

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY
SUBCOMMITTEE ON ENVIRONMENT**

HEARING CHARTER

Improving EPA's Scientific Advisory Processes

Wednesday, March 20, 2013
10:00 a.m. - 12:00 p.m.
2318 Rayburn House Office Building

PURPOSE

The Subcommittee on Environment of the Committee on Science, Space and Technology will hold a hearing entitled *Improving EPA's Scientific Advisory Processes* on Wednesday, March 20, 2013, at 10:00 a.m. in Room 2318 of the Rayburn House Office Building. The purpose of this hearing is to examine the Environmental Protection Agency's (EPA) process for receiving independent scientific advice and to receive testimony on draft legislation to strengthen public participation, improve the process for selecting expert advisors, expand transparency requirements, and limit non-scientific policy advice among advisory bodies.

WITNESS LIST

- **Dr. Michael Honeycutt**, Chief Toxicologist, Texas Commission on Environmental Quality
- **Dr. Roger McClellan**, Advisor, Toxicology and Human Health Risk Analysis
- **Dr. Francesca Grifo**, Senior Scientist and Science Policy Fellow, Union of Concerned Scientists

BACKGROUND

EPA's Science Advisory Board (SAB) was established by Congress in the Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA).¹ Under this authorization, the SAB provides scientific advice as may be requested by the EPA Administrator and interested Congressional Committees.

Since its enactment, the size and function of the SAB has evolved. ERDDAA established a minimum number of nine members, one of which is to be the designated Chair. Members are appointed by the EPA Administrator to serve a 3-year term and may be reappointed for a second 3 year term. There are currently 51 members of the chartered SAB. The SAB and its subcommittees and ad hoc subpanels provide scientific advice on a wide range of issues, including stream and wetland connectivity, hydraulic fracturing, environmental justice screening,

¹ *Public Law 95-155.*

and regulatory cost estimates.² The Board has also begun providing advice on the science underpinning several potential, forthcoming Agency regulatory activities.³

The SAB is operated in accordance with the Federal Advisory Committee Act of 1972, which requires that advisory panels have a charter and be "fairly balanced in terms of the points of view represented and the functions to be performed." According to the EPA, SAB's mission includes:

- reviewing the quality and relevance of the scientific and technical information being used or proposed as the basis for Agency regulations;
- reviewing research programs and the technical basis of applied programs;
- reviewing generic approaches to regulatory science, including guidelines governing the use of scientific and technical information in regulatory decisions, and critiquing such analytic methods as mathematical modeling;
- advising the Agency on broad scientific matters in science, technology, social and economic issues; and
- advising the Agency on emergency and other short-notice programs.⁴

Toward those goals, the chartered SAB conducts much of its work through subcommittees or subpanels focused on specific issues. Currently, these subcommittees include: Drinking Water Committee; Ecological Processes and Effects Committee; Environmental Economics Advisory Committee; Environmental Engineering Committee; Exposure and Human Health Committee; Radiation Advisory Committee; and the Chemical Assessment Advisory Committee (established January 30, 2013).⁵ Under the SAB's charter,⁶ these "[c]ommittees, panels, and workgroups have no authority to make decisions on behalf of the SAB and may not report directly to the Agency."

The EPA also receives advice from and manages 22 additional Federal Advisory Committees, including entities like the EPA Board of Scientific Counselors, the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel, and the Clean Air Scientific Advisory Committee (CASAC).⁷ These bodies carry out a variety of advisory functions. For example, CASAC "provides independent advice to the EPA Administrator on the technical bases for EPA's national ambient air quality standards" and "addresses research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality." The Chair of CASAC also sits on the chartered SAB.⁸

² <http://yosemite.epa.gov/sab/sabproduct.nsf/WebProjectsbyTopicBOARD!OpenView>.

