

Twisted Advice

Federal Advisory Committees are Broken



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This report was written by Integrity in Science Program Manager Kirsten Stade.

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1875 Connecticut Avenue, NW, #300

Washington, DC 20009

ph: 202-332-9110 fax: 202-265-4954

www.cspinet.org

www.integrityinscience.org

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Executive Summary

More than 900 advisory committees offer policy and scientific recommendations to virtually every agency of the federal government. The issues they review range from food safety and energy production to protection of the environment and public health. While most of these committees offer policy advice, over 200 are charged with evaluating the state of play in a specific scientific field so that the parent agency can accurately, effectively, and efficiently carry out its mission.

Independence is crucial if scientific advisory committees are going to carry out their mission. Sadly, all too often the independence of these committees is compromised by members financially beholden to special interests.

Committees that deliver policy recommendations may be comprised of individuals representing various stakeholder groups, including those that have a financial stake in the outcome of a committee's deliberations. These members are designated as "representatives," according to guidance from the Office of Government Ethics (OGE). The law requires balance among these members so that various points of view are represented.

Committees that deliver advice on the state of science in a particular field, on the other hand, are supposed to be comprised of "special government employees" (SGEs) who are not compromised by financial conflicts of interest. These outside advisers must be screened for conflicts so that the advice the committee offers is entirely independent. (However, scientists with conflicts of interest may serve on committees provided that the

agency first documents why the need for a scientist's expertise outweighs the law's requirement that the committee be free from conflicts of interest.)

Government Accountability Office (GAO) reports in 2004 and 2008 found that several agencies routinely and inappropriately appointed representative members to committees evaluating science and thus evaded FACA's conflict of interest screening requirements. The reports also found that many representative committees were dominated by members representing a single point of view.

This Center for Science in the Public Interest investigation finds that the deficiencies highlighted by the GAO persist, at least at the Departments of Agriculture, Energy, and Interior. CSPI found that:

- **Stakeholder representatives are inappropriately appointed to advisory committees whose charters and missions clearly spell out that they are expected to give scientific advice;**
- **Several advisory committees offering scientific advice, perhaps responding to the GAO reports, kept the same members, but merely changed their designation from representative to SGE;**
- **Numerous scientific advisory committees fail to issue waivers that document the unique expertise that would justify their appointments, notwithstanding their conflicts of interest; and**
- **Many representative advisory committees offering policy and other forms of non-scientific advice are not balanced, but are dominated by members with ties to industry.**

If the new administration wants objective scientific advice and a representative sampling of opinion for policy formation, it must move quickly to correct these shortcomings. Passage of a bill like the Federal Advisory Committee Act Amendments of 2008 (H.R. 5687), which passed the House but not the Senate, would improve the independence and balance of federal advisory committees and go a long way toward addressing the current deficiencies in agency implementation of the law.

Such legislation could be improved by including a requirement that no special government employee granted a conflict-of-interest waiver be allowed to vote on committee recommendations. And Congress should increase transparency in the system by requiring agencies to give the public the opportunity to recommend committee members and should use the Internet to allow public comment throughout the committees' formation process and subsequent deliberations.

Introduction

Federal advisory committees have been referred to as the “fifth arm of government” because of their crucial role in setting and influencing federal policy.¹ More than 900 advisory committees provide recommendations on vital issues ranging from renewable energy and food safety to global climate change and new drug approvals. More than 200 of these offer *scientific* advice. Their deliberations and advice are central to crafting policy and helping the agencies carry out their missions.

Given their influential role in shaping the decisions that affect our health, economy, and environment, it is essential that scientific advisory committees provide a balanced perspective and offer scientific advice that is free of bias, done so through a process that is transparent and receptive to public input. Conflicts of interest and imbalance within advisory committees pose the danger that committee advice will serve the interests of the stakeholder groups or industries represented by committee members, and not the general public. Indeed, Congress thought the integrity of advisory committees so essential that it wrote requirements for balance, fairness, and lack of bias into the Federal Advisory Committee Act (FACA) of 1972.

Yet many federal advisory committees fail to adhere to the requirements spelled out in the law. Despite clear guidance from the Office of Government Ethics (OGE) and two recent critical reports by the Government Accountability Office (GAO), many committees still include members with significant financial conflicts of interest.

¹ Government Accountability Office (GAO), *Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance*, GAO 04-328, April 16, 2004.

Others are not balanced with regard to points of view. Clearly, federal agency officials in charge of these committees adhere to the law casually and sometimes allow excessive influence by regulated industry. The system is broken.

FACA was enacted out of a concern that advisory committees lacked transparency, balance, and independence from special interests. The law, in combination with subsequent OGE guidance, requires agencies to consider conflicts of interest and balance when appointing members to advisory committees.

Specifically, members of “representative” committees – which generally advise federal agencies on *policy* and therefore should reflect the perspectives of various stakeholder interests – are required to “be fairly balanced in terms of the points of view represented.”² Members of these committees are not subject to FACA’s conflict-of-interest requirements because they are expected to represent the points of view of particular stakeholder groups. On the other hand, members of committees that are expected to provide independent *scientific* advice should be selected on the basis of their expertise and screened for conflicts of interest, according to Office of Government Ethics guidances issued in 2004 and 2005.³

The GAO’s 2004 report and a follow-up report in 2008 found systemic violations of the statutory and OGE mandates and called for corrective action by federal

² 5 U.S.C. app. I, § 5(b)(2) and (c).

