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HEARING ON THE NOMINATION OF VANESSA SUTHERLAND TO BE A MEMBER
AND CHAIRPERSON OF THE CHEMICAL SAFETY BOARD

WEDNESDAY, APRIL 22, 2015

U.S. SENATE

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 9:33 a.m. in room
406, Dirksen Senate Building, the Honorable James Inhofe
[chairman of the committee] presiding.

Present: Senators Inhofe, Fischer, Rounds, Boxer and
Gillibrand.

Senator Inhofe. We welcome our witness. Vanessa, I appreciate the time that you gave me, filling me in on your background and your intentions. I appreciate it very much.

There are three must-ask questions. First of all, do you agree, if confirmed, to appear before this committee, or designated members of this committee and other appropriate committees of the Congress, and provide information subject to appropriate and necessary security protection with respect to your responsibilities?

Ms. Sutherland. I do.

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

Ms. Sutherland. I do.

Senator Inhofe. 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?

Ms. Sutherland. I do not.

Senator Inhofe. First of all, Ms. Sutherland, thank you for being here today.

I want you to introduce your family, particularly that cute little girl back there.

Ms. Sutherland. That is Sydney Sutherland who got a free

pass and excused absence from kindergarten today to come. Next to her is what I thought was my mini-me until she sits next to her father and it is actually his mini-me, Emmanuelle Sutherland.

We have some colleagues from DOT with whom I have worked for the last four years throughout different agencies and modes.

Senator Inhofe. Very good. Thank you.

Ms. Sutherland. I think at some point, my mother will make it through security.

Senator Inhofe. Does she have a security problem?

Ms. Sutherland. No, just a little slow in walking.

Senator Inhofe. All right.

STATEMENT OF THE HONORABLE JAMES INHOFE, A UNITED STATES SENATOR
FROM THE STATE OF OKLAHOMA

The Chemical Safety Board is a deeply troubled agency and its next chairman will have to address a number of issues relating to how the agency is managed.

Just last Tuesday, the EPA Inspector General, who acts as the CSB Inspector General, told our oversight subcommittee that the prior Chairman, Rafael Moure-Eraso, likely committed perjury and other crimes during his tenure at the CSB. Thankfully, Mr. Moure-Eraso has resigned, but his legacy of mismanagement, harassment, and turmoil remains.

For example, in a July 30, 2013 report, the EPA Inspector General said "CSB does not have an effective management system to meet its established performance goal to conduct incident investigations and safety studies concerning releases of hazardous chemical substances."

On June 19, 2014 former CSB Board Member Beth Rosenberg testified to a House committee that, in her time on the CSB Board, "Those whose opinions differ from those of senior leadership or the Chair are marginalized and vilified. At the CSB, disagreement is seen as disloyalty. Criticism is not welcome and staff fear retaliation."

On March 4, 2015, current board member Mark Griffon testified to a House committee that "management deficiencies,

including an untenable turnover rate, have also contributed to the inefficiencies in completing investigations.”

On January 28, 2015, despite the congressional and Inspector General investigations about their mismanagement, former Chairman Moure-Eraso, with the cooperation of Board Member Ehrlich, took action to give the Chairman and Managing Director complete control of the CSB by dissolving 18 Board Orders that spelled out authorities for individual board members and approving a new order that removes board oversight of the actions of the Chairman. The public and even the other CSB Board member, Mr. Griffon, had no notice of the plans to restructure CSB operations.

According to investigations conducted by the House Oversight and Government Reform Committee, the former Chairman, the Managing Director, and the General Counsel used private email accounts to hide their plans for operating the CSB from other board members and CSB staff. After the EPA Inspector General learned about this, he sent a January 2015 report to President Obama concluding that Mr. Moure-Eraso and two of his senior officials violated the Federal Records Act.

In a March 14, 2015, letter to President Obama, both Senator Rounds and I asked for the immediate resignation of Mr. Rafael Moure-Eraso. Two weeks later, Mr. Moure-Eraso resigned.

Mr. Moure-Eraso has now left the CSB and you have been

nominated to take his place. The senior staff, implicated in numerous investigations alongside the previous chairman, unfortunately remain.

Given the current state of affairs at the CSB, I will be very interested to hear first, how you plan to address the mismanagement and toxic work environment at the CSB, and two, your views on what authority should be held by the Chairman of the CSB and what authority should be held by the Board as a whole.

