



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Hotline Report: U.S. Chemical Safety Board

CSB's Public Meeting Announcement Violated The Government in the Sunshine Act

Report No. 15-P-0304

September 30, 2015



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Report Contributors:

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Abbreviations

CSB U.S. Chemical Safety and Hazard Investigation Board
OIG Office of Inspector General
Sunshine Act The Government in the Sunshine Act

Cover photo: CSB's July 22, 2015, public business meeting. (Photo from CSB website)

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At a Glance

Why We Did This Audit

The Office of Inspector General (OIG) of the U.S. Environmental Protection Agency, which is also the OIG for the U.S. Chemical Safety and Hazard Investigation Board (CSB), received a hotline complaint expressing concerns about CSB actions at its January 28, 2015, public meeting that were not in compliance with The Government in the Sunshine Act (Sunshine Act). Specifically, the complaint cited a board motion that consolidated the former Chairperson's authority over the agency and terminated CSB investigations without explaining why CSB failed to complete them and the related cost to taxpayers. In response to the complaint, the OIG initiated an audit to determine whether CSB was compliant with requirements of the Sunshine Act (5 U.S.C. 552b) for the January 28, 2015, public meeting.

This report addresses the following CSB goal:

- *Preserve the public trust by maintaining and improving organizational excellence.*

Send all inquiries to our public affairs office at (202) 566-2391 or visit www.epa.gov/oig.

The full report is at: www.epa.gov/oig/reports/2015/20150930-15-P-0304.pdf

CSB's Public Meeting Announcement Violated The Government in the Sunshine Act

What We Found

CSB's public meeting announcement for its January 28, 2015, meeting, posted in the Federal Register, was not compliant with the Sunshine Act. The announcement included a description of what CSB would present and discuss prior to the possible board vote on the final report of CSB's investigation into the Chevron Richmond Refinery Fire. However, at the public meeting, CSB also presented a motion that terminated five investigations on which CSB had already spent over \$800,000, consolidated the former Chairperson's authority over the agency, and rescinded 18 of 46 board orders. CSB members and staff were unable to explain why the motion was not included in the public meeting announcement. By not announcing a motion that included terminating investigations, CSB kept the public uninformed of its planned actions to end the investigations, in violation of the Sunshine Act and the act's transparency goals. In addition, one board member, who was not notified, did not have sufficient time to review and familiarize himself with the motion's subject matter and was left unprepared to discuss or vote on the motion.

At a public meeting, CSB passed a motion to terminate five investigations on which it had already spent over \$800,000 in taxpayer funds without announcing the planned motion in advance, as required by the Sunshine Act.

For the January 28, 2015, meeting, CSB also did not comply with a requirement in its own guidance to circulate agenda items to board members prior to meetings.

Recommendations and Planned Agency Corrective Actions

We recommend that CSB comply with the Sunshine Act and ensure that public meeting announcements provide adequate subject matter information so that the public is informed of decisions concerning investigations and operations. We also recommend that CSB provide training on Board Order 001, *Board Quorum and Voting*, to ensure board members and staff are familiar with the requirements of public meetings and notifications to board members.

CSB acknowledged it was not compliant with the Sunshine Act "Open Meetings" requirement when it conducted the January 28, 2015, meeting and should have announced all orders of business in the Federal Register prior to the meeting. CSB provided planned corrective actions and completion dates.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

September 30, 2015

The Honorable Vanessa Allen Sutherland
U.S. Chemical Safety and Hazard Investigation Board
1750 Pennsylvania Avenue, NW, Suite 910
Washington, D.C. 20006-4502

Dear Ms. Sutherland:

This is our report on the audit of the U.S. Chemical Safety and Hazard Investigation Board's (CSB's) compliance with The Government in the Sunshine Act conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final CSB position. CSB managers will make the final determinations on matters in this report.

Because you agreed with our recommendations and provided planned corrective actions that meet the intent of the recommendations, along with completion dates, you are not required to provide a written response to this report. However, if you submit a response, it will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at <http://www.epa.gov/oig>.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", written in a cursive style.

Arthur A. Elkins Jr.

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Purpose

The U.S. Environmental Protection Agency's Office of Inspector General (OIG), which is also the Inspector General for the U.S. Chemical Safety and Hazard Investigation Board (CSB), received a hotline complaint identifying concerns about recent CSB actions at its January 28, 2015, public meeting. Our objective was to determine whether CSB properly held the public meeting on January 28, 2015, in accordance with 5 U.S.C. 552b, The Government in the Sunshine Act (Sunshine Act).

