

# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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February 19, 2014

The Honorable Arthur A. Elkins, Jr.  
Inspector General  
U.S. Environmental Protection Agency  
Office of Inspector General  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Mr. Elkins:

We have serious concerns over the manner in which you have conducted investigations and disseminated information in recent Environmental Protection Agency (EPA) Office of Inspector General (OIG) reports. These issues should be familiar to the OIG, as they have been the subject of several conversations and briefings between OIG and Senate Committee on Environment and Public Works (EPW) staff, including a meeting that you attended.<sup>1</sup> Recent OIG audits and investigations have called into question your office's commitment to upholding the mission of the OIG to conduct independent investigations. Our offices are dedicated to exposing waste, fraud, and abuse within the Federal Government, and in that light we are sharing our concerns over the OIG's report, "EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees."<sup>2</sup>

This report was issued in response to requests by Senator Inhofe in 2011, while he was EPW Ranking Member.<sup>3</sup> He asked the OIG to evaluate EPA's management of the Clean Air Scientific Advisory Committee (CASAC), the Advisory Council on Clean Air Compliance Analysis (Council), and the Agency's peer review process.<sup>4</sup> Despite the OIG's taking nearly two years to complete the report, a thorough review of the OIG's methodology, findings, and recommendations reveals a complacent OIG that ignored key sources of information and questions from Congress in an apparent attempt to validate the Agency's practices.

At the outset, the OIG's report methodology reveals weaknesses in the narrow sample of CASAC and Council members chosen for review. The OIG reviewed case files on 47 of 126 members appointed to CASAC and Council from 1998-2012, and conducted an "in depth" review of only 27 members. In addition, the OIG interviewed only six of the most recent

<sup>1</sup> Meeting between Office of Inspector Gen., Env'tl. Prot. Agency, & Republican Staff, S. Comm. on Env't. & Pub. Works (Oct. 24, 2013, 10:00 AM EST).

<sup>2</sup> 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).

<sup>3</sup> Press Release, Minority Office, S. Comm. On Env't & Pub. Works, *Inhofe Welcomes EPA Inspector General's Office Investigation into EPA's Scientific Process* (Mar. 26, 2012), available at [http://www.epw.senate.gov/public/index.cfm?FuseAction=Minority.PressReleases&ContentRecord\\_id=503cd8ab-802a-23ad-45e8-1d8528fa6847](http://www.epw.senate.gov/public/index.cfm?FuseAction=Minority.PressReleases&ContentRecord_id=503cd8ab-802a-23ad-45e8-1d8528fa6847).

<sup>4</sup> *Id.*

CASAC members. However, the OIG has refused to disclose who was reviewed, making it impossible to assess whether the sample was adequate. Moreover, the OIG simply relied on member's financial disclosure forms to perform its audit instead of collecting information on members. OIG staff did not even attempt to utilize any search engines (Lexis, Google, etc.) to research potential impartiality concerns and "did not conduct searches to independently verify the information reported on the financial disclosure forms."<sup>5</sup>

Separate from the limited scope of review, the OIG's slight treatment of certain information reveals potentially flawed findings. The original inquiry requested OIG review members' receipt of EPA research grants, yet the report summarily stated that research grants did not present a conflict of interest. Accordingly, the OIG did not conduct further inquiry into members' receipt of research grants and instead treated it as an inconsequential factor in assessing impartiality concerns with members. This omission is concerning because 75% of CASAC and Council members combined from 2006 to the present have received EPA and related multi-agency research grants.<sup>6</sup>

In addition, the OIG narrowly interpreted the requirement that CASAC and Council have balanced membership instead of the comprehensive review that was requested. Such review would have considered individual members' independence or impartiality concerns, viewpoints, receipt of research grants, or membership tenure, in assessing membership balance. However, the OIG only examined membership balance in the context of meeting the statutorily mandated requirements under the Clean Air Act.<sup>7</sup> This narrow review risks that, while the panel may have the prescribed expertise, it may nonetheless be imbalanced.

