

September 15, 2017

Administrator Scott Pruitt
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

Subject: Invitation for Public Comment on the List of Candidates for the U.S. Environmental Protection Agency's (EPA) Clean Air Scientific Advisory Committee (CASAC)

Administrator Pruitt:

The Association of Air Pollution Control Agencies (AAPCA)¹ appreciates U.S. EPA's request for public comments on the list of candidates for service on EPA's chartered CASAC.² You stated in EPA's call for nominations that you "... encourage scientific viewpoints from a full range of stakeholders in order to achieve balanced scientific advice."³ Recently, AAPCA, in conjunction with The Council of State Governments (CSG), created a new resource – located at www.cooperativefederalism.org – entitled *STATES AT THE TABLE: Engaging Energy and Environmental Opportunities with Federal Advisory Committees* to provide information on federal advisory committee opportunities for state officials.⁴

U.S. EPA's list of qualified candidates includes four experts from state environmental agencies: Dr. James Boylan, Georgia Environmental Protection Division (and co-chair of AAPCA's Modeling Committee); Dr. Sabine Lange, Texas Commission on Environmental Quality; Dr. Steve Packham, Utah Department of Environmental Quality; and, Dr. Larry Wolk, Colorado Department of Public Health and Environment. These individuals have demonstrated high levels of competence, knowledge, and expertise in fields relevant to air pollution and air quality issues, and possess significant experience in the technical aspects of National Ambient Air Quality Standards (NAAQS), including cost-benefit analysis, modeling, monitoring, and emissions inventory assessment. Their on-the-ground experience in implementing the NAAQS would be indispensable to CASAC and EPA, and would provide key perspectives in the scientific review process. Each candidate also holds an advanced degree, with impressive academic credentials in fields that include chemical engineering, modeling, risk assessment, toxicology, and public health.

¹ AAPCA is a national, non-profit, consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. AAPCA represents more than 40 state and local air agencies, and senior officials from 20 state environmental agencies currently sit on the AAPCA Board of Directors. AAPCA is housed in Lexington, Kentucky as an affiliate of The Council of State Governments. You can find more information about AAPCA at: <http://www.cleanairact.org>. In addition, more information on AAPCA agencies can be found in the recently released report, *The Greatest Story Seldom Told: Profiles and Success Stories in Air Pollution Control*.

² U.S. EPA Science Advisory Board Staff Office, [Invitation for Public Comment on the List of Candidates For the Environmental Protection Agency's Clean Air Scientific Advisory Committee](#), August 28, 2017.

³ U.S. EPA, "[EPA to Accept Nominations for Science Boards](#)," June 27, 2017.

⁴ This [resource](#) includes information on federal advisory committees at U.S. EPA, the U.S. Departments of Energy and Interior, and the National Oceanic and Atmospheric Administration, as well as an introduction to the Federal Advisory Committee Act.

AAPCA strongly recommends that EPA consider these state experts in the current chartered CASAC selection process. State, local, and tribal agency personnel possess direct knowledge and experience critical to providing informed, comprehensive, and authoritative understanding of the NAAQS.

EPA should ensure the chartered CASAC and individual NAAQS review panels include significant state, local, or tribal participation and diverse geographic backgrounds of advisors. At present, this is not the case. To illustrate:

- According to a May 2015 letter from CSG West: “For EPA’s Clean Air Scientific Advisory Committee Ozone Review Panel, which provided the critical advice for Administrator Gina McCarthy’s proposed ozone regulations, only one of the 22 panelists came from a state/local perspective.”⁵
- Historically, representation on CASAC committees and panels has been limited to specific regions and a handful of states.⁶
- A survey of twenty state air directors, including both AAPCA members and non-members, provides context for these concerns.⁷ The survey found:
 - A majority of respondents said state and local agencies are not adequately represented on CASAC and its subpanels, and that these panels are not sufficiently geographically diverse.
 - A majority of respondents agreed that the CASAC process for nominating and recommending expert candidates was transparent and clearly understood, but the top three barriers selected by respondents to state personnel serving on CASAC or its subpanels were lack of time to serve, low likelihood of being selected, and a perceived lack of expertise.
- Other EPA federal advisory committees have found avenues to expand membership for intergovernmental partners and co-regulators. For example, the Assumable Waters Subcommittee of the National Advisory Council on Environmental Policy and Technology (NACEPT) included ten state and two tribal members, representing members from seven different EPA regions.⁸
- The *Consolidated Appropriations Act of 2016*, signed into law on December 17, 2015, was accompanied by a report directing the EPA Administrator to develop a policy statement on science quality and integrity for the Science Advisory Board. The report also indicated that “EPA’s policy statement should include goals on increasing membership from States and tribes who are often underrepresented...”⁹
- The Government Accountability Office (GAO) reviewed this policy statement and reported in June 2017 that EPA did “not include specific or numeric goals on increasing membership from states and tribes,” and recommended that the Agency specifically address the Congressional directives.¹⁰
- The U.S. House Appropriations Committee report for H.R. 3354, *the Department of the Interior, Environment, and Related Agencies Appropriations Act of 2018*, again directed EPA “to develop updated policy statements in order to fulfill previous Congressional directives.”¹¹

⁵ The Council of State Governments West, [Letter to Senators Mike Rounds and Edward Markey](#), May 19, 2015.

