

**U.S. Chemical Safety and
Hazard Investigation Board**

2175 K Street, NW • Suite 650 • Washington, DC 20037-1809
Phone: (202) 261-7800 • Fax: (202) 261-7650
www.csb.gov

Hon. William E. Wright
Board Member

Hon. Gary L. Visscher
Board Member

Hon. William B. Wark
Board Member



September 27, 2007

Senator Barbara Boxer, Chairman
Senator James M. Inhofe, Ranking Member
Senate Committee on Environment and Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Boxer and Senator Inhofe:

Yesterday an unsigned document, appearing on the letterhead of the International Association of Fire Chiefs (IAFC), was circulated to the staff of the Senate Environment and Public Works Committee. The document makes a variety of claims concerning the investigation by the U.S. Chemical Safety and Hazard Investigation Board (CSB) of a major chemical accident that occurred last year in Danvers, Massachusetts.

The CSB is an independent federal agency that investigates and determines the causes of chemical accidents. The agency is headed by five members appointed by the president and confirmed by the Senate and employs a professional staff of engineers, safety specialists, and other technical personnel who conduct the investigations. We issue public reports and safety recommendations designed to prevent future accidents. These reports are distributed throughout the U.S. and around the globe in an effort to prevent further loss of life and environmental damage from chemical disasters.

I write to inform the Committee that the IAFC document that surfaced yesterday contains a number of significant errors of both fact and law.

The chemical explosion that shook Danvers in the early morning hours of November 22, 2006, originated in a chemical factory that produced printing inks and paints. The explosion damaged or destroyed more than 100 homes and businesses off-site. It exposed a number of Danvers families to life-threatening dangers as their houses literally collapsed around them while they slept.

As authorized and required under 42 U.S.C. § 7412(r)(6), the federal Clean Air Act, the CSB began a federal investigation to independently determine and make public the causes of the accident.¹ The

¹ The IAFC document states with evident disapproval that “the CSB attempted to initiate an investigation independent of the ongoing federal, state, and local investigation.” In fact, the Clean Air Act provisions establishing the Board and the accompanying legislative history make absolutely clear the requirement for CSB investigations to be separate and independent of other investigations. The CSB authorization was patterned on the National Transportation Safety Board; see 42 U.S.C. § 7412(r)(6) and Senate Report 101-228, stating that “the

Clean Air Act clearly states, “In no event shall the Board forego an investigation where an accidental release causes a fatality or serious injury among the general public, or had the potential to cause substantial property damage or a number of deaths or injuries among the general public.”

The IAFC document states that “Unfortunately, there were a number of problems with [the CSB’s] arrival on scene, including the fact that the incident commander and state fire marshal were not informed of their arrival ...” This statement is simply false.

On November 22, 2006, a few hours after the explosion, then-CSB Chairman Carolyn Merritt made the decision to deploy CSB investigators to the site in Danvers. Consistent with the CSB’s standing protocols and with the National Incident Management System (NIMS), the CSB General Counsel prepared letters of authority and introductions for specific CSB personnel stating the applicable U.S. statutes, for presentation at the accident site. The CSB investigator-on-duty that day, Mr. James Lay, P.E., promptly contacted the executive assistant to the Massachusetts State Fire Marshal and requested that she notify the marshal of the planned deployment on November 24. He further requested that the state fire marshal relay back the name and contact information of the incident commander to the CSB lead investigator, Mr. John Vorderbrueggen, P.E.²

The CSB incident screener on duty on November 22, Ms. Katherine Leskin, further notified the Danvers Fire Department, the U.S. Environmental Protection Agency, and the U.S. Coast Guard of the planned deployment two days later on November 24. A CSB public affairs officer, Ms. Jennifer Jones, contacted the state offices of Senator Edward Kennedy, Senator John Kerry, and U.S. Representative John Tierney to inform them of the pending deployment of CSB investigators and to schedule briefings for November 24 at the various members’ local offices. She further contacted the Danvers Town Manager’s office to inform authorities of the deployment and was subsequently referred to the town’s director of public health, with whom she scheduled a briefing for November 24.

