

Table of Contents

U.S. Senate

Date: Thursday, November 17, 2022

Committee on Environment
and Public WorksSubcommittee on Chemical Safety, Waste
Management, Environmental Justice
and Regulatory Oversight

Washington, D.C.

STATEMENT OF:	PAGE:
THE HONORABLE JEFF MERKLEY, A UNITED STATES SENATOR FROM THE STATE OF OREGON	3
THE HONORABLE ROGER WICKER, A UNITED STATES SENATOR FROM THE STATE OF MISSISSIPPI	8
STEPHEN A. OWENS, NOMINEE TO BE CHAIRPERSON OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATIONS BOARD	11
CATHERINE J.K. SANDOVAL, NOMINEE TO BE A MEMBER OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATIONS BOARD	16

HEARING ON THE NOMINATIONS OF STEPHEN A. OWENS TO BE CHAIRPERSON
OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATIONS BOARD AND
CATHERINE J.K SANDOVAL TO BE A MEMBER OF THE CHEMICAL SAFETY AND
HAZARD INVESTIGATIONS BOARD

Thursday, November 17, 2022

United States Senate

Committee on Environment and Public Works

Subcommittee on Chemical Safety, Waste Management, Environmental
Justice and Regulatory Oversight

Washington, D.C.

The committee, met, pursuant to notice, at 10:02 a.m. in
room 406, Dirksen Senate Office Building, the Honorable Jeff
Merkley [chairman of the subcommittee] presiding.

Present: Senators Merkley, Capito, Wicker.

STATEMENT OF THE HONORABLE JEFF MERKLEY, A UNITED STATES SENATOR
FROM THE STATE OF OREGON

Senator Merkley. Good morning and welcome to today's hearing to examine the qualifications of two individuals nominated to serve as members of the U.S. Chemical Safety and Hazard Investigations Board, or CSB, one of whom, Stephen Owens, is currently serving on the Board as interim Chairman but has been nominated by President Biden to fill that position for a full term.

For more than two decades, the CSB has been responsible for investigating industrial chemical accidents at fixed industrial facilities. This small agency and its team of investigators consisting of chemical and mechanical engineers, industrial safety experts and other specialists with experience in the private and public sectors decide what accidents to investigate and get to the root causes.

They then offer recommendations to facilities, local and State governments, regulatory agencies, industry organizations and labor groups on how to fix and avoid similar incidents. Their mission is to drive chemical safety change through these recommendations and they have a long record of doing so. The agency has investigated over 100 accidents from large explosions that destroyed communities to small releases in labs and

isolated work sites.

For many years, this agency was considered to be the global gold standard in conducting industrial accident investigations. We know, however, that the agency and the dedicated men and women within it have faced more than their fair share of challenges in fully carrying out their mission and duties over the past few years. The previous Administration attempted to zero out the budget but refused to nominate replacements for board members whose five-year terms had expired. As a result, the agency only has nine dedicated investigators today, less than half the 24 once employed by the CSB.

In addition, a number of vacancies in key staff positions has kept the agency from being able to fully utilize resources provided to them by Congress leading to a backlog of incomplete investigations. This situation, purposely created, is unconscionable and inexcusable for an agency vital to preventing industrial catastrophe.

One article from 2016 quotes Trish Kerin, the Australian Director of the Institution of Chemical Engineers Safety Center as saying, "The rest of the world is jealous of the CSB. We wish we had one because its purpose is to investigate and understand what happened, not because of community pressure or for the purpose of prosecution."

The good news is that under the Biden Administration, there is still a good way to go but I believe the situation at the U.S. Chemical Safety and Hazard Investigation Board is improving. At the end of last year, the Senate confirmed two of President Biden's nominees, Sylvia Johnson and Steve Owens, to fill vacancies on the Board and return it to a functioning quorum.

These leaders have taken it upon themselves to try to rejuvenate the Board, bring on new staff, conduct listening sessions to hear the concerns of current and former staff and former Board members. Just last month, the CSB released final reports on two concluded investigations along with updates on four more ongoing investigations demonstrating their ongoing commitment to addressing the backlog.

