

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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March 18, 2014

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Dodaro,

The Environmental Protection Agency (EPA) has a unique role in developing and examining science to support its regulatory mission to protect health and the environment. A critical part of this enterprise involves receiving scientific advice from independent review panels established by law and appointed by the EPA Administrator, including the EPA Science Advisory Board (SAB) and the EPA Clean Air Scientific Advisory Committee (CASAC). I am writing to request that the Government Accountability Office examine whether these independent bodies have been faithfully carrying out their statutory obligations.

The United States Congress passed the Environmental Research, Development, and Demonstration Authorization Act of 1978 to improve the direction and quality of environmental research within the EPA and to promote the coordination of environmental research and development efforts. Section 8 of the Act codified the then-existing EPA SAB in order to strengthen the Board's ability to render independent scientific evaluations of the technical basis for environmental regulations to decision makers. Specifically, section 8(a) requires EPA to "establish a Science Advisory Board which shall provide such scientific advice as may be requested by the Administrator, the Committee on Environment and Public Works of the United States Senate, or the Committee on Science, Space, and Technology, on Energy and Commerce, or on Public Works and Transportation of the House of Representatives."¹ The legislative history of this provision indicates that the goal was "to allow Congress to request scientific advice from the EPA Science Advisory Board without the SAB being obligated to seek permission from the Administrator of EPA before providing such advice to the Congress."²

Recent interactions between the Science Committee and the SAB related to the Board's reviews of EPA's *Study of Hydraulic Fracturing and Its Potential Impact on Drinking Water Resources* as well as its *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence* suggest that the Board may not be fulfilling its statutory obligations to provide scientific advice to Congress.

¹ 42 U.S.C. § 4365(a).

² H.R. Rep. No. 96-959 at 58 (1980).

Under Section 8(c)(1) of the Act, EPA “at the time any proposed criteria document, standard, limitation, or regulation... is provided to any other Federal agency for formal review and comment, shall make available to the Board such proposed criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the Environmental Protection Agency on which the proposed action is based.”³

EPA’s recent draft regulation on the definition of “waters of the U.S.” under the Clean Water Act indicates that the Agency may not be regularly providing the SAB with proposed regulations at the time of interagency review, as required in the Act.⁴

Furthermore, section 109 of the Clean Air Act requires EPA to appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.⁵ Among other things, the Act requires CASAC to advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards (NAAQS).⁶ The legislative history of this provision states that “[t]his committee is intended to assist the Administrator, but it is also intended to have complete independence. This independence will help provide an outside mechanism for evaluating whether any pollutant may reasonably be anticipated to endanger public health or environment, for evaluating the scientific and medical data which might bear on this question, and for reviewing gaps in the available data and recommending additional needs for research.”⁷

Recent testimony received by this Committee suggests that CASAC may not be carrying out its statutory obligations to advise EPA of any adverse public health, welfare, social, economic, or energy effects which may result from implementation of NAAQS:

- The former Assistant Administrator for the Office of Air and Radiation at EPA, Jeff Holmstead, testified that “It appears that, until recently, most CASAC members were not aware that they have a statutory obligation to advise the head of EPA on certain issues.... As far as I know, CASAC had never fulfilled this requirement as it relates to the ozone standard or any other [NAAQS].”⁸
- A former Chair of CASAC, Dr. Roger McClellan, stated that “I am not aware that CASAC has ever advised EPA to take account of the role of socioeconomic factors, unemployment or other risk factors influencing the health endpoints under consideration.”⁹

³ 42 U.S.C. § 4365(c)(1).

⁴ See: http://science.house.gov/sites/republicans.science.house.gov/files/documents/Letters/101813_letter.pdf and <http://science.house.gov/sites/republicans.science.house.gov/files/images/11-06-2013%20Science%20Committee%20to%20Administrator%20Shelanski.pdf>.

⁵ 42 U.S.C. § 7409(d)(2)(A).

⁶ 42 U.S.C. § 7409(d)(2)(C).

⁷ H.R. Rep. No. 95-294 at 182-83 (1977).

⁸ Committee on Science, Space, and Technology, “Background Check: Achievability of New Ozone Standards,” 113th Cong., 1st sess., 12 June 2013, <https://science.house.gov/hearing/subcommittee-environment-background-check-achievability-new-ozone-standards>.

⁹ Committee on Science, Space, and Technology, “Quality Science for Quality Air,” 112th Cong., 1st sess., 4 October 2011, <http://www.gpo.gov/fdsys/pkg/CHRG-112hrg70587/html/CHRG-112hrg70587.htm>.

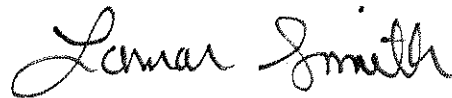
- Even more alarming, a member of the CASAC panel on fine particulate matter, Dr. Robert Phalen, testified that “CASAC was not allowed to discuss any of the adverse consequences associated with setting new standards” and that “the subcommittee that I was on did not adequately inform the Administrator on the pitfalls, the scientific limitations, and even the adverse health consequences that would flow from a more stringent regulation.”¹⁰

Given the importance of ensuring that Congress and the EPA have high quality scientific information on which to base informed decisions, we would like the Government Accountability Office to examine the following:

- 1) To what extent has the SAB provided scientific advice to the Congressional committees listed in section 8(a) of the Environmental Research, Development, and Demonstration Authorization Act? What procedures does the SAB have in place to ensure that timely and responsive advice is provided to these committees when requested? What is EPA’s role with regard to the SAB’s interaction with these committees, and is that role consistent with the Act? Does the SAB need to seek permission from EPA or the Administrator in order to provide scientific advice to Congress?
- 2) To what extent has EPA provided proposed regulations and associated scientific and technical information to the SAB for review at the time it is provided to any other Federal agency for formal review and comment?
- 3) To what extent has CASAC carried out the activities identified in section 109(d)(2)(C)(iv) of the Clean Air Act? Given that CASAC is supposed to have “complete independence” from EPA, what procedures are in place to ensure CASAC’s independence in carrying out these activities and to what extent have they been implemented?
- 4) To what extent has EPA’s management of the independent SAB and CASAC been consistent with the legal requirements discussed above?

Please feel free to contact Science Committee staff should you have any questions.

Sincerely,



Lamar Smith
Chairman
Committee on Science, Space, and
Technology

¹⁰ Committee on Science, Space, and Technology, “Quality Science for Quality Air,” 112th Cong., 1st sess., 4 October 2011, <http://www.gpo.gov/fdsys/pkg/CHRG-112hrg70587/html/CHRG-112hrg70587.htm>.