Senator Boxer?

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF THE HONORABLE BARBARA BOXER, A UNITED STATES
SENATOR FROM THE STATE OF CALIFORNIA

Senator Boxer. Thank you very much, Mr. Chairman.

Welcome, and to your family as well. The little one may not know exactly what this is about but she knows it is important. I think she will remember it.

I want to begin by welcoming you, Vanessa Sutherland, to the Committee on Environment and Public Works as we consider your nomination.

The confirmation of qualified individuals to lead federal agencies is an important responsibility of the Senate. It is critical that we move forward with the nominations under the jurisdiction of this committee so that our federal agencies can fulfill their mission to serve the American people.

I just recently looked at the ratings that Congress has. I am sorry to say it is very low. One of the issues I hear from people at home is, why is it that we do not move these nominations. We need to do that. I do not care whether you have a Democrat in the White House or a Republican, or whether I like that person or not; it is immaterial. The point is every President deserves to have a team in place.

There is another Safety Board nominee waiting, Kristen Kulinowski, to be a member of the CSB. Since we have all of her paperwork, I certainly hope we can move forward with her

nomination because if we do not have boards that have their full membership, sometimes they can become completely paralyzed and cannot do anything because they do not have enough members.

Ms. Sutherland currently serves as Chief Counsel to the Pipeline and Hazardous Material Safety Administration of the U.S. Department of Transportation. She has held that position since October 2011.

The CSB plays a critical role in protecting our communities from chemical hazards by investigating industrial chemical accidents involving fatalities, serious injuries, or substantial property damages and making recommendations to industry and federal and State agencies so that similar events might be prevented.

Two years ago this month, a massive explosion at a fertilizer distribution plant in West, Texas, killed 15 people, injured hundreds more, and damaged or destroyed homes, businesses, and three unoccupied schools. We shudder to think if those schools had been occupied what we would have been dealing with.

After the disaster in West, Texas, President Obama issued an Executive Order establishing a working group to conduct a comprehensive review of our chemical safety and security programs and asked them to develop recommendations for improving these programs. However, I am very concerned that despite the

clear risks posed by our Nation's chemical facilities, very little progress has been made to improve safety.

Ms. Sutherland, if confirmed, you are going to face a number of challenges, including tackling the backlog of open investigations, the recent resignation of the Chairman, and making sure that everyone pulls together to address the management and governance issues between the Chairman and other members of the Board. Many of those have been cited by my friend, Senator Inhofe.

The problems that preceded you were bad. We have to call it what it is, so you have a daunting challenge but a tremendous opportunity.

I have found, watching as long as I have and being involved in trying to get things done, leadership matters. I am very interested in your nomination. I believe that you have the requisite background to take on these challenges. It is a huge responsibility.

Not everyone is going to love you. That is the price you pay when you step into a leadership role. I know that to be true. However, I believe what former President Clinton said to me a long time ago, you have to be strong when you are a leader. You have to be willing to take the blows.

I think you have a lot of challenges. In my question time, I will ask you about those but I am very hopeful that you have

what it takes to get this job done.

[The prepared statement of Senator Boxer follows:]

Senator Inhofe. Thank you, Senator Boxer.

Let me make an observation. Senator Boxer and I do agree on a lot of things and we work well together. We have a little bit different understanding on the advice and consent of the committees.

I have always felt, yes, the President should be given every opportunity to surround himself with his own people.

Senator Boxer. Or she.

Senator Inhofe. Or she. The advice and consent is very important. It is well ingrained in our system, so we always take it seriously.

We will recognize you now, Vanessa, for five minutes.

STATEMENT OF VANESSA ALLEN SUTHERLAND TO BE A MEMBER AND
CHAIRPERSON OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION
BOARD

Ms. Sutherland. Thank you, Chairman Inhofe, Ranking Member Boxer, and distinguished members of the committee.

I am Vanessa Allen Sutherland and I am honored to have been nominated by President Obama to be the next Chairperson of the U.S. Chemical Safety Board, the CSB.

I would like to take this opportunity to acknowledge members of my family and friends here today who have encouraged, advised and supported me significantly throughout this process and long before it.

The CSB plays a unique and vital role investigating the most significant chemical disasters at fixed industrial sites, and making safety recommendations to prevent future loss of life and property.

