



Workers perform maintenance at the BP Plc Macondo site in the Gulf of Mexico off the coast of Louisiana, on Aug. 7, 2010.

Photographer: Derick E. Hingle/Bloomberg via Getty Images

[News](#)

For Chemical Safety Board, Advice to Federal Agencies Piles Up

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- Among Chemical Safety Board's toughest tasks is prodding federal agencies to improve
- After almost 20 years, 62 percent of CSB's suggestions not adopted
- Compliance rates, which can involve significant regulatory changes, unlikely to change soon

Launched two decades ago as a free agent with the power to call out scofflaw businesses and any lax federal regulations enabling them, the U.S. Chemical Safety Board is still waiting for systemic changes only willing federal partners can secure.

Though the CSB lacks its own regulatory authority, it can urge federal agency changes with implications for oil and chemical companies as well as labor unions and workers because their facilities are subject to these regulations.

But a large majority of the independent agency's recommendations to federal counterparts have languished without action, records show.

Federal agencies failed to respond to CSB recommendations 31 percent of the time. And just 37 percent of the CSB's recommendations to federal authorities have been adopted since the agency opened in 1998, according to a Bloomberg Environment analysis of CSB data.

By comparison, trade organizations have implemented 73 percent of recommendations, while facility owners and operators adopted 77 percent. Manufacturers of equipment, vendors, contractors, and suppliers of facilities where a chemical incident has occurred have met 89 percent of recommendations.

Mixed Results

The CSB “frankly, has somewhat of a mixed history in relating to other federal agencies,” board member Rick Engler [said](#) at a public meeting in October. “Maybe that’s a nice way of putting it.”

The discrepancy reflects the difficulty of the tasks the CSB assigns to federal agencies, Michael Wright, health and safety director at the United Steelworkers Union, which represents workers at some industrial facilities that have been investigated by CSB, told Bloomberg Environment.

A trade organization “can just assemble a group and get to work on a new consensus standard,” if that is what CSB asks for, Wright said. “It’s infinitely easier to do that than it is for OSHA [the Occupational Safety and Health Administration] to go through a whole rulemaking.”

A CSB spokeswoman didn’t respond to a request for comment.

Off the Hook

Recent questions about the feasibility of the CSB’s recommendations to federal agencies has led to some second guessing.

In one instance following debate during a public meeting in November, the board voted 3-1 to abandon a recommendation to the Bureau of Safety and Environmental Enforcement that suggested the Interior Department agency set up a system of labor management safety councils for offshore oil facilities in the Gulf of Mexico.

The board had identified insufficient worker participation in safety roles at offshore oil platforms as a problem in its Deepwater Horizon explosion investigation in 2010. But earlier this year, BSEE told the CSB it lacked the legal authority to set up the program.

In a March 22 [letter](#) to CSB Director of Investigations Charles Barbee, Douglas Morris—BSEE’s chief of its office of offshore regulatory programs—did not specify why the agency lacked authority. The letter said BSEE thought the CSB’s safety objectives have been addressed by “recent BSEE reforms.”

The move prompted claims from some labor advocates and former Obama administration officials that the CSB was failing to stand up for strong safety standards. The board said it wanted the changes but was convinced by BSEE’s legal analysis.

The action means that CSB will no longer list BSEE as noncompliant with the regulation. The board's next move is unclear, but the CSB has "an obligation to fix that problem and to get [the recommendation] addressed to the right people and push to see it adopted," the United Steelworkers' Wright said.

Some Successes

After an explosion at a Delaware oil refinery killed one worker and injured eight in 2001, the CSB issued eight recommendations to industry trade associations—the American Petroleum Institute, National Association of Corrosion Engineers, and National Petrochemical and Refiners Association—five of which have been adopted and completed.

But a request that OSHA cover certain atmospheric storage tanks like the one that exploded at the refinery under its process safety management standard remains incomplete. The board [designated it](#) as open with an unacceptable response in 2013, more than 10 years after issuing the request. The board said it had "inquired about the progress of this revision on multiple occasions, without receiving a clear answer."

BSEE is not the only agency with outstanding recommendations from the CSB. Records show the board has 31 other open recommendations to federal agencies for which it has not received a response, though there's no indication of broader pushback to the CSB standards.

Sometimes agencies, such as the Occupational Safety and Health Administration, found it more practical to wait to incorporate CSB suggestions en masse in a future rulemaking, rather than address the recommendations individually as they arrived, Jordan Barab, former OSHA deputy director from 2009 to 2017, told Bloomberg Environment.

"A lot of the agencies they are going to are EPA and OSHA, which have severe cases of regulatory constipation," Jeff Ruch, executive director of Public Employees for Environmental Responsibility, which advocates for government employees, told Bloomberg Environment.

For example, federal programs that protect workers and the public from unplanned chemical releases haven't seen rewrites in decades. OSHA has not updated its process safety management standard since 1992, and the EPA has not rewritten its facility risk management program regulation since it was published in 1996.

How Recommendations Work

Recommendations are developed by career staff, but Senate-confirmed board members must vote to approve them or modify their status later.

The agency rarely reconsiders recommendations to federal agencies, as it did for BSEE. It has done so only five other times since its founding. Halted proposals to these entities include:

- On Feb. 1, 2017, it abandoned a request that the EPA play a role in a process safety culture survey oversight committee at Andeavor Corp.'s Tesoro, Wash., refinery, a recommendation first issued in 2014. CSB [said](#) it “reconsidered the appropriateness” for a federal agency to participate in a company-specific program.
- On July 5, 2017, it scrapped a call that OSHA amend its permit-required confined spaces rule for general industry to reduce the limit below the level at which a flammable chemical could ignite, a recommendation issued in 2010. OSHA [told](#) the CSB that the standard already prohibited such conduct and enforced it against the company, Xcel Energy, that the CSB had investigated.

CSB Outcomes Reviewed

CSB staff audited some recommendations in 2015, releasing a [report](#) finding that recipients who did not complete the suggestions understood what was expected of them, and that recipients whose recommendations were already marked as closed had not backtracked on their progress.

At the same time, the report said it was hard to know whether chemical incidents had declined as a result of specific safety recommendations because the CSB lacks more reliable data on how often they occur.

The board has since been sued by advocacy groups that wanted a court to order it to issue a chemical reporting regulation, as called for in the Clean Air Act Amendments of 1990.

Barab said the CSB might be able to achieve better outcomes by working collaboratively with federal agencies in advance of issuing a safety recommendation.

It’s important to “make sure you have a thorough discussion with the targets of the recommendation to make sure that what you’re doing is possible legally for the agency to do, and where it’s the most effective way to get where you want to go,” Barab said.