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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RYAN JACKSON, MAJORITY STAFF DIRECTOR
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February 2, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

I write regarding the Environmental Protection Agency's (EPA) incessant lack of transparency and impartiality in its process for selecting members of the Clean Air Scientific Advisory Committee (CASAC). I have observed EPA, under the Obama Administration, cherry-picking the same allies to serve on this advisory committee and its subcommittees at the expense of having an open and robust process for selecting external advisors. In 2011, I requested the EPA's Office of Inspector General (OIG) review EPA's management of CASAC.¹ While the subsequent OIG report² affirmed concerns I had with respect to EPA's failure to recruit new members, address independence concerns, and comply with conflict of interest policies, the recommendations did not bring the much needed reforms to EPA's selection process.³ As evidenced by EPA's newly appointed CASAC members,⁴ this misguided and opaque process calls for renewed Congressional oversight.

As you are aware, the 1977 Clean Air Act Amendments established CASAC in order to provide independent expert advice to the EPA Administrator on the National Ambient Air Quality Standards (NAAQS).⁵ Section 109 of the Clean Air Act also delineates that CASAC shall be "composed of seven members including at least one member of the National Academy

¹ Letter from Hon. James Inhofe, Ranking Member, S. Comm. on Env't & Pub. Works, to Hon. Arthur Elkins, Inspector Gen., U.S. Evtl. Prot. Agency (Aug. 4, 2011). *See also* <http://www.epw.senate.gov/public/index.cfm/press-releases-all?ID=503cd8ab-802a-23ad-45e8-1d8528fa6847>.

² OFFICE OF INSPECTOR GEN., ENVTL. PROT. AGENCY, REPORT NO. 13-P-0387 EPA CAN BETTER DOCUMENT RESOLUTION OF ETHICS AND PARTIALITY CONCERNS IN MANAGING CLEAN AIR FEDERAL ADVISORY COMMITTEES (Sept. 11, 2013), <http://www2.epa.gov/sites/production/files/2015-09/documents/20130911-13-p-0387.pdf>.

³ Letter from Hon. James Inhofe & Hon. David Vitter, S. Comm. on Env't & Pub. Works, to Hon. Arthur Elkins, Inspector Gen., U.S. Evtl. Prot. Agency (Feb. 19, 2014), <http://www.epw.senate.gov/public/index.cfm/press-releases-republican?ID=F340F63C-9449-09CD-AB55-9DC53A56C689>.

⁴ *See* Members of the Clean Air Scientific Advisory Committee, Evtl. Prot. Agency, <http://yosemite.epa.gov/sab/sabpeople.nsf/WebExternalCommitteeRosters?OpenView&committee=CASAC&secondname=Clean%20Air%20Scientific%20Advisory%20Committee> (last accessed Dec. 9, 2015). It is not clear when EPA made the appointments; however, the online list of members was updated in early October 2015.

⁵ 42 U.S.C. § 7409(d)(2).

of Sciences (NAS), one physician, and one person representing state air pollution control agencies.”⁶ CASAC’s composition is further governed by EPA policies on financial conflicts of interest and peer review as well as the Federal Advisory Committee Act of 1972⁷ and corresponding guidance.⁸ Aside from these mandates, given CASAC’s role in shaping the NAAQS, it is critical EPA use a clear and unbiased process for selecting CASAC members to keep the public fully informed and involved in the NAAQS program. Moreover, since members are appointed to serve a three-year term on CASAC, the new appointments are particularly important as they will be responsible for advising the next administration, including the highly anticipated review of NAAQS for fine particulate matter (PM 2.5) by 2017.

While EPA issued a public notice in the Federal Register on April 2, 2015, soliciting nominations of candidates to CASAC by May 4, 2015,⁹ the steps EPA has taken since then have essentially occurred in a black box. Instead of posting the list of nominees to the Federal Register and accepting public comments through the well-established form on regulations.gov, EPA buried the list of 27 nominees and biosketches on its website.¹⁰ On a document dated May 20, 2015, EPA invited public comments on the nominees by June 10, 2015, but that too was limited to a hidden post on its website and conducted via email rather than the open regulations.gov format.¹¹ EPA made no public announcement of its new CASAC member appointments. Indeed, there is no way for the public to know the extent to which EPA received comments on the nominees or how EPA fully reached its decision to select certain nominees over others.

In addition to EPA’s opaque process for making CASAC appointments, the composition of the panel outright violates the Clean Air Act requirements for CASAC. Per Section 109 of the Clean Air Act, the Administrator must select at least one member from the NAS.¹² However, for no apparent reason, the EPA has violated this very prescriptive requirement with the new panel—none of the seven members are listed in NAS’s online directory or mention the NAS in their biosketches. Alarming, there has not been a member of the NAS on CASAC since 2009.

