June 13, 2013

Chairman Michael K. Simpson  
Subcommittee on Interior, Environment, and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives  
Rayburn House Office Building, B-308  
Washington, DC  20515-6023

RE:  Support for U.S. Chemical Safety and Hazard Investigation Board in FY 2014 Appropriations

Dear Chairman Simpson:

The American Society of Safety Engineers (ASSE) is a global professional society of safety, health and environmental (SH&E) professionals representing the interests of more than 35,000 members. Our members work with employers in every industry to help make sure workers can go home safe and healthy to their families each day.

An invaluable federal resource these professionals rely on to accomplish their work is the U.S. Chemical Safety and Hazard Investigation Board (CSB). CSB’s investigations into the causes of chemical explosions in workplaces and its resulting technical reports and recommendations provide the insight needed to help see that similar workplace incidents can be avoided. CSB’s contributions to our members’ understanding of how
best to protect workers from explosions save countless lives. Based on that value, ASSE fully supports the Administration’s FY 2014 budget proposal to fund CSB at $11.484 million, an 8.8 percent increase over the current operating budget.

Of particular interest to ASSE is to see that CSB receives this additional funding proposed by the Administration. In recent years especially, Congress has had no difficulty in recognizing CSB’s unique value. In recent weeks, Congress called on CSB to investigate the April 19 fertilizer explosion in West, Texas (http://www.epw.senate.gov/public/index.cfm?FuseAction=PressRoom PRESS RELEASES &ContentRecord_id=5c5072de-0c95-6026-6d73-4d5bae108ba2). Congress also asked CSB to focus its limited resources on the extremely complex 2010 Deepwater Horizon explosion. To date, CSB has dutifully responded to that request but, without any additional funding from Congress, has spent a full third of its budget on its investigation into this one incident, according to the agency’s budget justification (http://www.csb.gov/Assets/1/16/FY_2014_CONGRESSIONAL_BUDGET_JUSTIFICATION_-_Final_4-10-2013.pdf). The loss of workers, first responders and citizens as well as the catastrophic impact on communities easily demonstrate that the American people deserve a well-funded agency that has the resources needed to meet its Congressional mandate to investigate explosive releases of chemicals that harm people and property.

To help ensure CSB’s ability to use appropriated resources to the best advantage, ASSE also urges the Subcommittee to recommend to the full Committee on Appropriations that, with any appropriations measure moving forward, report language be included that can help resolve two long-standing issues concerning federal agency jurisdictional issues over incident sites that are challenging CSB’s ability to fulfill its mission independently and, so, limiting its ability to use the resources appropriated to it to their fullest measure.

First, because of a lack of clarity in federal jurisdictional priority when incidents occur, CSB too often has faced serious difficulties in carrying out investigations. The most severe example of confusion over this issue has been occurring at the West, Texas fertilizer explosion site. One federal law enforcement agency has dominated the site. ASSE supports each agency’s purpose and their need to investigate this and other incidents. However, we fear that, because the federal agencies involved have not been able to work out a satisfactory agreement to cooperate in this investigation, an opportunity to understand the specific causes of this incident from a variety of perspectives may be lost, making it more likely a similar explosion could occur again. The investigative responsibilities each agency has been given is important in its own way relative to the facts of each incident. But no one agency should be able to so dominate any investigation to the point that another agency is unable to carry out its own investigation without some well-articulated and appropriate reason.

Second, CSB and the Environmental Protection Agency (EPA) are embroiled in a conflict over the use of work product from CSB investigations, as outlined in a
March 10, 2013 San Francisco Chronicle article entitled “Grand jury probe of Chevron opens rift” (060913 CSB SF Chronicle 3 10 2013). While we understand that an agency like CSB without enforcement powers feels its ability to investigate is greatly assisted by ensuring that the testimony of those it interviews will not be used in an enforcement proceeding, we also understand that the EPA has a legitimate interest in not being inappropriately limited in the scope of information it can gather about an incident. In turn, CSB should be able to gain appropriate access to investigative work product other agencies develop so its own investigations can move forward. Whatever the solution is to this problem, when two federal agencies must resort to legal action to settle their differences, it is time for Congress to require the Administration to sort out these difficulties so the work of protecting the American people can be accomplished.

To address both these issues, ASSE urges the Subcommittee to see that language is included in report language to a final appropriations bill that would require the Administration to bring together CSB, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Department of Homeland Security, EPA, the Federal Bureau of Investigation, the Occupational Safety and Health Administration, and any other appropriate agency to establish procedures that would ensure an appropriate balance of interests in both carrying out investigations and in sharing work product can be established for future incidents where CSB has jurisdictional authority to investigate. The proper advancement of our members understanding of explosions in workplaces requires this important development.

Thank you for your time and attention to our concern.

Sincerely,

Richard A. Pollock, CSP

cc: Representative Jim Moran, Ranking Member