Finally, in the late afternoon of November 22, the CSB issued a news release stating our plan to begin an investigation. The CSB news release was widely reported by statewide news media including the *Boston Globe*, the *Boston Herald*, the Associated Press, and others on November 22-23.

The CSB investigative team arrived at the site at approximately noon on November 24, and I was the board member accompanying the team. Consistent with both the CSB’s standing protocols and with the National Incident Management System (NIMS), my first action on arriving in Danvers was to formally log in at the command center established by the state and local fire services and the state police, in an effort to further introduce the Board and team.

A short time later, my assistant and I were told that a coordination meeting was about to begin and it was made clear to us by an official in the command center that we were not welcome to attend. We left the command center to meet the town manager. In the meantime, the CSB lead investigator duly arrived at the command center and was instructed to talk to Detective Lieutenant Martin Foley, the state police arson investigation team operations commander, who reported directly to the state

independence of the Board in its official duties (finding the cause or probable cause of chemical accidents and recommending requirements or orders which will prevent accidents in the future) is essential for several reasons” and noting that “the independence of the Board was strengthened by amendments adopted during Committee markup.”

² So far as is known, the state fire marshal never responded to this request.

fire marshal. Mr. Foley acknowledged that the arrival of the CSB team was expected and assembled the incident command team for a short presentation by Mr. Vorderbrueggen.

Mr. Vorderbrueggen gave a brief introduction of the CSB and our mission to the incident command team, which included the state fire marshal, arson team operations commander, the Danvers fire chief, the deputy fire chief. Mr. Vorderbrueggen further reiterated that the CSB team would closely coordinate their activities with the ongoing state activities. However, the arson team commander immediately disputed the Board's authority to conduct an investigation and then dismissed both Mr. Vorderbrueggen and CSB investigator Johnnie Banks from the command center.

From that point forward, the arson team operations commander repeatedly denied the CSB team access to both the destroyed chemical facility and the surrounding damaged neighborhood over the next five days, until Wednesday, November 29, when the site was turned over to the EPA.

On Saturday, November 25, the Danvers Fire Chief conducted a news conference where he stated that the Board was "uninvited," "unwelcome," "not a piece of the pie," and "a distraction that has taken time away from the real investigators." He further stated: "We have a team that knows how to work together, they've been working together for years, and they're not part of our team."³ At the same time, the CSB made restrained public statements, characterizing the situation as a "misunderstanding" which we were hopeful of quickly resolving.

Over the next several days, the CSB's lead investigator, Mr. John Vorderbrueggen – a highly experienced mechanical engineer who has led many CSB investigations – made several further personal attempts to approach Mr. Foley and constructively discuss the situation. Mr. Vorderbrueggen was unsuccessful in establishing any dialogue and was told he was interfering with and disrupting the investigation and was summarily and repeatedly dismissed from the site.⁴ Mr. Vorderbrueggen was also threatened with removal from the police-controlled area if he continued "to interfere."

The September 25 IAFC document states that local fire and law enforcement officials were engaged for some period of time in determining if the explosion was caused by a criminal act. However, at no time since November 22, 2006, did local or state officials offer any evidence, either in private or in public, that the explosion in Danvers was anything other than a process-related chemical accident, clearly subject to the CSB's investigative jurisdiction. Further, CSB investigators have worked on numerous incidents in which concurrent civil and criminal investigations were conducted in the initial days following the incident, and CSB investigators are trained and acknowledged as experts in evidence preservation at chemical accident sites.

³ See AP Domestic News, November 26, 2006, "Probers Look for Clues in Mass. Blast," *Boston Globe*, November 26, 2006, "Dispute besets blast probe US investigators barred from site by Danvers chief," *Salem News*, November 27, 2006, "Investigators probe blast cause, feds fight to get access."

