

July 6, 2015

Via Email

Honorable Rick Engler  
Board Member  
U.S. Chemical Safety Board  
2175 K Street, NW  
Washington, DC 20037

Dear Mr. Engler:

On Friday, June 12, 2015, you declared yourself interim executive authority for the Board in an email to all staff, based on a private vote taken between you and Member Griffon the previous day. This private vote occurred while I was on medical leave and the Board lacked a quorum to operate. The vote also followed – by one day – a public meeting of the Board with a number of stakeholders, nominally about increasing transparency, where you and Member Griffon had no discussion about your plan to appoint you as interim executive.

The purported delegation of authority relied solely on the vote of Member Griffon, whose term ended on June 23, 2015, to in effect choose his own successor thereby usurping the authority of the current Board and of the President himself. Ironically the same illegitimate vote also rescinded the 180-day term limit on your appointment as interim executive, which was contained in Board Order 3, an order established in 2002 that you and Mr. Griffon had just voted to reaffirm at a public meeting on May 6, 2015.

As you stated to me several days ago, even you and Mr. Griffon were uncertain of the legality of these actions but decided that it would take too long to obtain a legal opinion on the matter. You also stated to me that you would not agree to my proposed power-sharing agreement, which I offered for a vote on June 8, 2015. Interestingly you stated to me that you could not agree to power-sharing because there were certain personnel maneuvers you desired on which we would be unable to agree.

On your first full day in the office following your unilateral declaration of authority, you and a handful of administrative staff entered the offices of the agency's two senior managers, the managing director and the general counsel, who oversee all the staff in the agency, and presented them each with a memorandum ordering them onto administrative leave for what you called allegations of misconduct. You seized their CSB issued devices and property and immediately cut off their email and network access. You then had them promptly escorted from the building under the observation of uniformed armed guards from the Federal Protective Service. Needless to say, these actions must have been carefully planned and choreographed, and initiated by you and Mr. Griffon in secret well prior to June 11 vote.

On Monday, June 29, 2015, an unnamed "agency official" was quoted in the *Washington Post* stating that "Engler put the general counsel and the managing director on leave to investigate possible misconduct identified by Congress and the inspector general." In an all-

hands staff meeting the following day, you announced – notwithstanding the privacy rights of the individuals affected – that you were conducting an investigation of the two senior officials.

As you are well aware, I was not consulted about any of these dramatic and ill-advised actions.

On June 18<sup>th</sup>, you announced a reorganization that had the deputy general counsel, who has pending legal action against the agency seeking up to \$300,000 in monetary damages, reporting directly to you. However, none of the other Office of General Counsel attorneys, including the assistant general counsel tasked with assisting the Justice Department in opposing the lawsuit, was able to report directly to you. Then on June 30<sup>th</sup>, you abruptly changed course, announcing to the all-hands staff meeting that another assistant general counsel would now be acting general counsel due to the pending lawsuit, and the deputy general counsel would have no supervisory role due to his pending federal litigation.

Subsequent to the all-hands staff meeting on June 30<sup>th</sup>, you and I held a Board quorum meeting at my request to discuss these serious issues. The director of administration and the assistant general counsel also attended this meeting. At the meeting, I requested information – such as the cost and the contract terms – concerning an outside law firm that has been apparently been retained at taxpayer expense to conduct an “administrative investigation” of actions by the managing director and the general counsel. You did not deny the existence of such a contract but stated that you were not prepared to provide any information on the contract at this time.

As you know, the Board acting jointly is the constitutional head of the agency, see *Free Enterprise Fund v. Public Co. Accounting Oversight Board*, 561 US 477, 511-513 (2010). In any external legal consulting contract, the client is the Board as a whole, not an individual Board member. You have no authority whatsoever to engage a private law firm using taxpayer funds to engage in what appears to be a personal vendetta against members of the civil service. And even if you were for argument’s sake the agency’s interim executive, you certainly lack any legal authority to deny me (or even a member of the public) information about the cost and the nature of the contract.

Now I learn that you have engaged an organizational consultant, RGS of Arlington, VA, on June 28<sup>th</sup> for \$49,998. At the all-hands staff meeting on June 30<sup>th</sup>, a staff member asked you specifically about your plans for engaging an organizational consultant and you essentially answered that you had not decided, divulging nothing about the RGS contract. Again, not only was I not consulted but I have no idea what the purpose of this contract is or even whether there is a statement of work. And to state the obvious, the amount of the contract award – \$49,998, or a mere \$2 under the threshold requiring Board notification and a vote under Board Order 28 – was obviously selected for the sole purpose of keeping me and other agency personnel in the dark. To engage in a contract like this where the amount of tax dollars committed is based on internal political considerations – rather than legitimate agency needs – is a serious matter.

In just these two contracts, you have unilaterally committed a significant percentage of the CSB’s entire remaining discretionary funds for the fiscal year to activities that appear to have nothing to do with chemical safety or our core investigative mission. These actions are simply astonishing.

As a fellow presidentially appointed Board member with fiduciary responsibility for the agency and responsibility for the integrity of the CSB's spending and internal controls, I have several requests. I request that no later than the noon on Tuesday, July 7<sup>th</sup>, you provide me with complete information concerning the outside legal and organizational consultant contracts, including:

- A copy of both contracts, including any associated statements of work, task orders, and modifications;
- A complete copy of the contract files, including purchase orders, information on how the contractor was selected, and any competition that was held;
- Information on how these contracts have been categorized (and apparently concealed from view) in the CSB's weekly operating budget;
- All correspondence, including email, between you, former Member Griffon, or any CSB staff member with personnel from the contractors;
- The names of the contracting officer (CO) and the contracting officer representative (COR) for each contract, and the names of all CSB staff members who are authorized to communicate with the contractors;
- All points of contact at the outside law firm and organizational consultant firm for the contracts with the CSB.

I intend to discharge the responsibilities of my position in those areas where my background is most beneficial to the agency and the people that I serve. For example, I will be involved in Federal Register process, investigation process including reporting etc. Last week a call came from the Federal Register about the procedure of putting information into the system and who was responsible. I told them that both you and I would sign documents and they advised of a new notification process for same. I will complete that letter early next week.

While I intend to take further such actions, I will off course keep you informed

Similarly, I expect to be kept updated in the process you are involved in before major modifications are made. While I recognize you desire to "handle" personnel I expect to have input and provide feedback. To that end I again ask that we share these responsibilities.

Thank you for your cooperation. In the event of the denial or partial denial of any of the items above by noon on Tuesday, I request that this letter be placed on the home page of [CSB.gov](http://CSB.gov).

Manny Ehrlich

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