AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 114–26

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

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

APRIL 22, 2015

Printed for the use of the Committee on Environment and Public Works

Available via the World Wide Web: http://www.gpo.gov/fdsys

U.S. GOVERNMENT PUBLISHING OFFICE

94–993 PDF WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED FOURTEENTH CONGRESS
FIRST SESSION

JAMES M. INHOFE, Oklahoma, *Chairman*

DAVID VITTER, Louisiana
JOHN BARRASSO, Wyoming
SHELLEY MOORE CAPITO, West Virginia
MIKE CRAPO, Idaho
JOHN BOOZMAN, Arkansas
JEFF SESSIONS, Alabama
ROGER WICKER, Mississippi
DEB FISCHER, Nebraska
MIKE ROUNDS, South Dakota
DAN SULLIVAN, Alaska

BARBARA BOXER, California
THOMAS R. CARPER, Delaware
BENJAMIN L. CARDIN, Maryland
BERNARD SANDERS, Vermont
SHELDON WHITEHOUSE, Rhode Island
JEFF MERKLEY, Oregon
KIRSTEN GILLIBRAND, New York
CORY A. BOOKER, New Jersey
EDWARD J. MARKEY, Massachusetts

RYAN JACKSON, *Majority Staff Director*
BETTINA POIRIER, *Democratic Staff Director*

C O N T E N T S

Page

APRIL 22, 2015

OPENING STATEMENTS

Inhofe, Hon. James M., U.S. Senator from the State of Oklahoma 2
Boxer, Hon. Barbara, U.S. Senator from the State of California 3
Cardin, Hon. Benjamin L., U.S. Senator from the State of Maryland, prepared statement 33

WITNESS

Sutherland, Vanessa Allen, nominated to be a Member and Chairperson of the Chemical Safety Board 6
Prepared statement 8
Responses to additional questions from: .....
Senator Inhofe 12
Senator Markey and Senator Rounds 23

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

WEDNESDAY, APRIL 22, 2015

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

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

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

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

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

Ms. SUTHERLAND. I do.

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

Ms. SUTHERLAND. I do.

Senator INHOFE. Do you know of any matters which you may or may not have disclosed that might place you in a conflict of interest if you are confirmed?

Ms. SUTHERLAND. I do not.

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

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

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

We have some colleagues from DOT with whom I have worked for the last 4 years throughout different agencies and modes.

Senator INHOFE. Very good. Thank you.

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

Senator INHOFE. Does she have a security problem?

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

Senator INHOFE. All right.

OPENING STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

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

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

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

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

On March 4, 2015, current board member Mark Griffon testified to a House committee that "management deficiencies, including an untenable turnover rate, have also contributed to the inefficiencies in completing investigations."

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

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

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

Mr. Moure-Eraso has now left the CSB and you have been nominated to take his place. The senior staff, implicated in numerous investigations alongside the previous chairman, unfortunately remain.

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

Senator Boxer.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

Ms. Sutherland, thank you for being here today.

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

Just last Tuesday, the EPA Inspector General (who acts as the CSB Inspector General) told our oversight subcommittee that the prior Chairman, Rafael Moure-Eraso, likely committed perjury and other crimes during his tenure at the CSB.

Thankfully, Mr. Moure-Eraso has resigned. But his legacy of mismanagement, harassment, and turmoil remains. For example:

In a July 30, 2013 report the EPA Inspector General said that:

CSB does not have an effective management system to meet its established performance goal to "[c]onduct incident investigations and safety studies concerning releases of hazardous chemical substances."

On June 19, 2014 former CSB Board Member Beth Rosenberg testified to a House committee that, in her time on the CSB Board:

Those whose opinions differed from those of senior leadership or the Chair are marginalized and vilified. At the CSB, disagreement is seen as disloyalty. Criticism is not welcome and staff fear retaliation.

On March 4, 2015 current Board Member Mark Griffon testified to a House committee that "management deficiencies—including an untenable turnover rate—have also contributed to the inefficiencies in completing investigations."

On January 28, 2015, despite the congressional and Inspector General investigations about their mismanagement, former Chairman Moure-Eraso, with the cooperation of Board Member Ehrlich, took action to give the Chairman and Managing Director complete control of the CSB by dissolving 18 Board Orders that spelled out authorities for individual Board members and approving a new order that removes Board oversight of the actions of the Chairman.

The public and even the other CSB Board member, Mr. Griffon, had no notice of the plans to restructure CSB operations.

According to investigations conducted by the House Oversight and Government Reform Committee, the former Chairman, the Managing Director, and the General Counsel used private e-mail accounts to hide their plans for operating the CSB from other Board members and CSB staff.

After the EPA Inspector General learned about this, he sent a January 2015 report to President Obama concluding that Mr. Moure-Eraso and two of his senior officials violated the Federal Records Act.

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

Mr. Moure-Eraso has now left the CSB and you have been nominated to take his place.

Given the current state of affairs at the CSB, I will be very interested to hear—

1. How you plan to address the mismanagement and toxic work environment at the CSB, and

2. Your views on what authority should be held by the Chairman of the CSB and what authority should be held by the Board as a whole.

OPENING STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

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

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

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

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

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

There is another Safety Board nominee waiting, Kristen Kulinowski, to be a member of the CSB. Since we have all of her paperwork, I certainly hope we can move forward with her nomination because if we do not have boards that have their full membership, sometimes they can become completely paralyzed and cannot do anything because they do not have enough members.

