



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

**OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD**

May 28, 2019

MEMORANDIUM

SUBJECT: Formation of the SAB Scientific and Technological Achievement Awards (STAA)
FY 2019-2021 Committee

FROM: Diana Wong, Ph. D. /s/
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THRU: Wanda Bright /s/
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TO: Thomas Brennan
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EPA Science Advisory Board Staff Office (1400R)

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 2019-2021 Committee, including:

1. The type of review body that will be used to conduct the review, and the nature of the review;
2. The types of expertise needed to address the general charge;
3. Financial conflict of interest considerations, including identification of parties who are potentially interested in or may be affected by the topic to be reviewed;

4. How regulations concerning “appearance of a loss of impartiality” pursuant to 5 C.F.R. § 2635.502 apply to members of the committee or panel;
5. Other considerations that might affect the objectivity of members of the committee or panel; and
6. How individuals were selected for the committee or panel.

DETERMINATIONS:

1. 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.

2. The types of expertise needed to address the general charge.

In a *Federal Register* Notice (Volume 83, Number 236, Pages 63502 – 63503) that was published on December 10, 2018, the SAB Staff Office sought public nominations of experts to be considered for EPA’s STAA Committee for Fiscal Year 2019-2021. The *Federal Register* Notice solicited public nominations of experts in the following disciplines as they relate to human health and the environment: air pollution exposure; chemical engineering; civil and environmental engineering; decision science; ecology; environmental economics; groundwater and surface water contaminant fate and transport; human health effects and risk assessment; monitoring and measurement methods for air and water; risk management; transport and fate of contaminants; water quality; and water and wastewater treatment processes. The SAB Staff Office stated it was especially interested in scientists with expertise described above who have knowledge and experience in air quality; aquatic and ecological toxicology; chemical safety; community environmental health; dosimetry and inhalation toxicology; drinking water; ecological modeling; ecological risk assessment; ecosystem services; energy and the environment; epidemiology; green chemistry; homeland security; human health dosimetry; mechanisms of toxicity and carcinogenicity; metabolism; statistics; sustainability; toxicokinetics; toxicology; waste and waste management; and water re-use.

3. Financial conflict of interest considerations, including identification of parties who are potentially interested in or may be affected by the topic reviewed.
 - (a) Identification of parties (or class of parties) whose financial interests may be affected by the matter to be reviewed: The principal interested and affected parties for this topic are authors of publications nominated for STAA awards.
 - (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 financial conflict of interest; however, the general provisions in the appearance of impartiality guidelines still apply and need to be considered.

- (i) Does the general charge to the SAB 2019-2021 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, 5 C.F.R. 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 activity of the SAB 2019-2021 STAA Committee will qualify as a *particular matter involving 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 specific nominated individuals being considered for awards.

- (ii) Will there be personal and substantial participation on the part of the committee/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 members of the SAB 2019-2021 STAA Committee *will be participating personally in the matter*. Members will be providing the agency with advice and recommendations on the agency’s STAA awards, and such advice is expected to directly influence the agency’s decisions regarding which EPA employees receive STAA awards. *Therefore, participation in this review also will be substantial.*
- (iii) Will there be a direct and predictable effect on the SAB 2019-2021 STAA Committee members’ financial interests? 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 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)(ii)]. The ethics regulations include an exemption

allowing Special Government Employees (SGEs) serving on federal advisory committees to participate in any particular matter of general applicability where the disqualifying financial interest arises from their non-Federal employment or non-Federal prospective employment, provided that the matter will not have a special or distinct effect on the employee or employer other than as part of a class [5 C.F.R. § 2640.203(g)]. (This exemption does not include the interests of an SGE arising from the ownership of stock in his employer or prospective employer.)

SAB members and prospective committee members were asked to submit EPA Form 3110-48, a Confidential Financial Disclosure for Special Government Employees, so that the SAB Staff Office could make this determination. In addition, SAB members and prospective committee members have reviewed the list of nominations for 2019 STAA awards and submitted information to the SAB Staff Office on whether any of the nominated EPA authors were the SAB member or prospective committee member, a spouse of the SAB member or prospective committee member, or a person whose financial interests are otherwise imputed to the SAB member or prospective committee member. The same process would occur for the 2020 and 2021 STAA awards cycle. *Upon review of this submitted information, the SAB Staff Office has determined that there will be no direct and predictable effect on the financial interests of members of the SAB 2019-2021 STAA Committee from their participation on the committee.*

4. How regulations concerning “appearance of a loss of impartiality” pursuant to 5 C.F.R. § 2635.502. apply to members of the committee or 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.”