The new CASAC panel further illustrates EPA’s disregard for policies requiring EPA shift membership on CASAC. Specifically, EPA’s Peer Review Handbook advises membership rotation on standing committees, such as CASAC, “to obtain fresh perspectives and reinforce the

⁶ Section 109(d)(2); 42 U.S.C. 7409(d)(2).

⁷ Pub. L. 92-463.

⁸ GSA Final Rule on Federal Advisory Committee Management, 41 CFR Parts 101-6 and 102-3; EPA Federal Advisory Committee Handbook, March 2012.

⁹ Env’tl. Prot. Agency, Notice, Request for Nominations of Candidates to the EPA’s Clean Air Scientific Advisory Committee (CASAC), 80 Fed. Reg. 17743 (Apr. 2, 2015), <http://www.gpo.gov/fdsys/pkg/FR-2015-04-02/pdf/2015-07634.pdf>

¹⁰ Env’tl. Prot. Agency, Nominate Candidates for the CASAC, the Chartered SAB, and SAB Standing Committees, <http://yosemite.epa.gov/sab/sabproduct.nsf/WebAll/nominationcommittee?OpenDocument> (last accessed Dec. 9, 2015).

¹¹ Env’tl. Prot. Agency, Invitation for Public Comment on the List of Candidates For the Environmental Protection Agency’s Clean Air Scientific Advisory Committee (May 20, 2015), [http://yosemite.epa.gov/sab/sabproduct.nsf/WebProjectsRequestsforCommentsCASAC/7E3873008970553085257E1A004FE862/\\$File/List%20of%20Candidates-CASAC-052015.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/WebProjectsRequestsforCommentsCASAC/7E3873008970553085257E1A004FE862/$File/List%20of%20Candidates-CASAC-052015.pdf).

¹² Section 109(d)(2); 42 U.S.C. 7409(d)(2).

reality and perception of independence from the Agency.”¹³ However, the chartered CASAC includes four of seven members that have already served on CASAC.¹⁴ Among the three who have not served on the chartered CASAC, two have served on CASAC subcommittees¹⁵ while the other one has served on EPA’s Advisory Council on Clean Air Compliance Analysis (Council)¹⁶ which is also designed to advise the Administrator on the impacts of the Clean Air Act on the public health, economy, and environment of the U.S.¹⁷ Given the number of well-qualified nominees and thousands of scientific experts across the country, it is deeply concerning EPA continues to select the same people. This practice runs counter to EPA policy and unnecessarily blocks other experts from serving as advisors.

The majority of CASAC members have also received considerable financial support from EPA, which calls into question their independence and therefore the integrity of the overall panel. While EPA has taken the position that receipt of grants do not constitute a financial conflict of interest, the NAS and EPA’s own Peer-Review Handbook state that grants can constitute a conflict or lack of impartiality.¹⁸ For the newly appointed panel this conflict is on full display—six of the seven members have received a total of \$119,217,008 in EPA research grants.¹⁹ Much to my dismay, three of the seven members have received in excess of \$25 million each.²⁰ This is not limited to the chartered CASAC as 22 of the 26 newly appointed members to the CASAC subcommittee on particulate matter²¹ have received more than \$330 million in EPA grants.²² These vast sums of money certainly constitute a conflict of interest and at a minimum give the appearance of a lack of impartiality.

Moreover, the newly appointed CASAC does not conform to EPA’s commitment to select members with geographic diversity. In EPA’s Federal Register notice request for nominations of candidates to CASAC, the Agency specifically states one of the selection criteria for CASAC includes “background and experiences that would help members contribute to the

¹³ ENVTL. PROT. AGENCY, SCIENCE & TECH. POLICY COUNCIL, PEER REVIEW HANDBOOK, 4th Ed. (Oct. 2015), http://www2.epa.gov/sites/production/files/2015-09/documents/final_epa_peer_review_handbook-4th_ed_091415_dummy_link.pdf.

¹⁴ See Appendix I.

¹⁵ Judith Chow has served on the Air Monitoring and Methods Subcommittee (AMMS) of CASAC since 2004, *see* <http://yosemite.epa.gov/sab/sabpeople.nsf/WebPeople/ChowJudith?OpenDocument>. Elizabeth Sheppard has served on “several CASAC special panels,” *see* [http://yosemite.epa.gov/sab/sabpeople.nsf/WebPeople/SheppardElizabeth%20A.%20\(Lianne\)?OpenDocument](http://yosemite.epa.gov/sab/sabpeople.nsf/WebPeople/SheppardElizabeth%20A.%20(Lianne)?OpenDocument).