Although fortunately major disasters are rare, when they do occur they can have significant and lasting impacts on workers, employers, and communities. The Board is a non-regulatory agency whose investigations are not designed to punish or find fault, but rather to help all of us learn from these tragedies.

First, a bit about who I am and why I am so excited about this nomination. My background is as a practicing attorney, and I hold an MBA from American University. After serving in both

government and industry for many years, in 2011, I was appointed as Chief Counsel of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, or PHMSA.

PHMSA is involved in overseeing many of the same industries and similar hazards that the CSB investigates. As chief counsel, I manage a team of 31 lawyers advising the Administrator and senior DOT personnel on hazardous materials policies, interagency relationships, media and congressional affairs, investigative plans, and employment issues.

Improving chemical safety is an issue that holds great significance for me. Within a year of my joining PHMSA, there was a serious gas pipeline explosion in West Virginia. The Administrator and I went to the site, where among others we met Ms. Sue Bonham, whose home was located next to the pipeline. Her story and testimony is one that I will never forget.

She described to us in vivid detail the experience of living through a major explosion. As she would testify to the Senate, "I stood in the center of my home where it was trembling, shifting, shaking, grinding all around me; the ground rumbling beneath me, thinking the earth would open up at any moment and swallow me." She recalled looking up from under her dining room table "only to see everything sizzling, blistering or melting."

While Ms. Bonham miraculously survived this explosion, her heart-wrenching account is all too similar to the workers and residents who have experienced the industrial chemical accidents that the CSB investigates.

From the residents of West, Texas, who saw much of their town destroyed by an ammonium nitrate blast in 2013, to the brave workers on the Deepwater Horizon, 11 of whom perished, these experiences are all eerily familiar and analogous.

Despite its small size, just 40 people with an \$11 million annual budget, the CSB has been in the forefront determining the technical causes of these accidents and highlighting opportunities for improvement.

CSB investigators drew attention to the unsafe storage of ammonium nitrate at the West fertilizer depot and were also first to put forward a detailed explanation for why the Deepwater Horizon's blowout preventer failed to operate.

The same safety management systems and practices that we have sought to promote for pipeline safety are equally important in the chemical sector. These include implementing good engineering practices, worker training and procedures, equipment inspections, and above all a safety culture that permeates throughout the organization, and influences all decisions from the CEO downward.

Over the years, the CSB has played an important role in

promoting these practices in the chemical sector. I have always believed that safety is a shared responsibility. It is shared among company personnel, government agencies, standard-setting bodies, local emergency planners and responders, and educational institutions.

For the public to feel safe from low-frequency, high consequence chemical disasters, all these organizations need to work together collaboratively toward a common purpose. From my perspective, the CSB, through its nearly 100 major investigations over the years, has amassed a tremendous wealth of knowledge on chemical accident hazards.

If confirmed by the Senate, I hope to use my term in office to encourage even greater use of this knowledge by industry, government agencies, and others for accident prevention and response. I believe the CSB's work is a tremendous and often untapped resource for these organizations. With education and collaboration, we hope the Senate will not be hearing from another Sue Bonham.

Once again, I am honored by the President's nomination. I will be happy to answer your questions. Thank you for the opportunity to appear here today.

[The prepared statement of Ms. Sutherland follows:]

Senator Inhofe. Thank you, Ms. Sutherland.

We are going to start off with five-minute rounds. I think my questions will take a little longer than that so we will be having a second round. However, our votes are at 10:45 a.m., so my guess is that is going to be a drop dead time.

I think we all agree that CSB needs a fresh start under new leadership and not continuation of the past policies. You and I talked about that in my office.

To clear the air, I want to ask you a few questions for the record about your interactions with CSB. How many times have you spoken to Mr. Moure-Eraso, Mr. Horowitz and Mr. Loeb before today?

Ms. Sutherland. I was in the office, preparing for this particular hearing, retrieving information and I happened to be there the day Dr. Moure-Eraso was leaving, so I met with him for the first time. I had never met him before. We spoke for about 15 minutes in his office. He shared very jovially, this will be yours, and it was a very short, pleasant conversation. I have not spoken with him or met with him since.

Senator Inhofe. You did not speak with him before then?

Ms. Sutherland. No, I had never met him before.

Senator Inhofe. As far as the other two, Horowitz and Loeb?

