

Affidavit of Rafael Moure-Eraso

I, Rafael Moure-Eraso, do affirm and declare the following based upon personal knowledge to which I am competent to testify:

1. I was appointed by President Obama as the Chairperson and Chief Executive Officer of the U.S. Chemical Safety Board and Hazard Investigation Board (CSB) in June 2010, for a five year term. I resigned as Chairperson on March 26, 2015.

2. Prior to serving on the Board, I was professor and chairman of the Department of Work Environment at the University of Massachusetts, Lowell. I hold a bachelor's and a master's degree in chemical engineering and a Ph.D. in Environmental Health and Industrial Hygiene. I also was a visiting lecturer at Harvard University and served in a variety of other roles with government agencies, major chemical companies, and unions.

3. My life and career have been dedicated to improving worker safety and protecting the environment.

4. I became acquainted with Dr. Daniel Horowitz in 2010 following my nomination by President Obama to the CSB. I have always known him as a highly intelligent, dedicated, and ethical civil servant who was completely committed to the CSB's mission and development. He had served several CSB chairs and acting chairs before me, Republicans and Democrats, and he had an outstanding and well-deserved reputation.

5. I was aware when I joined the CSB that the agency was known not only for its safety achievements but for a chaotic internal environment. This was described in a report by the U.S. Government Accountability Office and later in a report by the Environmental Protection Agency's Inspector General. These reports called for reinstating the position of Chief Operating Officer, which had been vacant since 2004.

6. When I became Chairperson, I worked to implement these recommendations. In September 2010, I transferred Dr. Horowitz laterally from his existing position of Director of Congressional, Public, and Board Affairs to the position of Managing Director, as the Chief Operating Officer was now called. In doing so, I received the support of all five Board Members, including three Bush appointees, another Obama appointee, and myself.

7. The position of Managing Director should ideally have been established within the Senior Executive Service (SES). All prior incumbents of the position were in the SES. However the position could not be filled in the career SES at the time because of a vestigial and unworkable internal procedure, known as Board Order

23. This order had only been used one time, in 2002, to fill an SES position at the CSB. As a result, SES billets in the agency remained vacant for many years.

8. In September 2010, it was vital to fill the Managing Director position because the agency was just commencing its Deepwater Horizon investigation at the request of Congress, and also had a record high backlog of cases, which I inherited from the previous administration.

9. To Dr. Horowitz's credit, he initially accepted the position for no salary increase at all, even though its duties, complexity, and stress were much greater than his existing position. As a result, Dr. Horowitz received approximately the same salary as several of the employees he supervised. In addition, his prior position of Director of Congressional, Public, and Board Affairs remained vacant from 2010 to 2015, and Dr. Horowitz had to continue performing many public affairs responsibilities along with the duties of Managing Director.

10. It had long been my intention to establish the Managing Director position within the SES, and to that end when time permitted I attempted to effect the repeal of Board Order 23 and use government-wide SES hiring procedures to compete the position, allowing qualified candidates including Dr. Horowitz, if he wished, to apply.

11. By the fall of 2011, relations within the Board had deteriorated and I was unsuccessful in having Board Order 23 repealed. Nonetheless, I continued to consider Dr. Horowitz's performance as Managing Director to be exemplary, in very difficult circumstances. I believed the position was absolutely necessary to keep the agency staff from drifting further into chaos.

12. At the same time, Dr. Horowitz was under a high level of stress due to the unfair criticisms that were directed at him, and due to personal circumstances involving the ultimately terminal illness of his mother in California. He expressed ambivalence about continuing as Managing Director, and expressed some interest in returning to his former role at the CSB in Congressional and public affairs, which was at the same salary, was still vacant, and only had to supervise a few people.

13. In the early part of 2012, in an effort to retain Dr. Horowitz in what I recognized was an essential function for the agency, I worked with my legal counsel, Richard Loeb, and the human resources director, John Lau, to establish a temporary, limited-term SES position supervising the agency's largest case, Deepwater Horizon, as well as other agency investigative and administrative functions, and to appoint Dr. Horowitz to this position.

14. U.S. Office of Personnel Management (OPM) procedures do not require competition for limited-term SES appointments not to exceed three years, and OPM approved Dr. Horowitz's appointment. Dr. Horowitz had little or no knowledge or

involvement in the establishment or filling of the limited term SES position. This was conducted by myself, Mr. Loeb, and Mr. Lau.

15. At no time did Mr. Lau raise any objection or concern to me about this process, which involved his core function of human resources. OPM and the Interior Business Center, which handled the CSB's personnel transactions, likewise did not raise any objections.

