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From: Keane, Rosemary
Sent: Thur 2/16/2017 5:36:19 PM
Subject: RE: Pruitt Could Alter Air Science Advisory Panel Direction at EPA

I think this really speaks to the idea that Dan talked about a few weeks ago(?) – we need to define our space before we have it defined for us. That's where the Communications Office could come in, ideally. It would be interesting to see how the SAB Staff Office has (or has not) publicly responded to these kinds of allegations of people being appointed and biased because of funding. The more people hear about the selection process and the criteria used to decide who goes on what panel, hopefully the less likely they would be to read these kinds of articles and jump to one side or the other.

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Subject: RE: Pruitt Could Alter Air Science Advisory Panel Direction at EPA

I agree with your point about funding alone as the sole basis to assess bias. As I understand it the Administrator ultimately appoints SAB & CASAC members with the help of the SAB Staff Office to ensure the nominees have the technical expertise, don't have a financial conflict of interest, etc. As we've seen just about every level of appointment and deliberation is becoming much more political in nature.

Alan Vette, Ph.D. | Deputy Director for Air, Climate and Energy Research

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Subject: RE: Pruitt Could Alter Air Science Advisory Panel Direction at EPA

No doubt. My point is that basing one's arguments about bias or objectivity on funding alone is not likely to be a winner. More broadly, it may be worth thinking about whether there are better ways to identify and nominate people for these committees. They're becoming increasingly the focus of political agendas, which adds to the difficulty of demonstrating science in an objective way. The politicization is not likely to decrease and there will always be someone who is going to be unhappy and claims bias. Is there some approach that would bring in reasonable people from each "side" to identify panel members? I don't know if that goes against FACA rules,

which were developed in a less contentious atmosphere, but it seems as though it's worth some thought.

C.A. (Andy) Miller

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Subject: Re: Pruitt Could Alter Air Science Advisory Panel Direction at EPA

Good points, Andy. I'd still argue that "our" people are more honest and less biased than "theirs". I'd imagine many CASAC & SAB members have received industry funding for their research as well as funding from EPA & other govt agencies. We know how deep EPA's pockets are and they aren't that deep. On principle alone Pruitt has an argument. But it's weak overall and there's a very strong underlying agenda to it.

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On Feb 16, 2017, at 10:14 AM, Miller, Andy <Miller.Andy@epa.gov> wrote:

I find it somewhat ironic that the push for changes in SAB and other FACs is based, at least partly, on perceived bias because panel members receive funding from EPA grants. Yet any hint of bias from campaign contributions or receiving a salary from an interested party (like one's employer) is entirely dismissed.

But it's not very consistent to argue that the person you disagree with is influenced by receiving money but the person you agree with is not. There's a non-trivial amount of posturing and hypocrisy on both sides, and it doesn't help us on the science side when either side argues that "our" people are honest and "your" people are not.

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Subject: Pruitt Could Alter Air Science Advisory Panel Direction at EPA

FYI.

Air Pollution

Pruitt Could Alter Air Science Advisory Panel Direction at EPA

<image001.png>

• EPA nominee Pruitt indicates desire to change membership of Clean Air Scientific Advisory Committee to address "conflicts of interest"

• Committee's scientific recommendations carry weight in decisions on ozone, other pollution standards

• Pruitt also could direct committee to offer analysis of adverse economic, energy impacts of tighter standards

By Patrick Ambrosio and Rachel Leven

A panel of science advisers whose recommendations underpin some of the EPA's most contentious air pollution regulations is likely to see some changes under the Trump administration, including the possible appointment of scientists who disagree with past agency findings on the health effects of ozone and other pollutants.

Scott Pruitt, the nominee to head the Environmental Protection Agency, has indicated a desire to alter the makeup of the EPA's independent science panels. During his Jan. 18 confirmation hearing, he highlighted "conflicts of interest" on the Clean Air Scientific Advisory Committee (CASAC) that he said need to be addressed.

While ex-members of the committee interviewed by Bloomberg BNA described the CASAC committee's work as independent and transparent, Pruitt's views appear to align with congressional Republicans and other critics of EPA air rules who have raised concerns about the panel's balance and impartiality. Pruitt during his confirmation hearing also expressed support for having better geographical representation on EPA's advisory committees, echoing another common criticism about CASAC's balance: that certain regions of the country are underrepresented.

John Walke, director of the Natural Resources Defense Council's Clean Air Project, said it's concerning that Pruitt seems to embrace the need for geographic diversity, which Walke described as a "preposterous qualification" for whether a scientist or other expert should serve on an independent advisory committee. The push for geographic diversity, combined with criticism by congressional Republicans that independent researchers who receive government grants have conflicts of interest, is part of an agenda against sound science and peer review at the EPA, Walke told Bloomberg BNA.