³ United States Office of Government Ethics, Memorandum: SGEs and Representatives on Federal Advisory Committees, July 19, 2004, accessed 8/19/08 at http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2004/do04022.pdf, and United States Office of Government Ethics, Memorandum: Federal Advisory Committee Appointments, August 18, 2005, accessed 9/30/08 at http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2005/do05012.pdf.

agencies.⁴ The Food and Drug Administration (FDA), whose advisory committees have received the most public scrutiny over the years, was forced by Congressional action in 2006 to post all conflict-of-interest waivers on the Internet at least 15 days prior to any advisory committee meeting. The Food and Drug Administration Amendments Act of 2007 mandated that the number of advisers with waived conflicts be cut by a fourth to about 18 percent of all members by 2012.

Clearly, there is a strong rationale – and public support – for removing imbalance and conflicts of interest from the federal advisory system. Yet this investigation reveals that numerous committees in several government departments have been formed in violation of these legal requirements.

Findings

Finding 1: Stakeholder representatives continue to give scientific advice.

A chief finding of the GAO’s 2004 report was that several agencies – in particular the Departments of Agriculture, Interior, and Energy – frequently appointed *representative* members to committees created to provide independent *scientific* advice. Representatives, as distinct from special government employees, are expected to reflect the views of stakeholder groups and thus do not come under FACA’s conflict of interest screening requirement. That 2004 report prompted the OGE to issue guidance in 2004 and 2005 that noted that “agencies may be designating their committee members as

⁴ Government Accountability Office, *Federal Advisory Committee Act: Issues Related to the Independence and Balance of Advisory Committees*, GAO 08-611T, April 2, 2008.

representatives primarily to avoid subjecting them to the financial disclosure statements required for SGEs.”⁵ The report called for appointing special government employees on committees where scientific expertise was required. The General Services Administration’s online FACA database began reporting member status as either SGE or representative in 2005.⁶

But the GAO’s 2008 report and our own investigation found that the OGE guidance and much of the GAO’s original advice appear to have been ignored. Many committees in the Departments of Interior and Agriculture, and several in the Department of Energy, still consist largely of representative members, even though the committees appear to be offering independent *scientific* advice and should therefore be populated with SGEs.

Indeed, it appears that these agencies may be unclear as to the difference between representative and SGE members, and are giving little thought to making appointments appropriate to the type of advice sought from the committee. They continue to fill scientific committees with representative members. They continue to create committees that offer both policy and scientific advice, and then appoint representatives to give advice in both realms. Some committees contain both representatives and SGEs, which renders accurate recordkeeping and policing of conflicts of interest difficult, if not impossible.

For example:

⁵ United States Office of Government Ethics 2004, *Op. Cit.*, p. 2.

⁶ *Ibid.*

- The **Wind Turbines Guidelines Advisory Committee** at the Department of Interior was created by the agency's Fish and Wildlife Service to update its existing guidelines⁷ to industry on minimizing wind turbines' impact on wildlife. The committee's charter⁸ specifies that the committee will advise the Secretary of the Interior on avoiding wildlife impacts from wind energy production, and will recommend "scientific tools and procedures" for assessing the risks wind turbines pose to wildlife. This committee is clearly designed to offer scientific advice.

Yet the 20-member committee is composed almost entirely of representative members, including two attorneys for the wind industry, five representatives of environmental organizations, and five representatives from companies involved in wind energy production.⁹ The committee does include one SGE – Robert Robel of Kansas State University. But his independent advice is vastly outweighed by the remaining members who are providing advice motivated by stakeholder concerns.

Furthermore, conservationists who follow the committee claim the committee's composition is heavily slanted in favor of the wind industry interests that would be affected by implementation of the guidelines. "The industry members are so pro-wind that environmental concerns will be voted out on any majority report," said Michael Fry of the American Bird Conservancy. Fry and other conservationists worry that the

⁷ The FWS' "Service Interim Guidance on Avoiding or Minimizing Wildlife Impacts from Wind Turbines" is available at <http://www.fws.gov/habitatconservation/Service%20Interim%20Guidelines.pdf>.

⁸ United States Department of The Interior, Wind Turbines Guidelines Advisory Committee Charter, accessed 11/7/08 at [http://fido.gov/facadatabase/docs_charters%5C34726_Charter_\(2008-01-30-09-45-15\).doc](http://fido.gov/facadatabase/docs_charters%5C34726_Charter_(2008-01-30-09-45-15).doc).

⁹ United States Fish and Wildlife Service, Wind Turbines Guidelines Advisory Committee, accessed 12/4/08 at http://www.fws.gov/habitatconservation/windpower/wind_turbine_advisory_committee.html.

committee's slant will result in recommendations that are pro-industry and do little to minimize wind turbines' danger to birds, bats, and other wildlife.

