



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460**

**OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD**

June 23, 2011

MEMORANDUM

SUBJECT: Addendum to the June 1, 2011 Memorandum: Formation of Science Advisory Board Panel for Review of Great Lakes Restoration Initiative Action Plan

FROM: Thomas Carpenter /signed/
Designated Federal Officer (DFO)
EPA Science Advisory Board Staff Office (1400R)

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

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

On March 9, 2011, The Science Advisory Board (SAB) Staff Office Director signed a memorandum that announced to the public the members of the SAB's Panel for Review of Great Lakes Restoration Initiative Action Plan. 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. On June 21, 2011, the SAB Staff Office received additional information regarding membership of the Panel for Review of Great Lakes Restoration Initiative Action Plan. Based on review of this additional information, the members of the SAB Panel for Review of Great Lakes Restoration Initiative Action are as follows:

Perchlorate Advisory Panel Members

On the basis of the above-specified criteria, the members of the Great Lakes Restoration Initiative Action Plan are as follows:

Dr. James Sanders, Skidaway Institute of Oceanography (GA), Chair
Dr. Joel Eric Baker, University of Washington Tacoma (WA)
Dr. Robert E. Bilby, Weyerhaeuser Company (WA)
Dr. Tracy Collier, National Oceanic and Atmospheric Administration (WA)
Dr. Robert Diaz, College of William and Mary (VA)
Dr. Kirk Havens, College of William & Mary (VA)
Dr. Joseph Koonce, Case Western Reserve University (OH)
Dr. Thomas Leschine, University of Washington (WA)
Dr. James Oris, Miami University (OH)
Dr. David Sample, Virginia Polytechnic Institute and State University (VA)
Dr. Donald Scavia, University of Michigan (MI)
Dr. Paul Sibley, University of Guelph (ON)
Dr. William Taylor, University of Waterloo (ON)
Dr. Ron Thom, Pacific Northwest National Laboratory (WA)
Dr. Judith S. Weis, Rutgers University (NJ)

Concurred,

/Signed/

Vanessa Vu, Ph.D.
Staff Director
EPA Science Advisory Board

6/23/2011

Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD

May 24, 2011

MEMORANDUM

SUBJECT: Formation of Science Advisory Board Panel for Review of Great Lakes Restoration Initiative Action Plan

FROM: Thomas Carpenter **/signed/**
Designated Federal Officer (DFO)
EPA Science Advisory Board Staff Office (1400R)

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

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

The US Environmental Protection Agency (EPA) Great Lakes National Program Office requested the Science Advisory Board (SAB) to review the Great Lakes Restoration Initiative's Action Plan. The GLRI Action Plan targets the most significant environmental problems in the region, as documented in extensive scientific studies and by stakeholder review. To guide the efforts of the GLRI, EPA and its Federal partners, through the Great Lakes Interagency Task Force, developed a comprehensive multi-year Action Plan. The GLRI Action Plan identifies outcome-oriented performance goals, objectives, measurable ecological targets, and specific actions for five major focus areas: toxic substances and areas of concern; invasive species; near-shore health and nonpoint source pollution; habitat and wildlife protection and restoration; and accountability, education, monitoring, evaluation, communication, and partnerships.

The EPA Great Lakes National Program Office has requested the SAB to review the GLRI Action Plan to assess the appropriateness of its planned actions to achieve its stated priorities and goals.

This memorandum addresses the set of determinations that were necessary for forming the SAB GLRI Action Plan Review Panel, 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* panel, composed of subject matter experts, will be formed under the auspices of the Science Advisory Board to provide advice and recommendations to EPA on the scientific and technical soundness of the GLRI Action Plan.

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

The SAB Staff Office announced in a *Federal Register* Notice (Volume 75, Number 185 Pages 58383-58385) published on September 24, 2010 that it was forming an SAB panel to review the interagency GLRI Action Plan that describes restoration priorities, goals, objectives, measurable ecological targets, and specific actions.

