



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON D.C. 20460

OFFICE OF THE ADMINISTRATOR  
SCIENCE ADVISORY BOARD

June 18, 2013

**MEMORANDUM**

**SUBJECT:** Addendum to the June 4, 2013 Memorandum: Formation of Science Advisory Board (SAB) Environmental Justice Technical Guidance Review Panel

**FROM:** Suhair Shallal, Ph.D.  
Designated Federal Officer (DFO)  
EPA Science Advisory Board Staff Office (1400R)

**THRU:** Wanda Bright  
SAB Ethics Officer  
EPA Science Advisory Board Staff Office (1400R)

**TO:** Christopher Zarba  
Acting Director  
EPA Science Advisory Board Staff Office (1400R)

On June 4, 2013, the Acting Director of the Science Advisory Board (SAB) Staff Office signed a memorandum that announced to the public the members of the SAB's Environmental Justice Technical Guidance Review Panel. The memorandum provided a set of determinations that were necessary for forming the SAB Panel, and described all relevant information considered in forming the Panel, including a review of the confidential financial disclosure forms and evaluation of an appearance of a lack of impartiality. Subsequently, the SAB Staff Office has received additional information regarding the availability of a panel member. Based on review of this additional information, the members of the EPA's SAB Environmental Justice Technical Guidance (EJTG) Review Panel are as follows:

**Dr. H. Keith Moo-Young**, Washington State University (CHAIR)  
**Dr. Troy Abel**, Western Washington University  
**Dr. Gary Adamkiewicz**, Harvard School of Public Health  
**Dr. Sue Briggum**, Waste Management  
**Dr. Linda Bui**, Brandeis University  
**Dr. Elena Craft**, Environmental Defense Fund  
**Dr. Michael DiBartolomeis**, California Department of Public Health  
**Dr. Neeraja Erraguntla**, Texas Commission on Environmental Quality  
**Dr. Richard David Schulerbrandt Gragg**, Florida A&M University

**Dr. Michael Greenberg**, Rutgers University  
**Dr. James K. Hammitt**, Harvard University  
**Dr. Barbara L. Harper**, Confederated Tribes of the Umatilla Indian Reservation (CTUIR)  
**Dr. Cecilia Martinez**, University of Delaware  
**Dr. Eileen McGurty**, Johns Hopkins University  
**Dr. Douglas Noonan**, Georgia Institute of Technology  
**Dr. James Sadd**, Occidental College  
**Dr. Thomas L. Theis**, University of Illinois at Chicago  
**Dr. Randall Walsh**, University of Pittsburgh

Concurred,

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Christopher Zarba.  
Acting Staff Director  
EPA Science Advisory Board (1400F)

***June 18, 2013***

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Date



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WASHINGTON D.C. 20460

OFFICE OF THE ADMINISTRATOR  
SCIENCE ADVISORY BOARD

June 4, 2013

**MEMORANDUM**

**SUBJECT:** Formation of Science Advisory Board (SAB) Environmental Justice Technical Guidance (EJTG) Review Panel

**FROM:** Suhair Shallal, Ph.D. /s/  
Designated Federal Officer (DFO)  
EPA Science Advisory Board Staff Office (1400R)

**THRU:** Wanda Bright /s/  
Ethics Officer  
EPA Science Advisory Board Staff Office (1400R)

**TO:** Christopher Zarba  
Acting Director  
EPA Science Advisory Board Staff Office (1400R)

EPA has released for public comment its *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (May 1, 2013)*. The purpose of this draft guidance is to provide EPA analysts with technical information on how to consider environmental justice (EJ) in regulatory analyses. This draft guidance takes into account EPA's past experience in integrating environmental justice into the rulemaking process, and is intended to support EPA's ongoing commitment to ensuring the fair treatment and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This draft guidance complements the EPA's *Interim Guidance on Considering Environmental Justice During the Development of an Action*, issued in July 2010, which provides direction on **when** EJ should be considered during the rulemaking process, and begins to address the issue of **how** to do so in an analytical fashion.

This memorandum addresses the set of determinations that were necessary for forming the SAB Environmental Justice Technical Guidance (EJTG) Review Panel:

- (A) The type of review body that will be used to conduct the review, and the nature of the review;
- (B) The types of expertise needed to address the general charge;

- (C) Financial conflict of interest considerations, including identification of parties who are potentially interested in or may be affected by the topic to be reviewed;
- (D) How regulations concerning “appearance of a lack of impartiality,” pursuant to 5 C.F.R. § 2635.502 apply to members of the Panel; and
- (E) How individuals were selected for the Panel.

