

HENRY A. WAXMAN, CALIFORNIA
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
EDOLPHUS TOWNS, NEW YORK
FRANK PALLONE, Jr., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
ELIOT L. ENGEL, NEW YORK
ALBERT R. WYNN, MARYLAND
GENE GREEN, TEXAS
DIANA DEGETTE, COLORADO
VICE CHAIRMAN
LOIS CAPPS, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
JANE HARMAN, CALIFORNIA
TOM ALLEN, MAINE
JAN SCHAKOWSKY, ILLINOIS
HILDA L. SOLIS, CALIFORNIA
CHARLES A. GONZALEZ, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE ROSS, ARKANSAS
DARLENE HOOLEY, OREGON
ANTHONY D. WEINER, NEW YORK
JIM MATHESON, UTAH
G.K. BUTTERFIELD, NORTH CAROLINA
CHARLIE MELANCON, LOUISIANA
JOHN BARROW, GEORGIA
BARON P. HILL, INDIANA

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER
RALPH M. HALL, TEXAS
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
BARBARA CUBIN, WYOMING
JOHN SHIMKUS, ILLINOIS
HEATHER WILSON, NEW MEXICO
JOHN B. SHADEGG, ARIZONA
CHARLES W. "CHIP" PICKERING, MISSISSIPPI
VITO FOSSELLA, NEW YORK
ROY BLUNT, MISSOURI
STEVE BUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO MACK, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE FERGUSON, NEW JERSEY
MIKE ROGERS, MICHIGAN
SUE MYRICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE

March 13, 2008

DENNIS B. FITZGIBBONS, CHIEF OF STAFF
GREGG A. ROTHSCHILD, CHIEF COUNSEL

The Honorable Stephen L. Johnson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Johnson:

Under Rules X and XI of the Rules of the U.S. House of Representatives, the Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are investigating the use of the chemical Bisphenol A (BPA), particularly in products intended for use by infants and children. We are also investigating industry's use of consulting firms such as the Weinberg Group to manipulate public opinion related to certain chemicals.

In the course of our investigation, we discovered that the Environmental Protection Agency (EPA), at the request of the chemical industry, removed Dr. Deborah Rice as the chair of an external peer review panel that was reviewing the draft health assessment for decabromobiphenyl ether (deca), a type of polybrominated diphenyl ether (PBDE) used widely as a flame retardant in electronic equipment. Dr. Rice's dismissal occurred after the American Chemistry Council (ACC) wrote to Assistant Administrator for Research and Development, George M. Gray, on May 3, 2007, to complain that Dr. Rice's appointment exhibited a conflict of interest and an "appearance of a lack of impartiality," based primarily on testimony she gave to the Maine State Legislature related to the dangers of deca.

We have reviewed the ACC letter and note that ACC's objection to Dr. Rice's participation on the review panel appears to be based on the assertion that, in her capacity as a scientist employed by the Maine Department of Health and Human Services, she testified before the Maine legislature on the human health risks presented by deca. The ACC does not assert that Dr. Rice had any pecuniary interest in the human health assessment at issue, and therefore seems to argue that scientific expertise with regard to a particular chemical and its human health effects is a basis for disqualification from a peer review board. This does not seem sensible on its face.

In reviewing this matter, moreover, we note that a number of EPA panels assessing the human health effects of toxic chemicals have included individuals alleged to have pecuniary interests in the chemical industry. We note, for example, the following:

1. Robert Schnatter, an employee of ExxonMobil, served on the expert panel to assess the carcinogenicity of ethylene oxide, a chemical manufactured directly by ExxonMobil;
2. James Klaunig served on the ethylene oxide panel after receiving research support from Dow Agro, a manufacturer of ethylene oxide, and the American Chemistry Council;
3. James Swenberg received funding from the American Chemistry Council to research ethylene oxide, then acted as a consultant to EPA's ethylene oxide panel, where he promoted his own research in an attempt to classify the chemical as merely a mutagen, not a carcinogen;
4. Vernon Walker also received funding from the American Chemistry Council to research ethylene oxide, then acted as a consultant to EPA's panel, where he promoted his research on the chemical while he prepared the American Chemistry Council's public comments on the carcinogenicity of ethylene oxide;
5. Lorelei Mucci sits on the EPA acrylamide panel, but has made the following statements, each of which can be refuted with the available scientific evidence, prior to her selection for the panel: "There is little evidence of an association between [acrylamide from] any specific baked or fried potato product and cancer risk," and "The levels [of acrylamide] individuals are generally exposed to through food do not appear to increase the risk [of cancer]," and "The intake of acrylamide, no matter how much is consumed, is not a breast-cancer risk factor";
6. Dale Sickles also sits on the acrylamide panel, but has received research funding from American Cyanamid, a manufacturer of acrylamide, and CYTEC Industries, a marketer of acrylamide;
7. Elizabeth "Betty" Anderson, a chemical industry consultant, chaired the EPA's dibutyl phthalate (DBP) panel, which recommended significantly reducing the chemical's safety standard, while her employer, Exponent, was under contract by the American Chemical Council's Phthalate Ester Panel to question a key study showing deleterious effects of common, everyday exposures to DBPs in baby boys;
8. Susan Borghoff sat on the 2,2,4-trimethylpentane panel, but has received funding for work with the Chemical Industry Institute for Toxicology from Lyondell Chemical Company that manufactures 2,2,4-trimethylpentane;

9. Deborah Barsotti also sat on the 2,2,4-trimethylpentane panel while her employer, MACTEC Engineering, worked with manufacturers of 2,2,4-trimethylpentane.

The routine use of chemical industry employees and representatives in EPA's scientific review process, together with EPA's dismissal of Dr. Rice, raises serious questions with regard to EPA's conflict of interest rules and their application.

Therefore, we ask that you provide the following:

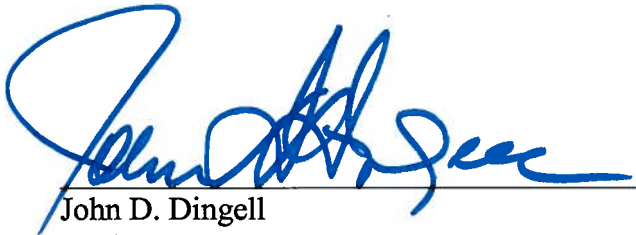
1. All records relating to Dr. Deborah Rice's consideration and selection for, appointment to, and dismissal from, the EPA external review panel for deca, including but not limited to, her appointment letter and dismissal letter;
2. All records of communications between EPA and the American Chemical Council and between EPA and any other individuals or entities pertaining to Dr. Deborah Rice;
3. All records relating to the consideration, selection, and appointment of all aforementioned EPA panel members;
4. Copies of all drafts of the external peer review report on PBDEs, and records of all communications between and among EPA and all members of the peer review committee;
5. All records relating to any instance in which EPA has removed, or has considered removing, panel members for conflict of interest, lack of impartiality, or the appearance of lack of impartiality;
6. All records relating to any instance in which EPA has altered versions of expert panel or consultant submissions due to a panel member's conflict of interest, lack of impartiality, or appearance of lack of impartiality;
7. A written explanation as to whether the aforementioned conflicts of interest were known prior to each member's consideration and selection to their respective panels, whether such information is verifiable by EPA, and if so, why each of the aforementioned panel members has not been dismissed based on the specific conflicts of interest noted above; and
8. All records relating to any conflict of interest disclosure forms, financial or otherwise, that are either required or volunteered by the aforementioned panel members.

The Honorable Stephen L. Johnson
Page 4

Please deliver copies of the requested records to the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, Room 316, Ford House Office Building, no later than two weeks from the date of this letter. Please note that for the purpose of responding to this request, the terms "record" and "relating" should be interpreted in accordance with the attachment to this letter. After review of the records, we may require additional records and/or staff interviews with FDA officials.

Thank you for your prompt attention to this matter. If you have any questions related to this request, please contact us or have your staff contact Paul Jung with the Committee staff at (202) 226-2424.

Sincerely,



John D. Dingell
Chairman



Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable John Shimkus, Ranking Member
Subcommittee on Oversight and Investigations