



Chemical Safety and Hazard Investigation Board

OFFICE OF GENERAL COUNSEL

Memorandum

To: Board Members

From: Thomas E. Zoeller, Acting General Counsel

Cc: Leadership Team

Subject: Board Action Report – URGENT Notation Item 2019-18

Date: March 22, 2019

On March 6, 2019, the Board approved Urgent Notation Item 2019-18, thereby voting to adopt the CSB's proposed Final Budget Request for Fiscal Year 2020, and to authorize the CSB Director of Financial Operations to submit the request to Congress and to OMB.

Voting Summary – Urgent Notation Item 2019-18

Disposition: APPROVED

Disposition date: March 6, 2019

	Approve	Disapprove	Calendar	Not Participating	Date
M. Ehrlich		X¹			3/11/2019
R. Engler	X				3/06/2019
K. Kulinowski	X				3/06/2019

¹ Member Ehrlich indicated he was not afforded the opportunity to assist in the development of the budget, which should have started much earlier, and he considers the submission to Congress to be deficient in certain aspects.

DISSENT OF MEMBER EHRLICH

I disapprove Notation Item 2019-18, the CSB Proposed Operating Budget for FY 2020.

My reasons for disapproval are many, but essentially relate to issues with process and presentation.

PROCESS DEFICIENCIES

As to the process issue, this proposed budget was not developed in accordance with Board Order 38 concerning preparation and submission of CSB budget requests, which contemplates Board Member involvement in the process. Instead, this proposed budget, attached to NI 2019-18, was the first time that my colleagues or CSB staff presented me with any documents relating to the proposed FY 2020 CSB budget. Moreover, this NI is presented as an “URGENT” item, presumably because the CSB intends to release its own budget request (independent of the Administration’s) to relevant Congressional Committees concomitant with the President’s budget request for FY 2020, which press reports indicate will be released on March 11, 2019. I find it inconceivable that given the many months the CSB Members, and senior and financial staff have had to prepare this request, that they have to suddenly seek approval on an URGENT basis. In my judgment, this constitutes either a complete lack of competence, or poor planning, or both. There should never be a situation where an URGENT vote is sought for an item that should have been months in the making, and where a regular schedule for preparation and release is contemplated. Even with the 35-day government shutdown, there is no reason why this document, or at least a substantial portion of the document could not have been shared with Board Members prior to this sudden URGENT vote.

I further assert that as a Board Member, and a principal official of this agency, that these actions constitute ineffective planning with respect to this proposed budget. Specifically, Board Order 38 specifies a budget preparation process that should have begun months ago and involved all Board Members. Instead, I felt that I was actively kept out of the process, and only received this document on March 5, 2019. It is indeed ironic that this agency is flouting its own governance Board Orders while at the same time expending hundreds of thousands of dollars on outside legal counsel to pursue false accusations that prior agency administration weakened board governance norms.

On March 5, 2019, shortly after receiving this NI, I asked the Director of Financial Operations about the OMB passback amount for the FY 2020 CSB budget. I also requested a copy of the passback. On March 6, 2019, I received a reply from the Senior Advisor, an agency employee, informing me that the OMB passback amount was \$10.2 million for an orderly shutdown of the agency. I did not receive the requested document, and was effectively told that a copy would not be provided to me as it was “privileged.” The failure to provide a Constitutionally-appointed officer of the CSB with a requested budget document, in my judgment, constitutes at a minimum, severe board mismanagement. There can be no “privilege” as to an OMB budget document that

excludes review by an officer of this agency. The assertion of privilege as to the OMB passback by an employee with respect to a Member of the Board evidences either a severe misunderstanding of Board Member responsibilities or a concerted effort to keep this Member from reviewing relevant documents and exercising appropriate fiduciary oversight of the agency – something that I am actively being prevented from doing. This is not to suggest that I agree with OMB's passback. I raise the issue only because it perfectly illustrates disregard of normal Board Member responsibilities by staff.

PRESENTATION DEFICIENCIES

The proposed budget document for which Board Member approval is sought is 22 pages in length of which 15 pages consist of programmatic discussion, and only 7 pages (including proposed appropriations language) consists of an actual budget justification.

The budget justification is at best cursory, and parts of the programmatic discussion appear to have been prepared in haste and without adequate explanation, or even an attempt to reconcile the narrative to the justification.

Given the short timeframe to review the document, as I was on travel the entire week of March 5, 2019, I will highlight some technical observations.

The budget request summary states that the CSB seeks a budget of \$12.451 million in FY 2020. It also states that this is an increase of \$1.451 million, or 3.70%, above the \$12 million annualized rate provided by the Consolidated Appropriations Act, 2019. Clearly, this is an error. The FY 2019 appropriation for the CSB was increased by \$1 million, representing an increase of 9% over FY 2018, a year in which I am told the CSB may have lapsed substantial funding. (I note for the record that as a Board Member, I have been denied access to this type of financial information by CSB officials responsible for maintaining these records, so I must rely on informal information I receive.) The CSB now seeks a 3.7% increase in funding over the recently approved 9% increase. This constitutes an almost 13% increase in funding over last year's appropriation. I do not believe that an adequate justification for this large increase has been provided. This is especially the case where during the last 17 months the CSB has lost 26% of its staff, and then proposes to increase staff from current levels by more than 50% during the next 18 months.

While it may be desirable to seek both additional funding and staff, this proposed budget provides no basis for me to have confidence that this is realistic in any manner and that the proposed increase in funding will translate into a larger staff or a more robust investigative program.

On page 13 of this budget request, mention is made that the agency anticipates that it will dedicate at least \$350,000 in personnel and consultancy costs to a contemplated chemical incident release reporting rule. Without addressing whether the CSB should appeal the district

court judge's decision (the agency initially appeared to aggressively defend against the lawsuit), the budget object classification section of this document provides no information whatsoever on either the personnel or consultancy costs that the agency anticipates it may incur. In short, there is no attempt at a reconciliation between the sentence appearing on page 13 and the agency's budget justification.

CONCLUSION

I disapprove this budget request. I do not do so lightly. The work of the CSB is important, and it is essential that the agency receive adequate funding from Congress.

The process by which this budget was prepared in contravention to agency Board Orders, including not providing me, as a Board Member, with all of the information requested is unacceptable. The timely and accurate justification of the agency's budget presentation to Congress is vital, and must be done in a manner that engenders confidence which this proposed budget does not accomplish.