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FOLDER TITLE:

Chemical Safety Board

2012-0820-S

ms475

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- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
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- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

OFFICE OF
DISEASE
PREVENTION AND
HEALTH
PROMOTION



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health
Office of Disease Prevention and Health Promotion

330 C Street, S.W., Room 2132

Washington, D.C. 20201

FACSIMILE TRANSMISSION

TOTAL PAGES (including this cover page):

2

DATE:

3/2/95

TO:

Karen Guss

Telephone:

FAX #:

4/576 74/31

FROM:

DEVRA LEE DAVIS, Ph.D., M.P.H.

Debra Davis

Telephone: (202) 690-8033/401-7681

FAX #: (202) 690-6603

MESSAGE:

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Article

WASHINGTON BRIEF

ie Court Becomes ictable on Death

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The *Q/Neat* decision was the second victory for prisoners in three death habeas decisions this term, notes habeas scholar Ira P. Robbins of the American University Washington College of Law. It continues a trend begun last term in which the court's center and its newest members—Justices Brayer and Ruth Bader Ginsburg—have shifted the tone and outcome of death habeas cases.

"The court is getting less predictable," says Professor Robbins. "It's still an uphill battle for prisoners, but now the result is unpredictable and the way they go about achieving the result is unpredictable."

Alabama Upheld

But in a non-habeas capital case, the high court handed a major defeat to Alabama death row inmates. The justices ruled 8-1 that the state's system of judicial override of jury recommendations on life or death sentences does not violate the Eighth Amendment. *Harris v. Alabama*, 93-7659.

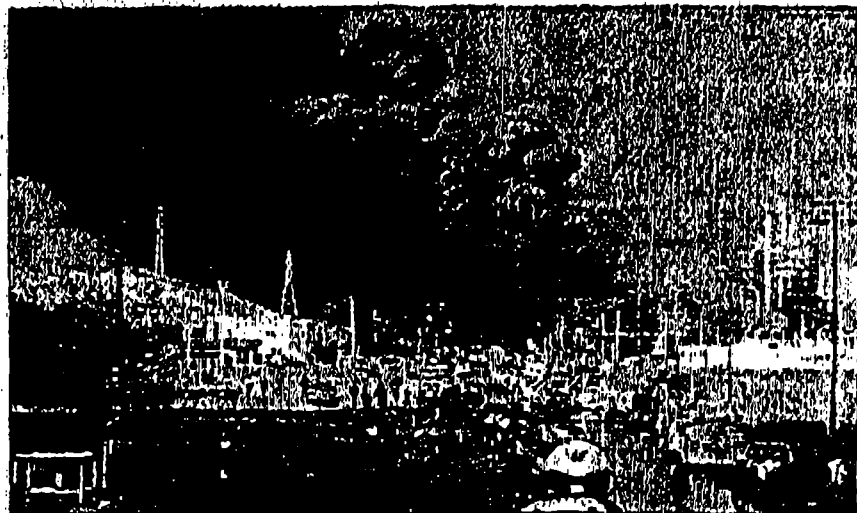
Alabama is one of four states with advisory juries in capital cases, but it is the only state with no statutory or case law guidelines for when a judge should disregard the jury's sentencing recommendation. Alabama only requires the judge "to consider" the advisory verdict. And in Alabama, overrides have overwhelmingly enhanced sentences from life to death.

In an opinion by Justice Sandra Day O'Connor, the court rejected Louise Harris' argument that the Constitution requires the state to define the weight the judge must give an advisory verdict. To do otherwise, the court explained, would place "within constitutional ambit micromanagement tasks" that are within the state's discretion.

The lone dissenter, Justice John Paul Stevens, said judicial overrides not only countermand the community's judgment, but they "express contempt for the judgment." At the least, he said, the Constitution requires those schemes "maintain strict standards to regularize and constrain judge's discretion."

All Aboard

The high court on Feb. 21 set the stage for a First Amendment attack on ... display policies when it ruled



Sparkling Action: Calls for an accident board followed a Phillips Petroleum plant blast.

Safety Board Goes Up in Smoke

IN AN EFFORT to display its budget-cutting, anti-regulatory resolve to Congress, the Clinton administration has moved to eliminate a new board that would have scrutinized the causes of chemical plant accidents the same way airline crashes have been investigated for 20 years.

By slashing the \$5 million funding for the Chemical Safety and Hazard Investigation Board in the budget plan sent to Congress on Feb. 6, the administration nipped in the bud one of the major health and safety initiatives by Congress in its 1990 update of the Clean Air Act.

The legality of President Clinton's use of the budget to undo a Congressional mandate is being questioned by unions, environmentalists and a bipartisan group of senators ranging in ideology from Frank Lautenberg, D-N.J., to Alfonse D'Amato, R-N.Y.

An array of legal barriers, including concerns about liability and federal-state authority, is likely to hamper the plan to delegate the job to the Occupational Safety and Health Administration and the Environmental Protection Agency.

"This is an example of the typical Clinton administration strategy: 'Let's cut off one of our legs and hand it to the Republicans to chew on, and hope we'll be able to hop away on the other,'" says Richard Miller, a lawyer for the Oil, Chemical & Atomic Workers International Union.

Says one official: "After the elections, somewhere in [the Office of Management and Budget] the decision was made that this is one agency that could be addressed in the streamlining that the administration had put into high gear."

Congress decided to establish an independent chemical accident board within

Chemical refinery in Texas that killed 40 workers. Modeled after the National Transportation Safety Board, it would have had the power to gather evidence that could not be used in court. That protection was crafted to foster industry cooperation in ferreting out the causes of accidents without concerns over liability.

No Opposition

Until recently the Chemical Manufacturers Association did not oppose the board. "If there was going to be a board, we always advocated for the strongest, most effective one possible," CMA spokesman Matthew Weinstock says.

But Mr. Miller says these boards generate more responsibilities for industry; for example, the NTSB has been a major impetus behind airline safety requirements. He says there is no such oversight of chemical plant accidents, which occur at a rate of 19 per day—one of them serious enough to cause an evacuation, injury or death, according to the Environmental Law Center of Boston.

Mr. Weinstock says the CMA now supports the plan to enhance the role of OSHA and the EPA in hazard investigation. Joseph Lastelle, spokesman for the American Petroleum Institute, agrees: "Other parts of the government can perform those functions."

But OSHA is pre-empted from leading investigations in 27 states that have agreed to take the role of lead worker-safety enforcer. A problem that thinly staffed state agencies face in such efforts was illustrated recently in Iowa, where the state sued Terra Industries Inc. for allegedly obstructing its probe of a December fertilizer plant explosion near Clearview that killed four workers.

MEMORANDUM

To: Hillary Rodham Clinton

From: Karen Guss

Date: February 22, 1995

Re: The National Chemical Safety and Hazard Investigation Board

As you know from your conversation with Secretary Shalala and Dr. Devra Davis at the meeting of the National Breast Cancer Action Plan steering committee on Monday, February 13, the Administration's 1996 budget does not include funding for the National Chemical Safety and Hazard Investigation Board. At your request, Dr. Davis sent you some material about the Board. I have reviewed the material and conducted some additional research; this memorandum will give you background information on the Board and describe the opposition to the Administration's proposal not to fund the Board.

The Board was created in the 1990 amendments to the Clean Air Act. The legislative history indicates that Congress believed it was important to establish an independent Board with the authority to get to the root causes of accidents and to recommend appropriate regulatory responses, if any, to the EPA. The model for the Board was the National Transportation Safety Board.

In October 1994, the Senate confirmed the Administration's three nominees to the five-member Board. These nominees have not been sworn in and the names of the other two nominees have not been submitted to the Senate. The FY 1995 budget contained funds to start the Board, but the FY 1996 budget "zeroes out" the Board. According to the Washington Post, this cut will save \$6 million next year; Chemical Week reports that the cut will save \$4 million in 1996 and \$30 million over 5 years.

Opposition to the funding cutoff and calls to seat the Board appear to be growing. On January 13, 1995, a bipartisan group of Senators wrote to the President to "express their serious concern" that the Board has not yet begun to function. The signatories are Senators Boxer, Lieberman, Lautenberg, Bradley, Levin, Kerry, Baucus, Harkin, Specter, D'Amato, Gorton, Chafee, Jeffords, Moynihan and Rockefeller. A letter to the same effect is circulating among state attorneys general. Unions and environmental groups are also angry about the zero funding of the Board; some have written to the President and to other Administration officials and some have withdrawn in protest from the EPA's "Common Sense Initiative" of voluntary pollution prevention projects. Articles and editorials on the Board have appeared in the press, including the Washington Post "In the Loop" column of January 20, 1995 (attached), and Dr. Davis informs me that the Post may run a longer piece.

Proponents of the Board argue that the need for investigation of chemical accidents is great because if the accidents were better understood, future accidents could be avoided. Recent serious industrial accidents have included an explosion of an Ohio Shell Chemical

facility in 1994 which killed 3 workers and dumped 500,000 pounds of poisonous chemicals into the Ohio River and a 1993 sulfur trioxide leak in Richmond, California which closed roads and railroad lines and sent 20,000 people to area hospitals complaining of nausea and irritated skin, eyes and lungs. Of the estimated 19 chemical accidents that occur daily, at least one requires evacuations or causes injuries or deaths. Because of the location of industrial facilities, these accidents often occur in low-income, minority, and rural communities. A number of the letters the Administration has received contend additionally that the failure to establish the Board violates the Administration's statutory duty under the Clean Air Act.

The Office of Management and Budget and the Chemical Manufacturers Association maintain that the EPA and OSHA can perform the Board's functions. Proponents of the Board dispute this contention, arguing the following:

- An important part of the Board's value is its independence from EPA and OSHA because its function includes pointing to situations where current EPA and OSHA regulations or safety audits have not prevented accidents.
- The Board's findings could not be used in court, but EPA and OSHA findings can. This could give chemical companies an incentive to hide information from the EPA and OSHA.
- In 27 states, OSHA does not have the authority to launch investigations.
- EPA and OSHA are under pressure from the new Congress and may run into even more trouble should they step up their investigatory activity.

As you may remember, you told Dr. Davis at the steering committee meeting that you were interested in looking into the situation of the National Chemical Safety and Hazard Investigation Board. If you decide to follow up on this matter, please let me know if there is anything else I can do.

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TO: Karen Guss

ROOM: _____ DATE: 2/17

☒ Per Your Request

☐ FYI

Message:

From: Regina Cragg

LEVEL 1 - 4 OF 41 STORIES

The Associated Press

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February 6, 1995, Monday, AM cycle

SECTION: Washington Dateline

LENGTH: 764 words

HEADLINE: Clinton Budget Reflects More Political Calculus Than Deficit Arithmetic

BYLINE: By TOM RAUM, Associated Press Writer

DATELINE: WASHINGTON

BODY:

President Clinton's budget appears designed to be politically risk free, speaking volumes by what it doesn't propose and doesn't cut.

The one-time centerpiece of his domestic agenda - health care reform - makes no appearance in Clinton's \$ 1.6 trillion fiscal 1996 budget.

Social Security, Medicare and Veterans Benefits - constituting more than half of all federal domestic spending - are left untouched.

Even government assistance programs subjected to more frequent criticism - such as farm subsidies - are left alone.

Defense spending would continue to shrink for the next few years, but rise again by century's end.

And, although the budget purports to terminate 131 programs, they're mostly obscure, small or antiquated units. For instance, one body eliminated by the budget - the Chemical Safety and Hazard Investigation Board - has never met.

In addition, the budget would auction off the federal helium program, a vestige of World War I's military blimps. It also would terminate the Interstate Commerce Commission - an agency that wielded much power when railroads were king but which now primarily regulates trucking. The Transportation Department would assume those functions.

For all the talk about reinventing government, few - if any - federal workers would be laid off if the president's budget were adopted.

"We are trying to do this without firing anybody," said Budget Director Alice Rivlin. The administration hopes to reduce 36,000 jobs through attrition, she said.

Of course, the president's budget isn't going to be adopted. And that's one reason why Rivlin - a unapologetic deficit hawk from her days as head of the Congressional Budget Office - was a lone voice within the administration for

The Associated Press, February 6, 1995

deeper, more painful cuts.

The prevailing view was one of political pragmatism: Why needlessly alienate the public, and the quick-to-raise-an-outcry interest groups? Let Republicans take the heat for coming up with the unpopular cuts in programs. After all, they're the ones talking about a balanced budget by 2002, not the president or most Democrats.

In fact, Clinton made significant headway in this area in 1993 when his economic package trimmed more than \$ 400 billion from the deficit over five years. The president remains miffed, White House aides say, that Americans haven't given him more credit for that.

Some recent polls have even shown that more people think the federal deficits got bigger under Clinton, even though he has presided over three straight years of deficit reduction.

Thus, there seemed to be little political gain for Clinton in pushing for more aggressive deficit reduction.

Clinton's fiscal 1996 budget does just enough deficit pruning - \$ 81 billion over five years - to keep the government on what he calls "the course of fiscal discipline."

This year's White House twist is that Clinton's new budget keeps the deficit "under control," even though the annual shortfall would hover at about \$ 200 billion out to the year 2,000.

To make his budget even more palatable, Clinton included modest middle-income tax cuts - a \$ 500 credit for each child under 13 for families earning up to \$ 75,000 and tax deductions for college tuition.

Even though he abandoned his campaign pledge of a middle-class tax cut in 1993, Clinton on Monday reclaimed it as the new "centerpiece" of his program.

Republicans, of course, were quick to jump on Clinton for not proposing more cuts.

House Budget Committee Chairman John Kasich, R-Ohio, said Clinton ducked the "heavy lifting," declaring: "This budget lacks courage."

But, for all the grumbling and their talk about a balanced budget in 2002, Republicans have yet to put a single program on the cutting block. And that's what Clinton and his aides are seeking to emphasize.

"Republicans are saying we took a walk on the deficit, but none of them voted for the president's (1993) plan that got us where we are," Rivlin said. "And we will see as time unfolds what they intend to do to bring the deficit down. We haven't seen anything yet."

Administration strategists are counting on Republicans finding that meaningful deficit reduction is a lot harder than it looks.

By the end of 1994, the government owed \$ 3.43 trillion in principal to those who had loaned it the money to pay for past deficits.

The Associated Press, February 6, 1995

This year, servicing that debt will cost the government a staggering \$ 226 billion in interest - roughly the same as the government will spend on national defense.

EDITOR'S NOTE - Tom Raum covers the White House and economic issues for The Associated Press.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: February 6, 1995

LEVEL 1 - 6 OF 41 STORIES

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Chemical Week

February 1, 1995

SECTION: NEWS UNITED STATES/AMERICAS; Legal; Pg. 15

LENGTH: 376 words

HEADLINE: Terra wins round as Safety Board protests rise

BYLINE: RONALD BEGLEY, in Washington

BODY:

Terra industries won a legal skirmish last week when the Iowa Occupational Safety and Health Administration (IOSHA) withdrew a slew of charges related to the cleanup of December's deadly explosion at the company's Port Neal fertilizer plant. Cleanup was temporarily interrupted after IOSHA charged, along with other allegations, that the company barred state investigators from the blast site and from speaking with plant employees.

At a hearing last week, IOSHA withdrew the charges after Terra made its opening remarks. "Our witnesses decimated their claims," says Terra, which adds that investigators failed to inform employees of their right to legal counsel and made incorrect allegations about past citations. Terra president and CEO Burton Joyce says the company has "tried to cooperate with virtually all IOSHA requests, including some we considered to be unreasonable."

PLEADING THE CASE. Critics say the investigation would have gone more smoothly with the help of the Chemical Safety and Hazard Investigation Board, now targeted for defunding by the Clinton Administration. Fifteen U.S. senators wrote to President Clinton demanding funding for the board, claiming that there has been a tenfold increase in the incidence of major industrial accidents "from the period covering post-World War II to 1980" to the present. Louisiana's attorney general made a similar plea, as have environmental and labor groups.

Meanwhile, cleanup at the Terra plant is under way, with 150-200 people onsite. The cause of the explosion will be not be known for at least several months.

The Iowa Department of natural Resources says Terra is removing ammonia, urea, and other chemicals from the site before assessing the integrity of buildings and storage tanks. The company has told customers it will supply 50% of their contract commitment at the contract cost and will obtain material from other Terra plants and competitors if necessary. "If we have to pay for shipping and other costs, we'll eat that" for the first 50%, Terra says. Additional material will be supplied at market cost.

Terra expects to earn 73 cts-78 cts/share for 1994, on revenue of more than \$ 1.6 billion. That excludes a \$ 7-million pretax charge for the explosion.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: February 06, 1995

LEVEL 1 - 8 OF 41 STORIES

Copyright 1995 The Washington Post
The Washington Post

January 20, 1995, Friday, Final Edition

SECTION: FIRST SECTION; PAGE A19; THE FEDERAL PAGE; IN THE LOOP

LENGTH: 885 words

HEADLINE: White House Absolutely Might Fill Vacancy

SERIES: Occasional

BYLINE: Al Kamen, Washington Post Staff Writer

BODY:

The White House appears to be circling slowly around the possibility of making a decision on filling some of the top jobs still open. The *nom du jour* for Cabinet secretary is Kathryn O'L. "Kitty" Higgins, now chief of staff to Labor Secretary Robert B. Reich. Higgins was assistant director of the domestic policy staff in the Carter White House and worked for Sen. Edward M. Kennedy (D-Mass.) and Rep. Sander M. Levin (D-Mich.) before that.

The appointment couldn't come too soon. More junior White House types have been running the morning telephone meetings with the Cabinet chiefs of staff, but some chiefs are said to have been playing hooky of late.

Same old names are floating about for political director, with White House aide Doug Sosnik, who used to work for incoming Democratic National Committee General Chairman Christopher J. Dodd, still said by some to be the likely pick there. On the other hand, some longtime watchers of President Clinton note the emerging rule of thumb that the likelihood of appointment is inversely proportional to the time a name stays "out there."

Most of the names for possible CIA director have also been floating, sinking and floating again. A name heard in the corridors at Justice and the Pentagon is Deputy Attorney General Jamie S. Gorelick, formerly Pentagon general counsel, who has done a lot of work with the agency in both jobs and is highly regarded by Clinton and her current and former bosses. But that would leave a gaping hole at a department Clinton might not want to mess with.

The National Security Council staff was buzzing last week with rumors that deputy national security adviser Samuel R. "Sandy" Berger might be moving out to Langley. And Defense Secretary William J. Perry, Deputy Secretary John M. Deutch and Joint Chiefs Chairman John Shalikashvili are hunkered down to stop Clinton from even thinking about moving rising star Adm. William Owens, now vice chairman of the Joint Chiefs.

White House spokesman Michael McCurry yesterday promised an announcement shortly.

Meanwhile, deputy press secretary Arthur Jones, just a couple of weeks shy of two years in the job, is moving to the media affairs office to work on the State of the Union and budget matters and is then going to explore options inside and outside the administration.

The Washington Post, January 20, 1995

Speaking of McCurry

A little going-away party at the State Department was off-the-record, but a recounting cobbled together has produced this list of the "Top Seven Reasons" (there were 10 originally but then came downsizing) why McCurry moved to the White House:

7. The State Department press corps already knows all of his jokes.
6. Two words -- Elaine Sciolino [of the New York Times].
5. He needed a better excuse to get out of the 2 a.m. feedings. [A third child is on the way.]
4. He got his career advice from [former New Jersey senator] Harrison Williams," McCurry's old boss.
3. The secret's out -- He's a Bubba wannabe.
2. Secretary [Warren] Christopher kept telling him to lighten up.
1. [A reference to former surgeon general Joycelyn Elders's suggested school curriculum.]"

Less-Than-Supreme Pay Raises

Some Supreme Court employees are angry about their measley 2 percent raise for 1995. The raise doesn't include additional "locality" pay received by some federal workers in Washington and other high-cost-of-living areas. Seems Chief Justice William H. Rehnquist is philosophically opposed to locality pay.

But some employees aren't so philosophical about it, according to the Associated Press. Some now refer to Rehnquist, behind his back, as "Mr. Cheap Justice" and point out he's the only court employee with a 1995 Cadillac limousine and two chauffeurs.

Clock Is Ticking for Chemical Board

It's hardly news that it takes the Clinton administration forever to pick people for jobs. Now it seems it can take forever to do something as simple as swearing them in.

The Washington Post, January 20, 1995

The Chemical Safety and Hazard Investigation Board, established under the Clean Air Act amendments in 1990, has never met. The Bush administration didn't nominate anyone and it took the Clintonites 18 months to do so.

But the Senate confirmed new members on Oct. 6, and a bipartisan group of 15 senators wants to know why they haven't been sworn in.

"It is simply inexcusable," said the group, led by Sens. Joseph I. Lieberman (D-Conn.) and Arlen Specter (R-Pa.), that more than four years after enactment of the law, the Board is still not in existence." The administration, they said, "now has a statutory duty to ensure that the Board is established."

Louisiana's attorney general, Richard P. Ieyoub Jr., also weighed in with a letter to Clinton asking for prompt action and noting that "explosions at refineries and chemical plants have killed workers and discharged heavy pollution into many Louisiana communities."

The board may never get sworn in. Seems the green-eyeshade crowd at the Office of Management and Budget has put the Board, which is to investigate accidental releases of chemicals, on the chopping block. The unions and enviros met with White House types yesterday to complain. We hear it wasn't pleasant.

The administration feels the board's whopping \$ 6 million budget might be used for other purposes.

How about laptops for chemical workers?

LANGUAGE: ENGLISH

LOAD-DATE-MDC: January 20, 1995

LEVEL 1 - 10 OF 41 STORIES

Copyright 1995 Chemical Week Associates
Chemical Week

January 4, 1995

SECTION: NEWS; United States/Americas; Washington; Pg. 14

LENGTH: 361 words

HEADLINE: Chemical safety board gets the ax

BYLINE: RONALD BEGLEY in Washington

BODY:

The Clinton Administration is killing the Chemical Safe Investigation Board, an early victim of Washington's cost board -- mandated by the 1990 Clean Air Act -- is being de 1996 budget because of its "redundancy" with existing agen from the White House Office of Management and Budget (OMB) Oil, Chemical, and Atomic Workers and six environmental gr from EPA's Common Sense Initiative of voluntary pollution

DISAPPOINTED

"I'm a little disappointed," says Paul Hill, president Institute for Chemical Studies (Charleston, WV), who had r by the Senate as the board's chairperson. "I was looking this task. I felt it was important." The Administration's for a middle-class tax cut and to realign the workings of the decision, he says, and the task now is to decide how t board's functions among existing agencies. "That's not be Hill adds. CMA had expressed concerns about the board's i

Congress must approve the Administration's budget, which has not been formally introduced. While this antiregulatory Congress is unlikely to rescue a new regulatory agency, Democrats such as Sen. Joseph Lieberman (D., CT) who wrote the board into law will not let it go without a fight. The cut saves \$ 4 million in 1996 and \$ 30 million over five years, OMB says.