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

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

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

After the disaster in West, Texas, President Obama issued an Executive Order establishing a working group to conduct a comprehensive review of our chemical safety and security programs and asked them to develop recommendations for improving these programs. However, I am very concerned that despite the clear risks posed by our Nation's chemical facilities, very little progress has been made to improve safety.

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

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

I have found, watching as long as I have and being involved in trying to get things done, leadership matters. I am very interested

in your nomination. I believe that you have the requisite background to take on these challenges. It is a huge responsibility.

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

I think you have a lot of challenges. In my question time, I will ask you about those but I am very hopeful that you have what it takes to get this job done.

[The prepared statement of Senator Boxer follows:]

STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR
FROM THE STATE OF CALIFORNIA

I want to begin by welcoming Vanessa Sutherland to the Committee on Environment and Public Works (EPW) today as we consider her nomination to be the next Chairman of the Chemical Safety Board (CSB).

The confirmation of qualified individuals to lead Federal agencies is an important responsibility of the Senate. It is critical that we move forward with the nominations under the jurisdiction of this Committee so that our Federal agencies can fulfill their mission to serve the American people. In addition to Ms. Sutherland, the President has nominated Kristen Kulinowski to be a Member of the CSB and, since we have all of her paperwork, we should move forward with her nomination as soon as possible.

Ms. Sutherland currently serves as Chief Counsel to the Pipeline and Hazardous Material Safety Administration of the U.S. Department of Transportation (DOT). This is a position she has held since October 2011.

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

Two years ago this month, a massive explosion at a fertilizer distribution plant in West, Texas, killed 15 people, injured hundreds more, and damaged or destroyed homes, businesses, and three unoccupied schools. After the disaster in West, Texas, President Obama issued an Executive Order establishing a Working Group to conduct a comprehensive review of our chemical safety and security programs and develop recommendations for improving these programs. However, I am very concerned that despite the clear risks posed by our nation's chemical facilities, very little progress has been made to improve safety.

If confirmed as Chairman of the CSB, Ms. Sutherland will face a number of challenges, including tackling the backlog of open investigations, the recent resignation of the Chairman, and addressing management and governance issues between the Chairman and other members of the Board.

The No. 1 priority of the CSB is safety. Ms. Sutherland, I need you to take these challenges on and be committed to the crucial safety mission of the agency. It is a huge responsibility but also a key opportunity.

I look forward to hearing from you about your vision for the CSB and how you intend to move the agency forward.

Senator INHOFE. Thank you, Senator Boxer.

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

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

Senator BOXER. Or she.

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

We will recognize you now, Vanessa, for 5 minutes.

STATEMENT OF VANESSA ALLEN SUTHERLAND, NOMINATED TO BE A MEMBER AND CHAIRPERSON OF THE CHEMICAL SAFETY BOARD

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

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

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

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

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

First, a bit about who I am and why I am so excited about this nomination. My background is as a practicing attorney, and I hold an MBA from American University. After serving in both government and industry for many years, in 2011, I was appointed as Chief Counsel of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, or PHMSA.

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

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

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

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

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

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

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

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

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

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

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

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

[The prepared statement of Ms. Sutherland follows:]

Written Testimony of Vanessa Allen Sutherland
Nominee for Chemical Safety Board Chairman and Board Member
Before the U.S. Senate Committee on Environment and Public Works
4.22.2015

Thank you, Chairman Inhofe, Ranking Member Boxer, and distinguished members of the Committee. I am Vanessa Allen Sutherland, and I am honored to have been nominated by President Obama to be the next chairperson of the U.S. Chemical Safety Board, the CSB. I would like to take this opportunity to acknowledge members of my family and friends, here today, who have encouraged, advised and supported me significantly throughout this process and long before it.

The CSB plays a unique and vital role investigating the most significant chemical disasters at fixed industrial sites, and making safety recommendations to prevent future loss of life and property. Although fortunately major disasters are rare, when they do occur they can have significant and lasting impacts on workers, employers, and communities. The Board is a non-regulatory agency whose investigations are not designed to punish or find fault, but rather to help all of us learn from these tragedies.

First, a bit about who I am and why I am so excited about this nomination. My background is as a practicing attorney, and I hold an MBA from American University. After serving in both government and industry for many years, in 2011, I was appointed as Chief Counsel of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, or PHMSA.

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

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

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

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

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

Despite its small size – just 40 people with an $11 million annual budget – the CSB has been in forefront determining the technical causes of these accidents and highlighting opportunities for improvement. CSB investigators drew attention to the unsafe storage of ammonium nitrate at the West fertilizer depot and were also first to put forward a detailed explanation for why the Deepwater Horizon's blowout preventer failed to operate.

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

I have always believed that safety is a shared responsibility. It is shared among company personnel, government agencies, standard-setting bodies, local emergency planners and responders, and educational institutions. For the public to feel safe from low-frequency, high consequence chemical disasters, all these organizations need to work together collaboratively toward a common purpose.

From my perspective, the CSB, through its nearly 100 major investigations over the years, has amassed a tremendous wealth of knowledge on chemical accident hazards. If confirmed by the Senate, I hope to use my term in office to encourage even greater use of this knowledge by industry, government agencies, and others for accident prevention and response. I believe the CSB's work is a tremendous and often untapped resource for these organizations.

In 2009, the CSB made an important recommendation jointly to the American Institute of Chemical Engineers and to the Accreditation Board for Engineering and Technology, which called for university chemical engineers to be trained on chemical process safety. By 2012, the two groups had successfully acted on this recommendation, and as a result process safety training is now a requirement for getting a chemical engineering bachelor's degree across the U.S.

