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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RYAN JACKSON, MAJORITY STAFF DIRECTOR  
BETTINA POIRIER, DEMOCRATIC STAFF DIRECTOR

April 29, 2016

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

Dear Administrator McCarthy:

On April 6, 2016, a notice requesting nominations to seven U.S. Environmental Protection Agency (EPA) scientific advisory panels was published in the Federal Register, with nominations due by May 6, 2016.<sup>1</sup> As you are aware, the Senate Committee on Environment and Public Works (EPW) has long conducted oversight of EPA advisory panels. These panels, including the Clean Air Scientific Advisory Committee (CASAC) and the Science Advisory Board (SAB), play a critical role in influencing the Agency's regulatory actions and have significant implications for the next administration. However, circumstances surrounding the recent nomination request and correspondence between EPA and the EPW Committee raise new concerns the Agency is not committed to a transparent or meaningful public input process for selecting CASAC and SAB members.

At the outset, the current 30-day request for nominations is not an adequate period of time to ensure an eligible collection of candidates has an opportunity to consider nomination to these vacant positions. Indeed, the notice requested nominations to CASAC, the chartered SAB, and five SAB standing committees, all of which require differing expertise and perspectives, as well as a significant time commitment. As prescribed by the Clean Air Act Amendments of 1977, CASAC makes recommendations to the EPA Administrator related to the National Ambient Air Quality Standards (NAAQS).<sup>2</sup> The statute also specifies that CASAC be "composed of seven members including . . . one person representing state air pollution control agencies."<sup>3</sup> The April 6, 2016, notice requests nominations to fill this specific state-based role on CASAC.<sup>4</sup> The Environmental, Research, Development and Demonstration Authorization Act of 1978 established the SAB to provide independent advice and recommendations regarding the science underlying EPA actions.<sup>5</sup> The April 6, 2016, notice requests nominations to fill several SAB

<sup>1</sup> U.S. Env'tl. Prot. Agency, Notice, Request for Nominations of Candidates to the EPA's Clean Air Scientific Advisory Committee (CASAC) and the EPA Science Advisory Board (SAB), 81 Fed. Reg. 19967, Apr. 6, 2016, available at <https://www.gpo.gov/fdsys/pkg/FR-2016-04-06/pdf/2016-07918.pdf>.

<sup>2</sup> 42 U.S.C. § 7409(d)(2).

<sup>3</sup> *Id.*

<sup>4</sup> 81 Fed. Reg. 19967.

<sup>5</sup> 42 U.S.C. § 4363.

positions with experts ranging in disciplines such as chemistry, to climate change, to social, behavioral and decision sciences, to name a few.<sup>6</sup> Importantly, candidates appointed to any of these panels will serve for a three-year term.<sup>7</sup>

Moreover, in a February 2, 2016, letter<sup>8</sup> I requested information about the Agency's last round of CASAC nominations,<sup>9</sup> and I was troubled to learn in EPA's February 25, 2016, response that each of the five members selected to serve on CASAC beginning in fiscal year 2016 were nominated by an EPA employee or a Designated Federal Officer (DFO).<sup>10</sup> DFOs oversee and manage the operations of federal advisory committees such as CASAC and SAB.<sup>11</sup> In other words, none of the potential members who were nominated by an individual or organization outside the EPA or those who self-nominated were selected. Notably, EPA's response did not provide the names or titles of those EPA employees and DFOs nominating such candidates. These findings only lend further credence to my concerns that these panels may not be fully independent of the Agency.

I am equally concerned by EPA's lack of transparency throughout the selection process. Based on EPA's February 25, 2016, letter, the Agency appointed five candidates to CASAC on August 3, 2015, yet the names of those selected were not posted on EPA website until October 5, 2015, and the Agency did not contact candidates who were not selected until October 6, 2015.<sup>12</sup> It is wholly inappropriate that more than two months had passed from the time EPA appointed CASAC members, to the time the public and those who were not selected were notified of the Agency's decision. The fact that the Agency, for seemingly no reason, kept those nominated but not selected in the dark is deeply inconsiderate to those candidates who may have otherwise been making personal and career plans in the event they were appointed. I have said time and again, greater transparency within the selection process would benefit all.