**DETERMINATIONS:**

- (A) The type of review body that will be used to conduct the review, and the nature of this review.

An *ad hoc* panel, composed of subject matter experts, will be formed under the auspices of the Science Advisory Board to provide advice and recommendations through the SAB to EPA on the scientific soundness of its *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (May 1, 2013).

- (B) The types of expertise needed to address the general charge.

The SAB Staff Office announced to the public through a *Federal Register* notice published on February 14, 2011 (76 FR 8366) that it was soliciting nominations of nationally and internationally recognized scientists in the following disciplines, especially as they relate to minorities, low-income, and other disproportionately affected populations: environmental exposure, fate and transport, human health risk assessment, toxicology, epidemiology, public health, biostatistics, economics, social and behavioral sciences, and risk communication. The *Federal Register* notice further stated that, in particular, the SAB Staff Office sought experts with expertise and experience in assessing cumulative and comparative risk, public health benefits and impacts, equity and disparity impacts, social impacts, and regulatory impacts. A second *Federal Register* notice was published on June 3, 2011 (76 FR 32202) seeking additional nominations of nationally and internationally recognized experts with experience in the following disciplines: risk assessment (particularly comparative risk and risk ranking); decision analysis; economics and environmental science, specifically in drinking water and groundwater human health effects, particulate matter, ozone and toxic air pollutants (including diesel particulate matter); lead in paint, household dust and other locations: proximity to active and inactive hazardous waste sites, industrial and other facilities; and proximity to highways.

- (C) Financial conflict of interest considerations, including identification of parties who are potentially interested in or may be affected by the topic to be reviewed.

(a) Identification of parties who are potentially interested in or may be affected by the topic to be reviewed: The principal interested and affected parties for this topic are: 1) federal, state, and local government agencies, elected officials, and non-government organizations involved in the development of regulations in the context of environmental justice; and 2) those with interests in private or public organizations that may be affected by the regulatory analyses that use this guidance to consider environmental justice (EJ) issues.

(b) Conflict of interest considerations: For Financial Conflict of Interest (COI) issues, the basic 18 U.S.C. § 208 provision states that: “An employee is prohibited from participating *personally or substantially* in an official capacity in any *particular matter* in which he, to his knowledge, or any person whose interests are imputed to him under this statute has a *financial interest*, if the particular matter will have a *direct and predictable effect* on that interest [emphasis added].” For a conflict of interest to be present, all elements in the above provision must be present. If an element is missing the issue does not involve a formal conflict of interest; however, the general provisions in the appearance of impartiality guidelines must still apply and need to be considered.

(i) Does the general charge to the SAB Environmental Justice Technical Guidance (EJTG) Review Panel involve a particular matter? A “particular matter” refers to matters that “...will involve deliberation, decision, or action that is focused upon the interest of specific people, or a discrete and identifiable class of people.” It does not refer to “...consideration or adoption of broad policy options directed to the interests of a large and diverse group of people.” [5 C.F.R. § 2640.103 (a)(1)]. A particular matter of general applicability means a particular matter that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties [5 C.F.R. § 2640.102(m)].

The activity of the SAB Environmental Justice Technical Guidance (EJTG) Review Panel in addressing the charge to provide guidance to EPA analysts on how to consider environmental justice (EJ) in regulatory analyses will qualify as a *particular matter of general applicability* because the resulting advice will be part of a deliberation, and under certain circumstances the advice could involve the interests of a discrete and identifiable class of people but does not involve specific parties. That group of people constitutes those who are involved with private or public organizations facing regulatory decisions that may be impacted by environmental justice issues.

(ii) Will there be personal and substantial participation on the part of the Panel members? Participating personally means direct participation in this review. Participating substantially refers to involvement that is of significance to the matter under consideration. [5 C.F.R. § 2640.103(a)(2)]. For this review, the SAB Staff Office has determined that the *SAB Panelmembers will be participating personally in the matter*. Panel members through the SAB will be providing the Agency with advice and recommendations on the scientific soundness of the guidance that describes ways of integrating environmental justice into the rulemaking process to ensure the fair treatment and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. *Therefore, participation in this review will also be substantial.*

(iii) Will there be a direct and predictable effect on SAB Environmental Justice Technical Guidance (EJTG) Review Panel members’ financial interest? A direct effect on a participant’s financial interest exists if “...a close causal link exists between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. ...A particular matter does not have a direct effect ...if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects

on the general economy is not considered to have a direct effect.” [5 C.F.R. § 2640.103(a)(i)] A predictable effect exists if, “...there is an actual, as opposed to speculative, possibility that the matter will affect the financial interest.” [[5 C.F.R. § 2640.103(a)(ii)]

The SAB staff office has determined that the work of this SAB Panel will not have a direct and predictable financial effect on any Panel member’s financial interests.