It is critical that here in the Senate we help them in these efforts. Towards that end, we will hear today from two nominees who have the potential to contribute greatly to these efforts to restore and revitalize the Board.

Steve Owens currently serves as a member and the interim Chairman of the U.S. Board since his confirmation last December. He is currently nominated for a full term as chairman. Since being sworn in, he has worked to increase transparency and information sharing, identifying ways to reduce the backlog, and

increased collaboration and communication between agency leadership and CSB career professional staff and stakeholders.

Professor Catherine Sandoval is a tenured law professor at Santa Clara University where she teaches and conducts research on energy, communications, antitrust and contract law. A regulatory and legal expert for over three decades, a safety leader for more than two decades, Professor Sandoval's interdisciplinary work advances infrastructure safety, reliability, access and equity.

In addition, Professor Sandoval has served a six-year term as a Commissioner of the California Public Utilities Commission to which she was appointed by Governor Brown and unanimously confirmed by the California State Senate. During her prior Federal service, she served as Director of the Office of Communications, Business Opportunities at the Federal Communications Commission.

Former California Governor Davis appointed her to serve as Undersecretary and Senior Policy Advisor for Housing, and before that as Staff Director of California's Business, Transportation and Housing Agency. In that capacity, she worked with law enforcement, including the California Highway Patrol, to respond to infrastructure vulnerabilities and hazardous incidents.

That is quite a variety of responsibilities, and quite a

breadth of experience.

I would like to thank both of our nominees for being here with us today.

Now, I will turn it over to our Ranking Member, Roger Wicker.

[The prepared statement of Senator Merkley follows:]

STATEMENT OF THE HONORABLE ROGER WICKER, A UNITED STATES SENATOR
FROM THE STATE OF MISSISSIPPI

Senator Wicker. Thank you, Chairman Merkley.

I want to welcome our two nominees today. Steve Owens has been nominated to serve as the Chair of the Chemical Safety and Hazard Investigation Board, or CSB. I have learned that he is a Memphis boy and grew up right up the highway from me, where I grew up in north Mississippi.

Mr. Owens appeared before this subcommittee last year when he was first nominated to be a member of CSB and he was confirmed by the Senate for that position last December. Catherine Sandoval, who has been nominated to be a member of the CSB, is also with us this morning. I appreciate their willingness to serve.

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

Since becoming operational in 1998, the CSB has investigated three accidents that occurred in my State of Mississippi. A 2002 explosion injured three workers; a 2006

explosion killed three contractors and seriously injured another; and in 2016, an explosion occurred in which fortunately no one was hurt.

The CSB works to investigate these types of incidents in order to prevent them from happening again. This work is vitally important and can save lives. It is therefore critical that the Board be filled with experts in chemical process safety.

Today's hearing presents an opportunity to hear from each of these nominees about their qualifications for this important role. I look forward to getting to know them and hearing more about their experiences.

Thank you, Mr. Chairman.

[The prepared statement of Senator Wicker follows:]

Senator Merkley. Thank you very much, Senator Wicker.

We will start with Stephen Owens. The floor is yours.

STATEMENT OF STEPHEN OWENS, NOMINATED TO BE CHAIRPERSON OF THE
CHEMICAL SAFETY AND HAZARD INVESTIGATIONS BOARD

Mr. Owens. Thank you, Mr. Chairman.

If I may, at the beginning I would like to introduce the members of my family who are with me as well. My wife, Karen Owens, is behind me to my left and my son, Ben Owens, is behind me to my right.

Mr. Chairman, Ranking Member Wicker and members of the Subcommittee, thank you for holding this hearing and inviting me to be here today. It is good to see you again, both of you.

Senator Wicker, I didn't get a chance to say hello but hopefully we will get a chance to chat before the end of the hearing. It is good to see you as well.

I am extremely honored to be nominated by President Biden to be the Chairperson of the Chemical Safety and Hazard Investigation Board. I have been a member of the Board since February of this year, confirmed by the Senate last December. I became the Board's Interim Executive Authority in July after our former chairperson resigned.