The wind turbine committee employs subcommittees to accomplish much of its work. These subcommittees – which focus on risk and uncertainty, science tools and procedures, legal, and other topics – are not governed by FACA, even though most members of the subcommittees are members of the full committee. The subcommittees also include nonvoting experts who inform the subcommittee's work. Regulations issued by GSA in 2001 stipulate that subcommittee meetings do not have to be open to the public and their members, minutes, and other proceedings need not be disclosed. Conservationists who have followed the work of the Wind Turbines Guidelines Advisory Committee say that the subcommittee structure has allowed the agency to give industry a greater voice in the committee's work and to exclude the public from providing input at a point in the process where it could actually make a difference.

- The Agriculture Department's **National Organic Standards Board** (NOSB) has many industry-affiliated members even though its charge is distinctly scientific. The committee's charter¹⁰ charges the committee with developing a list of substances that can be included in foods labeled organic. It must also "review all botanical pesticides used in agricultural production and consider whether any of them should be included in the list of prohibited natural substances." The committee's 15 members, despite this scientific mandate, represent stakeholder groups such as Consumer/Public Interest,

¹⁰ United States Department of Agriculture, Departmental Regulation: Reestablishment of National Organic Standards Board (NOSB), May 12, 2008, Accessed 11/7/08 at [http://fido.gov/facadatabase/docs_charters%5C1303_Charter_\(2008-05-14-14-16-35\).doc](http://fido.gov/facadatabase/docs_charters%5C1303_Charter_(2008-05-14-14-16-35).doc).

Environmentalists, Farmers/Growers, Handlers/Processors, Retailers, Scientists, and USDA Accredited Certifying Agents.¹¹

The committee's representative makeup alone would call into question its suitability to provide science-based, independent advice; to make matters worse the committee includes members with ties to large agricultural corporations. Among the committee's recent appointees was Katrina Heinze of General Mills, who was designated as a representative of "scientists." Heinze was originally appointed as the Consumer and Public Interest Representative,¹² but she resigned following pressure from the Organic Consumers Association and Consumers Union.¹³ Her replacement as Consumer and Public Interest Representative was Tracy Miedema of Stahlbush Island Farms, a 4,000-acre farm in Oregon that markets its products mostly to food processors. Miedema is a former employee of General Mills.

- The Department of Energy's **National Coal Council** is charged with advising the Secretary of Energy on "scientific and engineering aspects of coal technologies, including emerging coal conversion, utilization, or environmental control concepts."¹⁴ The technological feasibility of coal conversion and environmental control concepts like carbon sequestration are pressing and contentious questions as the United States looks

¹¹ United States Department of Agriculture, Agricultural Marketing Service, National Organic Program, Current NOSB Members, accessed 11/7/08 at <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateM&navID=NationalOrganicProgram&leftNav=NationalOrganicProgram&page=NOSBCurrentMembers&description=Current%20NOSB%20Members>.

¹² Organic Consumers Association, "USDA Attempts to Pack Organic Standards Board With Corporate Agribusiness Reps: Organic Consumers Fight Hijacked Seats on NOSB," accessed 11/7/08 at http://www.organicconsumers.org/articles/article_3526.cfm.

¹³ Truthinlabeling.org, "National Organic Standards Board Stacked with Industry Reps," accessed 11/7/08 at <http://www.truthinlabeling.org/OrganicIndustry-12-06.html>.

¹⁴ United States Department of Energy, National Coal Council Charter, accessed 11/11/08 at [http://fido.gov/facadatabase/docs_charters%5C449_Charter_\(2007-12-13-09-57-10\).doc](http://fido.gov/facadatabase/docs_charters%5C449_Charter_(2007-12-13-09-57-10).doc).

for ways to wean itself from dependence on foreign oil while holding down greenhouse gas emissions.

Yet this committee has produced reports with such titles as “Coal: America’s Energy Future” and “The Urgency of Sustainable Coal.” Member Gerald Hollinden, a consultant formerly with the engineering firm URS Corporation which designs and builds power plants, testified before the Senate Energy and Natural Resources Committee in 2007 that “coal must continue its vital and growing role in energy production in the United States.”¹⁵ The committee, whose website¹⁶ proclaims the “National Coal Council: Power for America from America,” lists more than 15 representatives of the coal industry and only one representative of an organization critical of industry among its more than 100 members.¹⁷ Considering that legitimate scientific uncertainty exists as to the feasibility of “sustainable coal” or of any of the technologies for converting coal to liquid or gas so as to broaden its use,¹⁸ this committee is ill-equipped to assess and accurately convey that uncertainty.

- Finally, this investigation uncovered numerous instances where stakeholder representatives were designated as representing areas of scientific expertise such as “biology” or “archeology.” The GAO in both its 2004 and 2008 reports emphasized that

¹⁵ Testimony of Jerry Hollinden on behalf of the National Coal Council, accessed 11/11/08 at <http://www.nationalcoalcouncil.org/Documents/HollindenTestimony.pdf>.

¹⁶ National Coal Council, accessed 11/11/08 at <http://www.nationalcoalcouncil.org/>.

¹⁷ See also National Coal Council, “2008 Current FY Report: Review of Federal Advisory Committee,” accessed 12/1/08 at <http://www.fido.gov/facadatabase/rptannualreport.asp>.

