Message

From: Goldman, Lisa [Goldman.Lisa@epa.gov]
Sent: 10/1/2020 7:31:40 PM
To: Lewis, Monica [lewis.monica@epa.gov]; Hooks, Samantha [hooks.samantha@epa.gov]; Spears, Rasheena [spears.rasheena@epa.gov]; Brooks, Matthew [Brooks.Matthew@epa.gov]; Smith, Fatimah [Smith.Fatimah@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Monson, Mahri [Monson.Mahri@epa.gov]; Messier, Dawn [Messier.Dawn@epa.gov]; Chang, Patrick [Chang.Patrick@epa.gov]; Cerasani, Gina [Cerasani.Gina@epa.gov]; Lattimore, Kraig [lattimore.kraig@epa.gov]; Ford, Peter [Ford.Peter@epa.gov]; Wolfson, Steve [Wolfson.Steve@epa.gov]; Castro, Denise [Castro.Denise@epa.gov]; Lee, Terry [lee.terry@epa.gov]; Wade, Alexis [Wade.Alexis@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; Green, Noelle [Green.Noelle@epa.gov]; Brockett, Aretha [Brockett.Aretha@epa.gov]; Michaud, John [Michaud.John@epa.gov]; Dorka, Lilian [Dorka.Lilian@epa.gov]; Rhines, Dale [rhines.dale@epa.gov]; Lynne, Diane [Lynne.Diane@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Medici, Andrea [medici.andrea@epa.gov]; Williams, Pat [Williams.Pat@epa.gov]; Youngblood, Charlotte [Youngblood.Charlotte@epa.gov]; Cole, Joseph E. [cole.josephe@epa.gov]; Downs, Caitlin [Downs.Caitlin@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Jefferson, Tricia [Jefferson.Tricia@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Hoppe, Allison [hoppe.allison@epa.gov]; Wiley, Ronald [Wiley.Ronald@epa.gov]; Goerke, Ariadne [Goerke.Ariadne@epa.gov]; Adkins, Jocelyn [Adkins.Jocelyn@epa.gov]; Kelly, Lynn [Kelly.Lynn@epa.gov]; Garfinkle, Stacey [garfinkle.stacey@epa.gov]; Patrick, Monique [Patrick.Monique@epa.gov]; James, Nathaniel [james.nathaniel@epa.gov]; Talbert-Duarte, Angelia [talbert-duarte.angelia@epa.gov]; DeRobertis, Cecilia [DeRobertis.Cecilia@epa.gov]; Bell, Aaron L. [Bell.Aaron@epa.gov]; Rodman, Sonja [Rodman.Sonja@epa.gov]; Epp, Timothy [Epp.Timothy@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]; Sheppard, Tracy [Sheppard.Tracy@epa.gov]; Ponce de Leon, Bianca [PonceDeLeon.Bianca@epa.gov]; Shaffer, Patricia [Shaffer.Patricia@epa.gov]; Schwarz, Stephanie [Schwarz.Stephanie@epa.gov]; Williams, Melina [Williams.Melina@epa.gov]; Walker, Denise [Walker.Denise@epa.gov]; Hogan, Stephanie [Hogan.Stephanie@epa.gov]; Evans, Crystal [Evans.Crystal@epa.gov]; Lemley, Lauren [Lemley.Lauren@epa.gov]; Le, Kathryn [le.kathryn@epa.gov]; Sadowsky, Don [Sadowsky.Don@epa.gov]; Berg, ElizabethG [Berg.ElizabethG@epa.gov]; James, Corin [James.Corin@epa.gov]; Stachowiak, Robert [Stachowiak.Robert@epa.gov]

White House Memo Not Slowing EPA Justice Work, Wheeler Says (1)

Sept. 30, 2020, 11:17 AM; Updated: Sept. 30, 2020, 12:55 PM

A recent White House memo that scuttled an EPA training session on environmental problems in low-income communities of color won't affect the agency's overall environmental justice program, Administrator Andrew Wheeler told reporters Wednesday.

