Congress of the United States
House of Representatives
Washington, D.C. 20515

May 18, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Pruitt:

We write regarding your decision to dismiss nine members of the U.S. Environmental Protection Agency (EPA) Board of Scientific Counselors ("Board"). We have serious concerns about this action that has prematurely removed qualified experts from EPA's Board and deprives EPA of critical scientific and technical expertise needed to support the Agency's mission to protect human health and the environment. We are also seriously concerned that you now intend to fill these newly opened positions with members who will serve as advocates for specific policies rather than as unbiased experts.

These members were eligible to have their appointments renewed for a second term as indicated in EPA's own documents.[1] The decision not to renew their membership, which appears to have come directly from your office, was reportedly a complete surprise to the terminated Board members[2] and contradicts information EPA officials provided to these Board members just one week prior to this decision.[3] This policy reversal very likely means the Board's activities will be curtailed for a substantial period of time. EPA's own documents indicate it takes approximately eight months to identify, vet and appoint new Board members.[4]

This action already is having a chilling effect on the Board and on the broader scientific community. The May 12, 2017, resignation of two scientists from the Sustainable and Healthy Communities Subcommittee of the Board in protest over the removal of Board members underscores this concern. In their resignation letter, the scientists explained "the effective

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[1] U.S. Environmental Protection Agency, Board of Scientific Counselors, *Membership Balance Plan* (www.facadatabase.gov/download.aspx?fn=Charters/5132_2016.05.18_EPA%20BOSC%202016%20Membership%20Balance%20Plan (2016-05-18-01-38-57).pdf).

[2] Email from Robert J. Kavlock, Acting Assistant Administrator, Office of Research and Development, U.S. Environmental Protection Agency, to nine Board of Scientific Counselors members whose first terms expired on April 27, 2017 (May 5, 2017).

[3] Email from Thomas Tracy, Designated Federal Officer for the Board of Scientific Counselors, U.S. Environmental Protection Agency, to nine Board of Scientific Counselors members whose first terms expired on April 27, 2017 (April 28, 2017).

[4] *See* note 1.

removal of our subcommittee's co-chairs suggests that our collective knowledge is not valued by the current EPA administrator" and "we cannot in good conscience be complicit in our co-chairs removal, or in the watering down of credible science, engineering, and methodological rigor that is at the heart of that decision."[5]

On Friday, April 28, 2017, EPA staff sent nine Board members whose first term expired on April 27, 2017 an e-mail stating their names had been submitted to EPA management with a recommendation that they be appointed for a second term.[6] However, one week later, on Friday, May 5, 2017, Robert Kavlock, the Acting Assistant Administrator of the Office of Research and Development (ORD), said that he had been informed, apparently by your office, that none of the appointments would be renewed.[7] According to a report in the *Washington Post*, members anticipated that their terms would be renewed in accordance with long-standing Agency practice, and because they had been told a renewal was expected.[8]

According to the *Post*, an EPA spokesperson stated the Agency is "making a clean break with the last administration's approach" and may consider industry scientific experts for some of the board positions.[9] In addition, the *New York Times* reported that an EPA spokesman said the EPA Administrator wanted more people on the Board from the regulated community.[10] However, industry representatives have always been considered for Board membership. Our concern is that the balance on the Board will now be tilted in favor of industry, to the detriment of unbiased scientific expertise.

The Board was established in 1996 at ORD's request to provide the Assistant Administrator with expert advice on EPA's research and development enterprise, including work at EPA's laboratories.[11] While the research and technology efforts of ORD are undertaken to support the work of EPA's program offices, this Board operates consistent with the Federal Advisory Committee Act (FACA), and has limited input into specific EPA regulations. In addition, the Board has routinely commented on EPA's strategic research plans, laboratory management, budget, and staffing issues. For instance, at its recent April 2017 meeting, the

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[5] Letter from Carlos Martin, PhD, Board of Scientific Counselors, U.S. Environmental Protection Agency and Peter B. Meyer, PhD, Board of Scientific Counselors, U.S. Environmental Protection Agency, to Deborah Swackhamer, Chair of the Board of Scientific Counselors, U.S. Environmental Protection Agency (May 12, 2017).

[6] *See* note 3.

[7] *See* note 2.

[8] *EPA Dismisses Half of Its Scientific Advisers on Key Board, Citing 'Clean Break' with Obama Administration*, Washington Post (May 8, 2017).