16. Around the same time, in January 2012, I approved reassigning certain supervisory responsibilities for administration to Mr. Lau, using the courtesy title of Deputy Managing Director for Administration. This action was undertaken to lessen the administrative burdens on Dr. Horowitz, to reduce the number of his direct reports to a more manageable level, and to allow him to focus more on mission-related work such as Deepwater Horizon and other investigations. Among other activities, we were planning a large-scale two-day public hearing in Houston related to Deepwater Horizon in the summer of 2012, for which Dr. Horowitz was heavily involved in planning and later served as the moderator.

17. In April 2012, Dr. Horowitz negotiated with me concerning the salary for the new limited term SES position, which OPM had approved. He did not appear to be willing to accept the position if the salary increase was only a few thousand dollars above his prior public affairs position, in part because the new position was ineligible for SES bonuses.

18. We eventually negotiated a salary at the upper end of the range for certified SES positions. This would still likely pay less (once SES bonuses were considered) than the two career SES positions in the agency – General Counsel and Senior Counselor to the Chairperson – which carried significantly less responsibility than Dr. Horowitz's position.

19. Dr. Horowitz played no improper role – or any real role whatsoever – in the creation or filling of the limited term SES appointment. He had no significant involvement at all, other than in negotiating directly with me concerning salary. Dr. Horowitz made no offers, promises, or undertakings to me concerning what he would do in the new position.

20. As Chairperson of the agency, I made all final decisions of any significance concerning personnel matters. As a general principle, Dr. Horowitz consulted with me on all these matters and sought my approval before taking any action with the other staff under his supervision. We would usually confer frequently during each work day, and I was extremely familiar with his activities.

21. After Board Member Manny Ehrlich and Dr. Horowitz briefed me on February 12, 2015, about their concerns with the development of a report on agency morale prepared by Vantage Human Resources, I approved a limited search of the CSB.gov email of John Lau to ascertain whether these concerns were justified. The

search was time-limited and only applied to emails between Mr. Lau and Vantage personnel.

22. I approved and directed that Dr. Horowitz, as Mr. Lau's supervisor, temporarily assume Contracting Officer Representative (COR) duties while these concerns were examined.

23. I authorized access to Mr. Lau's emails and followed the requirements of Board Order 34.

24. The initial batch of emails between Mr. Lau and Vantage personnel showed that he had deceived Dr. Horowitz on February 12 about his own involvement in preparing the Vantage report, which was supposed to reflect that company's independent perspective on agency issues. Both Member Ehrlich and myself were seriously concerned by the surreptitious activities revealed by the emails, particularly Mr. Lau's direction to the contractor to keep silent about his and Mr. Lyon's involvement in reviewing and revising the report and inserting numerous criticisms of the agency's "senior leadership" that were not contained in Vantage's original draft report.

25. With my approval, Mr. Ehrlich and Dr. Horowitz questioned Mr. Lau about his involvement with the Vantage report later in the day on February 13, 2015. Mr. Ehrlich and Dr. Horowitz reported back to me that Mr. Lau had made several significant false statements during this meeting, statements that were flatly contradicted by the recent emails we had already collected between Mr. Lau and Vantage personnel.

26. I approved a second limited search of emails between Mr. Lau and Mr. Lyon and Vantage personnel, going back several months.

27. The email searches were conducted by CSB's IT staff acting on my directions, which were relayed to them. To the best of my knowledge, Dr. Horowitz did not perform any searches himself or access the CSB servers, nor would he have had the access privileges to do so.

28. I was extremely concerned about the content of the emails of Mr. Lau and Mr. Lyon to Vantage. As Mr. Lau was the only human resources official in the agency, I referred the matter to Connie Harshaw, an independent expert in federal personnel policy who was contracted to assist me with personnel matters including efforts to recruit a career SES managing director for the agency in the winter of 2015.

29. Ms. Harshaw, a retired career member of the SES herself, reviewed the emails and the various drafts of the Vantage report, which Mr. Lau and Mr. Lyon had **influenced**. Ms. Harshaw, after weighing possible disciplinary actions, recommended that Mr. Lau be reassigned to his position of Human Resources Director, which involved no loss of pay or grade. As she pointed out, his position

description had not even updated since 2012 to reflect any supervisory duties over administration, even though he himself was the HR director and was largely responsible for keeping up-to-date position descriptions.

30. In late February, Ms. Harshaw provided, through the contract COR Anna Brown, two scripts for myself and Dr. Horowitz to use related to certain HR issues. The script for me related to announcing the career SES hiring process. The script proposed for Dr. Horowitz related to reassigning Mr. Lau back to his original and still-existing duties as HR director, and assigning Anna Brown as the supervisor for Mr. Lau and other administrative functions.

31. Dr. Horowitz asked for and received my verbal approval before meeting with Mr. Lau and Ms. Brown on February 27, 2015, to announce this realignment of responsibilities.