The Environmental Protection Agency put the session "on hold" because agency officials wanted to "take a deeper look as far as the materials themselves," Wheeler said. Politico first reported that the EPA had canceled a speaker series for agency employees.

- Wheeler said he considers the Office of Management and Budget memo "very appropriate." Training that marginalizes groups of people is a misuse of taxpayer dollars, and few of the EPA's training sessions are likely inappropriate, Wheeler added.
- Wheeler also said the EPA has elevated environmental justice by moving the program from the enforcement office to the administrator's office. By doing so, the agency is able to focus on environmental justice "across the entire program at EPA and everything we do, including the development of policies, and the development of regulations," he said.

- Democrats on the House Oversight and Reform Committee asked the White House on Wednesday for information about the Trump administration's cancellation of the training. The order shows "a level of ignorance rarely seen at executive levels in government or the private sector," the lawmakers said.
- The EPA has conducted training on diversity and inclusion in most of its programs, and held listening sessions after the May killing of George Floyd by police in Minneapolis.
- On Monday, the EPA's Office of Inspector General said the agency must bulk up oversight of its civil rights program to make sure agencies that receive its funding aren't discriminating against racial minorities.

(Revises with comment from House Democrats in third bullet point.)

To contact the reporter on this story: Stephen Lee in Washington at stephenlee@bloombergindustry.com

To contact the editors responsible for this story: Anna Yukhananov at ayukhananov@bloombergindustry.com; Chuck McCutcheon at cmccutcheon@bloombergindustry.com

Message

From: Wehling, Carrie [Wehling.Carrie@epa.gov]
Sent: 1/14/2021 7:12:37 PM
To: Conrad, Daniel [conrad.daniel@epa.gov]; OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]
Subject: RE: EARTHJUSTICE files suit over FL wetlands permitting

Yes, thanks.

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Conrad, Daniel <conrad.daniel@epa.gov>
Sent: Thursday, January 14, 2021 1:50 PM
To: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>
Subject: FW: EARTHJUSTICE files suit over FL wetlands permitting

Fine with standard EPA does not comment on pending litigation"? Thanks
-Dan

Daniel H. Conrad
Acting Associate Deputy General Counsel
U.S. Environmental Protection Agency
Office of General Counsel
Office: (202) 564-0903
Cell: (202) 507-2946

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From: Sullivan, Melissa <sullivan.melissa@epa.gov>
Sent: Thursday, January 14, 2021 1:17 PM
To: Risley, David <Risley.David@epa.gov>; Fuld, John <Fuld.John@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
Subject: FW: EARTHJUSTICE files suit over FL wetlands permitting

Good afternoon,

We have received a few inquiries about this.

Use standard, "EPA does not comment on pending litigation"?

Thank you,
Melissa

Melissa A. Sullivan
Office of Public Affairs
U.S. Environmental Protection Agency
202 913-3840
Sullivan.Melissa@epa.gov

From: Bruce Ritchie <britchie@politico.com>
Sent: Thursday, January 14, 2021 12:36 PM
To: Press <Press@epa.gov>; Block, Molly <block.molly@epa.gov>
Subject: Fw: EARTHJUSTICE files suit over FL wetlands permitting

Do you have any comment on this lawsuit? Is Florida DEP now taking applications and issuing permits for the federal wetlands permitting, or is that still being done by the feds? Is that the Army Corps of Engineers or EPA? Thanks.

Bruce Ritchie

POLITICO

Florida environment and energy reporter

850-385-1774 (land line, no texting)

850-566-4518 (cell)

britchie@politico.com

From: Julie Hauserman <jhauserman@earthjustice.org>
Sent: Thursday, January 14, 2021 12:11 PM
To: jhauserman@earthjustice.org <jhauserman@earthjustice.org>
Subject: EARTHJUSTICE files suit over FL wetlands permitting

EXTERNAL SENDER: Use caution with links and attachments.

