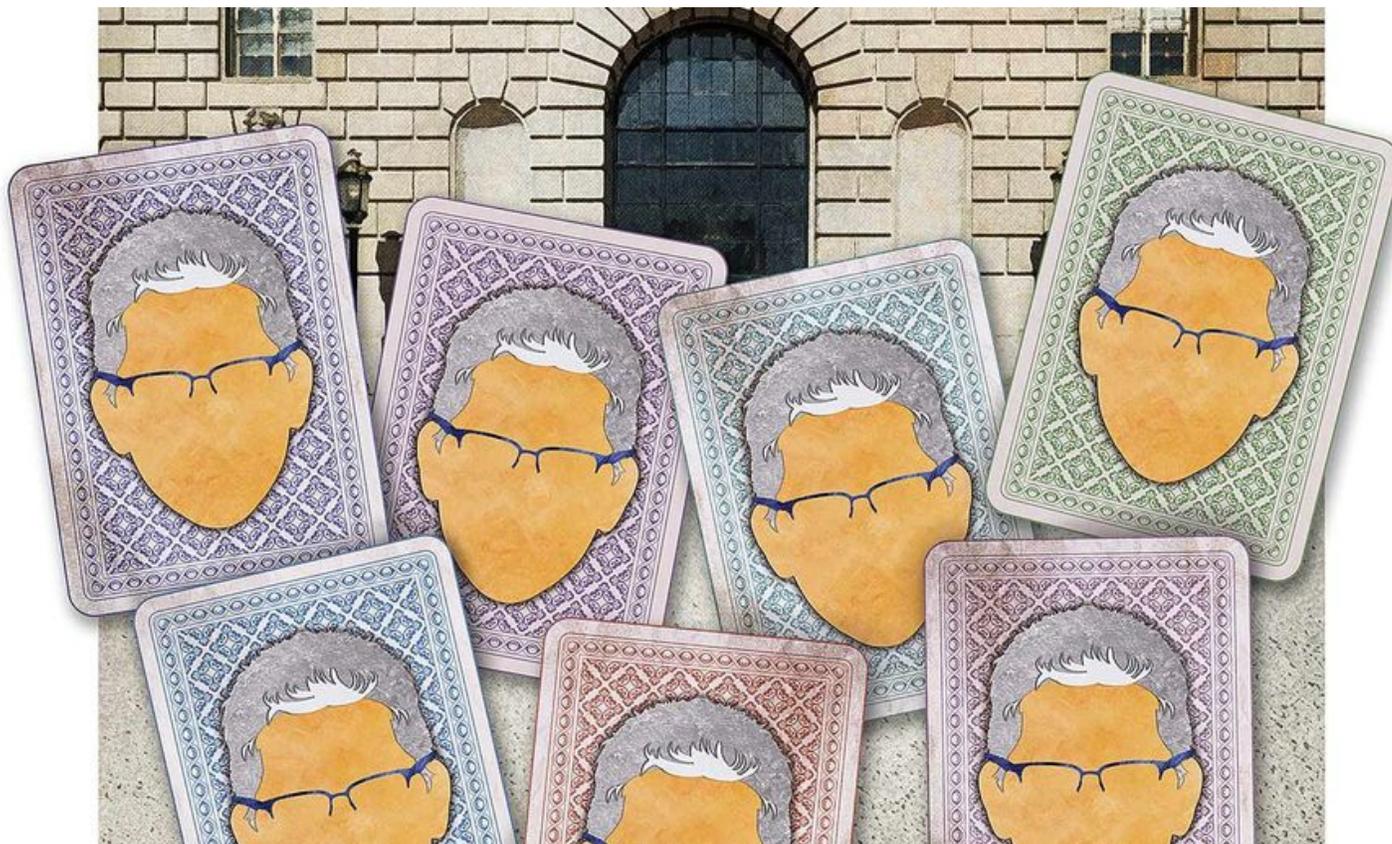


# Corrupting an 'independent' science panel

The EPA illegally stacks a key science advisory board



Stacking the Deck at the EPA Illustration by Greg Groesch/The Washington Times more >

By Steve Milloy - - Sunday, August 7, 2016

## ANALYSIS/OPINION:

The Environmental Protection Agency has illegally stacked a key science advisory board with highly paid cronies — but nothing can be done about it. I have a comatose lawsuit to prove it.

We sued the EPA in May because a panel of the agency's Clean Air Scientific Advisory Committee (CASAC) was selected in violation of the Clean Air Act and the Federal Advisory Committee Act, both of which require that CASAC be independent and unbiased.

