

Via e-mail July 21, 2020

Administrator Andrew Wheeler
Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Mail Code: 1101A
Washington, D.C. 20460

Re: Request to reopen nomination process for EPA advisory committees

Dear Administrator Wheeler:

The undersigned organizations call upon EPA to reopen the nominations process for its advisory committees to solicit nominations of individuals EPA previously deemed ineligible to serve because of their receipt of EPA grant funding, and to reinstate individuals to committees from which they were unjustifiably removed. EPA's 2017 directive restricting individuals with grant funding from serving on committees was struck down in June by the U.S. District Court for the Southern District of New York, which ruled that the policy was arbitrary and capricious under the Administrative Procedure Act.¹ Soon after, the U.S. Court of Appeals for the D.C. Circuit agreed that the directive was illegal, ruling that EPA failed to give a rational explanation for its decision to exclude highly qualified grantees and failed to obtain the approval of the Office of Government Ethics.² These decisions came after the U.S. Court of Appeals for the First Circuit rejected EPA's argument that the directive was not judicially reviewable.³ EPA has now announced that it will no longer apply this illegal policy.⁴

EPA grants are funded through a highly competitive process on the basis of merit and promise. Recipients tend to be among the most knowledgeable experts on the issues upon which EPA is seeking advice. That is why, when this Administration issued a directive preventing such individuals from serving on advisory committees, so many took notice and spoke out in opposition.⁵ Now that the directive has been rescinded, the Agency must ensure that the most qualified individuals in their fields have the opportunity to advise on critical science and policy issues.

Many EPA grant-funded scientists are at the top of their fields and possess critical, or even irreplaceable, highly relevant knowledge that the Agency needs to make health-protective and scientifically defensible policy decisions. In light of this and the Courts' decisions noted above, EPA should now provide an opportunity for EPA grant-funded experts to apply for or be nominated to positions on all EPA advisory committees. This should be done immediately for those committees for which EPA is already in the process of identifying candidates: EPA's Science Advisory Board and subcommittees,⁶ Science Advisory Committee on Chemicals,⁷ National Drinking Water Advisory Council,⁸ and National and Environmental Government Committees.⁹

Further, for all individuals who were removed from boards or whose terms were not renewed because they were receiving EPA funding between the time the 2017 policy was announced and the present, EPA should notify them of the change in policy, solicit their interest, and, if the individuals are interested, reinstate them onto the advisory committees on which they previously served.

Without consideration of all such eligible scientists, EPA will continue to receive insufficient science advice. Thus, we further call upon the Agency to suspend any ongoing process to fill positions on these advisory committees until the restoration of committees and the nominations process for experts EPA previously deemed ineligible is completed. These steps would not address prior flawed changes made to advisory committees' composition and structure, such as those made to the Clean Air Scientific Advisory Committee for the particulate matter NAAQS review.¹⁰ However, they would at least allow for a more

diverse, qualified, and independent composition on EPA's advisory committees and would better ensure the Agency receives the best available science advice on matters protecting the environment and public health. If you have any questions or require additional information, please contact Genna Reed at the Union of Concerned Scientists at GReed@ucsusa.org.

Sincerely,

Center for Science and Democracy, Union of Concerned Scientists
Earthjustice
Environmental Defense Fund
International Society for Children's Health and the Environment
Natural Resources Defense Council
Physicians for Social Responsibility
Protect Democracy

CC:

Nica Louie, DFO Children's Health Protection Advisory Committee
Javier Araujo, DFO National Environmental Education Advisory Board
Thomas Armitage, DFO Science Advisory Board
Thomas O'Farrell, DFO Human Studies Review Board
Ann-Marie Gantner, DFO Good Neighbor Environmental Board
Oscar Carrillo, DFO National Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation and the Governmental Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation
Fred Jenkins, DFO Hazardous Waste Electronic Manifest System Advisory Board
Thomas Tracy, DFO Board of Scientific Counselors
Hema Subramian, DFO Farm, Ranch and Rural Communities Advisory Committee
Matthew Tejada, DFO National Environmental Justice Advisory Council
Edward Chu, DFO Environmental Financial Advisory Board
Shannon Jewell, DFO Pesticide Program Dialogue Committee
Steven M. Knott, DFO Science Advisory Committee on Chemicals; FIFRA SAP Panel
Larry Weinstock, DFO Clean Air Act Advisory Committee
Edlynzia Barnes, DFO Great Lakes Advisory Board
Frances Eargle, DFO Local Government Advisory Committee
Tracey M. Ward, DFO National Drinking Water Advisory Council
Aaron Yeow, DFO Clean Air Scientific Advisory Committee

¹ *Nat. Res. Def. Council, Inc. v. U.S. Env'tl. Prot. Agency*, 438 F. Supp. 3d 220 (S.D.N.Y. 2020).

² *Physicians for Soc. Responsibility v. Wheeler*, 956 F.3d 634 (D.C. Cir. 2020).

³ *Union of Concerned Scientists v. Wheeler*, 954 F.3d 11 (1st Cir. 2020).

⁴ U.S. Environmental Protection Agency (EPA). 2020. EPA Will Not Appeal Adverse SDNY Decision Regarding October 31, 2017 Federal Advisory Committee Directive, June 24. Online at <https://www.epa.gov/newsreleases/epa-will-not-appeal-adverse-sdny-decision-regarding-october-31-2017-federal-advisory>, Accessed July 15, 2020.

⁵ Union of Concerned Scientists. 2020. Pruitt Actions on EPA Advisory Board Undermine Independent Science, Put Americans at Risk, October 31. Online at <https://ucsusa.org/about/news/pruitt-actions-epa-advisory-board>, Accessed July 15, 2020.

⁶ EPA. Request for Nominations of Candidates to the EPA's Science Advisory Board (SAB) and SAB Standing Committees. Federal Register 85, no. 63 (April 1, 2020):18225. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-01/pdf/2020-06660.pdf>, Accessed July 15, 2020.

⁷ EPA. TSCA Science Advisory Committee on Chemicals; Request for Nominations. Federal Register 85, no. 55 (March 20, 2020):16094. Online at <https://www.govinfo.gov/content/pkg/FR-2020-03-20/pdf/2020-05827.pdf>, Accessed July 15, 2020.

⁸ EPA. The National Drinking Water Advisory Council: Request for Nominations. Federal Register 85, no. 114 (June 12, 2020):35930. Online at <https://www.govinfo.gov/content/pkg/FR-2020-06-12/pdf/2020-12727.pdf>, Accessed July 15, 2020.

⁹ EPA. Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation. Federal Register 85, no. 70 (April 10, 2020): 20267. Online at <https://www.govinfo.gov/content/pkg/FR-2020-04-10/pdf/2020-07527.pdf>, Accessed July 15, 2020.

¹⁰ Independent Particulate Matter Review Panel. 2020. The Need for a Tighter Particulate-Matter Air-Quality Standard, June 10. *New England Journal of Medicine*. DOI: 10.1056/NEJMs2011009. Online at <https://www.nejm.org/doi/full/10.1056/NEJMs2011009>, Accessed July 15, 2020.