Contacts:

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tgalloni@earthjustice.org

Bonnie Malloy, Earthjustice attorney, (850) 322-8086
bmalloy@earthjustice.org

Jason Totoiu, Center for Biological Diversity, (561) 568-6740
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Lindsay Dubin, Defenders of Wildlife, (202) 772-3234
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Cris Costello, Sierra Club, (941) 914-0421
cris.costello@sierraclub.org

Amber Crooks, Conservancy of Southwest Florida, (239) 776-5601

amberc@conservancy.org

Preston Robertson, Florida Wildlife Federation, (850) 656-7113
preston@fwfonline.org

Lisa Rinaman, St. Johns Riverkeeper, (904) 256-7591
lisa@stjohnsriverkeeper.org

Kelly Cox, Miami Waterkeeper, (305) 905-0856
kelly@miamiwaterkeeper.org

Earthjustice sues on behalf of conservation groups to stop EPA rubber-stamping Florida wetlands destruction

EPA's approval of developer-backed scheme to turn permitting over to state violates U.S. environmental laws

***Please visit this link to view this release online ***

Jan. 14, 2021

Washington, D.C. – Earthjustice filed suit today to stop an attempt by the U.S. Environmental Protection Agency to allow Florida to fast-track wetlands permits for construction projects that will degrade and ruin Florida's natural landscape, all in violation of federal environmental laws.

While a worldwide pandemic is threatening lives and livelihoods across the United States, the U.S. Environmental Protection Agency is green lighting Florida's proposal to take over the federal program that issues permits when developers and others want to fill sensitive marshes, cypress forests, ponds and other wetlands – Section 404 of the Clean Water Act. In EPA's rush to push this through, the agency skirted procedural requirements -- failing even to make the state program legally effective.

Earthjustice is representing the Center for Biological Diversity, Defenders of Wildlife, the Sierra Club, the Conservancy of Southwest Florida, the Florida Wildlife Federation, Miami Waterkeeper, and St. Johns Riverkeeper in the case filed today in the U.S. District Court for the District of Columbia.
"This reckless scheme violates several of our bedrock laws, including the Endangered Species Act and the Clean Water Act, and lets developers avoid the National Environmental Policy Act, also known as 'the people's environmental law,'" said Tania Galloni, Earthjustice Managing Attorney for Florida. "EPA is lowering the bar to allow a state, for the first time, to run the federal wetlands program without meeting federal standards. Developers have called this the 'holy grail' because it would make it easier, faster and cheaper for them to get permits for big projects with less oversight and accountability for environmental impacts."

"Florida's record of wetlands protection is already abysmal," said Earthjustice attorney Bonnie Malloy, "and now is not the time for the federal government to turn over a massive Clean Water Act program to a state with a shrinking budget amid the economic losses in the pandemic. It is deeply troubling that EPA and Florida rushed this process in the midst of a pandemic when families are focused on their health, communities and jobs. They were so hurried, in fact, they failed to follow the necessary procedures to make the transfer of authority legally effective."

Jason Totoiu, senior attorney at the Center for Biological Diversity, said: "The toxic algae blooms that now plague Florida are a direct result of the state's decades-long failure to protect our waterways from wildlife-choking pollution. Now the state wants to make it even easier to dredge and fill wetlands that help filter these pollutants from entering our lakes, estuaries, and springs. Floridians will not stand for this absurd backward step that will only increase harm to the wild places that make Florida so special."

Amber Crooks, Environmental Policy Manager for the Conservancy of Southwest Florida, said: “As Florida and its residents grapple with a never-ending onslaught of growth and development, protection for our natural resources should be strengthened, not further weakened."

Kelly Cox, General Counsel for Miami Waterkeeper, said: "EPA’s decision undermines the intent of the Clean Water Act 404 program - to provide important oversight and scrutiny over our vulnerable wetlands. Instead, it puts these places directly in the line of fire. This decision is deeply disappointing and runs contrary to the public interest. The state of Florida and the federal government have once again prioritized special interests and the development-driven bottom line over environmental protection."