The board's task was to investigate and compile data on chemical accidents and their causes, "so we might be able to make better policy recommendations," Hill says, a job EPA concedes its data base cannot perform.

The Bush and Clinton Administrations had delayed naming appointees. Last fall the Senate confirmed Hill, Devra Lee Davis of the U.S. Health and Human Services Department, and Gerald V. Poje of the National Institute of Environmental Health Sciences as board members. Andrea Kidd Taylor of the United Auto Workers and Isadore Rosenthal, formerly of Rohm and Haas, were awaiting confirmation.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: January 17, 1995

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LEVEL 1 - 10 OF 41 STORIES

Copyright 1995 Chemical Week Associates
Chemical Week

January 4, 1995

SECTION: NEWS; United States/Americas; Washington; Pg. 14

LENGTH: 361 words

HEADLINE: Chemical safety board gets the ax

BYLINE: RONALD BEGLEY in Washington

BODY:

The Clinton Administration is killing the Chemical Safety and Hazard Investigation Board, an early victim of Washington's cost cutting fever. The board -- mandated by the 1990 Clean Air Act -- is being defunded in the fiscal 1996 budget because of its "redundancy" with existing agencies, CW has learned from the White House Office of Management and Budget (OMB). As a result, the Oil, Chemical, and Atomic Workers and six environmental groups are withdrawing from EPA's Common Sense Initiative of voluntary pollution prevention projects.

DISAPPOINTED

"I'm a little disappointed," says Paul Hill, president of the National Institute for Chemical Studies (Charleston, WV), who had recently been confirmed by the Senate as the board's chairperson. "I was looking forward to taking on this task. I felt it was important." The Administration's twin desires to pay for a middle-class tax cut and to realign the workings of government are behind the decision, he says, and the task now is to decide how to reapportion the board's functions among existing agencies. "That's not been worked out yet," Hill adds. CMA had expressed concerns about the board's redundancy.

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LANGUAGE: ENGLISH

LOAD-DATE-MDC: January 17, 1995

LEVEL 1 - 12 OF 41 STORIES

Copyright 1994 The Houston Chronicle Publishing Company
The Houston Chronicle

December 26, 1994, Monday, 2 STAR Edition

SECTION: BUSINESS; Washington; Pg. 1

LENGTH: 733 words

HEADLINE: All confirmed, nowhere to go

BYLINE: BILL MINTZ; Staff

BODY:

YOUR mother may be proud when you get that letter from President Clinton nominating you for an important federal post.

Just don't give up your day job.

As part of the massive 1990 rewrite of the Clean Air Act, Congress created the Chemical Safety and Hazard Investigation Board, an independent panel that would scrutinize chemical industry accidents the way the National Transportation Safety Board examines accidents in the airline, maritime, railroad and pipeline industries.

The legislation was in reaction to a rash of catastrophes in the chemical industry, including the Phillips and Arco Chemical explosions in the Houston area, which claimed a total of 40 lives.

In October, four years after the law was signed by former President Bush, the first three of five commissioners were confirmed by the Senate.

So, did the new panel dispatch investigators when an explosion demolished a farm chemical plant in Iowa earlier this month, killing four workers and injuring 18?

No, the commissioners were still working in their previous jobs in Charleston, W.Va.; Washington, D.C.; and Bethesda, Md.

Congress appropriated only \$ 500,000 for the commission's operations in fiscal year 1995, and that's not enough to open the doors, said Gerald V. Poje, a board member who was contacted at his desk at the National Institute of Environmental Health Sciences in Bethesda.

Two other candidates - one with industry experience and another who is a labor union official - were nominated but didn't make it through the confirmation process before Congress adjourned.

The Houston Chronicle, December 26, 1994

Poje said he and his colleagues are waiting by the phone to see how the Office of Management and Budget plans to resolve the funding issue.

"We are eagerly awaiting the answer to the question of how we will be financially empowered," Poje said.

Crudely put, field is inefficient

If you like the Postal Service, you'll love this government oil field.

It's not hard to figure out why the Clinton administration wants to find a buyer for the Naval Petroleum Reserve - the Elk Hills, Calif., oil field that is 80 percent owned by the government and 20 percent owned by Chevron.

A 1993 report to Congress by a panel of industry experts said that Chevron employs 24 people for every 100 wells it operates. Bechtel Petroleum Operations, the government contractor running the field, employs 71 people to operate 100 wells.

The Energy Department, which paid Bechtel about \$ 200 million last year, determines the contractor's profit based on general management, safety and environmental compliance, quality of operations and business management.

"It seems that DOE oversight of Bechtel is resulting in a major effort by Bechtel to monitor, justify and defend their activities," the industry experts said.

Chevron last year asked DOE for authority to operate the field, one of the 10 largest in the nation. Spokesman Mike Libby said, "We think we could operate Elk Hills more efficiently and produce more revenue for the government and taxpayers."

Inspections preferred to detectors

The accidental death of tennis star Vitas Gerulaitis has given a boost to the market for carbon monoxide detectors, but the natural gas industry isn't sure the devices are all they are cracked up to be.

Gerulaitis, 40, died in September when a broken propane heater filled the Long Island cottage where he was staying with odorless carbon monoxide.

The American Gas Association, a trade group that represents local gas distribution systems, says that an annual inspection of home heating systems can be a much better way to ensure safety.

The Houston Chronicle, December 26, 1994

If consumers still want a detector, the association says it's important to buy one that's been certified by Underwriters Laboratories.

Meanwhile, the Chicago Fire Department last week said First Alert's UL-approved detectors were too sensitive and responsible for a false-alarm rate of 86 percent. The company blamed unusual atmospheric conditions and promised to investigate ways to improve the devices.

What really gets people worried are the inexpensive "'detection cards'" that promise protection for as little as \$ 5. A properly functioning card will change colors in response to carbon monoxide.

But the cards don't have alarms. It's hard to figure how they will help since most cases occur when people are asleep.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: December 28, 1994

LEVEL 1 - 14 OF 41 STORIES

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Chemical Week

October 5, 1994

SECTION: ENVIRONMENT NEWSLETTER; Pg. 41

LENGTH: 93 words

HEADLINE: CHEMICAL HAZARD BOARD GETS A NEW MEMBER

BODY:

In an apparent bow to industry demands, President Clinton will nominate a 25-year chemical industry veteran to the federal Chemical safety and Hazard Investigation Board. Isadore Rosenthal spent the first 25 years of his career with Rohn and Haas, serving as director/safety, health, environmental affairs, and product integrity. Since retiring in 1990 he has served as a senior fellow at the Wharton Risk and Decisions Processes Center at the University of Pennsylvania. The Clean Air Act-mandated Board has been without members until this summer.

GRAPHIC: Picture, no caption

LANGUAGE: ENGLISH

LOAD-DATE-MDC: October 10, 1994

LEVEL 1 - 29 OF 41 STORIES

Copyright 1994 Globe Newspaper Company
The Boston Globe

August 19, 1994, Friday, City Edition

SECTION: NATIONAL/FOREIGN; Pg. 9

LENGTH: 648 words

HEADLINE: Groups urge stronger safety codes for chemical industry

BYLINE: By David L. Chandler, Globe Staff

BODY:

Warning that a deadly chemical accident as catastrophic as the one that rocked Bhopal, India, ten years ago could happen anytime in the United States, two environmental groups yesterday issued a report calling for stronger regulations and greater emphasis on preventive measures by the chemical industry.

"This report should serve as a wakeup call for citizens," said Rob Sargent of the Massachusetts Public Interest Research Group, which released the new report in Boston at one of several press conferences held nationwide yesterday.

The study by the National Environmental Law Center and the US Public Interest Research Group is called "Accidents do Happen." It was based on analyzing the voluntary reports by chemical plants to the National Emergency Response Notification System. Over the last five years, 34,500 accidents involving toxic chemicals were reported to the system with Massachusetts ranking tenth among the states in the number of such incidents.

Nationwide, 19 chemical accidents occur on average every day, the report says.

The numbers in the report are "conservative" because many accidents probably go unreported, Sargent said. And reports may not fully convey the extent of accidents, he said. A chlorine leak that occurred in Springfield forced evacuation of 20,000 people. In the federal data, the accident is included but there is no mention of any evacuation, he noted.

The chemical industry has made some progress toward reducing the quantities of dangerous materials in many plants, Nicholas Ashford, professor of technology and policy at the Massachusetts Institute of Technology, said at the press conference. But far more emphasis needs to be placed on substituting safer materials for hazardous chemicals wherever possible in processes, he said.

Roger McClellan, president of the industry-supported Chemical Industries Institute of Toxicology, responded that industry, "given an option, . . . is always going to work with the least toxic material."

He had not seen the report, McClellan said, but based on a summary "it appears they're painting with an awfully broad brush" and using statistics that lump together "some fairly nasty substances" with others whose dangers are less severe.

The Boston Globe, August 19, 1994

Sanford Lewis of the Good Neighborhood Project for Sustainable Industries said the fact that none of the US accidents so far has matched the devastation of Bhopal, where 3,500 people were killed and 200,000 injured, was "largely a matter of luck." He noted that a survey last year showed that 75 percent of chemical companies were cutting back on safety measures in response to economic pressures.

Ashford said unlike questions of how toxic certain chemicals are, which may require further research, the potential for some chemicals to produce devastating explosions, and the danger from spills of certain chemicals, is well understood. "We know the cause," he said, "you simply have to change the means of production. It's not a knowledge problem, it a question of political will."

The study makes four recommendations for improving the safety of chemical plants:

- Congress and the Clinton administration should follow through on a provision of the Clean Air Act of 1990 which calls for appointing and funding a Chemical Safety and Hazard Investigation Board.

- Information on past accidents and "worst case" hazards should be made easily available to the public and to state agencies. On this score, Massachusetts is ahead of many states, with a law requiring companies to disclose details of their use of toxic chemicals.

- Government and industry should concentrate on promoting "inherent safety," for example by using less-toxic substitutes in chemical processes or by eliminating the storage of large quantities of such chemicals.

- Business and political leaders should set specific goals for the reduction of chemical accidents.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: August 20, 1994

LEVEL 1 - 32 OF 41 STORIES

Copyright 1994 The Houston Chronicle Publishing Company
The Houston Chronicle

August 19, 1994, Friday, 2 STAR Edition

SECTION: A; Pg. 29

LENGTH: 636 words

HEADLINE: Harris County leads in chemical accidents;
Report pushes board to investigate

BYLINE: T.J. MILLING; Staff

BODY:

Harris County had more toxic chemical accidents than anywhere else in the country between 1988 and 1992 and is tied with Los Angeles County, Calif., for the most deaths from such accidents, a consumer group said Thursday.

"This report serves as a wake-up call for industry leaders and politicians in Harris County," said Beth Niederman, spokeswoman for U.S. Public Interest Research Group.

But an industry group said the findings were unsurprising, because Harris County has more industry and therefore reports more industrial accidents.

"Harris County has the largest concentration of industry in the United States, so it doesn't surprise me that Harris County ranks first," said Texas Chemical Council spokeswoman Kristen Nelson.

The study was conducted by the National Environmental Law Center based on data from the Emergency Response Notification System, which is managed by the Environmental Protection Agency.

The study says the situation is worse than the numbers indicate because many accidents are not reported to the system.

The ERNS recorded more than 34,500 accidents involving toxic chemicals between 1988 and 1992, with more than half of them occurring in 10 states, including California, which topped the list, and Texas, which was second.

The study claimed that nearly 40 percent of the accidents happened in 63 U.S. counties, and one of every 16 releases caused immediate injuries, deaths or evacuations. Harris County had the most with 1,398 reports and five deaths.

The report called on the president and Congress to appoint and fund the independent Chemical Safety and Hazard Investigation Board, which was created by Clean Air Act amendments to investigate accidents, establish reporting requirements and research chemical safety and accident prevention.

The Houston Chronicle, August 19, 1994

The report also said federal and state agencies should require industry to disclose more information on past accidents and the amount of toxins it handles to citizens and local governments.

The EPA said such actions are already being taken through the Emergency Planning and Community Right to Know Act, which was passed after the December 1984 methyl isocyanate leak at a Union Carbide Corp. plant in Bhopal, India, killed 3,500 people.

"Businesses of any size that have an inventory of hazardous chemicals are required to maintain an inventory and provide documentation on types and amounts to EPA and local responders, like fire departments, police departments and hospitals," EPA spokesman David Bary said. "There will be accidents. That's just the nature of things. I think what they are asking for is zero-risk utopias. I don't know if such a thing exists."

Toxic accidents

Harris County ranks as the worst in the nation for toxic chemical accidents for 1988 through 1992. Texas ranks as second of the 50 states for the same period. The top 10 among the states and the Texas counties in the top 2 percent for accidents:

State	Accidents
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California	4,820
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TEXAS	4,532
-------	-------

Louisiana	2,505
-----------	-------

Pennsylvania	1,395
--------------	-------

Ohio	1,269
------	-------

Kentucky	1,166
----------	-------

Illinois	1,085
----------	-------

Florida	905
---------	-----

Michigan	869
----------	-----

New Jersey	857
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Texas counties

County:	No.	County:	No.
Harris	1,398	Hutchinson ...	288
Jefferson	586	Nueces	214

The Houston Chronicle, August 19, 1994

Brazoria	339	Calhoun	181
Galveston	300	Dallas	125

GRAPHIC: Graph: Toxic accidents (p. 32, TEXT); Houston Chronicle, Sources:
National Environmental Law Center; the U.S. Public Interest Research Group

LANGUAGE: ENGLISH

LOAD-DATE-MDC: August 20, 1994

LEVEL 1 - 33 OF 41 STORIES

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The Plain Dealer

August 19, 1994 Friday, FINAL / ALL

SECTION: STATE & REGION; Pg. 7B

LENGTH: 493 words

HEADLINE: OHIO HIGH IN TOTAL OF TOXIC ACCIDENTS

BYLINE: By T.C. BROWN; PLAIN DEALER BUREAU

DATELINE: COLUMBUS

BODY:

Ohio had the fifth-highest number of reported toxic chemical accidents in the nation between 1988 and 1992, according to a national study released yesterday.

Cuyahoga, Lucas and Hamilton counties ranked in the top 2% for the highest frequency of accidents in the nation out of more than 3,000 counties studied, said Hillel Grey, policy director of the Boston-based National Environmental Law Center. Grey co-authored the study done by the non-profit environmental group.

One such accident occurred Wednesday in Mentor when a Conrail train carrying poisonous and flammable chemicals derailed in a commercial district, forcing the evacuation of hundreds of industrial-park workers and apartment residents.

The Ohio Public Interest Research Group released the statistics from the national study in Columbus yesterday. Nearly 2,700 accidents - an average of 45 per month for the five years - were reported in the Great Lakes basin that stretches from New York to Minnesota.

Cuyahoga County reported 148 accidents resulting in injury, death or evacuation, while Lucas County in Northwest Ohio recorded 179 such mishaps. Both of those counties and six others in other states accounted for more than half of the accidents reported within the 176-county Lake Erie basin, according to the study.

Grey attributed Ohio's ranking to its concentrations of auto and chemical industries.

About 34,500 toxic chemical accidents in the United States were reported during the five-year period examined, Grey said.

"This report is a wakeup call for the politicians, industry and leaders of Ohio," said David Clarkson, a campaign director for the Ohio research organization.

The national study said the accident numbers are vastly underestimated because many spills go unreported. It calls for the U.S. EPA to require industry to disclose the amounts of toxic chemicals it handles and asks business and political leaders to set goals to reduce toxic accidents. It also asks President Clinton to appoint and fund a Chemical Safety and Hazard Investigation Board, mandated by the Clean Air Act.

The Plain Dealer, August 19, 1994

The group called on government to scale back its preoccupation with planning for accidents and develop accident-prevention programs. It also called on industry to redesign to use "environmentally friendly" materials.

David Ellison, treasurer of the Northeast Ohio Greens, said too often, debates over such studies turn into a jobs vs. environment issue.

"The fact is there are plenty of jobs and a lot of work to be done (environmentally)," Ellison said. "People should be alarmed we have so many toxic accidents going on."

Carol Porter, a spokeswoman for the Ohio EPA, agreed that most agencies focus on responding to an accident, not preventing one.

"Some of the things they call for are going on at the federal level, but may be several years away for us," Porter said. "The Ohio EPA would be supportive of upfront prevention."

LANGUAGE: ENGLISH

LOAD-DATE-MDC: August 20, 1994

LEVEL 1 - 34 OF 41 STORIES

The Associated Press

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August 18, 1994, Thursday, AM cycle

SECTION: Business News

LENGTH: 625 words

HEADLINE: Study Documents Frequency Of Toxic Chemical Accidents In U.S.

BYLINE: By DARLENE SUPERVILLE, Associated Press Writer

DATELINE: WASHINGTON

BODY:

Industrial and government programs are too focused on cleaning up toxic chemical spills instead of preventing them, environmental groups charged Thursday, pointing to an average of 19 such mishaps daily in the United States between 1988 and 1992.

The spills, explosions and other accidents caused two injuries per day and at least 100 deaths over the period, and released more than 680 million pounds of toxic chemicals into the environment, according to a report.

"Environmental contamination and the threat to public safety are compelling reasons for this country to redouble its efforts to prevent chemical accidents," said Daniel Rosenberg, staff attorney for the U.S. Public Interest Research Group.

"Cumulatively these individual accidents cause a major health threat and demand national attention," he said at a news conference.

In the report, PIRG and the National Environmental Law Center call on the government and industry to redesign industrial processes to be safer and find alternatives to the hazardous materials currently in use.

The report, "Accidents Do Happen," also calls on President Clinton and Congress to appoint members to a independent board created under the Clean Air Act, and improve local government and citizen access to information.

"Our environment is subjected to a daily barrage of accidents involving toxic chemicals that cause cancer, birth defects, reproductive disorders and ecological damage," said Hillel Gray, policy director of the law center.

"This report should serve as a wake-up call for industry leaders and politicians across the country," he said.

The groups studied data from the Emergency Response Notification System, which is managed by the Environmental Protection Agency, to compile the report. But they warned that the situation is worse than the numbers indicate because many accidents aren't reported to the system.

The Associated Press, August 18, 1994

The ERNS recorded more than 34,500 accidents involving toxic chemicals between 1988 and 1992, with more than half of them occurring in 10 states, including California, Texas, Pennsylvania, Louisiana and Ohio.

The documented mishaps occurred in all kinds of industries, including the chemical industry, Gray noted.

Nearly 40 percent of the accidents happened in 63 U.S. counties, and one of every 16 releases caused immediate injuries, deaths or evacuations.

EPA spokesman Jim Makris declined to comment specifically on the report, but said programs discussed in the document are in place at the agency. He also said Clinton was "moving quite vigorously" on getting the independent chemical safety board established.

"In many ways some of the comments made today are parallel to activities ongoing in the administration," said Makris, director of the chemical emergency preparedness prevention office at EPA.

While the groups emphasize prevention, devices such as sprinklers, leak detectors and double-walled vessels that detect accidents after they happen need not be scrapped to achieve that goal, they said.

Operator error or equipment failure is the cause of most accidents.

"The report and the groups aren't saying don't remove the sprinklers and other devices," Rosenberg said. "If you substitute safer chemicals you may have accidents, but they won't be toxic."

The groups said Clinton and Congress should name members and fund the independent Chemical Safety and Hazard Investigation Board, which was created by Clean Air Act amendments to investigate accidents, establish reporting requirements and research chemical safety and accident prevention.

The report also said federal and state agencies should require industry to disclose more information on past accidents and the amount of toxins it handles to citizens and local governments.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: August 18, 1994

LEVEL 1 - 38 OF 41 STORIES

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Chemical Week

August 3, 1994

SECTION: TECHNOLOGY NEWSLETTER; Pg. 21

LENGTH: 138 words

HEADLINE: ACCIDENT BOARD GETS FIRST NOMINEES

BODY:

President Clinton has nominated the first four members of the Chemical Safety and Hazard Investigation Board mandated under the 1990 Clean Air Act. Paul Hill, president of the National Institute for Chemical Studies (Charleston, WV), will be chairperson and CEO. The other nominees are Devra Lee Davis of the U.S. Health and Human Services Department, Gerald V. Poje of the National Institute of Environmental Health Sciences, and Andrea Kidd Taylor of the United Auto Workers. The board will investigate the causes of chemical accidents, will propose corrective steps to reduce the risk of injury in the production and use of chemicals, and may conduct related research and studies. CMA says that "it is critically important" that the fifth position on the board be someone with considerable industry experience.

GRAPHIC: Illustration, no caption

LANGUAGE: ENGLISH

LOAD-DATE-MDC: August 05, 1994

LEVEL 1 - 2 OF 4 STORIES

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Science News

November 3, 1990

SECTION: Vol. 138 ; No. 18 ; Pg. 277; ISSN: 0036-8423

LENGTH: 1323 words

HEADLINE: Clean Air bill mixes new limits with R&D; Clean Air Act of 1970
amendments, research and developments

BYLINE: Raloff, Janet

BODY:

Clean Air bill mixes new limits with R&D

In the waning hours of the 101st Congress, lawmakers finished writing an 868-page blueprint for overhauling the U.S. attack on air pollution. The bill, having passed both houses, now awaits the President's expected signature.

The new legislation, some 10 years in the making, promises not only to strengthen existing federal controls on air pollutants, but also to dramatically increase the breadth of pollutants and polluters subject to regulation. Its congressional architects also included provisions to revive a major program for acid rain research and to launch a host of new antipollution research initiatives.

In broad outline, the new amendments to the Clean Air Act of 1970 resemble measures proposed by President Bush last year (SN:6/17/89, p.375). The primary acid rain initiative, for example, requires a reduction of at least 10 million tons in sulfur dioxide emissions from fossil-fuel burning -- roughly a halving of the levels emitted in 1980. The new rules also require emissions of nitrogen oxides to drop by roughly 2 million tons per year, an annual reduction of about 10 percent from the 1980 baseline of 20.4 million tons.

A number of new controls, including stricter tailpipe-emissions standards, take aim at smog. Depending on the severity of regional smog problems, locales exceeding the federal smog standard may also have to conduct more vehicle-emissions monitoring, require installation of vapor-recovery nozzles at gas pumps and force the sale of cleaner-burning fuels.