Background

Authorized by the Clean Air Act Amendments of 1990 (42 U.S.C. 7412(r)(6)), CSB began operating in 1998 as an independent federal government organization. CSB's headquarters is in Washington, D.C., with an investigation office in Denver, Colorado. CSB's mission is to enhance the health and safety of the public, workers and environment by determining the root causes of accidental chemical releases, and use these findings to promote preventive actions by the private and public sectors. The agency does not issue fines or citations; rather, it makes recommendations to plants, industry organizations, labor groups and regulatory agencies such as the Occupational Safety and Health Administration and the U.S. Environmental Protection Agency.

The President appoints, and the Senate confirms, CSB's board members. The board Chairperson serves as the Chief Executive Officer and is responsible for agency administration, while the full board is responsible for major budgeting decisions, strategic planning and direction, general agency oversight, and approval of investigation reports and studies. Although the board is supposed to be composed of five members, including the Chairperson, during our audit the number of members on the CSB Board has changed. In January 2015, the board consisted of two members and a Chairperson. As of August 2015, the board consisted of three members and a Chairperson.

Under the Sunshine Act, 5 U.S.C. 552b(b) states, "[m]embers shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation."

The Sunshine Act also affords the opportunity for the public to attend these meetings by requiring agencies to make public announcements in the Federal Register. The requirements for public meeting announcements are set forth in 5 U.S.C. 552b(e), including a description of the subject matter of the meeting, and what actions an agency takes for any scheduling or subject matter changes. In the case of CSB, this provides the public the opportunity to prepare comments or questions for the board or CSB staff.

CSB Board Order 001, *Board Quorum and Voting*, requires CSB to follow the Sunshine Act at board meetings. The order describes how and by whom items for discussion at a board meeting may be placed on the agenda. Further, it requires that a memorandum establishing a meeting date and agenda shall be circulated to the members approximately 2 weeks before the meeting.

The majority of CSB's public meetings involve presenting to the public the intermediate or final reports and recommendations from a CSB investigation of a chemical accident. Following the CSB staff's presentation, the public is invited to comment on or question the board members and staff about the investigation, the findings and CSB's recommendations to the respective industry or federal agencies. In addition, at the public meetings, board members discuss and vote on agency business matters, such as items that have been previously placed on hold during earlier board discussions.

Scope and Methodology

We conducted this audit from March 2015 to September 2015 in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We reviewed the Sunshine Act for the requirements to announce public meetings. We reviewed the announcement and transcript for the January 28, 2015, public meeting. To address the hotline complaint concerns about cost to taxpayers, we determined CSB's funds spent on the five investigations that were terminated during the January 28, 2015, public meeting. Lastly, we requested May and June 2015 public meeting transcripts to evaluate CSB's further actions relating to the vote taken on the unannounced motion at the January 28, 2015, public meeting.

Results of Audit

The CSB public meeting announcement posted in the Federal Register on January 16, 2015, for the January 28, 2015, public meeting was not fully compliant with the Sunshine Act "Open Meetings" requirement. The announcement included a description that CSB would present and discuss the final report of its investigation into the Chevron Richmond Refinery Fire prior to a possible board vote. However, at the public meeting, CSB presented an unannounced motion to terminate five investigations, consolidate the former Chairperson's authority over the agency, and rescind 18 of CSB's 46 board orders. CSB board members and staff were unable to explain why the motion was not included in the public meeting announcement. By not announcing the motion,

CSB kept the public uninformed of its planned actions to end the investigations and left a board member unprepared to discuss or vote on the motion.

CSB did not comply with its own guidance, Board Order 001, *Board Quorum and Voting*, by not notifying board members of agenda items to be discussed at meetings.

CSB's Public Meeting Announcement Did Not Include a Planned Board Motion

On January 28, 2015, in Richmond, California, CSB held a public meeting to present to the public and CSB stakeholders the final report of its investigation into the Chevron Richmond Refinery Fire. The Federal Register announcement of January 16, 2015, for the public meeting stated that the board would consider and possibly vote on the final report after hearing comments from the public. The announcement also noted the possibility of other subject matters. Specifically, it stated "...[l]astly, the Board may also consider such other items of business as determined by the Chairperson."

After the Federal Register announced the public meeting on January 16, 2015, the motion was developed and discussed among specific CSB officials. CSB provided us with copies of emails dating from January 23, 2015, through January 26, 2015. Our review of the emails found that the former CSB Chairperson, another board member and two senior officials developed and discussed a motion. The announcement in the Federal Register was not updated to include the motion for public notice as required by the Sunshine Act.

The January 16, 2015, announcement did not mention a board motion titled "Improving CSB Mission Operation." At the public meeting, a board member nonetheless presented the unannounced motion to terminate five investigations, consolidate the former Chairperson's authority over the agency, and rescind 18 of CSB's 46 board orders. As a result of these actions, another board member was surprised by and unprepared to discuss or vote on the motion. Although he attempted to put the vote on hold to gain time for review and for a newly confirmed board member to be sworn in, the motion passed with objection by a 2-to-1 vote. Consequently, CSB did not comply with the Sunshine Act requirement to provide the subject matter of a meeting in its public meeting announcement.