¹⁸ Among the topics considered by the committee’s report “The Urgency of Sustainable Coal” were “more efficient ways to generate electricity from coal with carbon capture and storage (CCS), turning coal into pipeline quality substitute natural gas with CCS, producing liquid transportation fuels from coal with CCS, using electricity generated from coal with CCS to fuel plug-in hybrid vehicles, and exploring the feasibility of in situ underground coal gasification.” From FACA database “Justifications” form accessed 11/11/08 at http://fido.gov/facadatabase/form_Justifications.asp?ID=14263.

representative members should be appointed to represent stakeholder groups and not classes of expertise, which should be given to SGEs. For instance, 17 of 78 advisory committees at the Department of the Interior and 2 of 27 committees at the Department of Agriculture have “representatives” of such areas as academia, biology, or aquatic species.

For example, Marie Greene of the Interior Department’s National Park Service Advisory Board is appointed as a representative of “Social Science/Natural Resources Management.” But she is employed as the president of NANA Regional Corporation, Inc. – a for-profit development corporation that manages hotels, develops energy resources, and consults in engineering and construction in Alaska. Linda Kennedy, who is not connected to any university, is a representative “Academician of Natural Resources” on Interior’s Arizona Resource Advisory Council. She is the Director and Science Coordinator for the National Audubon Society’s Appleton-Whittel Research Ranch in Elgin, AZ. A. Ross Black, a professor at Eastern Washington University, is a representative “Academician” on Interior’s Eastern Washington Resource Advisory Council. He also received more than \$150,000 in research funding from the Bonneville Power Administration – a federal marketing agency for power in the Pacific Northwest – between the years 2000 and 2002.¹⁹ These members should have been designated as SGEs, screened for conflicts of interest, and, given their financial ties to special interest groups, either replaced by scientists without conflicts of interest or granted waivers because they had unique expertise required by the committee.

¹⁹ “Curriculum Vitae, A. Ross Black PhD,” November 2001, accessed 12/15/08 at <http://www.ewu.edu/groups/biology/black/rossblackcv.pdf>.

Finding 2: In some agencies that changed member status from representatives to SGEs after 2004, the change was in appearance only.

The 2008 GAO report found that the Department of Energy (DOE) made significant progress since 2004 in appointing special government employees (SGEs) – and not stakeholder representatives – to committees expected to provide independent scientific advice. In 2005, 16 of 17 DOE committees were primarily composed of representative members. By 2008 the number was only 7 of 19. The function of these committees – providing technical advice to DOE on topics such as nuclear energy, climate change, and hydrogen fuel cell development – renders the SGE designation appropriate.

Though the DOE increasingly appears to adhere to the letter of the GAO’s recommendation, the changes did not always address its spirit. On nine DOE committees that existed in both 2005 and 2008, the committee members originally appointed as representatives of stakeholder groups were simply redesignated as SGEs. All these committees were offering scientific advice before and after the change in designation.

For instance, the **Nuclear Energy Advisory Committee**²⁰ (NEAC) is charged with advising DOE on the policy, scientific, and funding aspects of the U.S. nuclear energy program. Though the committee also offers advice on policy and funding, scientific advice is clearly a significant part of this committee’s mandate. Yet half of the 12 committee members – including Marvin Fertel of the Nuclear Energy Institute, the nuclear industry’s trade group; William Martin of Washington Policy and Analysis,

²⁰ At <http://www.ne.doe.gov/neac/neNeacOverview.html>.

which consults²¹ for the nuclear industry; and Michael Corradini of the University of Wisconsin-Madison, who resigned²² from another DOE panel in late 2003 after Public Citizen questioned²³ his ties to the Nuclear Energy Institute – were appointed as representatives prior to 2006, and designated SGEs thereafter. The Natural Resource Defense Council’s (NRDC’s) Thomas Cochran – the sole committee member representing environmental interests – was also a representative prior to 2006 and improperly designated an SGE thereafter. Although all these members may have expertise that qualifies them to offer scientific advice, they all have affiliations that motivated their initial appointment as representatives of stakeholder groups. Those affiliations should at the very least have been documented – and the necessity for the members’ continued service explained – in conflict-of-interest waivers issued at the time of their reappointment as SGEs.

According to John Bogar, the federal official in charge of the committee, the 2004 GAO report resulted in a directive to avoid appointing representative members to all DOE committees and to conduct intensive screening for conflicts of interest among members appointed as special government employees. Hence, Bogar says, only one committee member – Brew Barron of Constellation Energy Group – is appointed as a representative. However, at least two of 11 SGEs on the committee, in addition to Fertel,

²¹ WPA’s clients listed at http://www.wpainc.com/no_flash/clients.html.

²² See Michael Corradini, “Letter of resignation from the US Nuclear Waste Technical Review Board,” December 30, 2003, accessed 10/23/08 at <http://www.nwtrb.gov/corr/mlcres.pdf>.

²³ See Lisa Grue, “New Chair of Key Nuclear Review Board Prompts Concerns about Objectivity on Yucca,” accessed 10/23/08 at http://www.citizen.org/print_article.cfm?ID=8903.