⁴ The IAFC document is accurate in stating that the CSB sent a video crew to Danvers prior even to the arrival of investigators. The purpose of the video crew was to document the extensive damage to the community before structures collapsed or were either razed or repaired. The crew carried appropriate contractor credentials issued by the CSB. Although the CSB regrets that the crew arrived before CSB investigators, there is no indication whatsoever that this small, professional crew was in any way disruptive or discourteous to state or local officials. The crew remained outside a police checkpoint and eventually left the area after it proved impossible to arrange access. The CSB never sought to have the crew enter the destroyed facility or its immediate vicinity. The sole purpose of the video crew was to attempt to document the blast damage to the community which extended up to a mile away from the destroyed CAI/Arnel facility.

As already indicated, CSB recognizes and follows the NIMS system. The NIMS system was established in February 2003 by Homeland Security Presidential Directive #5 with the purpose to “prevent, prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies.” In the case of Danvers, the fires had extinguished, the community had been searched and evacuated, and the emergency had ceased on November 22, two days prior to the arrival of CSB investigators.

NIMS is designed to promote the fast integration of federal, state, and local efforts to respond to major disasters – a goal which the CSB clearly supports. NIMS is a system for emergency response and recovery and is not a system for investigating the causes of disasters. Where emergency response and investigations may overlap, emergency response must come first. But HSPD-5 and NIMS are not intended to, and do not, interfere with the CSB’s authority to carry out its investigative mission. Additionally, we do not view these as mutually exclusive functions. Paragraph 5 of HSPD-5 states unambiguously that “nothing in this directive alters, or impedes the ability to carry out, the authorities of Federal departments and agencies to perform their responsibilities under law.” In fact under NIMS, the responsibility of the local incident commander in Danvers was to rapidly integrate the CSB into the existing command structure so that the Board’s lawful functions could proceed. Had they done so all parties could have more effectively coordinated their respective responsibilities, but regrettably this did not happen.

Between November 25 and 27, while the CSB continued to be blocked, it became clear from media reports that the Danvers accident site was being irrevocably damaged by the state-led investigation. State and local authorities brought heavy equipment, such as front-end loaders, into the site to rapidly clear the debris field, without apparent regard to the possible evidentiary value the debris and damaged equipment might have in establishing the causes of the accident. The modification and destruction of the accident site by state and local fire services is clearly documented in the accompanying photographs (see attachment).

Facing an intractable and rapidly changing situation on the ground, the CSB chairman personally authorized the CSB general counsel to seek the intercession of the U.S. attorney for the District of Massachusetts to protect the Board’s interest in the accident site. The CSB further sent a letter on the morning of November 27 to the state fire marshal, citing the CSB’s authority under the Clean Air Act to “enter the accident site and ‘do all things therein necessary for a proper investigation’ including inspecting ‘records, files, papers, processes, controls, and facilities’ and taking relevant samples.”⁵ The letter stated that the CSB was not seeking to preempt the Massachusetts investigation and, despite all that had occurred, asked state authorities to “work cooperatively with the CSB to ensure that relevant evidence is preserved from alteration or destruction.” The CSB received no response to the letter.

The CSB chairman further authorized the CSB director of congressional, public, and board affairs to contact state and federal elected officials and other stakeholders – including Governor Romney, Senator Kennedy, Senator Kerry, and Representative Tierney – to describe the current situation in Danvers and the ongoing destruction of the physical evidence. The CSB chairman authorized the director to speak to the news media, including the *Boston Globe* and others, concerning the serious situation in Danvers and the need to provide the Board’s experts with immediate access to the site and the physical evidence before it was lost.

⁵ Letter dated November 27, 2006, from CSB Lead Investigator John Vorderbrueggen to Massachusetts State Fire Marshal Stephen Coan (see attachment).

Following extensive editorial criticism of the position taken by Massachusetts fire authorities, chiefly by the *Boston Globe*,⁶ those authorities backed down on November 28 and allowed the CSB to enter the accident site the following day. However, it is misleading to suggest, as the IAFC document does, that “the U.S. District Attorney [sic] finally worked out an arrangement to bring peace to the situation” as though the U.S. attorney had valiantly inserted himself into a lawless conflict. In fact, the CSB had contacted the U.S. attorney’s office the previous day in an effort to protect the Board’s interest in the accident site under federal law.