For the five investigations that were terminated, CSB spent over \$800,000 of taxpayer funds through January 2015. At a May 2015 public meeting, CSB voted

Figure 1: Federal Register announcement for CSB January 28, 2015, public meeting



Source: Federal Register website.

that the five investigations remain closed and provided several reasons for why they should remain closed, as listed in Table 1.

Table 1: Summary of terminated investigations

Investigation terminated in Board motion	Incident date	Funds spent as of January 2015	CSB reasons for closure identified at the May 2015 public meeting
CITGO Refinery	July 19, 2009	\$139,562	Cases are old, most of the investigators who worked on the cases are no longer at CSB; therefore, CSB plans to incorporate work into a larger study.
	March 12, 2010	203,549	
Silver Eagle	January 12, 2009	302,406	
	November 4, 2009		
Horsehead Corporation	July 22, 2010	189,468	Evidence is old, the investigator who worked on the case is gone, and CSB teams looked at the evidence file and found it supports closure.
Funds spent as of January 2015		\$834,985	

Source: CSB May 6, 2015, public meeting transcripts and OIG Analysis of CSB data.

CSB Did Not Follow Sunshine Act Requirements

According to the Sunshine Act, 5 U.S.C. 552b(b), CSB is required to conduct its public business meetings in the open to allow for public observation. Public meeting announcements procedures are set forth in 5 U.S.C. 552b(e):

(1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was

possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

After CSB determined it wanted to add the motion to the public meeting, it was required to publicly announce a change to the meeting's subject matter. CSB did not make a change to the Federal Register announcement. There is no record of a vote for a subject matter change or that an earlier announcement of the change was not possible.

CSB Board Member Was Not Notified About Agenda Items

CSB should follow its internal guidance, Board Order 001, *Board Quorum and Voting*, when developing and announcing the agendas for the public meetings. CSB guidance states that board members should be notified of agenda items and they may request items to be placed on the agenda for discussion. It also states that board meetings must be held in accordance with the Sunshine Act. Board Order 001 addresses the requirements of public meetings, the development of the agenda for a public meeting, and notifications to board members. Section 9(a) states:

Board meetings must be held in accordance with the Government in the Sunshine Act, 5 U.S.C. § 552b, and the CSB's Sunshine Act Regulation, 40 CFR part 1603.

Section 9(b)(2) states:

...[a]ny Member may request that an item be placed on the agenda for discussion and if appropriate, a vote, at a Board Meeting. The General Counsel will determine whether the item requires a vote in the manner described in section 7.c.1. The General Counsel shall circulate to the Members a memorandum establishing a meeting date and agenda approximately two weeks before the meeting or with as much advance notice as possible for a special meeting. A Member may request, in a written memo to the other Members and the General Counsel, that the meeting not be held or that the agenda be changed.

Prior to the January 28, 2015, public meeting, the General Counsel did not circulate to all board members the motion titled "Improving CSB Mission Operations," which terminated investigations, centralized the former Chairperson's authority and rescinded board orders. One board member did not have equal time to review and familiarize himself with the subject matter; the board member should have been notified of the motion to allow proper time to prepare.

In addition, CSB's language in the January 16, 2015, public meeting announcement, such as "...[I]astly, the Board may also consider such other items of business as determined by the Chairperson," is not consistent with its internal guidance. The board member may, in advance, request an item to be placed on the agenda, and this shall be included in the public announcement, for discussion and, if appropriate, a vote at the announced public meeting. CSB should follow its internal guidance when making an announcement for public meetings and make all board members aware of the agenda items so that they can be prepared to vote on them.

Conclusion

CSB did not follow the Sunshine Act requirement to announce the subject matter for its public meeting on January 28, 2015, in the Federal Register. CSB is required to comply with the Sunshine Act and provide adequate subject matter information in public meeting announcements. Further, CSB should comply with its internal guidance when developing and announcing agenda items for public meetings. Board members must have the ability to determine business items for discussion and votes as well as the knowledge of the subject matter presented at public meetings.

Recommendations

We recommend that the U.S. Chemical Safety and Hazard Investigation Board:

1. Comply with 5 U.S.C. 552(b), The Government in the Sunshine Act, and ensure that public meeting announcements provide adequate subject matter information so that the public is informed of decisions concerning investigations and operations.
2. Provide training on Board Order 001, *Board Quorum and Voting*, to ensure board members and staff are familiar with the requirements of public meetings, and notifications to board members.