Martin, and Corradini, have ties to the nuclear industry.²⁴ And while Marvin Fertel has been recused from speaking on certain issues that might impact the interests of his employer, according to Bogar, no waivers were issued for the remaining committee members who had conflicts of interest.²⁵

Since 2006, a primary focus of NEAC has been advising DOE on the Department's Global Nuclear Energy Partnership program (GNEP) – an effort to promote international development and commercialization of technologies for recycling spent plutonium to generate nuclear energy. NRDC's Cochran says the committee is “heavily stacked for industry” in these discussions, and, in fact, meeting minutes²⁶ indicate that committee members overall support GNEP and an accelerated schedule for commercialization of spent fuel recycling technologies. George Mason University's Allison MacFarlane, who was a member of a National Academy of Sciences panel²⁷ that criticized GNEP earlier this year, noted that the nuclear industry supports GNEP because it represents an opportunity for more federal subsidies and for claiming to have solved the nuclear waste disposal problem.

However, MacFarlane argued that large-scale conversion to facilities that recycle spent fuel would actually generate *more* radioactive waste than current facilities,

²⁴ Sue Ion was Group Director of Technology for British Nuclear Fuels, an international nuclear energy business, from 2002-2006, and continues to consult for that company. See Engineering and Physical Sciences Research Council site at <http://www.epsrc.ac.uk/Content/Documents/Biographies/SueIon.htm>. Dan Poneman is with the Scowcroft Group, which consults for the energy and utility industries. See Scowcroft Group website at <http://www.scowcroft.com/html/clients.html>.

²⁵ John Bogar, personal communication, October 2008.

²⁶ Accessed 10/20/08 at <http://www.ne.doe.gov/neac/neNeacMeetings.html>.

²⁷ Committee on Review of DOE's Nuclear Energy Research and Development Program, National Research Council, Review of DOE's Nuclear Energy Research and Development Program, Washington, DC: The National Academies Press, 2008. Accessed 10/22/08 at http://books.nap.edu/openbook.php?record_id=11998&page=R1.

which operate on a once-through or open fuel cycle. “Commercial reprocessing and recycle will not help solve resource or waste or proliferation problems and are not sensible technical goals for the United States for the foreseeable future,” according to MacFarlane and energy consultant Victor Gilinsky, who was also on the NAS panel.²⁸ So although NEAC is a panel of SGEs appointed to offer “their own individual best judgment on behalf of the Government,”²⁹ members are actually giving policy advice that supports moving forward on a controversial DOE nuclear energy program on the basis of inconclusive scientific information – a task more suited to a representative committee whose members speak for various constituent groups.

While it is legal for scientific committees comprised of SGEs to offer policy advice, they should do so only after considering all the scientific evidence in a fair and impartial manner. Rather than promoting DOE plans to move forward with commercial development of an unproven technology of questionable safety and economic feasibility, NEAC should be focusing on the scientific questions of whether this technology is economically feasible and technically capable of solving the nuclear waste disposal problem. Those questions should be answered by independent scientists with no stake in the industries that would be impacted by the evaluation.

²⁸ *Ibid.*, “Appendix A: Minority Opinion: Dissenting Statement of Gilinsky and Macfarlane.” accessed 10/22/08 at http://books.nap.edu/openbook.php?record_id=11998&page=73.

²⁹ United States Office of Government Ethics memorandum, August 18, 2005, accessed 10/28/08 at http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2005/do05012.pdf.

Finding 3: Agencies fail to issue conflict-of-interest waivers that document the unique expertise of special government employees with conflicts of interest.

NEAC is just one of many advisory committees whose members have ties to firms with a direct financial stake in matters under consideration by the committees. While committee members with conflicts of interest may be appointed when “the need for the individual’s services outweighs the potential for a conflict of interest,”³⁰ Office of Government Ethics regulations specify that such appointments require waivers from the official making the appointment. The waivers should explain the relevant conflicts of interest and the reason that the members’ expertise is deemed important enough to outweigh the conflicts.

Of 19 Energy Department advisory committees, 12 have at least one SGE with a financial interest in the issues discussed by the committee (many other members may have conflicts that were not identified by the authors of this report). No waivers were issued for any of these members. The result is a large number of advisory committees that include industry members who are providing scientific advice, but with no documentation of the potential for bias in the advice they are providing. The **Biomass Research and Development Technical Advisory Committee**, for instance, is charged with providing³¹ advice on “the technical focus and direction of requests for proposals issued under the Biomass Initiative” – clearly a mandate for technical advice best

³⁰ 18 U.S.C. 208(b)(3).

³¹United States Department of Energy, Biomass Research and Development Technical Advisory Committee Charter, accessed 10/3/08 at [http://www.fido.gov/facadatabase/docs_charters%5C10674_Charter_\(2007-05-14-14-33-01\).doc](http://www.fido.gov/facadatabase/docs_charters%5C10674_Charter_(2007-05-14-14-33-01).doc).

rendered by independent scientists. Yet the committee includes SGE Gil Gutknecht, a former Republican congressman who consults with three renewable energy companies and is a partner in a fourth. When in Congress, Gutknecht received \$53,000 in campaign contributions from companies that produce crops used for biofuels and \$12,000 from the sugar industry.³²

Similarly, the Energy Department's **Biological and Environmental Research Advisory Committee** includes SGE Stephen Padgette, Vice President of Biotechnology with Monsanto. The DOE's **Climate Change Science Program Development Advisory Committee** includes SGE Brian Flannery, Manager of Science Strategy and Programs with ExxonMobil. The **Environmental Management Advisory Board**, which provides both policy and technical advice to DOE on cleanup of nuclear weapons facilities, has five SGE members who have financial ties to nuclear-weapons and nuclear-energy companies. None of those financial relationships were disclosed in waivers that document the need for those members' unique expertise, which under FACA must be substantial enough to override their conflicts of interest.