Unfortunately, the accident site had been extensively disturbed during the preceding several days by the state-led investigation. Key pieces of physical evidence could never be found, including the steam valves on a large solvent tank that was later believed to have overheated on the night of the accident and released the flammable vapor that exploded. Despite the loss of evidence, CSB investigators and blast experts worked for weeks at the accident site and for months afterward to conduct the most thorough investigation possible under the circumstances.

On May 9, 2007, the Board held a large community meeting in Danvers, which was attended by approximately 200 residents, government officials, safety experts, and journalists, where the CSB investigative team presented its preliminary findings. Among other conclusions, CSB investigators determined that the CAI/Arnel facility had not complied with existing Massachusetts state fire codes for the use of flammable liquids, that the facility had not been thoroughly inspected in several years, and that the facility had not sought or received state-required permits for handling flammable substances.

At the public meeting, the CSB received overwhelmingly positive comments from the residents and officials about the quality and thoroughness of our investigation in Danvers.⁷ Massachusetts has since established a program to improve its inspection of chemical plants for code compliance and is considering additional state legislation.

The Board remains fully committed to effective coordination with federal, state, and local officials during all stages of its investigations – as it always has been. The CSB has a notable record of successful, concurrent civil/criminal investigations at incident sites throughout the country. We have conducted such concurrent investigations at many major accident sites, including the massive, fatal explosions at the BP Texas City refinery; the West Pharmaceutical facility in Kinston, NC; and the CTA Acoustics facility in Corbin, KY, to cite just a few examples.

Finally, I note that U.S. firefighters benefit greatly from accurate, thorough, independent investigations of chemical accidents. A number of fire chiefs have complimented the CSB’s investigative work, as noted in an article published by the *Salem News* during the unfortunate situation in Danvers.⁸ Firefighters’ lives are ultimately on the line when chemical disasters occur, and the Board has made a number of safety recommendations aimed at improving emergency preparedness, equipment, and training around the country. Additionally, the CSB has received numerous requests from fire departments, officers, and trainers around the country seeking the use of CSB investigative products in educational efforts for firefighters, and we always assist in any way possible.

⁶ See *Boston Globe* column, November 27, 2006, “No time for turf war,” by Adrian Walker; *Boston Globe* editorial, November 28, 2006, “Another Danvers Blowup” (see attachment).

⁷ A transcript of the public meeting is available at CSB.gov.

⁸ See *Salem News*, November 29, 2006, “Others Welcomed Chemical Safety Board,” by Paul Leighton (see attachment).

If you have any questions or require further clarification on any point raised in this letter, please contact the CSB's Director of Congressional, Public, and Board Affairs, Dr. Daniel Horowitz, at (202) 261-7613. Thank you for your ongoing support of the Board and its mission.

Sincerely,



William E. Wright
Board Member and Interim Executive Authority

Attachments:

Photographs of Danvers accident site documenting evidence disturbance
Editorial articles from the *Boston Globe*
Salem News, November 29, 2006, "Others Welcomed Chemical Safety Board"
CSB letter to the Massachusetts state fire marshal, November 27, 2006

Cc: Senator Frank R. Lautenberg
Senator David Vitter
Senator Edward M. Kennedy
Senator John F. Kerry
Representative John F. Tierney
The Honorable Deval L. Patrick, Governor of Massachusetts
Kevin Burke, Massachusetts Secretary of Public Safety
Stephen Coan, Massachusetts State Fire Marshal
Wayne Marquis, Danvers Town Manager
James Tutko, Danvers Fire Chief
Jim Harmes, IAFC President
Mark W. Light, IAFC Executive Director
The Honorable Gary L. Visscher, CSB Board Member
The Honorable William B. Wark, CSB Board Member
The Honorable Carolyn W. Merritt, CSB Chairman (2002–2007)

Figure 1a. Aerial photograph of Danvers, Massachusetts, explosion site taken on Friday, November 24, 2006, two days after the explosion. The photograph was taken after the emergency had ceased but before the removal of debris/evidence by state and local fire services. Yellow-enclosed area includes key evidence zones that were disturbed over the next several days before the CSB was given access to the site on November 29.