¹⁶ Ivan Fernandez has served on the Council from 2010-2013, *see* <http://umaine.edu/pse/files/2010/08/Web-VitalJFAug2010.pdf>.

¹⁷ 42 U.S.C. §7612.

¹⁸ See National Academy of Sciences, “Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports” (May 2003), <http://www.nationalacademies.org/coi/index.html>; *See also* http://www2.epa.gov/sites/production/files/2015-09/documents/peer_review_handbook_2006_3rd_edition.pdf.

¹⁹ See Appendix I.

²⁰ See Appendix I.

²¹ Env’tl. Prot. Agency, CASAC Particulate Matter Review Panel (2015-2018), [http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommitteesSubcommittees/CASAC%20Particulate%20Matter%20Review%20Panel%20\(2015-2018\)](http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommitteesSubcommittees/CASAC%20Particulate%20Matter%20Review%20Panel%20(2015-2018)). Note that member appointments were posted online on November 20, 2015.

²² See Appendix II.

diversity of perspectives on the committee, e.g., geographic[.]”²³ Yet, among the seven members, three are from the northeast and two are from the west coast—not a single member is from a state within EPA’s region four, six, seven or eight, which represent vast parts of the country impacted by the NAAQS.²⁴

In light of these findings, Congressional oversight of EPA’s process for appointing members to CASAC is absolutely necessary. Accordingly, I request you thoroughly respond to the following requests by no later than February 23, 2016:

1. Please provide a copy of all public comments submitted in response to EPA’s Federal Register notice soliciting nominations for candidates to CASAC.
2. Please provide a copy of all public comments submitted to EPA in response to the Agency’s call for comments on the list of candidates nominated and biosketches.
3. Please explain EPA’s process for soliciting nominations and comments on candidates, including its decision to call for comments on candidates via website post and email rather than the Federal Register. Why did the Federal Register notice for solicitation of nominations fail to state the specific number of member appointments available?
4. Why has the Agency violated Section 109 of the Clean Air Act’s requirement to appoint at least one member of the NAS to CASAC? How does the Agency weigh the geographic diversity of candidates? What steps does the Agency take to ensure CASAC has fresh and diverse perspectives?
5. When did the Agency make its determination of which candidates to appoint? When did the Agency post the new panel on its website? Why didn’t the Agency make a formal announcement of the new panel via press release or Federal Register notice?
6. How and when did the Agency notify candidates that were not selected to serve on the panel? How and when did the Agency notify candidates that were selected?
7. Did the Agency conduct any additional external outreach or consultation (e.g. those submitting public comments or non-governmental organizations) on the candidates prior to making its decision? If so, please explain this process and who was consulted.

Thank you for your prompt attention to this matter. If you have any questions with this request, please contact the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,



James M. Inhofe
Chairman
Committee on Environment and Public Works

²³Envtl. Prot. Agency, Notice, Request for Nominations of Candidates to the EPA’s Clean Air Scientific Advisory Committee (CASAC), 80 Fed. Reg. 17743 (Apr. 2, 2015), <http://www.gpo.gov/fdsys/pkg/FR-2015-04-02/pdf/2015-07634.pdf>.

²⁴ See Appendix I.

APPENDIX I.

<u>Member</u>	<u>Section 109</u>	<u>Years on Chartered CASAC</u>	<u>Grant 1</u>	<u>Grant 2</u>	<u>Grant 3</u>	<u>Grant 4</u>	<u>Grant 5</u>	<u>Grant 6</u>	<u>Total</u>	<u>State</u>	<u>EPA Region</u>
Ana V. Diez Roux	Physician	2011-Present	\$ 576,091.00	\$32,999,090.00	\$ 768,990.00	\$ 556,144.00			\$ 34,900,315.00	PA	3
George A. Allen	State Regulator	2011-Present	\$3,000,000.00	\$ 380,111.00	\$ 527,000.00				\$ 3,907,111.00	MA	1
Judith Chow		2015-Present	\$ 449,456.00						\$ 449,456.00	NV	9
Ivan J. Fernandez		2015-Present	\$ 894,361.00	\$ 623,395.00					\$ 1,517,756.00	ME	1
Jack Harkema		2013-Present	\$ 600,000.00	\$ 7,999,875.00	\$ 7,999,994.00	\$ 747,960.00	\$ 854,702.00	\$ 8,715,583.00	\$ 26,918,114.00	MI	5
Elizabeth A. Sheppard		2015-Present	\$8,000,000.00	\$ 1,199,217.00	\$32,999,090.00	\$1,036,972.00	\$8,288,977.00		\$ 51,524,256.00	WA	10
Ronald Wyzga		2013-Present							\$ -	CA	9
									Casac Total	\$119,217,008.00	

Administrator McCarthy
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APPENDIX II.