The problem isn't limited to the Department of Energy. The Department of Interior's **North Slope Science Technical Advisory Panel (STAP)** provides scientific advice on the environmental impact of industrial development on the North Slope of Alaska. It includes two scientists designated as SGEs even though they are employed by Conoco/Philips and BP. While these scientists have not pushed the committee toward

³² Opensecrets.org, "Gil Gutknecht, Top 5 Contributors, 2005-2006 and Top 5 industries 2005-2006," accessed 10/30/08 at <http://www.opensecrets.org/politicians/summary.php?cid=N00004527&cycle=2006>.

obviously industry-friendly recommendations, according to environmentalists on the committee, the generally pro-industry orientation of the department has hindered the committee's ability to do much work at all. "The political agenda has crippled this committee from being an effective science tool," said Wendy Loya of the Wilderness Society, who was also inappropriately designated as an SGE on the committee. Although the financial relationships of committee members have not yet led to a slanting of the committee's advice, they should at the very least have been documented in conflict-of-interest waivers. Those waivers would have signified that the agency appreciates the significance of conflicts of interest and their potential to undermine a committee's impartiality.

Finding 4: Some representative advisory committees are not balanced.

In addition to concerns about conflicts of interest among the SGEs appointed to serve on advisory committees and the improper appointment of representatives to serve as experts, the 2004 and 2008 GAO reports raised additional concerns about purely representative committees. The first of these is balance.

The Federal Advisory Committee Act requires that advisory committees "be fairly balanced in terms of the points of view represented."³³ In the Interior Department, 17 committees engaged in assessing resource use on national lands are composed overwhelmingly or exclusively of members who represent only one side of the issue. For example, ten **Subsistence Regional Advisory Councils** representing regions of Alaska are comprised exclusively of members representing "fish and wildlife resource users."

³³ 5 U.S.C. app. I, § 5(b)(2) and (c).

They include no members who might advocate conservation over resource use. An additional six **National Park Service Subsistence Resource Commissions** are nearly exclusively comprised of subsistence hunters or other subsistence users. The 12-member **Sporting Conservation Council**, which advises the secretaries of Interior and Agriculture about “wildlife conservation endeavors that benefit recreational hunting” but also should encourage partnerships between “the public, the sporting conservation community, wildlife conservations groups” and government, consists of one representative of fish and wildlife resource agencies and eight representatives of hunting and big game organizations. The three representatives from “wildlife conservation” groups include the Congressional Sportsmen’s Foundation – a lobbying group for hunters and fishermen – and the National Rifle Association.³⁴

In the Department of Agriculture, several committees associated with food production have members who are almost exclusively affiliated with one industry. The **Fruit and Vegetable Industry Advisory Committee** and **Grain Inspection Advisory Committee**, for example, are almost exclusively composed of members affiliated with the industries whose interests are at stake in the committees’ deliberations. Even if one accepts that these committees are meant to promote the interests of their respective industries, there are varying perspectives on how that might best be accomplished. The vantage point of, say, consumers and safety advocates, for instance, could have been taken into account when appointing members to these committees.

³⁴ Federal Advisory Committees Database Members Form, accessed 8/26/08 at http://fido.gov/facadatabase/form_Members.asp.

The **National Wildlife Services Advisory Committee** advises the Department of Agriculture on its Wildlife Services program, whose chief responsibility is control of wildlife deemed a nuisance by ranching, farming, and other commercial interests. Of the 20 members on this committee, 11 represent interests that wish to maintain or expand Wildlife Services' wildlife control programs. These members include five representatives of the livestock industry and one employee of Varmint Guard Environmental Services, which provides wildlife removal and pest control products and services. Only three members represent animal welfare interests, and they have expressed concerns that the committee's recommendations³⁵ tend to include maintenance or expansion of existing wildlife control programs, which killed 2.4 million wild animals³⁶ in 2007. At the August 4, 2008 meeting, members voted to recommend the continued use of currently approved lethal poisons for predator control.³⁷ Toxicants currently approved for use by Wildlife Services include sodium cyanide and sodium fluoroacetate, both subjects of current reviews by the Environmental Protection Agency for a possible ban.³⁸

Finally, some stakeholder groups enjoy unofficial representation in addition to their stated representation on DOI committees. The Department of Interior has 28

³⁵National Wildlife Services Advisory Committee Meeting Summary/Decision Document, June 19-20, 2007, accessed 9/30/08 at http://www.aphis.usda.gov/wildlife_damage/nwsac/2007%20NWSAC%20Documents/NWSAC%20Decision%20Document%202007.pdf.