Figure 1b. Aerial photograph of Danvers, Massachusetts, explosion site taken on December 6, 2006, showing the area (outlined in yellow) that was disturbed and cleared of debris/evidence by Massachusetts fire services between November 24 and November 29, 2006.



Figure 1c. Close-in photograph taken from a manlift basket on December 15, 2006, showing the extent of the evidence disturbance that occurred between November 24 and 29 (area that was cleared of debris/evidence using heavy equipment is outlined in yellow).



ADRIAN WALKER

No time for turf war



11923A
If James Tutko, the Danvers fire chief, really wants to do something to aid the investigation into the stunning explosion last week, there is one step he could easily take: Get out of the way.

It is absurd that the federal Chemical Safety Board can't get onto the site to investigate the cause of the blaze, because the fire official has decided they aren't needed.

Tutko said Saturday that he already has a team investigating the blaze — made up of State Police and local and state fire officials — and the federal investigators are not part of it. He described the feds as a "distraction." Speculation that good sense would quickly bring the dispute to bay has not borne out.

Daniel Horowitz, a spokesman for the safety board, said yesterday, "We're in a holding pattern right now and still seeking cooperation from state and local authorities so our work can go forward." His frustration was palpable.

The national board is a fire equivalent of the National Traffic Safety Board. Its role is to go into scenes such as this and assess the cause of the fire and, just as important, what steps might be taken to prevent such disasters.

It is the second of those duties that sometimes causes friction with local officials. The feds may find, for example, that inadequate local fire codes contributed to a fire. They may find that inspections were not up to par in some regard. They may also produce findings that differ from those of local officials, who are accustomed to investigating fires together — and, in some cases, covering each other's backs.

"Our role is to determine the root causes and make those public, so other communities in Massachusetts and elsewhere are protected from this kind of devastating accident," Horowitz said.

While conflicts sometimes occur, they seldom develop into the type of standoff that is going on in Danvers, Horowitz said. This kind of stubbornness is unusual, as well as counterproductive.

He insisted that under federal law the safety board does not need local permission to do its job.

"We have the full authority to gather evidence, subpoena whatever witnesses we need to, and convene public hearings, and we will use whatever legal authority we need to carry this investigation forward."

While that may be true, it matters that the safety board is, at this point, locked out. Its investigators need to see evidence before it has been picked over by several other investigators. Otherwise, the safety board investigators' ability to reconstruct the fire could be severely compromised.

One of the last things anyone needs at this point is a turf battle. A fire has displaced hundreds and wrecked the peace of a city. When a plane crashes, local investigators do their work, and federal investigators do theirs. That is the way to serve the public interest, and frankly there's no good reason any of this should be up to the Danvers fire chief.

The collapse of the Big Dig ceiling made one fact clear: There can never be enough competent review of a tragic accident. The locals should investigate the fire, the state should investigate the local officials, and the federal government should keep an eye on everyone.

Instead of that, we have a bureaucrat jealously guarding his turf, his little piece of power.

One would think the absurdity of that would be obvious to Tutko, whose town is living every day with the wreckage wrought on Wednesday morning.

Other than assisting the residents who bore the brunt of the damage, nothing should be a higher priority than learning what happened.

But Tutko takes a different view. He has his team, and, according to him, they have it covered. That someone else would have something to contribute seems barely to have crossed his mind.

That's why the federal investigators need to be allowed in — and why he shouldn't be making these decisions.

Adrian Walker is a Globe columnist. He can be reached at walker@globe.com.

Another Danvers Blowup

November 28, 2006

Whether the danger is a chemical explosion on the North Shore or an eruption of gang violence in Boston, the public is never well-served by turf battles among federal, state, and local officials. Efforts by the Danvers Fire Department to keep federal investigators away from the site of Wednesday's blast at a paint and ink manufacturing site is an egregious case in point.