The CASAC panel of concern is its Particulate Matter Review Panel for 2015-2018. It will pass judgment on EPA's scientific assessment of the health risks of particulate matter (soot and dust) in outdoor air ahead of EPA's next mandated review of the existing standards for particulate matter, perhaps the agency's flagship regulatory program.

The EPA claims that particulate matter in outdoor air kills somewhere between 300,000 to 570,000 people per year. It has used this claim to fuel the Obama administration's coal industry-killing war on coal and the most expensive EPA regulation ever — its outdoor air standard for ozone (smog).

The agency has spent almost \$600 million on "scientific" research literally fabricating the notion that particulate matter in outdoor air kills. The EPA's "science" has been difficult to challenge since the agency has hidden the key data from the public and Congress for 20 years.

Instrumental to EPA has been CASAC, which has spent the past 15 years rubber-stamping the EPA's desired conclusions.

In 1996 when the EPA first claimed that particulate matter killed, CASAC rejected the claim, writing, "[Death] does not appear to be unambiguously related to any single pollutant let alone a specific portion of the particulate matter." Of the 21 members of that CASAC particulate matter panel, two-thirds did not receive funding from EPA and could plausibly be considered as "independent."

But since agency didn't like the CASAC's conclusions, it reconstituted the particulate matter panel to get a more favorable result. During the 2000s, the CASAC particulate matter panel was more than two-thirds comprised of EPA-funded scientists and, not surprisingly, it saw things the EPA's way.

Now that the Obama EPA has discovered the potency of its particulate matter as a regulatory weapon, the EPA's "science" must be protected at all costs. Despite legal requirements to the contrary, the new particulate matter panel is clearly anything but independent and unbiased. Of its 26 members, 24 have received grants from EPA in an

amount exceeding \$220 million. As CASAC works on a consensus basis, and the two non-EPA-funded panel members include a state regulator and a timid, token representative from an extremely cowed electric utility industry, “the fix is in” again.

Our lawsuit asked a federal court to order EPA to comply with the law and reconstitute the particulate matter panel so as to be independent and unbiased. The EPA responded with two primary arguments. First, the ever-arrogant EPA said it was not subject to the Federal Advisory Committee Act (FACA) — despite the fact that in its official announcement about the particulate matter panel’s formation, the agency stated the particulate matter subpanel “will comply with the provisions of FACA .”

The more problematic of EPA’s defenses against our lawsuit, however, is the agency’s assertion that my not-for-profit group lacks standing to bring the lawsuit in the first place. The EPA pointed to a very recent federal appellate court decision basically concluding that unless we offered up an individual plaintiff who was denied membership on the particulate matter panel, we could not sue until the entire particulate matter regulatory process was over, somewhere around 2018 or later. Recognizing the legal reality, we withdrew our lawsuit to avoid the court doing it for us with prejudice.

The agency’s argument might sound reasonable until you realize that the EPA is not actually required to follow advice from CASAC. That’s how the EPA was able to regulate particulate matter on the basis that it kills in 1996 despite the conclusion to the contrary of the 1996 CASAC panel. It’s not hard to imagine that a future 2018 legal challenge to EPA’s new particulate matter regulations would be subject to an argument from EPA that the advice of CASAC doesn’t even really matter in the first place.

So why does the EPA even bother with CASAC? First, the Clean Air Act requires that EPA consult with a panel of independent scientists. Next and possibly more importantly, an EPA-friendly CASAC panel provides EPA scientific cover for its otherwise junk science-fueled regulatory agenda.

The larger point in all this is that Congress has enacted all sorts of “good government” laws aimed at ensuring that regulatory agencies like the EPA do their jobs properly and according to the law. But all this amounts to legal lip service, since there is no mechanism for the public to actually enforce them. My group is a public interest charity whose mission is, in part, to enforce good government laws. But as in the case of EPA’s CASAC, that is not possible since Congress did not explicitly provide an enforcement mechanism such as a right to sue.

Even in good government laws where Congress has provided a right to sue, such as the Freedom of Information Act, the laws fail to provide any legal consequences for agencies that fail to comply with their provisions. Not only have we had this experience with the EPA, but consider the extreme case of Hillary Clinton's blatant and consequence-free efforts to avoid public disclosure laws by using a private email server for official State Department business.

Good government laws are nice but without a means to enforce them and meaningful consequences when they are violated or disregarded, they are merely illusory and a fraud on the public.

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