In their lawsuit, the groups point out that the U.S. Environmental Protection Agency’s approval of Florida’s application to assume jurisdiction over the Clean Water Act permitting program is unlawful because Florida fails to demonstrate adequate authority to carry out the wetlands permitting program, fails to ensure protection of animals and plants under the Endangered Species Act, and fails to demonstrate it has sufficient funding and staffing to implement and enforce the program. The state program does not have equivalent permit requirements, enforcement authority, access to courts, public notice, public participation opportunities, and other components that are integral parts of the federal program. The EPA rushed to approve this program so that it may take effect by January 19, 2021, despite these and many other substantial gaps in the state’s proposal.

The groups are also challenging decisions that the U.S. Fish and Wildlife Service and U.S. Army Corps of Engineers made in connection with EPA’s review of Florida’s application to assume responsibility for wetlands permitting. Specifically, the U.S. Fish and Wildlife Service violated the Endangered Species Act by failing to ensure there would be “no jeopardy” to protected animals and plants if Florida took over the program and granting broad protection to developers who “incidentally” harm protected species. The U.S. Fish and Wildlife Service also created an unlawful scheme for purportedly reviewing the state’s decisions on individual permits that may harm federally protected species. And the U.S. Army Corps of Engineers violated the Administrative Procedure Act and Rivers and Harbors Act with its grossly truncated list of waters that it will continue to oversee.

Cris Costello, Organizing Manager of the Sierra Club, said: "We are acting to set aright the present topsy turvy state of affairs. This is an especially egregious example of what the DeSantis DEP has done over and over again now -- join forces with Florida's most callous polluters in assaults on our environment all the while claiming to be doing it a favor. The fact that Trump's EPA blessed this assault is par for the course."

“Giving Florida the green light to issue permits to dredge and fill wetlands threatens the diversity of wildlife that live there,” said Lindsay Dubin, staff attorney at Defenders of Wildlife. “Endangered Florida panthers, endangered red-cockaded woodpeckers, and threatened Eastern indigo snakes are among the species that could be impacted if the state of Florida assumes permitting responsibilities without the proper laws, resources, and oversight in place. With more than 1 million species at risk of extinction worldwide, the clock is ticking. We should be protecting these species, not making it easier to destroy their habitat.”

###

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Because the earth needs a good lawyer

Message

From: Wehling, Carrie [Wehling.Carrie@epa.gov]
Sent: 1/15/2021 4:20:48 PM
To: Sweeney, Stephen [Sweeney.Stephen@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]; OGC WLO [OGC_WLO@epa.gov]
Subject: RE: EPA Alumni Assn (based on WTOP reports) that Biden selects Janet McCabe as EPA Deputy Administrator

If the focus is on climate change and getting a running start, this makes total sense.

Caroline (Carrie) Wehling
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202-564-5492
wehling.carrie@epa.gov

From: Sweeney, Stephen <Sweeney.Stephen@epa.gov>
Sent: Friday, January 15, 2021 11:19 AM
To: Levine, MaryEllen <levine.maryellen@epa.gov>; OGC WLO <OGC_WLO@epa.gov>
Subject: RE: EPA Alumni Assn (based on WTOP reports) that Biden selects Janet McCabe as EPA Deputy Administrator

Janet was Gina McCarthy's deputy in OAR.

From: Levine, MaryEllen <levine.maryellen@epa.gov>
Sent: Friday, January 15, 2021 11:16 AM
To: OGC WLO <OGC_WLO@epa.gov>
Subject: EPA Alumni Assn (based on WTOP reports) that Biden selects Janet McCabe as EPA Deputy Administrator

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
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Message

From: McConkey, Diane [Mcconkey.Diane@epa.gov]
Sent: 1/15/2021 4:21:20 PM
To: Sweeney, Stephen [Sweeney.Stephen@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]; OGC WLO [OGC_WLO@epa.gov]
Subject: RE: EPA Alumni Assn (based on WTOP reports) that Biden selects Janet McCabe as EPA Deputy Administrator

Yes, and then she was acting AA for OAR when Gina became Administrator.

