored for me the importance of following the facts, the law, and the science in addressing chemical risks and ensuring the safety of chemical facilities. If I am privileged to serve on the Chemical Safety Board, I pledge to do just that.

Thank you again for the opportunity to be here, Senators, and I look forward to answering any questions you may have.

[The prepared statement of Mr. Owens follows:]

Statement of Stephen A. Owens
Hearing on Nominations
Subcommittee on Chemical Safety, Waste Management, Environmental Justice and
Regulatory Oversight
Committee on Environment and Public Works
United States Senate
July 29, 2021

Chairman Merkley, Ranking Member Wicker, and Members of the Subcommittee, thank you for holding this hearing and giving me the opportunity to be here today.

I am extremely honored to be nominated by President Biden to be a member of the Chemical Safety & Hazard Investigation Board.

The Chemical Safety Board is a small agency, but it has a very big – and very important – mission: to conduct investigations and make recommendations that help ensure that chemical facilities are operated safely and that the people who work in them and the families who live near them are protected from chemical disasters.

I grew up in a poor family. We lived in public housing for a time when I was young, and I had part-time jobs to help make ends meet.

I worked my way through college and law school with the help of work-study jobs and student loans. I was fortunate to be admitted to Brown University, where I graduated with honors, and I attended Vanderbilt Law School, where I was Editor in

Chief of the Vanderbilt Law Review.

I currently am an attorney in Phoenix, Arizona, where I practice environmental, safety and health law. My practice includes issues and regulations relating to chemical safety, safe chemical practices, and the production, management and safe use of chemicals at facilities.

I have always had a deep commitment to public service.

During the Obama-Biden Administration, I served as the Assistant Administrator of the U.S. Environmental Protection Agency in charge of the Office of Chemical Safety & Pollution Prevention, where I oversaw EPA's chemical regulatory programs, including implementation of the Toxic Substances Control Act, the primary federal law regulating the chemical industry in this country.

Our mission at EPA was to ensure the safety of chemicals, the safe production and use of chemicals, and the reduction of risks from chemicals to children, families, consumers, workers and other vulnerable populations. Among our efforts, we prepared Action Plans on priority chemicals, issued new rules to limit the risks presented by existing chemicals, and required testing on a number of high-risk chemicals. We launched the Chemical Data Reporting Rule, which requires chemical manufacturers to provide more detailed and comprehensive data on the chemicals they make and their uses. Further, we developed a framework for prioritizing chemicals for evaluation,

which led to EPA's chemical "work plan" that was incorporated into the 2016 amendments to the Toxic Substances Control Act.

We also increased transparency for chemical information and expanded public access to health and safety data on chemicals. We began the effort to reduce unnecessary confidentiality claims and declassify information where confidentiality is no longer warranted. We also made the Toxic Substances Control Act Inventory available to the public online and created a searchable data base that gives the public access to thousands of health and safety studies and other chemical information that has been submitted to EPA under the statute.

We also worked with tribal leaders to establish the National Tribal Toxics Council to expand safer chemical initiatives in Indian country and address unique chemical exposures on tribal lands and Alaska Native villages.

Before joining EPA, I served as Director of the Arizona Department of Environmental Quality, where I guided the department's efforts on chemical safety and its role in responding to chemical hazards and other emergency situations. I made protecting children's health and reducing children's exposure to toxic pollutants a top priority. We also worked closely with tribal leadership to reduce toxic exposures on reservation lands in Arizona.

We increased the department's emergency response capabilities and activities. We placed a high priority on providing immediate localized air quality monitoring, data collection and emergency response support whenever there was a fire, explosion or other episode at a facility where chemicals were present, to protect the health and safety of the surrounding community and the first responders. Additionally, we worked closely with Arizona's law enforcement and homeland security officials to ensure the security of critical infrastructure in our state, including potentially at-risk chemical facilities, and I served on the executive oversight committee of the Arizona Counter-Terrorism Information Center.

My experiences have underscored for me the importance of following the facts, the law and the science in addressing chemical risks and ensuring the safety of chemical facilities. If I am privileged to serve on the Chemical Safety Board, I pledge to do just that.

Thank you again for the opportunity to be here.

Senate Committee on Environment and Public Works
Hearing Entitled, *"Hearing on the Nominations of Stephen A. Owens, Jennifer Beth Sass,
and Sylvia E. Johnson to be members of the U.S. Chemical Safety and Hazard Investigations
Board"*
July 29, 2021
Questions for the Record for Stephen A. Owens

Senator Markey:

1. The Chemical Safety Board (CSB) currently has 20 open investigations, including one from an incident nearly five years ago in 2016. This is the largest backlog of open investigations in the CSB's history. There is also no publicly available plan for how and when the CSB will complete these investigations, leaving communities, workers, and the American public with no information about investigations concerning their safety.

- a. As a CSB board member, what would you do to address this backlog?

- If confirmed, I would work with the CSB Chair, other Board members and the CSB's career staff to identify the cause(s) of the backlog and develop a plan of action for eliminating the backlog and hiring needed professional staff to complete investigations and make recommendations in a timely manner.**

- b. Would you be supportive of the CSB issuing a public accounting of its current investigations with targeted dates for completion?

- If confirmed, I would support the CSB issuing a public accounting of its current investigations and where feasible providing targeted dates for completion.**

2. At CSB meetings prior to March 5, 2021, there have historically been opportunities for public comments and questions. However, recently, including at the meetings on March 5, 2021 and April 2, 2021, there have not been opportunities for the public to provide comments.

- a. If confirmed, would you commit to working to restore opportunities for public comments and questions during public CSB meetings, including quarterly business meetings and meetings discussing specific investigations?

- If confirmed, I would work with the CSB Chair and other Board members to provide opportunities for public comments and questions during the CSB's public quarterly business meetings and public meetings discussing specific investigations.**

3. It is also CSB policy that the public be notified 60 days in advance of quarterly public business meetings. Recently, this has not been the case, and the CSB has given the public as little as seven days' notice.

- a. As a CSB board member, would you commit to giving the public 60 days' notice for meetings?

If confirmed, I would support giving the public 60 days' notice for the CSB's public quarterly business meetings as provided in the CSB's applicable Board Order.

Ex-Officio Capito:

1. If confirmed, what do you hope to accomplish during your time at CSB?

If confirmed, among other goals, I would seek to increase transparency and accountability for the CSB, including providing greater information to stakeholders and communities affected by incidents being investigated by the CSB and ensuring that the CSB completes investigations and makes recommendations in a timely manner.

2. CSB identifies its key chemical safety advocacy initiatives through its list of "Drivers of Critical Chemical Safety Change" or "Critical Drivers List." If you were asked to add one priority issue to the Drivers of Critical Chemical Safety Change on your first day, what would you add?

Transparency and Information Sharing.

3. What role should CSB play, if any, when state and federal agencies propose regulations?

The CSB should provide advice to agencies proposing regulations on matters relevant to the CSB's jurisdiction and expertise.

4. Is it appropriate for CSB to submit comments on the proposed rule?

The CSB should continue its practice of submitting comments on proposed rules as appropriate.

5. If you believe CSB should write comments, what information should CSB rely on when drafting comments?

The CSB should base any comments on facts, law and science, including relying on the expertise of the CSB's career staff. The CSB also should seek input from stakeholders as appropriate.

6. If you believe CSB should write comments, what is the appropriate process to achieve consensus among board members when drafting and submitting public comments?

All Board members should have the opportunity to review and have input into any public comments to be submitted on behalf of the CSB.

7. If confirmed, how will you balance ensuring the public has adequate safety information with protecting sensitive information where sharing could create security risks?

If confirmed, I would seek to enhance public access to information about chemical incidents while ensuring that confidential information relating to facility security is protected as required by law.

8. In your role as the U.S. Environmental Protection Agency's (EPA) Assistant Administrator in the chemicals office, to what extent did you work directly with the CSB? Please describe.

The CSB did not seek assistance directly from me as Assistant Administrator.

9. Have you assisted in the response to an industrial accident during your time at EPA or at the Arizona Department of Environmental Quality? If so, can you share your experience?

As Director of the Arizona Department of Environmental Quality, I guided the department's role in responding to industrial accidents, including increasing the department's emergency response capabilities, ensuring that air quality monitoring and hazardous materials support were provided when there was an incident involving chemicals (including, for example, chlorine gas, nitric acid, ammonium perchlorate, hydrofluorosilicic acid, cyanic gas, arsine, and other substances) and overseeing the department's corrective action efforts to prevent future incidents. I also worked with Arizona's law enforcement and homeland security officials to ensure the security of potentially at-risk chemical facilities and other critical infrastructure, and I served on the executive oversight committee of the Arizona Counter-Terrorism Information Center.

10. You have served as a leading regulatory official at both the state and federal level. How would your role as a regulator at EPA and the State of Arizona differ from your role at CSB if confirmed?

As a non-regulatory body, the CSB must develop effective recommendations that can be adopted and implemented by other agencies or industry. If confirmed, I would work with the CSB Chair, other Board members and stakeholders to develop recommendations that are based on facts, law and science.

Senator MERKLEY. Thank you very much, Mr. Owens.

Welcome to all the family members who have traveled to be with us here today.

