

September 28, 2017

Mr. Thomas Carpenter
 Designated Federal Officer, Science Advisory Board
 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) Chartered Science Advisory Board (SAB)

Mr. Carpenter:

The Association of Air Pollution Control Agencies (AAPCA)¹ appreciates U.S. EPA's request for public comments on the list of candidates under consideration for EPA's chartered SAB.² EPA's call for nominations quoted EPA Administrator Scott Pruitt highlighting that "[t]hese boards play an important role at EPA by providing independent advice based on sound science in support of the agency's mission," and that he strongly encouraged "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 several experts from state environmental agencies with experience and expertise that would enable them to provide independent advice and unique, indispensable perspectives on the suite of scientific issues facing EPA and SAB. The Administrator should look to appoint these officials in leadership roles on the chartered SAB and its subcommittees. These officials possess on-the-ground experience in implementing regulations under the Clean Air Act and other statutes, as well as expertise in disciplines including air quality, public health, chemistry, risk assessment, engineering, modeling, toxicology, and uncertainty and benefit-cost analysis. In addition to the value of this advice from state experts, selecting these nominees for leadership roles could help the Agency in following Congressional directives to increase SAB "membership from States and tribes who are often underrepresented" and the SAB Staff Office's commitment to "expanding the diversity of scientific perspectives on the SAB, including the perspectives from state and local governments..."

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>.

² U.S. EPA Science Advisory Board Staff Office, [Invitation for Public Comment on the List of Candidates For the Environmental Protection Agency's Chartered Science Advisory Board](#), September 7, 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.

The SAB is one of the few currently operating EPA advisory committees established by Congress, rather than Agency authority.⁵ The *Environmental Research, Development, and Demonstration Authorization Act of 1978*⁶ (ERDDAA) requires that the Administrator establish the SAB to “provide such scientific advice as may be requested by the Administrator” as well as Congressional committees of jurisdiction. The Board is to be composed of at least nine members (although the Agency’s most recent membership balance plan indicates composition of “about 45 members”)⁷ and each member is to be “qualified by education, training, and experience.” ERDDAA further requires the Administrator, at the time any proposed criteria document, standard, limitation, or regulation under the Clean Air Act or other environmental statute is provided for interagency review, to provide such Agency action with relevant technical and scientific information in possession of EPA to the SAB for review. Administrator Pruitt has stated that he intends to “follow applicable legal authorities” as it related to SAB and other advisory committees.⁸ Nominated state officials are uniquely qualified to help EPA and SAB carry out these statutory duties.

EPA should ensure the chartered SAB and its subcommittees and ad hoc panels include significant state, local, or tribal participation and diverse geographic backgrounds of advisors. At present, this is not the case. To illustrate:

- 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 EPA’s draft policy statement and reported in June 2017 that “the draft document does not include specific or numeric goals on increasing membership from states and tribes. However, it states that the SAB Staff Office is committed to expanding the diversity of scientific perspectives on the SAB, including the perspectives from state and local governments, tribes, industry, and nongovernmental organizations.” GAO also stated they “continue to encourage the agency to specifically address the directives provided in the explanatory statement.”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
- A May 2015 letter from CSG West noted that “states are largely underrepresented in EPA advisory panels” and pointed to the dearth of state/local/tribal experts during recent SAB and CASAC reviews of science related to air quality, hydraulic fracturing, and water connectivity.¹²

⁵ More information on establishment authority can be found at the General Services Administration’s [FACA Database](#).

⁶ 42 U.S.C. 4365.

⁷ <http://www.csg.org/aapca/documents/SABMembershipBalancePlan2017.pdf>.

⁸ https://www.epw.senate.gov/public/_cache/files/6d95005c-bd1a-4779-af7e-be831db6866a/scott-pruitt-qfr-responses-01.18.2017.pdf.

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.

¹² The Council of State Governments West, [Letter to Senators Mike Rounds and Edward Markey](#), May 19, 2015.

- In May 15, 2017 comments on regulatory reform, the Western Governors Association argued that U.S. EPA should “enhance state representation on the [SAB], as well as on its standing and *ad hoc* committees.”¹³
- Historically, representation on the chartered SAB has been limited to certain geographic areas, and state experts have constituted no more than three advisors on the roughly 50-member panel at any time over the last decade.¹⁴
- 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.¹⁵

The *Federal Advisory Committee Act* (FACA) requires committees to be “fairly balanced in terms of the points of view represented and the functions to be performed.” 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.”¹⁶ 41 CFR 102-3.130 provides the Administrator, as the appointing authority, with the ability to determine membership terms for all SAB members under FACA.¹⁷

EPA should select state environmental agency experts for the chartered SAB from this list of qualified candidates. EPA should also strongly encourage nominations of qualified state, local, and tribal environmental agency experts for future openings on SAB subcommittees and ad hoc panels.

Thank you for the opportunity to provide feedback on EPA’s list of candidates for SAB. If you have any questions regarding our comments, please contact cwoods@csg.org or (859) 244-8040.

Sincerely,



Clinton J. Woods
Executive Director, AAPCA

¹³ [http://westgov.org/images/editor/Regulatory Reform Task Forces - Final.pdf](http://westgov.org/images/editor/Regulatory_Reform_Task_Forces_-_Final.pdf).

¹⁴ Data collected from [SAB entry](#) in the FACA database.

¹⁵ U.S. EPA, [Assumable Waters Sub-Committee](#), June 2016. The [Assumable Waters Subcommittee Report](#) was transmitted via NACEPT on June 2, 2017.

¹⁶ U.S. EPA, [Peer Review Handbook](#), 4th Edition, October 2015.

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.”