From: Sweeney, Stephen <Sweeney.Stephen@epa.gov>
Sent: Friday, January 15, 2021 11:19 AM
To: Levine, MaryEllen <levine.maryellen@epa.gov>; OGC WLO <OGC_WLO@epa.gov>
Subject: RE: EPA Alumni Assn (based on WTOP reports) that Biden selects Janet McCabe as EPA Deputy Administrator

Janet was Gina McCarthy's deputy in OAR.

From: Levine, MaryEllen <levine.maryellen@epa.gov>
Sent: Friday, January 15, 2021 11:16 AM
To: OGC WLO <OGC_WLO@epa.gov>
Subject: EPA Alumni Assn (based on WTOP reports) that Biden selects Janet McCabe as EPA Deputy Administrator

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

Message

From: Wehling, Carrie [Wehling.Carrie@epa.gov]
Sent: 1/15/2021 4:51:17 PM
To: Conrad, Daniel [conrad.daniel@epa.gov]; OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]
Subject: RE: BREAKING: EPA Challenged for Shirking Duty to Protect Communities from Lead

Yes, thanks. Sigh.

Caroline (Carrie) Wehling
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Washington DC 20004
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wehling.carrie@epa.gov

From: Conrad, Daniel <conrad.daniel@epa.gov>
Sent: Friday, January 15, 2021 11:36 AM
To: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>
Subject: FW: BREAKING: EPA Challenged for Shirking Duty to Protect Communities from Lead

OK with "EPA does not comment on pending litigation." ?
-Dan

Daniel H. Conrad
Acting Associate Deputy General Counsel
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From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Friday, January 15, 2021 11:17 AM
To: Conrad, Daniel <conrad.daniel@epa.gov>; Fuld, John <Fuld.John@epa.gov>; Risley, David <Risley.David@epa.gov>; Lippert, Allison <lippert.allison@epa.gov>
Subject: FW: BREAKING: EPA Challenged for Shirking Duty to Protect Communities from Lead

Hello everyone,

Did we want to go with:

Attributable to an EPA Spokesperson

EPA does not comment on pending litigation.

I am checking on deadline.

Thanks,

Angela

From: Rebecca Beitsch <rebecca@thehill.com>
Sent: Friday, January 15, 2021 11:07 AM
To: Press <Press@epa.gov>
Subject: Fwd: BREAKING: EPA Challenged for Shirking Duty to Protect Communities from Lead

Let me know if you'd like to comment.

Rebecca Beitsch
Energy and Environment Reporter
The Hill
rebecca@thehill.com | @rebeccabeitsch

---------- Forwarded message ---------
From: **Erin Fitzgerald** <efitzgerald@earthjustice.org>
Date: Fri, Jan 15, 2021 at 11:02 AM
Subject: BREAKING: EPA Challenged for Shirking Duty to Protect Communities from Lead
To: <rbeitsch@thehill.com>

For Immediate Release – January 15, 2021

Contact: Erin Fitzgerald, efitzgerald@earthjustice.org

EPA Challenged for Shirking Duty to Protect Communities from Lead

Civil rights and environmental groups sue to ensure protections for millions who rely on lead-piped drinking water

Washington, D.C. – Today, a coalition of civil rights and environmental groups represented by Earthjustice sued the EPA for failing to protect children's health and the safety of the drinking water of millions of people. The lawsuit comes as the Environmental Protection Agency (EPA) published the final — but flawed —Lead and Copper Rule Revisions in the Federal Register.

The lawsuit comes a day after ex-governor Rick Snyder and eight other former Michigan officials were chard for the 2014 Flint water crisis.

The Lead and Copper rule, or LCR, regulates the control and monitoring of lead in drinking water. These revisions dramatically slow down the rate at with lead pipes are required to be replaced. The new rule also allows small public water systems required to replace lead service lines to avoid replacing them altogether, even if those systems continually exceed the lead action level.

The NAACP, United Parents Against Lead, Newburgh Clean Water Project, and the Sierra Club are the groups challenging the revised rule. They are calling on the Biden administration to immediately start a new rulemaking process that follows the law, science and principles of environmental justice. The Natural Resources Defense Council filed a similar but separate lawsuit.