The cause of the early-morning blast, which damaged about 70 homes and businesses, is unknown. Answers may be harder to come by because Danvers officials closed the site to investigators from the federal Chemical Safety Board. Since 1998, teams of experts from the board have conducted independent investigations into the causes of hazardous spills, fires, and other chemical accidents. While confusion at accident scenes results in occasional delays, the blockade by Danvers Fire Chief James Tutko is "unprecedented," according to safety board spokesman Daniel Horowitz.

It's understandable that local firefighters who risk their lives responding to chemical explosions might take a proprietary approach to such sites. But cooler heads, such as those from the State Fire Marshal's office, are supposed to recognize the immediate value of a federal team that includes chemical and mechanical engineers with decades of investigative experience, blast modelers, and combustible dust experts. And unlike local officials, federal investigators not only examine the factors contributing to the blast but also analyze and publicize their findings to

prevent similar explosions across the country. Stiff-necked local fire officials have no cause to interfere with such work.

Limited access to the site may be provided this morning. But local officials maintain they don't want federal investigators tramping through a potential crime scene. That doesn't make sense. The Chemical Safety Board has conducted 40 investigations concurrently with local officials nationwide. People in this line of work respect the need to give wide berth to criminal investigators. They aren't likely to pollute a crime scene.

Those who lost their homes and narrowly escaped death or serious injury deserve an independent federal probe that examines whether state and local failures might have contributed to the blast. Despite the presence of hazardous materials, it appears the plant wasn't inspected by state authorities for several years. Federal authorities also will need to look closely at enforcement of local fire codes.

Federal investigators have served notice to the governor's office that they intend to access the entire site this morning. Anyone who interferes with that effort is harming, not protecting, public safety

Aftershocks in Danvers

THE POWERFUL explosion last year at an ink manufacturing plant in Danvers exposed massive defects in the inspection of local businesses that use and store dangerous chemicals. The blast that damaged or destroyed 270 homes and businesses yielded many lessons on how to avoid such accidents, but it is unclear who, if anyone, has the authority and qualifications to apply such lessons in the future.

Last week, a team from the federal Chemical Safety Board determined that the likely cause of the blast at CAI Inc. was the ignition of flammable solvent vapor that accumulated after workers turned off the building's ventilation system at the end of the day. The federal investigators also charged that the company failed to follow standards for the safe storage, handling, and use of flammable solvents. Failure to detect those problems, according to the agency, falls on the Danvers Fire Department, the state fire marshal's office, and the federal Occupational Safety and Health Administration.

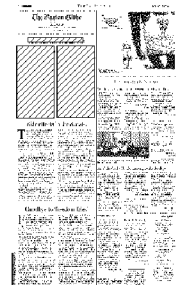
The company flatly disputes the Chemical Safety Board's findings. That question should be resolved as the investigation deepens. But the most worrisome aspect of this case is that both the state fire marshal's office, which provides technical assistance to fire departments, and the Danvers Fire Department deny responsibility for inspection of such hazardous workplaces. Westwood Fire Chief

William Scoble, president of the Fire Chiefs' Association of Massachusetts, adds that it is the rarest firefighter who is competent to assess chemical processes. The result, says Scoble, is a "black hole of authority."

State fire prevention regulations state clearly that it is the "duty and responsibility of the marshal or the head of the fire department" to enforce the fire code. But it is not so clear about who is responsible for finding the violations in the first place. A lack of specific permitting instructions for workplace chemicals clouds matters even more. The fire regulations, in fact, offer better guidance on permits needed to refinish bowling alleys or burn Christmas trees.

The fire chiefs make a point. But it shouldn't require a doctorate in chemistry to notice the absence of floor-level ventilation or automatic shutoff valves, and other dangers in Danvers cited by the federal officials. People living near hazardous workplaces want to know that their chiefs are taking all reasonable steps to protect them. And there is no ground for such confidence now.

The National Fire Protection Association in Quincy boasts chemical experts capable of training local fire officials how to spot workplace dangers. The group trained fire officials to recognize pyrotechnic dangers after the 2003 Rhode Island nightclub fire that killed 100 people. Similar exercises in chemical safety might help to quiet the effects of the Danvers blast.