The SAB Staff Office identified 36 candidates based on their relevant expertise and willingness to serve from the *Federal Register* Notice. On March 14, 2011, the SAB Staff Office posted a notice on the SAB Web site inviting public comments on the List of Candidates for the Panel, including biographical sketches, by April 4, 2011. The SAB Staff Office did not receive 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 potentially affected parties for this topic are: (1) federal, state, and local government agencies, elected officials, industries, and non-government organizations involved in the restoration of the Great Lakes region, ecological targets, and specific actions for five major focus areas: areas of concern from toxic substances; invasive species; near-shore health and nonpoint source pollution; habitat and wildlife protection and restoration; and accountability, education, monitoring, evaluation, and (2) those involved with the interests of private or public organizations that may have received funding under the GLRI. Periodically the GLRI requests proposals and awards grants to fund projects that address the most important Great Lakes priorities, including reducing toxic contaminants, restoring the Great Lakes Areas of Concern, protecting beaches and beachgoers, keeping out invasive species and reducing polluted land-based runoff.

(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 GLRI Action Plan Review 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 GLRI Action Plan Review does not qualify as a *particular matter of general applicability* in that it does not involve deliberation, decision, or action that is focused upon the interests of a discrete and identifiable class of people and does not involve specific parties. Nor does this include matters that involve formal parties or extend to legislation or policymaking that is narrowly focused upon the interests of a discrete and identifiable class of persons. Rather it covers consideration or adoption of options for a broad research and restoration programs.

(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)].

Because this does not constitute a particular matter involving specific parties, the chain of elements leading to a determination that a conflict of interest exists is broken and no such conflict exists and there is no need to pursue the additional elements in determining the existence of a conflict of interest (i.e., Personal and Substantial Participation; Direct and Predictable Effect on Members Financial Interest).

(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.

(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 has come from information provided by potential advisory committee 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. Have you received any past or current funding from the EPA on Great Lakes Restoration Initiatives or projects? If so, please provide information name of the project, funding, and when received.
2. Do you know of any reason that you might be unable to provide impartial advice on the interagency Great Lakes Restoration Initiative (GLRI) Action Plan or any reason that your impartiality in the matter might be questioned?
3. Have you had any previous involvement with in the development of the Great Lakes Restoration Initiative (GLRI) Action Plan or projects funded under the GLRI? If so, please identify and describe that involvement.
4. Have you served on previous advisory panels, committees or subcommittees that have addressed in the development of the Great Lakes Restoration Initiative (GLRI) or the Action Plan? If so, please identify those activities.
5. 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 in the development of the Great Lakes Restoration Initiative, the GLRI Action Plan, or other GLRI projects? If so, please identify those statements.

(E) The selection of Panel members

The SAB Staff Office Director makes the final decision about who serves on the Oil Spill Research Strategy 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 lack of impartiality, and application of criteria to ensure a balanced panel.

As a result of a review of all relevant information including each candidate's confidential financial disclosure form (EPA Form 3110-48), 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 lack of impartiality for the members of this Panel.

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.

On the basis of the above-specified criteria, the members of the Great Lakes Restoration Initiative Action Plan are as follows:

Dr. James Sanders, Skidaway Institute of Oceanography (GA), Chair
Dr. Joel Eric Baker, University of Washington Tacoma (WA)
Dr. Robert E. Bilby, Weyerhaeuser Company (WA)
Dr. Tracy Collier, National Oceanic and Atmospheric Administration (WA)
Dr. Robert Diaz, College of William and Mary (VA)
Dr. Kirk Havens, College of William & Mary (VA)
Dr. Joseph Koonce, Case Western Reserve University (OH)
Dr. Thomas Leschine, University of Washington (WA)
Dr. Brenda McAfee, Environment Canada (QU)
Dr. James Oris, Miami University (OH)
Dr. David Sample, Virginia Polytechnic Institute and State University (VA)
Dr. Donald Scavia, University of Michigan (MI)
Dr. Paul Sibley, University of Guelph (ON)
Dr. William Taylor, University of Waterloo (ON)
Dr. Ron Thom, Pacific Northwest National Laboratory (WA)
Dr. Judith S. Weis, Rutgers University (NJ)

Concurred,

 /signed/
Vanessa Vu, Ph.D.
Staff Director
EPA Science Advisory Board (1400R)

 May 24, 2011
Date