Congress translated the President's call for a major reduction in the carcino-genicity of urban air into a complex series of new regulatory responsibilities for EPA. Under the existing Clean Air Act, EPA regulates the releases of only seven toxic materials (asbestos, beryllium, mercury, vinyl chloride, arsenic, radionuclides and benzene). The new amendments add 182 "toxics" to the list of chemicals requiring EPA regulation.

CFCs: The new legislation seeks to accelerate and strengthen controls on chemicals that destroy ozone in the stratosphere, going beyond measures now required under the revised Montreal Protocol (SN: 7/7/90, p.6). While the year 2000 deadline for phasing out the five most destructive chlorofluorocarbons (CFCs), three halons and carbon tetrachloride remains unchanged, the revised

Science News, November 3, 1990

Clean Air Act speeds a phaseout of methyl chloroform production by three years, to 2002. And though the Montreal Protocol encourages a phaseout of hydrochlorofluorocarbons (HCFCs) -- expected to serve as initial substitutes for CFCs in many refrigerant applications -- the pending law would require freezing HCFC production levels by 2015 and ban HCFC production 15 years later.

The revised act also exceeds the Montreal Protocol by regulating the management of existing ozone-depleting chemicals. For instance, EPA must issue regulations for recycling and disposing of CFCs in appliances and industrial refrigerators by 1992, and in all other uses within four years of the law's enactment. Other new provisions would outlaw the venting of ozone-depleting chemicals during appliance repair, service and disposal, beginning in 1992.

NAPAP: Many researchers thought the administration acted prematurely in ending the 10-year National Acid Precipitation Assessment Program (NAPAP) this past Oct. 1 after the program had conducted research for only about eight years (SN: 9/15/90, p.165). Congress apparently shared that view, because it ordered that NAPAP "shall be continued," with some modifications.

In particular, the new amendments require that NAPAP continue, and perhaps expand, its monitoring of key pollutants and sensitive ecosystems "to ensure the availability and quality of data and methodologies" needed for evaluating the effectiveness of the pending law's acid rain controls. For example, the amendments call on NAPAP to maintain a National Acid Lakes Registry for tracking conditions within a representative sample of acid-prone lakes.

Chemical accidents: The new legislation directs EPA to identify at least 100 "hazardous" substances needing regulation and then to write accident-prevention regulations, which may call for such measures as monitoring pollutants, training workers or installing vapor-recovery systems.

IT also establishes a Chemical Safety and Hazard Investigation board, modeled after the National Transportation Safety Board, to investigate chemical accidents, including any releases causing major fires, explosions or substantial property damage.

To anticipate the risks posed by accidental releases of many of these newly regulated chemical hazards, the legislation sets up a research program at the Liquefied Gaseous Fuels Spill Test Facility in Nevada. At least two chemicals per year -- selected on the basis of their potential threat to human health -- must undergo field tests to determine how they disperse in buildings and outdoors.

Other new research initiatives in the pending law include:

- * A \$ 6 million, university-conducted field study to evaluate acid rain's effects on waters in New York's Adirondack Mountains, where acidification from fossil-fuel pollutants has been most acute.

- * An 18-month joint study by the Federal Energy Regulatory Commission and EPA to calculate "environmental benefits of renewable energy" and methods for ensuring that new regulations "reward renewable energy technologies for their environmental benefits."

Science News, November 3, 1990

* Monitoring and reporting of carbon dioxide emissions from each facility subject to the revised Clean Air Act's "Title V," or permitting, section. Past U.S. data on carbon dioxide, the leading "greenhouse" gas, have been based on tests of a few "typical" power plants under several different conditions. Within 18 months of the new law's enactment, every power plant operating under a Clean Air permit must report to EPA the actual amounts of carbon dioxide emitted.

* An \$ 8 million, five-year investigation of air pollution's contribution to atmospheric haze -- acid rain's most visible symptom. NAPAP based most of the haze analysis it prepared earlier this year (SN: 3/3/90, p.143) on pre-NAPAP data. Congress now requires the development of a new haze-monitoring network to help assess its new acid rain controls.

* An EPA program to begin evaluating the short- and long-term health impacts of "toxic" air pollutants, including wood smoke.

* A two-year quantitative inventory of methane sources in the United States and abroad. Congress also instructs EPA to identify options for reducing U.S. releases of methane, an ozone-destroying chemical and one of the four major greenhouse gases.

* Establishment of a Risk Assessment and Management Commission to investigate the policy implications and best use of risk assessment and risk management in rules to prevent cancer and other chronic health effects caused by air pollutants.

* A program to identify, characterize and predict air pollutants emitted in the production, distribution and use of the cleaner-burning fuels called for in the act's smog-control section.

* A study, to be completed within two years, comparing international technologies for air pollution control.

* A program to study short- and long-term effects of air pollutants on whole ecosystems, especially waterways, wetlands, forests and soils.

No one knows for sure what the new law will ultimately cost. The Clean Air Working Group, a coalition of nearly 2,000 industries, has estimated that the revised Clean Air Act, when fully implemented, could cost taxpayers \$ 50 billion to \$ 104 billion annually. The Clean Air Coalition, a group of environmental organizations, pegs the likely price of the fully implemented program at closer to \$ 20 billion a year.

Recognizing the fiscal uncertainty, the new bill gives EPA two years to begin assessing the likely costs and benefits of compliance.

IAC-NUMBER: IAC 09093344

IAC-CLASS: Magazine

LANGUAGE: ENGLISH

LOAD-DATE-MDC: September 08, 1994

LEVEL 1 - 3 OF 4 STORIES

Copyright 1990 PennWell Publishing Company
Oil & Gas Journal

July 23, 1990

SECTION: PROCESSING; News; Pg. 15

LENGTH: 2857 words

HEADLINE: U.S. industry refighting battles on Clean Air Act

BYLINE: Patrick Crow, Washington Editor

BODY:

The U.S. oil industry is refighting lost skirmishes this summer as House and Senate conferees work on compromise Clean Air Act legislation.

Oil lobbyists will be arguing against several provisions such as requirements for reformulated gasoline. But changes will be hard to win.

Merging the House and Senate Clean Air Act reauthorization bills will be no small task. Both are about 700 pages long. They take different approaches to different problems. The House bill is more stringent in some respects, the Senate bill in others.

Leaders have named 147 congressmen -- more than one fourth of Congress -- to serve on the conference committee. They have 33 working days before the planned Oct. 4 adjournment.

Legislative staff members, who will do most of the work, say a compromise bill cannot possibly be approved before September or October. They say it's not likely legislation will be passed until the closing weeks -- or days -- of the 101st Congress.

But they are equally confident the job can be done.

There is very strong support for a Clean Air Act revision. It passed the Senate Apr. 3 by an 89-11 vote and the House May 23 by a 401-21 vote. And legislators campaigning this fall for reelection want to list passage as an achievement.

What it does

The Clean Air Act, originally passed in 1970 and revised in 1977, requires the Environmental Protection Agency to set limits for air pollutants. EPA has regulated six contaminants: particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, lead, and ozone.

Since passage and revision, pollution levels have been dramatically reduced, and most areas of the country meet national ambient air quality standards for lead (mainly due to the switch to unleaded fuel), nitrogen dioxide (from smokestacks), sulfur dioxide, and particulate matter. Meeting standards for carbon monoxide and ozone has been more difficult, although smog has been significantly reduced.

Oil & Gas Journal, July 23, 1990

The House and Senate bills would tighten control requirements in cities that have not yet met federal air quality standards, establish an acid rain control program, and create a system for regulating toxic air pollution.

They also would require tighter auto emissions standards, mandate cleaner gasoline and clean fueled vehicles in some cities, and phase out production of chemicals that contribute to depletion of the stratospheric ozone layer.

Alternative fuels

The bills encourage alternative fuels development and set tailpipe emissions for gasoline and diesel fueled cars, trucks, and buses -- standards that are more rigorous for 11 serious ozone nonattainment areas.

The bills offer different approaches for promoting development of private and government fleets that can use alternative fuels.

The Senate bill requires EPA to require that oil companies make clean burning alternative fuels available in certain nonattainment areas and later in nationwide transportation corridors. A service station would not have to offer an alternative fuel if it recently had replaced its underground storage tanks.

The House bill limits the clean fueled vehicle program to California. There, the program requires 150,000 cars/year burning alternative fuels to be sold through 1996 and 300,000 thereafter.

EPA would set standards for the fuels and determine which would be sold in which areas. Refiners and service stations would be required to make them available.

Under both programs, stations selling more than 50,000 gal/month would be required to make at least one alternative fuel available, regardless of whether they offer reformulated gasoline.

The Senate bill would ban the manufacture or sale of any on or off road engine that requires leaded gasoline after model year 1992. The sale of gasoline containing lead would be banned July 1, 1992, unless a study determines it would lead to a shortage of fuel for farm vehicles.

Both bills would require EPA to issue rules lowering the volatility of fuels, depending on regional pollution problems. And they stipulate that beginning Oct. 1, 1993, diesel fuel for vehicles could not contain more than 0.05 wt % sulfur or fail to meet a cetane index minimum of 40.

The Senate bill does not require refiners with less than 25,000 b/d of capacity to meet that limit for their diesel. The sulfur ban would not apply to diesel used in oil exploration, production, or development on the North Slope of Alaska.

Both bills require EPA to issue rules requiring all new cars to be equipped with onboard canisters to capture 95% of refueling emissions if the Transportation Department determines the canisters are not dangerous to motorists.

Oil & Gas Journal, July 23, 1990

Both require EPA to issue specifications for fuel quality to minimize emissions of hydrocarbons, carbon monoxide, nitrogen oxide, and particulates. The specifications could ban fuel impurities or require the use of additives. And EPA must require refiners to use additives in all their gasolines to prevent buildup of deposits in fuel injected engines.

Clean fuels

The bills require EPA, within 1 year, to set specifications for reformulated gasoline sold for conventional vehicles in severe or extreme ozone nonattainment areas.

The specifications would limit aromatic hydrocarbon content to no more than 30 vol % as of Jan. 1, 1992, dropping to 25 vol % by Jan. 1, 1996. In the Senate bill, benzene content would be less than 1 % or lower if it can be achieved without added capital spending. The House bill requires less than 0.8%.

Also, oxygen content would be at least 2 wt % by Jan. 1, 1992, 2.5 wt % a year later, and 2.7 wt % by Jan. 1, 1994. EPA could waive that if it determines that use of oxygenated fuels could prevent or interfere with attainment of standards for pollutants other than carbon monoxide.

Companies selling fuels with an oxygen content higher than required would be eligible for credits.

Under the Senate bill, EPA could delay implementation of the reformulated gasoline requirements for 3 years to allow lead time for refiners to provide the fuels.

The Senate bill requires that beginning Oct. 1, 1991, any gasoline used in a carbon monoxide nonattainment areas from Oct. 1 to Mar. 31 have an oxygen content of at least 3.1 wt %. The House bill calls for 2.7 wt %. Pumps would have to carry labels, indicating the fuel is oxygenated and would reduce vehicle carbon monoxide emissions. And the Senate bill orders EPA to study expanding the use of oxygen in gasoline to all cities of 100,000 population, regardless of their attainment status.

It allows EPA to waive the oxygen standard if EPA determines oxygenated fuels will increase other forms of pollution or if cold temperatures rule out use of the fuel.

The House bill does not dictate a formula for reformulated gasoline but requires such gasoline to be offered in the nine cities with the worst air quality problems, and that it be capable of reducing pollutants 15% by 1995 and 25% by the year 2000.

Industry opposition

The American Petroleum Institute waged an intense fight against legislation dictating the gasoline content, saying "government gas" mandates would hamper industry's efforts to develop reformulated, improved fuels. It lost in both Houses.

Charles DiBona, API president, complained the House bill sets such stringent standards for reformulated gasoline no one in the petroleum industry knows

Oil & Gas Journal, July 23, 1990

whether these standards could be met.

He added that unless the House-Senate conference committee relaxes the requirements, it may not be possible for the industry to continue to meet the fuel needs of consumers.

API said the legislative gasoline formulas are aimed at vastly expanding the use of ethanol as an ingredient in gasoline.

"This may help ethanol producers," API said, "but this government gas' has never been tested and could make it more difficult to reduce smog."

It said a 10% ethanol, 90% gasoline blended fuel would increase ozone forming potential by at least 6% and nitrogen oxide emissions by 4-8%. API said alcohol fuels evaporate faster than conventional gasoline and contain less energy per gallon than gasoline.

API pointed out the oil and auto industries are conducting a joint research program that is testing various reformulations of gasoline, searching for the cleanest combination of fuels and vehicles.

The National Petroleum Refiners Association questions whether the refinery construction industry has the capability to produce and install the new equipment refineries will need to meet new motor fuel standards.

It estimated the refining industry will have to spend more than \$ 3.6 billion alone to meet the diesel desulfurization requirement.

Air toxics

Refiners are affected by standards in both bills for major sources of air pollutants -- those that emit 10 tons/year of any hazardous pollutant or at least 25 tons/year of a combination of hazardous air pollutants.

Both bills exempt emissions from oil and gas drilling and producing wells, stipulating wells cannot be aggregated so that oil fields are defined as major sources even though the wells are closely spaced or are owned by the same company. The Senate bill includes pipeline compressor stations.

And the latter exempts production of stripper oil or natural gas from ambient air quality rules except in areas with severe pollution problems.

Senators ordered EPA to examine the human health risk of hydrogen sulfide emissions generated by oil and gas production and report its findings to Congress within 2 years.

Their bill directs the Labor Department to begin a program to prevent accidental releases of chemicals that pose a human health threat. Within 1 year Labor and EPA would have to issue a chemical process safety standard to protect employees from accidental releases of highly hazardous chemicals. The Senate bill would establish an independent Chemical Safety and Hazard Investigation Board similar to the National Transportation Safety Board.

The panel would investigate all chemical accidents and propose corrective steps to make chemical production, processing, and handling as safe as

Oil & Gas Journal, July 23, 1990

possible.

The House bill gives EPA responsibility for protecting employees against releases and creates an Accidental Release Investigation Board. It directs employers to develop written safety information, perform workplace hazard assessments, consult workers on chemical accident prevention plans, and establish prevention, mitigation, and emergency response systems.

The Senate bill orders EPA to propose within 1 year and issue within 2 years a list of at least 50 substances that might be suddenly released in concentrations that could harm human health. The House bill calls for a list of 100.

Both agree the list should include chlorine, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, tetrachlorethylene, ammonia, hydrogen sulfide, and sulfur dioxide.

The House bill also requires EPA to study the use of hydrofluoric acid at refineries. If EPA finds an alternative chemical or process that provides net benefits, it would have to issue rules within 15 months requiring its use.

Offshore emissions

Oil industry associations are not pleased with either the House or Senate bill's provisions regulating emissions from Outer Continental Shelf drilling and production platforms.

The House bill would transfer authority to regulate OCS emissions to EPA, except off Texas, Louisiana, Mississippi and Alabama. In all other areas, EPA would issue rules to control air pollution, and if the facilities are within 25 miles of the state boundary, the rules must be as stringent as onshore rules.

The Senate bill leaves regulation with the Interior Department, but Interior must issue rules limiting emissions off California that are as stringent as the state's onshore rules -- and with the concurrence of EPA.

It requires Interior, in OCS areas adjacent to states other than California, to coordinate efforts with EPA on onshore and offshore regulations. Interior is required to make a 3 year study of emissions on the Gulf Coast to determine if they are effecting onshore areas that may fail to meet the national ambient air quality standards for ozone or nitrogen oxide.

Both bills would allow the rules to be waived for practicality or health and safety grounds, but offsetting emissions reductions would be required.

The Senate bill creates a fund to acquire or create emissions offsets to mitigate emissions from OCS activities. Offshore operators needing pollution offsets would pay fees into the fund, which would be used to buy or create emissions offsets.

Nicholas Bush, president of the Natural Gas Supply Association, called the OCS provisions -- in particular the House provisions -- "a disastrous course."

He said two thirds of the energy produced on the OCS is natural gas, and environmentalists should not tout the environmental benefits of burning

Oil & Gas Journal, July 23, 1990

natural gas while attempting to block its development at the same time.

Other provisions

In the Senate bill, in all ozone nonattainment areas, states could require a Stage II refueling vapor recovery system at gasoline stations that dispense more than 20,000 gal/month. The House bill sets the limit at 10,000 gal/month or 50,000 gal/month for certain independents.

The House bill also requires EPA to issue standards for emissions from loading and unloading of tankers within 2 years.

The acid rain portion of the bill includes a number of provisions governing burning of oil and natural gas in electrical power plants. A number of exemptions encourage use of natural gas.

Refiners of less than 50,000 b/d are given an allowance until Dec. 31, 1999.

EPA is ordered to study options to reduce methane release to the atmosphere during processing, distribution, or other activities as part of the program to reduce tropospheric ozone formation and global climate change.

Reformulated gasoline under the Clean Air bills

Note: This table may be divided, and additional information on a particular entry may appear on more than one screen.

Issue	Senate bill
Refiner requirement	Refiner must meet fuel specifications.
Fuel specifications	
Benzene	
Maximum vol %	1994 -- 1
Aromatics	
Maximum vol %	1992 -- 30 1994 -- 28 1996 -- 25
Oxygen	
Minimum wt %	1992 -- 2.0 1993 -- 2.5 1994 -- 2.7
Lead	Banned Jan. 1, 1992
Antideposit additives	Required Jan. 1, 1994
Nitrogen oxides	No increase allowed.
Waiver	Waiver allowed from 2.7% oxygen requirement if it interferes with attaining any air quality standard except carbon monoxide.
Issue	House bill
Refiner requirement	Refiner must meet the more stringent of the emissions reductions associated with the fuel specifications or the

Oil & Gas Journal, July 23, 1990
more general performance
standards.

Fuel specifications

Benzene

Maximum vol % 1994 -- 0.8

Aromatics

Maximum vol % 1992 -- 30
1994 -- 28
1996 -- 25

Oxygen

Minimum wt % 1992 -- 2.0
1993 -- 2.5
1994 -- 2.7

Lead

Banned Jan. 1, 1994

Antideposit

Required Jan. 1, 1994

additives

Nitrogen oxides

No increase allowed.

Waiver

No waiver for air quality standard
Interference. Waivers
available for oxygenates as
carbon monoxide strategy.

Alternative fuels programs under CAA bills

New vehicles issues

Senate

Program scope

Nine cities with serious
pollution

VOC* emission

All new cars, on a

reductions

per Vehicle basis:

0.015 gpm formaldehyde

Phase 1 (1995-98), 0.75 gpm

Phase 2 (1999 on), 0.66 gpm

Toxics

Definition

Five carcinogens

Reduction

Phase 1: 12% reduction
in incidence of cancer
cases

Phase 2: 27%, EPA can
lower to 18%

Vehicle phase-in

Applies to all new vehicles
from model year 1995

Opt in, Opt up

California can develop
own program. Opt in/opt up
allowed. Other areas
can opt up to California
standard. Can expand to
major transportation corridors.

Fuel supply

requirements

Must distribute fuel for sale
to ultimate purchasers as
specified by EPA.

Service stations

Stations of 50,000 gal/month
or larger must offer
at least one clean fuel for
sale. No tank replacement
required if tanks have
been replaced within
last 7 years.

Oil & Gas Journal, July 23, 1990

* Volatile organic compound.

New vehicles issues House

Program scope

VOC* emission

reductions

California only pilot program

Phase 1 (1995-2000): 50%

reduction in ozone forming

VOCs

Phase 2 (2000 on): 75% reduction

in VOCs

Toxics

Definition

Five carcinogens, but EPA
could add other pollutants

Reduction

Phase 1: 50% reduction in
emissions of 5 carcinogens

Phase 2: 75% reduction

Vehicle phase-in

Requires sale of 150,000 vehicles/year

in model years

1994-96 and 300,000 in model

years 1997 on

Opt in, Opt up

No opt in/opt up

Fuel supply

At a minimum, sufficient fuel
to be provided so vehicles

requirements

can operate exclusively on

clean fuels in the area.

Service stations

Same

LANGUAGE: ENGLISH

TOP PRIORITY

TO: KAREN GUSS, White House Fellow
Office of the First Lady
Phone: 202/456-6603
Fax: ~~202/456-6603~~ 456 7431

MELANNE VERVEER, Office of the First Lady
Phone: 202/456-6266
Fax: 202/456-6244

FROM: DEBORAH J. DRUCKER, ESQ. (for DEVRA LEE DAVIS, PH.D., M.P.H. Confirmed Member, National Chemical Safety and Hazard Investigation Board; Senior Advisor to the Ass't. Sec. for Health)
Reply Phone: 202/690-8033/401-7661
Reply Fax: 202/690-8603

DATE: February 13, 1995

RE: NAT'L. CHEMICAL SAFETY AND HAZARD INVESTIGATION BD.

VIA FACSIMILE TRANSMISSION

OF PAGES: 18

In response to Mrs. Clinton's request, this fax includes the following information about the Chemical Safety Board:

- o bipartisan letter of 1/13/95 to President Clinton from 15 Senators (with signatures of majority and minority chairs of Environment and Public Works Committee) urging the President to complete Board appointments and swear in the Senate-confirmed members of the Board;

- o Internal Memorandum of 1/25/95 from Deborah J. Drucker, Esq. to Devra L. Davis, Ph.D., M.P.H. citing reasons for congressional creation of an Independent Chemical Safety Board;

- o EPA/OSHA Joint Accident Investigation Program proposed by OMB in FY '96 (1/19/95);

- o letter of 1/28/95 to T.J. Glauthler from David Drissan, Esq., outlining the serious tort liability issue created by the proposed OSHA/EPA program, and the potential enhancement of industry's liability for suits in damages arising out of accidents investigated by EPA and OSHA;

- o draft of letter dated 1/31/95 to President Clinton from state attorneys general asserting their concern for failure to fund Board;

- o letter to Leon Panetta from City Councillors in Holyoke, Massachusetts, about the consequences to this city of not having a Chemical Safety Board;

- o letter of 1/23/95 to Leon Panetta from Robert Wages, President, Oil, Chemical & Atomic Workers International Union (OCAW) urging the need for Board funding;

- o "Nation Still Needs Chemical Board" The Charleston Gazette, 1/23/95; and

- o BNA article of 1/25/95 reporting on the bipartisan Senators' actions and urging Board funding.

cc: The Honorable Donna Shalala, Secretary,
U.S. Department of Health and Human Services
Fax: 202/690-7203

Lisa Newman
Fax: 202/690-7318

01-18-95 02:28PM FROM 33

TO 96906603

P002/003

United States Senate

WASHINGTON, DC 20510

January 13, 1995

Honorable William J. Clinton
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

We are writing to express our serious concern that the members of the Chemical Safety and Hazard Investigation Board have not yet been sworn in, despite Senate confirmation of three Board members by unanimous consent on October 6, 1994.

