

June 1, 2021

Mr. Aaron Yeow
Designated Federal Officer
Email: yeow.aaron@epa.gov
Submitted via email

RE: “Invitation for Public Comment on the List of Candidates For the Environmental Protection Agency’s Clean Air Scientific Advisory Committee”

Mr. Yeow:

I appreciate this opportunity to provide comments¹ to the Environmental Protection Agency (EPA) on the candidates under consideration for appointment to the Clean Air Scientific Advisory Committee (CASAC). The focus of these comments is not on specific individuals, but on the actions that have led the EPA to request for these nominations in the first place.

The EPA’s Unreasonable Decision to Purge the Entire CASAC

On March 31, 2021, EPA Administrator Michael S. Regan announced that he was getting rid of every CASAC member.² This appears to be an unprecedented decision, getting rid of every single member of this statutorily-required panel.

One of the main justifications for this move, according to the March 31, 2021 press release,³ was the Trump Administration EPA’s decision to impose a conflict-of-interest policy that barred panelists from receiving EPA grants while also serving on CASAC. As a result of this policy laid out in an October 2017 directive,⁴ the EPA now asserts qualified people were prevented from being considered for membership.

Therefore, the EPA is getting rid of *every* CASAC member because of the *possibility* that some qualified people may not have been considered. In the March 31 press release,⁵ the EPA does not explain why the conflict-of-interest policy, struck down on procedural grounds, is not sound

¹ The views I have expressed in this comment are my own and should not be construed as representing any official position of The Heritage Foundation.

² News release, “Administrator Regan Directs EPA to Reset Critical Science-Focused Federal Advisory Committees,” U.S. Environmental Protection Agency, March 31, 2021, <https://www.epa.gov/newsreleases/administrator-regan-directs-epa-reset-critical-science-focused-federal-advisory> (accessed June 1, 2021).

³ Ibid.

⁴ U.S. Environmental Protection Agency, “Strengthening and Improving Membership on EPA Federal Advisory Committees,” October 31, 2017, https://www.epa.gov/sites/production/files/2017-10/documents/final_draft_fac_directive-10.31.2017.pdf (accessed June 1, 2021).

⁵ The March 31, 2021 press release appears to be the most definitive document articulating the rationale for the CASAC purge. For example, the EPA does not explain its rationale for getting rid of every CASAC member in its “Request for Nominations.” See, U.S. Environmental Protection Agency, “Request for Nominations of Candidates to the EPA’s Clean Air Scientific Advisory Committee (CASAC),” *Federal Register*, Vol. 86, No. 61 (April 1, 2021), pp. 17146–17147, <https://www.govinfo.gov/content/pkg/FR-2021-04-01/pdf/2021-06715.pdf> (accessed June 1, 2021).

policy. More importantly, the agency does not explain why the CASAC members who have been removed were not qualified. Further, the EPA does not identify any problems with their work product or any factors that should disqualify them from continued membership on the panel.

Instead, the EPA has taken the irrational and unreasonable action of getting rid of *known* qualified CASAC members because other people might have been put on the panel if the conflict-of-interest policy had not existed; a policy that the EPA does not claim has substantive problems or fails to prevent conflict-of-interest problems that would undermine scientific integrity.

Two additional reasons for the CASAC purge, which seem to be afterthoughts, are also listed in the March 31, 2021 press release. The EPA points to eliminated panels that allegedly helped CASAC. However, this has to do with CASAC membership. The agency does not explain how the elimination of these panels justifies getting rid of every CASAC member. If there is a concern about these panels, then the action is presumably to bring them back. Getting rid of all CASAC members is completely unrelated to achieving that objective. Quite simply, this point makes no sense.

The EPA also brings up a July 2019 Government Accountability Office (GAO) report regarding the agency's advisory committee appointments process, and the fact GAO found a couple of problems.⁶ A routine GAO report identifying some procedural problems, which is the norm for GAO, is hardly grounds for getting rid of everyone on two of the agency's 22 advisory committees (including CASAC). The GAO does not assert any problems with the outcomes of the process. In fact, the GAO explained, "we did not assess the outcomes of the membership appointment process."⁷ The EPA itself has not explained how the specific problems identified in the GAO report undermined the CASAC membership or would justify such an extreme action as to remove every CASAC member.

Here is what the GAO did allege: the EPA in fiscal year 2018 did not take the procedural step of including EPA staff rationales for proposed membership. Yet the EPA explained in the GAO report that the agency actually *went beyond* what was required in the vetting of candidates and argued that the GAO's finding was inaccurate and possibly misleading. If anything, this more extensive process to find qualified members was better than the norm.

The GAO regularly provides recommendations in its reports. For this report, it did not recommend anything bold, and simply recommended addressing the narrow issues identified.⁸ The GAO report certainly did not recommend or even hint at taking the unreasonable action of getting rid of every CASAC member.

⁶ U.S. Government Accountability Office, "EPA Advisory Committees – Improvements Needed for the Member Appointment Process," GAO-19-280, July 2019, <https://www.gao.gov/assets/gao-19-280.pdf> (accessed June 1, 2021).

⁷ *Ibid* at p. 34.

⁸ The GAO also asserted, and the EPA agreed, that the agency had not consistently evaluated the quality of financial disclosure forms of special government employees appointed to advisory committees.

This CASAC purge is even more unreasonable given that there are simpler and more direct ways to address the agency's alleged concerns. For example, if the agency does not like the conflict-of-interest policy, then it does not have to implement it (it is not being implemented now). When CASAC terms expire, then the agency can make appointment decisions accordingly.

Recommendation: Restore the CASAC Membership

The EPA should undo its decision to remove all CASAC members. If there is an objective and legitimate concern about a specific member, then the agency can take action, consistent with the law. Until then, the agency should wait until terms expire to make any new appointments.

This unreasonable and arbitrary purge, at a minimum, gives the appearance that the Administrator simply wants to pick people to provide the "science" necessary to support his agenda. John Graham, former Chair of the Science Advisory Board (SAB) recently wrote, "In one fell swoop, the Biden administration team at EPA has put its policy agenda ahead of the principle of scientific integrity. Regretfully, now we are likely to see more of that behavior in the years ahead."⁹ While he was referring to the SAB purge, the same argument applies to the CASAC purge.

In 2009, President Barack Obama issued a memo¹⁰ on scientific integrity in which he said, "the public must be able to trust the science and scientific process informing public policy decisions." Through the CASAC and SAB purges, the Biden administration's EPA has managed to undermine any trust in the science that will be connected to these newly formed advisory panels. And this lack of trust would be warranted.

Conclusion

I strongly urge the EPA to restore the CASAC membership and address any membership concerns in a reasonable manner, consistent with the rule of law. Unless such action is taken, the advisory boards will have little legitimacy.

Sincerely,

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⁹ John Graham, "Joe Biden's purge at the EPA," Washington Times, May 25, 2021, <https://www.washingtontimes.com/news/2021/may/25/joe-bidens-purge-at-the-epa/> (accessed June 1, 2021).

¹⁰ President Barack Obama, "Memorandum for the Heads of Executive Departments and Agencies 3-9-09," Executive Office of the President, March 9, 2009, <https://obamawhitehouse.archives.gov/the-press-office/memorandum-heads-executive-departments-and-agencies-3-9-09> (accessed June 1, 2021).