Ms. Sutherland. Probably at least a handful. They have

been providing information such as CSB documents that might be helpful in preparation as a nominee and certainly have helped through I guess the preparation period of just discussing any other documents that I might need, making me accessible or having access to the CSB. That is probably about five or so times.

Senator Inhofe. Did that include anything about their status as members or employees of CSB or other appropriate authority of the chairman and the CSB board members?

Ms. Sutherland. No, we have never talked about their employment or status with regard to them personally.

Senator Inhofe. Thank you.

Did you have any knowledge of Board Order 2015-01 before it was adopted January 28?

Ms. Sutherland. No.

Senator Inhofe. Did you ever tell anyone in the White House that supported keeping Mr. Moure-Eraso as Chairman until his term ended?

Ms. Sutherland. I am sorry, I am not sure I understood the question.

Senator Inhofe. Did you tell anyone in the White House, have any conversations where you were encouraging the White House to keep Mr. Moure-Eraso as Chairman until his term ended?

Ms. Sutherland. I understand. No, I do not think it is my

place.

Senator Inhofe. You did not do that?

Ms. Sutherland. I do not think that is my place.

Senator Inhofe. Did you ever tell anyone in the White House that you supported making Mr. Ehrlich an interim Chair?

Ms. Sutherland. I did not.

Senator Inhofe. In January 2015, the EPA IG notified the White House that CSB Chairman Moure-Eraso, General Counsel Richard Loeb and Managing Director David Horowitz knowingly, all three, violated the Federal Records Act by using personal email accounts to conduct official government business. The House investigation found that General Counsel Loeb knowingly used his private email because other CSB employees had access to the CSB servers.

Given the fact that General Counsel Loeb and Managing Director Horowitz took the same actions that led to the dismissal of Chairman Moure-Eraso, do you think they should continue to serve in the top leadership positions?

Ms. Sutherland. Those are very serious allegations. I think as a nominee, I, like most people in the public, have watched and read many of the statements both from the EPA Inspector General as well as several hearings that have been very publicly known and watched.

Certainly as a new chairperson, I would want to immediately

consult with my fellow board members, if confirmed, the staff, review very seriously the performance management of both of those employees, and the allegations. But as a nominee, it feels premature for me to have a definitive hiring or firing decision at this point but it certainly would be a very top priority, if confirmed as chairperson.

Senator Inhofe. We were saying that given the fact that they took the same actions, discussed by the IG and another person, if that is true, do you think should continue if they were guilty of the same thing, the same deficiencies as the chairman at that time? We will put it in a hypothetical. If that is true, do you think they ought to be retained?

Ms. Sutherland. I certainly believe that if employees are engaged in illegal behavior, that is serious and could very well warrant their termination immediately. If it turned out to be as serious as I think we have been led to believe that it is and has been discussed, then certainly I think as a leader sometimes you have to take very hard action and make sure that in taking those actions, you do not do anything that would disadvantage the agency by not having knowledge transfer, transition and the like.

Certainly, as the potential Chair of the CSB, I would have no trouble making a hard decision if it turned out a termination, a hiring or a firing needs to occur.

Senator Inhofe. In the event this is true, you would be willing to terminate these people?

Ms. Sutherland. I think certainly as a Chair, I would also consult with my board members on that decision. Certainly they have been there as well but on certain types of personnel and employment matters, I certainly think as a Chair, I would be willing to take action up to termination if upon data and consultation, that turned out to be the right decision to make.

Senator Inhofe. Thank you.

Senator Boxer?

Senator Boxer. I want to compliment you on the way you handled those questions because we are talking about very serious allegations and peoples' lives. We need to know the absolute facts. I think you have displayed the type of leadership that I appreciate so much, strong, yet cautious because I think that is critical.

Thank you for asking those questions, Senator.

I wanted to note that today is Earth Day. This is the Environment and Public Works Committee. I wanted to note that.

To me, Earth Day puts a spotlight on how we have to protect our planet and our families. Your position is so critical. There are so many explosions out there that we really have not delved into. I want to ask you about those investigations.

Congress created the Chemical Safety Board to conduct root

cause investigations of industrial chemical accidents involving fatalities. We have not even asked you about that, so I want to ask you about that, serious injuries, substantial property damage, so that similar events might be prevented. This is critical.

For example, when we look at what is being stored and how it is being stored and what happens, we can say we know why this explosion occurred because this particular chemical was stored in this particular way, without the proper safety features. This can save lives.

