



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD

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MEMORANDUM

SUBJECT: Formation of Clean Air Scientific Advisory Committee Air Monitoring and Methods Subcommittee

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The Science Advisory Board (SAB) Staff Office has formed a new Subcommittee of the Clean Air Scientific Advisory Committee (CASAC) to provide independent review and advice to EPA over the next few years on a range of technical issues related to ambient air monitoring methods for air pollutants as regulated under the Clean Air Act. During 2011, this new Subcommittee (named the Air Monitoring and Methods Subcommittee, AMMS, of CASAC) will provide advice to EPA on the following topics: a) monitoring and methods for Oxides of Nitrogen (NO_x) and Sulfur (SO_x); b) Photochemical Assessment Monitoring Stations (PAMS); c) Near-road Ambient Air Monitoring Requirements; and d) Monitoring Methods for Volatile Organic Compounds (VOCs). This new CASAC AMMS Subcommittee will replace the existing CASAC Subcommittee (Ambient Air Monitoring and Methods, AAMMS).

This memorandum addresses the set of determinations that were necessary for forming the CASAC AMMS review of EPA's draft monitoring and methods documents for NO_x and SO_x. They include:

- (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 Subcommittee;

- (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 Subcommittee; and
- (E) The selection of Subcommittee members.

The SAB Staff Office will separately determine whether there are any conflicts of interest or appearances of a lack of impartiality for the member’s participation in each advisory activity to be taken up by the CASAC AMMS.

DETERMINATIONS:

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

An *ad hoc* CASAC Subcommittee, composed of subject matter experts, will be formed to provide advice and recommendations through the chartered CASAC to EPA.

- (B) The list of candidates considered for the CASAC AMMS.

The SAB Staff Office announced to the public through a *Federal Register* notice published on October 20, 2010 (75 FR 64726-64727) that it was forming an *ad hoc* CASAC Subcommittee to provide independent expert advice to EPA through the chartered CASAC on ambient air monitoring methods for air pollutants.

To form AMMS, the SAB Staff Office sought public nominations of nationally recognized and qualified experts in the following areas: atmospheric sciences, dispersion modeling, atmospheric chemistry, ecosystem modeling, aquatic chemistry, environmental science and engineering, risk assessment, and statistical analysis. Nominees were sought with particular knowledge of ambient air monitoring methods for criteria pollutants and air toxics, ambient air network design, environmental data analysis, quality assurance, dispersion modeling, emission inventories for point and mobile sources, source apportionment techniques, atmospheric chemistry, meteorology, and assessment of ecosystem impacts.

On November 19, 2010, the SAB Staff Office posted a list of forty one Nominated Candidates. Public comments on this List of Candidates were requested to be received by December 10, 2010. The SAB Staff Office received comments on the candidate list from the following two members of the public:

- Mike Gilroy, Monterey Bay Unified Air Pollution Control District
- Charles Pietarinen, New Jersey Department of Environmental Protection

(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 or implementation of policies or regulations related to air monitoring and methods; (2) the air pollution research community; and (3) industries and those involved with the interests of private or public organizations that may be affected by policies or regulations developed on the basis of EPA's efforts to develop air monitoring documents and methods.

(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 CASAC AMMS 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 CASAC AMMS in addressing the charge for peer review of EPA's efforts to develop air monitoring documents and methods 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 class of people constitutes those who are involved with private or public organizations facing regulatory decisions related to air monitoring and methods, and those who are associated or involved with the potentially interested or affected parties, as identified in Section (C)(a) above.

(ii) Will there be personal and substantial participation on the part of the CASAC AMMS 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 *CASAC AMMS members will be participating personally in the matter*. CASAC AMMS members will be providing the Agency with advice and

recommendations on development of EPA's efforts to develop air monitoring documents and methods, and such advice is expected to directly influence the Agency's approach for assessing key questions regarding the potential public health and environmental protection issues that may be associated with air monitoring and methods. *Therefore, participation in this review also will be substantial.*

(iii) Will there be a direct and predictable effect on a CASAC AMMS 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)]

Prospective candidates were evaluated against the requirements of 5 C.F.R. § 2640.101(a), based on the candidate's submission of their confidential financial disclosure forms (EPA Form 3110-48), to determine whether the work of the CASAC AMMS 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 CASAC AMMS.

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 candidates for AMMS were evaluated against the 5 C.F.R. 2635(a)(2) general requirements for considering an appearance of a lack of impartiality regarding the AMMS review of draft monitoring and methods documents for NO_x and SO_x. Information used in this evaluation has come from information provided by the candidates (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 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.

(E) The selection of CASAC AMMS members.

The SAB Staff Office Director makes the final decision about who serves on the CASAC AMMS, based on all relevant information. This includes a review of the confidential financial disclosure forms (EPA Form 3110-48) and information gathered by staff, evaluation of an appearance of a lack of impartiality, and consideration of public comments and Subcommittee formation criteria.

For the SAB Staff Office, a balanced committee, subcommittee 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 used in evaluating an individual CASAC AMMS 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 Subcommittee as a whole, (f) diversity of scientific expertise, and viewpoints.

