



State of West Virginia
Office of the Attorney General

Patrick Morrissey
Attorney General

(304) 558-2021
Fax (304) 558-0140

April 14, 2021

The Honorable Michael S. Regan
Administrator, Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Regan,

As Attorney General of West Virginia, I write seeking an explanation for the recent reports that you have “purge[d]” all members from Environmental Protection Agency’s Science Advisory Board (“SAB”) and Clean Air Scientific Advisory Committee (“CASAC”).¹ Objectivity is essential to these committees’ scientific and technical work. Such aggressive and wholesale restructuring threatens to politicize their work, and thus calls their future objectivity into question.

Extraordinary actions require extraordinary explanations—and comprehensive purges of the Agency’s scientific advisors are unprecedented in modern memory. Because of their objective and technical nature, these boards are often unmoved by the political waves of a new party winning the White House. This customary continuity meant that many of the purged SAB members were initially appointed under President Obama and re-appointed under President Trump.

Although your statement following this upheaval expressed commitment to “scientific integrity,” it fell short of explaining why such a drastic purge was necessary for or consistent with that goal.² For example, your statement referred to the previous administration’s policy of not appointing members to these boards if they received Agency funding in their professional capacity. You may plan to appoint members who do receive Agency funding, but it does not stand to reason

¹ Lisa Feldman, *The EPA Administrator Purges Its Scientific Advisory Boards, Which Included Many Trump Appointees*, NEW YORK TIMES (Mar. 31, 2021), available at <https://www.nytimes.com/2021/03/31/us/epa-advisory-boards-trump.html>.

² U.S. Env’t Prot. Agency, *Administrator Regan Directs EPA to Reset Critical Science-Focused Federal Advisory Committees* (Mar. 31, 2021), available at <https://www.epa.gov/newsreleases/administrator-regan-directs-epa-reset-critical-science-focused-federal-advisory>.

that existing members who did not receive such funding should have been terminated—particularly when those members served under Republicans and Democrats alike.

In these uncertain times, it is more important than ever that SAB and CASAC remain free of political influence. Pressure cannot be allowed to steer the Agency away from comprehensive, objective, and scientific assessment of both the problem and the proposed solutions.

For example, the SAB reviews the guidelines for how the Agency analyzes the economic impact of its actions and proposals. Last year, my Office highlighted the good work the SAB was doing to improve the Agency’s understanding of a problem that West Virginians understand very well: regional economic dislocation.³ Previous Agency guidelines simply assumed that if a regulation required a business to spend more on compliance costs, then that added spending will create jobs. The proposed revisions rightly note that the question is rarely that simple. Regulations can increase the demand for some types of labor while decreasing the demand for other types. And when these different types of labor are concentrated in different States or regions, shifting demand from one to the other can cause severe regional unemployment—even if there is no net effect on national employment overall.

Regional economic dislocation is just one example of the issues facing the SAB, but it promises to be a crucial factor in advancing new technologies. For example, the path chosen by the Agency in its ill-fated “Clean Power Plan” was explicitly premised on “generation shifting”—forcing existing generation sources to subsidize the transition to other forms of power.

It is essential that you remain conscious of the impartial advice of the SAB as you choose your course. The U.S. Supreme Court’s extraordinary stay of the Clean Power Plan should no doubt caution against following its furthest legal excesses in any future rule, but the SAB’s guidance on economic dislocation should help steer you away from taking any step down that deeply flawed pathway.

* * *

President Biden’s executive order on climate expressly stated that “we must listen to science” in meeting the challenge of climate change.⁴ Thus, it is crucial to demonstrate that the decision to purge the Agency’s scientific boards was not driven by political calculations. It would be entirely antithetical to the scientific method—to say nothing of the Administrative Procedures Act—for the Agency to decide its preferred policies in advance *before* any objective analysis is done, and then stack the deck to ensure that analysis is done by people who share those preferences.

³ *Comments of Attorney General Patrick Morrisey on Proposed Revisions to the Board of Scientific Advisors’ Guidelines for Preparing Economic Analyses* (Apr. 23, 2020), available at [https://ago.wv.gov/publicresources/Documents/2020-04-23%20SAB%20Letter%20\(M0407875xCECC6\).pdf](https://ago.wv.gov/publicresources/Documents/2020-04-23%20SAB%20Letter%20(M0407875xCECC6).pdf)

⁴ *Tackling the Climate Crisis at Home and Abroad* (Executive Order 14008), 86 Fed. Reg. 7619, 7619 (Jan. 27, 2021).

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Attempting to shape the science, rather than listen to it, would of course be unsuccessful. As always, my Office stands ready to file suits against any Agency actions that are unsupported by objective and reasoned decision-making. Nonetheless, I hope you can provide an explanation for these recent actions that dispels any doubt that these committees will remain committed to practicing objective analysis, rather than simply printing loyal partisan propaganda.

Sincerely,

A handwritten signature in blue ink that reads "Patrick Morrissey". The signature is written in a cursive, slightly stylized font.

Patrick Morrissey
Attorney General of West Virginia