³ Dave Reynolds, "Advisors Narrow List Of Pending EPA Rules For Novel Scientific Scrutiny," Inside EPA, March 11, 2013, <http://insideepa.com/201303112427282/EPA-Daily-News/Daily-News/advisors-narrow-list-of-pending-epa-rules-for-novel-scientific-scrutiny/menu-id-95.html>.

⁴ <http://yosemite.epa.gov/sab/sabpeople.nsf/Webcommittees/BOARD>.

⁵ <http://yosemite.epa.gov/sab/sabproduct.nsf/WebBOARD/CommitteesandMembership?OpenDocument>.

⁶ <http://yosemite.epa.gov/sab/sabproduct.nsf/WebBOARD/currentcharter?OpenDocument>.

⁷ <http://www.epa.gov/ocem/faca/facacomcontacts.htm>.

⁸ <http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC>.

EPA staff and the chartered SAB allow for some public involvement in advisory activities through the nomination of experts for committees and panels and involvement in advisory committee meetings and report developments. In response numerous comments during an SAB Session on Public Involvement in June 2011, the SAB Staff Office announced additional steps to enhance public involvement in advisory activities beginning in FY2012.⁹

LEGISLATIVE SUMMARY AND HISTORY

In the 112th Congress, then-Chairman Ralph Hall, along with current Chairman Lamar Smith and other members of the Science, Space, and Technology Committee introduced H.R. 6564, the EPA Science Advisory Board Reform Act of 2012. This legislation would have altered EPA's advisory process by: strengthening public participation and comment opportunities; changing SAB and sub-panel selection process; requiring chances for dissenting members to make their views known and the communication of uncertainties; and limiting non-scientific policy advice.

Witnesses have been asked to provide comment on discussion draft legislation similar to H.R. 6564 (language and section-by-section analysis attached).

ADDITIONAL READING

- EPA, [Reorganization of the EPA Science Advisory Board \(SAB\): A Report of the EPA Science Advisory Board Staff Office](#), November 2003.
- Terry Yosie, "The EPA Science Advisory Board: A Case Study in Institutional History and Public Policy," *Environmental Science and Technology*, 1993, Vol. 27, No. 8.
- Craig S. Barrow and James W. Conrad, "[Assessing the Reliability and Credibility of Industry Science and Scientists.](#)" *Environmental Health Perspectives*, 2006, 114: 153-155.
- James E. McCarthy, "Air Quality Standards and Sound Science: What Role for CASAC?" April 21, 2008, Congressional Research Service, 7-5700.
- Ronald Bailey, "[Scrutinizing Industry-Funded Science: The Crusade Against Conflicts of Interest](#)," March 2008, American Council on Science and Health.
- Joe G. Conley, "Conflict of Interest and the EPA's Science Advisory Board," *Texas Law Review*, November 2007.
- EPA, [Peer Review Handbook, 3rd Edition](#).
- The National Academies, [Policy on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports](#), May 12, 2003.
- Bipartisan Policy Center's Science for Policy Project, [Improving the Use of Science in Regulatory Policy](#), August 5, 2009.
- The Keystone Center's Research Integrity Roundtable, [Improving the Use of Science in Regulatory decision-Making: Dealing with Conflict of Interest and Bias in Scientific Advisory Panels, and Improving Systematic Scientific Reviews](#), September 18, 2012.
- Bruce L.R. Smith, *The Advisers: Scientists in the Policy Process* (Washington, DC: The Brookings Institution, 1992).

⁹ <http://yosemite.epa.gov/sab/sabproduct.nsf/WebSABSO/PublicInvolvement?OpenDocument>.

- Sheila Jasanoff, *The Fifth Branch: Science Advisers as Policymakers* (Cambridge, MA: Harvard University Press, 1990).

Discussion Draft

Section-by-Section Analysis

Purpose: To amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Scientific Advisory Board member qualifications, public participation, and for other purposes.

Section 1: Short Title

This Act is entitled, “EPA Science Advisory Board Reform Act of 2013”.