As I said when I appeared before you last year, the CSB is a very 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.

Since I have been the Interim Executive, I have worked very closely with my fellow Board member, Sylvia Johnson, and the dedicated career public servants at the CSB to address the serious challenges facing the agency, including reducing the backlog in investigation reports, addressing staff vacancies, improving morale, breaking down silos, and increasing communication between CSB leadership and career staff.

For example, since late July, we have released the final reports for three investigations: the fatal 2017 explosion at the Loy-Lange Box Company in St. Louis; the fatal 2016 fire at the Sunoco terminal in Nederland, Texas; and the 2019 fire and explosions at the PES refinery in Philadelphia.

Prior to issuing the Loy-Lange report in late July, the CSB had not released an investigation report in over 10 months. Going forward, we anticipate releasing the final reports for another three investigations by the end of this calendar year.

In the last few years, the CSB has suffered serious attrition among our investigative and other critical staff, and fell to one of the lowest levels of career staff in its history. Since I have been the Interim Executive, we have hired a new Chief Information Officer to address the serious cybersecurity

and information technology issues plaguing the CSB, and we will be adding other IT staff soon.

We onboarded a new chemical incident investigator and plan to hire several more in the months ahead. We also hired two recommendations specialists, and we are recruiting other key staff as well.

Additionally, in September, we deployed a team to investigate the fatal fire and explosion at the BP-Husky Refinery in Ohio. This was the first deployment that the CSB had undertaken in 14 months.

We also have increased transparency and are providing more information to the public and our stakeholders. For example, we have begun to post data on chemical incidents that we receive under the agency's reporting rule.

We also have reinstated public comments at CSB Board meetings. In September, we issued updates on four investigations, including the 2020 fatal fire and explosion at the Optima Belle facility in West Virginia and the fatal 2021 liquid nitrogen release at the Foundation Food Group facility in Georgia.

The agency had stopped providing these updates last year, but we believe that they provide important information to the public and stakeholders. In the next few weeks, we plan to

issue an update on another investigation, the fatal 2021 explosion and fire at the Yenkin-Majestic facility in Ohio.

The Chemical Safety Board began operations in January 1998. As we approach the 25th anniversary of the CSB, I am very optimistic about the agency's future. I strongly believe that we can rebuild and revitalize the CSB and perform our mission as Congress intended. I look forward to working with this committee to do that.

Thank you again, Mr. Chairman and Ranking Member Wicker, for the opportunity to appear before you. I will be happy to answer any questions you may have.

[The prepared statement of Mr. Owens follows:]

Senator Merkley. Thank you very much.

Ms. Sandoval.

STATEMENT OF CATHERINE J.K. SANDOVAL, NOMINATED TO BE A MEMBER
OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATIONS BOARD

Ms. Sandoval. Thank you very much.

I would like to begin by introducing my family: my husband, Steve Smith; my sister, Barbara Sandoval; and also my family friends, Didas Catagi [phonetic] and Esther Noltrig [phonetic]. Thank you so much.

Senators, thank you for this opportunity to discuss my nomination to serve as a member of the U.S. Chemical Safety and Hazard Investigation Board. I would also like to thank President Biden for the honor of this nomination and my family, particularly my husband, Steve, my sister, Barbara, my late sister, Anna Lugo, my father, Vernon Kissée; and my friends, colleagues, and Santa Clara University for their support and encouragement of my safety leadership work.

In the decades before the CSB was founded, prior to the Clean Air Act, and before the establishment of the Occupational Safety and Health Administration, my great uncle, Ishmael Martinez, was killed in a chemical explosion at the Apache Powder Company near Benson, Arizona.

Apache Powder made nitroglycerin-based dynamite used in the mines near my mother's hometown, a small town served by a rural electric utility. My mother, Maria Elena Martinez Sandoval-

Kissée, who watches this hearing from heaven; my Uncle Juan and Aunt Tina often talked about the fear and dread they felt as the explosion rocked the town.