“I think it signals a very ominous politicization of science advisers to the federal government in order to bias and slant the outcomes in favor of an industry agenda,” Walke said.

Six Vacancies by 2018

Critics of Obama environmental regulations are eyeing the CASAC as something that could be in for changes under Pruitt's leadership. If confirmed, Pruitt will have the opportunity to make his mark on the committee: Six of the seven members of the chartered committee will see their terms end by Sept. 30, 2018, according to a government database. The seventh member of the committee, Donna Kenski of the Lake Michigan Air Directors Consortium, was appointed to the committee in 2016, so her term doesn't expire until September 2019.

The scope of what the committee reviews also could change during the Trump administration, as Pruitt could direct it to provide analysis of the economic and energy effects of tightening national air standards, a duty the committee is tasked with under the Clean Air Act but has not historically carried out.

While the EPA administrator is barred by a U.S. Supreme Court ruling from considering implementation costs in the decision on where to set those standards, an ex-EPA official said directing the committee to study the economic and energy effects of tightening air standards could rally support for legislative changes to the Clean Air Act if the agency-appointed expert panel were to highlight substantial economic burdens caused by new requirements.

Small Panel Plays Big Role

The CASAC plays an important role in the EPA's review of national standards for ozone, particulate matter and other pollutants, as it reviews available studies on the human health and environmental effects of those pollutants and recommends whether the national standards should be retained or revised.

During the most recent review of the national ozone standards, the committee recommended that the EPA consider setting the standards somewhere in the range of 60 parts per billion to 70 ppb after determining that less-stringent standards wouldn't adequately protect public health. Then-EPA Administrator Gina McCarthy ultimately set the standards at 70 ppb, a decision that upset both environmental advocates who wanted even more protective standards and a coalition of states, industry groups and lawmakers that argued the standards will be unattainable in some parts of the U.S.

The advice provided by CASAC also carries weight with the courts. A federal appeals court in 2009 ruled against the EPA in litigation over a George W. Bush-era fine particulate matter standard, in part because the agency didn't adequately explain its rationale for not accepting the committee's recommendation on where to set the standard (Am. Farm Bureau Fed'n v. EPA, 559 F.3d 512, 68 ERC 1417, 2009 BL 37548 (D.C. Cir., 2009)).

While a subsequent ruling on the 2008 ozone standards gave the EPA more leeway to disagree with the committee's policy recommendations, the U.S. Court of Appeals for the District of Columbia Circuit created a “super important role” for CASAC in deciding where national ambient air quality standards should be set, said William Yeatman, a senior fellow at the Competitive Enterprise Institute. While several of his colleagues at CEI, including Myron Ebell, served during President Donald Trump's transition, Yeatman is not involved with the new administration.

“When it comes to the science advice, the EPA has virtually no room to depart from what CASAC said,” Yeatman told Bloomberg BNA.

Administrator Has Appointment Authority

The process for staffing the CASAC, as well as other agency science advisory panels, is led by the Science Advisory Board's staff office, which annually makes recommendations regarding the membership of those committees. However, the Clean Air Act grants ultimate authority for appointing members of the seven-member chartered CASAC, as well as the larger review panels that assess specific pollutants, to the EPA administrator.

Gretchen Goldman, research director at the Center for Science and Democracy at the Union of Concerned Scientists, described the committee as the "gold standard" for providing reliable, independent scientific advice and said it's "absolutely crucial" that the new administration maintains the independence of its advisory committees.

"I hope they'll continue that strong tradition of having independent scientists" on the CASAC, Goldman told Bloomberg BNA. "If it's not broke, don't fix it."

Sen. Sheldon Whitehouse (D-R.I.) had asked Pruitt if he intended to change the current appointment process for the EPA's independent science advisory panels and if he would maintain the existing structure of the committee. In response, Pruitt, in a written response submitted to the Senate Environment and Public Works Committee, said he had "no first-hand knowledge" of the existing processes and rules of the committee, but pledged to "follow applicable legal authorities" as administrator.

The Clean Air Act does spell out some requirements for the committee, which must include one physician, one member of the National Academy of Sciences and one representative of state air pollution control agencies. The committee's charter also states that members of the CASAC "will have demonstrated high levels of competence, knowledge and expertise" in relevant fields.

Walke of the NRDC acknowledged that the EPA administrator does have a "fair amount of leeway" under the law in appointing members to advisory committees, though the law does require expertise, qualification and balance of membership.