(D) How regulations concerning “appearance of a loss of impartiality,” pursuant to 5 C.F.R. § 2635.502, apply to members of the Panel

The Code of Federal Regulations at 5 C.F.R. § 2635.502(a) states that: “Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the person determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and has received authorization from the agency designee.” Further, § 2635.502(a)(2) states that, “An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.”

Candidates for the Panel were evaluated against the 5 C.F.R. 2635(a)(2) general requirements for considering an appearance of a loss of impartiality. Information used in this evaluation has come from information provided by potential advisory panel members (including, but not limited to, EPA 3110-48 confidential financial disclosure forms) and public comment as well as their responses to the following supplemental questions (included on the EPA 3110-48 confidential financial disclosure form):

1. Do you know of any reason that you might be unable to provide impartial advice on the matter to come before the panel/committee/subcommittee or any reason that your impartiality in the matter might be questioned?
2. Have you had any previous involvement with the review document(s) under consideration including authorship, collaboration with the authors, or previous peer review functions? If so, please identify and describe that involvement.
3. Have you served on previous advisory panels, committees or subcommittees that have addressed the topic under consideration? If so, please identify those activities.
4. Have you made any public statements (written or oral) on the issue that would indicate to an observer that you have taken a position on the issue under consideration? If so, please identify those statements.

As a result of a review of all relevant information including financial disclosure, the responses to the four questions above, and public comments, the SAB Staff Office has determined that there are no conflicts of interest or appearances of a loss of impartiality for the members of this Panel.

(E) How individuals were selected for the Panel

The SAB Staff Office identified 78 experts to be considered for the Panel. On April 8, 2011, the SAB Staff Office posted a notice on the SAB website inviting public comments by April 29, 2011 on the list of candidates for the Panel. The SAB Staff Office subsequently identified an additional 13 experts to be considered for the Panel. On August 24, 2011, the SAB Staff Office posted another notice on the SAB website inviting public comments by September 14, 2011 on the additional list of candidates for the Panel. The SAB Staff Office received comments on these lists of candidates from the following members of the public:

- Albert Huang, Natural Resources Defense Council (NRDC)
- Marylee M. Orr, Louisiana Environmental Action Network (LEAN)
- Oliver A. Houck, Tulane University
- Kathryn Goppelt, Concerned Citizens of Ascension Parish
- Alvin J. Robert, Gonzales, LA
- Tennie White, Coalition of Communities for Environmental Justice (COCEJ)
- John Sullivan, University of Texas Medical Branch

The SAB Staff Office Director makes the final decision about who serves on the SAB Environmental Justice Technical Guidance (EJTG) Review Panel, based on all relevant information. This includes a review of the member's confidential financial disclosure form (EPA Form 3110-48) and an evaluation of an appearance of a loss of impartiality in addition to information gathered by the SAB Staff Office. For the SAB Staff Office, a balanced committee or panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the general charge. Specific criteria to be used in evaluating an individual Panel member include: (a) scientific and/or technical expertise, knowledge, and experience; (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a loss of impartiality; (e) skills working in committees, subcommittees and advisory panels; and (f) for the committee as a whole, diversity of scientific expertise and viewpoints.

On the basis of the above-specified criteria, the membership of the Panel for this review is as follows:

**Dr. H. Keith Moo-Young**, Washington State University (CHAIR)  
**Dr. Troy Abel**, Western Washington University  
**Dr. Gary Adamkiewicz**, Harvard School of Public Health  
**Dr. Linda Bui**, Brandeis University  
**Dr. Elena Craft**, Environmental Defense Fund  
**Dr. Michael DiBartolomeis**, California Department of Public Health  
**Dr. Neeraja Erraguntla**, Texas Commission on Environmental Quality

**Dr. Richard David Schulerbrandt Gragg**, Florida A&M University  
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**Dr. Cecilia Martinez**, University of Delaware  
**Dr. Eileen McGurty**, Johns Hopkins University  
**Dr. Douglas Noonan**, Georgia Institute of Technology  
**Dr. James Sadd**, Occidental College  
**Dr. Thomas L. Theis**, University of Illinois at Chicago  
**Dr. Randall Walsh**, University of Pittsburgh

Concurred,

\_\_\_\_\_/s/\_\_\_\_\_  
Christopher Zarba  
Acting Director  
EPA Science Advisory Board Staff Office (1400R)

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6/4/2013  
Date