We are equally concerned by the OIG's improper finding regarding the 2007 ozone reanalysis. While the report identified EPA's failure to subject its 2007 ozone reanalysis to required peer review prior to dissemination, the report improperly concluded that subsequent peer review of the reanalysis was adequate. In this case, the OIG drew a conclusion based on a narrow review of the subsequent peer reviewers and failed to consider the original author's comments which directly contradict the results of the 2007 ozone reanalysis.

Aside from the potentially flawed findings, we identified several instances where the OIG revealed flaws, but inexplicably declined to recommend reforms at EPA. For example, rather than recommending specific actions for EPA to mitigate independence and impartiality concerns, the OIG merely recommended that EPA better document membership decisions, indicating that EPA's current documentation is inadequate. As such, the OIG essentially opined that so long as there is documentation, it is acceptable to select members with potential impartiality and independence concerns. While the report identified nine out of 27 members where impartiality concerns were not well-documented and additional steps were needed, the OIG failed to address

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<sup>5</sup> OFFICE OF INSPECTOR GEN., ENVTL. PROT. AGENCY, *Response to Senate EPW Minority Staff Questions (01/23/14) EPA OIG Report: "EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees"* (on file with Committee).

<sup>6</sup> See ENVTL. PROT. AGENCY, *Research Project Search*, [http://cfpub.epa.gov/ncer\\_abstracts/index.cfm/fuseaction/search.welcome](http://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/search.welcome) (last accessed Feb. 7, 2014).

<sup>7</sup> See 42 U.S.C. §§ 7409(d)(2), 7612.

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the fact these members represent 33% of members selected for “in depth” review. As such, a more thorough analysis, including more than just 27 anonymous members, as well as a review of the literature through available search engines, is likely to reveal that the rate of members with impartiality concerns is much higher than 33%. It appears EPA’s current process is neither fully transparent nor provides assurance of neutrality.

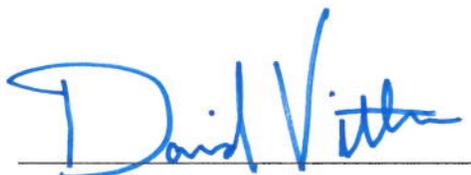
The OIG also missed an opportunity to make a recommendation on remedial action to ensure employees follow the procedures for financial disclosures and failed to recommend EPA alter the policy on updating financial disclosure forms. While the report identified an instance where procedures were blatantly violated, the OIG merely recommended EPA educate employees of the procedures – something employees should have already known – rather than provide specifics on the case from which further information could have been derived. The OIG did not conduct more than a cursory review of financial disclosures and there is no requirement or specific time frame members must update their forms, suggesting the accuracy of these forms is questionable.

The report indicated that EPA did not apply membership tenure policy to review panels and subcommittees, which led the OIG to conclude that “EPA may not be achieving the policy’s intent of providing fresh perspectives.” The lack of adherence to the membership tenure policy is significant: between 1998 and 2012, 36% of all CASAC members and consultants violated the six-year policy. Membership tenure has implications for membership balance; however, the OIG did not use tenure as a criterion for reviewing membership balance and failed to make any meaningful recommendation to ensure fresh perspectives.

Overall, the report buries a few significant findings that call into question the selection of CASAC and Council members. The report illustrates work product by the OIG that appears to be less than thorough, as evidenced by the limited number of members reviewed. The OIG refrained from making recommendations to address concerns found and instead took a narrow approach and permitted EPA policies to maintain the status quo.

These concerns require your immediate attention. It is our hope that this analysis will improve the OIG’s work moving forward, reinforce your responsibility as an “independent” watchdog of EPA, and ensure the Federal Government operates in the most effective and responsible manner in serving the American people.

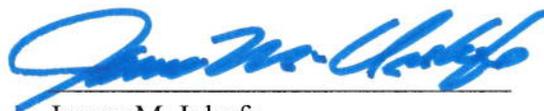
Sincerely,



David Vitter

Ranking Member

Committee on Environment and Public Works



James M. Inhofe

Ranking Member

Subcommittee on Oversight

Committee on Environment and

Public Works