Member	Grant 1	Grant 2	Grant 3	Grant 4	Grant 5	Grant 6	Grant 7	Grant 8	Grant 9	Grant 10	Grant 11	Grant 12	Grant 13	Total
Diez Roux, Ana V.	\$ 576,091.00	\$ 32,999,090.00	\$ 768,990.00	\$ 556,144.00										\$ 34,900,315.00
Adams, Peter	\$ 900,000.00	\$ 483,827.00	\$ 600,000.00	\$ 896,596.00	\$ 450,000.00	\$ 449,994.00	\$ 900,000.00							\$ 4,680,417.00
Adgate, John	\$ 999,899.00	\$ 510,012.00	\$ 633,044.00	\$ 899,264.00										\$ 3,042,219.00
Allen, George A.	\$ 3,000,000.00	\$ 380,111.00	\$ 527,000.00											\$ 3,907,111.00
Balmes, John R.	\$ 1,091,783.00	\$ 4,765,843.00												\$ 5,857,626.00
Boyle, Kevin	\$ 194,374.00	\$ 126,804.00												\$ 321,178.00
Chow, Judith	\$ 449,456.00													\$ 449,456.00
Dockery, Douglas	\$ 300,000.00	\$ 7,999,609.00	\$ 7,747,040.00											\$ 16,046,649.00
Felton, Henry (Dirk)	\$ -													\$ -
Frampton, Mark	\$ 8,000,000.00	\$ 408,859.00	\$ 8,302,447.00	\$ 736,260.00										\$ 17,447,566.00
Frey, H. Christopher	\$ 500,000.00	\$ 893,439.00	\$ 680,000.00	\$ 553,296.00	\$ 329,425.00	\$ 180,000.00								\$ 3,136,162.00
Gordon, Terry	\$ 1,199,927.00	\$ 399,827.00	\$ 375,000.00	\$ 749,175.00	\$ 8,076,438.00	\$ 600,799.00								\$ 11,401,166.00
Harkema, Jack	\$ 600,000.00	\$ 7,999,875.00	\$ 7,999,994.00	\$ 747,960.00	\$ 854,702.00	\$ 8,715,583.00								\$ 26,918,114.00
Kaufman, Joel	\$ 900,000.00	\$ 1,199,217.00	\$ 32,999,090.00	\$ 1,036,972.00	\$ 8,288,977.00									\$ 44,424,256.00
Kinney, Patrick	\$ 32,999,090.00	\$ 4,435,198.00	\$ 744,866.00	\$ 1,496,418.00	\$ 378,458.00									\$ 40,054,030.00
Kleinman, Michael T.	\$ 7,999,994.00													\$ 7,999,994.00
McConnell, Rob	\$ 3,802,622.00	\$ 8,715,583.00	\$ 4,146,875.00											\$ 16,665,080.00
Peden, David	\$ -													\$ -
Poirot, Richard L.	\$ 809,993.00	\$ 131,089.00	\$ 1,228,521.00	\$ 271,463.00										\$ 2,441,066.00
Polasky, Stephen	\$ 1,000,000.00	\$ 7,999,779.00	\$ 899,956.00	\$ 499,512.00	\$ 1,238,940.00	\$ 7,747,040.00	\$ 1,883,248.00							\$ 21,268,475.00
Samat, Jeremy	\$ 1,489,361.00	\$ 899,600.00	\$ 499,777.00	\$ 399,406.00	\$ 1,120,641.00	\$ 699,543.00	\$ 900,000.00	\$ 899,731.00	\$ 497,354.00	\$ 7,999,994.00	\$ 450,000.00	\$ 449,687.00	\$ 898,388.00	\$ 17,198,482.00
Schauer, James Jay	\$ 8,000,000.00	\$ 1,199,217.00	\$ 32,999,090.00	\$ 1,036,972.00	\$ 8,288,977.00									\$ 51,524,256.00
Sheppard, Elizabeth A. (Lianne)	\$ 399,928.00	\$ 598,544.00	\$ 446,061.00											\$ 1,444,533.00
Turpin, Barbara	\$ 800,000.00													\$ 800,000.00
Vedal, Sverre	\$ -													\$ -
Wynga, Ronald	\$ -													\$ -
														\$ 331,928,151.00