"These revisions ensure that generations of children will continue to be poisoned by lead-tainted water," **said Queen Zakia Shabazz, executive director of United Parents Against Lead**, a nonprofit from Richmond, Virginia. "Lead poisoned children grow up to be lead poisoned adults. It's past time for the EPA to revise the Lead and Copper Rule in favor of children's health and stop childhood lead poisoning once and for all."

Most of the lead found in drinking water comes from lead service lines, according to the EPA. Lead service lines naturally corrode when water flows through them. EPA estimates there are as many as 10 million lead service lines in the country, and researchers estimate lead pipes serve as many as 22 million people. Communities of color are disproportionately affected. A study by the Centers for Disease Control and Prevention found that 11.2 percent of African American children and 4 percent of Mexican American children are poisoned by lead.

Still, EPA's new lead rule requires water systems to replace only three percent of lead service lines annually after certain lead action level exceedances, in contrast to the seven percent rate in the former rule.

"This rule is a major disappointment," **said Suzanne Novak, Earthjustice attorney.** "Communities exposed to dangerous levels of lead in water expected the new rule to focus on removing lead pipes from the ground, the actual remedy to keep families safe. Instead, the new rule took a huge step backwards by slowing down the replacement rate of lead service lines. The Trump administration is failing the country once again, this time as it walks out the door. Children will continue to be poisoned, with no end in sight."

There is no safe level of lead exposure for children, according to the Centers for Disease Control and Prevention. Even in small amounts, lead can cause irreversible brain damage in children, learning disabilities, and impaired hearing.

"EPA had the opportunity to instate a lead rule that would truly protect families, especially children. Instead, it's putting our most vulnerable at risk, exposing them to serious irreversible brain and nervous system development issues, and potentially life-long learning and behavioral challenges," says **Gabrielle Hill of the Newburgh Clean Water Project,** a Hudson Valley New York community organization. "EPA must act on the health data and take appropriate action to protect the future of communities like ours, which have experienced multiple toxic exposures."

"Lead in water is still a major problem for families and their children all over the country. Yet EPA today finalized a lead rule that doctors and scientists say falls short," said **Dalal Aboulhosn, Sierra Club Deputy Director of Policy Advocacy and Legal.** "If this EPA is serious about stopping children from drinking lead-tainted water, then it can't slow down the rate at which lead pipes are required to be replaced."

Groups say the Biden administration must hold required public hearings in affected communities; and put out a rule that includes a maximum contaminant level for lead, monitor

and control for lead using best scientific practices, publicize the constant risk of exposure to lead in water and the limitations of the LCR, and require the expedited removal of all lead service lines across the country. They are also calling on Congress to prioritize full lead service line replacement by water utilities in infrastructure packages and other legislation to ensure that disadvantaged, low-income communities don't foot the bill for contaminated water.

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Other, . ., ., . . United States

Message

From: Sweeney, Stephen [Sweeney.Stephen@epa.gov]
Sent: 1/19/2021 4:29:04 PM
To: Levine, MaryEllen [levine.maryellen@epa.gov]; OGC WLO [OGC_WLO@epa.gov]
Subject: Press statement

"EPA is still reviewing the decision."

From: Levine, MaryEllen <levine.maryellen@epa.gov>
Sent: Tuesday, January 19, 2021 11:26 AM
To: OGC WLO <OGC_WLO@epa.gov>
Subject: FW: BREAKING: Trump Power Plant GHG Rule Falls At D.C. Circuit

I am sure you'll see this – but I will be reading this recent DC Cir decision.

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
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From: Energy Law360 <news-q2@law360.com>
Sent: Tuesday, January 19, 2021 10:22 AM
To: Levine, MaryEllen <levine.maryellen@epa.gov>
Subject: BREAKING: Trump Power Plant GHG Rule Falls At D.C. Circuit

ENERGY

Tuesday, January 19, 2021

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REAKING: rump ower Plant HG Rule alls At D.C. ircuit

ne D.C. rcuit on uesday cated the ump lministration's llback of bama-era eenhouse s emission andards for isting power ants and the le intended to place them, ding it ested itically on a istaken ading of the ean Air Act."