There is an old religious saying, if you save one life, you save the world. You are going to be in a very enviable position, in my view, to be able to save lives. Not very many people are directly in that position. It is so important.

I am worried about the limited resources that you have because you cannot possibly investigate every chemical accident that falls within your authority. When significant accidents happen like the fertilizer plant explosion in West, Texas, the CSB is called upon to conduct investigation immediately regardless of what other investigations are still pending.

How would you approach addressing the need to investigate the next significant accident while still keeping pending investigations on track because we have had a series of problems, interagency problems where one person says, don't

touch this, this is our domain, don't look at this and that is a real problem.

Have you thought about that, the turf battles as my Chairman says? I feel that you have that personality that is going to be able to overcome this. But could you give us a general answer since it is complex when there are a lot of different agencies involved in an investigation but yours has the distinct, definite authority that you need to move right away? How do you do that without displacing other investigations?

Ms. Sutherland. Thank you for that question, Senator Boxer. I think I can start by answering it very generally with regard to my experience at PHMSA.

We are required, and we embrace, working collaboratively and collegially with other federal agencies. Certainly where possible, we strive to share resources. In accident investigations, where possible, we share information. We have fantastic subject matter experts in pipeline safety as well as hazardous materials transportation. We recognize that is a value to others, especially in accident investigations.

I would say that likewise with the CSB, other than the obvious which is keeping lines of communication open within the Federal Government to make sure there is not duplication, there are not inefficiencies, there are not gaps and that we are

approaching safety in a collaborative approach, I think is a good thing.

I certainly would want to transport that type of model and collegiality. We work very closely with DOJ, EPA and others at DOT. I see no reason why the CSB could not assert more of a presence in these investigations and begin to work more deeply and more collegially with federal agencies because the information they have on accidents both past and possible, those that may occur in the future, is critical.

In that shared responsibility model, I think we all have a seat at the table to make sure we prevent these types of serious accidents from happening.

Senator Boxer. I think you are absolutely right. Our concern is how do we prevent this from happening again. To do that, we have to share the information and it does not happen. We have seen turf battles that have been just awful. We have to set aside our personalities when we are dealing with these kinds of things.

This is my last question. The CSB has been criticized for the length of time it takes to complete investigations and release reports. In your opinion, from what you know so far, what is responsible for these delays and how would you address them if confirmed?

Ms. Sutherland. Thank you for that question.

Not having had a chance to really interview, meet with and get the opinions of my potential future board members and/or the staff to determine that, I am not specifically sure.

In those cases that have been closed a little bit more quickly, because the CSB has done great work and closed some investigations really quickly, I would like to understand what differentiates those from the investigations or reports that may take a more significant amount of time and try to replicate what works in those more potentially complex or serious investigations.

I suspect that it may be that some of my experience in DOT could be translatable in that complex investigations, particularly where there is a catastrophic event where evidence is burned and destroyed, strewn for miles, and deaths and/or serious injuries occur, those, in many instances, just by definition, are going to take some time.

I certainly think there would be an opportunity to set regular check-in points, a project plan and create some strategies from those investigations that have not taken quite as long and try to apply those to the more complex investigations because the information the CSB shares and generates is critical and not just prevention but emergency response.

I think in that regard, as Chairperson, if confirmed, we

could predictably identify when we are going to need more resources or to restructure how an investigation is done in order to get more complex investigations completed in a timely manner.

I certainly would be supportive of that. Most importantly, I think listening, learning and consulting with the staff and the current board members would be an easy first step in getting some ideas on how to implement that.

Senator Boxer. Mr. Chairman, I am not going to have a second round, so I just want to close this.

Senator Inhofe. Go ahead.

Senator Boxer. Thank you.

In my view, this is a really important issue, that you have not had the chance to really get into because obviously you are new to the board. I think it is critical to move without delay when there is a problem because if it takes forever, we cannot learn.

I am going to ask for a little more detailed answer, if you would, just on how you would go about setting timelines and making sure that agency's morale picks up. Because frankly, the morale is very bad right now from being very high, because of the obvious problems that my Chairman has pointed out.

Also, if you do not see an end to your work, it is depressing. You have to find closure on incidents. If you

could give it a little more thought and perhaps get back to me on how you would set the deadlines, thank you very much.

Ms. Sutherland. I would be happy to do so, Senator Boxer.

Senator Boxer. Thank you very much.