The Clean Air Act Amendments of 1990 required that a Chemical Safety and Hazard Investigation Board be appointed, upon enactment, by the President with the advice and consent of the Senate. The Board has widespread, bipartisan support. It is simply inexcusable that, more than four years after enactment of the law, the Board is still not in existence.

The purpose of the Board is to investigate accidental releases of certain chemical substances resulting in serious injury, death, or substantial property damage. The Board is modelled after the highly successful National Transportation Safety Board to provide independent, credible assessments of major chemical accidents and to coordinate relevant Federal research and other activities. We believe you will agree that the NTSB is an outstanding model: the public has true confidence in its operations.

Serious chemical releases that urgently require this Board's oversight continue to occur throughout the country, such as the December 9, 1994, release of hazardous chemicals that forced the nighttime evacuation of several thousand people from their homes in Alabama. A report by the Organization for Economic Cooperation and Development (OECD) indicates that, since 1980, the incidence of major industrial accidents has risen to two major accidents per year, representing a 10-fold increase from the period covering post-World War II to 1980.

We could go on at length about the justifications for the Board, as set forth in detail in Senate Report 101-228, Report of the Committee on Environment and Public Works, to accompany S. 1630, the Clean Air Act Amendments of 1990. However, those justifications were made and accepted by the Congress and the President more than four years ago. The Administration now has a

01-18-95 02:28PM FROM 33

TO 96906603

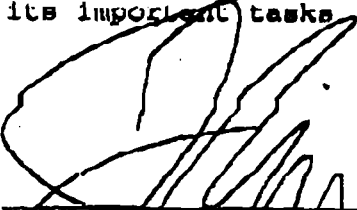
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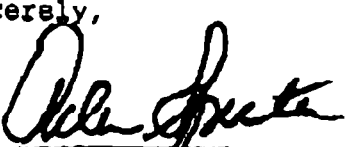
statutory duty to ensure that the Board is established.

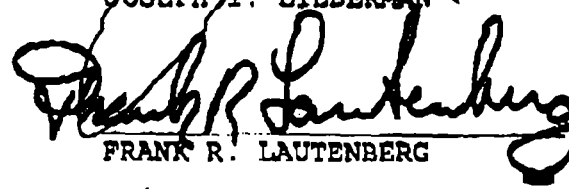
The FY 95 budget contains funds to start the Board. A significantly larger amount of money was included in the Senate appropriations bill, but the Administration's delay in announcing appointments resulted in a reduction in those funds. However, with the existing funds and support from other Agencies (already agreed to), the Board's activities can commence.

We urge you to ensure that the Board begins expeditiously its important tasks.

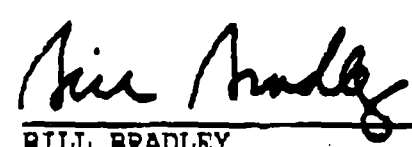
Sincerely,


 JOSEPH I. LIEBERMAN

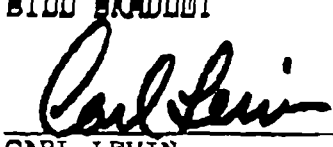

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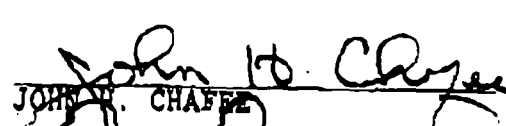

 FRANK R. LAUTENBERG


 ALFONSE D'AMATO

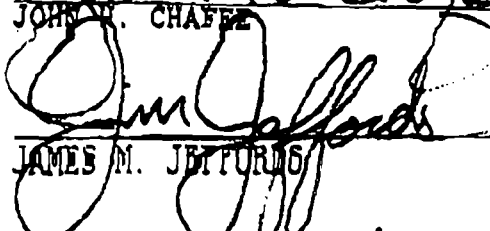

 BILL BRADLEY

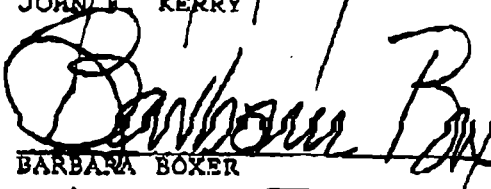

 SLADE GORTON


 CARL LEVIN


 JOHN W. CHAFFE

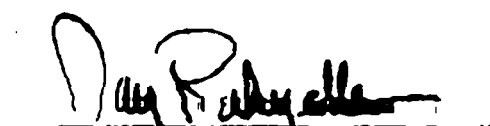

 JOHN F. KERRY


 JAMES M. JEFFORDS


 BARBARA BOXER


 DANIEL PATRICK MOYNIHAN


 MAX BAUCUS


 JOHN D. ROCKEFELLER, IV


 TOM HARKIN

INTERNAL MEMORANDUM

TO: DEVRA L. DAVIS, PH.D., M.P.H.

FROM: DEBORAH J. DRUCKER, ESQ.

DATE: JANUARY 25, 1995

RE: Reasons for Congress' Creation of an Independent Board

Congress Intended Independent Board Status

In the 1990 Clean Air Act Congress mandated that the National Chemical Safety and Hazard Investigation Board (hereinafter referred to as "CSHIB") operate as an independent agency, separate from EPA. "A Board which did not operate independent from the [EPA's] direction would defeat the objective of stimulating regulatory action -a stimulus created through the organizational tension built into the statutory relationship between the Board and the [EPA]." See Legislative History, Senate Report No. 101-228 at p. 230.

Separate Board Status Ensures Independent Recommendations to EPA

Congress intended that the CSHIB operate in a manner analogous to the NTSB. The NTSB investigates airline accidents and makes recommendations to the FAA. Through its recommendations for new or revised airline industry regulations, the NTSB "stimulates regulatory action".

Congress legislated that the CSHIB also "stimulate regulatory action" by investigating accidents and recommending new regulations to the EPA. "The CSHIB is created as an independent source of expertise which may make recommendations for rules and orders to the [EPA]. These recommendations may include a schedule for implementing the proposed actions. The [EPA] is required to make a formal, public response to each recommendation". See Legislative History, Senate Report No. 101-228 at p. 230.

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SENT BY:

1-23-85 11:44PM

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202 690 8603;# 2

EPA/OSHA Joint Accident Investigation Program

EPA and OSHA will work together using their respective existing authorities to carry out the responsibilities of the Chemical Safety and Hazard Investigation Board. OSHA and EPA will undertake the following activities in FY 95 and FY 96 to meet these new responsibilities:

- **EPA and OSHA will continue existing cooperative activities including joint accident investigations, using this experience to develop a joint investigation protocol. The information gained in this experience will determine whether the existing Memorandum of Understanding (MOU) needs to be modified or a new MOU developed. EPA and OSHA will collaborate with State and local agencies and other stakeholders in these efforts.**
- **Based on the joint protocol OSHA and EPA will revise their investigation training programs.**
- **The MOU will identify criteria for selection of accidents for joint investigations, as well as situations where EPA or OSHA may choose to investigate alone.**
- **OSHA and EPA will continue training of SUPPLEMENT staff to build our accident investigation capabilities.**
- **EPA and OSHA will develop a multilevel internal and external expert review process (including "blue ribbon" panels of stakeholders) for accident reports and other chemical safety reports.**
- **OSHA and EPA will conduct joint investigations, develop reports with findings on accident causation and safety recommendations, and will continue cooperation with State and local agencies and other stakeholders.**
- **EPA and OSHA will expand contract support to provide technical expertise, analytical support, on-site investigations, and training.**
- **OSHA and EPA will deliver training on the joint investigation protocol to staff and make it available to other Federal agencies, industry, labor, and other interested parties.**
- **EPA and OSHA will initiate the expert review process and respond to its recommendations.**

1/19/95

Tel: 202-288

From: NRDC - Washington, DC

1-20-85 9:17pm 0.2



Natural Resources
Defense Council

1350 New York Ave., N.W.
Washington, D.C. 20005
202 783-7400
Fax 202 783-5017

January 18, 1984

FAX 202 288-4632

F. J. Glauthier
Office of Management and Budget
New Executive Office Bldg.
725 17th Street, N.W.
Washington, D.C. 20503

Dear Mr. Glauthier:

Moving the Chemical Safety Board's accident investigation function entirely into EPA and OSHA may enhance industry's liability in suits for damages arising out of the accidents EPA and OSHA investigate. I strongly suggest you ask the general counsel at EPA, OSHA, and the Justice Department (which prosecutes violations of EPA and OSHA regulations) to review this memorandum and to thoroughly analyze potential liabilities arising from the approach OMB advocates under both the Clean Air Act and OSHA for EPA, the Department of Labor, and industry. The Natural Resources Defense Council fears that the litigation and controversy your proposed approach may create would interfere with thorough accident investigations and enforcement of OSHA and EPA requirements.

Increased Industry Liability

Section 112(r)(6)(C) of the Clean Air Act requires the Chemical Safety Board to report its finding about the causes of accidents to the public. Section 112(r)(8)(9) disallows the admission of the Safety Board's conclusions, findings, or recommendations into evidence in any suit for damages arising from an investigated accident. This exclusion performs an important function; it allows industry to participate freely and openly in the Board's effort to find the root causes of accidents without fear that the findings will increase their liabilities flowing from the accident. It also allows the Board to make and publicize very forthright findings. Absent the exclusion, industry would have a monetary incentive to pressure the board into softening up findings whenever liability was possible (i.e. in most serious accidents).

JANU 18 1984
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Los Angeles, CA 90048
213 934-6800
Fax: 213 934-1250

To: 993-2200

From: . ion, DC

1-20-88 8:10pm p.1

2

By contrast the Clean Air Act does not provide an evidentiary exclusion for EPA findings. EPA findings made in connection with an accident investigation generally could be introduced as evidence against a company in a civil trial. The admissibility of EPA (and presumably OSHA findings as well) performs a purpose under the law as important as the exclusion of the Chemical Board's findings. OSHA and EPA must investigate to determine if existing laws have been violated. Legal violations constitute evidence of negligence per se in some states and may be powerful evidence of negligence in others. Excluding the findings of agencies enforcing the law from actions in negligence would unfairly hinder victim compensation in cases where the negligence involved a legal violation. It would force private parties with few resources to prove again what a government agency had already proved in order to receive compensation.

The unavailability of the section 112(r)(6)(G) exclusion to EPA and OSHA investigations may spark substantial involvement of lawyers in thwarting effective investigation of root causes of accidents if industry fears a suit for damages flowing from EPA and OSHA findings. Findings designed to spark corrective action in the future may increase industry liability for accidents that have already occurred, even when the investigated company has not violated any existing government regulations. OSHA and EPA inspectors may still help an independent board investigate. But where the root causes do not involve violations of the existing patchwork of regulations, some independent investigation and findings by the Board will be necessary.

In addition, under section 113(b) EPA has the authority and duty to prosecute violations of the Act. As a result, industry may cooperate less perfectly with EPA inspectors than with a Board that has no such duty. Similar problems exist with respect to OSHA.

EPA and OSHA Liability

Please ask counsel for EPA, OSHA and the Justice Department to carefully evaluate the potential liabilities and problems that may make it difficult for EPA and OSHA to investigate and publicize the root causes of accidents. What tools can lawyers use to resist thorough investigations when negative findings and published reports may trigger liability for damages? The conflict of interest situation EPA's draft proposal to do away with the Safety Board creates is bound to increase resistance to discovering and publicizing the root causes of accidents.

To: 101-2086

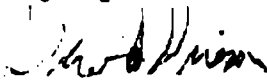
From: WDC - Washington, DC

1-20-93 9:18pm p.4

3

I hope this letter is helpful please call me at 783-7800 if I can be of any further assistance.

Sincerely,


David Driessan
Senior Project Attorney

cc: Carol Browner, Administrator, EPA
Alice Rivlin, Director, OMB
Liz Montoya, Associate Director, Presidential Personnel
Katie McInty, Director, Office of Environmental Policy
Greg Simon, Chief Domestic Policy Advisor
to the Vice President
Carol Rasco, Assistant to the President for Domestic Policy
Mary Nichols, EPA
David Deniger, EPA
Robert Brenner, EPA

JAN-31-95 TUE 16:31

H. NORRIS

FAX NO. 4135368816

P. 02

~~CONFIDENTIAL~~

DRAFT LETTER FOR A NATIONAL ATTORNEY GENERAL'S SIGN ON LETTER

January 31, 1995

2012-0820-5

DETERMINED TO BE AN

ADMINISTRATIVE MARKING

INITIALS: Me DATE: 9-10-12President William Clinton
White House
Washington, DC 20500

Dear President Clinton:

in the strongest possible terms

We are writing to urge you to constitute the Chemical Safety and Hazard Investigation Board ("CSHIB") and seek sufficient funds from Congress to allow it to begin its legally required investigations of explosions and releases of toxic chemicals from chemical plants and refineries. Press reports suggest that the Administration may be considering a decision to eliminate funding for the CSHIB.

The CSHIB, which was established by the Clean Air Act Amendments of 1990 (§112(r)(6)), is a non-regulatory, independent, five-member Board charged with responsibility to identify the root cause of accidents and chemical releases in extremely hazardous industries and recommend ways to prevent their recurrence. The CSHIB was patterned after the independent National Transportation Safety Board ("NTSB"), which investigates air plane accidents and recommends safety improvements to the Federal Aviation Administration and the aircraft industry.

Across the nation, an average of 19 chemical accidents occur daily. From 1982-86 there were close to one-half million people who had to be evacuated from hazardous chemical spills, leaks and explosions. Major catastrophes in Montana, Iowa, Louisiana, California, Texas, Ohio, Pennsylvania have occurred in the past year; however, there has been no expert and independent assessment or recommendations on the best way to prevent these from occurring elsewhere in the country. Thus, each accident is a double tragedy--first for the loss of life and property and second because the chance to learn and prevent others has been lost.

Although OSHA and EPA have substantial authority, neither can provide the scope or independence granted to the CSHIB. First, OSHA lacks the authority to unilaterally investigate accidents in those 27 states where OSHA's authority has been delegated to the state. Second, because evidence gathered by the CSHIB cannot be used as evidence in a court of law, industries that are under investigation will be more willing to disclose relevant facts to CSHIB without fear of adverse consequence--an advantage not enjoyed by EPA and OSHA. Third, EPA and OSHA are charged with enforcing the violation of rules, standards and regulations--not getting to the root cause of accidents regardless of whether or not there are

JAN-31-95 TUE 18:32

H. NORRIS

4135369616

FAX NO. 4135369616

P. 03

-2-

violations of law. Fourth, no report of the CSHIB shall be subject to review by EPA or any federal agency or court, thus freeing the Board's to focus exclusively on its non-regulatory, fact-seeking mission.

After lengthy discussion, Congress specifically concluded that existing federal authority was not sufficient to accomplish the aims of an independent executive agency. However, Congress did not ignore EPA and OSHA's important work or their respective roles in investigations. Rather, Congress explicitly ordered that the CSHIB maximize opportunities to combine resources with other federal agencies. This is consistent with the Administration's Reinventing Government initiative, and the desire to be prudent in expending federal resources.

Moreover, Congress recognized that there would be "a stimulus created through the organizational tension built into the statutory relationship between the Board and [EPA]." (See: Senate Report No. 101-228 at p. 230.) This same type of stimulus by the National Transportation Safety Board serves to motivate the Federal Aviation Administration to promote ever higher levels of airline safety--something we all agree benefits the public.

As a matter of policy, we believe the Administration should implement the statutory mandate contained in the Clean Air Act Amendments by (1) requesting sufficient funding in the FY 96 budget to allow the Board to begin its investigatory work, (2) swearing in the three Board nominees who were confirmed by the U.S. Senate on October 6, and (3) submitting the other two nominees you have announced to the Senate for confirmation.

We look forward to cooperating with you in establishing the Chemical Safety and Hazard Investigation Board.

Sincerely,

*The City of***HOLYOKE***Massachusetts 01840*CITY COUNCIL
CITY HALL
HOLYOKE, MA

MUNICIPAL OFFICE BUILDING

31 January 1995

Leon Panetta
Chief of Staff
White House
Washington, DC 20500

Dear Mr. Panetta:

We are disturbed to learn that the Office of Management and Budget ("OMB") has decided to "zero out" funding for the INDEPENDENT CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD ("CSHIB"), in contravention with the requirements of Section 112(r) of the Clean Air Act Amendments of 1990. We urge the President to continue forward on the path he charted when he announced that he was going to constitute the CSHIB and nominate the Board members. The OMB has apparently strayed off of the course set by the President for reasons that do not appear defensible or legal.

Holyoke is home to a large polystyrene resins manufacturing plant, which sits on the banks of the Connecticut River. As City officials we cannot overlook the fact that there was no independent CSHIB investigation in the aftermath of the large polystyrene plant explosion and fire in Belpro, Ohio last year. The explosion forced 1700 people to evacuate (according to Shell Chemical), caused 3 deaths, and dumped over 500,000 lbs of styrene and other toxic chemicals into the Ohio River. Water treatment plants had to close for 50 miles downstream. Without an independent and credible answer to the root-cause of the Belpro explosion, what assurance do we have that regulations are adequate to prevent a comparable catastrophe in Holyoke? Or elsewhere?

If chemical accidents such as these are preventable, then so are the costs to local and state government of responding to these accidents. The administration is pursuing a penny-wise and pound foolish approach to government by eliminating a low-cost measure of prevention in favor of expensive emergency response costs and lost lives. While President Clinton advocates universal immunization because it is a low-cost way to reduce disease and avoid the high costs of treatment, the OMB, in the name of "reinventing government", is eliminating an ounce-of-prevention in favor of a pound-of-cure.

To "zero out" this Board in the name of reinventing government completely misses the mark. Congress explicitly ordered the Board to maximize opportunities to combine resources with other federal agencies. This directive supports the Administration's reinventing government initiative. Senator James Jeffords inserted provisions into the final legislation to assure coordination between OSHA and EPA through a Memorandum of Understanding.

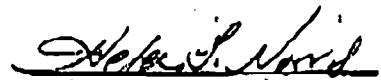
The President needs to continue on the course of action he initiated last July when he announced his nominees to the Board. Furthermore, as a matter of law, we question whether the President has the discretion not to constitute the CSHIB.

Thus, it is clear that President Clinton should immediately: (1) overrule the "green-eyeshades" at OMB and seek Congressional funding, (2) swear in his three superb appointments to the CSHIB who were confirmed by the Senate on October 6, and (3) submit the two remaining nominees to the Senate for confirmation.

We look forward to your response.

Sincerely,


Elaine Pluta
City Council, At Large


Helen F. Norris
City Council, Ward 3

U.S. PIRG

202 546 2461
TEL No. 202-546-2461

Jan 25.95 16:31 No.027 P.04



OCAW

OIL, CHEMICAL & ATOMIC WORKERS INTL UNION, AFL-CIO

January 23, 1995

ROBERT E. WAGNER
PRESIDENTDAVID J. ROSENBERG
SECRETARY-TREASURERL. CALVIN MOORE
VICE PRESIDENTJAMES E. PHILLIPS, JR.
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80128-0200303-987-2229
FAX 303-987-1967

VIA FAX - (202) 456-2881

Mr. Leon Panetta
Chief of Staff to the President
The White House
Washington, DC 20500

Dear Mr. Panetta:

This letter urges the Administration to include funding in the FY 96 Budget Request for the Chemical Safety and Hazard Investigation Board (CSIB), which was established by the Clean Air Act Amendments of 1990 to investigate the cause of catastrophic accidents and chemical releases in high hazard industries and make recommendations on preventing future accidents--similar to the mission of the National Transportation Safety Board. THIS IS A VERY HIGH PRIORITY FOR WORKERS IN THE REFINING, CHEMICAL AND HIGH HAZARD INDUSTRIES.

During a January 19, 1995, meeting with the CEO Director, Katie McGinty, and T. J. Clauthier of the Office of Management and Budget, we were informed that the Administration was proposing to place an added \$6.0 million into the Environmental Protection Agency and the Occupational Safety and Health Administration for accident investigation--as a substitute for funding the statutorily mandated Chemical Safety and Hazard Investigation Board. This is a fundamentally misguided policy for the following reasons (1) it bypasses the Board's independence from all regulatory agencies; (2) OSHA doesn't have guaranteed access to facilities in the 27 OSHA state-plan states and (3) a requirement for the 27 state OSHA programs to do separate investigations would be redundant and wasteful.

Unlike OSHA, which is charged with enforcement of rules and standards, the CSIB's mission is to find the root cause of accidents and recommend measures to whichever agency is appropriate. The OMB's counter-proposal to create "blue ribbon panels" and "stakeholder" oversight of OSHA investigations is laughable. I have been a "blue ribbon" panelist and this proposed mechanism is a pathetic substitute for independence. Killing this Board is not reinventing government. It is screwing out legislation. The Administration is giving those who would like to zero out other safety and health laws the cover they need.

Continued . . .

U.S. PIRG

202 546 2461
TEL No. 202-546-2461

Jan 25.95 16:31 No.027 P.05

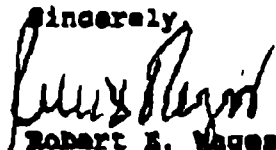
Mr. Leon Panetta
January 23, 1995
Page 2

Three of the five members of the CSIB were confirmed by the Senate on October 6. At this point, we find it incomprehensible why the President will not swear in the members of the Board and use the limited funds appropriated by Congress to get the CSIB up and running in FY 95 while we work to pass appropriations for FY 96.

A bipartisan letter from 15 Senators has told you they want the CSIB members sworn in and funding requested in FY 96. The Louisiana Attorney General has told you of the litany of accidents and deaths that show little sign of abating and asked you to fund the CSIB. The AFL-CIO has weighed in in unequivocal terms. The Industrial Union Department of the AFL-CIO, the Steelworkers, the Chemical Workers, the United Auto Workers, the Communication Workers, the Amalgamated Clothing and Textile Workers, the United Rubber Workers and our union, OCAW, have all written to the Administration in support of the CSIB. Environmental groups, including EDF, NRDC, World Wildlife Fund, U. S. PIRG, Friends of the Earth and scores of grassroots groups across the country have signaled their support for the CSIB in recent weeks. The San Francisco Chronicle editorialized in support of funding the CSIB.

