LEGISLATION MOVING through the House of Representatives could significantly hinder the Environmental Protection Agency’s ability to act against pollution. The measure makes key changes, sought by the chemical industry, to a panel of outside experts who review EPA’s draft scientific conclusions on matters including the toxicity of pollutants. Those changes allow greater industry input. Critics charge that this will delay actions like cleanup requirements that get reviewed by this expert panel.

The bill (H.R. 1422) does not take aim at EPA’s regulatory authority. It focuses on the agency’s Science Advisory Board. SAB reviews EPA’s scientific work on issues such as the effects of mountaintop coal mining on streams and assessment of the health hazards of dioxins. These scientific analyses aren’t regulations. But policymakers who do make rules rely on them heavily.

That committee approved the bill last month, voting along party lines to send it to the full House. The bill’s sponsor, Rep. Christopher Stewart (R-Utah), says the measure will bring more balance and expertise to EPA’s science advice. As an example, he points to SAB’s newly formed panel that is reviewing EPA research into the potential impacts of hydraulic fracking—a method to extract natural gas from shale—on drinking water sources. He criticizes EPA for selecting few advisers for this panel who have recent experience in this industry. Citing what he called EPA’s “overreaching and economy-threatening agenda,” Stewart says, “commonsense reforms that improve scientific advice should make EPA’s regulatory end-products more credible.”

ACC says H.R. 1422 would institute “reforms that will improve scientific integrity of EPA’s advisory panels.” ACC is also part of an organization pushing for enactment of the bill. That coalition, called the American Alliance for Innovation, is composed of industry groups representing companies that make, distribute, or use chemicals or formulate products. The alliance endorses the bill in part for “improving the process for public engagement and ensuring that scientific concerns are clearly addressed and communicated.”

The bill would mandate changes, which ACC has sought for years, in the way SAB operates. Under H.R. 1422, members of the public who make oral public comments to SAB panels “shall not be limited by an insufficient or arbitrary time restriction.”

In addition, H.R. 1422 would require that SAB reports include written responses to “significant comments” from the public, though the bill does not define what type of comments would be considered significant. Stewart, the bill’s sponsor, says these provisions are designed to facilitate meaningful public participation in SAB deliberations.

The bill would provide greater opportunities for input and discussion by scientific and technical experts from research institutions, consultancies, industry, universities, or environmental or health groups, Becker says. These members of the public often offer analyses that are alternatives to the ones in EPA’s draft scientific docu-
Three Scientists who formerly chaired SAB tell C&EN the board sets boundaries on oral comments so it can conduct its deliberations in a timely matter.

“You can’t go on forever,” says Raymond C. Loehr, an emeritus professor of civil engineering at the University of Texas, Austin, who chaired SAB from 1988 to 1993. He served on several panels of the board from 1978, the year SAB was established, to 2003.

SAB and its panels often meet in three-hour teleconferences or at day-and-a-half-long, in-person gatherings. Typically, public commenters are given five to seven minutes each to speak, notes Deborah L. Swackhamer, a professor of science, technology, and public policy at the University of Minnesota, Twin Cities. No member of the public is excluded from addressing the board orally, she adds.

The argument against SAB-specified time limits for oral comments “has come up quite a bit in recent years,” she says. During her tenure, most of these objections cropped up around EPA’s draft hazard assessments of specific chemicals and the mountain-top mining review.

Public comments to SAB aren’t limited to oral presentations, points out M. Granger Morgan, who served as chair of SAB from 2004 to 2008. “There is nothing that prevents folks from industry or anywhere else from supplying more extensive written comments,” says Morgan, a professor of engineering and public policy at the University of Texas, Austin, who chaired SAB from 1988 to 1993. He served on several panels of the board from 1978, the year SAB was established, to 2003.

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Oral presentations often reinforce more detailed written comments submitted to the board, Swackhamer says. “Frankly, written comments are the most useful.”

Providing a pertinent study that was published in a peer-reviewed journal is a better strategy for influencing SAB than making public comments, Morgan says. “Publications will get much more serious attention from SAB than presentations, or even extended write-ups, on findings that are not peer reviewed by a high-quality journal,” he says.

Meanwhile, ACC says H.R. 1422 would “hold peer review panels accountable in responding to public comment and ensure that legitimate scientific concerns are transparently addressed.” ACC’s Becker adds, “I just don’t think it’s going to be a great burden.”

Former SAB chair Loehr agrees. He says that on the basis of his experience, the board could respond to public comments. For

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instance, the board might simply summa-
imize in a report what commenters said and
whether and how it used the information
in its deliberations. “It’s possible to do this
without getting tied up,” Loehr tells C&EN.

But Swackhamer and Morgan see things
differently.

Responding in writing to comments
would eat up valuable time for SAB’s sci-
entific deliberations and run up the cost
of operating the board’s panels, Swack-
hamer says. “It would delay SAB reports
tremendously.”

Morgan points out that SAB’s job is
limited to giving science advice to the EPA
administrator—the board does not make
regulatory policy that affects the public.
“I see no reason why SAB should be bur-
dened with having to respond in writing to
every comment from an outside group,”
he says.

Some public commenters describe
to SAB what they anticipate will be the
regulatory implications, including cost to
industry, of EPA’s scientific conclusions
undergoing board review, Swackhamer
says. Since these comments do not deal
with scientific matters, the board should
not respond to them, she says.

**THE BILL ALSO** would expand industry
representation on SAB. Under the bill,
scientists with “substantial and relevant
expertise” could serve as advisers even if
they have a potential financial interest in
the board’s advisory activities—as long as
that interest is fully disclosed. It is unclear
how this arrangement would fit with exist-
ing federal law that governs conflicts of
interest. However, Republicans and many
Democrats on the House Science, Space &
Technology Committee say they support
expanding the ability of industry scientists
to serve on SAB.

Another provision in H.R. 1422 would
prohibit scientists from participating in
SAB efforts that directly or indirectly in-
volve review and evaluation of studies on
which they are coauthors. Stewart says he
is concerned about having scientists whose
work is cited in an EPA scientific assess-
ment serve on an SAB panel reviewing that
agency document.

But that raises a problem for some.
“How can you have a panel that doesn’t
have anybody that’s published in that area?
You want a committee of experts,” says
Sass of the Natural Resources Defense
Council. The National Academies, the In-
ternational Agency for Research on Cancer,
and some SAB panels include authors of
key scientific studies cited in documents
that review panels examine, she points out.

The Republican-controlled House is
likely to take up and pass H.R. 1422 in the
coming weeks or months. The bill’s chance
in the Senate, where Democrats hold sway,
is dimmer. But if the House passes it, the
measure could be tacked on to a larger bill
with broad political support and wind up
on President Barack Obama’s desk. ■