



March 17, 2008

Stephen Johnson, Administrator
Environmental Protection Agency

George Gray, Asst Administrator, Office of Research and Development
Environmental Protection Agency

Dear Drs. Johnson and Gray;

We are writing to protest the removal of Dr. Deborah Rice as Chair of the EPA scientific panel reviewing safe exposure limits for the toxic brominated flame retardants.¹ Dr. Rice was an external peer reviewer of the EPA's human health assessment for the polybrominated diphenyl ethers (PBDEs), a toxic class of chemicals that includes deca-BDE.

PBDEs are brominated organic compounds. Global production of these chemicals is approximately 40,000 tons per year for use as fire retardants in plastics and textiles. These chemicals are environmentally persistent and are known to bioaccumulate. The chemical structure of PBDEs is similar to the PCBs, dioxins, and other organohalogen compounds of serious concern. The effects of greatest concern to date are endocrine disruption effects and adverse effects on neurological development from early life exposures. The positive cancer studies on deca-BDE require serious attention and cancer

¹ IRIS peer review of polybrominated diphenyl ethers. Docket ID No EPA-HQ-ORD-2006-0838.

studies using other PBDE congeners are high priority. Deca-BDE has been banned in Washington State and Maine.

As revealed in a recent report by Environmental Working Group, *EPA Axes Panel Chair at Request of Chemical Industry Lobbyists*, the reasons for, and time of, Dr. Rice's removal raise serious concerns about the credibility of EPA's public health reviews.

At the time Dr. Rice was removed from the expert review she had already completed her service to the EPA and had already submitted her comments² on the assessment. Moreover, as with all peer reviewers, the EPA has the final decision on which comments to accept and which to reject; EPA is under no obligation to accept all the comments of Rice or any other reviewer. Therefore, it is very odd that EPA chose to take this highly unusual action and remove its panel Chair.

The report by Environmental Working Group, *EPA Axes Panel Chair at Request of Chemical Industry Lobbyists*, documents the interactions between EPA management and the industry. Tellingly, this Agency action follows a letter to EPA's George Gray from the American Chemistry Council's (ACC) Brominated Flame Retardant Industry Panel (BFRIP).³ The BFRIP letter illogically argues that Dr. Rice's scientific publications should be seen as a 'bias', rather than evidence of her scientific expertise. The chemical industry questioned Dr. Rice's impartiality by wrongly claiming that her testimony before the Maine legislature earlier in 2007 advocated a state phase-out of deca-BDE. In fact, Dr. Rice's testimony was of a purely scientific nature. Dr. Rice testified on available alternatives to deca-BDE in her official capacity as a scientific expert employed by the Maine Center for Disease Control and Prevention.

The Federal Advisory Committee Act (FACA) states that scientists with conflicts of interest cannot serve on review or advisory panels unless their expertise cannot be found elsewhere or the conflict of interest is waived because it is considered "*de minimis*." The law also states that scientists with distinct points of view are allowed to serve, but should be balanced with scientists with other points of view. Bias, real or perceived, is not a cause for removal, but a cause for seeking balance. Further, Dr. Rice is a public health expert, and therefore her perspective is consistent with the EPA mission to protect human health and the environment.

Dr. Rice has no financial conflicts, and was never accused of that by the industry. The EPA policy says that, "Ideally, peer reviewers should be free of real or perceived conflicts-of-interest or there should be a balancing of interests [perspectives] among peer reviewers."⁴

² Report by Environmental Working Group, *EPA Axes Panel Chair at Request of Chemical Industry Lobbyists*. 2008. <http://www.ewg.org/files/March-2007PBDEpanelcomments.PDF>

³ Report by Environmental Working Group, *EPA Axes Panel Chair at Request of Chemical Industry Lobbyists*. 2008. Letter from American Chemistry Council to George Gray, EPA. May 1, 2007. <http://www.ewg.org/files/ACC-request.pdf>

⁴ EPA Peer Review Handbook ("PR Handbook") at 22. <http://www.epa.gov/peerreview/pdfs/prhandbk.pdf>

As revealed by the investigations of Environmental Working Group, the industry letter specifically requested that Rice's data, opinions, and conclusions not be considered by the Agency. In response to the ACC letter, EPA scrubbed every reference to Dr. Rice out of the final report, including removing her name as a reviewer and all her comments.⁵ A subsequent version of the final report included a note acknowledging the removal of one reviewer's comments "due to the perception of a potential conflict of interest."⁶ A letter from EPA to the chemical industry identifies these actions as taken at the request of the industry.⁷

Scientific information provided by scientists with conflicts of interest is included in EPA reports all the time. This reflects the fact that much regulatory science comes from industry-funded studies, or scientific studies conducted by scientists who consult for, are on the payrolls of or lobby or testify on behalf of regulated industries. Even if Dr. Rice had a conflict of interest, it would not merit removing any references to her work in the report, although it would merit her removal from the peer review committee.

In stark contrast to EPA's removal of a renowned and well-respected scientist who is free of financial conflicts, the Agency selected and retained Richard J. Bull of MoBull Consulting as a peer reviewer for the PBDE assessment, despite his sullied reputation for failing to disclose relevant financial conflicts of interest.