Fear quickly turned to shock and sadness as they learned that several workers were killed in the blast including Tio Ishmael, who lived with their family. A joint funeral Mass, and the birth and naming of my cousin Ishmael, better known as Smiles, in memory of my great uncle, began the journey toward community healing.

That company operates today as Apache Nitrogen Products, making ammonium nitrate-based products through safety management systems now required by OSHA and EPA rules.

As my family's history illustrates, the CSB's mission to protect people and the environment through independent investigations and recommendations that drive chemical safety is vital to communities, families, workers, the environment, and the economy. The chemical incidents the CSB investigates are often lose, lose, lose, lose calamities. They may injure or kill workers, cause community harms including injury, death, and property damage, and loss of job opportunities, release hazardous chemicals into the environment, and generate losses for investors and insurers. The CSB's root cause analysis and recommendations can create quadruple wins.

If honored by Senate confirmation, I would bring to the CSB more than 30 years of regulatory and legal experience, two decades of safety leadership and expertise as a tenured Energy, Communications, Antitrust, and Contracts Law Professor. My collaborative management experience for multi-billion-dollar budget organizations would contribute to effective CSB operations.

As a former Commissioner of the California Public Utilities Commission and former Undersecretary and Staff Director of California's Business, Transportation and Housing Agency, I gained experience in collaborative response to chemical incidents. My CPUC colleagues and I responded to the largest industrial methane leak in U.S. history at the Aliso Canyon natural gas storage facility in Los Angeles, California.

To address the safety, air pollution, and energy challenges this 2015 incident created, we listened to communities, worked with public and private stakeholders, and engaged with experts to conduct a root cause analysis and adopt responsive measures. That investigation built on expertise developed in responding to the 2010 natural gas explosion in San Bruno, California caused by Pacific Gas and Electric. That methane explosion killed eight people and leveled a neighborhood.

The CPUC's root cause analysis examined the pipeline's metallurgy, including welding, process safety and human factors including recordkeeping and operational deficiencies, risk identification and management.

These experiences and my work with the California Highway Patrol in responding to refinery incidents when I was BTH Staff Director and Undersecretary highlight the importance of safety management and operational integrity. My experience in working with first responders during and following incidents, and in developing policy with first-responder input would be an asset to CSB investigations and safety recommendations.

My work with underserved and disadvantaged rural, urban, and tribal communities would enhance CSB community collaboration. My approach to CSB investigations would be driven by the facts and by science, and faithful to the agency's statutory safety mission.

If I were to earn the honor of Senate confirmation, I would serve the CSB and the American people with dedication and diligence.

Thank you very much for this opportunity.

[The prepared statement of Ms. Sandoval follows:]

Senator Merkley. Thank you for the testimony from both of you.

Mr. Owens, since this is a nomination for you to serve as Chair, I noted in my opening remarks that the staff has been quite short. I know you have been working in the interim capacity. How much progress so far? Do you have the funding you need to be able to hire the number of investigators you need? Is the backlog getting worse or better? What would it take to make it better?

Mr. Owens. Senator, I was going to ask how much time we have to talk about that today. I could talk all day about this.

Senator Merkley. Concisely.

[Laughter.]

Mr. Owens. I will be concise.

The answer is, we have very concrete plans to hire additional staff. As I mentioned, we have already hired a recommendations specialists, a chief information officer, and a new incident investigator. We are currently in the process of advertising, I don't think it has been posted yet, for another four to five chemical incident investigators.

What my colleague Sylvia Johnson and I did, after I became the Interim Executive, is sit down with our budget staff to identify what were the priority positions we needed to hire. We

prioritized, obviously, chemical incident investigators and IT staff as the two highest. Recommendations specialists go along with that.

Under the current funding that we have, under the continuing resolution, we should be able to accomplish all of that over the next several months. We are keeping our fingers crossed on the appropriations bills that are currently pending in front of both the House and the Senate which would increase funding for the CSB, which would enable us to bring on additional chemical incident investigators as well as other much needed staff in our administrative offices like HR, finance, contracting, and a few other positions that would support our legal team responding to FOIA requests as well as helping on other mission critical activities.