In initiating the questioning, we are going to start with three yes or no questions that are asked of all nominees that appear before us, and so I will just ask the question, and work my way across: Mr. Owens, Dr. Sass, Dr. Johnson, in that order, through these three questions.

Do you agree, if confirmed, to appear before this committee or designated members of this committee and other appropriate committees of Congress and provide information subject to appropriate and necessary, with respect to your responsibilities? Mr. Owens?

Mr. OWENS. Yes, Senator.

Senator MERKLEY. Dr. Sass?

Ms. SASS. Yes, Senator.

Senator MERKLEY. Dr. Johnson?

Ms. JOHNSON. Yes, Senator.

Senator MERKLEY. Do you agree to ensure that testimony, briefings, and documents, and electronic and other forms of communication of information are provided to this committee and its staff and other appropriate committees in a timely manner? Mr. Owens?

Mr. OWENS. Yes, Senator.

Ms. SASS. Yes, Senator.

Ms. JOHNSON. Yes, Senator.

Senator MERKLEY. Perhaps most importantly, do you know of any matters which you may or may not have disclosed that might place you in a conflict of interest if you are confirmed?

Mr. OWENS. No, Senator.

Ms. SASS. No, Senator.

Ms. JOHNSON. No, Senator.

Senator MERKLEY. OK.

We will now begin the first round of questions. I want to start with addressing the question of transparency with the public. To all nominees, what would you do as a CSB Board member to ensure that CSB is transparent to the public and provides adequate opportunities for public engagement? Who would like to jump in first?

Mr. OWENS. Senator, I will be happy to go first.

Senator, thank you for that question. As I indicated in my opening statement, I have had a lot of experience in providing transparency to information. At EPA, we established a new Chemical Data Reporting Rule, which requires more information to be parted to the public. We created an online data base that is searchable, so the public can have access to health and safety studies, and I think that one of the keys to any effective agency is transparency and accountability.

If I am privileged to serve on the Chemical Safety Board, we will work with the staff to identify ways in which more information can be made available to the public, more communication with the public, as well as the stakeholders and industry groups, so that the operations of the Board can be better understood and become more effective.

Senator MERKLEY. Thank you.

Do either of you, Dr. Sass or Dr. Johnson, anything you would like to add to that?

Dr. SASS. Thank you, Senator, for that question. I will only add that transparency is different for different stakeholders. There are different ways to communicate with different stakeholders. So we would need to be sensitive to all those. I would commit to getting briefed on all the different ways that the Chemical Safety Board has to reach out and work to try and improve transparency where possible. Thank you for that question.

Senator MERKLEY. And Dr. Johnson, I will amend the question a little bit, because there is another piece of it I wanted to touch on. But in a situation where an accident involves a community, maybe it is, for example, an explosion at a fertilizer plant that affects a community, is there any particular way that the CSB should make sure that the community itself has a chance to share their perspectives and information?

Ms. JOHNSON. Thank you, Senator, for the question.

Absolutely. I think that transparency has to be an integral part of what the CSB does. As Dr. Sass indicated, depending upon who the stakeholders are, obviously there would be a process by which that happens. But it would be imperative that the surrounding community have full transparency of what has happened and what we are going to do about it to protect them in the future. Part of the mission of the Chemical Safety Board is not only to protect the environment, but the public as well.

Senator MERKLEY. Thank you very much, Dr. Johnson.

I want to turn next to the issue of scientific integrity, and kind of non-partisan and immunity to political interference. What actions would you take to assure that the scientists, the investigators, who are also scientists, at the agency are free to conduct and communicate their research without political interference, and that scientific and technological findings are not suppressed or distorted at the CSB?

Dr. Sass, would you like to begin on that?

Ms. SASS. Thank you, Senator, for that question. Thank you for raising that issue because it is so important. The integrity of science is fundamental to earning the trust of the public and stakeholders. I would commit myself to being fully briefed. There are laws and rules and regulations that agencies have to follow, as well as practices. I would look forward, should I be confirmed, to getting fully briefed on those. Thank you.

Senator MERKLEY. Dr. Johnson.

Ms. JOHNSON. Thank you, Senator, for the question. In the event that you described, I would commit to, if I am confirmed to the Chemical Safety Board, to gather all of the data and be transparent, and exhibit the highest level of integrity. Because integrity is what drives me. I am also driven by data and science and numbers. So I commit to ensuring.

Senator MERKLEY. Dr. Johnson, if you got a call from an Assistant Secretary who said, we want to do a big press release on such and such of an issue, so can you speed up the work and really modify the recommendation, your draft recommendation, to give us a little more political punch, what would your response be?

Ms. JOHNSON. My response to that would be that I am driven by science and data and integrity and I would have to delve into what is going on and based on the findings and the facts, that would guide my decision on whether or not to release the information. I would be guided by facts.

Senator MERKLEY. Thank you.

Mr. Owens, would you be supportive of the CSB developing a scientific integrity policy?

Mr. OWENS. Yes, Senator. I would be. When I worked at EPA and also the Arizona Department of Environmental Quality, I had the privilege of working with many career-trained scientists. I am not a scientist myself. I learned that the best thing I could do as a manager and as a director of the office as well as an agency, is to give them the support and direction that they need, to stand by them when they are making their scientific decisions and ensure that they are focused on their mission and not worrying about outside interference.

Senator MERKLEY. Thank you.

Our Ranking Member, Senator Wicker.

Senator WICKER. Thank you very much.

Mr. Owens, you grew up in Memphis. Where did you go to high school?

Mr. OWENS. Messick High School, sir.

Senator WICKER. That is about an hour and a half from where I grew up, in Pontotoc, Mississippi.

Mr. OWENS. Yes, sir. I know Pontotoc well.

Senator WICKER. Dr. Johnson, you grew up in Bladen County?

Ms. JOHNSON. Yes, Senator.

Senator WICKER. Which town?

Ms. JOHNSON. Elizabethtown, except I really grew up beside the road, because we didn't even have a traffic light. So I grew up in the suburbs of Elizabethtown.

Senator WICKER. The outskirts, OK. That is two counties away from Wayne County, where I spent 4 years in the U.S. Air Force.

Ms. JOHNSON. Yes.

Senator WICKER. So I identify with at least two members of the panel here.

Let's just ask, two groups that have concerns about your qualifications have spoken out, the American Chemistry Council and the Petrochemical Manufacturers have expressed concern about your qualifications. As I mentioned in my opening statement, they said the nominees do not have "the necessary experience or expertise to meet its mission."

So let me start with you, Mr. Owens. In your practice, have you dealt with industrial accidents?

Mr. OWENS. Senator, thank you for the question. I have not dealt specifically with an industrial accident. I have done preventive work with clients to prevent industrial accidents. My practice includes advising a number of companies, both chemical manufacturers, chemical processors, and other large chemical users on ways to comply with existing regulations, including OSHA's process safety management standard, the Department of Homeland Security's counterterrorism facility standards and some of the other applicable regulations that EPA and other agencies comply with.

So I have advised them on how to comply, how to avoid having accidents in the first place. I look forward to the opportunity to work with them, work with stakeholders if I am privileged to serve on the Chemical Safety Board.

Senator WICKER. Is it your position that there are professional investigators on the staff that will be able to take care of the investigation?

Mr. OWENS. Thank you, Senator, for the question. Yes, sir, I believe that is the situation.

As a member of the Board, I would view my responsibility to support the career staff there who are the trained investigators of the Chemical Safety Board to do the hands-on work and develop the recommendations and provide those up to the Board. We would evaluate those recommendations to ensure that they are practical and reasonable and can be put into effect.

I would think that as a Board member, the best role is to provide that kind of support to the career technical staff who are trained engineers in many cases.

Senator WICKER. OK.

Dr. Johnson, let me give you a minute five, to answer. Have you ever interacted with the CSB in either your role at the NEA or the UAW?

Ms. JOHNSON. Thank you, Senator, for the question. During my time at the NEA, I have not interacted with the CSB. During my time at the UAW, I did not interact with the CSB.

Senator WICKER. Is the criticism of these two organizations fair, do you think?

Ms. JOHNSON. In terms of?

Senator WICKER. They have said that none of you are qualified based on experience, to serve on this Board.

Ms. JOHNSON. I would say that that is not accurate in my case. During my time at the UAW as an epidemiologist, I worked with labor and management, I have investigated chemical accidents, I have trained workers on how to remain safe from chemicals, how to safely store chemicals.

Senator WICKER. Were these accidents industrial accidents?

Ms. JOHNSON. They were industrial accidents, yes.

Senator WICKER. Where?

Ms. JOHNSON. There was an industrial accident at a Chrysler plant in Kokomo, Indiana, where I had 95 workers who were sick from exposure to metalworking fluids. I worked on a study at a plant that is now closed that was in Huntsville, Alabama, with exposure to benzene.

Senator WICKER. Perhaps you could supplement your answer since I only have 38 seconds.

Dr. Sass, is the criticism about your qualifications unfounded?

Ms. SASS. Senator, thank you for the question. Thank you for caring about the qualifications of the members of the Chemical Safety Board to carry out its mission to protect and prevent accidents and protect safety.

