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ONE HUNDRED TENTH CONGRESS

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

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April 2, 2008

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

Mr. Jack N. Gerard
President and Chief Executive Officer
American Chemistry Council
1300 Wilson Blvd.
Arlington, VA 22209

Dear Mr. Gerard:

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) and the industry's use of consulting firms such as the Weinberg Group to manipulate public opinion related to certain chemicals. As a result, we have begun investigating the removal of Dr. Deborah Rice from an Environmental Protection Agency (EPA) external peer review panel on decabromobiphenyl ether (deca) at the request of the American Chemistry Council (ACC).

We have reviewed the ACC letter to the EPA requesting Dr. Rice's removal and have noted that ACC's objection to Dr. Rice appears to be based not on any pecuniary interest in the health assessment of deca, but instead on the assertion that in Dr. Rice's 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 associated with deca.

We wish to know how the ACC determined that Dr. Rice had such a conflict of interest and why this conflict of interest would warrant removal from the EPA panel. We are interested as well in learning why some other members of EPA panels, specifically those mentioned in our March 13, 2008, letter to the Agency (attached), have not been targeted by the ACC as also having conflicts of interest that would disqualify them from serving on EPA panels. As such, we are further interested in learning of all scientists investigated and determined to have, or not to have, conflicts of interest by ACC.

Mr. Jack N. Gerard

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In addition, we are interested in the relationship between the American Chemistry Council (and all its subsidiaries such as the Chlorine Chemistry Council, Society of Plastics, American Plastics Council, Vinyl Institute, etc.) and the International Society for Regulatory Toxicology and Pharmacology (ISRTP). In a November 19, 2002, letter to Elsevier Science and Academic Press, several scientists noted "apparent conflicts of interests, lack of transparency, and absence of editorial independence" in the ISRTP's journal, *Regulatory Toxicology and Pharmacology*. In that letter, they note that the ACC is one organization that provides financial support to the ISRTP, which may result in a bias toward studies that favor the ACC's policies. The ISRTP also holds official meetings in the offices of Keller & Heckman, L.L.P., a law firm that specializes in regulatory law related to pharmaceutical and food industries. Additionally, we are interested in your relationship with Dr. William F. "Bill" Carroll, former executive of the Vinyl Institute and former president of the American Chemical Society.

Therefore, we ask that you provide the following information and items to the Committee:

1. All records relating to Dr. Deborah Rice;
2. All records relating to Robert Schnatter, James Klaunig, James Swenberg, Vernon Walker, Lorelei Mucci, Dale Sickles, Elizabeth "Betty" Anderson, Susan Borghoff, and Deborah Barsotti;
3. All records of communications relating to the membership of EPA external peer review panels;
4. All records of payments to and communications with the Weinberg Group;
5. All records of payments to and communications with William F. "Bill" Carroll;
6. All records of payments to the International Society for Regulatory Toxicology and Pharmacology and officials of the organization;
7. All records of payments to any officials of the journal, *Regulatory Toxicology and Pharmacology*, including editors, associate editors, editorial board members, and authors of articles published therein;
8. All records of payments to the law firm Keller and Heckman, L.L.P., and
9. A written explanation as to whether those individuals identified in our March 13, 2008, letter to EPA, in the opinion of the American Chemistry Council, have any type of conflict of interest related to their membership on their respective EPA panels. For each individual without such a conflict, please explain why their circumstances are

Mr. Jack N. Gerard
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distinguishable from that of Dr. Deborah Rice. In addition, for individuals with such a conflict, please explain whether the ACC believes that each individual should be removed from their respective EPA panels, or if the panels have finished their work, please provide a written explanation as to whether the ACC believes that the individuals who do have a conflict of interest should also be removed from their respective EPA panels or, if the panels have finished their work, whether the comments and opinions of those individuals should be redacted from their panels' work product.

The above request applies to the American Chemistry Council as well as all of its constituent subsidiaries such as the Chlorine Chemistry Council, Society of Plastics, American Plastics Council, Vinyl Institute, and any other subsidiary currently and prior to their merger with the American Chemistry Council.

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, by 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 ACC officials.

Thank you for your prompt attention to this matter. If you have any questions about this request, please have your staff contact John F. Sopko or 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

ATTACHMENT

1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
2. The terms "relating," or "relate" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.

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MARSHA BLACKBURN, TENNESSEE

March 13, 2008

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
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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
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The Honorable John Shimkus, Ranking Member
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