In 2004, Richard Bull was asked to resign from a National Academies committee after he failed to disclose industry ties as required by the FACA. Bull was a paid consultant to Lockheed Martin in toxic tort litigation regarding perchlorate and other chemical pollution in Redlands, California.⁸ The case was still ongoing when Bull served on the National Academies committee to assess the health risks of perchlorate, and yet Bull failed to reveal these direct financial conflicts to the National Academies staff.⁹ NRDC met with the committee staff and produced paystubs from Lockheed Martin to Bull as

⁵ Report by Environmental Working Group, *EPA Axes Panel Chair at Request of Chemical Industry Lobbyists*. 2008. External Peer Review, Toxicological Review Polybrominated Diphenyl Ethers (PBDEs) Human Health Assessment. Final Report. February, 2007. <http://www.ewg.org/files/AugustPBDEcomments.PDF>

⁶ Report by Environmental Working Group, *EPA Axes Panel Chair at Request of Chemical Industry Lobbyists*. 2008. External Peer Review, Toxicological Review Polybrominated Diphenyl Ethers (PBDEs) Human Health Assessment. Final Report. August, 2007. <http://www.ewg.org/files/NovemberPBDEcomments.pdf>

⁷ Report by Environmental Working Group, *EPA Axes Panel Chair at Request of Chemical Industry Lobbyists*. 2008. Letter from George Gray, EPA, to Nancy Sandrof, BFRIP American Chemistry Council. January 8, 2008. <http://www.ewg.org/files/ACC-Jan08.PDF>

⁸ Superior Court of the State of California for the County of San Bernardino, West District – Rancho Cucamonga. Case No. RCV 31496, Volume 18, Pages 4,685-4,948. Deposition of Daniel T. Teitelbaum, M.D. November 19, 2002

⁹ National Research Council Committee to Assess the Health Implications of Perchlorate Ingestion (BEST-K-03-05-A)

evidence of these unacknowledged conflicts.¹⁰ Senators Boxer and Feinstein followed with a letter to the National Academies staff raising concern about Bull and the impartiality of the perchlorate committee.¹¹ Finally, the National Academies asked Bull to resign from the committee.¹² The Wall Street Journal reported the resignation and showed that Bull had been working on an outside perchlorate report, at the time that recommended a final drinking water standard for perchlorate as high as 100 ppb, which was substantially higher than that recommended by any other non-industry scientific review (EPA had recommended a drinking water limit of 1 ppb).

EPA officials must adhere to the requirements of the FACA when they establish or utilize any advisory committee that provides collective advice or recommendations to the agency. 5 U.S.C. App. II, § 3(2). When an agency seeks to obtain such advice or recommendations, it must ensure the advisory committee is "in the public interest," *id.* App. II, § 9(2), is "fairly balanced in terms of points of view represented and the function to be performed," *id.* § 5(b)(2), and does not contain members with inappropriate special interests. *Id.* § 5(b)(3).

In this case EPA opted to use a contractor to conduct an external peer review, a common practice. EPA guidance states that when using a contractor agency personnel should not select the reviewers and "must limit direct contact with the prime contractor's designated representative and not have general contact with or provide direction to the contractor's staff or peer reviewers."¹³ The contractor is required to develop a work plan for itself describing how it will select peer reviewers with appropriate expertise, identify conflicts of interest, establish schedules, prepare the peer review report, and submit the peer review package to EPA.¹⁴

The actions taken by EPA against Dr. Rice call into question the credibility of EPA management. The EPA is a publicly-funded regulatory Agency charged with protecting human health and the environment. When it allows itself to serve the interests of the polluting industries that it is charged with regulating, it has perverted its mission, compromised its credibility, and forsaken its Congressional mandate.

As recommended in the report by Environmental Working Group, *EPA Axes Panel Chair at Request of Chemical Industry Lobbyists*, we request that EPA immediately:

- reinstate Dr. Rice as the chairperson of the PBDE expert review panel;

¹⁰ Letter from Jennifer Sass et al, NRDC to Warren Muir, NRC. January 17, 2004.

¹¹ Letter from Senators Boxer and Feinstein to Bruce Alberts, National Academy of Sciences. May 14, 2004.

¹² Perchlorate Panel Member Resigns. Wall St Journal. A3. June 11, 2004. Peter Waldman

¹³ EPA Peer Review Handbook ("PR Handbook") at 52, 56.
<http://www.epa.gov/peerreview/pdfs/prhandbk.pdf>

¹⁴ *Id.* at D-12 <http://www.epa.gov/peerreview/pdfs/prhandbk.pdf>

- remove the altered panel review document from public record and restore the original panel review document that included Dr. Rice's comments; and
- issue an updated health standard for deca-BDE that adequately protects public health and that thoroughly considers Dr. Rice's comments, including the issue of additive risks from multiple related fire retardants that widely contaminate the U.S. population.

Anything less will compromise the ability of EPA to carry out its mission to protect human health and the environment.

Respectfully,

Richard Wiles
Executive Director
Environmental Working Group

Jennifer Sass, Ph.D. (corresponding author)
Senior scientist, Health and Environment
Natural Resources Defense Council

Michael F. Jacobson, Ph.D.
Executive Director
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