Our challenge is, as you have noted, is that there has been a great loss of experienced personnel at the agency. We do have less than half the number of investigators that we had not that long ago, less than 10 years ago.

The backlog is enormous. We have reduced it by three already. We plan to reduce it by another three by the end of this calendar year. But that is still going to leave us with 11 more reports that we anticipate being able to issue by the end of the next calendar year. We posted a plan on that. But if we

can get additional funding, we would be able to hire the additional investigators to do that and clear up the backlog.

Senator Merkley. To summarize, how many investigators do you have right now?

Mr. Owens. Well, at the moment, it depends on how you count them. We have 10 in the field investigators, plus two supervisors and a third person, so anywhere from 10 to 13. The people who actually go out and do the heavy lifting in the field, we have about 10.

Senator Merkley. How many more do you need?

Mr. Owens. My goal would be to get it up to at least 20.

Senator Merkley. Thank you.

Ms. Sandoval, you really answered my question which was to highlight the two or three things that make you a very good fit for this position. I won't ask you to repeat those; they were in your testimony.

How did you hear about the position? How did you become interested in serving on this board?

Ms. Sandoval. Thank you, Senator.

The White House asked me if I would be interested, given my energy expertise and my experience in responding to chemical safety incidents. We honor the victims of the San Bruno natural gas explosion by recognizing the chemical safety, energy and

utility regulation failures that leveled a neighborhood.

That is something that we talk about in my energy law class. I tell students that they get a bonus class in part looking at the science. Because much of energy as well as water work marches through the periodic table in dealing with hydrocarbons and other types of chemicals.

I have experience in responding to a variety of chemical incidents and then also looking at the process safety, human factors and material factors that caused failures.

Senator Merkley. As you were talking, I was thinking about Roseburg, Oregon, where the entire downtown was leveled by an explosion when I was a child. I remember seeing the charred city blocks. It wasn't actually a factory, it was a chemical truck that was left parked and then a fire in an adjacent building blew it up and it blew up the town.

I think that is probably outside the purview of the CSB but it sticks in my mind, the destructive power that can occur when chemicals are not carefully managed.

Let me turn this over to my colleague.

Senator Wicker. Thank you, Mr. Chairman.

Dr. Sandoval, on the Aliso Canyon natural gas storage facility, the largest industrial methane leak in U.S. history, tell us a little about that. We do not have a lot of time.

Were there any injuries?

Ms. Sandoval. I hesitate because the causation has been hotly debated and is still currently being litigated.

Senator Wicker. So, the question of causation is still up in the air?

Ms. Sandoval. There is a nearby neighborhood where several people complained about nosebleeds and headaches. They have entered into a settlement with the natural gas utility that ran that field.

That particular field didn't have any homes on top of it or structures on top of it other than what was needed to run the natural gas facility. But the homes that were approximately a mile and a half away with some of the fumes from the methane leak as well as some of the other hydrocarbon, CO₂ and other things incident to that field, they complained of nosebleeds and headaches. In fact, many of them were evacuated for a time.

Senator Wicker. You mentioned root cause analysis. Do you have an opinion about the root cause?

Ms. Sandoval. Yes. The root cause analysis for that incident has been completed. There was a tremendous methane flare and actually the son of Red Adair came to help to put it out. It took a long time to kill the well, as they said. Finally that happened through some great ingenuity.

Ultimately, it was found that corrosion in the natural gas pipeline, which happened through microbial corrosion from water leaking down through the ground, was part of what caused the leak in the pipeline. Then actually the CO₂ in the pipeline nourished the water and made the leak worse.

Then the methane leaked throughout the field, as will happen geologically because methane is lighter than air, so it seeks to escape.

This is why the plume from Aliso Canyon was visible from NASA's satellites. It is an example where these chemical incidents have tremendous impacts on the environment as well as having impacts on public health. And also secondary impacts in this case on energy. It was the largest natural gas storage facility in the Los Angeles Basin. So it had impacts and consequences for energy, safety and reliability. We had to manage the public safety issues as well as the environmental issues and the energy issues while working with the community and with experts.