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<sup>6</sup> 81 Fed. Reg. 19967.

<sup>7</sup> "Appointments are anticipated to be filled by the start of Fiscal Year 2017 (October 2016). . . Members are appointed by the EPA Administrator for a three-year term and serve as Special Government Employees who provide independent expert advice to the agency." 81 Fed. Reg. 19967.

<sup>8</sup> Letter from Hon. James M. Inhofe, Chairman, S. Comm. on Env't & Public Works, to Hon. Gina McCarthy, Adm'r, U.S. Env'tl. Prot. Agency (Feb. 2, 2016), *available at* <http://www.epw.senate.gov/public/index.cfm/2016/2/inhofe-questions-epa-process-for-selecting-air-advisors>.

<sup>9</sup> See 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>; *see also* Members of the Clean Air Scientific Advisory Committee, Env'tl. Prot. Agency, <http://yosemite.epa.gov/sab/sabpeople.nsf/WebExternalCommitteeRosters?OpenView&committee=CASAC&secondname=Clean%20Air%20Scientific%20Advisory%20Committee>.

<sup>10</sup> Letter from Christopher S. Zarbar, Dir., EPA Science Advisory Board Staff Office, U.S. Env'tl. Prot. Agency, to Hon. James M. Inhofe, Chairman, S. Comm. on Env't & Public Works (Feb. 25, 2016) (on file with Committee).

<sup>11</sup> 5 U.S.C. §10 (e)-(f). "(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee."

<sup>12</sup> Letter from Christopher S. Zarbar, Dir., EPA Science Advisory Board Staff Office, U.S. Env'tl. Prot. Agency, to Hon. James M. Inhofe, Chairman, S. Comm. on Env't & Public Works (Feb. 25, 2016) (on file with Committee).

As you are aware, I am not the only one to raise concerns over EPA's lack of meaningful public input and transparency in the process for selecting members of the Agency's independent advisory panels.<sup>13</sup> Yet, it appears EPA has taken no serious actions to ameliorate these concerns. Accordingly, I respectfully request the Agency commit to the following steps towards improving the integrity and transparency of EPA's scientific advisory nomination and selection process:

1. Please extend the deadline for submitting nominations by thirty days.
2. When providing a List of Candidates on EPA's website, please list who referred that candidate, including relevant title and organization/agency affiliation.
3. When soliciting public comments on the List of Candidates, please make all comments publicly available on the EPA webpage that provides the List of Candidates.
4. When the appointments have been made, all candidates, including those who were not selected, must be notified on the same day.
5. Within seven business days of notifying candidates of appointments, EPA must make the list of newly appointed candidates available on its website, including the date on which appointments were made.

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,



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James M. Inhofe  
Chairman  
Committee on Environment and Public Works

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<sup>13</sup> See 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>; see also Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform & Hon. Cynthia M. Lummis, Chairman, Subcomm. on the Interior, H. Comm. on Oversight & Gov't Reform, to Hon. Gina McCarthy, Adm'r, U.S. Env'tl. Prot. Agency (Apr. 11, 2016), available at <https://oversight.house.gov/wp-content/uploads/2016/04/2016-04-11-JEC-Lummis-to-McCarthy-EPA-SAB-CASAC-due-4-25.pdf>; see also Letter from Hon. Lamar Smith, Chairman, H. Sci., Space & Tech. Comm. to Hon. Gina McCarthy, Adm'r, U.S. Env'tl. Prot. Agency (Mar. 19, 2014), available at <http://science.house.gov/sites/republicans.science.house.gov/files/documents/03-19-2014%20Smith%20to%20Administrator%20McCarthy.pdf>.