Section 2: Science Advisory Board

Subsection (a) MEMBERSHIP amends section 8(b) of the Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA) to include the following:

(b) (1) Requires the Science Advisory Board be composed of at least nine members, with one designated as Chairman, and that these members meet at a times and places designated by the Chairman and Administrator.

(2) Requires that each member of the Board is qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board. The Administrator is required to select Board members from nominations received, and shall ensure: (A) the scientific and technical points of view represented on the Board, as well as the function to be performed, be fairly balanced among the Board members; (B) at least ten percent of Board membership are from State, local, or tribal governments; (C) persons with substantial and relevant expertise are not excluded from the Board due to affiliation with or representation of entities that might have a potential interest in the Board’s advisory activities, as long as this interest is fully disclosed to the Administrator and the public; (D) in the case of a Board advisory activity on a particular matter involving a specific party, no Board member that has an interest in that party shall participate in that activity; and (E) Board members may not participate in advisory activities that involve review or application of their own work.

(3) The Administrator is required to: (A) solicit public comments for the Board by publishing a notification in the Federal Register; (B) solicit nominations from relevant Federal Agencies; (C) make the list of nominees, as well as the entity that nominated them, public, and accept public comments on the nominees; (D) require that upon nomination, nominees file a written report disclosing financial relationships and interests, including EPA grants, contracts, cooperative agreements, and other financial assistance relevant to the Board’s advisory activities for the three year period prior to nomination, as well as relevant professional activities and public statements for the five year period prior to nomination; and (E) these reports are made public for each member of the Board upon their selection, excepting specific dollar amounts.

(4) The terms of the members of the Board shall be three years and staggered to ensure that no more than one-third of total membership shall expire within a single year, and members are limited to two terms over a ten-year period.

Subsection (b) RECORD amends Section 8(c) of ERDDAA in the following ways:

In paragraph 1: (A) by inserting “risk or hazard assessment” after “at the time any proposed”; and (B) by inserting “risk or hazard assessment” after “to the Board such proposed”.

In paragraph 2: (A) by inserting “risk or hazard assessment” after “the scientific and technical basis of the proposed”; and (B) by adding at the end “The Board’s advice and comments, including dissenting views of Board members, and the response of the Administrator shall be included in the record with respect to any proposed risk or hazard assessment, criteria document, standard, limitation, or regulation and published in the Federal Register.”

Subsection (c) MEMBER COMMITTEES AND INVESTIGATIVE PANELS amends section 8(e) of ERDDAA by adding requirements that the member committees and investigative panels: (1) be constituted and operate in accordance with other provisions of this Act; (2) do not have authority to make decisions on behalf of the Board; and (3) may not report directly to the Environmental Protection Agency.

Subsection (d) PUBLIC PARTICIPATION amends ERDDAA by adding subsection (h). Subsection (h): (1) requires the Administrator and the Board to make public all reports and relevant scientific information and provide materials to the public at the same time they are received by the Board. (2) Requires the Board to hold a public information-gathering session to discuss the state of the science relative to the advisory activity prior to conducting major advisory activities. (3) Requires the Administrator to accept, consider, and address public comments on questions to be asked of the board prior to convening a member committee or panel, and The Board, member committee, or panels shall accept, consider, and address these public comments. The Board cannot accept a question that unduly narrows the scope of an advisory activity. (4) Requires the Administrator and the Board to encourage public comments, and the public comments must be provided to the Board when received. The Board is also required to respond in writing to significant public comments. (5) Provides the public with 15 calendar days after Board meetings to provide additional comments for consideration.

Subsection (e) OPERATIONS amends ERDDAA by adding subsection (i) which requires: (1) the Board strive to avoid making policy determinations or recommendations, and explicitly distinguish between scientific determinations and policy advice. (2) The Board clearly communicates uncertainties associated with scientific advice provided to the Administrator. (3) The Board ensures that advice and comments reflect the views of the members and encourage dissenting members to make their views known to the public and Administrator. (4) The Board conducts periodic reviews to ensure its advisory activities are addressing the most important scientific issues facing the EPA.