⁶ Data collected from [CASAC entry](#) in the FACA database, which contains information on panelists back to FY1997.

⁷ Survey results and related presentation are available on AAPCA’s 2016 Spring Meeting [website](#).

⁸ U.S. EPA, [Assumable Waters Sub-Committee](#), June 2016. The [Assumable Waters Subcommittee Report](#) was transmitted via NACEPT on June 2, 2017.

⁹ [Explanatory Statement Submitted for Consolidated Appropriations Act, 2016](#), pg. H10220, December 17, 2015.

¹⁰ [GAO Assessment of Updated EPA Policy Statement](#), June 8, 2017

¹¹ [Report from the Committee on Appropriations to accompany H.R. 3354](#), pg. 62, July 21, 2017.

The Federal Advisory Committee Act requires committees to be “fairly balanced in terms of the points of view represented and the functions to be performed.” CASAC’s charter and the Clean Air Act (CAA) direct EPA to appoint at least one member of the National Academy of Sciences, one physician, and one person representing state air pollution control agencies. The most recent Membership Balance Plan for CASAC, last updated in June 2017, states that “Geographic location may be considered” as the only other balance factor that “EPA identifies as important in achieving a balanced [Federal Advisory Committee].”¹² U.S. EPA’s Peer Review Handbook states that the Agency should “include a broad enough spectrum of other related experts to consider wider dimensions of the issue(s)” and “keep a balance by considering new individuals who bring fresh perspectives to the review of a work product.”¹³

Geographically diverse state, local, and tribal contributors have unique, direct experience with the NAAQS, including expertise that could help CASAC carrying out the full responsibilities in its charter and Section 109(d) of the CAA. This includes advice on: “any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such” NAAQS; “the relative contribution to air pollution concentrations of natural as well as anthropogenic activity”; “areas in which additional knowledge is required to appraise the adequacy and basis of” NAAQS; and, “the research efforts necessary to provide the required information.”

In 2015, the GAO reported that CASAC has not carried out its role in providing some of this advice related to the NAAQS “... because EPA has never asked CASAC to do so.”¹⁴ EPA’s press release calling for nominations also recognized that EPA and CASAC have failed to carry out statutory duties required in the CAA. AAPCA has detailed the historical record confirming GAO’s finding, and identified five avenues for EPA and CASAC to facilitate this advice (including the critical role of experts from state, local, and tribal environmental agencies in reforming the current CASAC review process).¹⁵ Communications from AAPCA members also suggest that state air pollution control agencies would benefit from the full suite of statutorily required advice.¹⁶

EPA should select state air agency experts for the chartered CASAC from this list of qualified candidates. If EPA is unable to select a seven-member chartered CASAC that satisfies CAA requirements for membership and scope of advice, including advice on adverse social, economic or energy effects related to NAAQS, and with geographically and scientifically diverse viewpoints, the EPA Administrator, as the appointing authority, should reconstitute the panel in accordance with 41 CFR 102-3.130.¹⁷ EPA should

¹² [CASAC 2017 Membership Balance Plan](#).

¹³ U.S. EPA, [Peer Review Handbook](#), 4th Edition, October 2015.

¹⁴ U.S. GAO, [EPA’S SCIENCE ADVISORY BOARD: Improved Procedures Needed to Process Congressional Requests for Scientific Advice](#), June 2015.

¹⁵ AAPCA, “[Advice and Context: The Role of CASAC in Contextualizing Background Pollution and Adverse NAAQS Effects](#),” June 2016.

¹⁶ In response to a May 2014 [letter](#) from members of the U.S. Senate Committee on Environment and Public Works, the [Louisiana Department of Environmental Quality](#), [Mississippi Department of Environmental Quality](#), [North Carolina Department of Environment and Natural Resources](#) (now Department of Environmental Quality), and [Texas Commission on Environmental Quality](#) provided feedback on the CASAC process. [Multi-state comments](#) on the proposed ozone NAAQS provide perspectives on the role of CASAC. The previously cited [survey](#) of state air directors found that more than 80 percent of respondents thought CASAC advice on the full suite of topics in the charter and Section 109(d) of the Clean Air Act, as part of the NAAQS review process, would be helpful.

¹⁷ [41 CFR 102-3.130](#) states “Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority.”

also strongly encourage nominations of qualified state, local, and tribal environmental agency experts for future openings on individual CASAC NAAQS review panels.

Thank you for the opportunity to provide feedback on EPA's excellent list of candidates for CASAC. If you have any questions regarding our comments, please contact Mr. Clint Woods, Executive Director, at cwoods@csg.org or (859) 244-8040.

Sincerely,



Sean Alteri
Director, Kentucky Division for Air Quality
2017 President, AAPCA



Stuart Spencer
Associate Director, Office of Air Quality
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2018 President, AAPCA