Similarly in 2011, the CSB recommended that the American Chemical Society develop hazard evaluation guidelines for university chemical research laboratories, and the ACS has now done this as well.

And the CSB has done a great deal of educational work itself through its online safety video program, which began in 2005. This is a program to educate companies and workers about accident hazards, directly based on CSB investigation findings. The program has now produced at least 55 online animated videos on YouTube, with nearly

four million total views. The videos have been translated into many languages around the world, and won many awards both in the U.S. and overseas. I understand that most major U.S. chemical companies are using these videos in their training programs.

With education and collaboration we hope this Senate will not be hearing from another Sue Bonham.

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

Vanessa Allen Sutherland

Since 2011, Vanessa Allen Sutherland has served as the Chief Counsel for the Pipeline and Hazardous Materials Safety Administration at the U.S. Department of Transportation, whose mission is to protect people and the environment from the risks associated with hazardous materials transportation.

Prior to PHMSA, Ms. Sutherland spent seven years at Fortune 25 Philip Morris/ Altria Client Services in Richmond, Virginia. She managed technology transactions, procurement matters, data security and privacy, competitive intelligence, U.S. Customs issues, state and federal audits, and issues related to re-organization, dissolution and spin-off of international entities. Prior to her role at Altria, Ms. Sutherland spent six years in various legal roles at MCI/WorldCom, including Vice President and Deputy General Counsel for its webhosting and outsourcing subsidiary, eventually helping the subsidiary through legal matters that followed WorldCom's admission of accounting fraud and irregularities and bankruptcy. During that time, Sutherland was profiled in the Legal Times for being a top, senior, minority, in-house lawyer. She also has worked briefly for the Federal Deposit Insurance Corporation, the U.S. Department of Energy - Office of Inspector General and a law firm.

In 2012, she was the Recipient of a U.S. Secretary of Transportation Award at the 45th Annual Secretary's Awards after only a year in her new position, and two Secretary's awards in 2014. In 2010, she was the only in-house counsel recipient of thirty-one lawyers honored as "Leaders in the Law - 2010" for advancing the law, serving the community and improving the justice system in Virginia. She has been selected as a Fellow in both the Maryland State Bar (2005) and the Leadership Council on Legal Diversity (2011). She has been on the board or advisory committees of legal associations such as the Washington Metropolitan – Association of Corporate Counsel, Corporate Counsel Women of Color, Maryland State Bar, and the Virginia Bar Association.

Her non-legal contributions include having been the Vice Chairman of the Board for Peter Paul Development Center, whose mission is to help kids 7-18 by building a community of learners by engaging and challenging children, families and seniors in Richmond, Virginia's East End neighborhood. She has been Vice President, President and a regional chair in Jack and Jill of America, Inc. – James River Chapter, Mid-Atlantic Region, has been top fundraiser annually for the March of Dimes–Central Virginia and has been a member of the fundraising arm of the Richmond Symphony Orchestra.

After graduating high school at 16, Sutherland went on to obtain a B.A. from Drew University in New Jersey in Political Science and Art History after studying in London, England, to a J.D. and an M.B.A. from American University and a Certified Information Privacy Professional standing from the IAPP. She speaks French and is proficient in Spanish.

United States Senate Committee on Environment and Public Works
Nomination Hearing on April 22, 2015
Vanessa Allen Sutherland to be Member and Chairman of the Chemical Safety and Hazard Investigation Board
Questions for the Record

Senator Inhofe:

1. During the April 22nd hearing, I asked you to give me a commitment that, if you are confirmed, you will follow the direction of Senator Lautenberg's 1999 letter and that of the Moss opinion regarding governance of the CSB. You responded by promising collegiality and collaboration. I took that as a positive response. However, this issue is too critical for me to answer for you. And, it is too critical to be answered with vague promises of collegiality and collaboration. So, I ask again:

   Will you commit to me that, if you are confirmed, you will follow the direction of Senator Lautenberg's 1999 letter and the Moss Opinion?

Answer: I can assure the Committee that if confirmed as CSB Chairperson and Member, I will adhere to the "Moss Opinion" issued by the Department of Justice. In general, I agree with Senator Lautenberg's 1999 letter, but I note that it was issued prior to the issuance of the "Moss Opinion." I would have to study the "Moss Opinion" to ensure that Senator Lautenberg's recommendations are consistent with DOJ's legal advice. Senator Lautenberg's letter and recommendations echo my belief that the Board must work collectively and collaboratively to carry out the mission of the CSB effectively.

2. The CSB statute provides that the "Chairperson shall exercise the executive and administrative powers of the board." 42 U.S.C. 7412(r)(6).

   a. Explain your understanding of the phrase "executive and administrative powers of the board."
   b. Do you understand that the "executive and administrative functions" were defined by the Board in accordance with DOJ's Moss opinion?
   c. Do you understand and accept that the Chairperson is not the "head of the CSB" and that the full Board is the head of the agency. *See e.g., Free Enterprise Fund v. Public Co. Accounting Oversight Board*, 561 US 477, 511-513 (2010) (the constitutional heads of all of multi-member agencies are their respective boards or commissions, acting jointly.)