The logic escapes us why the Administration is reluctant to request funding for the CSIB. George Bush did it. The two previous Clinton Administration budgets requested funding. Why are you now reluctant to shift the burden to Congress to fund it?

Finally, please advise us what we should tell our members after the next major catastrophe?

Sincerely,

Robert E. Vages
President

REW/rea

cc: International Office
Mr. T. J. Clauthier, DMB (Fax - 202/300-4639)

JAN-23-95 MON 10:19 AM

NATL INST CHEM STDS

FAX NO. 3043466349

P. 3

3043466349

The Charleston
Gazette

1123/95 P.3

VIEWPOINT

Safety compromised

Nation still needs chemical board

By Paul Orum

ON the tenth anniversary of Bhopal, thousands of people were evacuated and four were killed by a massive explosion that devastated Terra Industries in Sioux City, Iowa. In the U.S. today, nearly one chemical fire, spill or explosion occurs every hour.

To prevent such accidents, Congress established an independent National Chemical Safety Board in 1990. Four years later the board still does not exist. The White House is poised to kill funding for the board, which has enjoyed broad bipartisan support.

Record numbers of huge petrochemical catastrophes have occurred in the U.S. in recent years. In 1991 and 1992 alone, 15 major chemical accidents destroyed over \$1 billion in property, killing or maiming working men and women, and causing thousands to be evacuated from homes, schools, and hospitals. From 1988 to 1992, some 34,500 U.S. accidents released 680 million pounds of toxic chemicals. Seventeen past U.S. accidents spewed as much dangerous chemicals as were released at Bhopal.

Congress modeled the chemical board after the respected and effective National Transportation Safety Board, which as earned public confidence with expert investigations of fatal airplane crashes. The chemical board is a similarly independent public watchdog, established to investigate accidents and report to the public, government and industry on how to prevent them.

Last July, President Clinton initiated five high-qualified board members. The Senate un-

Recent major accidents

1987 — Texas City, Texas, Oct. 30: Hydrogen fluoride from a damaged storage tank at Marathon Oil spreads a ground-bugling plume across Texas City, forcing extensive evacuations and sending 1,000 people to local hospitals.

1988 — Henderson, Nev., May 4: Ammonium perchlorate, used in rocket fuel, explodes at Pacific Engineering's plant near Las Vegas, killing 2, injuring 380 and measuring 3.3 on the Richter scale 200 miles away in Pasadena, Calif.; damages reach \$78 million.

1988 — Pasadena, Texas, Oct. 23: A massive explosion destroys a Phillips Petroleum plastics plant, leaving 33 dead, over 200 injured and more than \$1 billion in damages.

1990 — Channelview, Texas, July 8: An explosion and fire at ARCO Chemical kills 17 workers and flattens an area the size of a city block.

1991 — Sterlington, La., May 1: An explosion at

DMC Chemical kills 8, injures 100, and renders the plant into a twisted mass of metal; property damages exceed \$100 million.

1992 — Wilmington, Calif., Oct. 8: A vapor cloud from a Texaco refinery explodes in a poor Los Angeles neighborhood, damaging the refinery and homes and shattering windows several miles away; property damage: \$78 million.

1993 — Richmond, Calif., July 26: A sulfur trioxide leak at General Chemical drifts for miles downwind through a lower-income minority community, closing the roads and rail lines; some 20,000 nauseous people seek assistance from area hospitals for irritated skin, eyes and lungs.

1994 — Belpre, Ohio, May 27: A Shell Chemical facility explodes, killing 3 workers and flushing a half million pounds of polystyrene into the Ohio River, shutting down plastics production for months.

unanimously confirmed the first three on Oct. 8, 1994. However, budget cutters at the Office of Management and Budget are now angling to eliminate the board. Would the Administration halt NTSB investigations of airline crashes to save a few million dollars?

Accidents at refineries and chemical plants continue to take a heavy toll. On May 27, 1994, a Shell Chemical facility exploded in Belpre, Ohio, killing three workers and flushing a half million pounds of poisonous styrenes into the Ohio River.

These accidents have significant costs — in human lives, health care, property damage, lost jobs and cleanup — which often are borne by financially strapped local governments. Local response costs for preventable accidents dwarf the board's \$8 million annual budget.

Current trends are likely to make the situation worse, not better. A 1994 survey by Industrial Safety and Hygiene News, an industry trade publication, reported that 78 percent of its readers believe corporate downsizing will

Why kill the board now? November's elections demanded more

accountability from government, not less. The president and Congress should work together and fully fund the independent chemical safety board.

lead to more accidents.

With each accident, the public loses confidence in industry to self-regulate and in government to protect public safety. Expert, independent oversight is needed to ensure that both government and industry will take appropriate steps to prevent future catastrophes. The limited funding the chemical board requires will provide countless dividends in better worker and community safety — safety that can't be purchased by families with a middle class tax cut.

Why kill the board now? November's elections demanded more accountability from government, not less. The president and Congress should work together to complete the appointments and fully fund the independent chemical safety board.

Orum is a coordinator for The Working Group on Community Right-to-Know, an affiliation of public interest groups concerned with the public's right to know about toxic pollution and chemical accidents.

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1-25-85 : 3:12PM ;

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BNA OCCUPATIONAL SAFETY & HEALTH DAILY
January 25, 1995

Process Safety

SENATORS CALL ON CLINTON TO PROVIDE FUNDS
TO LAUNCH STALLED CHEMICAL INVESTIGATION BOARD

WASHINGTON (BNA) -- A bipartisan effort has been launched in the Senate to prod the White House to fund an independent board created in 1990 to investigate serious accidents that could harm workers in the chemical and petrochemical industries, several Senate aides told BNA Jan. 18.

Sen. Joseph Lieberman (D-Conn) joined Sen. Arlen Specter (R-Pa) and 13 other senators in calling on President Clinton to provide full funding for the Chemical Safety and Hazard Investigation Board, according to a Jan. 18 letter to the president.

Created under the Clean Air Act amendments of 1990, the chemical board quickly fell victim to political infighting and budget debates within the Bush and Clinton administrations; after four years the board has yet to hold its first meeting. The Clinton administration made some headway in October when the Senate cleared three board members, but its Office of Management and Budget has questioned whether the \$5 million needed for the board's implementation might be better spent on other programs (24 OSHR 1025).

"It is simply inexcusable that, more than four years after enactment of the law, the board is still not in existence," according to the letter, which also was signed by Sens. Frank Lautenberg (D-NJ); Alfonse D'Amato (R-NY); Bill Bradley (D-NJ); Glade Gorton (R-Wash); Carl Levin (D-Mich); John Chafee (R-RI); John Kerry (D-Mass); James Jeffords (R-Vt); Barbara Boxer (D-Calif); Daniel Patrick Moynihan (D-NY); Max Baucus (D-Mont); John D. Rockefeller (D-WVa); and Tom Harkin (D-Iowa).

Board Advocates Respond

John Adams, the National Resources Defense Council's executive director, said in a Jan. 18 letter to the president the administration's refusal to fund the board could send a mixed message to those in the Republican-led Senate and House who may "seek to rewrite laws that protect public health and safety through selective budgeting."

"The administration will be poorly positioned to oppose any of these irresponsible efforts to evade public accountability and circumvent the President's right to veto poor substantive legislation, if it has itself tried to rewrite the Clean Air Act through the budget," the letter said.

In addition to its investigative responsibilities, the chemical investigation board was required by Congress to report to the Occupational Safety and Health Administration and the Environmental Protection Agency on recommended regulations for addressing workplace and environmental issues within the industry. However, those never-completed reports were required by November 1992 (20 OSHR 1025).

Rumors that the White House might eliminate funding for the board even as it has moved forward in nominating the board members sparked the effort, according to Paul Orum, coordinator of the Working Group on Community Right-To-Know, a Washington, D.C.-based environmental group.

"Budget cutters at the White House Office of Management and Budget are angling to kill the board," Orum said. "They want to fold it into the Environmental Protection Agency and the Occupational Safety and Health Administration at a time when their budgets are under attack and their authorities are threatened," Orum contended.

Orum said the real issue remains the independence of the board. For instance, under Section 112(r) of the clean air legislation, the board was designated the national repository for chemical accident information.

"Without the board the information only will be available locally," Orum said. "Nationally compiled data is of major importance to investment researchers, insurers, and reporters trying to find out the accident histories of these facilities," he said.

OCAW Withdraws

In protest over the lack of funding for the board, the Oil, Chemical and Atomic Workers union has withdrawn its membership in the petroleum sector of EPA's Common Sense Initiative, a voluntary pollution prevention program, an OCAW official told BNA.

"We exert pressure where we can. The chemical safety board is a statutory requirement of the Clean Air Act. This is not an optional deal. We expect this to be done," according to Joe Anderson, director of health and safety for the union.

While the Chemical Manufacturers Association has not publicly called for eliminating the board, the industry group also is not actively lobbying the administration to approve the funding, according to a CMA spokesman.

"CMA takes the position that the board duplicates much of the process safety work already being done at EPA and OSHA. Let's let the regulatory agencies do the work," the spokesman said.

An association representative suggested to BNA in December that in light of the Republican takeover of the House and Senate, a Congressional hearing "on the board and its mission" might be appropriate, but no date has been scheduled (24 OSHR 1513).



National Environmental Law Center

29 Temple Place, Boston, MA 02111. (617) 422-0880, Fax: (617) 422-0881

FAX COVER SHEET

DATE: 2/15

TO: Karen Guss

ORGANIZATION: White House

FAX #: 202 456 - 7431

FROM: Joe Ticken

As per Dr. David Davis' recommendation, I am attaching
information regarding the Chemical Safety Board. Please contact
me if you have **PAGE #1 OF 5 TOTAL PAGES** any questions



National Environmental Law Center

29 Temple Place, Boston, MA 02111. (617) 422-0880, Fax: (617) 422-0881

January 23, 1995

Mr. Leon Panetta
Chief of Staff
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

hy fax 202-456-2883

Dear Mr. Panetta:

I am writing to urge the Administration to promptly fund the federal Chemical Safety and Hazard Investigation Board. The Board, a cornerstone of the chemical safety provisions under the 1990 Clean Air Act Amendments, would play an instrumental role in focusing public opinion -- and initiating government and industry action -- on chemical accident prevention. However, at present, establishment of the Board is already two years behind schedule and is facing further delays due to a lack of federal funding.

The Clean Air Act of 1990 calls for the establishment of a federal, independent Chemical Safety and Hazard Investigation Board, modelled after the successful and influential National Transportation Safety Board. The five member Board would investigate major chemical accidents, issue expert reports on chemical safety, criticize agency and industry action or inaction, and determine measures to prevent accidents. The Board would have the power conduct hearings, stimulate agency regulatory action, and promulgate regulations for accident reporting and investigations. It would also provide guidance for the preparation of the Risk Management Plans required by over 100,000 facilities under the 1990 Clean Air Act.

The need for the Chemical Safety and Hazard Investigation Board is clear. Ten years after the catastrophic accident in Bhopal, India, which claimed the lives of more than 3,000 people, the United States has not made substantial progress in preventing chemical accidents. Citizens and the environment in the United States continue to be threatened by serious accident risks due to the storage and use of toxic chemicals. The National Environmental Law Center (NELC), in its report Accidents Do Happen: Toxic Chemical Accidents in the United States, found that more than 19 toxic chemical accidents occur each day in this country. One out of every 16 accidents is serious enough to cause immediate injuries, evacuations, or deaths. NELC found that these figures represent only the "tip of the iceberg" as many accidents go unreported. The costs of chemical accidents on public health, environment, and property are enormous. Experience has shown that only luck has spared the U.S. of a Bhopal type disaster.

We understand the urgent need to streamline government and reduce spending. However, eliminating funding for this Board is not only against the law, it may also cost taxpayers more in lost lives, health costs, and property and environmental damage. We sincerely feel that neither OSHA nor EPA would be able to adequately absorb the Board's functions and, most importantly, its independence. We urge the Administration to promptly nominate and provide the Board with sufficient funding to fully investigate the underlying causes of chemical accidents and prevention options. Thank you very much for your consideration. I would appreciate the opportunity to discuss this matter further with you in the near future.

Sincerely,

Joel A. Tickner
Policy Analyst

Accidents Do Happen

TOXIC CHEMICAL ACCIDENT PATTERNS IN THE UNITED STATES

by

Joel A. Tickner

and

Hillel Gray

National Environmental Law Center

and

United States Public Interest Research Group

August 1994



National
Environmental
Law Center

29 Temple Pl.
Boston, MA 02111
(617) 422-0880



U.S. PIRG
U.S. Public Interest Research Group

215 Pennsylvania Ave., SE
Washington, DC 20003
(202) 546-9707

Table 1: U.S. States Ranked by Number of Toxic Chemical Accidents from 1988-1992

State	Number of Accidents	Accidents w/injuries, Evacuations or Deaths	State	Number of Accidents	Accidents w/injuries, Evacuations or Deaths
CALIFORNIA	4,820	400	WISCONSIN	371	51
TEXAS	4,332	176	NEW MEXICO	349	6
LOUISIANA	2,305	40	OKLAHOMA	315	24
PENNSYLVANIA	1,395	78	CONNECTICUT	308	34
OHIO	1,299	84	UTAH	304	16
KENTUCKY	1,166	30	NEVADA	299	13
ILLINOIS	1,085	64	(UNKNOWN)	295	15
FLORIDA	905	64	WYOMING	279	4
MICHIGAN	869	30	ARKANSAS	259	19
NEW JERSEY	837	64	ALASKA	234	7
GEORGIA	761	47	IDaho	247	12
INDIANA	733	39	MISSISSIPPI	243	12
NEW YORK	722	47	OREGON	232	18
MISSOURI	714	40	MAINE	229	34
NORTH CAROLINA	639	46	MINNESOTA	210	19
TENNESSEE	638	40	NEBRASKA	163	17
VIRGINIA	602	34	PUERTO RICO	159	21
WASHINGTON	596	42	DELAWARE	135	7
WEST VIRGINIA	361	20	MONTANA	115	3
ALABAMA	333	20	NORTH DAKOTA	113	8
ARIZONA	333	37	NEW HAMPSHIRE	112	14
MASSACHUSETTS	334	38	RHODE ISLAND	77	20
KANSAS	498	41	DISTRICT OF COLUMBIA	70	1
SOUTH CAROLINA	485	35	HAWAII	54	6
COLORADO	462	36	SOUTH DAKOTA	35	3
IOHA	434	23	VERMONT	34	4
MARYLAND	403	23	VIRGIN ISLANDS	13	2
			GUAM	1	0
			Total	34,575	2,186

Source: ERMS database 1988-1992, compiled by NELC
 Note: Only includes accidents with immediate injuries, known at the time of notification and excludes chronic health and environmental effects.

Table 2: Top two Percent of U.S. Counties Ranked by Number of Toxic Chemical Accidents from 1988-1992

State/County	Number of Accidents	Accidents w/injuries, Evacuations or Deaths	State/County	Number of Accidents	Accidents w/injuries, Evacuations or Deaths
TX HARRIS	1,398	55	MD BALTIMORE	175	12
CA LOS ANGELES	1,204	112	CA SAN JOAQUIN	169	32
TX JEFFERSON	586	10	WV KANAWHA	166	5
LA CALCASTEU	333	9	MO ST LOUIS	162	8
CA SAN DIEGO	345	19	CA RIVERSIDE	160	8
LA ASCENSION	343	9	FL BILLSBOROUGH	157	14
IL COOK	342	24	CA SACRAMENTO	155	14
TX BRAZORIA	339	4	OH CUYAHOGA	148	13
LA INVERVILLE	337	2	AL MOBILE	147	6
LA EAST BATON ROUGE	332	3	MO JACKSON	145	3
CA CONTRA COSTA	304	16	CA KERN	144	14
CA ORANGE	303	18	PA MONTGOMERY	143	6
TX GALVESTON	300	3	IN MC KINLEY	141	1
TX HUTCHINSON	288	2	RI RIDLAND	138	2
MI WAYNE	280	14	MA MIDDLESEX	137	14
KY JEFFERSON	285	15	TX SHELBY	137	9
CA ALAMEDA	274	23	CA TOLO	134	8
PA PHILADELPHIA	265	16	AZ PINAL	125	4
CA SANTA CLARA	253	29	OH HAMILTON	125	5
KY HANCOCK	250	0	TX DALLAS	125	12
NJ UNION	217	11	KY CARROLL	123	3
TX BRACES	214	6	CA FRESNO	120	14
CA SAN BERNARDINO	213	12	NJ MIDDLESEX	120	14
KY SEDGWICK	204	10	AK UNKNOWN	117	6
CA CHATNAH	202	4	IN LAKE	114	8
AZ MARICOPA	194	17	DE NEW CASTLE	111	7
KY MARSHALL	191	2	IL MADISON	107	4
LA ST CHARLES	184	2	PA WASHINGTON	105	0
TX CALHOUN	181	5	UT SALT LAKE	101	9
OH LUCAS	179	6	NC BEAUFORT	100	1
CA SANTA BARBARA	178	6	FL POLK	92	0
			Total	14,876	730

Source: ERMS database 1988-1992, compiled by NELC
 Note: Only includes accidents with immediate injuries known at the time of notification and excludes chronic health and environmental effects.

Executive Summary

Chemical accidents unnecessarily endanger workers, communities, emergency response personnel, and the environment. The daily barrage of chemical accidents in the United States adds to the toxic pollution that scientists believe may be linked to increasing rates of cancer, birth defects, reproductive dysfunction, immune suppression, and other health problems in humans and wildlife. This report examines chemical accident patterns in the United States from 1988 through 1992 using data obtained from the Emergency Response Notification System (ERNS) database. The ERNS is the largest and most comprehensive database of chemical accident notifications, covering transportation and industrial facility accidents.

NELC's analysis of the ERNS data found that toxic chemical accidents are a common, on-going problem with potential for catastrophe. From 1988-1992, more than 34,500 accidents involving toxic chemicals were reported in the United States. This means that on average nineteen times a day or nearly once an hour an accident was reported in the United States.

Toxic chemical accidents were highly concentrated in a small number of U.S. states and counties. Over half of the chemical accidents occurred in 10 states including California, Texas, Louisiana, Pennsylvania, Ohio, and Illinois. Nearly 40% of the chemical accidents occurred in 63 (of 3,181) U.S. counties.

Toxic chemical accidents have caused still unmeasured damage to human health and the environment. About 6% (one in sixteen) of the chemical accidents which occurred in the United States basin resulted in immediate injuries, evacuations or deaths. An average of two people per day were injured as a result of chemical accidents in the U.S. Over half of the accidents in the U.S. involved the release of toxic chemicals into surface waters or land.

Unfortunately, the ERNS data provides only a small picture of the accident situation in the United States. While ERNS is the largest and most comprehensive dataset available on accidents, it is based primarily on telephone interviews that take place when accidents are reported to authorities. As a result, the number of injuries, quantities of chemicals released, and other information are not fully represented in the ERNS. Furthermore, many industrial and transportation companies do not comply with accident notification rules. As several studies undertaken by state and federal authorities indicate, the severity of the accident picture in the U.S. is gravely understated by the ERNS data.

The number of accidents that happen in the United States points to vulnerabilities with complex production systems that use large amounts of toxic chemicals. Currently, chemical safety programs in this country are preoccupied with responding to accidents and tend to ignore these vulnerabilities. The better approach to accidents would be to prevent them at every stage of toxic chemical production, use, and handling through the relatively new principle of "Inherent Safety". Inherent Safety measures reduce or eliminate the possibility of an accident through the redesign of production systems and the substitution of hazardous chemicals at the facility.

Accidents Do Happen, Page 2

Our society is moving painfully slowly toward real prevention. Though new federal rules require companies to undertake planning to prevent or minimize accidents, the federal agencies responsible for carrying out these rules -- EPA and OSHA -- are more geared to conventional accident mitigation and add-on safety systems rather than fundamental prevention. Existing data sources also inhibit progress because they are either inaccurate, fragmented, or they lack key pieces of information, such as the source (process, chemicals involved) of an accident.

With the goal of significantly reducing chemical accidents and toxic pollution in the United States, NELC recommends the following:

- 1. Aggressive efforts to promote Inherent Safety should be a component of federal, state, and local pollution prevention initiatives, and should be required by EPA's Risk Management Plan rule.** EPA's Risk Management Plan rule, at a minimum, should require companies to conduct a "Technology Options Analysis" of alternatives that would eliminate or substantially reduce accident hazards.
- 2. The President and Congress should promptly appoint the members of the Chemical Safety and Hazard Investigation Board and provide sufficient funding for the Board to fulfill its mandate.** This independent board, a cornerstone of the Clean Air Act Amendments, could be a motivating force in the shift toward Inherent Safety.
- 3. Federal and State agencies should greatly improve public access to meaningful data on past accidents, toxics use, and potential "worst case" accident hazards.** The availability of accurate and complete information is a prerequisite to stimulating accident prevention.
- 4. Business and political leaders should set numerical goals to reduce chemical accidents through Inherent Safety prevention measures.** The commitment to prevent accidents could mirror successful pollution prevention goal setting programs.

TO: Karen Guss

FROM: Deborah J. Drucker, Esq. 

DATE: February 15, 1995

RE: National Chemical Safety and Hazard Investigation Board.

Back to Karen

Most chemical accidents occur in poor, minority communities, tend to have patterns of recurrence and are believed to be preventable. This Board was established after long congressional discussion to provide for independent investigation of such accidents.

Chemical accidents costs lives, disrupt communities, and disrupt the economy. One past accident shut down the Mississippi River to traffic for a day; others have severely curtailed regional plastics manufacturing.

Under the reinventing government initiative, this Board is slated for elimination, with its duties subsumed under EPA and OSHA. This action would be unlawful for two reasons:

1. the 1990 Clean Air Act established the board as an **independent agency** to investigate chemical accidents, modelled on the NSTB;
2. in 27 states the federal OSHA can be barred from conducting investigations.

Further, eliminating the Board would also exacerbate the tort crisis, as its findings cannot be used in tort actions, while those of EPA and OSHA can be.

Congressional interest in this issue remains intense, but bipartisan, at this point. Labor and environmental groups are organizing to fight for it. The Washington Post is onto a story on all this, and several trade press accounts have appeared.

Please call me if you have any questions or need further information: phone: (202) 690-8033; fax: (202) 690-6603.

(Note to Mrs. Clinton 2 of the five Board nominees are women, one of whom is also minority.)