[9] *Id.*

[10] *E.P.A. Dismisses Members of Major Scientific Review Board*, New York Times (May 7, 2017).

[11] U.S. Environmental Protection Agency, *EPA Board of Scientific Counselors Charter* (May 9, 2016) (www.epa.gov/sites/production/files/2017-02/documents/bosc_2016_renewal_charter.pdf).

Board discussed reports on homeland security, nitrogen, children's environmental health, and climate change.[12]

The experts serving on the Board all serve as Special Government Employees (SGEs) and are subject to conflict of interest screening and regulations.[13] This is to ensure the Board provides expert and unbiased scientific advice to the Assistant Administrator of ORD. FACA requires, for example, that the EPA select Board members that will represent a balanced set of views, expertise, and other relevant factors.[14] Accordingly, experts from industry cannot be excluded as Board members solely because their perspectives and experience align with regulated industries. Further, the Membership Balance Plan for the Board indicates that EPA considers candidates from a variety of scientific and technical organizations, including public and private research institutes and industry.[15]

To maintain the scientific integrity of the Board's work, we expect you to adhere to the requirements of FACA for transparency and balance in making new appointments to the Board. We further expect you will appoint new members as SGEs who are bound by conflicts of interest regulations.

To assist us in our oversight responsibilities, and to ensure the Agency is moving forward to fill the many new vacancies on the Board in accordance with applicable FACA requirements and related regulations,[16] we request the records identified below and responses to the following:

1. Please provide all communications, records, and analysis related to EPA's determination not to renew the appointments of Board members whose first terms ended on April 27, 2017. This should include, but not be limited to, any drafts of the email sent by the EPA's Designated Federal Officer (DFO) to the Board to members on April 28, 2017 and the emails or drafts of the emails sent by Robert Kavlock, Acting Assistant Administrator of ORD to (current or former) Board members on May 5, 2017. It should also include, but not be limited to, any communications between officials in ORD and the EPA Administrator's office regarding the decision not to renew the terms of the Board members.

2. Pursuant to the current Board Membership Balance Plan,[17] approximately eight months before the expiration of Committee members' terms, a plan for conducting outreach to new members must be developed and approved. Please provide the Committees a copy

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[12] U.S. Environmental Protection Agency, *Meeting materials for the BOSC Executive Committee April 11, 2017 Teleconference* (www.epa.gov/bosc/meeting-materials-bosc-executive-committee-april-11-2017-teleconference).

[13] *See* note 1.

[14] *Id.*

[15] *Id.*

[16] 5 U.S.C. Appx. § 2.

[17] *See* note 1.

of the outreach plan prepared by the EPA's DFO for the Board as well as the draft grid of potential nominees also prepared by the DFO. This should also include all communications between the DFO and the EPA's Federal Advisory Committee Management staff regarding the selection of Board members.

3. Members of the Board serve as SGEs as defined in 18 U.S.C. § 202[18] and are, therefore, government employees for purposes of conflict of interest laws.[19] Please explain what systems and processes EPA intends to implement in order to ensure that any new Board members are in compliance with all applicable ethics regulations and free of any conflicts of interest or appearances of being unable to provide impartial advice.

We appreciate your prompt attention to this issue and look forward to your response by no later than Wednesday, May 31, 2017. Should you have any questions, please contact Jon Monger with the Committee on Energy and Commerce, Democratic Staff at (202) 225-3641 or Doug Pasternak with the Committee on Science, Space and Technology, Democratic Staff at (202) 225-6375.

Sincerely,

Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce

Eddie Bernice Johnson
Ranking Member
Committee on Science, Space, and Technology

Diana DeGette
Ranking Member
Subcommittee on Oversight and Investigations

Donald S. Beyer, Jr.
Ranking Member
Subcommittee on Oversight

Paul D. Tonko
Ranking Member
Subcommittee on Environment

Suzanne Bonamici
Ranking Member
Subcommittee on Environment

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[18] *Id.*

[19] Office of Government Ethics, *Conflict of Interest and the Special Government Employee* (Feb. 2000) (www.oge.gov/Web/OGE.nsf/0/DDABAE34F0273E5F85257E96005FBDDE/$FILE/00x1.pdf).

Cc: The Honorable Greg Walden
Chairman, Committee on Energy and Commerce

The Honorable Lamar Smith
Chairman, Committee on Science, Space, and Technology