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Message

From: Wehling, Carrie [Wehling.Carrie@epa.gov]
Sent: 1/22/2021 2:45:58 PM
To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Messier, Dawn [Messier.Dawn@epa.gov]
Subject: FYI figuring out recusals for WOTUS cases
Attachments: CLF v. EPA (D. Mass.) - 15 States' Amicus Brief ISO MSJ_12.17.20.pdf

Just so you can see our discussion about this.....

Caroline (Carrie) Wehling
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202-564-5492
wehling.carrie@epa.gov

From: ODea, Elise <odea.elise@epa.gov>
Sent: Friday, January 22, 2021 9:24 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Thanks, Carrie! Your summary seems right to me. So far I've determined that Massachusetts signed on to at least one amicus brief in another WOTUS case, *Conservation Law Foundation* (D. Mass.) (attached). I'm assuming Melissa would be recused from that case as well, unless different ethics rules apply where a client participates as amicus rather than as a plaintiff. I'll let the team know if I come across any other amicus briefs, etc., that would impact the recusals. I'll also add a note to the cases in the district court litigation spreadsheet indicating where Melissa and/or Dimple are recused so that we can keep that straight moving forward.

- -

Elise M. O'Dea
Attorney-Advisor
Office of General Counsel
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(202) 564-4201

From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Friday, January 22, 2021 9:16 AM
To: ODea, Elise <odea.elise@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Thanks, Elise.....so here's what I take away for WOTUS litigation, interested in your thoughts/analysis/correction:

1. Melissa is recused from the WOTUS SDNY and the State ND Cal cases because Mass is a party, but not from policy decisions about those cases (not sure I'm exactly clear about the distinction but it seems helpful).
2. Dimple is recused from any NRDC cases for two years so that would be:
    a. NWPR – CLF case in D. Mass and SC case
    b. 2015 – Ohio and SD Texas

Caroline (Carrie) Wehling

Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: ODea, Elise <odea.elise@epa.gov>
Sent: Friday, January 22, 2021 8:21 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: FW: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

FYI—see below/attached. I'm sure Steve will circulate this to the rest of WLO, but I wanted to be sure to pass it on to our team ASAP given the conversation we had yesterday re: recusals in the WOTUS litigation. I haven't reviewed closely yet but plan to do so. Thanks!

- -

Elise M. O'Dea
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4201

From: Schmidt, Lorie <Schmidt.Lorie@epa.gov>
Sent: Thursday, January 21, 2021 9:49 PM
To: OGC SWERLO <OGC_SWERLO@epa.gov>
Subject: FW: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

FYI

Lorie J. Schmidt
Associate General Counsel
Solid Waste and Emergency Response Law Office
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,
As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know

how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.
- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	*Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA*, Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	*Labor Council for Latin America, NRDC, et al. v. EPA*, Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	*NRDC v. Wheeler*, Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	*Walters v. Flint, EPA, et al.*, Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all I interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Wehling, Carrie [Wehling.Carrie@epa.gov]
Sent: 1/22/2021 3:04:22 PM
To: OGC WLO [OGC_WLO@epa.gov]
Subject: FW: Agri-Pulse: "Biden's EPA pick talks WOTUS, biofuels, environmental justice, importance of ag, and more"

Some interesting insights into our next Administrator.....

Caroline (Carrie) Wehling
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From: Messier, Dawn <Messier.Dawn@epa.gov>
Sent: Thursday, January 21, 2021 3:40 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: Agri-Pulse: "Biden's EPA pick talks WOTUS, biofuels, environmental justice, importance of ag, and more"

Thanks Carrie – I think this would be of interest to the whole office – want to forward?