Prospective panel members were evaluated against the 5 C.F.R. 2635(a)(2) general requirements for considering an appearance of a loss of impartiality. This evaluation included information provided on the EPA Form 3110-48 confidential financial disclosure forms.

On review of the submitted information in EPA Form 3110-48 and the list of nominations for the 2019 STAA awards, the SAB Staff Office has determined that some members will be recused from the review of certain 2019-2021 STAA nomination packages to avoid an appearance of loss of impartiality. This recusal will be documented in the meeting minutes.

5. Other considerations that might affect the objectivity of members of the committee or panel.

Members of SAB panels must be scientific and technical experts who are objective and open-minded, able to engage in deliberative discussions with scientists who may have disparate perspectives. To evaluate candidates, the SAB Staff Office considers information (if any) provided by the public in response to the invitation for public comment on the candidates, information provided by candidates (including on the EPA Form 3110-48), and information independently gathered by the SAB Staff Office.

As part of a determination that members of committees and panels are objective and open-minded on the topic of the review, and consistent with the agency's Peer Review Policy, the SAB Staff Office considers previous involvement in the matter before the committee or panel. This evaluation includes responses provided by candidates to the following supplemental questions:

- (a) 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?
- (b) 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.
- (c) Have you served on previous advisory panels, committees or subcommittees that have discussed or addressed topics related to EPA's Program? If so, please identify those activities.
- (d) Have you made any public statements (written or oral) including expert testimony (public hearing, litigation), on EPA's STAA Program or on the publication of EPA's scientists and engineers that would indicate to an observer that you have taken a position on EPA's STAA Program? If so, please identify those statements.

The SAB Staff Office has determined that there is no reason to believe that the members selected for the SAB 2019-2021 STAA Committee would not be objective and open-minded and able to engage in deliberative discussions with scientists who may have disparate points of view on the matter before the committee. However, some members will be recused from the review of certain 2019-2021 STAA nomination packages to avoid an appearance of lack of impartiality.

6. How individuals were selected for the committee or panel.

On April 9, 2019, the SAB Staff Office posted a list of 19 candidates for the SAB 2019-2021 STAA Committee, identified based on their expertise and willingness to be considered for the committee. This list was accompanied by a notice inviting public comments on the list of candidates, to be submitted by April 30, 2019. The SAB Staff Office has not received any comments from the public on this list of candidates.

The SAB Staff Office Acting Director makes the final decision about who serves on a review panel based on all of the relevant information, including a review of each candidate's

confidential financial disclosure form (EPA Form 3110-48), the responses to the questions above, public comments, and information independently gathered by SAB Staff.

For the SAB Staff Office, a balanced committee or panel is characterized by candidates who possess the necessary domains of scientific knowledge, relevant perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breath 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 pursuant to 5 C.F.R. § 2635.502; (e) skills working on advisory committees and panels (including objectivity and open-mindedness); and (f) for the committee as a whole, diversity of scientific expertise and viewpoints.

On the basis of the above-specified criteria, the members of the SAB 2019-2021 STAA Committee are as follows:

SAB 2019-2021 STAA Committee

Dr. Jay R. Turner, Washington University, St. Louis (MO), CHAIR

Dr. C. Marjorie Aelion, University of Massachusetts (MA)

Dr. Henry Anderson, University of Wisconsin (WI)

Dr. Adriana C. Bejarano, Shell Health-Americas, Inc. (TX)

Dr. Linda T.M. Bui, Brandeis University (MA)

Dr. Celia Chen, Dartmouth College (NH)

Dr. Joseph J. DeGeorge, Independent Consultant (PA)

Dr. Zhihua (Tina) Fan, New Jersey Department of Health (NJ)

Dr. G. Frank Gerberick, GF3 Consultancy (OH)

Dr. Richard S. Grippo, Arkansas State University (AR)

Dr. Michael Jayjock, Jayjock Associates (PA)

Dr. Maria Morandi, Independent Consultant (TX)

Dr. Krishna R. Pagilla, University of Nevada, Reno (NV)

Dr. Thomas F. Parkerton, ExxonMobil Biomedical Science (NJ)

Dr. Kent E. Pinkerton, University of California, Davis (CA)

Dr. Robert W. Puls, Independent Consultant (NC)

Dr. Thomas Theis, University of Illinois at Chicago (IL)

Dr. Kimberly White, American Chemistry Council (DC)

Concurred,

_____/s/
Thomas Brennan
Acting Director and Deputy Ethics Official
EPA Science Advisory Board Staff Office (1400R)

_____/s/
Date