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# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

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June 4, 2014

The Honorable Mitch McConnell  
Senate Minority Leader  
United States Senate  
Washington, DC 20510

Dear Leader McConnell:

I write to notify you that I have objected to a unanimous consent agreement to confirm Richard J. Engler (PN1083-113, Cal. 651) and Manuel H. Ehrlich, Jr. (PN1370-113) to be members of the U.S. Chemical Safety and Hazard Investigation Board (CSB or the “Board”).

The Board, which is charged with investigating chemical safety accidents and recommendations to prevent them in the future, provides an important public service. But I recently become aware that CSB is refusing to cooperate with an investigation by its Inspector General.

The Inspector General for the Environmental Protection Agency (EPA), which also serves as the Inspector General for CSB,<sup>1</sup> first requested certain records from CSB on July 22, 2013, as part of a whistleblower investigation.<sup>2</sup> In the subsequent communications between CSB and the Inspector General, CSB refused to provide the records, arguing that they are attorney-client privileged and therefore exempt from disclosure to the EPA Inspector General.<sup>3</sup>

As a result, the EPA Inspector General, for the first time in its history,<sup>4</sup> invoked Section 5(d) of the Inspector General Act of 1978, as amended,<sup>5</sup> which requires an inspector general to notify the head of an agency when it “becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration and operations of [the Board].”<sup>6</sup> The notification requires the receiving agency to forward the letter to Congress within seven

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<sup>1</sup> Consolidated Appropriations Act of 2014, Pub. L. 113-76, 128 Stat. 5, 332 (2014).

<sup>2</sup> Letter from Office of the Inspector General, Environmental Protection Agency, to the Honorable Rafael Moure-Eraso, Chairman, U.S. Chemical Safety and Hazard Investigation Board (July 22, 2013).

<sup>3</sup> *See, e.g.*, Letter from the Honorable Rafael Moure-Eraso, Chairman, U.S. Chemical Safety and Hazard Investigation Board to the Office of the Inspector General, Environmental Protection Agency, to (August 29, 2013).

<sup>4</sup> Committee Staff meeting with EPA Inspector General on Nov. 21, 2013.

<sup>5</sup> Letter from Office of the Inspector General, Environmental Protection Agency, to the Honorable Rafael Moure-Eraso, Chairman, U.S. Chemical Safety and Hazard Investigation Board (Sep. 5, 2013).

<sup>6</sup> Inspector General Act of 1978, as amended, § 5(d).

days of receipt. CSB did so on September 12, 2013. Now, nearly nine months later and despite meeting with congressional staff, CSB has yet to turn over the required records.

I disagree with the Board's interpretation of the Inspector General Act of 1978 as exempting from disclosure those records that are subject to the attorney-client privilege and I am concerned by the precedent CSB's interpretation would set if left unchecked. Congress intended that the Inspector General Act provide a "broad mandate" affording inspectors general access to all records, including "confidential agency memoranda."<sup>7</sup> Inspectors general's authorities under the act are clear:

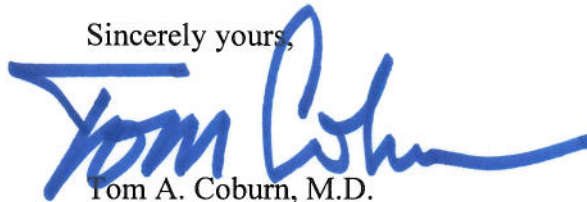
[E]ach Inspector General, in carrying out the provisions of this Act, is authorized to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the [agency] which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act ...<sup>8</sup>

The subsection includes no exception for attorney-client privileged materials. I believe the plain language of Section 6(a)(1), along with the omission of any statutory exception, is dispositive in this matter, especially given Congress's expressed intent in enacting the Inspector General Act.

I believe it would be inappropriate to proceed with confirming these nominations until CSB cooperates with the investigation by its Inspector General and produces the requested records. I request that I be consulted before the Senate enters into any unanimous consent agreements on either nomination. I am available to answer any questions you may have, and appreciate your leadership.

With best personal regards I am,

Sincerely yours,



Tom A. Coburn, M.D.

Ranking Member

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<sup>7</sup> S. Rept. 95-1071, 34.

<sup>8</sup> Inspector General Act of 1978, as amended, at § 6(a)(1).