Answer:

a. The "executive and administration powers of the board" are, among other things, naturally concerned with the day-to-day administration of the agency, as well-summarized in DOJ's opinion.

b. I understand that the Moss Opinion outlined general principles of board governance without addressing any specific area of actual policy or administration. In general, DOJ advised that day-to-day administrative functions are vested in the chair, while substantive policy-making is vested in the board as a whole (as it should be).

c. I understanding the majority's reasoning in the PCAOB decision, and agree that in the case of multi-member Boards and Commissions, the Constitutional "head" of the agency are the Members or Commissioners in fulfilling their Constitutional, statutory or regulatory role.

3. During the April 22nd hearing you testified that illegal behavior by CSB employee could justify termination of that employee. However, behavior that falls short of a crime also can justify removal from office. Speaking hypothetically, if you were presented with facts demonstrating that a senior CSB official took all of the following actions, do you think those actions, in the aggregate, justify dismissal of that employee or do you think it would be appropriate for that employee to remain in a senior position at CSB?

    a. chastising a CSB employee for consulting with OMB on CSB budget issues and retaliated against the employee by reducing his bonus by two thirds because he or she talked to OMB,
    b. criticizing the credentials of experienced CSB investigators and abused them in front of their peers,
    c. micromanaging investigations,
    d. bringing in outside consultants on an investigation without the knowledge of the investigator in charge and without assuring confidentiality or the absence of a conflict of interest,
    e. removing investigators from investigations without cause,
    f. calling an employee a fool for bringing information on the cost of investigations to supervisor meetings,
    g. discounting Board member opinions, claiming political differences, and
    h. scheduling votes on Board orders without notice to Board members or the public.

Answer:
I take personnel matters very seriously, and of course, would ask relevant questions to determine the type of disciplinary action to take, such as over what period did these behaviors occur, was disciplinary action already taken and recorded and were there any other facts or employee behaviors that contributed to the actions. Organizations cannot promote a culture of excellence or innovation, when their senior leaders, whether appointed or hired, do not engage in respectful, ethical and legal behaviors.

4. The CSB has been the topic of numerous EPA IG reports, an independent contractor report, and hearings in both the House and Senate during which it has been described as having a "dysfunctional" culture that does not countenance and, in some cases, punishes dissent.

What specific actions would you take as Chair to address the culture that has persisted at CSB? What metrics will you use to measure whether your actions have been successful?

Answer: As you know, the OPM Federal Employee Viewpoint Survey is a frequently-used tool for tracking employee engagement and employee satisfaction. In my view, it can also be used as a tool to measure the current culture at the agency and work towards improvement. Furthermore, the Partnership for Public Service uses certain employee satisfaction and commitment scores from the OPM Viewpoint Survey to rank the Best Places to Work in the Federal Government annually. I plan to fully engage the resources available through the Partnership for Public Service to improve the CSB's OPM Viewpoint Survey results and ultimately the agencies' culture.

It is my understanding that the Partnership for Public Services weighs the positive responses in the OPM Viewpoint Survey for the following questions:

1) I recommend my organization as a good place to work.
2) Considering everything, how satisfied are you with your job?
3) Considering everything, how satisfied are you with your organization?

My goal is to focus on these key issues in an attempt to improve overall the culture at the CSB. I also plan to sit down with each employee and discuss their views on the agency and what can be done to improve their overall job satisfaction. With consistent communications and an ongoing dialogue I am confident that I can improve the current situation at the board. I plan to further examine issues such as a new management system of project review, so the board and staff are fully aware of where a project stands. I am also interested in developing a clear investigative protocol. It is my understanding that the CSB has had a protocol committee tasked with revising and updating investigative procedures; if confirmed I would plan to sit down with this committee and discuss how they can accomplish their objectives. I welcome an environment where employees can view their perspectives without fear of retaliation.

Of course, initially I would meet with every employee by walking around, hosting employee gatherings, soliciting ideas from the staff and fellow Board members, and communicating frequently on the initiatives described above.

5. On January 28, 2015, CSB held a hearing to consider findings related to a CSB investigation. No notice was given to Board Member Mark Griffon or the public that a proposed Board Order was going to be considered and voted upon. No copy of a proposed Board Order was given to Board Member Griffon or the public to review prior to the hearing. Despite the lack of notice, Board Member Manuel Ehrlich offered Board Order 2015-01 which rescinded 18 prior Board Orders and consolidated authority in the CSB Chairman. The Board Order was approved with Mr. Ehrlich and Chairman Moure-Eraso voting in favor of it and Board Member Griffon opposed.

a. What are your general thoughts on the process that was used to pass this Board Order?

b. Will you commit to me that, if confirmed, the CSB will operate in compliance with the Sunshine Act?

Answers:

a. I found the procedure used to be unfortunate. As I mentioned in the hearing, how something is executed is as important as what is being executed. Board Members should be made aware of motions to be offered before they are first put forth at a meeting. More importantly, I note from the records of the CSB, that the offering of previously uncirculated motions has been a common practice, and spans over several different chairs and members. In fact, I noted that approximately one year prior to the January 28, 2015 motion, that a similar situation occurred where two board members surprised the chair with a previously uncirculated motion, and demanded an immediate vote. Sadly, other examples abound at the CSB, which may have led to previous Congressional interest in the board's governance practices and behaviors. I believe that members should be free to offer motions, and at the same time, they should also be collegial with, and respectful of, one another so that "surprise motions" are unnecessary and highly unpopular.

b. I absolutely commit to adherence with the Sunshine Act. I also commit to an atmosphere of collegiality so that "surprise motions" became a thing of the past.

6. Do you believe each member should have access to and meaningful opportunity to participate in all board level deliberations and decisions?