The Chemical Safety Board has always enjoyed bipartisan support, because in Congress' wisdom it recognized that the CSB's mission was best achieved by a multidisciplinary Board. And it includes someone with my skill set. It is part of the description that

Congress included when it described what a functioning Board would look like. I bring to that Board health and toxicology skills and science policy skills as well as a broad view that is required for a thorough Chemical Safety Board investigation and meaningful recommendations to all stakeholders.

I commit to you to listening to all concerned stakeholders, including the private sector and its trade associations to support industry, the economy, jobs, and the communities that surround those industries and the health of those members of the communities and their families by having a working, functioning Chemical Safety Board staff and Board. Thank you.

Senator WICKER. Thank you, ma'am. And thank you, Mr. Chairman.

Senator MERKLEY. Thank you. We will turn to Senator Kelly.

Senator KELLY. Thank you, Mr. Chairman.

Mr. Owens, I want to again say how pleased I am to see an Arizona nominated to serve on the CSB. I want to say thank you for your willingness to serve in this very important role.

For those of you who don't know, Steve brings decades of experience working on issues in chemical safety and regulatory oversight to the Board from his time being, and this may have come up, leading the Arizona Department of Environmental Quality and then working on these issues at the EPA.

Mr. Owens, I often talk on, at this committee, about how the regulatory and environmental challenges faced by Arizona often look different than those in other States. I am especially pleased that you are able to bring your perspective as a former Arizona regulator to this Board.

Could you share how you plan to bring your experience working in Arizona to your time on the CSB?

Mr. OWENS. Thank you, Senator, for the question. It is good to see you again. I appreciate the opportunity to be here with you today.

As the director of the Arizona Department of Environmental Quality, I oversaw the emergency response functions of the agency and the role that the agency had in responding to events such as a fire, explosion, or other episode at a chemical facility. We provided air quality monitoring information and collected the data that we needed. We worked with local law enforcement as well as plant officials and members of the surrounding community to ensure that members' families who lived near those facilities had the information they needed and that we took appropriate action as the State environmental protection agency where it was required.

Senator KELLY. Thank you.

I next want to ask all three nominees about the importance of the CSB's work to help communities prepare for emergency situations at chemical facilities. To date, CSB has conducted 16 investigations and made 46 recommendations seeking to help industry, first responders, and regulators proactively plan for emergency situations at facilities where there is a lot of risk. Despite this work, too often local first responders, especially in rural and disadvantaged communities, still struggle when faced with chemical fires or similar emergency situations.

What more do you believe CSB can do to engage local communities to ensure that recommendations made around emergency preparedness are understood and implemented? Why don't we start with Dr. Johnson?

Ms. JOHNSON. Thank you, Senator, for the question.

It is my belief that engaging stakeholders and keeping open lines of communication on a consistent basis is important to guide the work of the CSB. If I am confirmed to the CSB, I commit to you that that would be a priority for me in terms of reaching out to stakeholders.

I am from a rural community, and I totally understand what you are talking about in terms of being able to have that outreach or that reach into those communities, because it is vitally important.

Senator KELLY. Thank you.

Dr. Sass, would you like to add anything?

Ms. SASS. Senator, thank you very much for the question and for thinking broadly about all of the stakeholders for Chemical Safety Board recommendations, including both those that receive the recommendations and those that are impacted by the recommendations, like communities and America's families.

I share your concern for protecting those families, and I commit to you to get fully briefed on all the different ways that the Chemical Safety Board has now for communicating and outreach, both in terms of timeliness as well as accuracy of information, and to ensure that the Chemical Safety Board uses its resources wisely to carry out its mission to protect those families.

Senator KELLY. Thank you.

Mr. Owens.

Mr. OWENS. Thank you, Senator, for the question. Yes, I believe that transparency and accountability for the Chemical Safety Board would be extremely important in providing information to the families that live near chemical facilities when there has been an incident. It is especially important so that they understand not only what has happened at the facility but where the investigation is going, what the status of that investigation is along the way, so that they can understand better what action is being taken to prevent similar episodes in the future.

Senator KELLY. Thank you. I yield back the remainder of my time, Mr. Chairman.

Senator MERKLEY. Thank you, Senator Kelly.

Senator CAPITO.

Senator CAPITO. Thank you, Mr. Chairman. Thank you all for your willingness to serve, and thanks for being here today.

Congress created the Chemical Safety Hazard and Investigation Board, or CSB, to investigate accidents and determine the conditions and circumstances that led up to these accidents. The Board certifies the causes or cause of the accident so that similar things can be prevented.

Investigative work is vital for the safety of our Country's facilities and our communities. I am from West Virginia. We have a lot of chemical facilities, and we have had several accidents. We are a global leader in chemical manufacturing, and this industry provides thousands of jobs in West Virginia, particularly in the area and community where I live.

I am committed to make sure that everybody has the right skills and technical expertise. Learning from past mistakes is critically important. Working with the communities is absolutely essential, quickly with the communities. That is one of the things we have learned. Leaving things in limbo with communities who have been affected by something immediately is probably one of the worst things that you can do to a community, and lack of communication.

I know that this has been covered a little bit, so I am going to skip Dr. Johnson, because I heard your reply to Senator Wicker. But can you describe, Dr. Sass, a time you led or participated in either an industrial, chemical, or transportation facility accident, just to give me an example of something like that, if you have done that? Then we will go to Mr. Owens.

Ms. SASS. Thank you, Senator Capito. Thank you for making time to come to the hearing. I really appreciate that and your interest in the Chemical Safety Board and its mission.

As a science and science policy expert, my role has been to work with communities, both communities on the ground, in local areas, in States and local areas as well as different kinds of Federal interest stakeholders who are interested in chemical policy, chemical regulation, as chemicals get reviewed, and the way chemicals are used.

I also have worked with users of chemicals in downstream chains and retailers and products and consumer products. My role has been to understand the movement of chemicals through the economy, through the supply chain, and from manufacturers to downstream users, and to work with those stakeholders to ensure that they are used in the safest way possible.

Senator CAPITO. So you haven't actually been part of an accident investigation. While I have you, apparently in 2019, you tweeted "Shame on the EPA Chemical Safety Office for posturing to the American Chemistry Council corporate toxic chemical manufacturers and polluters! Mission fail." This was in response to a tweet documenting that the head of EPA's Chemical Office spoke to the industry about her commitment to "implementing TSCA in an open and transparent way."

Why is that posturing?

Ms. SASS. Thank you, Senator, for that question. I have to apologize that I do not recall the full context of that. But I will only comment that it is important to me, both personally and in my professional work, that the Federal agencies communicate with communities, with all stakeholders, and that includes communities, as well as those that receive the recommendations of something like a Chemical Safety Board.

Senator CAPITO. But I don't think that you can have sufficient implementations of something like TSCA if you are not also talking to the manufacturers and the producers and other people who are intimately involved. How can you only talk to—I mean, I started out with talking about community involvement and how important that is. How can you only talk to the community and not talk to the people who understand the processes? That seems like that is what you are saying here.

Ms. SASS. Senator Capito, I agree with you that talking to all stakeholders and gathering all information is important. Again, I

don't remember the exact context of that particular tweet. But I do commit to you to fully consult with all stakeholders.

Senator CAPITO. OK, so maybe we will ask an additional question and get some clarification.

Ms. SASS. Sure, that would be fine. Thank you.

Senator CAPITO. Mr. Owens, the first question. I think you answered this, but I might have missed it. I know you have worked in this area.

Mr. OWENS. Thank you, Senator. I appreciate the question. I actually want to clarify something I said in response to Senator Wicker's question. Certainly as the director of the Arizona Department of Environmental Quality, I oversaw emergency responses. In fact, in my first year as DEQ director, we had an episode that was investigated by the Chemical Safety Board, a chlorine leak at a chlorine facility in the west valley, in Maricopa County.

Our agency was not directly involved in it, because the air quality permit was issued by the Maricopa County Air Pollution Control Department. But we worked hand in hand with them to ensure that citizens that live near that facility, there was an evacuation as well, that everyone was taken care of and that the appropriate information was provided to the community along the way.

More recently, as a private practitioner in Phoenix, I have worked with companies, not just in Arizona, but across the Country, who manufacture chemicals, who use chemicals. While I told the Senator I have not been personally hands-on involved in an accident investigation, I have worked with the individuals at those companies who have been involved in accident investigations, and have advised them on compliance with the regulations, including on release reporting requirements and on remedial actions that need to be taken by those facilities.

As part of that, I have ensured that the have either stayed in compliance, if they weren't in compliance before, or come into compliance if they weren't into compliance to begin with.

Senator CAPITO. Thank you. Thank you, Mr. Chairman.

Senator MERKLEY. Thank you very much, Senator Capito.

I am sorry Senator Kelly has left, because I wanted Mr. Owens to have a chance to display his Arizona flag while Senator Kelly was here. Obviously, a proud citizen of that State.

I want to address the backlog and whether, as potential Board members, you feel that we need to catch up or reduce that backlog in order to get recommendations out the door so that more accidents are prevented. That backlog has been described as the largest backlog in the last 5 years, and that there are 100 open safety recommendations.

My understanding of that, which I hope is right, is that there are draft recommendations but they haven't been completed and officially shipped out the door.