32. No adverse personnel action of any kind was ever undertaken against John Lau. In addition, Dr. Horowitz was not the decision maker for the actions either to assign Mr. Lau supervisory responsibilities in January 2012, or to divest those responsibilities in February 2015.

33. I was aware that Ms. Elizabeth (Bea) Robinson, the CSB finance director, had complained to the EPA OIG concerning agency governance and/or personnel activities in February 2011, since she notified me via email of that fact. Some or all of these complaints were later relayed to the Office of Special Counsel for investigation.

34. The Office of Special Counsel never made any findings of prohibited personnel practices, retaliation, or other wrongdoing at the CSB during my tenure, after investigating a variety of complaints.

35. No adverse personnel action of any kind was ever undertaken against Bea Robinson.

36. I was aware of, and approved and directed, the action to reassign responsibility for Office of Management and Budget liaison from Ms. Robinson to Senior Counselor Richard Loeb, a former OMB career executive, in September 2011.

37. I was aware of, and approved and directed, the action to reassign responsibility for EPA OIG liaison from Ms. Robinson to Ms. Anna Brown in June 2012. I believed this action was necessary to avoid a conflict of interest because of Ms. Robinson's active OIG complaints.

38. I was aware of and supportive of Dr. Horowitz's activities to transfer additional mission related responsibilities to Ms. Robinson, including responsibilities for investigation protocols, supporting the agency's Most Wanted

Recommendations program, and serving on the employee-driven Workplace Improvement Committee beginning in 2014.

39. Dr. Horowitz and I were both concerned – as was Mr. Lau – that Ms. Robinson was underutilized, had a generally negative demeanor, and was difficult to engage in a positive way on agency activities. She frequently appeared to be sulking, came to leadership team meetings or other meetings where she took personal notes but said little or nothing, and held many closed door meetings in her office with individual Board members or staff outside her reporting chain. In addition she and her employees tended to apply excessive oversight on the agency's many travelers including its field investigators, which appeared to cause much consternation over the years.

40. Dr. Horowitz was consistently concerned about the agency's morale and sought ways to improve it, for example through the two Workplace Improvement Committees, which he worked to establish. He also supported bringing in various organizational consultants, facilitators, and coaches over the years, and supported extensive training efforts. Dr. Horowitz's personality is one that does not like or promote conflict, and he tried to mitigate long-running conflicts that had existed in the agency before he became Managing Director, e.g. between the various investigative teams, between the regional office and headquarters, between the investigations and recommendations staffs, and so forth. He treated people with courtesy and fairness in an agency where those virtues were all too rare. However, I believe it was his misfortune to serve in a staff leadership role at a time when it was simply impossible to contain all these conflicts. I believe he did the best he could in a very difficult situation.

41. Dr. Horowitz's performance was rated outstanding during all the years I served as his rating official. He played a critical role in reducing the agency's case backlog by approximately two-thirds, presenting important reports and recommendations to the Board (including two lengthy volumes on Deepwater Horizon), developing the CSB's award-winning video program, promoting a record-high successful closure rate for CSB safety recommendations, and implementing significantly improved budgeting and procurement processes.

42. Dr. Horowitz supported and helped orchestrate many activities to improve investigator training and development, including periodic all-investigator training meetings, external training, and career ladders. He implemented much-improved access for staff to training, with the assistance of Mr. Loeb and the administrative staff.

43. I am not aware of any significant assignment I made to Dr. Horowitz, as his first line and second line supervisor, concerning action plans, investigation plans, training programs, reviewing or commenting on draft investigation reports, or hiring that he ever failed to undertake or perform competently.

44. Dr. Horowitz facilitated the hiring of many investigators into the agency, who currently work there today, as well as their professional development. He was always generous in recognizing the work of others, and on three occasions recommended to me that I award the prestigious Carolyn Merritt award to CSB investigators and that I broadly recognize their work.

45. Dr. Horowitz was always willing to take on additional tasks and assignments to support agency mission functions, even in cases where other staff said the tasks were not possible. For example, in 2014-2015, he personally worked with an outside international expert that he located to successfully identify the cause of the 2010 fatal explosion at the Horsehead Zinc facility in Monaca, Pennsylvania, fulfilling a longstanding pledge the agency had made to the community there. This resulted in a technical report that the agency published in March 2015, which was lauded by the workforce. Dr. Horowitz personally took these actions after CSB investigators had opined that the case was unsolvable and should be dropped.

46. In sum, during my tenure at the agency Dr. Horowitz performed in a commendable fashion and was never aware of anything he might have done that could reasonably be perceived as conduct unbecoming a federal employee.

Rafael Moure-Eraso
[Affiant's name]

[Affiant's signature]

*SUBSCRIBED AND SWORN to before me
this __ day of _____, 2015.*

[signature of the person authorized to take affidavits]

[Notary Public or Commissioner of Oaths]

My commission expires [expiring date].