Answer: Absolutely, I believe each member should have meaningful opportunity to participate in all board level deliberations and decisions. The best functioning boards find a way to discuss differences of opinions, deliberate, reach a conclusion and proceed with subsequent activities in a mature, professional manner.

7. Would you at any time prepare agenda items without allowing the board members meaningful opportunity to know and consider the items that may be brought up?

Answer: Should I be confirmed, I fully commit to providing my colleagues with advance notice of issues that will come up at board meetings.

8. Would you plan on calling quarterly public meetings to address general agency business and post clear notice of items to be voted?

Answer: It is my understanding that the CSB recently has proposed a rule to this effect (80 FR 27276, May 13, 2015). Presently, the rule is undergoing a public comment period, so I believe it would be inappropriate for me to comment on the proposed rule. Needless to say, whatever rule may emanate from this process, I will follow.

9. Are you committed to working with fellow members to craft an agenda including, as appropriate, voting on items you may not personally support.

Answer: Should I be confirmed, I fully commit to working with fellow members to craft an agenda, including, as appropriate, agenda items that I may not personally support. A Chair's role is not to present only his or her positions, at the exclusion of four other members. I would seek to model the behavior or openness, transparency and ethical conduct and expect my fellow members to model the same.

10. What do you think should be the roles of individual board members at the CSB?

Answer: I believe that individual board members are well positioned to perform a variety of roles at the CSB. In addition to their formal statutory roles in approving accidents investigations, safety recommendations, and agency policies, Board members can play a critical role in educational efforts, as I described in my testimony on April 22. I believe this educational role is perhaps the most important function of the agency, to make sure that the information from CSB investigations is put directly into the hands of the people in industry – both managers and rank-and-file employees – who can best make use of it. If confirmed as chairperson, I would encourage each member to develop an agenda of presentations before industrial audiences and academic institutions, to visit industrial chemical sites, to support the Office of Recommendations in following up on outstanding recommendations and to appear in CSB safety videos that are viewed and appreciated worldwide. These activities are vital if we are to help prevent future industrial accidents and mitigate their consequences.

In addition, I would encourage members to work positively, reassuringly and encouragingly with CSB staff members through dialogue and informal interactions, to increase employee engagement and improve morale. For example, board members could participate informally in staff working groups that are developing investigative procedures, best practices for investigation planning and scoping, and tools for investigative project management. Finally, I would like to see expanded participation of the board members in investigative field work, along the lines of the National Transportation Safety Board (NTSB) where members routinely deploy to accident sites along with the investigative teams, and the board members play key roles in public communications, interagency coordination, and stakeholder outreach. Having engaged with the NTSB during my tenure at the U.S. Department of Transportation, I would encourage fellow board members to give prompt and due attention both to the review and completion of

investigation reports and to the existence of any resource obstacles that hinder the completion of such reports.

In summary, I believe there is an essential, positive role that Board members play, which will help foster collegiality and teamwork across the agency.

11. How will you keep open lines of communication with and among board members?

Answer: Being mindful of the Sunshine Act and of avoiding the creation of cliques on the board, I would meet often with each board member, encourage board members to do the same with each other, and use technology, where possible, to stay updated on current issues affecting the staff and the resources of the agency. I would support and encourage board meetings, and I would encourage the board members to be in the office as much as possible to stay with the needs and activities of the staff in order to promote a common understanding on the strengths and opportunities of the agency.

12. What role would you see the board members playing in planning and preparation of CSB budgets and supplemental budgets?

    a. Would you agree that the board should be able to set out guidelines to the Chairman to administer his functions overseeing budget preparation?

    b. At other agencies in our jurisdiction, such as the NRC, the commissioners have direct access to staff, should they desire it, for technical information concerning budget planning to assist in their eventual review of budget proposals. Do you think board members should have access to budget planning information?

Answer:

a. It is my belief that on issues of policy, such as the preparation of annual budget requests to Congress, that the Board should not only have free and full input into the process, but should actively approve (as a collegial body), the agency's Congressional budget request.

b. Yes, of course. I would caveat this answer by saying that while all Board Members should have access to all information relating to the budget, Members (including the Chairperson) should not inadvertently or overtly endorse ignoring or bypassing the chain of command. Each federal employee has one boss, not five or six supervisors. It is essential that Board Members be provided with necessary information to make informed decisions. At the same time, Members must commit to follow the agency's organizational structure. This is only fair to employees who may be put in difficult positions if they bypass their supervisors while assisting members. I would seek to assure that the process was not disruptive or duplicative to employees.

13. What role to you see board members playing with regard to the use and approval of funds appropriated to CSB?

a. Would you agree that, should questions arise about spending decisions, the board members have an oversight responsibility that cannot be denied by a chairman?

b. Will you work with board members to ensure they can meaningfully perform their oversight responsibilities?

Answers to both a. and b.: I fully agree that all five Board Members have an important oversight role to play.

14. What role to you see board members playing with regard to appointments and oversight of heads of major administrative components of CSB, and especially key staff such as the General Counsel to the board, the chief of investigations, and managing director?

    At other agencies in our jurisdiction, such as the NRC, the Commissioners have oversight of the most senior staff hiring and reviews. Should CSB be any different?

Answer: I agree with former Congressman Henry Waxman's recommendations to the CSB dated May 2, 2014, specifically, his recommendation regarding the appointment of senior staff who will serve the entire board. I believe that such appointments should be conducted in a spirit of collegiality, while also strictly adhering to merit-based civil service personnel selection procedures.