Senator Wicker. Is it still functional?

Ms. Sandoval. Yes, it is.

Senator Wicker. Thank you.

Let me ask you, Mr. Owens, a key aspect of your work is identifying and applying process safety management principles.

What are some of the core principles that you are working to advance regarding process safety management?

Mr. Owens. Senator, thank you for the question.

As you know, there are 14 aspects, 14 elements of process safety management. I think probably the simple one is prevention, identifying causes, and having plans in place so that you can anticipate problems before they arise and involve employees of the facility in identifying what the issues may be that could create problematic conditions that could result in a release, or an explosion or a fire, those kinds of things.

We have identified a number of issues in the course of the history of the CSB recommendations that address various elements of process safety management. A couple of the most important ones are employee involvement and also taking sort of a hierarchy of controls approach to addressing conditions that exist at facilities so when there are conditions that could lead to an upset, or a release, or a fire and explosion, that there are systems in place to minimize the consequences of that if not actually prevent it in the first place.

Senator Wicker. Thank you.

Thank you, Mr. Chairman.

Senator Merkley. Senator Capito.

Senator Capito. Thank you, Chairman Merkley, and thank

you, Ranking Member Wicker for having this. And I thank the both of you for being before the committee. We appreciate it.

We are obviously considering both your nominations, Stephen Owens and Catherine Sandoval. I guess the entire Board consists of five, but there are presently just two. Is that correct?

Yes.

Congress obviously established the CSB to investigate facts, conditions, circumstances and causes of chemical releases. It is a critical role in determining, certainly for where I live, we are called Chemical Valley, and for a reason. So your role is very important to us in my home State.

But we do have some question as to how the CSB has been fulfilling its responsibilities. The EPA inspector report stated that the CSB's operations are challenged by vacancies in mission critical positions and an inability to fully use resources Congress has allocated.

Further, CSB staff are concerned that leadership, internal review processes, and reported backlogs are impeding CSB's ability to accomplish its mission. The inspector general also identified significant data vulnerabilities. So attracting and maintaining full-time staff is difficult.

I want to say we have many boards in front of us. You are not alone here. This is an issue I think government wide as we

see a turnover of people in their 60s moving on.

But to only have 12 chemical incident investigators now working on 17 open investigations, what happens when we have the next accident? You can see why everything is so delayed and timely release is pushed back.

One of the questions that came to mind that I have along those lines is keeping us, as members of the Senate and also over on the House side, apprised as to what has happened with investigations in our own States. I think Senator Wicker talked about something that is parochial to his State. I would ask, I think it came about that we have had an accident and we were not made aware of what the final findings were until after it was made public to the press.

Mr. Owens, I don't know if we can elicit a promise from you that you will take into better consideration the updates and final reports before going public. We would certainly like to have a little bit of a heads up there.

Mr. Owens. Senator, thank you for the question. The answer is absolutely. That is a commitment I will make here today and is one we have tried already to do. I was saying before you arrived, we just released updates on four investigations, including the Optima Belle incident in 2020 that occurred in your State.

The agency had stopped doing those updates last year. But Sylvia Johnson, my fellow board member, and I determined that these provide very important information to stakeholders as well as members of the House and Senate. We are going to continue to do that.

We are more than happy, and in fact, eager to brief you and your staff on any incident. We can certainly give you a heads up before we release a final report so you will know what is going on with it.

Senator Capito. Thank you. That would be much appreciated.

Ms. Sandoval, can I elicit the same response from you, that you would be more inclusive of giving us a heads up and updates in our offices?

Ms. Sandoval. I absolutely would be happy to coordinate and I certainly believe in transparency.

Senator Capito. Good. It is essential for us to in order to conserve our constituencies but also to provide the best information to them. A lot of times we are working with county and city officials to make sure we understand what the reports are saying. We want to be helpful to you but we also want to be helpful to those who are going to be interacting.

Mr. Owens, I went through some of what the inspector

general said. Do you agree with the report that came out? Do you take any issues with the quotes that I decided to kind of handpick out of there?