Enclosures

TOP PRIORITY

TO: KAREN GUSS, White House Fellow
Office of the First Lady
Phone: 202/456-5603
Fax: 202/456-7431

MELANNE VERVEER, Office of the First Lady
Phone: 202/456-6266
Fax: 202/456-6244

FROM: DEBORAH J. DRUCKER, ESQ. (for DEVRA LEE DAVIS, PH.D., M.P.H. Confirmed Member, National Chemical Safety and Hazard Investigation Board; Senior Advisor to the Ass't. Sec. for Health)
Reply Phone: 202/690-8033/401-7681
Reply Fax: 202/690-6603

DATE: February 13, 1995

RE: NAT'L. CHEMICAL SAFETY AND HAZARD INVESTIGATION BD.

VIA FACSIMILE TRANSMISSION

OF PAGES: 18

In response to Mrs. Clinton's request, this fax includes the following information about the Chemical Safety Board:

- o bipartisan letter of 1/13/95 to President Clinton from 15 Senators (with signatures of majority and minority chairs of Environment and Public Works Committee) urging the President to complete Board appointments and swear in the Senate-confirmed members of the Board;

- o Internal Memorandum of 1/25/95 from Deborah J. Drucker, Esq. to Devra L. Davis, Ph.D., M.P.H. citing reasons for congressional creation of an independent Chemical Safety Board;

- o EPA/OSHA Joint Accident Investigation Program proposed by OMB in FY '96 (1/19/95);

- o letter of 1/26/95 to T.J. Glauthier from David Drissan, Esq., outlining the serious tort liability issue created by the proposed OSHA/EPA program, and the potential enhancement of industry's liability for suits in damages arising out of accidents investigated by EPA and OSHA;

- o draft of letter dated 1/31/95 to President Clinton from state attorneys general asserting their concern for failure to fund Board;

- o letter to Leon Panetta from City Councillors in Holyoke, Massachusetts, about the consequences to this city of not having a Chemical Safety Board;

- o letter of 1/23/95 to Leon Panetta from Robert Wages, President, Oil, Chemical & Atomic Workers International Union (OCAW) urging the need for Board funding;

- o "Nation Still Needs Chemical Board" The Charleston Gazette, 1/23/95; and

- o BNA article of 1/25/95 reporting on the bipartisan Senators' actions and urging Board funding.

- o The Washington Post, column appearing 1/20/95.

cc: The Honorable Donna Shalala, Secretary,
U.S. Department of Health and Human Services
Fax: 202/690-7203

Lisa Newman
Fax: 202/690-7318

Withdrawal/Redaction Marker

Clinton Library

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Clinton Presidential Records
First Lady's Office
Domestic Policy Council (Karen Guss)
OA/Box Number: 5931

FOLDER TITLE:

Chemical Safety Board

2012-0820-S

ms475

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1** National Security Classified Information [(a)(1) of the PRA]
- P2** Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3** Release would violate a Federal statute [(a)(3) of the PRA]
- P4** Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5** Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6** Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1)** National security classified information [(b)(1) of the FOIA]
- b(2)** Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3)** Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4)** Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6)** Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7)** Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8)** Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9)** Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

DEVRA LEE DAVIS

On October 7, 1994, the Senate confirmed Devra Lee Davis to serve as one of the first Presidential appointees to the newly established Chemical Safety and Hazard Investigation Board, an independent executive branch agency charged with investigating, preventing and mitigating chemical accidents. For the past two years, she has worked as Senior Advisor to the Assistant Secretary for Health, in the Department of Health and Human Services, advising on breast cancer, and environmental, occupational and public health. She has also recently been appointed by the Speaker of the House of Representatives as a Member of the Board of Directors of the Mickey Leland National Urban Air Toxics Research Center. From 1983-1993 at the National Research Council(NRC) of the National Academy of Sciences, Davis held the post of Scholar in Residence of the NRC and the Institute of Medicine, and also served as Director of the Board on Environmental Studies and Toxicology.

A Founder of the International Breast Cancer Prevention Collaborative Research Group, Davis is a Fellow in the American College of Epidemiology, a Senior Member of the American College of Toxicology, and a Fellow in the International Collegium Ramazzini. She also holds the appointment of Visiting Professor, in the Department of Environmental and Occupational Medicine, at Mt. Sinai Medical Center, in New York City, and is a Member of the National Commission on American Jewish Women.

She is the author or contributor to more than the 130 publications and monographs on patterns in cancer, public health, breast cancer, environmental policy and epidemiology, and the molecular biology of carcinogenesis. An advisor to numerous federal and international agencies, Dr. Davis was Science Director of the Environmental Law Institute from 1979-83. At ELI, Davis directed a staff of attorneys, scientists, and economists who advised federal and state governments, and the American Bar Association, American Law Institute, on the development of environmental laws and regulations.

With colleagues at major research institutions, Davis' current research assesses international trends in cancer mortality and incidence, and develops and tests theories on the possible role of environmental and hormonal factors for cancer and other diseases. She has given a number of endowed lectures, including the Bell Core Distinguished Lecture, and she has testified before Congress on a number of occasions. This past year, she received the Woman of Distinction Award from the Conservative Judaism's Women's League, and was honored by the Noreen T. Holland Foundation for "leadership in advancing the understanding of potential environmental causes of breast cancer." In October, she is receiving the Breast Cancer Awareness Award from the Betty Ford Comprehensive Cancer Center and the American Cancer Society for her research on avoidable causes of breast cancer. Recently, her scientific article, "Medical Hypothesis: Xenoestrogens as Preventable Causes of Breast Cancer," was selected as an example of excellence in the field of environmental contamination and toxicology by the editorial board of QUINTESSENCE.

Davis grew up in [REDACTED] P6/b(6) She received B.S. and M.A. degrees as an honors college graduate from the University of Pittsburgh in 1967, Ph.D. in Science Studies from the University of Chicago, as a Danforth Foundation Graduate Fellow from 1967-1972, and a Masters in Public Health, from the Johns Hopkins University in 1982, as a Senior National Cancer Institute Post-doctoral Fellow.

Her research has been profiled in the New York Times Magazine, December 15, 1991, and reported on in other news media and leading scientific news journals, including Science News, Scientific American, the Journal of the National Cancer Institute, and Environmental Health Perspectives.

She is the mother of Aaron, 18, and Lea Davis Morgenstern, 15, and married to Richard D. Morgenstern, Ph.D., Director of the Office of Policy Analysis, EPA.

330 C Street S.W., Room 2018
Department of Health and Human Services
Washington, D.C. 20201
202-690-8033; 401-7681
internet DDAVIS@OASH.SSW.DHHS.GOV fax 690-6603

United States Senate

WASHINGTON, DC 20510

January 13, 1995

Honorable William J. Clinton
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

We are writing to express our serious concern that the members of the Chemical Safety and Hazard Investigation Board have not yet been sworn in, despite Senate confirmation of three Board members by unanimous consent on October 6, 1994.

The Clean Air Act Amendments of 1990 required that a Chemical Safety and Hazard Investigation Board be appointed, upon enactment, by the President with the advice and consent of the Senate. The Board has widespread, bipartisan support. It is simply inexcusable that, more than four years after enactment of the law, the Board is still not in existence.

The purpose of the Board is to investigate accidental releases of certain chemical substances resulting in serious injury, death, or substantial property damage. The Board is modelled after the highly successful National Transportation Safety Board to provide independent, credible assessments of major chemical accidents and to coordinate relevant Federal research and other activities. We believe you will agree that the NTSB is an outstanding model: the public has true confidence in its operations.

Serious chemical releases that urgently require this Board's oversight continue to occur throughout the country, such as the December 5, 1994, release of hazardous chemicals that forced the nighttime evacuation of several thousand people from their homes in Alabama. A report by the Organization for Economic Cooperation and Development (OECD) indicates that, since 1980, the incidence of major industrial accidents has risen to two major accidents per year, representing a 10-fold increase from the period covering post-World War II to 1980.

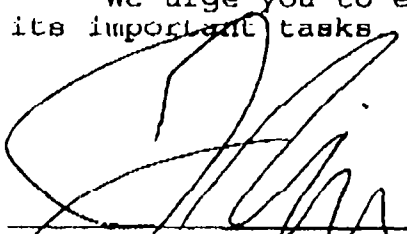
We could go on at length about the justifications for the Board, as set forth in detail in Senate Report 101-228, Report of the Committee on Environment and Public Works, to accompany S. 1630, the Clean Air Act Amendments of 1990. However, those justifications were made and accepted by the Congress and the President more than four years ago. The Administration now has a

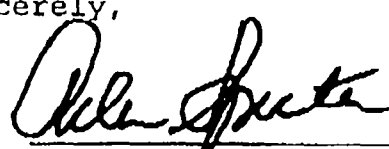
statutory duty to ensure that the Board is established.

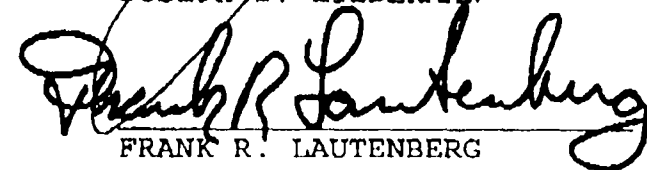
The FY 95 budget contains funds to start the Board. A significantly larger amount of money was included in the Senate appropriations bill, but the Administration's delay in announcing appointments resulted in a reduction in those funds. However, with the existing funds and support from other Agencies (already agreed to), the Board's activities can commence.

We urge you to ensure that the Board begins expeditiously its important tasks.

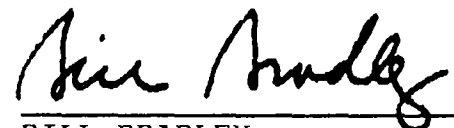
Sincerely,

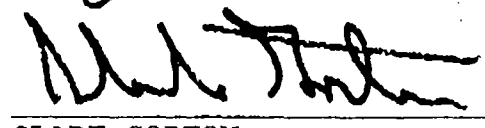

JOSEPH I. LIEBERMAN


ARLEN SPECTER

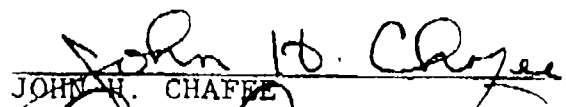

FRANK R. LAUTENBERG


ALFONSE D'AMATO

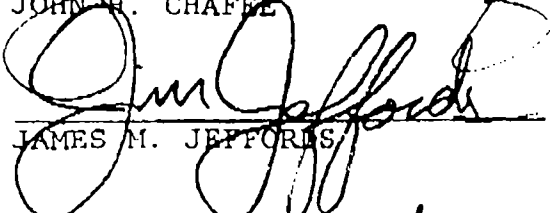

BILL BRADLEY

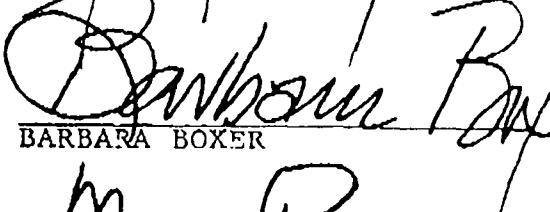

SLADE GORTON

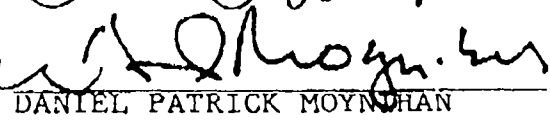

CARL LEVIN


JOHN H. CHAFFEE


JOHN F. KERRY


JAMES M. JEFFORDS


BARBARA BOXER


DANIEL PATRICK MOYNIHAN


MAX BAUCUS


JOHN D. ROCKEFELDER, IV


TOM HARKIN

INTERNAL MEMORANDUM

TO: DEVRA L. DAVIS, PH.D., M.P.H.
FROM: DEBORAH J. DRUCKER, ESQ.
DATE: JANUARY 25, 1995
RE: Reasons for Congress' Creation of an Independent Board

Congress Intended Independent Board Status

In the 1990 Clean Air Act Congress mandated that the National Chemical Safety and Hazard Investigation Board (hereinafter referred to as "CSHIB") operate as an **independent** agency, separate from EPA. **"A Board which did not operate independent from the [EPA's] direction would defeat the objective of stimulating regulatory action -a stimulus created through the organizational tension built into the statutory relationship between the Board and the [EPA]."** See Legislative History, Senate Report No. 101-228 at p. 230.

Separate Board Status Ensures Independent Recommendations to EPA

Congress intended that the CSHIB operate in a manner analogous to the NTSB. The NTSB investigates airline accidents and makes recommendations to the FAA. Through its recommendations for new or revised airline industry regulations, the NTSB "stimulates regulatory action".

Congress legislated that the CSHIB also "stimulate regulatory action" by investigating accidents and recommending new regulations to the EPA. **"The CSHIB is created as an independent source of expertise which may make recommendations for rules and orders to the [EPA]. These recommendations may include a schedule for implementing the proposed actions. The [EPA] is required to make a formal, public response to each recommendation".** See Legislative History, Senate Report No. 101-228 at p. 230.

**EPA/OSHA Joint Accident
Investigation Program**

EPA and OSHA will work together using their respective existing authorities to carry out the responsibilities of the Chemical Safety and Hazard Investigation Board. OSHA and EPA will undertake the following activities in FY 95 and FY 96 to meet these new responsibilities:

- EPA and OSHA will continue existing cooperative activities including joint accident investigations, using this experience to develop a joint investigation protocol. The information gained in this experience will determine whether the existing Memorandum of Understanding (MOU) needs to be modified or a new MOU developed. EPA and OSHA will collaborate with State and local agencies and other stakeholders in these efforts.
- Based on the joint protocol OSHA and EPA will revise their investigation training programs.
- The MOU will identify criteria for selection of accidents for joint investigations, as well as situations where EPA or OSHA may choose to investigate alone.
- OSHA and EPA will continue training of current staff to build our accident investigation capabilities.
- EPA and OSHA will develop a multilevel internal and external expert review process (including "blue ribbon" panels of stakeholders) for accident reports and other chemical safety reports.
- OSHA and EPA will conduct joint investigations, develop reports with findings on accident causation and safety recommendations, and will continue cooperation with State and local agencies and other stakeholders.
- EPA and OSHA will expand contract support to provide technical expertise, analytical support, on-site investigations, and training.
- OSHA and EPA will deliver training on the joint investigation protocol to staff and make it available to other Federal agencies, industry, labor, and other interested parties.
- EPA and OSHA will initiate the expert review process and respond to its recommendations.

1/19/95



Natural Resources
Defense Council

1350 New York Ave., N.W.
Washington, DC 20005
202 783-7400
Fax 202 783-5017

January 26, 1994

FAX 202 895-4619

T. J. Clauthier
Office of Management and Budget
New Executive Office Bldg.
725 17th Street, N.W.
Washington, D.C. 20503

Dear Mr. Clauthier:

Moving the Chemical Safety Board's accident investigation function entirely into EPA and OSHA may enhance industry's liability in suits for damages arising out of the accidents EPA and OSHA investigate. I strongly suggest you ask the general counsel at EPA, OSHA, and the Justice Department (which prosecutes violations of EPA and OSHA regulations) to review this memorandum and to thoroughly analyze potential liabilities arising from the approach OMB advocates under both the Clean Air Act and OSHA for EPA, the Department of Labor, and industry. The Natural Resources Defense Council fears that the litigation and controversy your proposed approach may create would interfere with thorough accident investigations and enforcement of OSHA and EPA requirements.

Increased Industry Liability

Section 112(r)(6)(C) of the Clean Air Act requires the Chemical Safety Board to report its finding about the causes of accidents to the public. Section 112(r)(6)(C) disallows the admission of the Safety Board's conclusions, findings, or recommendations into evidence in any suit for damages arising from an investigated accident. This exclusion performs an important function, it allows industry to participate freely and openly in the Board's effort to find the root causes of accidents without fear that the findings will increase their liabilities flowing from the accident. It also allows the Board to make and publicize very forthright findings. Absent the exclusion, industry would have a monetary incentive to pressure the board into softening up findings whenever liability was possible (i.e. in most serious accidents).

By contrast the Clean Air Act does not provide an evidentiary exclusion for EPA findings. EPA findings made in connection with an accident investigation generally could be introduced as evidence against a company in a civil trial. The admissibility of EPA (and presumably OSHA findings as well) performs a purpose under the law as important as the exclusion of the Chemical Board's Findings. OSHA and EPA must investigate to determine if existing laws have been violated. Legal violations constitute evidence of negligence per se in some States and may be powerful evidence of negligence in others. Excluding the findings of agencies enforcing the law from actions in negligence would unfairly hinder victim compensation in cases where the negligence involved a legal violation. It would force private parties with few resources to prove again what a government agency had already proved in order to receive compensation.

The unavailability of the section 112(r)(6)(G) exclusion to EPA and OSHA investigations may spark substantial involvement of lawyers in thwarting effective investigation of root causes of accidents if industry fears a suit for damages flowing from EPA and OSHA findings. Findings designed to spark corrective action in the future may increase industry liability for accidents that have already occurred, even when the investigated company has not violated any existing government regulations. OSHA and EPA inspectors may still help an independent board investigate. But where the root causes do not involve violations of the existing patchwork of regulations, some independent investigation and findings by the Board will be necessary.

In addition, under section 113(b) EPA has the authority and duty to prosecute violations of the Act. As a result, industry may cooperate less perfectly with EPA inspectors than with a Board that has no such duty. Similar problems exist with respect to OSHA.

EPA and OSHA Liability

Please ask counsel for EPA, OSHA and the Justice Department to carefully evaluate the potential liabilities and problems that may make it difficult for EPA and OSHA to investigate and publicize the root causes of accidents. What tools can lawyers use to resist thorough investigations when negative findings and published reports may trigger liability for damages? The conflict of interest situation OMB's draft proposal to do away with the Safety Board creates is bound to increase resistance to discovering and publicizing the root causes of accidents.

3

I hope this letter is helpful please call me at 783-7800 if I can be of any further assistance.

Sincerely,



David Drissen
Senior Project Attorney

cc: Carol Browner, Administrator, EPA
Alice Rivlin, Director, OMB
Liz Montoya, Associate Director, Presidential Personnel
Katie McGinty, Director, Office of Environmental Policy
Greg Simon, Chief Domestic Policy Advisor
to the Vice President
Carol Rasco, Assistant to the President for Domestic Policy
Mary Nichols, EPA
David Doniger, EPA
Robert Brenner, EPA

~~CONFIDENTIAL~~

DRAFT LETTER FOR A NATIONAL ATTORNEY GENERAL'S SIGN ON LETTER

January 31, 1995

President William Clinton
White House
Washington, DC 20500

2012-0820-5
DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: MA DATE: 9-10-12

Dear President Clinton:

in the strongest possible terms

We are writing to urge you to constitute the Chemical Safety and Hazard Investigation Board ("CSHIB") and seek sufficient funds from Congress to allow it to begin its legally required investigations of explosions and releases of toxic chemicals from chemical plants and refineries. Press reports suggest that the Administration may be considering a decision to eliminate funding for the CSHIB.

The CSHIB, which was established by the Clean Air Act Amendments of 1990 (§112[r][6]), is a non-regulatory, independent, five-member Board charged with responsibility to identify the root cause of accidents and chemical releases in extremely hazardous industries and recommend ways to prevent their recurrence. The CSHIB was patterned after the independent National Transportation Safety Board ("NTSB"), which investigates air plane accidents and recommends safety improvements to the Federal Aviation Administration and the aircraft industry.

Across the nation, an average of 19 chemical accidents occur daily. From 1982-86 there were close to one-half million people who had to be evacuated from hazardous chemical spills, leaks and explosions. Major catastrophes in Montana, Iowa, Louisiana, California, Texas, Ohio, Pennsylvania have occurred in the past year; however, there has been no expert and independent assessment or recommendations on the best way to prevent these from occurring elsewhere in the country. Thus, each accident is a double tragedy--first for the loss of life and property and second because the chance to learn and prevent others has been lost.

Although OSHA and EPA have substantial authority, neither can provide the scope or independence granted to the CSHIB. First, OSHA lacks the authority to unilaterally investigate accidents in those 27 states where OSHA's authority has been delegated to the state. Second, because evidence gathered by the CSHIB cannot be used as evidence in a court of law, industries that are under investigation will be more willing to disclose relevant facts to CSHIB without fear of adverse consequence--an advantage not enjoyed by EPA and OSHA. Third, EPA and OSHA are charged with enforcing the violation of rules, standards and regulations--not getting to the root cause of accidents regardless of whether or not there are

-2-

violations of law. Fourth, no report of the CSHIB shall be subject to review by EPA or any federal agency or court, thus freeing the Board's to focus exclusively on its non-regulatory, fact-seeking mission.

After lengthy discussion, Congress specifically concluded that existing federal authority was not sufficient to accomplish the aims of an independent executive agency. However, Congress did not ignore EPA and OSHA's important work or their respective roles in investigations. Rather, Congress explicitly ordered that the CSHIB maximize opportunities to combine resources with other federal agencies. This is consistent with the Administration's Reinventing Government initiative, and the desire to be prudent in expending federal resources.

Moreover, Congress recognized that there would be "a stimulus created through the organizational tension built into the statutory relationship between the Board and [EPA]." (See: Senate Report No. 101-228 at p. 230.) This same type of stimulus by the National Transportation Safety Board serves to motivate the Federal Aviation Administration to promote ever higher levels of airline safety--something we all agree benefits the public.

As a matter of policy, we believe the Administration should implement the statutory mandate contained in the Clean Air Act Amendments by (1) requesting sufficient funding in the FY 96 budget to allow the Board to begin its investigatory work, (2) swearing in the three Board nominees who were confirmed by the U.S. Senate on October 6, and (3) submitting the other two nominees you have announced to the Senate for confirmation.

We look forward to cooperating with you in establishing the Chemical Safety and Hazard Investigation Board.

Sincerely,



MUNICIPAL OFFICE BUILDING

The City of

H O L Y O K E

M a s s a c h u s e t t s 01040

CITY COUNCIL
CITY HALL
HOLYOKE, MA

31 January 1995

Leon Panetta
Chief of Staff
White House
Washington, DC 20500

Dear Mr. Panetta:

We are disturbed to learn that the Office of Management and Budget ("OMB") has decided to "zero out" funding for the independent Chemical Safety and Hazard Investigation Board ("CSHIB"), in contravention with the requirements of Section 112(r) of the Clean Air Act Amendments of 1990. We urge the President to continue forward on the path he charted when he announced that he was going to constitute the CSHIB and nominate the Board members. The OMB has apparently strayed off of the course set by the President for reasons that do not appear defensible or legal.