What is your viewpoint on this backlog and the importance of actually completing recommendations and sending them out the door to the appropriate agencies and organizations? Why don't we start with Dr. Johnson?

Ms. JOHNSON. Thank you, Senator, for the question. As it pertains to the backlog at the Chemical Safety Board, if I am con-

firmed, I commit to doing my part to uncover why that backlog exists, and do my part to also ensure that the backlog gets addressed.

I also commit to work with this committee in so doing. It is important to both the public and this committee to figure out what the root cause of the backlog is. I understand that each existing case that is backlogged obviously has a set of circumstances for which there may be some explanation. So my job if confirmed to the Chemical Safety Board would be to take a deeper diver and look into that.

Senator MERKLEY. Thank you.

Dr. Sass.

Ms. SASS. Thank you, Senator.

I do also, like Dr. Johnson, commit to understanding better the delay. As a scientist, I certainly want to have timely information, but accurate information as well. I also understand that there are many stakeholders in the public that are concerned about that issue. So I would commit to looking into that. Thank you.

Senator MERKLEY. Thank you.

Mr. Owens.

Mr. OWENS. Thank you, Senator, for the question. Like my colleagues here on the panel, I have not had the opportunity to be fully briefed on or briefed at all on the reasons for the backlog there. I do know from the public record that exists that there are roughly 19 open investigations at the Board.

As I have said in my comments already, I believe that transparency and accountability for the Board are very important. If I am privileged to serve on the Board, we will work to not only understand the reasons for that backlog but work to move investigations and recommendations forward as expeditiously as possible.

Senator MERKLEY. I think about the fact that when a recommendation sits on the shelf, enacted, but it hasn't been shipped out, there may be other accidents that occur because of the failure to do so. Of course, that is the whole goal here, is to prevent industrial chemical accidents.

I want to turn to the issue of environmental justice. A lot of chemical facilities that use chemical industrial facilities are located in fence line communities. Is there a sense or a role for the CSB in understanding the potential impact on the community of safety issues at a nearby industrial facility?

Ms. SASS. Senator, thank you for that question. I know that fence line communities, environmental justice communities, the terms can be a little different. In this case, I think we are really focused on the fence line communities around facilities.

They also include not only families that live near these facilities and are impacted by potential accidents but they also include people that work at those facilities, people that live, go to school, do their daily activities around those facilities.

So I think it is very important for a functioning Chemical Safety Board to consider all of the stakeholders when it does its investigations, and gather all of the relevant information. That would include from the facility, from managers, from employers, from the employees, from the community and from other professionals with specific expertise in those areas in order to make as informed deci-

sions and recommendations as possible. I would commit to doing that.

Thank you.

Senator MERKLEY. Thank you.

Anyone else want to jump in and share thoughts on this?

Mr. OWENS. I will take a stab at it. Thank you, Senator, for that question.

As I said, I think one of the most important things a Board like the Chemical Safety Board can do, and any agency for that matter, that is reviewing chemical safety issues, is to keep the surrounding communities informed, as well as work closely with all the stakeholders.

As Senator Capito indicated, and as you indicated as well, a recommendation that isn't made isn't much of a recommendation. So if I am privileged enough to serve on the Board, as a member of the Board, I would look forward to working with the career professional staff there and the other Board members to figure out ways that we can be more transparent and have more engagement and active involvement, so that the surrounding communities, the families that live near those facilities, will understand more what happened, why it happened, and what is being done to prevent it from happening again.

Senator MERKLEY. Thank you all. I certainly think about how many of these accidents can affect the community. Fires, toxic smoke from fires, releases of gases like chlorine gas, so on and so forth, explosions. So the sensitivity to the communities, as you put it, the fence line communities, is certainly appropriate.

I want to close with thinking a little bit about the background each of you bring. Mr. Owens, you have been, if I understand your testimony correctly, and I just want to affirm this, you have been advising companies on how to prevent chemical accidents and ensure chemical safety. Did I understand that correctly?

Mr. OWENS. Yes, Senator.

Senator MERKLEY. And the role of this Board is to prevent chemical accidents and advise on chemical safety, am I correct on that?

Mr. OWENS. Yes, Senator, that is my understanding.

Senator MERKLEY. So your experience certainly is directly relevant?

Mr. OWENS. Yes, Senator, I believe so.

Senator MERKLEY. And Dr. Johnson, I understand from your testimony, again, I want to make sure I read this correctly, that you have conducted workplace hazard assessments and investigated chemical accidents? Did I understand that correctly?

Ms. JOHNSON. Yes, Senator.

Senator MERKLEY. And while as a Board member, you wouldn't be actually doing the hazard assessments and/or investigating the chemical accidents, you would be overseeing the work of professional scientists who would be doing hazard assessments and investigating chemical accidents?

Ms. JOHNSON. Yes, Senator.

Senator MERKLEY. So your background is very relevant to the work of this Board?

Ms. JOHNSON. I would say so, yes.

Senator MERKLEY. And Dr. Sass, you have a graduate degree in occupational health and safety. I understand from your testimony that occupational health and safety has been a significant kind of core of your professional life, and that you have worked to inform decisionmakers and stakeholders, including chemical manufacturers, on chemical exposure and safety issues.

Do I have that correct?

Ms. SASS. Yes, sir.

Senator MERKLEY. So that role of occupational health and safety, that kind of theme in your professional work, and the fact that you have worked to inform decisionmakers and stakeholders on chemical exposure and safety issues, seems directly related to the core mission of this Board, am I correct in that?

Ms. SASS. It is, Senator, yes. Thank you.

Senator MERKLEY. OK, thank you all for that.

I am going to turn to my team now, who I am sure is going to guide me in the official closing comments here.

So in closing, thank you for your time and your testimony, your willingness to bring your expertise to bear on this important mission. Some final housekeeping: I would like to ask unanimous consent to submit for the record a number of reports and articles related to today's hearing.

Hearing no objections, it always helps when no one is present to object, then we will have those submitted.

[The referenced information follows:]



July 27, 2021

The Honorable Tom Carper
Chairman, Committee on
Environment and Public Works
United States Senate
Washington, DC 20510

The Honorable Shelley Moore Capito
Ranking Member, Committee on
Environment and Public Works
United States Senate
Washington, DC 20510

Dear Chairman Carper and Ranking Member Capito:

The American Chemistry Council (ACC), the primary trade association representing the business of chemistry, strongly supports filling all of the seats on the Chemical Safety and Hazard Investigation Board (CSB). However, ACC is concerned that the nominees under consideration for the CSB do not have the necessary experience or expertise to meet its mission. Over the past several years the CSB has struggled to meet its mandate, which is why it is so important to have experts focused on process safety serving on the Board.

The CSB is tasked with the critical role of investigating industrial chemical accidents, conducting root cause analyses, and making safety recommendations. A key skill set necessary for CSB members is considerable knowledge of the chemical manufacturing environment, including direct process safety experience to understand plant systems, equipment and procedures. During a January 2020 hearing before your committee, I testified to the important need for Board members to have applicable experience in the operations and processes of chemical facilities and encouraged the appointment of well-qualified industry and process safety experts to fill out the Board.

The three nominees currently pending before the Committee, while accomplished in their own respective fields, lack the critical and necessary background to meet the mission of the CSB. We urge the Committee to reconsider these nominations and recommend the Administration seek appropriately qualified candidates who possess the process safety experience needed to fulfill the CSB's mandate. ACC values the important work of the CSB and is committed to working with this Committee and the CSB to protect workers, the public, and the environment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Jahn", written over a light blue horizontal line.

Chris Jahn
President and CEO



8/10/2021

ACC Urges White House to Identify Chemical Safety Board Nominees with Process Safety Experience

American Chemistry Council

ACC Urges White House to Identify Chemical Safety Board Nominees with Process Safety Experience

Contact Us

Scott Jensen
{202} 249-6511

WASHINGTON (April 30, 2021) – *The American Chemistry Council (ACC) issued the following statement regarding the White House's announcement to nominate Sylvia Johnson, Steve Owens and Jennifer Sass to serve on the Chemical Safety Board (CSB):*

"Process safety experience is critical to an effective Chemical Safety Board. We are disappointed that the current slate of nominees lack sufficient experience and familiarity with industrial process safety practices or chemical manufacturing operations – all of which are essential to fulfilling the Board's congressionally mandated safety mission.

"The CSB has the important job of conducting complex investigations of major accidents and making recommendations, which is why it must be managed by qualified board members. We urge the Administration to work with industry and other stakeholders on advancing nominees with the requisite skills and experience to successfully carry out the CSB's valuable work."

July 8, 2021

Dear Chairperson Lemos,

We write to you on behalf of the 22 undersigned labor, environmental, community and scientific organizations over our growing concerns with the functionality and ability to execute the mission of the Chemical Safety and Hazard Investigation Board (CSB). We have compiled this list of recommendations to right the path of the CSB and assist in fulfilling the goals of protecting communities, workers, and our planet.

Recommendations for Preventing Chemical Disasters to the U.S. Chemical Safety and Hazard Investigation Board

More than 180 major incidents occur on average each year at our nation's oil refineries, chemical plants, water and sewage treatment operations, and other facilities that use hazardous chemicals.¹ These incidents result in deaths and injuries, community evacuations and shelter in place orders, environmental contamination, and facility shutdowns with permanent job loss. Often, they disproportionately harm workers in these facilities and low income and people of color living near disaster sites. These incidents are preventable.