Mr. Owens. Thank you for the question. There have been a lot of inspector general reports. I think most of them are right on. They are very spot on in terms of the issues they have identified with the lack of board members, decreasing personnel, IT and cybersecurity issues. We are working very hard to address all of those.

I worked very closely with the EPA Inspector General when I was at EPA during the Obama Administration. I am very appreciative of the work that they do. They have highlighted some very important issues for us to address.

Senator Capito. In terms of hiring, you do have a much, much higher attrition rate than the EPA. What plans does the Board and the agency, or the whole entity have to fill these much-needed positions?

Mr. Owens. Senator, thank you for the question.

We have already begun the process of filling some of the more mission critical positions. We hired a new chief information officer who is already working on a lot of the cybersecurity issues, working with the CSIA to address some of those concerns.

We have hired a new chemical incident investigator already. We are in the process of advertising for another four or five more. We have hired a couple of new recommendations specialists already. Those are the people who actually write the recommendations and work with our investigative staff to help produce the reports.

But as you very correctly identified, with only 12 or so investigators who not only go into the field and do the investigations when we do deployments, they have to come back and write those reports. They are already overloaded. When we did the deployment to the BP-Husky Refinery in Ohio back in September, we had to take a half dozen or so investigators off of writing reports and send them to the field. That is a very significant incident that occurred there. They have interviewed 100 people already in conjunction with that incident.

We are very eager to get new staff onboard. We are working within the resource constraints we have, but we feel very optimistic that we can do that.

Senator Capito. I certainly hope you can, too. I think these are important jobs that you are filling and important reports that you are generating. Obviously in this time of cybersecurity, it is extremely important in terms of some of the dangerous materials being produced gladly here in this Country.

Thank you very much.

Senator Merkley. Thank you very much.

I think Senator Ernst was hoping to join us but she is in another meeting right now. I will ask you one question and we will see if she returns.

I was thinking about the massive explosion that happened in Lebanon that leveled a good portion of a city. Does the storage of chemicals in warehouses also fall into the purview of the CSB?

Mr. Owens. Senator, thank you for the question.

Yes, it does. The incident in Lebanon involved, as you know, ammonium nitrate. One of the issues that we had in the investigation the CSB did was in West Texas at the West Texas fertilizer facility where there were very, very large amounts of fertilizer grade ammonium nitrate.

That has been a big issue that the CSB has been investigating. We are working very closely with EPA and OSHA, for that matter, both with the EPA's risk management plan, proposed rule and OSHA's process safety management standard, to encourage them to take more action from a regulatory perspective in dealing the storage of substances like fertilizer grade ammonium nitrate.

Generally, the jurisdiction of the CSB are facilities that

process, use, store, and handle chemical substances. It is within the parameters of the Clean Air Act, but it is a very broad jurisdiction.

Senator Merkley. I have just been alerted that a couple Senators are trying to make their way here, so I will fill in a little bit here.

After you make these recommendations, do you have any leverage in getting them implemented? If that leverage exists, in what form does it exist?

Mr. Owens. The biggest leverage is in the form of the persuasiveness of the recommendations themselves and implementability. That is one of the things the agency does when we are developing recommendations, is discuss them in advance with the recipients of the recommendations to make sure they can actually do them. Because it does not do us any good to issue recommendations that no one can implement.

But in a broader sense, we work very closely with the recommendation recipients to try to encourage them to implement them, especially some of the regulatory agencies. For example, EPA and OSHA, now that I and Sylvia Johnson are on the Board because of experiences we have had, myself at EPA and herself working in labor organizations and being very familiar with OSHA, that we have in a personal sense, we have a better

relationship with both those agencies and have already been in communication with people there about implementing some of the longstanding recommendations that we have issued to EPA and OSHA.

More important than that, with some of the trade associations as well as individual companies, trying to stay in touch on a more continuous basis, so that they don't just get a recommendation from the CSB, as sometimes happened in the past, and then the agency will check in once a year to see how it is going. Before you know it five, six, or seven years have gone by and a recommendation has just been hanging out there without being implemented.