Holyoke is home to a large polystyrene resins manufacturing plant, which sits on the banks of the Connecticut River. As City officials we cannot overlook the fact that there was no independent CSHIB investigation in the aftermath of the large polystyrene plant explosion and fire in Belpre, Ohio last year. The explosion forced 1700 people to evacuate (according to Shell Chemical), caused 3 deaths, and dumped over 500,000 lbs of styrene and other toxic chemicals into the Ohio River. Water treatment plants had to close for 50 miles downstream. Without an independent and credible answer to the root-cause of the Belpre explosion, what assurance do we have that regulations are adequate to prevent a comparable catastrophe in Holyoke? Or elsewhere?

If chemical accidents such as these are preventable, then so are the costs to local and state government of responding to these accidents. The administration is pursuing a penny-wise and pound foolish approach to government by eliminating a low-cost measure of prevention in favor of expensive emergency response costs and lost lives. While President Clinton advocates universal immunization because it is a low-cost way to reduce disease and avoid the high costs of treatment, the OMB, in the name of "reinventing government", is eliminating an ounce-of-prevention in favor of a pound-of-cure.

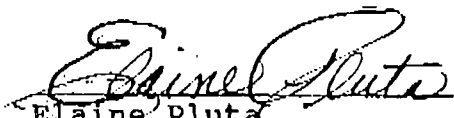
To "zero out" this Board in the name of reinventing government completely misses the mark. Congress explicitly ordered the Board to maximize opportunities to combine resources with other federal agencies. This directive supports the Administration's reinventing government initiative. Senator James Jeffords inserted provisions into the final legislation to assure coordination between OSHA and EPA through a Memorandum of Understanding.

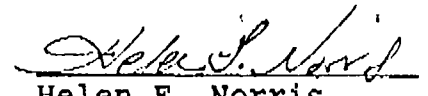
The President needs to continue on the course of action he initiated last July when he announced his nominees to the Board. Furthermore, as a matter of law, we question whether the President has the discretion not to constitute the CSHIB.

Thus, it is clear that President Clinton should immediately: (1) overrule the "green-eyeshades" at OMB and seek Congressional funding, (2) swear in his three superb appointments to the CSHIB who were confirmed by the Senate on October 6, and (3) submit the two remaining nominees to the Senate for confirmation.

We look forward to your response.

Sincerely,


Elaine Pluta
City Council, At Large


Helen F. Norris
City Council, Ward 3



OCAW

OIL, CHEMICAL & ATOMIC WORKERS INTL UNION, AFL-CIO

January 23, 1995

ROBERT E. WAGES
PRESIDENT

ERNEST J. KOUNELLE
SECRETARY-TREASURER

L. CALVIN MOORE
VICE PRESIDENT

JAMES K. PHILLIPS, JR.
VICE PRESIDENT

INTERNATIONAL
OFFICE
255 UNION BLVD.
LAKEWOOD, CO
80228

MAIL
P.O. Box 281200
LAKEWOOD, CO
80228-8200

303-987-2229
FAX: 303-987-1967

VIA FAX - (202) 456-2883

Mr. Leon Panetta
Chief of Staff to the President
The White House
Washington, DC 20500

Dear Mr. Panetta:

This letter urges the Administration to include funding in the FY 96 Budget Request for the Chemical Safety and Hazard Investigation Board (CSIB), which was established by the Clean Air Act Amendments of 1990 to investigate the cause of catastrophic accidents and chemical releases in high hazard industries and make recommendations on preventing future accidents--similar to the mission of the National Transportation Safety Board. **THIS IS A VERY HIGH PRIORITY FOR WORKERS IN THE REFINING, CHEMICAL AND HIGH HAZARD INDUSTRIES.**

During a January 19, 1995, meeting with the CEO Director, Katie McGinty, and T. J. Glauthier of the Office of Management and Budget, we were informed that the Administration was proposing to place an added \$6.0 million into the Environmental Protection Agency and the Occupational Safety and Health Administration for accident investigation--as a substitute for funding the statutorily mandated Chemical Safety and Hazard Investigation Board. This is a fundamentally misguided policy for the following reasons (1) it bypasses the Board's independence from all regulatory agencies, (2) OSHA doesn't have guaranteed access to facilities in the 27 OSHA state-plan states and (3) a requirement for the 27 state OSHA programs to do separate investigations would be redundant and wasteful.

Unlike OSHA, which is charged with enforcement of rules and standards, the CSIB's mission is to find the root cause of accidents and recommend measures to whichever agency is appropriate. The OMB's counter-proposal to create "blue ribbon panels" and "stakeholder" oversight of OSHA investigations is laughable. I have been a "blue ribbon" panelist and this proposed mechanism is a pathetic substitute for independence. Killing this Board is not reinventing government. It is zeroing out legislation. The Administration is giving those who would like to zero out other safety and health laws the cover they need.

Continued . . .

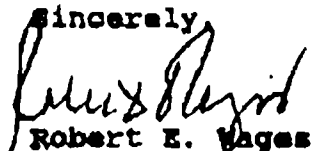
Mr. Leon Panetta
January 23, 1995
Page 2

Three of the five members of the CSIB were confirmed by the Senate on October 6. At this point, we find it incomprehensible why the President will not swear in the members of the Board and use the limited funds appropriated by Congress to get the CSIB up and running in FY 95 while we work to pass appropriations for FY 96.

A bipartisan letter from 15 Senators has told you they want the CSIB members sworn in and funding requested in FY 96. The Louisiana Attorney General has told you of the litany of accidents and deaths that show little sign of abating and asked you to fund the CSIB. The AFL-CIO has weighed in in unequivocal terms. The Industrial Union Department of the AFL-CIO, the Steelworkers, the Chemical Workers, the United Auto Workers, the Communication Workers, the Amalgamated Clothing and Textile Workers, the United Rubber Workers and our union, OCAW, have all written to the Administration in support of the CSIB. Environmental groups, including EDF, NRDC, World Wildlife Fund, U. S. PIRG, Friends of the Earth and scores of grassroots groups across the country have signaled their support for the CSIB in recent weeks. The San Francisco Chronicle editorial-ized in support of funding the CSIB.

The logic escapes us why the Administration is reluctant to request funding for the CSIB. George Bush did it. The two previous Clinton Administration budgets requested funding. Why are you now reluctant to shift the burden to Congress to fund it?

Finally, please advise us what we should tell our members after the next major catastrophe?

Sincerely,

Robert E. Hayes
President

REW/raa

cc: International Officers
Mr. T. J. Glauthier, OMB (Fax - 202/388-4619)

The Charleston

Gazette

11/23/95 p.3

VIEWPOINT

Safety compromised

Nation still needs chemical board

By Paul Orum

ON the tenth anniversary of Bhopal, thousands of people were evacuated and four were killed by a massive explosion that devastated Terra Industries in Sioux City, Iowa. In the U.S. today, nearly one chemical fire, spill or explosion occurs every hour.

To prevent such accidents, Congress established an Independent National Chemical Safety Board in 1990. Four years later the board still does not exist. The White House is poised to kill funding for the board, which has enjoyed broad bipartisan support.

Record numbers of huge petrochemical catastrophes have occurred in the U.S. in recent years. In 1991 and 1992 alone, 15 major chemical accidents destroyed over \$1 billion in property, killing or maiming working men and women, and causing thousands to be evacuated from homes, schools, and hospitals. From 1988 to 1992, some 34,500 U.S. accidents released 680 million pounds of toxic chemicals. Seventeen past U.S. accidents spewed as much dangerous chemicals as were released at Bhopal.

Congress modeled the chemical board after the respected and effective National Transportation Safety Board, which has earned public confidence with expert investigations of fatal airplane crashes. The chemical board is a similarly independent public watchdog, established to investigate accidents and report to the public, government and industry on how to prevent them.

Last July, President Clinton nominated five high-qualified board members. The Senate un-

Recent major accidents

1987 — Texas City, Texas, Oct. 30: Hydrogen fluoride from a damaged storage tank at Marathon Oil spreads a ground-hugging plume across Texas City, forcing extensive evacuations and sending 1,000 people to local hospitals.

1988 — Henderson, Nev., May 4: Ammonium perchlorate, used in rocket fuel, explodes at Pacific Engineering's plant near Las Vegas, killing 2, injuring 350 and measuring 3.5 on the Richter scale 200 miles away in Pasadena, Calif.; damages reach \$73 million.

1989 — Pasadena, Texas, Oct. 23: A massive explosion destroys a Phillips Petroleum plastics plant, leaving 23 dead, over 200 injured and more than \$1 billion in damages.

1990 — Channelview, Texas, July 5: An explosion and fire at ARCO Chemical kills 17 workers and flattens an area the size of a city block.

1991 — Sterlington, La., May 1: An explosion at

IMC Chemical kills 8, injures 100, and renders the plant into a twisted mass of metal; property damages exceed \$100 million.

1992 — Wilmington, Calif., Oct. 8: A vapor cloud from a Texaco refinery explodes in a poor Los Angeles neighborhood, damaging the refinery and homes and shattering windows several miles away; property damage: \$72 million.

1993 — Richmond, Calif., July 26: A sulfur trioxide leak at General Chemical drifts for miles downwind through a lower-income minority community, closing the roads and rail lines; some 20,000 nauseous people seek assistance from area hospitals for irritated skin, eyes and lungs.

1994 — Belpre, Ohio, May 27: A Shell Chemical facility explodes, killing 3 workers and flushing a half million pounds of poisonous styrene into the Ohio River, shutting down plastics production for months.

animously confirmed the first three on Oct. 6, 1994. However, budget cutters at the Office of Management and Budget are now angling to eliminate the board. Would the Administration halt NTSB investigations of airline crashes to save a few million dollars?

Accidents at refineries and chemical plants continue to take a heavy toll. On May 27, 1994, a Shell Chemical facility exploded in Belpre, Ohio, killing three workers and flushing a half million pounds of poisonous styrenes into the Ohio River.

These accidents have significant costs — in human lives, health care, property damage, lost jobs and cleanup — which often are borne by financially strapped local governments. Local response costs for preventable accidents dwarf the board's \$5 million annual budget.

Current trends are likely to make the situation worse, not better. A 1994 survey by Industrial Safety and Hygiene News, an industry trade publication, reported that 78 percent of its readers believe corporate downsizing will

Why kill the board now? November's elections demanded more accountability from government, not less. The president and Congress should work together and fully fund the independent chemical safety board.

lead to more accidents.

With each accident, the public loses confidence in industry to self-regulate and in government to protect public safety. Expert, independent oversight is needed to ensure that both government and industry will take appropriate steps to prevent future catastrophes. The limited funding the chemical board requires will provide countless dividends in better worker and community safety — safety that can't be purchased by families with a middle class tax cut.

Why kill the board now? November's elections demanded more accountability from government, not less. The president and Congress should work together to complete the appointments and fully fund the independent chemical safety board.

Orum is a coordinator for The Working Group on Community Right-to-Know, an affiliation of public interest groups concerned with the public's right to know about toxic pollution and chemical accidents.

SENT BY:

1-25-95 ; 3:12PM ;

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BNA OCCUPATIONAL SAFETY & HEALTH DAILY
January 25, 1995

Process Safety
SENATORS CALL ON CLINTON TO PROVIDE FUNDS
TO LAUNCH STALLED CHEMICAL INVESTIGATION BOARD

WASHINGTON (BNA) -- A bipartisan effort has been launched in the Senate to prod the White House to fund an independent board created in 1990 to investigate serious accidents that could harm workers in the chemical and petrochemical industries, several Senate aides told BNA Jan. 18.

Sen. Joseph Lieberman (D-Conn) joined Sen. Arlen Specter (R-Pa) and 13 other senators in calling on President Clinton to provide full funding for the Chemical Safety and Hazard Investigation Board, according to a Jan. 13 letter to the president.

Created under the Clean Air Act amendments of 1990, the chemical board quickly fell victim to political infighting and budget debates within the Bush and Clinton administrations; after four years the board has yet to hold its first meeting. The Clinton administration made some headway in October when the Senate cleared three board members, but its Office of Management and Budget has questioned whether the \$5 million needed for the board's implementation might be better spent on other programs (24 OSHR 1025).

"It is simply inexcusable that, more than four years after enactment of the law, the board is still not in existence," according to the letter, which also was signed by Sens. Frank Lautenberg (D-NJ); Alfonse D'Amato (R-NY); Bill Bradley (D-NJ); Slade Gorton (R-Wash); Carl Levin (D-Mich); John Chafee (R-RI); John Kerry (D-Mass); James Jeffords (R-Vt); Barbara Boxer (D-Calif); Daniel Patrick Moynihan (D-NY); Max Baucus (D-Mont); John D. Rockefeller (D-WVa); and Tom Harkin (D-Iowa).

Board Advocates Respond

John Adams, the National Resources Defense Council's executive director, said in a Jan. 18 letter to the president the administration's refusal to fund the board could send a mixed message to those in the Republican-led Senate and House who may "seek to rewrite laws that protect public health and safety through selective budgeting."

"The administration will be poorly positioned to oppose any of these irresponsible efforts to evade public accountability and circumvent the President's right to veto poor substantive legislation, if it has itself tried to rewrite the Clean Air Act through the budget," the letter said.

In addition to its investigative responsibilities, the chemical investigation board was required by Congress to report to the Occupational Safety and Health Administration and the Environmental Protection Agency on recommended regulations for addressing workplace and environmental issues within the industry. However, those never-completed reports were required by November 1992 (20 OSHR 1035).

Rumors that the White House might eliminate funding for the board even as it has moved forward in nominating the board members sparked the effort, according to Paul Orum, coordinator of the Working Group on Community Right-To-Know, a Washington, D.C.-based environmental group.

"Budget cutters at the White House Office of Management and Budget are angling to kill the board," Orum said. "They want to fold it into the Environmental Protection Agency and the Occupational Safety and Health Administration at a time when their budgets are under attack and their authorities are threatened," Orum contended.

Orum said the real issue remains the independence of the board. For instance, under Section 112(r) of the clean air legislation, the board was designated the national repository for chemical accident information.

"Without the board the information only will be available locally," Orum said. "Nationally compiled data is of major importance to investment researchers, insurers, and reporters trying to find out the accident histories of these facilities," he said.

OCAW Withdraws

In protest over the lack of funding for the board, the Oil, Chemical and Atomic Workers union has withdrawn its membership in the petroleum sector of EPA's Common Sense Initiative, a voluntary pollution prevention program, an OCAW official told BNA.

"We exert pressure where we can. The chemical safety board is a statutory requirement of the Clean Air Act. This is not an optional deal. We expect this to be done," according to Joe Anderson, director of health and safety for the union.

While the Chemical Manufacturers Association has not publicly called for eliminating the board, the industry group also is not actively lobbying the administration to approve the funding, according to a CMA spokesman.

"CMA takes the position that the board duplicates much of the process safety work already being done at EPA and OSHA. Let's let the regulatory agencies do the work," the spokesman said.

An association representative suggested to BNA in December that in light of the Republican takeover of the House and Senate, a congressional hearing "on the board and its mission" might be appropriate, but no date has been scheduled (24 OSHR 1513).

White House Absolutely Might Fill Vacancy

By Al Kamen

Washington Post Staff Writer

The White House appears to be circling slowly around the possibility of making a decision on filling some of the top jobs still open. The *nom du jour* for Cabinet secretary is **Kathryn O'L. "Kitty" Higgins**, now chief of staff to Labor Secretary **Robert B. Reich**. Higgins was assistant director of the domestic policy staff in the Carter White House and worked for Sen. **Edward M. Kennedy** (D-Mass.) and Rep. **Sander M. Levin** (D-Mich.) before that.

The appointment couldn't come too soon. More junior White House types have been running the morning telephone meetings with the Cabinet chiefs of staff, but some chiefs are said to have been playing hooky of late.

Same old names are floating about for political director, with White House aide **Doug Sosnik**, who used to work for incoming Democratic National Committee General Chairman **Christopher J. Dodd**, still said by some to be the likely pick there. On the other hand, some longtime watchers of President **Clinton** note the emerging rule of thumb that the likelihood of appointment is inversely proportional to the time a name stays "out there."

Most of the names for possible CIA director have also been floating, sinking and floating again. A name heard in the corridors at Justice and the Pentagon is Deputy Attorney General **Jamie S. Gorelick**, formerly Pentagon general counsel, who has done a lot of work with the agency in both jobs and is highly regarded by Clinton and her current and former bosses. But that would leave a gaping hole at a department Clinton might not want to mess with.

The National Security Council staff was buzzing last week with rumors that deputy national security adviser **Samuel R. "Sandy" Berger** might be moving out to Langley. And Defense Secretary **William J. Perry**, Deputy Secretary **John M. Deutch** and Joint Chiefs Chairman **John Shalikashvili** are hunkered down to stop Clinton from even thinking about moving rising star **Adm. William Owens**, now vice chairman of the Joint Chiefs.

White House spokesman **Michael McCurry** yesterday promised an announcement shortly.

Meanwhile, deputy press secretary **Arthur Jones**, just a couple of weeks shy of two years in the job, is moving to the media affairs office to work on the State of the Union and budget matters and is then going to explore options inside and outside the administration.

Speaking of McCurry

■ A little going-away party at the State Department was off-the-record, but a recounting cobbled together has produced this list of the "Top Seven Reasons" (there were 10 originally but then came downsizing) why McCurry moved to the White House:

7. The State Department press corps already knows all of his jokes.

6. Two words—**Elaine Sciolino** [of the New York Times].

5. He needed a better excuse to get out of the 2 a.m. feedings. [A third child is on the way.]

4. He got his career advice from [former New Jersey senator] **Harrison Williams**, McCurry's old boss.

3. The secret's out—He's a Bubba wannabe.

2. Secretary [Warren] **Christopher** kept telling him to lighten up.

1. [A reference to former surgeon general **Joycelyn Elders**'s suggested school curriculum.]

Less-Than-Supreme Pay Raises

■ Some Supreme Court employees are angry about their measly 2 percent raise for 1995. The raise doesn't include additional "locality" pay received by some federal workers in Washington and other high-cost-of-living areas. Seems Chief Justice **William H. Rehnquist** is philosophically opposed to locality pay.

But some employees aren't so philosophical about it, according to the Associated Press. Some now refer to Rehnquist, behind his back, as "Mr. Cheap Justice" and point out he's the only court employee with a 1995 Cadillac limousine and two chauffeurs.

Clock Is Ticking for Chemical Board

■ It's hardly news that it takes the Clinton administration forever to pick people for jobs. Now it seems it can take forever to do something as simple as swearing them in.

The Chemical Safety and Hazard Investigation Board, established under the Clean Air Act amendments in 1990, has never met. The Bush administration didn't nominate anyone and it took the Clintonites 18 months to do so.

But the Senate confirmed new members on Oct. 6, and a bipartisan group of 15 senators wants to know why they haven't been sworn in.

"It is simply inexcusable," said the group, led by Sens. **Joseph I. Lieberman** (D-Conn.) and **Arlen Specter** (R-Pa.), that more than four years after enactment of the law, the Board is still not in existence." The administration, they said, "now has a statutory duty to ensure that the Board is established."

Louisiana's attorney general, **Richard P. Ieyoub Jr.**, also weighed in with a letter to Clinton asking for prompt action and noting that "explosions at refineries and chemical plants have killed workers and discharged heavy pollution into many Louisiana communities."

The board may never get sworn in. Seems the green-eyeshade crowd at the Office of Management and Budget has put the Board, which is to investigate accidental releases of chemicals, on the chopping block. The unions and enviros met with White House types yesterday to complain. We hear it wasn't pleasant.

The administration feels the board's whopping \$6 million budget might be used for other purposes.

How about laptops for chemical workers?

The
Washington
Post

Friday, 1/20/95

FAX TRANSMITTAL

of pages ▶

To Dana Davis	From K. Cross
Dept./Agency	Phone # 456 5603
Fax # 205 4840	Fax # 456 7431

NSN 7540-01-317-7368

5099-101

GENERAL SERVICES ADMINISTRATION

To: Devra Davis
Deborah Drucker

From: Karen Guss

Date: Feb. 17, 1995

Re: National Chemical Safety and Hazard Investigation Board

I have been asked to write a memo for the First Lady on the NCSHIB. Please assist me by answering the following questions:

1. What specifically would the NCSHIB's function be? Would the NCSHIB investigate every overturned chemical truck on the Beltway or would its role be targeted to large accidents such as the Burlington Northern derailment in Duluth/Superior a few years ago?
2. What are the two or three most powerful arguments for why the NCSHIB is needed? (Deborah, you touched on this in your memo to me).
3. Why can't the EPA and OSHA take over the functions that are assigned to the NCSHIB? Have the EPA and/or OSHA been given increased budgets or enhanced powers to fulfill these functions?
4. Who made the decision to zero fund the NCSHIB? Was eliminating NCSHIB funding a National Performance Review recommendation or did OMB decide this on their own.

I would also appreciate a copy of the section of the Clean Air Act that authorizes or requires the creation of the NCSHIB.

February 17, 1993

To: Karen Guss

From: Devra Davis

Re your questions

1. The Chemical Safety Board was established to investigate the root cause of major chemical accidents (not involving transportation). Of the estimated 19 chemical accidents that occur daily, at least one requires evacuations or causes injuries or deaths. To paraphrase Tolstoy on families, all safe factories are distinct, all hazardous ones can be related.

2. Currently no independent authority exists to investigate these accidents, which tend to occur in poor, minority and rural areas. Without information on root causes, preventable accidents will recur. (E.G., An explosion levelled Iowa's largest fertilizer plant for several blocks; if it had occurred an hour later, more than 100 would have been killed. It will take a year to rebuild the plant, but no one knows the root cause of the accident, which could happen again.

3. Assigning EPA and OSHA to take over the Board's responsibilities will not work for four reasons: first of all, it is illegal, in terms of the 1990 Clean Air Act, which expressly established an independent executive authority, after a long legislative history that considered the capacities of existing federal authorities and the need for independent authority; second, both these agencies are under intense pressure from the new Congress to perform less with less resources, so that any effort to give them additional moneys, will ultimately result in their having less overall latitude and support; third, in 27 states federal OSHA can be barred from conducting investigations (this happened last year in North Carolina, when the federal OSHA was unable to investigate a fatal chicken processing plant fire); finally, in many instances accidents occur in plants that have followed EPA and OSHA regulations. Having these agencies investigate accidents, basically puts the fox in charge of the chicken coop.

4. The decision for 0 funding came from T J Glauthier at OMB, who marketed this as an NPR/REGO recommendation, without realizing the legal and policy implications of this decision, which "saves" (but reprograms into the ether of reinvented government in larger agencies) \$6 million this year.

