



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD

June 4, 2012

MEMORANDUM

SUBJECT: Formation of the SAB Scientific and Technological Achievement Awards
FY 2012 Committee

FROM: Edward Hanlon */Signed/*
Designated Federal Officer (DFO)
EPA Science Advisory Board Staff Office (1400F)

THRU: Wanda Bright */Signed/*
Ethics Officer
EPA Science Advisory Board (1400F)

TO: Vanessa Vu, Ph.D.
Director
EPA Science Advisory Board (1400F)

EPA's Scientific and Technological Achievement Awards (STAA), established in 1980, is an annual Agency-wide competition to promote and recognize scientific and technological achievements by EPA scientists and engineers who publish their work in the peer-reviewed literature. The STAA program is administered and managed by EPA's Office of Research and Development (ORD). ORD requested EPA's Science Advisory Board (SAB) to review scientific publications nominated by EPA managers and make recommendations to the Administrator for STAA awards.

This memorandum addresses the set of determinations that were necessary for forming the SAB STAA FY 2012 Committee, including:

- (A) The type of review body that will be used to conduct the review, and the nature of the review;
- (B) The list of candidates to be considered for the panel;
- (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) The selection of Panel members.

DETERMINATIONS:

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

An *ad hoc* committee, composed of subject matter experts, will be formed under the auspices of the SAB to make recommendations through the chartered SAB on EPA’s STAA awards.

(B) The list of candidates to be considered for the Panel.

In a *Federal Register* Notice (Volume 77, Number 27, Pages 6797 – 6798) published on February 9, 2012, the SAB Staff Office sought public nominations of nationally and internationally recognized scientists and engineers to be considered for EPA’s STAA Committee for Fiscal Year 2012, 2013, and 2014. The *Federal Register* Notice requested public nominations of scientists and engineers with a multidisciplinary background in the areas of: ecological research; energy and the environment; environmental control systems and technology; environmental monitoring and measurement methods; environmental policy and decisionmaking studies; environmental risk management and restoration; environmental sustainability and innovation; environmental transport and fate; human health effects research and human health risk assessment; homeland security; industry and the environment; integrated environmental risk assessment; and other environmental research.

The SAB Staff Office identified 37 candidates based on their relevant expertise and willingness to serve. On April 5, 2012, the SAB Staff Office posted a notice on the SAB website inviting public comments by April 26, 2012 on the List of Candidates for the Panel. The SAB Staff Office received no public comments on the candidate list.

(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) authors of STAA nominations; and (2) EPA and the scientific community at large.

(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 STAA Committee 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)]. Additionally, 5CFR 2637.102(a)(7) defines a particular matter involving specific parties to mean any judicial or other proceeding, application, request for ruling or other determination, contract, claim, controversy, investigation, change, accusation, arrest or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest.

The SAB Staff Office has determined that the work that this committee will perform will be a particular matter of specific applicability affecting specific parties (i.e., the authors of the papers to be reviewed), because the resulting advice will be part of a deliberation and the advice would involve the interests of individuals considered for awards.

- (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 committee members *will be participating personally* in matters presented to them through attendance at meetings, teleconferences and other means. Since committee members will be providing the Agency with advice and recommendations for awards, *participation in this review will be substantial*.

- (iii) Will there be a direct and predictable effect on a Panel member’s 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)]

Candidates for the Panel were evaluated against the requirements of 5 C.F.R. § 2640.101(a), using each candidate's confidential financial disclosure form (EPA Form 3110-48), to determine whether the work of the Panel will have a direct and predictable effect on his or her financial interests. Although the work that this committee will perform will have a direct and predictable financial effect on individuals (since committee advice may result in monetary awards to authors of papers reviewed by the committee), no committee members are the authors of papers considered for STAA 2012 awards. Therefore, the SAB Staff Office has determined that there is no direct and predicable effect on any committee member's financial interests for the review of STAA 2012 nominations.

(D) How regulations concerning "appearance of a lack 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 lack of impartiality. Information used in this evaluation included responses to the following questions (see below), and to EPA 3110-48 confidential financial disclosure forms.

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.

On review of the submitted ethics information, the SAB Staff Office has determined that some members will be recused from the review of certain 2012 STAA nomination packages to avoid an appearance of lack of impartiality.

(E) The selection of Committee members

The SAB Staff Office Director makes the final decision about who serves on the Committee, based on all relevant information, including a review of candidate's confidential financial disclosure form (EPA Form 3110-48), the responses to the four questions above, public comments, and information independently gathered by SAB Staff.

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 committee member include: (a) scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) skills working in committees, subcommittees and advisory panels; and, for the committee as a whole, (f) diversity of scientific expertise, and viewpoints.