15. What role do you see board members playing with regard to general policies and procedures by which the Chairman of the CSB shall carry out his or her duties?

    Do you agree that the Chairman should administer the daily activity of the CSB subject to the oversight of the other presidentially appointed, Senate confirmed Board members?

Answer: Board members should play a role in the creation, review and revision of general policies and procedures that govern the Chairperson and the members of the CSB. Yes, I agree that the Chairperson should administer the daily activity of the CSB subject to the inclusion of and collaboration with other Board members. CSB staff, including its senior staff, have a responsibility to the Board as a whole. I would see the staff's responsibility as providing high-quality technical work, open communication with all the board members at all times, and assistance to the members with their various formal and informal responsibilities.

16. Do CSB staff, and especially senior staff such as the General Counsel, serve the Chairman or the full board?

Answer: CSB staff, including its senior staff, have a responsibility to the Board as a whole. I would see the staff's responsibility as providing high-quality technical work, open communication with all the board members at all times, and assistance to the members with their various formal and informal responsibilities. In the case of the general counsel specifically, my understanding is that the role has long been defined by Board Order 2, adopted in 1999, which states that "it is the policy of the Board that the General Counsel shall report directly to the Chairperson, and not through any other employee of the CSB. While the first-line supervisor of the General Counsel shall be the Chairperson, the General Counsel may bring legal issues or concerns to any Board Member." I would go even further than this policy statement, and say that if confirmed as chairperson, I would encourage the general counsel's office to work freely and openly with *all* the members – not just in raising any issues or concerns – but also in helping to draft and refine members' proposals, policy positions, and motions and promoting consensus among the members on the substantive issues before the Board. This would be my guiding philosophy for all the agency's senior staff.

17. What do you think is the appropriate role of the general counsel in accident investigations?

Answer: The role of the General Counsel is to support the Board and investigators in obtaining necessary information to successfully conduct investigations. This includes such activities as approval of issuances of subpoenas, subpoena enforcement, negotiation of site control agreements, analyzing jurisdiction among various parties and other activities designed to elicit information from relevant parties, while at the same time respecting and protecting confidential business information.

18. The CSB is not a regulatory agency. It supports safety by investigation the causes of investigations and making recommendations. If the CSB makes the same unrealistic recommendations every time, such as recommending use of inherently safer technology or compliance with safety standards with a "safety case" approach, do think that industry will stop paying attention to the CSB, eliminating its value?

Answer: I want to state very clearly for the record that my intention, if confirmed, is to approach each individual investigation based on the specific facts of the incident and to perform a thorough, impartial, and scientifically-based root-cause investigation. I would view with serious concern if anyone at the agency were to approach an investigation with a preconceived notion of how the incident could be prevented through a safety regime change or any other preconceived or narrowly tailored agenda. It is well documented in the literature of accident

investigations that having preconceptions about cause has the effect of hamstringing the investigation process and causing investigators, even unconsciously, to overlook contradictory evidence or competing theories in favor of a particular desired outcome. Any such trend would be highly corrosive to the agency's reputation and effectiveness.

For example, the highly regarded Center for Chemical Process Safety (CCPS), a long-established program of the American Institute of Chemical Engineers, has developed specific guidance on how to compose an effective investigation team for root-cause analysis. In the 2002 CCPS book, *Guidelines for Investigating Chemical Process Incidents,* the Center directly cautions that in selecting an investigation team an organization must "avoid selecting personnel: with preformed opinions on important issues; who identify causes of the incident of the incident before the investigation starts ..." CCPS emphasizes using a multi-disciplinary investigation team – with a wide variety of technical and engineering skills – for the specific purpose of avoiding bias or subjective judgment in the results of the investigation.

If confirmed as chairperson, I will be guided by these industry-developed best practices for conducting objective investigations, and any safety recommendations will be strictly based on objectively determined root causes. As CCPS has also noted, the "attributes of a successful recommendation are ... it addresses a root cause of the incident (that is, it fixes the problem) ... [and] it is practical, feasible, and achievable." I believe these are sound principles for the CSB's operation.

Finally, as mentioned above, the Board members, through education, outreach and thought leadership, can facilitate discussion on the many ways to achieve what we all desire – safer environments for workers and the public. The Board members should not promote their individual safety philosophies over the objective findings of an investigation and related recommendations.

19. Do you think it is appropriate to assume that a particular safety regime is the answer to all problems or do you think the CSB should investigate actual root causes of accidents, go there the evidence leads them, and make recommendations based on the facts of the case?

    Answer: See my answer to number 18. Safety issues and remedies can be very fact-specific. Each accident should be investigated based its unique facts and causes.

20. The prior Chairman wanted to CSB to recommend adoption of the "safety case" model as the response to all accident investigations. The safety case approach replaces specific safety standards with documentation that the facility owner has identified all major safety and environmental hazards, estimated the risks, and showed how all of these are managed achieving a stringent target level of safety.

What is your view of the "safety case"? What is your evaluation of how you have seen it applied during the tenure of the departing Chairman? Would you continue to apply his preferences and practices?

Answer: There are many valuable elements about the safety case; however, I would want to discuss it with CSB staff, Board members and other experts to learn from them how it has been implemented and assessed in other countries. That said, there is no silver bullet or one-size-fits-all to preventing all accidents, but Board members including the Chairperson can empower and listen to all of the bright and experienced people within the CSB to collectively achieve the mission. Safety management systems and safety culture concepts are also great opportunities for industries to engage employees at all levels to assess and prioritize risk. I am a strong advocate for safety, and any approach that promotes continual improvement cycles, allocating budgets against the nature of the risk, and getting broad management buy-in is going to make workers safer.