"Every Republican and Democratic administration has interpreted balance to cover different stakeholders and even different perspectives, but not to accommodate something as irrational as a geographic litmus test or a demand that regulated industries have an overbearing influence," Walke said. "That appears to be the clear theme of critics of the [Science Advisory Board] and other advisory committees."

Changes on the Way?

The Trump administration has expressed an early interest in the EPA's use of science. Doug Ericksen, who is directing communications for Trump's EPA landing team, told reporters Feb. 2 that the new administration is interested in "expanding the science" at the agency. In response to a question about his views on climate change, Ericksen said the Trump EPA will work to give a voice to people who have been denied the ability to air their scientific views.

"There were stories saying we were going to lock down on science, and it's actually the opposite," Ericksen said. "New science will be allowed in; more people have a voice when it comes to debating the science of issues at the EPA."

Jeffrey Holmstead, former assistant EPA administrator for air and radiation under President George W. Bush, told Bloomberg BNA that while the people who are appointed to the CASAC have the necessary technical expertise, those selected in the past to serve "tend to be people" who agree with the viewpoint of EPA staff.

"I think you don't get a true understanding of the diversity that's out there among air quality experts," Holmstead, now a partner at Bracewell LLP in Washington, D.C., said. "I believe, and I hope, there will be an effort to appoint more balanced panels" under Pruitt.

Push for Ozone Science Critic

Last year, there was an unsuccessful push by industry to get Michael Honeycutt, director of the Toxicology Division of the Texas Commission on Environmental Quality, appointed to the CASAC. Honeycutt co-authored a May 2015 article that argued that available science didn't support the EPA's assertion that tighter ozone standards would result in measurable health benefits, a viewpoint at odds with the advice the CASAC provided.

Honeycutt was included on a list of seven state air officials under consideration for an open committee spot that

was circulated for comment by the SAB office. EPA leadership eventually decided to appoint Kenski of the Lake Michigan Air Directors Consortium, who had previously served on the committee from 2008-2010.

Sen. James Inhofe (R-Okla.) was among those who weighed in during the most recent CASAC nomination process: in a letter to the EPA he complained of a “seeming geographic bias” to the selection of committee members during the Obama administration and urged the agency to not reappoint Kenski because the panel needed “fresh perspectives.” Inhofe said geographic bias left the committee without the benefit of experts from parts of the U.S. that are most affected by the ozone standards.

Inhofe told Bloomberg BNA that he has “always been concerned” about the membership of the CASAC and is reviewing the procedure to make changes. He declined to comment on what changes are warranted, but said they would be in “the best interest” of the committee.

“My biggest concern has always been that in the committee, the committee does things that are based on sound science,” Inhofe said. “This has not always been the case.”

IG: Adequate Bias Controls

Congressional criticism of the EPA's science advisory panels isn't limited to Inhofe, as House Science Committee Chairman Lamar Smith (R-Texas) Feb. 8 described the scientists who serve on the agency's science advisory panels as “rubber stamps” who are biased toward the EPA because they've received federal grant funding.

In addition to geographic diversity and the presence of EPA-funded scientists, another common criticism of the committee is that members of the panel often end up reviewing studies they were involved with

Those criticisms have continued even after the EPA's Office of Inspector General conducted an investigation into the committee that was requested by Inhofe during the Obama administration. The OIG's report, released in 2013, concluded that the EPA office that oversees the committee has “adequate procedures” for identifying independence and impartiality concerns, but suggested the agency improve the documentation of how those concerns are addressed.

The investigation also concluded that the CASAC is balanced with respect to scientific points of view and effectively limits members to six years of service, which helps balance the need for fresh perspectives with the need for experience.

A pair of House Democrats touted the importance of maintaining the independence of the committee. Rep. Frank Pallone (D-N.J.), ranking member of the House Energy and Commerce Committee, told Bloomberg BNA in an e-mailed statement that he would not support any changes to the CASAC that would alter the mission or makeup of the panel.

“Undermining the independence of the committee by changing the membership to reflect a preferred policy bias or including members with significant conflicts of interest would damage the credibility of the committee and its ability to provide unbiased advice to the administrator,” Pallone said.

In the past, Republicans have suggested that more industry scientists should be added to the CASAC, according to an aide to House Science Committee ranking member Eddie Bernice Johnson (D-Texas). Having industry representatives that could directly benefit from halting additional regulation could skew the panel's results, the aide told Bloomberg BNA.

Ex-Members Defend Panel

A pair of former members of the chartered CASAC defended the panel against many of the criticisms, including allegations that EPA funding of scientific grants affected the committee's conclusions.