So we are working on improving communication with recommendation recipients, but also making sure we are more in touch with recipients up front.

Senator Merkley. You don't just want that recommendation to be implemented at that particular company, but across the scope of that industry or related circumstances.

Mr. Owens. That is correct, Senator. Historically, the agency has done a very good job of looking at issues that are broader than just the individual facility.

The recommendations themselves are based on the specific facts of the incidents that occurred, but especially when we

have noticed patterns over the years of incidents where it is one of those things that, does it happen at one facility but either has happened or can happen in other facilities?

The agency has tried to make the recommendations as broadly applicable as it can. That is where working with trade associations, for example, and with regulatory agencies really comes into play.

Senator Merkley. The fact you don't issue citations, you don't deliver information for criminal prosecutions, helps greatly in actually getting to the root of the problem and being able to understand the challenge in a way that allows those recommendations to carry forward.

Mr. Owens. Yes, Senator, that is absolutely right. It is a nonregulatory agency. Again, our ability to get things done is dependent on the relationships we have developed, the factual accuracy of the reports, the implementability and persuasiveness of the recommendations.

But the fact we do not have individual enforcement authority or regulatory authority as an agency, having been on the other side of that, both as a regulator and representing parties who did work with regulators, I like this situation much better, because we can work more closely with entities that we are investigating and really get to the causes of the problems

and find solutions to them.

Senator Merkley. Ms. Sandoval, do you want to add anything to the points Mr. Owens has made?

Ms. Sandoval. Yes, thank you, Senator. Here is an area where I also think my academic background may be helpful. As a law professor, certainly when I write law review articles, I can recommend things, but I have no power except the power of persuasion and analysis. Even with my students, I may assign things and hopefully they will turn in their assignments.

So I am certainly accustomed to working through the power of persuasion. I wanted to also underscore the importance of working in advance with a large group of stakeholders.

I also have regulatory experience and experience in looking at root cause analysis, and as well as doing the enforcement side. I think the independence of the Chemical Safety Board is important because it really creates an opportunity, as Board Member Owens said, to look at the facts of that specific incident but also to take a broad look at other incidents that are arising.

A couple things I would like to highlight is we have seen growing examples of where the loss of electricity has actually caused chemical incidents as happened in the Arkema fire in Texas, and as well flooding. We need to be looking forward to

some of those commonalities to ensure we are not just responsive to chemical safety incidents, but we are also thinking proactively with companies, with insurers, with communities and first responders so we can hopefully prevent some of these incidents and damage in the future.

Senator Merkley. Thank you very much.

I am going to wrap up now with three questions that this committee asks all nominees who appear before it. They are basically yes or no questions. If you feel the necessity of answering in a more complicated fashion, I understand. The press asks electees to answer yes or no questions all the time, when we see things, but I think these are important points.

So I will ask each of you, 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 protections with respect to your responsibilities? Mr. Owens?

Mr. Owens. Yes, Senator.

Senator Merkley. Ms. Sandoval?

Ms. Sandoval. Yes, Senator.

Senator Merkley. Second, do you agree to ensure that testimony, briefings, documents, electronic and other forms of

communication of information are provided to this committee and its staff and other appropriate committees in a timely manner?

Ms. Sandoval. Yes, Senator Merkley.

Mr. Owens. Yes, Senator.

Senator Merkley. Thank you. 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. Sandoval. No, Senator.

Senator Merkley. With that, I appreciate my colleagues coming to share in this hearing.

We have a standard way of wrapping up. I ask unanimous consent of all the committee members present to submit into the record a variety of materials related to today's hearing.

Hearing no objections, so ordered.

[The referenced information follows:]

Senator Merkley. Finally, Senators will be allowed to submit written questions for the record through the close of business on Wednesday, November 23rd. We will compile those questions and send them to our witnesses who we will ask to reply by Wednesday, November 30th. So, the 25th to the 30th, we would appreciate you giving intense attention to any questions that are submitted.

Thank you for working to address such important issues and being willing to serve the American public in this capacity.

The hearing is adjourned.

[Whereupon, at 10:45 a.m., the hearing was adjourned.]