21. During the April 22nd hearing you responded to many questions by referring to your experience at PHMSA. PHMSA is currently under investigation by its Inspector General relating to delays in carrying out its own mission so it may not the best model.

For example, during last year's State of the Union speech (2014), President Obama spoke about consensus policies in the energy space and *"...putting people to work by building fueling stations that shift more cars and trucks from foreign oil to American natural gas."* PHMSA has critical jurisdiction over LNG facilities that can be used for this exact purpose. I have heard from companies that wish to build these facilities that PHMSA's delays in updating standards that govern these small-scale liquefaction plants is a barrier to the use of these facilities.

I understand that you are departing PHMSA, but I am interested to learn what you have done during your time there to advance the Administration's goals in facilitating the construction of these small-scale LNG facilities by using up to date standards to provide operators regulatory certainty?

Answer: It has been rewarding to participate in the evaluating and supporting the issues related to the significant growth in import and export LNG facilities and in the number of facilities producing LNG as a transportation vehicle fuel for trucks, trains, and ships. Depending on the location and use, several Federal agencies and State utility regulatory agencies may regulate an LNG facility. For LNG import and export facilities, three Federal agencies share oversight for safety and security: the Federal Energy Regulatory Commission (FERC), the U.S. Coast Guard, and the PHMSA. FERC is responsible for authorizing the siting and construction of onshore and near-shore LNG import or export facilities, while PHMSA has authority to establish and enforce safety standards for onshore LNG facilities.

Among other things, I have personally met with LNG operators to discuss their legal and technical questions in order to assist other agencies with their approval processes. I have participated in interagency workgroups to foster regulatory reviews and consistent communication to operators. I have supported PHMSA's participation in standards

developing organizations' process to update technical standards, its consultative review of project specifications to operators, the creation of a webpage containing detailed guidance and FAQs for operators, and commenced a rulemaking process to update PHMSA regulations, which regulations contemplated LNG import activity years ago rather than the energy renaissance and export activity that has boomed recently. I and my office have also supported the program office in the evaluation of special permits, a tracking system to assure timely, responsive assessment of LNG projects, and the publication on the PHMSA website of all projects that are currently under review with PHMSA.

22. If confirmed, are there approaches or actions that are different from your experience at PHMSA that you would undertake at the CSB?

Answer: My time and perspectives from working in an Inspector General's office, working in industry and serving on 501(c)(3) and 501(c)(4) boards have provided me with a unique toolbox from which to draw. Yes, if confirmed, there are approaches that are different from my experience at PHMSA that I would undertake at the CSB, such as focusing on continuing to make the CSB a thought leader in chemical accident analyses or amplifying education and outreach to academic institutions, industry, other agencies and the public as a means to safety improvements that exceed mere regulatory oversight.

Senator Markey and Senator Rounds:

1) Ms. Sutherland, one of the more recent controversies associated with the CSB was the vote to completely alter the way the Board is managed without any public notice, and without providing all Board Members with an opportunity to even review the proposed changes. Based on what you have read about this incident, would you agree that it would have been more collaborative for all Board Members to have worked *together* on any changes to the way the Board is run prior to this vote?

   Answer: Yes, I agree. Board members and stakeholders deserve transparency and collaboration.

2) There are many other independent Boards and Commissions, and many of these have established processes for how the Chairman and Board Members should divide their roles and responsibilities. Would you be willing to work with your colleagues already at the Board as well as any new Board Members that will be confirmed in the future to take a look at how other similar organizations are run, and attempt to find a consensus management approach the Board can collectively adopt in the future?

Answer: Yes, I would welcome the opportunity to work with fellow Board members, current and future, to review how other similar organizations are run. I would encourage fellow Board members to set a new tone for the CSB and not revert to some of the practices and behaviors that have diverted previous Board members' attention from supporting accident investigations, conducting educational outreach, facilitating the completion of recommendations and focusing on employees' morale and professional development

Senator INHOFE. Thank you, Ms. Sutherland.

We are going to start off with 5-minute rounds. I think my questions will take a little longer than that so we will be having a second round. However, our votes are at 10:45 a.m., so my guess is that is going to be a drop dead time.

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

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

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

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

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

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

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

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

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

Senator INHOFE. Thank you.

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

Ms. SUTHERLAND. No.

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

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

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

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

Senator INHOFE. You did not do that?

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

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

Ms. SUTHERLAND. I did not.

Senator INHOFE. In January 2015, the EPA IG notified the White House that CSB Chairman Moure-Eraso, General Counsel Richard Loeb and Managing Director David Horowitz knowingly, all three, violated the Federal Records Act by using personal email accounts

to conduct official government business. The House investigation found that General Counsel Loeb knowingly used his private email because other CSB employees had access to the CSB servers.

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

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

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

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

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

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

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

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

Senator INHOFE. Thank you.

Senator Boxer.

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

Thank you for asking those questions, Senator.

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

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

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

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

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

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

How would you approach addressing the need to investigate the next significant accident while still keeping pending investigations on track because we have had a series of problems, interagency problems where one person says, don't touch this, this is our domain, don't look at this and that is a real problem.

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

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

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

I would say that likewise with the CSB, other than the obvious which is keeping lines of communication open within the Federal Government to make sure there is not duplication, there are not inefficiencies, there are not gaps and that we are approaching safety in a collaborative approach, I think is a good thing.