CSB Comments and OIG Evaluation

CSB acknowledged it was not compliant with the Sunshine Act "Open Meetings" requirement when it conducted the January 28, 2015, meeting and should have announced all orders of business in the Federal Register prior to the meeting. CSB provided planned corrective actions and completion dates. CSB detailed the steps it plans to take to implement corrective actions. CSB stated it does not anticipate a repeat of these issues. We agree with CSB's response to our recommendations.

On September 14, 2015, CSB provided its planned corrective actions and estimated completion dates, as shown in Table 2 below.

Table 2: Agency planned corrective actions and completion dates

Recommendation	Planned Corrective Action	Expected Completion Date
1	The CSB acknowledges it was not compliant with the Sunshine Act "Open Meetings" requirement when conducting the January 28, 2015, meeting and should have announced all orders of business in the Federal Register prior to the meeting. The board received training on the Sunshine Act on August 26, 2015. On September 28, 2015, the board will receive another related briefing on relevant statutes, regulations and its Board Orders. Board Order review has already commenced and will be reviewed one at a time. Additionally, the board will receive Freedom of Information Act training on October 5, 2015. The Federal Register Notice will be submitted 10 days prior to the meeting. (Example: September 30, 2015, meeting announcement will be posted in the Federal Register on September 20, 2015).	10/5/15
2	Board members will receive training on Board Order 001 on September 28, 2015. Staff training will be completed by the end of the first quarter.	12/31/15

Source: CSB email.

CSB disagreed with our finding section in the draft report that stated CSB did not comply with the Sunshine Act requirement in its July 2013 public meeting. We removed that section from our final report for reasons different than the one raised by CSB.

Appendix A contains CSB's full response to our draft report.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	6	Comply with 5 U.S.C. 552(b), The Government in the Sunshine Act, and ensure that public meeting announcements provide adequate subject matter information so that the public is informed of decisions concerning investigations and operations.	O	U.S. Chemical Safety and Hazard Investigation Board	10/5/15		
2	6	Provide training on Board Order 001, <i>Board Quorum and Voting</i> , to ensure board members and staff are familiar with the requirements of public meetings, and notifications to board members.	O	U.S. Chemical Safety and Hazard Investigation Board	12/31/15		

¹ O = Recommendation is open with agreed-to corrective actions pending.
 C = Recommendation is closed with all agreed-to actions completed.
 U = Recommendation is unresolved with resolution efforts in progress.

CSB Response to Draft Report

U.S. Chemical Safety and Hazard Investigation Board

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Vanessa Allen Sutherland
Chairperson and Member

Manny Ehrlich, Jr.
Board Member

Rick Engler
Board Member

Kristen M. Kulinowski, Ph.D.
Board Member



September 14, 2015

Mr. Kevin Christensen
Assistant Inspector General for Audits
Office of Inspector General
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.,
(2410T) Washington, DC 20460

Dear Mr. Christensen:

Thank you for the opportunity to review and comment on the Office of the Inspector General's (OIG) draft report entitled CSB's Public Meeting Announcement Not Compliant with the Government in the Sunshine Act. As the CSB continues its organizational review, we welcome these findings and recommendations as we strive to improve agency operations.

The CSB acknowledges that it was not compliant with the Sunshine Act "Open Meetings" requirement when conducting the January 28, 2015 meeting and should have announced all orders of business in the Federal Register prior to the meeting. To ensure full compliance in the future, on August 26, 2015, all board members received training from the CSB Office of the General Counsel on the Sunshine Act. In the coming weeks, the board will receive another related briefing on relevant statutes, regulations, and its Board Orders. The CSB also addressed several points raised by the OIG in the recent amendment to 40 CFR part 1600 – all members may now add agenda items to quarterly business meetings. In addition, a representative from counsel's office attends all of our internal and external board meetings. We do not anticipate a repeat of these issues on this topic.

**U.S. Chemical Safety and
Hazard Investigation Board**

We do, however, disagree with the OIG's finding that the CSB did not comply with the Sunshine Act requirement in July 2013. At this meeting, a member introduced a motion to schedule a public meeting that the then-Chairperson refused to consider. A notice in the Federal Register was impractical because the Chairperson was unaware of the other Member's plan to make the motion. Specific notice was unnecessary because the Chairperson did not entertain the motion, and so no Sunshine Act-covered discussion occurred. Regardless of the reason for refusing to consider the matter, the Chairperson's unilateral action prevented a violation of the Act.

As you finalize your report, I appreciate your consideration of the CSB's concerns and comments. Please feel free to contact me or Anna Brown with questions about the content of the letter, at 202-261-7617 and 202-261-7639 respectively.

Sincerely,

A handwritten signature in blue ink, appearing to read "Vanessa Allen Sutherland".

Vanessa Allen Sutherland
Chairperson

Distribution

Board Members, U.S. Chemical Safety and Hazard Investigation Board
Director of Administration and Audit Liaison, U.S. Chemical Safety and Hazard
Investigation Board