

June 1, 2011

Dr. Angela Nugent
Designated Federal Officer (DFO)
EPA Science Advisory Board (1400R)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW.
Washington, DC 20460

Comments to Docket ID EPA_FRDOC_0001, Public Involvement in Activities Related to EPA's Chartered Federal Advisory Committees

Dear Dr. Nugent:

The American Petroleum Institute (API) represents more than 470 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America's energy, supports more than 9.2 million jobs and 7.5 percent of the U.S. economy, and, since 2000, has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives. API members include producers, refiners, suppliers, pipeline operators and marine transporters, as well as service and supply companies that support all segments of the industry. API appreciates the opportunity to provide comments as requested in the May 11, 2011 Federal Register notice (FRN)¹ regarding EPA's chartered Federal Advisory Committees: the Advisory Council on Clean Air Compliance Analysis (the Council), the Clean Air Scientific Advisory Committee (CASAC), and the Science Advisory Board (SAB).

Please see the three key recommendations below which would greatly improve current EPA Advisory Activities.

1. EPA's Federal Advisory Committees, standing committees or ad hoc subcommittees/panels should provide a balanced representation of stakeholder viewpoints and be unbiased.

We believe that it is useful to have scientists from a range of organizations and disciplines on committees and subcommittees. It is unfortunate that, recently, some committees and subcommittees have seemed to exclude scientists who have or are currently employed by industry. "Industry scientists" should not be excluded a priori; of course, there may be a need to include scientists representing environmental special interest groups as well. In all cases, the selected individuals should not have taken a position on the issues/materials under review.

We would suggest excluding from Advisory Committees former EPA employees who have previously authored earlier versions of scientific documents which are under review. We would suggest excluding scientists who have previously stated strong positions about the issues they have been selected to review impartially. For example, the current CASAC Particulate Matter Review Panel includes five members who were also members of the core CASAC panel for the

¹ Federal Register Volume 76, Number 91 (Wednesday, May 11, 2011), Pages 27315-27316, FR Doc No: 2011-11560. Web link: <http://www.gpo.gov/fdsys/pkg/FR-2011-05-11/html/2011-11560.htm>

previous PM NAAQS review who had previously signed a letter² stating that the Administrator's decision to maintain the current annual NAAQS did not protect the public health and that the annual standard should have been lowered from 15 ug/m³ to 13 or 14 ug/m³. In addition, the PM NAAQS review panel includes four scientists also on the CASAC panel for the 2006 review who also signed a letter³ that unanimously recommended lowering the annual PM_{2.5} standard to 13-14 ug/m³. Thus, the current PM panel includes nine scientists who had previously recommended lowering the annual NAAQS. It is somewhat hard to believe that this group is able to set aside their prior opinions and provide an unbiased and impartial review of the new science.

2. EPA's Federal Advisory Committees, standing committees, or ad hoc subcommittee/panel meetings and teleconferences need to offer adequate opportunity for public engagement with EPA and the panel members.

Currently, committee meetings allow 3 to 5 minutes for individual public comment at the beginning of the meeting and do not offer any further opportunity for dialogue between panel members and the public. This does not afford the public adequate time to raise concerns or highlight issues for the panel to consider. EPA should increase the amount of time allotted for stakeholder comment during meetings above the 3– 5 minutes currently allowed. This current practice discourages public interaction with panel members and does not facilitate an environment for the discussion of pertinent scientific issues. Advisory Committee meetings should offer an opportunity for public participation through the sharing of appropriate technical information directly with the panel or EPA staff. Such opportunities could be provided at the end of panel discussions of specific issues by recognizing audience members who wish to contribute.

3. EPA's Federal Advisory Committees, standing committees, or ad hoc subcommittees/panels should be advising on scientific and technical issues and not be recommending policy decisions.

EPA Federal Advisory Committees are tasked with providing independent scientific and technical peer review, consultation, advice and recommendations directly to the EPA Administrator on the scientific basis for EPA actions and programs. According to the Federal Advisory Committee Act (FACA)⁴, "*Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions.*" Thus, Federal Advisory Committees should only advise or recommend on scientific and technical issues and may not establish law or policy (unless specifically provided otherwise by statute or Presidential directive). Unfortunately, after the ozone NAAQS were promulgated in 2008, the CASAC improperly commented on the EPA Administrator's final policy decision.

In addition to the three recommendations listed above, we have also provided recommendations in the four areas noted in the FRN: (1) public access to web sites supporting the Advisory Council on Clean

² CASAC (2006). Clean Air Science Advisory Committee Recommendations Concerning the Final National Ambient Air Quality Standards for Particulate Matter. Letter of September 29, 2006. EPA-CASACILTR-07-003.

