



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD

June 5, 2009

Memorandum

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

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

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

THRU: Anthony Maciorowski, Ph.D. */Signed/*
Deputy Director
EPA Science Advisory Board (1400F)

This memorandum documents the process and steps taken to form a new *ad hoc* committee under the auspices of the Science Advisory Board to review and recommend EPA Scientific and Technological Achievement Awards (STAA). This Committee will conduct an annual review of nominated scientific and technical publications by EPA scientists and engineers for FY 2009, 2010 and 2011.

This memorandum provides background information on this SAB activity and addresses:

- expertise needed to address the charge;
- conflict of interest;
- appearance of lack of impartiality; and
- how individuals were selected for the Committee.

1) Expertise Requested:

On February 4, 2009, the EPA SAB Staff Office announced in a *Federal Register* Notice (Volume 74, Number 22, Pages 6033 – 6034) that it was forming a committee that will

serve between FY 2009-2011 to review scientific publications nominated by EPA managers and make recommendations to the Administrator for recognition and awards. To form the committee, the SAB Staff Office sought public nominations of recognized experts with specific experience and knowledge in one or more of the following categories in which the publications will fall: environmental exposure, transport and fate; environmental monitoring and methods; environmental control systems and risk management; ecosystems and ecological risk assessment; human health and risk assessment; and social and decision sciences. As a result of those public nominations, on March 23, 2009 the SAB Staff Office posted on the SAB Web site a short list of 31 candidates for the STAA Committee for public comment. The SAB Staff Office received no public comments on this short list.

2) 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 and 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.

Personal and Substantial Participation:

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.

Particular Matter:

A “particular matter” refers to matters that “...will involve deliberation, decision, or action that is focused upon the interests 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)].

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.

Direct and Predictable Effect:

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 a speculative, possibility that the matter will affect the financial interest." [5 C.F.R. § 2640.103(a)(ii)].

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 will be authors of papers considered for awards. Therefore, the SAB Staff Office has determined that there is no direct and predictable effect on any committee member's financial interests.

3) Appearance of a Lack of Impartiality Considerations:

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 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."

Each potential committee member was evaluated against the 5 C.F.R. 2635(a)(2) general requirements regarding an appearance of a lack of impartiality. Information used in this evaluation was provided by prospective committee members through their submission of a confidential financial disclosure form (EPA Form 3110-48, "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency"). Also, committee members will be asked to recuse themselves from the review of any papers should they find a conflict of interest or appearance of a lack of impartiality once they receive the papers for review.

Upon review of submitted disclosure forms, the SAB Staff Office has determined that there are no conflicts of interest or appearances of a lack of impartiality associated with prospective members for this committee.

4) How Individuals Were Selected For The Final Committee:

The SAB Staff Office Director, taking all factors into account, makes the final decision about the membership for the STAA Committee. Specific criteria to be used in evaluating an individual committee member include: (a) scientific and/or technical expertise, knowledge, impartiality, 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 and balance of scientific expertise and viewpoints.

On the basis of the above-specified criteria, the members of the FY 2009-2011 STAA Committee are as follows:

Dr. Taylor Eighmy, University of New Hampshire, **CHAIR**

Dr. Fred Benfield, Virginia Polytechnic Institute & State University (Virginia Tech)

Dr. James Bus, The Dow Chemical Company

Dr. John P. Giesy, University of Saskatchewan

Dr. Cynthia Harris, Florida A & M University

Dr. Dale Hattis, Clark University

Dr. Michael T. Kleinman, University of California, Irvine

Dr. Desmond F. Lawler, University of Texas at Austin

Dr. Reid Lifset, Yale University

Dr. Randy Maddalena, Lawrence Berkeley National Laboratory

Dr. Paulette Middleton, Panorama Pathways

Dr. Fred J. Miller, Independent Consultant

Dr. John R. Smith, Alcoa Inc.

Dr. Robert Twiss, University of California, Berkeley

Dr. Yousheng Zeng, Providence Engineering and Environmental Group LLC

Dr. Barbara Zielinska, Desert Research Institute

Concurred:

<u> </u> <i>/Signed/</i>	June 5, 2009
Vanessa Vu, Ph.D.	Date
Staff Director	
EPA Science Advisory Board (1400F)	