I certainly would want to transport that type of model and collegiality. We work very closely with DOJ, EPA and others at DOT. I see no reason why the CSB could not assert more of a pres-

ence in these investigations and begin to work more deeply and more collegially with Federal agencies because the information they have on accidents both past and possible, those that may occur in the future, is critical.

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

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

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

Ms. SUTHERLAND. Thank you for that question.

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

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

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

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

I think in that regard, as Chairperson, if confirmed, we could predictably identify when we are going to need more resources or to restructure how an investigation is done in order to get more complex investigations completed in a timely manner.

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

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

Senator INHOFE. Go ahead.

Senator BOXER. Thank you.

In my view, this is a really important issue, that you have not had the chance to really get into because obviously you are new to

the board. I think it is critical to move without delay when there is a problem because if it takes forever, we cannot learn.

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

Also, if you do not see an end to your work, it is depressing. You have to find closure on incidents. If you could give it a little more thought and perhaps get back to me on how you would set the deadlines, thank you very much.

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

Senator BOXER. Thank you very much.

Senator INHOFE. Thank you, Senator Boxer.

We have been joined by Senators Rounds and Gillibrand. We are in the process of the 5-minute opening questions.

Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

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

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

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

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

At DOT, I certainly have a very collaborative and collegial relationship with our IG's office. We are very proactive in both referring cases to them and collaborating where we see a need to share information that we have uncovered, as well as being responsive to them when we have audits, both ordinary course audits as well as anything that we might want to focus on in more specificity.

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

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

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

Ms. SUTHERLAND. Thank you, Senator.

I think communication is critical. Certainly, I am extremely supportive of approaching any Chairperson role in the vein of shared responsibility and communicating with the Oversight Committee,

understanding the concerns and those of all stakeholders is a very essential role for any Chairperson.

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

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

Senator ROUNDS. Very good. Thank you.

Mr. Chairman, I am completed.

Senator INHOFE. Thank you, Senator Rounds.

Senator Gillibrand.

Senator GILLIBRAND. Thank you, Mr. Chairman.

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

The Chemical Safety Board is tasked with the important role of investigating industrial chemical incidents. Their recommendations can help companies avoid these types of accidents in the future.

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

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

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

Ms. SUTHERLAND. Thank you, Senator.

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

Going forward, having worked at the NTSB at DOT, I think there are certain things that the Office of Recommendations can do, as well as the board members. The board members also play an instrumental role in participating in and reviewing reports, recommendations and helping to move them forward.

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

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

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

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

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

In that regard, that is powerful messaging. When you can amplify the reactive agent elements of chemistry that may have been overlooked or amplify that certain parts of curriculum need substantive and deeper experience before someone enters the workplace, those are great and wonderful stories and examples to have.

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

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

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

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

Although I know it is not squarely in the safety mission of the CSB, I certainly think the board members and the Chair could play a very critical role in engaging a similar conversation so that as we are looking at safety and understanding root causes, to the extent those are security related, that we share that information appropriately with others throughout the government.

Senator GILLIBRAND. Thank you so much for your testimony.

Ms. SUTHERLAND. Thank you.

Senator INHOFE. Thank you.

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

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

that the CSB chairman must perform those functions under the direction and approval of the board as a whole"?

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

Will you commit to this committee that if you are confirmed, you will follow the direction of Senator Lautenberg's 1999 letter and that of the Moss opinion?

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

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

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

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

Closely related to that, the current board members just passed a new order that temporarily gives back to the board some of its authority. It does not rescind Board Order 2015–1 that I referred to in my opening statement. It is only effective to June 24 or until the new Chair is confirmed.

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

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

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

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

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

Ms. SUTHERLAND. That, I do not have.

Senator INHOFE. Board Members Griffon and Engler have testified they would like to see Board Order 2015 rescinded to restore

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

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

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

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

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

Senator INHOFE. I think that is fair.

Senator Rounds, do you have further questions?

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

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

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

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

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

Certainly as a chairperson, my goal would be to communicate, be transparent, and make sure all voices are heard. I think much of

the challenge I have seen as just a citizen with the CBS has been a feeling, however legitimate, that there is not transparency, there is a lack of communication, that diversity of thought, opinion and perspective is not welcome.

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

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

Ms. SUTHERLAND. I have not.

Senator ROUNDS. You have not. OK. Board Members Griffon and Engler have testified they would like to see this Board Order rescinded to restore public confidence in the CSB.

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

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

Senator ROUNDS. Very good. Thank you.

Thank you, Mr. Chairman.

Senator INHOFE. Thank you, Senator Rounds.

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

Ms. SUTHERLAND. She has.

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

Ms. SUTHERLAND. That is Audrey Allen.

Senator INHOFE. Very good. Thank you very much.

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

Ms. SUTHERLAND. Thank you, Senator.

Senator INHOFE. We are adjourned.

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

[An additional statement submitted for the record follows:]

STATEMENT OF HON. BENJAMIN L. CARDIN, U.S. SENATOR FROM THE STATE OF MARYLAND

I would like to welcome our nominee here before this committee. Vanessa Sutherland was born at Sibley Memorial Hospital here in Washington, DC and after several days came home to Ft. Washington, MD where she lived in Tantallon until college. She attended a Queen Anne School, in Upper Marlboro from seventh grade through high school. She now lives in Ft. Washington, as do her parents and many of her siblings.

I want to praise Ms. Sutherland for her dedication to public service and to thank her, and congratulate her, for picking the best State in the country in which to live much of her life.

○