³⁶ USDA Animal and Plant Health Inspection Service, "Table G. Animals Taken by Component/Method Type and Fate by Wildlife Services - FY 2007" accessed 9/30/08 at http://www.aphis.usda.gov/wildlife_damage/annual%20tables/2007%20PDRs/FY%202007%20Individual%20PDRs/National%20Tables/PDR_G_FY2007_National.pdf.

³⁷ National Wildlife Services Advisory Committee, Tuesday, November 4, 2008, accessed 11/13/08 at http://www.aphis.usda.gov/wildlife_damage/nwsac/2008%20NWSAC%20Documents/Approved%20NWSAC%20August%202008%20minutes.pdf.

³⁸ "Petition Requesting EPA to Issue a Notice of Intent to Cancel the Registrations of M-44 Sodium Cyanide Capsules and Sodium Fluoroacetate." Federal Register 72:221 (16 November 2007), pp. 64623-64624.

Resource Advisory Councils, which are charged with providing advice to the Bureau of Land Management on land use planning and management on its 264 million acres of land holdings.³⁹ The committees' charters call for members to represent three groups of stakeholders: grazing permit holders or representatives of extractive industries and commercial recreation; representatives of environmental and archeological groups; and representatives of state and local elected office and/or representatives of relevant natural science fields in academia. But commercial interests, such as grazing, dominate these committees because the ostensible representatives for other groups are in fact doing double-duty as representatives for commercial interests.

For example, Interior's 15-member **Boise District Resource Advisory Council** has three appointed representatives of grazing interests. But several other members on the committee representing other stakeholder groups are ranchers, too. Margaret Soulen-Hinson, the "Public-At-Large" representative on the committee, is a rancher; so is Ted Howard, the representative of "Native American Tribes." Gerald Koppenhauser, the "Elected Official" representative on the **Southwest Regional Advisory Council** until August of 2008, is also a rancher, even though this committee has two additional representatives of grazing permittee interests.

³⁹ "Notice of Resource Advisory Council Call for Nominations." Federal Register 73:40 (28 February 2008), pp. 10804-10805.

Conclusion

Many federal agencies continue to flout the requirements of the Federal Advisory Committee Act and guidances from the Office of Government Ethics.

Specifically, we found that:

- **Many committees offering scientific advice include members who represent stakeholder groups, yet have been improperly categorized as scientific advisers;**
- **Several advisory committees changed their members' designation from representative to SGE, but left the same people in place, effectively side-stepping the conflict of interest screening provisions in the law;**
- **Numerous advisory committees fail to issue waivers that document the unique expertise that would justify the appointment of SGEs with conflicts of interests; and**
- **Many representative advisory committees are not balanced, but dominated by representatives with ties to industry.**

In addition:

- The federal government consistently fails to provide information that would allow the public to meaningfully engage in the advisory committee process. A publicly available advisory committee database maintained by the General Services Administration⁴⁰ is outdated and incomplete. And while agencies

⁴⁰ U.S. General Services Administration, FACA Database at FIDO Gov, accessed 11/12/08 at <http://fido.gov/facadatabase/>.

provide the public with some timely information by devoting portions of their websites to their advisory committees – the Department of Energy, for example, provides a link to an agency website for most committee entries within the GSA database – no such website exists for many advisory committees; and

- The information provided on agency websites is inconsistent. Some websites provide detailed biographical information about committee members; others do not. Some maintain records of meeting agendas, minutes, and other meeting information that is required by FACA to be made publicly available; others do not. Virtually all fail to disclose relevant conflicts of interest. The Food and Drug Administration may be the only agency that publicly documents its reasons for appointing to scientific advisory committees members with conflicts of interest, and it only does so because of a 2007 law.

Given the vital role that advisory committees play in shaping federal policy, these deficiencies must be addressed. Agencies charged with protecting the public's health, safety, environmental, and economic interests should base their decisions on unbiased scientific advice, and policymakers negotiating a course between conflicting priorities should get advice from all stakeholder groups, not just those that represent powerful economic interests. This report documents glaring inadequacies in the federal advisory committee process that undermine both of those goals. The following reforms will restore the integrity of the scientific advisory committee system.

Recommendations

A 2006 CSPI report⁴¹ on the National Academy of Sciences urged many reforms to that institution's advisory committee system, and may have prompted the NAS to more consistently screen for and disclose conflicts of interest among its committee members. Also, the Food and Drug Administration has issued guidance⁴² that clarifies the agency's advisory committee appointment policies, which include clear provisions for conflict of interest screening, disclosure, and waivers. The Environmental Protection Agency has improved disclosure of conflicts of interest on its Scientific Advisory Board panels.

As this report documents, however, at least three federal departments have failed to correct problems with their advisory committees. Concern about that inaction prompted Representatives William Clay (D-MO) and Henry Waxman (D-CA) to introduce the Federal Advisory Committee Act Amendments of 2008. H.R. 5687 passed the House in June 2008 but died in the Senate.⁴³ It would correct many of the deficiencies regarding balance, conflict of interest screening, and transparency. H.R. 5687 would require that:

⁴¹ The Center for Science in the Public Interest, 2006. "Ensuring Independence and Objectivity at the National Academies." The Center for Science in the Public Interest, Washington DC, accessed 11/13/08 at <http://cspinet.org/new/pdf/nasreport.pdf>.