The U.S. Chemical Safety and Hazard Investigation Board (CSB) is an independent, non-regulatory agency whose unique mission is to investigate the causes of major chemical releases, issue reports, and make recommendations to prevent future incidents.

In the agency's 22-year history, CSB recommendations have helped lead to significant safety changes. For example, New York City adopted a new fire code that better addressed chemical risks; California adopted stronger rules for oil refineries that focused on hazard prevention and worker participation; revised national codes prohibit use of flammable gases to clean piping; and firefighters receive improved training for responding to chemical emergencies.²

Today, however, CSB needs to rebuild its investigative and recommendations capacity; set clear priorities for agency action; reform its governance policies; and increase public transparency and engagement.

To accomplish these objectives, this document outlines 21 practical and measurable actions. All are feasible with the current CSB budget of \$12 million.³

The proposed actions, discussed below, address:

¹ [2020-02418.pdf \(csb.gov\)](#), page 10078.

² https://www.csb.gov/assets/1/6/csb_key_successes.pdf

³ [fy 2021 budget request.pdf \(csb.gov\)](#), page 3.

- A) Incident Investigations;
- B) Safety Studies;
- C) Safety Recommendations;
- D) Agency Governance; and
- E) Public Transparency and Engagement.

A) Incident Investigations

Problem: A Record Backlog of Investigations

CSB investigations and recommendations can help prevent future chemical incidents and their tragic consequences.

As of June 17, 2021, CSB had 19 open site investigations of incidents that in total killed 32 people, injured at least 87 people, led to thousands of residents sheltering in place or evacuating, and resulted in many millions of dollars in property damage (see Table 1 and CSB factual updates).⁴ **The number of open investigations is the largest number in CSB history.**⁵

CSB is still investigating three incidents from 2016 and 2017.⁶ During your term, which began April 23, 2020, the CSB Board has approved just one final report.⁷

In FY2020, CSB did not issue any new safety recommendations.⁸

There is no publicly available plan indicating how and when CSB will complete these 19 investigations and issue reports and recommendations to prevent future tragedies. It is also unclear if investigations have been terminated or suspended because of staffing constraints.

Requested Action

- 1) Issue an accounting of the current investigative backlog and a plan explaining how CSB will complete each open site investigation, with a target date for issuing final reports and recommendations. Post the plan on the CSB website and update it periodically.

Table 1

⁴ csb.gov, Investigations, Current Investigations.

⁵ This conclusion is based on discussions with former CSB Board Members and CSB staff.

⁶ csb.gov, Investigations, Current Investigations.

⁷ csb.gov, Investigations, Completed Investigations. The report on a hydrogen sulfide release which killed a worker and his spouse at the Aghorn Operating Waterflood Station in Odessa, Texas was approved on May 21, 2021. See [board action report dlc signed- notation item 2021-31.pdf \(csb.gov\)](#)

⁸ https://www.csb.gov/assets/1/17/csb_impact_report_2021-final1.pdf?16624

	Corporation Name	Location	Incident Date	Deaths	Approximate # of Injuries
1					
9	Yenkin-Majestic Paint & OPC Polymers	Columbus, Ohio	April 8, 2021	1	8
1					
8	Foundation Food Group	Gainesville, Georgia	January 28, 2021	8	12
1					
7	Optima Belle LLC	Belle, West Virginia	December 8, 2020	1	NI
1					
6	Wacker Polysilicon	Charleston, Tennessee	November 13, 2020	1	3
1					
5	Evergreen Packaging Mill	Canton, North Carolina	September 21, 2020	2	NI
1					
4	Bio-Lab	Conyers, Georgia	September 14, 2020	0	NI
1					
3	Bio-Lab	Lake Charles, Louisiana	August 27, 2020	0	NI
1					
2	Wendland 1H Well	Burleson County, Texas	January 29, 2020	3	NI
1					
1	Watson Grinding	Houston, Texas	January 24, 2020	2	NI
1					
0	TPC Group	Port Neches, Texas	November 27, 2019	0	2
9	Philadelphia Energy Solutions	Philadelphia, Pennsylvania	June 21, 2019	0	5
8	AB Specialty Silicones, LLC	Waukegan, Illinois	May 3, 2019	4	1
7	KMCO LLC	Crosby, Texas	April 2, 2019	1	2
6	Intercontinental Terminals	Deer Park, Texas	March 17, 2019	0	0
5	Kuraray America	Pasadena, Texas	May 19, 2018	0	21
4	Husky Energy	Superior, Wisconsin	April 26, 2018	0	11
3	Didion Milling	Cambria, Wisconsin	May 31, 2017	5	14
2	Loy Lange Box	St. Louis, Missouri	April 3, 2017	4	1
1	Sunoco Logistics Partners	Nederland, Texas	August 12, 2016	0	7
			Total	32	87

NI = Not indicated by CSB on website.
Table does not include any off-site
evacuations and any property damage.

Source: [csb.gov](https://www.csb.gov), Investigations, Current
Investigations.

Problem: Investigative Staff Vacancies

The core of CSB's mission is to conduct on-site investigations of the technical and underlying causes of chemical incidents and to make recommendations for preventing them to facility

management, trade associations, unions, professional safety organizations, government agencies and other entities.

CSB's investigative capacity is broken. CSB now has 12 (or even fewer) staff members dedicated to investigations, down roughly nine staff from earlier periods.⁹ The CSB's 2019 Federal Employment Viewpoint Survey found that nearly 50% of the employees surveyed believed that CSB was unable to recruit staff with appropriate skills.¹⁰

While cumbersome federal requirements have been blamed for the slow pace of hiring new investigators, CSB also appears to have taken inadequate steps to address known obstacles.

Requested Actions

- 2) Issue a staff recruitment, training, and retention plan. Post this plan on the CSB website.
- 3) Request "direct hiring authority" and/or other measures from the U.S. Office of Personnel Management to help accelerate staff recruitment and hiring.

Problem: Inadequate Skills and Experience of Investigative Staff

Most, if not all, current CSB investigators are engineers. While engineering (and particularly chemical engineering) is one key expertise, CSB needs investigation teams with diverse expertise and experience to conduct effective investigations that consider *all* causes of incidents, including production and cost-cutting pressures, inadequate management oversight, deficient worker and union participation, and gaps in government regulation and enforcement.¹¹

⁹ <https://republicans-energycommerce.house.gov/wp-content/uploads/2021/05/Bipartisan-Letter-to-Dr.-Lemos.pdf>, page 2.

¹⁰ 2019 Federal Employee Viewpoint Survey, Annual Employee Survey Report: Chemical Safety and Hazard Investigation Board, Office of Personnel Management, 2019. www.csb.gov/assets/1/6/2019_opm_fevs_aes_chemical_safety_and_hazard_investigation_board.pdf

¹¹ The Organization for Economic Cooperation and Development suggests that "The team should have a diverse membership with participants from different disciplines, with different skills, including members with knowledge of the specific installation subject to the investigation." OECD Guiding Principles for Chemical Accident Prevention, Preparedness and Response; Guidance for Industry (including Management and Labour), Public Authorities, Communities, and other Stakeholders, 2nd Edition, Organization for Economic Cooperation and Development, 2003. The Center for Chemical Process Safety says that a team approach with individuals that have diverse skills and perspectives is more likely to be objective and produce high quality investigations. Guidelines for Investigating Process Safety Incidents, Third Edition, Center for Chemical Process Safety, Wiley, 2019, Chapter 6, Building and Leading An Incident Investigation Team, page 97.

<https://books.google.com/books?id=IjgUDwAAQBAJ&pg=PA97&lpg=PA97&dq=chemical+incident+diverse+team&source=bl&ots=8SMgNlgevo&sig=ACfU3U38kLcwM78BGkPEXKFO8wkxQxiPpw&hl=en&sa=X&ved=2ahUKewjG3YObqrPmAhUQivkKHwYxCKQQ6AEwCXoECAoQAQ#v=onepage&q=chemical%20incident%20diverse%20team&f=false> The Occupational Safety and Health Administration suggests that "A multi-disciplinary team is better able to gather the facts of the event and to analyze them and develop plausible scenarios as to what happened, and why." OSHA, Compliance Guidelines and Recommendations for Process Safety Management, February 8, 2013. https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=9763&p_table=STANDARDS

Requested Action

- 4) In addition to engineers with process safety experience, hire investigators with expertise in such fields as toxicology, industrial hygiene, environmental, occupational, and public health, human factors, and economics/risk assessment. New staff should also be recruited from diverse backgrounds, including corporate process safety departments, labor union safety initiatives, etc. and not just those with chemical industry experience.

Problem: Reliance on Corporate Information

CSB disaster investigations are first conducted on-site, where independent investigators examine the incident scene, conduct interviews with workers and managers to learn the facts, and secure physical evidence.