Senator Inhofe. Thank you, Senator Boxer.

We have been joined by Senators Rounds and Gillibrand. We are in the process of the five minute opening questions.

Senator Rounds?

Senator Rounds. Thank you, Mr. Chairman.

During recent congressional hearings, the EPA's Inspector General testified that his office has had extreme difficulty getting the full cooperation of CSB senior leadership in his investigations.

Can you describe how you view the role of the Inspector General and what steps you would take as Chair to ensure that the EPA's Inspector General has the full cooperation of senior CSB leadership?

Ms. Sutherland. Thank you for that question, Senator.

I am not sure if many people know but my first job out of college was in an inspector general's office for the U.S. Department of Energy, so I am very familiar with and supportive of the great work that IGs do.

At DOT, I certainly have a very collaborative and collegial relationship with our IG's office. We are very proactive in

both referring cases to them and collaborating where we see a need to share information that we have uncovered, as well as being responsive to them when we have audits, both ordinary course audits as well as anything that we might want to focus on in more specificity.

I see no reason why, if confirmed as Chairperson, I would not enjoy the same kind of respect, collaboration, collegiality, brainstorming and coordination with the EPA IG.

Senator Rounds. As with the EPA's IG, the CSB leadership in recent years has been, shall we say, extremely reluctant to cooperate with congressional oversight committees. Can you describe how you view the appropriate oversight role of the committee as it relates to CSB and what steps you would take as the Chair to ensure that the committee has the full cooperation of your senior CSB leadership team?

Will you commit to meeting regularly with Congress and providing updates on progress to address some of the lingering problems there at CSB?

Ms. Sutherland. Thank you, Senator.

I think communication is critical. Certainly, I am extremely supportive of approaching any Chairperson role in the vein of shared responsibility and communicating with the Oversight Committee, understanding the concerns and those of all stakeholders is a very essential role for any Chairperson.

I think the second part of your question was, would I commit to meeting regularly. I think there is an absolute benefit to meeting regularly to understand what critical issues are. CSB is a small agency with a very, very meaningful and powerful mission.

To the extent we are communicating well, explaining to people what we do and understanding how we might do that better and being forthcoming and sharing where there might be challenges to what we are doing and how we are doing it, I think is a great dialogue to have in order for the team and the staff to get the resources they need, the board to be effective in explaining how it is carrying out the mission and quite frankly, for the CSB to become a little more better known as the valuable resource in the government that it is.

Senator Rounds. Very good. Thank you.

Mr. Chairman, I am completed.

Senator Inhofe. Thank you, Senator Rounds.

Senator Gillibrand?

Senator Gillibrand. Thank you, Mr. Chairman.

Thank you, Ms. Sutherland, for testifying before our committee. I want to welcome your family. Welcome to this hearing. It is a big day for your Mom.

The Chemical Safety Board is tasked with the important role of investigating industrial chemical incidents. Their

recommendations can help companies avoid these types of accidents in the future.

CSB has received quite a lot of negative press lately. I hope the change in leadership will quickly reverse the downward trajectory of the CSB. This agency plays an important role in public health and workplace safety. The board must redirect the energy of its employees and refocus its mission.

Following an investigation of a chemical facility incident, the board provides recommendations. These are integral to increasing workplace safety and preventing disasters of a similar nature from happening again.

There is currently a 73 percent adoption rate for these recommendations. What are some ways, as chairman, that you could increase this adoption rate?

Ms. Sutherland. Thank you, Senator.

In my preparation for this particular hearing, the 73 percent seems to actually be going up, so first, I would commend the phenomenal staff at CSB for their previous establishment of the Office of Recommendations within the CSB to do that very thing, to track progress and make sure the recommendations were being taken seriously, reviewed and adopted.

Going forward, having worked at the NTSB at DOT, I think there are certain things that the Office of Recommendations can do, as well as the board members. The board members also play

an instrumental role in participating in and reviewing reports, recommendations and helping to move them forward.

I think contacting individual industries, companies, working with federal agencies to understand some of the obstacles or challenges and then working with them definitively to try to reach resolution is a great thing.

To the extent they can propose compromises or alternatives that would meet the same safety objectives, that would be a welcome approach as well.

Certainly as a non-regulatory body focused on investigations, dissemination of information and sharing for prevention and response activities, I think continuing to make sure that message is carried further to underscore and amplify the importance of those recommendations outside of just meeting with stakeholders is a great thing.