⁴² United States Food and Drug Administration, "Guidance for the Public, FDA Advisory Committee Members, and FDA Staff: Public Availability of Advisory Committee Members' Financial Interest Information and Waivers." U.S. Department of Health and Human Services Food and Drug Administration, August 2008, accessed 11/14/08 at <http://www.fda.gov/oc/advisory/GuidancePolicyRegs/ACDisclosureFINALGuidance080408.pdf>.

⁴³ GovTrack.us, H.R. 5687--110th Congress (2008): Federal Advisory Committee Act Amendments of 2008, accessed Nov 12, 2008 at <http://www.govtrack.us/congress/bill.xpd?bill=h110-5687>.

- appointments to advisory committees be made without regard to political affiliation;
- consultants who regularly attend committee meetings, even if not entitled to a vote, be considered “members” of the committee and subject to the requirements of FACA;
- subcommittees be subject to FACA, thus precluding agencies from avoiding FACA’s conflict of interest screening and balance requirements by appointing additional committee members to subcommittees that do the bulk of the committee’s work;
- proceedings of subcommittees, as well as all communications made by any committee or subcommittee member on behalf of the committee, be made available to the public;
- the Office of Government Ethics issue regulations defining what constitutes a conflict of interest, and specifying a common means by which all agencies must disclose those conflicts to the public;
- agencies consider representative members’ relevant conflicts of interest, when those conflicts arise outside of members’ associations with the entities they are appointed to represent;
- committee charters include a description of the expertise needed to carry out the committee’s work; a description of whether the committee will be composed of special government employees, representatives, or both; and whether the committee has the authority to create subcommittees.

- require agencies publish on their websites, at least 15 days before each committee meeting, information including the committee charter, a description of the process used to identify and select members, and a justification of the need for any representative members. Agencies also would be required to publish, at that time, a list of all members, including, for each member:
 - The name of any person or entity that nominated the member,
 - The reason for the member's appointment,
 - Whether the member is designated as a special government employee or a representative,
 - In the case of a representative, the individuals or entity whose viewpoint the member represents,
 - Any conflict of interest relevant to the functions to be performed by the committee,
 - For those members designated as special government employees for whom waivers of conflicts of interest were made, a summary description of the conflict necessitating the certification, and the reason for granting the certification.
- agencies make available on their websites a summary of the process used by the advisory committee for making decisions, transcripts or audio or video recordings of all meetings, any written determination by the president or the head of the agency to which the advisory committee reports to close a meeting and the reasons for the determination, and notices of future meetings.

Enacting H.R. 5687 would represent tremendous progress toward correcting the extensive deficiencies in the federal agency advisory committee system and restoring balance and transparency to the process by which advisory committees influence federal decisions.

- In addition to the reforms included in the legislation, Congress should take additional steps to ensure transparency and facilitate the public's participation in the federal advisory committee process. This includes adopting a standard procedure across all government agencies whereby:
- Agencies solicit nominations of committee members from the general public via a Federal Register notice and a listing on the agency website at least three months before the first meeting of the committee. The public should then be given 30 days to respond and provide nominations;
- Agencies publish the information specified in H.R. 5687 and listed in item (8) above at least 45 days before the first meeting of the committee, giving the public 15 days to comment on the nominations;
- Agencies review comments received and publish a final list of members 15 days in advance of the committee's first meeting, as specified in H.R. 5687. The final committee membership should also be listed on agency websites, along with a listing of conflict-of-interest waivers issued and the justification for each waiver. These procedures should apply to both

representative and scientific committees, because conflicts of interest - as recognized by H.R. 5687 - may be relevant with respect to representative members as well as SGEs.

- When determining conflicts of interest, agencies should look back at least three years into a potential member's history of financial affiliations, including research funding, consulting fees, employment, patents, investments, and any other relevant financial relationships, as determined by the Office of Government Ethics.
- Individuals with conflicts of interest should be prohibited from serving as voting members of scientific advisory committees. Individuals with unique expertise that cannot be obtained elsewhere should be granted, by the agency official who appointed the member, a written certification specifying that the member is permitted to provide information to the rest of the committee but not to vote on committee matters.
- Agencies should devote an easily identified portion of their websites to their advisory committees, with all information pertaining to committee appointments, meetings, minutes, audio and video recordings, and additional information posted in a consistent format for each committee. Each committee's entry in the GSA's FACA database should link to the committee's agency website, and the FACA database entries should be updated in a timely fashion.

- Agency advisory committee websites should include a clear designation of whether each committee is offering stakeholder or scientific advice, or a combination thereof.

The hundreds of federal agency advisory committees whose deliberations affect the health and safety of the American people face growing scrutiny by Congress, public interest organizations, and members of the public. The new administration should act immediately to address longstanding deficiencies in the advisory committee system, especially since the federal agencies themselves appear reluctant to respond to repeated criticisms of their management. Many of the reforms outlined here could be implemented quickly by the Obama administration by means of an Executive Order clarifying the Federal Advisory Committee Act.

In the longer term, a strengthened Federal Advisory Committee Act, which included the reforms embodied in H.R. 5687 and additional refinements suggested here, would go a long way toward restoring the public's faith in the integrity of the government's advisory committee system.