CSB now appears to be conducting “desk audits”, in addition to its 19 open on-site investigations. One source states that “We understand that the CSB presently has approximately 30 open desk investigations.”¹² These limited investigations, however, appear to rely entirely on information supplied by facility management, with no apparent plans for CSB to interview on scene workers and community residents or to make corporate data publicly available for scrutiny. If this desk audit approach is continued, CSB is missing the vital role of workers, and their representatives, participation, will likely get the wrong facts, findings, and conclusions. Desk audits are fundamentally at odds with CSB’s role as an independent agency that conducts its own investigations, as well as agency past practice.

Requested Action

- 5) Stop reviewing incidents through “desk audits” unless management incident investigation reports, union investigation reports, other information received about the incident, and any CSB assessment are posted on CSB’s website with a disclaimer that fully explains CSB’s limited investigative approach.

Problem: Involvement by ICE Will Harm CSB Investigations

If workers are afraid to be witnesses during CSB investigations, CSB’s findings and reports will be fundamentally deficient.

CSB is currently investigating an incident at the Foundation Food Group poultry plant in Gainesville, Georgia where six workers died and 12 were hospitalized after a leak of liquid nitrogen in January 2021.¹³ A report from the Project on Government Oversight (POGO) alleges that there was “highly unusual” communication between the Immigration and Customs Service (ICE) and a CSB senior official about the immigration status of workers.¹⁴ POGO’s report states

¹² <https://news.bloomberglaw.com/pfas-project/the-chemical-safety-board-quietly-expands-its-incidents-review>

¹³ [csb.gov, Investigations, Current Investigations.](https://www.csb.gov/investigations/current-investigations/)

¹⁴ <https://www.pogo.org/investigation/2021/02/specter-of-ice-looms-over-investigation-of-fatal-poultry-plant-disaster/>

that “plant workers—many of whom are undocumented—fear being arrested or monitored by ICE while going to and from witness interviews.

The U.S. Department of Labor, OSHA’s parent agency, has a Memorandum of Understanding (MOU) with ICE’s parent agency, the Department of Homeland Security (DHS), which limits ICE enforcement activity during federal Investigations of safety violations, wage theft and other labor law violations.¹⁵ “Effective enforcement of labor law,” the MOU states, “is essential to ensure proper wages and working conditions for all covered workers regardless of immigration status.”¹⁶ There is no such memorandum in effect between DHS and CSB.

Requested Action

- 6) Negotiate a CSB Memorandum of Understanding with the Department of Homeland Security, to prevent ICE enforcement activity at facilities with open CSB investigations.

Problem: CSB Continues to Omit the Names of Victims in Reports

Those who die in chemical incidents are human beings and deserve to be recognized as part of the complete historical record that CSB reports compile.

In January 2018, five workers died in an explosion and fire at the Pryor Trust gas well in Pittsburg County, Oklahoma. Killed were Josh Ray, Cody Risk, Matthew Smith, Roger Cunningham, and Parker Waldrige.¹⁷ The CSB omitted their names from its final report issued June 12, 2019.¹⁸

On September 12, 2019, however, the CSB Board voted to amend Board Order 47 to include the names of those killed in future agency reports *and* to update the already issued Pryor Trust report with this information.¹⁹

This Board vote is apparently being ignored. The Pryor Trust report was never updated²⁰ and the latest CSB report, on a hydrogen sulfide release which killed a worker, Jacob Dean, and his spouse, Natalee Dean, at the Aghorn Operating Waterflood Station in Odessa, Texas, in October 2019 omits their names.²¹

And despite being in effect, Board Order 47 no longer appears on CSB’s website.²²

¹⁵ <https://www.nilc.org/wp-content/uploads/2020/10/DHS-DOL-MOU-2011-12-07.pdf>

¹⁶ *Ibid*, page 1.

¹⁷ <https://kfor.com/news/jury-awards-20-million-to-families-of-men-killed-in-rig-explosion/>

¹⁸ <https://www.csb.gov/pryor-trust-fatal-gas-well-blowout-and-fire/>

¹⁹ https://www.csb.gov/assets/record/board_action_report_-_notation_item_2019-622.pdf

²⁰ <https://www.csb.gov/pryor-trust-fatal-gas-well-blowout-and-fire/>

²¹ <https://www.eenews.net/stories/1063594445> and <https://www.csb.gov/csb-releases-final-aghorn-investigation-report/>

²² [csb.gov](https://www.csb.gov), About CSB, Open Government, Board Orders.

Requested Action

- 7) Update and post on the agency website the policy *Accident Victim and Family Communication Program* (Board Order 47) to include Board ordered changes approved on September 12, 2019 to include the names of victims. Update all final investigation reports issued since September 12, 2019 to include the names of victims.

B. Safety Studies

Problem: A Release of Hydrofluoric Acid Poses an Enormous Safety Risk

If released to the atmosphere, hydrofluoric acid (HF) can form a dense, low-lying vapor cloud that can travel great distances. Like other powerful acids, HF can cause deep severe burns and damage the eyes, skin, nose, throat and lungs. HF entering the body through a burn or lungs can cause internal damage throughout the body. At high exposures, HF can kill. The Occupational Safety and Health Administration and the Environmental Protection Agency regulate HF as highly toxic.

A 2014 report by the Environmental Justice and Health Alliance for Chemical Policy Reform found that more than 17 million U.S. residents lived in the vulnerability zones of fifty U.S. oil refineries that operate HF alkylation units to make gasoline components.²³

At Exxon-Mobil (Torrance, California in May 2017)²⁴ and Husky (Superior, Wisconsin in April 2018)²⁵, there were likely near misses involving a potential HF release resulting from impact of debris on or near vessels holding HF. At PES (Philadelphia, Pennsylvania in June 2019),²⁶ leaking process fluid formed a large ground-hugging vapor cloud which ignited, causing a massive fire and explosions. More than 5,000 pounds of HF was released. Surrounding communities were put at risk. The refinery was permanently shut-down and more than 1,000 jobs were destroyed.²⁷

On April 23, 2019, CSB requested that the U.S. Environmental Protection Agency update a 1993 HF study and assess the effectiveness of their Risk Management rule to ensure refinery safety

²³ <https://comingcleaninc.org/assets/media/images/Reports/Who's%20in%20Danger%20Report%20FINAL.pdf>
Page 34, Table 13.

²⁴ https://www.csb.gov/assets/1/20/exxonmobil_presentation_2016.01.pdf?15595

²⁵ https://www.csb.gov/assets/1/6/husky_factual_update.pdf?16317

²⁶ https://www.csb.gov/assets/1/20/pes_factual_update_-_final.pdf?16512

²⁷ <https://www.phila.gov/media/20191202091559/refineryreport12219.pdf>, page 14.

and the viability of adopting safer, commercially viable alkylation technologies.²⁸ Five months later, EPA refused CSB's request.²⁹

Requested Actions

- 8) Complete the CSB reports on the Husky and PES incidents, including analyses of the potential near misses involving HF acid.
- 9) Conduct a study of alternatives to HF acid alkylation in oil refineries that addresses potential technology and regulatory gaps and issue safety recommendations.

C) Safety Recommendations

Problem: Current Process Safety Rules Fail to Protect Workers and Communities

"Process safety" focuses on preventing fires, explosions and releases in chemical process facilities. It often involves addressing the risks to workers and communities of multiple chemicals in interconnected processes at sites that operate continuously, 24 hours a day, at high pressures and temperatures.

Elements of process safety include process safety information; process hazard analysis; assessing safer alternatives; operating procedures; training; mechanical Integrity; management of change; pre-startup safety reviews; management of change; compliance audits; incident investigations; and workers and union participation.

Process safety regulations in the U.S., however, are out of date. CSB identifies process safety modernization as an advocacy priority on its website.³⁰ CSB has supported strengthening Occupational Safety and Health Act's Process Safety Management of Highly Hazardous Chemicals (PSM) standard³¹ and Section 112(r) of the Clean Air Act's amendments Risk Management Plan (RMP) rule.³² The RMP rule covers approximately 12,500 U.S. facilities that use extremely hazardous substances.³³

In 2017, the EPA made modest improvements to the RMP rule.³⁴ In 2019, however, the Trump Administration rescinded important provisions of the 2017 RMP rule on safer technology and

²⁸ https://www.csb.gov/assets/1/6/letter_to_epa_4.23.2019.pdf?16464

²⁹ <https://www.inquirer.com/business/pes-philadelphia-refinery-fire-hf-hydrofluoric-csb-report-stalled-20210326.html>

³⁰ CSB.gov, Advocacy Priorities, Drivers of Critical Safety Change, Process Safety Management for the 21st Century.

³¹ https://www.csb.gov/assets/1/6/csb_rficommments1.pdf

³² https://www.csb.gov/assets/1/6/epa_rfi2.pdf

³³ Regulatory Impact Analysis, Reconsideration of the 2017 Amendments to the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7), U.S. Environmental Protection Agency, April 27, 2018, page 8.

³⁴ <https://www.govinfo.gov/content/pkg/FR-2017-01-13/pdf/2016-31426.pdf>

alternatives analyses, third-party audits, incident investigations, and public access to information.³⁵

EPA's own analysis admits that this rollback would disproportionately and negatively impact people of color and low-income communities near industrial facilities.³⁶

CSB submitted comments to EPA opposing their 2017 action.³⁷

These rollbacks are under review by the Biden EPA and they are considering whether to restore the 2017 rule and to propose additional prevention measures.³⁸ Reforming the RMP and PSM regulations would be high impact policy changes that could help safeguard workers and communities across the nation.