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"(5) **THRESHOLD QUANTITY.**—At the time any substance is listed pursuant to paragraph (3), the Administrator shall establish by rule, a threshold quantity for the substance, taking into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury or ~~serious adverse effects to human health~~ for which the substance was listed. The Administrator is authorized to establish a greater threshold quantity for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer.

* **"(6) CHEMICAL SAFETY BOARD.**—

"(A) There is hereby established an independent safety Establishment.
board to be known as the Chemical Safety and Hazard Investigation Board.

"(B) The Board shall consist of 5 members, including a Chairperson, who shall be appointed by the President, by and with the advice and consent of the Senate. Members of the Board shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, toxicology, or air pollution regulation. The terms of office of members of the Board shall be 5 years. Any member of the Board, including the Chairperson, may be removed for inefficiency, neglect of duty, or malfeasance in office. The Chairperson shall be the Chief Executive Officer of the Board and shall exercise the executive and administrative functions of the Board.

"(C) The Board shall—

"(i) investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances ~~and the cause of probable~~ cause of any accidental release resulting in a fatality, serious injury or substantial property damages;

"(ii) ~~issue periodic reports to the Congress, Federal, State and local agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration, concerned with the safety of chemical production, processing, handling and storage,~~ Reports.
and other interested persons recommending measures to reduce the likelihood or the consequences of accidental releases and proposing corrective steps to make chemical production, processing, handling and storage as safe and free from risk of injury as is possible and may include in such reports proposed rules or orders which should be issued by the Administrator under the authority of this section or the Secretary of Labor under the Occupational Safety and Health Act to prevent or minimize the consequences of any release of substances that may cause death, injury or other serious adverse effects on human health or substantial property damage as the result of an accidental release; and

"(iii) establish by regulation requirements binding on persons for reporting ~~accidental releases into the environment~~

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blent air subject to the Board's investigatory jurisdiction. Reporting releases to the National Response Center, in lieu of the Board directly, shall satisfy such regulations. The National Response Center shall promptly notify the Board of any releases which are within the Board's jurisdiction.

"(D) The Board may utilize the expertise and experience of other agencies.

"(E) The Board shall coordinate its activities with investigations and studies conducted by other agencies of the United States having a responsibility to protect public health and safety. The Board shall enter into a memorandum of understanding with the National Transportation Safety Board to assure coordination of functions and to limit duplication of activities which shall designate the National Transportation Safety Board as the lead agency for the investigation of releases which are transportation related. The Board shall not be authorized to investigate marine oil spills, which the National Transportation Safety Board is authorized to investigate. The Board shall enter into a memorandum of understanding with the Occupational Safety and Health Administration so as to limit duplication of activities. In no event shall the Board forego an investigation where an accidental release causes a fatality or serious injury among the general public, or had the potential to cause substantial property damage or a number of deaths or injuries among the general public.

"(F) The Board is authorized to conduct research and studies with respect to the potential for accidental releases, whether or not an accidental release has occurred, where there is evidence which indicates the presence of a potential hazard or hazards. To the extent practicable, the Board shall conduct such studies in cooperation with other Federal agencies having emergency response authorities, State and local governmental agencies and associations and organizations from the industrial, commercial, and non-profit sectors.

"(G) No part of the conclusions, findings, or recommendations of the Board relating to any accidental release or the investigation thereof shall be admitted as evidence or used in any action or suit for damages arising out of any matter mentioned in such report.

Reports.

"(H) Not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990, the Board shall publish a report accompanied by recommendations to the Administrator on the use of hazard assessments in preventing the occurrence and minimizing the consequences of accidental releases of extremely hazardous substances. The recommendations shall include a list of extremely hazardous substances which are not regulated substances (including threshold quantities for such substances) and categories of stationary sources for which hazard assessments would be an appropriate measure to aid in the prevention of accidental releases and to minimize the consequences of those releases that do occur. The recommendations shall also include a description of the information and analysis which would be appropriate to

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include in any hazard assessment. The Board shall also make recommendations with respect to the role of risk management plans as required by paragraph (8)(B) in preventing accidental releases. The Board may from time to time review and revise its recommendations under this subparagraph.

"(I) Whenever the Board submits a recommendation with respect to accidental releases to the Administrator, the Administrator shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator shall indicate whether the Administrator will—

"(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;

"(ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Administrator not to implement a recommendation of the Board or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Administrator setting forth the reasons for such determination.

"(J) The Board may make recommendations with respect to accidental releases to the Secretary of Labor. Whenever the Board submits such recommendation, the Secretary shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator shall indicate whether the Secretary will—

"(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;

"(ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Secretary not to implement a recommendation or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Secretary setting forth the reasons for such determination.

"(K) Within 2 years after enactment of the Clean Air Act Amendments of 1990, the Board shall issue a report to the Administrator of the Environmental Protection Agency and to the Administrator of the Occupational Safety and Health Administration recommending the adoption of regulations for the preparation of risk management plans and general requirements for the prevention of accidental releases of regulated substances into the ambient air (including recommendations for listing substances under paragraph (3)) and for the mitigation of the potential adverse effect on human health or the environment as a result of accidental releases which should be applicable to any stationary source handling any regulated substance in more than

Reports.

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threshold amounts. The Board may include proposed rules or orders which should be issued by the Administrator under authority of this subsection or by the Secretary of Labor under the Occupational Safety and Health Act. Any such recommendations shall be specific and shall identify the regulated substance or class of regulated substances (or other substances) to which the recommendations apply. The Administrator shall consider such recommendations before promulgating regulations required by paragraph (7)(B).

"(L) The Board, or upon authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Board, may for the purpose of carrying out duties authorized by subparagraph (C)—

"(i) hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise attendance and testimony of such witnesses and the production of evidence and may require by order that any person engaged in the production, processing, handling, or storage of extremely hazardous substances submit written reports and responses to requests and questions within such time and in such form as the Board may require; and

"(ii) upon presenting appropriate credentials and a written notice of inspection authority, enter any property where an accidental release causing a fatality, serious injury or substantial property damage has occurred and do all things therein necessary for a proper investigation pursuant to subparagraph (C) and inspect at reasonable times records, files, papers, processes, controls, and facilities and take such samples as are relevant to such investigation.

Whenever the Administrator or the Board conducts an inspection of a facility pursuant to this subsection, employees and their representatives shall have the same rights to participate in such inspections as provided in the Occupational Safety and Health Act.

"(M) In addition to that described in subparagraph (L), the Board may use any information gathering authority of the Administrator under this Act, including the subpoena power provided in section 907(a)(1) of this Act.

"(N) The Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties. The Board is authorized without regard to section 5 of title 41 of the United States Code to enter into contracts, leases, cooperative agreements or other transactions as may be necessary in the conduct of the duties and functions of the Board with any other agency, institution, or person.

"(O) After the effective date of any reporting requirement promulgated pursuant to subparagraph (C)(iii) it shall be unlawful for any person to fail to report any release of any extremely hazardous substance as required by such subparagraph. The Administrator is authorized to enforce any regulation or requirements established by the Board pursuant to subparagraph (C)(iii) using the authorities of sections 113 and 114. Any request for information from the

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owner or operator of a stationary source made by the Board or by the Administrator under this section shall be treated, for purposes of sections 113, 114, 116, 120, 303, 304 and 307 and any other enforcement provisions of this Act, as a request made by the Administrator under section 114 and may be enforced by the Chairperson of the Board or by the Administrator as provided in such section.

"(P) The Administrator shall provide to the Board such support and facilities as may be necessary for operation of the Board.

"(Q) Consistent with subsection (G) and section 114(c) any records, reports or information obtained by the Board shall be available to the Administrator, the Secretary of Labor, the Congress and the public, except that upon a showing satisfactory to the Board by any person that records, reports, or information, or particular part thereof (other than release or emissions data) to which the Board has access, if made public, is likely to cause substantial harm to the person's competitive position, the Board shall consider such record, report, or information or particular portion thereof confidential in accordance with section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, and authorized representatives of the United States concerned with carrying out this Act or when relevant under any proceeding under this Act. This subparagraph does not constitute authority to withhold records, reports, or information from the Congress. Records.

"(R) Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget request, or other budget information, legislative recommendation, prepared testimony for congressional hearings, recommendation or study to the President, the Secretary of Labor, the Administrator, or the Director of the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No report of the Board shall be subject to review by the Administrator or any Federal agency or to judicial review in any court. No officer or agency of the United States shall have authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony, comments, recommendations or reports to any officer or agency of the United States for approval or review prior to the submission of such recommendations, testimony, comments or reports to the Congress. In the performance of their functions as established by this Act, the members, officers and employees of the Board shall not be responsible to or subject to supervision or direction, in carrying out any duties under this subsection, of any officer or employee or agent of the Environmental Protection Agency, the Department of Labor or any other agency of the United States except that the President may remove any member, officer or employee of the Board for inefficiency, neglect of duty or malfeasance in office. Nothing in this section shall affect the application of title 5, United States Code to officers or employees of the Board.

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Reports.

"(S) The Board shall submit an annual report to the President and to the Congress which shall include, but not be limited to, information on accidental releases which have been investigated by or reported to the Board during the previous year, recommendations for legislative or administrative action which the Board has made, the actions which have been taken by the Administrator or the Secretary of Labor or the heads of other agencies to implement such recommendations, an identification of priorities for study and investigation in the succeeding year, progress in the development of risk-reduction technologies and the response to and implementation of significant research findings on chemical safety in the public and private sector.

"(7) ACCIDENT PREVENTION.—

"(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. Regulations promulgated under this paragraph may make distinctions between various types, classes, and kinds of facilities, devices and systems taking into consideration factors including, but not limited to, the size, location, process, process controls, quantity of substances handled, potency of substances, and response capabilities present at any stationary source. Regulations promulgated pursuant to this subparagraph shall have an effective date, as determined by the Administrator, assuring compliance as expeditiously as practicable.

Regulations.

"(B)(1) Within 3 years after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases. The Administrator shall utilize the expertise of the Secretaries of Transportation and Labor in promulgating such regulations. As appropriate, such regulations shall cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and in the conduct of periodic inspections. The regulations shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment. The regulations shall cover storage, as well as operations. The regulations shall, as appropriate, recognize differences in size, operations, processes, class and categories of sources and the voluntary actions of such sources to prevent such releases and respond to such releases. The regulations shall be applicable to a stationary source 3 years after the date of promulgation, or 8 years after the date on which a regulated substance present at the source in more than threshold amounts is first listed under paragraph (3), whichever is later.



National Environmental Law Center

29 Temple Place, Boston, MA 02111, (617) 422-0880, Fax: (617) 422-0881

March 8, 1995

To:	Leslie Atkinson	Off. of Representative Stokes	202-225-1335
	James Waller	Off. of Representative Lewis	202-225-0351
	Dan Renberg	Office of Senator Specter	202-224-1893
	Carolyn Apostoulou	Senate Appropriations	202-224-4344
	Rusty Matthews	Office of Senator Mikulski	202-224-8858
	Julie Kays	Office of Senator Gorton	202-224-9393
	Kent Connolly	Office of Senator Jefford	202-228-0338
	Joyce Rechsthaffen	Office of Senator Lieberman	202-224-9750
	Drew Fields	Office of Senator Rockefeller	202-224-7665
	Scott Amrhein	Office of Senator D'Amato	202-227-5871
	Tom Sliter	Office of Senator Baucus	202-224-1273
	Dave Moulton	Off. of Representative Markey	202-225-1716
	Caroline Bartholomew	Off. of Representative Pelosi	202-225-8259
	Scott Flemming	Off. of Representative Lowey	202-225-0546
	Liz Montoya/	Off. of Presidential Personnel	202-456-2259
	Veronica Biggins		
	Elliot Laws	EPA	202-260-3527
	Karen Guss	Office of Hilary Clinton	202-456-7431
	Leon Panetta	White House Chief of Staff	202-456-2883
	Katie McGinty	Counc. on Environmental Quality	202-456-2710

From: Joel A. Tickner - National Environmental Law Center

Re: Chemical Safety and Hazard Investigation Board

Attached is a White House letter I received dated February 28, 1995 stating that the Chemical Safety and Hazard Investigation Board will exist. This letter conflicts with the Administration's official decision (as of February 1, 1995) to eliminate the Board and place its responsibilities in EPA and OSHA. It also conflicts with the February rescission bill which rescinded the Board's FY1995 funding of \$500,000.

We hope that this letter indicates both the Administration's and Congress' intentions of finally establishing the Chemical Safety and Hazard Investigation Board, filling the remaining two positions on the Board, and providing the Board with the funding necessary to fulfill its mandate. Please call me at 617-422-0880 if you have any questions.



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

February 28, 1995

Joel A. Tickner
Policy Analyst
National Environmental Law Center
29 Temple Place
Boston, MA 02111

Dear Mr. Tickner:

Thank you for your letter concerning the federal Chemical Safety and Hazard Investigation Board. I apologize for the delay in my response.

As you know, the Chemical Safety and Hazard Investigation Board would provide guidance and oversight in protecting our citizens from the risks of chemical accidents.

This Administration and my office recognize the importance of filling the remaining positions on the Board. Rest assured that we are working vigorously in order to ensure that the Board is up and running as soon as possible.

Again, thank you for sharing your concerns regarding this very important issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kathleen A. McCarthy", is written over the typed name.

Kathleen A. McCarthy
Chair, Council on
Environmental Quality

KAM/mmng



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

Kathleen A. McGinty
Chair

March 9, 1995

Mr. Joel A. Tickner
Policy Analyst
National Environmental Law Center
29 Temple Place
Boston, MA 02111

Dear Mr. Tickner:

I am writing today to apologize for any misunderstanding that may have resulted from my letter to you dated February 28, 1995 regarding appointments to the Chemical Safety and Hazard Investigation Board.

My letter contained misinformation regarding the Administration's position on the Board. In fact, the Administration is proposing to eliminate the Board as explained in the President's FY 96 budget.

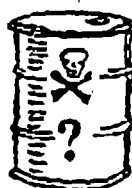
I regret having to inform you of this change and hope this correction will prevent further misunderstanding on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen McGinty", written over a horizontal line.

Kathleen A. McGinty
Chair, Council on
Environmental Quality

KAM/mmg



WORKING GROUP ON COMMUNITY RIGHT-TO-KNOW

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TO: Karen Guss

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TOTAL NUMBER OF PAGES, INCLUDING THIS PAGE 3

NOTES: Knowing of your support and interest in the Chemical Safety Board,
I thought the enclosed article would be of interest to you. It presents
a succinct explanation of the board's current status.

WORKING NOTES

ON COMMUNITY RIGHT-TO-KNOW



January - February 1995

A WORKING PAPER ON OUR RIGHT-TO-KNOW ABOUT TOXIC POLLUTION

Administration Zeros Safety Board

President Clinton is diverting funding from the independent Chemical Safety Board mandated by the Clean Air Act of 1990 and is refusing to swear in his own nominees who were confirmed by the Senate last October. Congress established the board to investigate and report on serious explosions, spills, and fires at refineries and chemical plants, and to recommend new policies for prevention.

Congress must now decide whether to fund an independent board or to accept the Administration's alternative, which diverts the board's

funding into the very agencies it was supposed to oversee. A bipartisan group of 15 U.S. Senators is calling upon the Administration to fund the board as required and to swear in the board members.

The White House is diverting the board's funding to the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA), at \$3 million each. However, the board was designed to be independent, to insulate it from political pressures and enable it to criticize if necessary the actions — or failure to act — of these agencies.

The Office of Management and Budget (OMB) is proposing to substitute ad hoc "blue ribbon panels" for some safety board investigations. But in 1989, after an explosion devastated Phillips Petroleum (in Pasadena, Texas), OMB barred an OSHA blue ribbon study from

asking basic questions (on training, skills, union affiliation, etc.) needed to assess how the use of contract labor affects safety in the industry.

"Blue ribbon panels are no substitute for independence," said Richard Miller of the Oil, Chemical, and Atomic Workers (OCAW). "OCAW served on the blue ribbon panel for the Phillips accident and quickly discovered that springs were being pulled by industry

through back channels to OMB."

Aside from political interference, EPA and OSHA investigations differ fundamen-

tally from the independent board's:

- EPA and OSHA investigations look for noncompliance with regulations; the safety board must find the root causes of accidents even if no laws were violated.
- OSHA frequently accepts the company's own accident reports as fact when setting fines and penalties; the safety board has the expertise and mandate to complete its own investigations into root causes.
- EPA and OSHA investigations rarely produce changes in safety requirements; the safety board must make preventive recommendations, to which OSHA and EPA must respond.
- The safety board has clear authority to investigate after accidents; OSHA lacks guaranteed access to accident sites in the 27 states that administer their own OSHA programs.



Washington Update

The Republicans' "Contract With America" is rolling through Congress with scarcely a pause for effective debate. One bill, H.R. 9, would tie-up government in endless litigation and analytical loops by requiring burdensome risk assessment and cost-benefit analyses — in effect overriding existing health, safety, and environmental laws.

"The risk bill... mandates a costly, procedural maze that will delay or stop the public health protections traditionally enjoyed by all Americans," said EPA Administrator Carol Browner. "20 years of protections... are being rolled back."

A new report by the Natural Resources Defense Council (NRDC), "Breach of Faith: How the Contract's Fine Print Undermines America's Environmental Success," details how H.R. 9 could cripple community right-to-know and kill efforts to expand the Toxics Release Inventory (TRI) by:

- requiring government-wide reduction goals for information collection;
- requiring some government information to be cut if new information is added;
- granting environmental violators new legal rights to sue enforcement officials.

To order "Breach of Faith" (120 pages), send \$9 to: NRDC Publications, 40 West 20th St., New York, New York 10011.

TRI Data Release

EPA is targeting late March for release of national Toxics Release Inventory (TRI) data (March 20 or soon thereafter)

Continued on page 2—

Safety Board Should Be Funded, Staffed

BY PAUL ORUM

On the tenth anniversary of Bhopal, thousands of people were evacuated and four were killed by a massive explosion that devastated Tera Industries in Sioux City, Iowa. In the U.S. today, nearly one chemical fire, spill, or explosion occurs every hour.

To prevent such accidents, Congress established an independent National Chemical Safety Board in 1990. Four years later the board still does not exist. The White House is trying to eliminate the board, despite broad bipartisan support.

Record numbers of huge petrochemical catastrophes have occurred in the U.S. in recent years. In 1991 and 1992 alone, 15 major chemical accidents destroyed over \$1 billion in property, killing or maiming working men and women, and causing thousands to be evacuated from homes, schools, and hospitals.

Recent major chemical accidents

1987 - Texas City, Texas, Oct. 30: Hydrogen fluoride from a damaged storage tank at Marathon Oil spreads a ground-hugging plume across Texas City, forcing extensive evacuations and sending 1,000 people to local hospitals.

★ **1988 - Henderson, Nev., May 4:** Ammonium perchlorate, used in rocket fuel, explodes at Pacific Engineering's plant near Las Vegas, killing 2, injuring 350, and measuring 3.5 on the Richter scale 200 miles away in Pasadena, Calif.; damages reach \$73 million.

★ **1989 - Pasadena, Texas, Oct. 23:** A massive explosion destroys a Phillips Petroleum plastics plant, leaving 23 dead, over 200 injured and more than \$1 billion in damages.

★ **1990 - Channelview, Texas, July 5:** an explosion and fire at ARCO Chemical kills 17 workers and flattens an area the size of a city block.

★ **1991 - Sterlington, La., May 1:** An explosion at IMC Chemical kills 8, injures 100, and renders the plant into a twisted mass of metal; property damages exceed \$100 million.

★ **1992 - Wilmington, Calif., Oct. 8:** A vapor cloud from a Texaco refinery explodes in a poor Los Angeles neighborhood, damaging the refinery and homes, and shattering windows several miles away; property damage: \$72 million.

1993 - Richmond, Calif., July 26: A sulfur trioxide leak at General Chemical drifts for miles downwind through a lower-income minority community, closing roads and rail lines; some 20,000 nauseous people seek assistance from area hospitals for irritated skin, eyes, and lungs.

1994 - Belpre, Ohio, May 27: A Shell Chemical facility explodes, killing 3 workers and flushing a half-million pounds of poisonous styrene into the Ohio River, shutting down plastics production for months.

From 1988 to 1992, some 34,500 U.S. accidents released 680 million pounds of toxic chemicals. Seventeen past U.S. accidents spewed as much dangerous chemicals as were released at Bhopal.

Congress modeled the chemical board after the respected and effective National Transportation Safety Board (NTSB), which has earned public confidence with expert investigations of fatal airplane crashes. The chemical board is a similarly independent public watchdog, established to investigate accidents and report to the public, government, and industry on how to prevent them.

Last July, President Clinton nominated five highly-qualified board members. The Senate unanimously confirmed the first three on Oct. 6, 1994. However, budget cutters at the Office of Management and Budget are now cutting the board. Would the Administration also halt NTSB investigations of airline crashes to save a few million dollars?

Accidents at refineries and chemical plants continue to take a heavy toll. On May 27, 1994, a Shell Chemical facility exploded in Belpre, Ohio, killing 3 workers and flushing a half-million pounds of poisonous styrene into the Ohio River. Plastics production shut down for months.

Chemical accidents have significant costs — in human lives, health care, property damage, lost jobs, and clean-up — which often are borne by financially strapped local governments. Local response costs for preventable accidents dwarf the board's \$5 million annual budget.

Current trends are likely to make the situation worse, not better. A 1994 survey by Industrial Safety and Hygiene News, an industry trade publication, reported that 78 percent of its readers believe corporate downsizing will lead to more accidents.

With each accident, the public loses confidence in industry to self-regulate and in government to protect public safety. Expert, independent oversight is needed to ensure that both government and industry will take appropriate steps to prevent future catastrophes. The limited funding the chemical board requires will provide countless dividends in better worker and community safety — safety that can't be purchased by families with a middle class tax cut.

Why kill the board now? November's elections demanded more accountability from government, not less. The President and Congress should work together to complete appointments and fully fund the independent chemical safety board.

Safety Board *Continued from page 1*

- Unlike safety board reports, OSHA and EPA documents are admissible court, creating incentives for companies to obstruct investigations.
- EPA and OSHA databases lack needed information on the root causes of accidents; the safety board would routinely assemble and analyze such information.

In addition, the board is supposed to receive some 100,000 risk management plans (including worst-case accident scenarios) from facilities that use highly hazardous chemicals. Yet EPA has no alternate plan or budget to receive and manage this information. Materials are available from Paul Orum at (202) 546-9707.