Salem News

Published: 11/29/2006

Chemical Safety Board welcomed by other towns



Ona Ridenour helps her mom with clearing out some of her garbage at 12 Riverside St. yesterday as homeowners worked to repair their damaged homes. Photo by Paul Bilodeau/Salem News.

By Paul Leighton
Staff writer

Public safety officials from other communities affected by chemical explosions say the federal agency that was barred from the Danvers site for almost a week was a big help with their investigations.

Officials from North Carolina, Texas and Mississippi said they had no problems with the U.S. Chemical and Safety Hazard Investigation Board, a federal agency authorized by Congress to look into major chemical accidents around the country.

"Not a bit. They were very helpful, actually," said Mark Haraway, fire chief of Apex, N.C., where an explosion at a hazardous waste company forced the evacuation of 16,000 residents Oct. 5. "They kept us apprised of everything. They didn't do anything we didn't want them to."

Until yesterday, Danvers fire Chief James Tutko and state Fire Marshal Stephen Coan prohibited investigators with the Chemical Safety Board from entering the site of last week's chemical plant explosion on Water Street.

Coan said the five members of the federal agency were kept off the site because they are not trained to carry out criminal investigations, which the Danvers case is considered until foul play has been ruled out. A spokesman for the Chemical Safety Board said this was the first time in the agency's eight-year existence that its investigators had been barred from a site in the first few days after an explosion when access to evidence is critical.

Other public safety officials around the country said the Chemical Safety Board has provided valuable expertise in the aftermath of devastating explosions in their communities.

Fire Chief Gerald Grimm of Texas City, Texas, praised the board's investigators for their work after a series of explosions at an oil refinery in his city killed 15 workers and injured about 170 on March 23, 2005. It was the biggest industrial accident in the United States in 15 years, according to the Chemical Safety Board.

"We found them not to be an impediment but of great assistance to the city," Grimm said. "Their report was very conclusive, very comprehensive. They held a number of forums that were well-attended by the public. Of all the things that happened here, theirs was most often in the light of day and therefore the most credible to the public."

Grimm said the Chemical Safety Board investigators had the kind of expertise in industrial accidents that local officials lacked.

"They bring with them a wealth of talent in that area," he said. "That is their niche in life. They came in unvarnished and unbiased, and they left with that image."

Mark Tolbert, the public safety chief in Morgantown, N.C., said he can understand how local authorities would be wary of a little-known federal agency. Like many state and local officials here, Tolbert said he had never heard of the Chemical Safety Board until it showed up in his town of 17,300 people on the day of the blast.

But he said authorities worked out jurisdictional issues among the 53 agencies that descended on Morgantown after a chemical plant explosion Jan. 31 killed a worker and injured a dozen.

"Let's just say we had some issues (with the Chemical Safety Board) early on, and they were resolved," Tolbert said. "They got what they needed and we cooperated. We entered into a gentlemen's agreement. We sat down and opened up the lines of communication a little bit and did a better job of trying to pull from the agencies as to what they needed and the timetable."

Kevin Butler, the emergency management director for Smith County in Mississippi, said local authorities had no problems with the Chemical Safety Board investigating an explosion June 5 at an oil field in the small town of Raleigh, Miss., that killed three people.

"They wanted to interview all the people involved, and we set up the interviews for them," Butler said. "They were very accommodating. They didn't just come in and exert authority and push people around. They came in and did their job."

Office of Investigations



November 27, 2006

Stephen D. Coan
Massachusetts State Fire Marshal
Massachusetts Department of Fire Services
P.O. Box 1025 State Road
Stow, Massachusetts 01775

By Facsimile and First Class Mail

Dear Fire Marshal Coan:

As you know, the U.S. Chemical Safety and Hazard Investigation Board (CSB) is conducting an investigation, pursuant to the authority of 42 U.S.C. § 7412(r)(6)(C)(i), of the incident that occurred at the CAI, Inc. and Arnel Company, Inc. facilities in Danvers, Massachusetts, and the surrounding community that was damaged in the incident (collectively the "accident site"), on November 22, 2006. This letter serves as formal written notice to the Massachusetts State Fire Marshal and Department of Fire Services, the Danvers Fire Chief, and their agents (collectively "Massachusetts authorities"), that physical evidence at the accident site is relevant to the CSB investigation and will be inspected and/or tested by the CSB, under the authority of 42 U.S.C. § 7412(r)(6)(L)(ii). This letter also serves to outline CSB expectations with respect to the site and relevant evidence related to this incident.