California in 2017 adopted refinery safety rules that offer important precedents for national reform of PSM and RMP, including a greater focus on preventing hazards through the "hierarchy of controls" and enhanced worker and union collaboration.³⁹

Requested Action

- 10) Designate meaningful reform of RMP and PSM as CSB's top advocacy priority and allocate staff resources towards this end.⁴⁰

³⁵ https://www.epa.gov/sites/production/files/2019-11/documents/final_risk_management_program_reconsideration_final_rule_fact_sheet.pdf

³⁶ Ibid, Regulatory Impact Analysis, EPA, page 80. EPA specifically stated that *Based on analysis of RMP data and other studies, EPA concludes that there is evidence that risks from RMP facilities fall on minority and low-income populations, to a significantly greater degree than those risks affect other populations. Therefore, EPA believes that this action may have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).*

³⁷ csb.gov, About CSB, Open Government, Public Comments. Scroll down to CSB Comments on the Environmental Protection Agency (EPA) Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act, Section 112(r)(7). July 20, 2018.

³⁸ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/> and <https://www.epa.gov/newsreleases/epa-announces-public-listening-sessions-risk-management-plan-rule-0>

³⁹ See <https://aiche.confex.com/aiche/s18/meetingapp.cgi/Paper/511230> and https://www.epw.senate.gov/public/index.cfm/hearings?id=9A92B90F-DE5F-5477-7177-CCD5A1AEF682&Statement_id=34575FD7-8E6F-4B2C-9424-3E707DBA8AAF

⁴⁰ EPA is currently holding public listening sessions and seeking "solicit comments and suggestions from stakeholders pertaining to the review of EPA Risk Management Program (RMP) regulation revisions completed since 2017 and to address new priorities, as directed under Executive Order 13990: Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," including on the important issues of climate risks and environmental justice. EPA, Notice, 86 Fed. Reg. 28,828 (May 28, 2021); see also EPA Press Release, <https://www.epa.gov/newsreleases/epa-announces-public-listening-sessions-risk-management-plan-rule-0>. The Occupational Health and Safety Administration is participating in the listening sessions "to foster continued coordination with the EPA." *Id.* EPA has announced that it is "developing a regulatory proposal to revise the RMP regulations at 40 CFR part 68." *Id.* at 28,829. EPA has also announced in the Spring 2021 Regulatory Agenda that it plans to publish a proposed rule by September 2022, and publish a final rule by August 2023.

(<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2050-AH22>). The CSB should provide

- 11) Assess how the 2017 California refinery PSM and RMP rules offer valuable precedents for national reforms.

D) Agency Governance

Problem: Chair Lemos has Attempted to Eliminate “Majority Rule” to determine major Board policies.

CSB is a very small agency that has a budget to fund about 46 positions, including up to five Board Members. Oversight of CSB policies, budget, and major operations by the Board Members is a critical function that helps to ensure that the agency is fulfilling its mission and serving the public interest.

Before April 1, 2021, Board Order 28 defined the *Executive and Administrative Functions of the Board*.⁴¹ For example, it established the powers of the Chair over specific management and administrative issues and the powers of the other Board Members to vote on final investigative reports, recommendations, recommendations status changes, *and* important agency policies, such as budget.

As the sole CSB Board Member, on April 1, 2021 you voted to eliminate Board Order 28 on the *Executive and Administrative Functions of the Board*⁴² and to replace it with a new Board Order 28 on *Board Member Roles and Responsibilities*.⁴³

This unilateral action attempts to eliminate the authority of other Board Members, including three whose nominations are now pending before Congress, to have any power over agency regulations, rules, and Board Orders; the agency budget and transmission of the budget to Congress; and statements to Congress or the President.

By making such draconian changes to well-established Board policy, you ignored a bedrock legal principle for independent government Boards that “the majority rules” and defied established legal opinion.⁴⁴ Board Members must have explicit authority – as they did in the prior version of BO 28 – to vote on matters central to CSB’s direction and operation, including agency regulations, rules, and Board Orders; major budget matters and contracts; and statements to

all available new information on RMP facilities and incidents to EPA and OSHA, including on the important issue of climate risk assessment and mitigation measures, as part of this process, as well as detail on the CSB’s important recommendations to EPA on ways to prevent incidents and ways that the RMP should be expanded.

⁴¹ This older version of CSB Board Order 28 is not archived on CSB’s website. It can be accessed at the Wayback Machine, an independent Internet archive at [http://web.archive.org/web/20201017004438/http://www.csb.gov/assets/record/board_order_028_-_final_approved_3_22_18_\(1\).pdf](http://web.archive.org/web/20201017004438/http://www.csb.gov/assets/record/board_order_028_-_final_approved_3_22_18_(1).pdf)

⁴² https://www.csb.gov/assets/record/board_action_report_-_notation_item_2021-30.pdf

⁴³ https://www.csb.gov/assets/record/b0_028docx.pdf

⁴⁴ <https://www.justice.gov/file/19391/download>

Congress and the President. Moreover, new Board Members should be part of discussions to help determine their appropriate roles and specific duties.⁴⁵

Requested Action

- 12) After meaningful input from new Board Members and opportunities for public comment on a draft regulation, issue a new CSB **regulation** (or regulations) to address **both** the *Executive and Administrative Functions of the Board* and *Board Member Roles and Responsibilities*.

E) Public Transparency and Engagement

Problem: Elimination of Opportunities for Public Participation at Meetings

Public transparency and engagement are widely accepted as foundational to a democratic government.⁴⁶

During CSB business meetings before March 5, 2021, there were opportunities for public comments and questions.⁴⁷ At business meetings on March 5, 2021 and April 2, 2021, however, you did not provide such opportunities.⁴⁸

You also did not allow for public comments or questions during the May 4, 2021 public meeting to adopt the report on the two deaths at the Aghorn Waterflood Station in Texas in 2019, also conflicting with CSB past practice.⁴⁹

Requested Action

- 13) Restore opportunities for public comments and questions during all CSB public meetings, including quarterly business meetings and meetings discussing specific investigations.

Problem: Violating CSB's Policy for Notice of Public Meetings

In the past an occasional CSB practice was to post the tentative dates of quarterly business meetings on the agency website.⁵⁰ Current CSB policy states the public is supposed to be notified of its quarterly public business meetings no less than 60 days in advance, when

⁴⁵ Attempts to disenfranchise of other Board Members and consolidation of power by the Board Chair has been a recurrent issue in CSB history. For events in 2015, for example, see: <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2015-03-18.Chaffetz%20EEC%20etc%20to%20Obama%20re%20CSB.pdf>, page 2.

⁴⁶ For example, see

https://obamawhitehouse.archives.gov/realitycheck/the_press_office/Transparency_and_Open_Government

⁴⁷ See transcripts of CSB business meetings for January 29, 2020, April 29, 2020, September 2, 2020, October 29, 2020, and earlier meetings at www.csb.gov, About the CSB, Open Government, CSB Business Meetings.

⁴⁸ See transcripts of CSB business meetings for March 5, 2021 and April 2, 2021 at www.csb.gov, About the CSB, Open Government, CSB Business Meetings.

⁴⁹ See video of meeting on May 4, 2021 at <https://www.csb.gov/videos/?SID=3606>

⁵⁰ For example, see <https://www.csb.gov/csb-announces-dates-for-public-business-meetings-for-2020/>

feasible.⁵¹ For 2021 meetings, however, CSB ignored its own policy and provided approximately just seven days and the most minimal public notice to comply with Federal Register notice rules. Such late notice discourages CSB stakeholders from planning to participate in these meetings and from learning about agency work.

Requested Actions

- 14) Follow CSB policy to provide 60 days advance public notice of quarterly business meetings.
- 15) Develop an annual calendar of tentative dates for CSB's quarterly public business meetings and post it on the agency website.

Problem: No Public Input in CSB Planning

The GPRMA Modernization Act of 2010 (GPRAMA) requires federal agencies to prepare strategic agency plans (ASP) which operate on a four (fiscal) year basis.⁵² CSB's current plan for 2017-2021 expires September 30, 2021.⁵³

Under GPRAMA, agencies must consult with nonfederal stakeholders at least once every four years when developing the plan. (Agencies also must confer with appropriate congressional committees every two years, irrespective of their work on an ASP).

CSB has not held a dialogue with multiple stakeholders since June 10, 2015 and there is no indication that it plans to hear stakeholder perspectives as part of developing a new strategic plan.⁵⁴

Requested Actions

- 16) Conduct a public forum to hear stakeholder perspectives and encourage dialogue on a draft FY 2022-2026 CSB strategic plan.
- 17) Conduct an annual CSB stakeholders meeting, beginning in FY2023, involving representatives of industry, labor, environmental, environmental justice, public health, scientific, professional safety, family, and other organizations.

Problem: Uncertain Disclosure of Chemical Incident Data

There are few data sources where the public can learn about major chemical incidents.

⁵¹ https://www.csb.gov/assets/record/board_order_001-quorum_voting_and_meeting_procedures12-17-19.pdf, pages 9-10.