Senator Gillibrand. What are some of the strategies you hope to use to amplify education and outreach?

Ms. Sutherland. I certainly think there are benefits of going to educational institutions, conferences. Using one example with the CSB, I was very impressed that the Chemical Safety Board investigation findings actually led to a change in university curriculum for chemical engineering.

In that regard, that is powerful messaging. When you can amplify the reactive agent elements of chemistry that may have

been overlooked or amplify that certain parts of curriculum need substantive and deeper experience before someone enters the workplace, those are great and wonderful stories and examples to have.

I think the more the CSB can dedicate time, I know it is only 40 people and \$11 million, and the board can play a critical role in sharing those kinds of examples of success, I think the more luck we may have in seeing the recommendations as an important factor in improving safety overall. It is a shared responsibility so we have a lot of stakeholders to cover.

Senator Gillibrand. On the issue of safety and security, I am sure during your time with the Pipeline and Hazardous Materials Safety Administration it was clear that security, both the physical and cyber infrastructures, is of most importance.

As chairman, are there ways you could focus on increasing both the safety and security of the Nation's chemical industry?

Ms. Sutherland. I think safety and security are often integrally tied. At PHMSA, we have worked very closely with TSA, Homeland Security and various other agencies to ensure that safety is discussed and analyzed in the same context as those who unfortunately may have nefarious intent and want to highlight certain facilities for terrorist activity or other bad behavior.

Although I know it is not squarely in the safety mission of

the CSB, I certainly think the board members and the Chair could play a very critical role in engaging a similar conversation so that as we are looking at safety and understanding root causes, to the extent those are security related, that we share that information appropriately with others throughout the government.

Senator Gillibrand. Thank you so much for your testimony.

Ms. Sutherland. Thank you.

Senator Inhofe. Thank you.

We are going to have a second round of questioning. I think there will be another member arriving.

Are you aware that Senator Lautenberg, who helped draft this legislation authorizing the CSB, believed that while the chairman exercised the executive and administrative functions of the board, in a 1999 letter, he said, "There is no doubt in my mind, however, that the CSB chairman must perform those functions under the direction and approval of the board as a whole"?

Are you aware that Randolph Moss, Acting Assistant Attorney General for the Department of Justice, Office of Legal Counsel, issued an opinion in 2000 saying "In disputes over the allocation of authority in specific instances, the board's decision controls as long as it is not arbitrary or unreasonable"?

Will you commit to this committee that if you are

confirmed, you will follow the direction of Senator Lautenberg's 1999 letter and that of the Moss opinion?

Ms. Sutherland. Thank you for that question, Senator. I am sure it is on the minds of many, given the governance challenges that have been identified over the last 12 to 18 months. If confirmed as Chairperson, I certainly think that governance and the general cooperation among the board and the effectiveness of the board, would have to be a top priority.

In consultation with my board members, I certainly think that revisiting the board orders is probably a good thing to do given how much controversy and ambiguity there has been regarding the interpretations and practices of the board orders.

I absolutely commit to being collaborative and understanding that what we do is as important as how we do it. Chairs do not have unilateral authority to make all decisions for the board. I will absolutely collaborate and be collegial in making decisions that are going to affect the future and efficiency of the agency.

Senator Inhofe. I think that is a long way of saying yes, as I read the statement made by Senator Lautenberg.

Closely related to that, the current board members just passed a new order that temporarily gives back to the board some of its authority. It does not rescind Board Order 2015-1 that I referred to in my opening statement. It is only effective to

June 24 or until the new Chair is confirmed.

What is your view of that order or are you familiar with that, the replacement order?

Ms. Sutherland. I am only generally familiar with the replacement order and certainly defer to the three current board members as to how they operate before other members and a chairperson are confirmed.

As I mentioned, given the fact that governance has been a topic for many years at the CSB, it would seem to me that given the challenges, it is critical for any incoming chairperson to meet with the members and potentially, whether it is repeal, modify, review, going forward, I think those board orders certainly deserve some clarity.

If confirmed, I certainly would want to review all of the actions being taken in the interim and understand more about how the board would want to move forward.

Senator Inhofe. From what you know now, you are somewhat familiar with that, do you have an opinion as to whether it goes too far, does it go far enough or anything concerning that? I think it is called 2015-26. Do you have an opinion on that?

Ms. Sutherland. That, I do not have.

