

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**  
September 16, 2019

The Honorable Andrew Wheeler  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Dear Administrator Wheeler:

Our committees are continuing to investigate efforts by the Environmental Protection Agency (EPA) to systematically undermine key environment and public health protections and discredit the role of science. In light of recent warnings underscoring the impacts of climate change on air quality and the health of the American people, we are deeply concerned about actions EPA has taken to weaken scientific integrity in reviewing and setting National Ambient Air Quality Standards (NAAQS) under the Clean Air Act (CAA).

We previously raised a series of concerns regarding EPA's elimination of scientific expertise needed to review and set NAAQS under the Clean Air Act.<sup>1</sup> In October 2018, you disbanded a panel of independent experts that supported the work of the Clean Air Scientific Advisory Committee (CASAC) in reviewing the health impacts of particulate matter (PM).<sup>2</sup> Established in 1977, CASAC is a seven-member panel that provides advice to the Administrator on the technical bases for the NAAQS. To date, EPA has failed to adequately explain how it will replace the independent panel's scientific expertise in particulate matter, a dangerous pollutant linked to premature death, heart attacks, and other severe health problems.<sup>3</sup> EPA also declined to convene a panel of experts to support CASAC's review of the NAAQS for another dangerous pollutant, ozone.<sup>4</sup> Without sufficient expertise, we are concerned that CASAC will be unable to support setting NAAQS needed to protect Americans from these harmful pollutants.

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<sup>1</sup> See, e.g., Letter from Rep. Frank Pallone, Jr., Chairman, House Committee on Energy and Commerce to Andrew Wheeler, Acting Administrator, EPA (Jan. 28, 2019) and House Committee on Science, Space, & Technology, *Hearing on EPA Advisory Committees: How Science Should Inform Decisions*, 116th Cong. (Jul. 16, 2019).

<sup>2</sup> *EPA to Disband a Key Scientific Review Panel on Air Pollution*, New York Times (Oct. 11, 2018).

<sup>3</sup> Environmental Protection Agency, Health and Environmental Effects of Particulate Matter (PM) ([www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm](http://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm)).

<sup>4</sup> *EPA Scraps a Pair of Air Pollution Science Panels*, Washington Post (Oct. 13, 2018).

Additionally, EPA—under your leadership—appears to fail to recognize the need for robust and independent scientific expertise despite requests from CASAC itself for additional resources. In an April 8, 2019, letter to Chairman Pallone, EPA stated that it “believes that the current CASAC has the experience and expertise needed to serve in this capacity as well as to complete the reviews for the particulate matter and ozone NAAQS.”<sup>5</sup> CASAC itself flatly discredited this assertion just days later. In an April 11, 2019, letter to you, CASAC concluded that it lacked sufficient expertise in critical areas, including epidemiology and toxicology, and requested that the particulate matter expert panel be reconstituted.<sup>6</sup> According to CASAC’s letter, “[t]he breadth and diversity of evidence to be considered exceeds the expertise of the statutory CASAC members, or indeed of any seven individuals.”<sup>7</sup> CASAC also outlined concerns with the draft technical document prepared by EPA, known as the Integrated Science Assessment (ISA), and requested that EPA prepare a second draft and address its concerns.<sup>8</sup>

EPA has also failed continuously to adequately respond to the concerns raised by our committees in previous correspondence. At two recent bipartisan committee staff briefings,<sup>9</sup> EPA was unable to explain the estimated timeframe for responding to CASAC’s April 11 concerns, whether it intended to provide CASAC with requested expertise, what process it would use to find and evaluate potential experts, and whether it intended to prepare a second draft of the Integrated Science Assessment for particulate matter. EPA staff instead indicated that responding to CASAC’s concerns was the responsibility of the Administrator.

On July 25, 2019, you responded to CASAC Chair Tony Cox by functionally rejecting CASAC’s requests and outlining your plans to instead empanel an informal “pool of subject matter expert consultants” to give ad hoc advice to CASAC upon written request of the Chair.<sup>10</sup>

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<sup>5</sup> Letter from Troy Lyons, Associate Administrator, EPA, to Rep. Frank Pallone, Jr., Chairman, House Committee on Energy and Commerce (April 8, 2019). EPA’s April 8 letter responded to a January 28, 2019 letter in which the Energy and Commerce Committee requested an explanation for EPA disbanding the CASAC pollution panel, including any corresponding Agency actions intended to replace the expertise of panel members. Letter from Rep. Frank Pallone, Jr., Chairman, House Committee on Energy and Commerce to Andrew Wheeler, Acting Administrator, EPA (Jan. 28, 2019).