Joseph Brain, a former member of the committee, told Bloomberg BNA that while EPA staff would provide the committee with summaries of data and predictions on the health effects of pollution exposure, the committee

operated free of interference from agency leadership and was always open to differences of opinion. Brain, the Cecil K. and Philip Drinker Professor of Environmental Physiology at the Harvard T.H. Chan School of Public Health, said he has received grants from EPA.

“I literally can't remember a single time where there was any direction [from EPA leaders] on what the standard should be and what our CASAC report should say,” Brain said.

Brain acknowledged that it is a reality that members of the CASAC review panels often have contributed to the body of air pollution studies the panel would review. But, he said the size of the review panels ensured a balanced look at all the available science so that even if one member of the committee worked on a particular study, that study wouldn't escape scrutiny.

“One of the nice things about science is that we welcome controversy,” Brain said. “There was careful analysis of all the studies.”

Jonathan Samet, who served as chairman of the CASAC during President Barack Obama's first term, agreed that studies authored by committee members received the same level of review as the rest of the science the panel reviewed. Samet, director of the University of Southern California's Institute for Global Health, told Bloomberg BNA that there was transparency about who funded the work of committee members and an effort to prevent panel members from commenting on studies they had worked on.

Samet also disagreed that the panel was hampered by a lack of geographic diversity. He said the committee was “quite well-equipped” to deal with region-specific science issues, such as ozone in the mountain West region.

“This is not something that confounded CASAC because nobody was living on a mountaintop in Utah,” Samet said.

Possible New Directive

The options for Pruitt to make changes to the CASAC wouldn't be limited to membership. As administrator he also could direct the committee to provide analysis of the adverse economic and energy effects of tightening national standards for ozone and other pollutants. Section 109(d) of the Clean Air Act states the committee is to advise EPA leadership of “any adverse public health, welfare, social, economic or energy effects” that would result from implementing more stringent air standards.

A different advisory committee, the EPA Advisory Council on Clean Air Compliance Analysis, did provide the agency with advice on the costs and benefits of Clean Air Act programs from 1991-2014. However, the CASAC historically hasn't been equipped to engage in discussions about economics and energy effects of specific air quality standards, according to Samet. He said, however, the committee could expand that expertise by adding more members with economic expertise to the consulting review panels, if the EPA were to provide the committee with related material to review.

During the most recent review of the national ozone standards, the committee told EPA leadership that the panel would be “receptive” to a request to review the agency's analysis of the factors identified in Section 109(d). If such a request were made, an ad hoc panel could be formed to obtain the expertise necessary to review those factors, according to Christopher Frey, who chaired the committee in 2014. Frey is a professor in the Department of Civil, Construction and Environmental Engineering at North Carolina State University.

A coalition of industry organizations is challenging the EPA's alleged failure to consider adverse economic, social and energy effects during its last ozone review. In their opening brief, the industry organizations noted that the EPA didn't solicit the CASAC's advice, despite clear legal requirements that the panel advise the administrator on those issues (*Murray Energy v. EPA*, D.C. Cir., No. 15-1385, *briefs filed* 4/22/16). Holmstead, who urged the CASAC to consider adverse economic and energy effects during the last ozone standards review, said he personally nominated people who had “real academic credentials” to serve on the committee, but the EPA didn't consider those nominations. Holmstead said he'd continue to push the EPA to seek the advice of the committee to provide a better understanding of the trade-offs associated with tightening national ambient air quality standards.

Could Analysis Be Useful?

Congress also has taken an interest in the CASAC's role in reviewing the adverse effects of tightening ozone standards: Legislation (H.R. 806, S. 263) that would delay implementation of the 2015 ozone standards by eight years includes language that would require the EPA administrator to seek that advice from the committee before taking action to set or revise a standard.

The CEI's Yeatman said the new EPA leadership might select new CASAC members who have expertise on those economic and energy factors, but predicted that the agency's eventual use of that information would be subject to legal challenges. The U.S. Supreme Court in 2001 unanimously held that the EPA administrator cannot take cost into account in setting national ambient air quality standards (Whitman v. Am. Trucking Ass'ns, 531 U.S. 457, 51 ERC 2089 (2001)).

"It wouldn't shock me at all if they chose [committee members] with an eye toward this second responsibility of CASAC," Yeatman said. "Were they to pursue that, it will get litigated."

Walke of the NRDC acknowledged that an analysis of adverse economic and energy effects could be useful toward implementation of national ambient air quality standards, but noted that any suggestion that those factors should influence adoption or revision of a health-based air standards would be "flatly contrary" to the *Whitman* decision.

Holmstead said the committee's analysis of economic effects could potentially help spur support for updating the Clean Air Act.

"If you were to have an EPA-appointed expert panel issue a report that said there are very substantial economic and other burdens that are caused by these standards, I think you're much more likely to get statutory reform," he said.

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