Senator Inhofe. Board Members Griffon and Engler have testified they would like to see Board Order 2015 rescinded to restore public confidence in the CSB. You have already answered

as to whether or not you agree with that, but I think something has to be done to restore confidence. This has been a problem. This was pointed out by Senator Rounds and myself. Our investigation resulted kind of resulted in the changes that have taken place that make this committee hearing necessary.

Do you have anything to add as to your plan for dealing with this Board Order or do you see something else you could do in this area as a new chairman, if you are confirmed, to restore confidence?

Ms. Sutherland. Trying to be short in the answer, boards and commissions operate in a very complex, legal and regulatory space. Orders over orders over orders can create a lot of confusion and ambiguity.

If confirmed as Chairperson, I think the first thing to do would be for the board, as a whole, to take a look at all of those Board Orders and determine collectively the best way to move forward.

Certainly, as a chairperson and member, the Chair has a one in five conversation and vote on these very critical topics. If there is not agreement or understanding going forward, then I would fear that the same level of discord and mistrust would continue on the board. As a nominee, it feels a little premature for me to definitively know which specific Board Order may be the right or wrong one, given that they have caused a

little bit of tension for many years.

Senator Inhofe. I think that is fair.

Senator Rounds, do you have further questions?

Senator Rounds. Mr. Chairman, if I could, I would like to follow a little bit on the same line that you were following.

I will go into a little bit of detail that we are kind of trying to work our way through. On January 28, 2015, CSB held a hearing to consider findings related to a CSB investigation. No notice was given to Board Member Mark Griffon or the public that a proposed Board Order was going to be considered and voted upon. No copy of the proposed Board Order was given to Board Member Griffon or the public to review prior to the hearing.

Despite the lack of notice, Board Member Manuel Erhlich offered Board Order 2015-01, the one the Chairman referred to, which rescinded 18 prior Board Orders and consolidated authority in the CSB Chairman. The Board Order was approved with Mr. Erhlich and Chairman Moure-Eraso voting in favor of it and Board Member Griffon opposed to it.

You can see the focus we have here. We are curious about your general thoughts on the process that was used to pass this Board Order. Maybe you were not aware of what happened. We can kind of suspect what your response will be but for the record, what was your general thought on the process used to pass this particular Board Order?

Ms. Sutherland. You are correct. I was not familiar with the whys or the rationale for how that meeting came to be, the outcome or any of the details or specificity. I would say that having been on other boards, certainly not at this level, but non-profits and 501(c)(4)s, having been a chairperson, having been president of a small organization, it is not necessarily what you do when you are leading people, it is how you do it and how you communicate it.

Certainly as a chairperson, my goal would be to communicate, be transparent, and make sure all verses are heard. I think much of the challenge I have seen as just a citizen with the CBS has been a feeling, however legitimate, that there is not transparency, there is a lack of communication, that diversity of thought, opinion and perspective is not welcome.

I do not think that you get the best outcomes or product when you are not transparent and communicate. As Chairperson, I would lead with that approach.

Senator Rounds. I think the example of how this particular piece of the process worked is a good example of probably how it should not have worked. Have you had a chance to discuss any of this process with the current members of the board at all?

Ms. Sutherland. I have not.

Senator Rounds. You have not. Okay. Board Members Griffon and Engler have testified they would like to see this

Board Order rescinded to restore public confidence in the CSB.

Would you agree to sit down with them and consider their recommendation and basically talk about how you would plan to deal with, as you have heard, regaining that sense of confidence that there will be a process within the operation of the entire board that is a lot more transparent and open than apparently what has been going on in the past?

Ms. Sutherland. That seems to be necessary to move this board forward in an efficient and effective manner so they can return to the focus of the CSB with less time and attention on governance and more time and attention on accidents and investigations.

Senator Rounds. Very good. Thank you.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Rounds.

When you first introduced your family, your mother had not arrived. Has she arrived?

Ms. Sutherland. She has.

Senator Inhofe. I welcome you, Mom. You should be very proud to be a part of this.

Ms. Sutherland. That is Audrey Allen.

Senator Inhofe. Very good. Thank you very much.

We do not have more questions. We appreciate very much your presence here and your answers to our questions.

Ms. Sutherland. Thank you, Senator.

Senator Inhofe. We are adjourned.

[Whereupon, at 10:22 a.m., the committee was adjourned.]