<sup>6</sup> Letter from Dr. Louis Anthony Cox, Jr., Chair, Clean Air Scientific Advisory Committee, to Andrew Wheeler, Administrator, EPA, at 1 (Consensus Responses to Charge Questions) (April 11, 2019).

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.* at 1-3.

<sup>9</sup> Bipartisan Staff Briefing for Energy and Commerce Committee Staff by EPA Office of Air and Radiation (June 13, 2019); Bipartisan Staff Briefing for Energy and Commerce Committee Staff by EPA Scientific Advisory Board Staff Office (July 12, 2019).

<sup>10</sup> Letter from Andrew Wheeler, Administrator, EPA, to Dr. Louis Anthony Cox, Jr., Chair, Clean Air Scientific Advisory Committee (Jul. 25, 2019).

On August 7, 2019, EPA formally sought requests for nominations for this pool of consultants, requesting nominations by August 21 in order to make them available to CASAC by August 31.<sup>11</sup> On September 13, 2019, EPA announced it had selected twelve consultants that “will be available to assist with specific technical questions.”<sup>12</sup> This misguided approach not only ignores CASAC’s request to reconstitute the panel on particulate matter but also raises additional transparency concerns and questions regarding CASAC’s ability to provide an independent and comprehensive review for NAAQS.

Specifically, we are concerned that this pool of consultants will be insufficient to allow EPA to obtain a legitimate peer review of the draft Integrated Science Assessment before it is used to inform a major policy decision. Prior expert panels, including the expert panel on particulate matter you disbanded, were assembled using a transparent selection process that allowed for public input.<sup>13</sup> By contrast, it is not clear the extent to which, if at all, the public will be allowed to provide input on the consultant selection. Without public input, there is a risk that the consultants may provide biased advice that does not reflect scientific consensus.<sup>14</sup> Your letter to CASAC also envisions a process in which the consultants will only respond to written requests from the CASAC Chair,<sup>15</sup> which raises the possibility of a potentially selective review that could sideline other CASAC members from the process. In that same letter, you state EPA’s intention to finalize the Integrated Science Assessment for particulate matter by the end of 2019, with the goal of completing the rulemaking for the particulate matter NAAQS by the end of 2020.<sup>16</sup> This timeline and EPA’s use of consultants raises significant implementation questions and suggests EPA lacks an appreciation for the detailed and independent external review needed to ensure scientific integrity in setting NAAQS under the CAA.<sup>17</sup>

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<sup>11</sup> Environmental Protection Agency, *Request for Nominations of Consultants to Support the Clean Air Scientific Advisory Committee (CASAC) for the Particulate Matter and Ozone Reviews*, 84 Fed. Reg. 38624 (Aug. 7, 2019) (notice).

<sup>12</sup> Environmental Protection Agency, *Administrator Wheeler Announces New CASAC Member, Pool of NAAQS Subject Matter Experts* (Sept. 13, 2019) (press release).

<sup>13</sup> See, e.g., Environmental Protection Agency, *Request for Nominations of Experts for the Clean Air Act Advisory Committee (CASAC) Particulate Matter Review Panel*, 80 Fed. Reg. 6086, 6087 (Feb. 4, 2015).

<sup>14</sup> *Wheeler Plan for NAAQS Expert ‘Pool’ Risks ‘Cherry Picking,’ Experts Claim*, InsideEPA (Aug. 1, 2019).

<sup>15</sup> Letter from Andrew Wheeler, Administrator, EPA, to Dr. Louis Anthony Cox, Jr., Chair, Clean Air Scientific Advisory Committee (Jul. 25, 2019).

<sup>16</sup> *Id.*

<sup>17</sup> As you know, “consultation” and “review” have very different meanings in the context of the EPA advisory process. A consultation “provides expert advice on a technical question before EPA begins substantive work on that issue.” EPA, *EPA Science Advisory Board (SAB): Advisory Activities* (Sept. 8, 2015) ([yosemite.epa.gov/sab/sabproduct.nsf/WebBOARD/advisoryprojects?OpenDocument](http://yosemite.epa.gov/sab/sabproduct.nsf/WebBOARD/advisoryprojects?OpenDocument)). Peer

The Honorable Andrew Wheeler

September 16, 2019

Page 4

Therefore, pursuant to Rules X and XI of the House of Representatives, we request the following:

1. Why was the decision made to use a pool of consultants instead of using a panel of subject matter experts for PM and ozone? Please also explain your process for making these decisions and which, if any, CASAC members or EPA career officials from whom you sought input and recommendations.
2. Before EPA issued its call for nominations, did you or any other EPA political employees identify or receive recommendations for consultants to be included?
3. How did EPA evaluate, select, and deploy candidates for the pool of consultants to provide advice to the CASAC, and did CASAC members or members of the public have any input into the selection process after nominations were submitted?
4. EPA has stated that the pool of experts will be subject to the Federal Advisory Committee Act (FACA) and employed as Special Governmental Employees (SGEs).<sup>18</sup> How will EPA document its processes for evaluating and selecting candidates in a manner consistent with FACA requirements, and ensure that the experts will adhere to the ethics requirements articulated under 18 U.S.C. § 202(a)?
5. Has EPA conducted any analysis of how any recent changes—including accelerated timeline for NAAQS review, disbanding of expert panels, and changes to the CASAC's membership criteria and appointment process—may impact the CASAC's ability to fulfill its statutory responsibilities? If so, please provide any materials prepared as part of such an evaluation.
6. As Acting Administrator or since your confirmation, did you conduct a re-evaluation of any policies enacted by former Administrator Pruitt that affect scientific advisory committees at the Agency, including the October 21, 2017, directive that prohibits recipients of grants from serving on EPA advisory committees? If so, please state which policies you re-evaluated and provide any materials prepared as part of such an evaluation.

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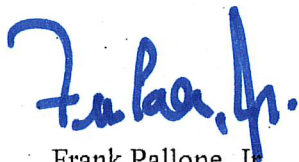
review, on the other hand, is “a review of EPA’s final draft technical reports...or work products.” *Id.* Accordingly, a decision to provide consultants on an ad hoc basis fails to fulfill the CASAC’s clear request for an expert panel to “review the Second Draft ISA.” Letter from Dr. Louis Anthony Cox, Jr., Chair, Clean Air Scientific Advisory Committee, to Andrew Wheeler, Administrator, EPA, at 1 (Consensus Responses to Charge Questions) (April 11, 2019).

<sup>18</sup> *Wheeler Plan for NAAQS Expert ‘Pool’ Risks ‘Cherry Picking,’ Experts Claim*, InsideEPA (Aug. 1, 2019).

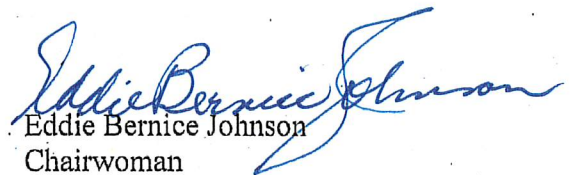
The Honorable Andrew Wheeler  
September 16, 2019  
Page 5

Please provide all requested information, including potential times for a meeting with your staff to discuss these issues, no later than September 30, 2019. If you have questions, please contact Judy Harvey with the Energy and Commerce Committee at (202) 225-2927 or Janie Thompson with the House Science, Space, and Technology Committee at (202) 225-6375. Thank you for your attention to this matter.

Sincerely,



Frank Pallone, Jr.  
Chairman  
Committee on Energy and Commerce



Eddie Bernice Johnson  
Chairwoman  
Committee on Science, Space,  
and Technology



Diana DeGette  
Chair  
Subcommittee on Oversight  
and Investigations



Mikie Sherrill  
Chair  
Subcommittee on Investigations  
and Oversight



Paul Tonko  
Chairman  
Subcommittee on Environment  
and Climate Change

The Honorable Andrew Wheeler

September 16, 2019

Page 6

Attachments

cc: The Honorable Greg Walden, Ranking Member, Committee on Energy and Commerce  
The Honorable Brett Guthrie, Ranking Member, Subcommittee on Oversight and  
Investigations  
The Honorable John Shimkus, Ranking Member, Subcommittee on Environment and  
Climate Change  
The Honorable Frank Lucas, Ranking Member, Committee on Science, Space, and  
Technology  
The Honorable Ralph Norman, Ranking Member, Subcommittee on Investigations and  
Oversight

## **Responding to Document Requests from the Committee on Energy and Commerce**

In responding to the document request from the Committee on Energy and Commerce, please apply the instructions and definitions set forth below.

### **Instructions**

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
5. Documents produced in electronic format should also be organized, identified, and indexed electronically. Documents produced in an electronic format should also be produced in a searchable format.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. When you produce documents, you should identify the paragraph or clause in the Committee's request to which the documents respond.
8. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
9. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.
10. It is not a proper basis to refuse to produce a document because another person or entity possesses a nonidentical or identical copy of the same document.
11. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (8) and (9) above.

12. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2017 to the present.
16. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
17. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
18. All documents should be bates-stamped sequentially and produced sequentially.
19. Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 316 of the Ford House Office Building, and the minority set should be delivered to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.
20. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.



## Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, email (desktop or mobile device), text message, instant message, MMS or SMS message, or otherwise.
4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures,

proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
7. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
8. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.