Federal law authorizes the CSB to enter the accident site and "do all things therein necessary for a proper investigation," including inspecting "records, files, papers, processes, controls, and facilities" and taking relevant samples. 42 U.S.C. § 7412(r)(6)(L)(ii). The law of the Commonwealth in no manner precludes the CSB from exercising this authority. Moreover, the CSB is not seeking custody of any physical evidence at this time or to otherwise preempt the Commonwealth's investigation.

Up to this point, however, Massachusetts authorities have denied CSB investigators unrestricted access (including photographic documentation of blast damage) to the site areas determined by the EPA to be clear of chemical hazards and have publicly challenged the CSB authority to conduct an investigation as provided in the CSB statute. Therefore, it is important that Massachusetts authorities immediately acknowledge federal jurisdiction at the accident site and work cooperatively with the CSB to ensure that relevant evidence is preserved from alteration or destruction. Federal authorities, Massachusetts authorities, and the victims of this incident share a common objective that physical evidence is handled in a manner that respects the concerns of all interested parties.

CSB investigators will be present at the accident site to continue their investigation according to CSB statutory authority on Tuesday, November 28, 2006, at 9:00 a.m. Specifically, CSB

investigators intend to take photographs to document the scene, collect relevant samples, map debris, and to outline CSB concerns to Massachusetts authorities regarding possible alteration of the CAI and Arnel companies' property during the origin and cause investigation by the Massachusetts authorities. The CSB intends to continue to work to the best of its ability to conduct its investigation in a manner that respects the important role of the Massachusetts authorities in determining the cause of the incident. Likewise, the CSB anticipates that Massachusetts authorities will respect the role of the CSB. Our primary purpose in this investigation is to expand beyond the cause and origin elements of the incident to report fully on what operational, maintenance, training, or other company activities may have led to this incident. The CSB intends to make appropriate recommendations to involved parties and similar industries in order to help prevent a similar tragedy from happening again, either in the Commonwealth or elsewhere in the U.S. In order to achieve this important mission, we ask for your fullest cooperation from this point forward.

Accordingly, the CSB requests that Massachusetts authorities take no further action to alter the CAI and Arnel companies' property from its as-found state until CSB investigators are afforded full access to the accident site and the full cooperation of Massachusetts authorities, including direct involvement in the remaining evidence collection and site cleanup decision process.

The CSB investigation team is immediately available to work with the site response team. If an emergency necessitates the further alteration of the CAI and Arnel companies' property before our arrival on Tuesday, as noted above, please notify the CSB contact designated in this letter. Such notice should be provided before the alteration occurs so that the CSB may document the pre-alteration condition of the companies' property.

The designated CSB contacts for all notifications described in this letter are as follows:

<u>Primary Contact:</u> John Vorderbrueggen, P.E. Investigator-in-Charge (202) 261-7618 (office) (202) 378-3518 (cell) john.vorderbrueggen@csb.gov	<u>Alternate Contact:</u> Stephen J. Selk, P.E. Investigation Manager (202) 261-7623 (office) (202) 378-3515 (cell) steve.selk@csb.gov
---	--

If you have any questions concerning the jurisdiction of the CSB, please contact our General Counsel, Christopher Warner, at 202-261-7624. Thank you for your anticipated cooperation with the CSB's investigation. We look forward to working with you in a professional and respectful manner.

Sincerely,

/s/

John Vorderbrueggen
Investigator-in-Charge

Cc: Steven Rourke, General Counsel, Department of Fire Services
Wayne P. Marquis, Danvers Town Manager
Michael C. Lehane, Esq., Danvers Town Counsel