⁵² <https://www.congress.gov/bill/111th-congress/house-bill/2142>

⁵³ https://www.csb.gov/assets/1/6/csb_strategic_plan11.pdf

⁵⁴ See the transcript of this meeting at <https://app.box.com/s/07tgkeihhfrod014ei3m1pi37945je53>

CSB's reporting rule, issued in February 2020, requires prompt reports to CSB from facility owners or operators that have a chemical release that results in a death, serious injury or substantial property damage.⁵⁵

In this rule, CSB pledged to publicly disclose incident information stating that "...the CSB recognizes the public interest in learning from initial accidental release information. The CSB occasionally receives FOIA requests for incident screening information. After appropriate review, the CSB has disclosed this information and will continue to do so."⁵⁶

CSB also stated in the rule that "With the adoption of this final rule, the CSB will also devote additional resources to the collection and processing of initial accidental release information. In light of this, the CSB will proactively disclose, subject to any Federal statutory prohibitions on such disclosure, initial incident information, as defined in this rule at § 1604.4, at least once per year."⁵⁷

To be of more timely public use, incident information should be posted quarterly.

Requested Action

18) Post incident reports quarterly on CSB's website.

Problem: Complying with President Biden's Policies on Racial Equity

On September 22, 2020, President Trump issued Executive Order 13950, *Combating Race and Sex Stereotyping*.⁵⁸ This Order sought to block CSB and other federal agencies from teaching "divisive" concepts about race and prohibited federal contractors and subcontractors from providing workplace diversity training.

In response to your request to the Office of Inspector General for EPA,⁵⁹ on November 18, 2020 the OIG evaluated CSB's compliance with this Order. The OIG found that CSB had suspended all planned diversity and inclusion trainings as of November 9, 2020 and had not provided any employee diversity and inclusion trainings since November 2019.⁶⁰

On January 20, 2021, as part of a new Executive Order, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, President Biden revoked Executive Order 13950.⁶¹ His new Executive Order (EO) stated that "equal opportunity is the bedrock of

⁵⁵ <https://www.csb.gov/assets/1/6/2020-02418.pdf>

⁵⁶ Ibid, page 10094.

⁵⁷ Ibid, page 10094.

⁵⁸ <https://www.federalregister.gov/documents/2020/09/28/2020-21534/combating-race-and-sex-stereotyping>

⁵⁹ https://www.epa.gov/sites/production/files/2020-11/documents/epa_oig_notificationmemo_11-18-20_stereotyping.pdf

⁶⁰ https://www.epa.gov/sites/production/files/2020-12/documents/epa_oig_20201229-21-e-0043.pdf

⁶¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

American democracy, and our diversity is one of our country's greatest strengths" and that "Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government. Because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity."

The new EO also states that "It is therefore the policy of my Administration that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."

Further, the EO states that "In carrying out this order, agencies shall consult with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs. The head of each agency shall evaluate opportunities, consistent with applicable law, to increase coordination, communication, and engagement with community-based organizations and civil rights organizations."

Requested Actions

- 19) Comply with President Biden's Executive Order 13985, including consulting with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs.
- 20) Develop a policy and video for communities that are disproportionately harmed by chemical incidents on how the CSB works and opportunities for engagement with the agency, focusing on the investigation process.

Problem: CSB Lacks Clear Policies on Scientific Integrity

The US Chemical Safety Board relies heavily on the use of science to inform its investigations and decisions regarding severe industrial chemical accidents. The CSB also is comprised of several scientific experts including mechanical and chemical engineers, industrial safety experts and investigators. Given the CSB's important science-based charge and mission, it is critically important that the science relied upon by the CSB remain independent and free from undue interference.

Currently, the CSB is without a scientific integrity policy that would help to ensure that the work it conducts remains free from political interference. Political interference in science-based decision making has occurred under every presidential administration at least dating back to President Eisenhower. However, the past four years saw an uptick in scientific integrity violations even at federal agencies with strong scientific integrity policies. Such violations

resulted in decisions made that were not informed by the best available science putting the public's health and safety at-risk. For these reasons, the Biden-Harris administration is working on strengthening scientific integrity⁶² and evidence-based decision making across the federal government.

The US Chemical Safety Board should develop a scientific integrity policy that is enforceable to protect its scientific experts and their work from undue political interference. While the board currently follows guidelines⁶³ for "ensuring and maximizing the quality, objectivity, utility, and integrity of disseminated information," these guidelines lack enforcement even within the board itself. Because the CSB is charged with investigating severe industrial accidents that often involve injuries, fatalities, and destruction costing millions of dollars, it should work to maintain integrity in its science-based investigations and decisions for the public good.

Requested Actions

21) The CSB should establish and enforce a scientific integrity policy that safeguards against improper political interference in the conduct of scientific research and in the collection of scientific or technological data, and that prevents the suppression or distortion of scientific or technological findings, data, information, conclusions, or technical results.

Please respond to our organizations with your ability to implement these reasonable recommendations within 30 days. You may send your response to the representatives listed below.

John Paul Smith
United Steelworkers
jpsmith@usw.org

Allison Cain
Union of Concerned Scientists
acain@ucsusa.org

Terry McGuire
Earthjustice
tmcguire@earthjustice.org

Respectfully,

United Steelworkers (USW)
Union of Concerned Scientists
Earthjustice
AFL-CIO
BlueGreen Alliance
United Food and Commercial Workers International Union (UFCW)
International Chemical Workers Union Council (ICWUC)

⁶²<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/memorandum-on-restoring-trust-in-government-through-scientific-integrity-and-evidence-based-policymaking/>

⁶³ <https://www.csb.gov/assets/1/6/finaldataqualityguidelines1.pdf>

Environmental Justice Health Alliance for Chemical Policy Reform (EJHA)
Sierra Club
Greenpeace US
Coming Clean
National COSH
Coalition for a Safe Environment
New Jersey Work Environment Council
NAACP Branch #1069
Community Dreams
California Kids IAQ
EMeRGE
Center for Progressive Reform
Ohio Valley Environmental Coalition
Air Alliance Houston
California Communities Against Toxics

June 22, 2021

Senator Tom Carper, Chairman
U.S. Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Shelley Moore Capito, Ranking Member
U.S. Senate Committee on Environment and Public Works
456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Carper and Ranking Member Capito:

We are writing to support the nomination of Dr. Jennifer Sass to the US Chemical Safety and Hazard Investigation Board (CSB), and encourage you to promptly schedule a hearing and advance her nomination. Dr. Sass' scientific qualifications are excellent – a master's and doctorate degree in anatomy and cell biology, and postdoctoral work in toxicology with expertise in occupational safety and health, US federal chemical policy and regulations, teaching environmental and occupational health, and communicating scientific concepts to a broad audience. She is also highly adept at bringing together diverse perspectives into productive collaborations, as evidenced by her many successes such as co-leading the Coming Clean Working Group on Emerging Technologies for many years, where she led the scientific analyses and policy positions on nanomaterials for Coming Clean (a national network of over 175 diverse organizations). This work resulted in a scientific publication demonstrating the application of existing hazard evaluation methods to new chemistries.

Of great value for Coming Clean members and allies has been Jen's ability to provide rapid and reliable analyses of technical information, and effectively communicate it for diverse audiences, including for communities, reporters, businesses, scientists, regulators, and lawmakers. For example, she provided real-time analyses of the potential health risks posed by the 2014 Elk River chemical spill of MCHM for the public, reporters, and scientists. Jen has consistently made herself available as a trusted source of scientific information and technical analyses to support the work of Coming Clean.

Chemical spills, explosions, and contaminations cause disease and deaths among residents of fenceline communities, poison and kill workers, and poison waterways and ecosystems often beyond repair. These incidents – many preventable – also reduce the economic stability of impacted communities, local businesses, and infrastructure, causing even more suffering to already hard-hit communities. The work of the CSB is to fully investigate these tragic events, and document the steps that could be taken to prevent them from recurring across the industry.

The CSB is most productive when it has the support of labor unions, businesses, community leaders, environmental justice leaders, environmental groups, and scientists. The undersigned organizations and individuals include experts in community organizing, environmental justice, environmental health, sustainable business, policy, and other critical areas. Our members care very much about having a fully-staffed, fully-functional, and productive CSB that can conduct its investigations without impediments and complete them in a timely manner, with the goal of transforming the chemical and energy industries so they are no longer a source of harm. We are confident that Dr. Jennifer Sass shares our vision, and has the technical and scientific expertise, and the focus and fortitude to carry the CSB forward into a successful future.

Supported by:



David Levine
Chief Executive Officer
American Sustainable Business Council



Jose Bravo
Executive Director
Just Transition Alliance



Judith Robinson
Executive Director
Coming Clean



Richard Moore
Co-Director
Los Jardines Institute



Michele Roberts
National Co-Coordinator
Environmental Justice Health Alliance for
Chemical Policy Reform

Senator MERKLEY. Additionally, Senators will be allowed to submit questions for the record through the close of business on August 12th. We will compile those questions; we will send them to all of you, our nominees, and ask you to reply by August 26th.

With that, the hearing is adjourned.

[Whereupon, at 11:08 a.m., the hearing was adjourned.]