³ CASAC (2005). Clean Air Science Advisory Committee Peer Review of the National Ambient Air Quality Standard for Particulate Matter. Letter of June 5, 2005. EPA-SAB-CASAC-05-007.

⁴ Federal Advisory Committee Act (5 U.S.C. Appendix 2), Web link: <http://www.archives.gov/federal-register/laws/fed-advisory-committee/>

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Air Compliance Analysis CASAC, and the Scientific Advisory Board (SAB); (2) public involvement in nomination of experts for committees and panels; (3) public participation in meeting and report development; and (4) other topics of interest to the public.

To improve public involvement in Federal Advisory Committee activities EPA should provide for better public access to web sites supporting the Advisory Committee activities:

- By displaying a tab on the EPA’s homepage that links the public directly to Advisory Committee activities, meetings and reports.
- By displaying all information that is relevant to a specific advisory activity on a single webpage (e.g. key information related to Agency requests for advice, advisory committee or panel membership, Federal Register Notices, related meetings, agendas, minutes, all iterations of draft or final reports, Agency responses to advice, public comments, and individual panel member comments).
- By posting detailed transcripts of the meetings and teleconferences within two weeks of a meeting or teleconference.
- By ensuring that the “Recent Happenings” and “Recent Additions” sections and the related “really simple syndication” (RSS) feeds are updated in a timely manner.
- By allowing the public to post comments directly to the website supporting the Advisory Committee Activity (i.e. similar to the web posting capabilities of www.regulations.gov).
- By ensuring that meetings and teleconferences of Advisory Committees are web posted at least 21 days from the scheduled meeting or teleconference. A 21 day posting will allow adequate time for travel accommodations to be scheduled.

To improve public involvement in Federal Advisory Committee activities EPA should provide for better public involvement in nomination of experts for committees and panels:

- By soliciting public input through a FRN on the recommended expertise needed on a Federal Advisory Committee, standing committee, or an ad hoc subcommittee/panel.
- By ensuring that all qualified persons nominated for a Federal Advisory Committee, standing committee, or an ad hoc subcommittee/panel, are given consideration for appointment based on expertise, the subject matter to be reviewed by the panel, and in accordance with applicable conflict of interest provisions.
- By soliciting public input, through a FRN, on the selection of members from the approved candidate ‘short list’ for any advisory committee or panel, including ad hoc subcommittees or panels by providing public access to candidate answers to questions in Section 6 of Form 3011-48, preferably posted along with the resumes provided on the short list.
- By soliciting public comment on the specific criteria used to select approved nominees for appointment to a Federal Advisory Committee, standing committee, or ad hoc subcommittee/panel.

To improve public involvement in Federal Advisory Committee activities EPA should provide for better public involvement in meeting and report development:

- By including a timely question and answer period for the public to engage EPA and the panel members during all panel meetings or teleconferences.

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- By ensuring Charge Questions, which are assigned to a panel member, reflect stakeholder input and are developed using an iterative public process. Currently, Charge Questions are developed at the discretion of EPA staff but public comment on draft Charge Questions should be solicited prior to question finalization and submission to a peer review panel.
- By ensuring that panel members are afforded the opportunity to seek a range of scientific views for each charge question and, when appropriate, to deviate from the proposed Charge Questions in order to address alternative scientific views.
- By providing the public timely access to the individual peer review panel members written comments.
- By submitting public comments to panel members at least one month prior to a panel meeting, in order to allow public comments to be fully considered in the panel deliberations.
- By ensuring that the panel addresses recommendations or concerns presented by the public in the meeting report.
- By ensuring that adequate audio/visual equipment is available to the public and that meeting materials/comments submitted by the public are made available to panel members in a timely manner before and during the meeting.

To improve public involvement in Federal Advisory Committee activities EPA should consider other topics of interest to the public:

- By soliciting public input regarding the best mechanism to get expert advice (i.e., whether to form a Federal Advisory Committee, Standing Committee, or ad hoc subcommittee/panel).
- By ensuring that public comments submitted to the EPA prior to a meeting are also provided to any other Federal Advisory Committee that is also reviewing the same subject matter addressed in the peer review.
- By limiting the use of teleconferences for the discussion of key scientific issues since this reduces the public's opportunity for meaningful dialogue, which would be better facilitated through an in-person meeting.

We ask that you implement the recommendations provided above to improve public involvement in EPA Advisory Committee Activities. Please contact me by telephone (202-682-8340) or email (feldman@api.org) with questions or requests for additional information.

Respectfully submitted,