Dawn Messier
Deputy Associate General Counsel for Water
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1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Thursday, January 21, 2021 3:35 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Messier, Dawn <Messier.Dawn@epa.gov>
Subject: FW: Agri-Pulse: "Biden's EPA pick talks WOTUS, biofuels, environmental justice, importance of ag, and more"

fyi

Caroline (Carrie) Wehling
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Water Law Office
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Washington DC 20004
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wehling.carrie@epa.gov

From: Kwok, Rose <Kwok.Rose@epa.gov>
Sent: Thursday, January 21, 2021 11:21 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Beck, Whitney <beck.whitney@epa.gov>; Maschal, Emma <maschal.emma@epa.gov>; Kelso, Julia <kelso.julia@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>;

Kasparek, Lauren <kasparek.lauren@epa.gov>; Kaiser, Russell <Kaiser.Russell@epa.gov>; ODea, Elise <odea.elise@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>
Subject: FW: Agri-Pulse: "Biden's EPA pick talks WOTUS, biofuels, environmental justice, importance of ag, and more"

FYI – if you haven't see this yet. OGC, he's coming for you.

Here's the WOTUS piece and then the full article:

Farmers and ranchers have been focused on the scope of the Waters of the U.S. (WOTUS) for many years. What's your recommendation for the next steps under a new Biden administration?

This is another opportunity for me to, first of all, consult with my legal team at EPA to determine what are all of the options on the table in terms of moving forward from a legal perspective. While they are evaluating that and advising me on the legal path forward, I also plan to convene all of the stakeholders that have been impacted to begin thinking through what we need to do to advance this topic. So, we'll look at the legal path forward and I'll consult with counsel, but we'll also reach out to our stakeholders about what are the avenues outside of litigation to advance this issue. This is a very important issue, and it's been a topic of discussion in North Carolina. It's been a topic of discussion across this country. What I do know is we have to choose a path forward that protects our water quality, protects our natural resources, but also is not overly burdensome on our small farmers. I think there's a way to do it, but it will require conversations and all hands on deck.

Should we anticipate that there will likely be some type of change, and that the status quo will not be acceptable?

I'll have to consult with the litigation counsel at EPA to determine where we are in the litigation and what's advisable there. But I don't foresee any outcomes that closes the door on a robust conversation.

Agri-Pulse
"Biden's EPA pick talks WOTUS, biofuels, environmental justice, importance of ag, and more"
Sara Wyant

Michael Regan has served as secretary of the North Carolina Department of Environmental Quality since 2017 and now he's ready to enter the national stage as Joe Biden's pick to lead the Environmental Protection Agency.

If confirmed, he'll play a major role in countless decisions impacting air and water quality, climate change, food production, crop protection and rural America in general.

In an exclusive interview, Regan told *Agri-Pulse* that he recognizes the nation's 46th president has a very aggressive agenda, "but we cannot meet our goals without having a very strong partnership with agriculture." He also acknowledged that "we can't regulate our way out of this solely. It will take innovation. It will take partnership. It will take voluntary programs, all of the above, to see our way through this climate emergency and agriculture has such an important role."

Raised in the eastern part of North Carolina, he grew up hunting and fishing with his father and his grandfather, a small farmer who grew peanuts and soybeans, along with a few hogs and chickens. As a result, he understands "the importance of agriculture and the culture of agriculture and that "agriculture has a role in helping us be successful in environmental protection," he said.

Regan believes that environmental protection and economic prosperity are not mutually exclusive, but can go hand in hand, and agriculture fits in that narrative, he said.

In this wide-ranging interview, we asked him a variety of questions, ranging from crop protection to biofuels and environmental justice. Some answers have been edited for brevity.

Several sources tell us that, in North Carolina, you had an "open door" policy and were willing to listen to both sides of an argument. What should folks expect that to look like in Washington?

It's my goal to have it look very similar. Agriculture is such an important industry in North Carolina and is such an important industry to this country, as well. And so, I've always felt that it's very important to use the power of convening and pull all of our stakeholders in and have very robust conversations, quite frankly about some fairly complex issues. ... The goal is to get folks to buy into the journey. We've had some success with that in North Carolina, and I plan to apply that same recipe if confirmed.

The list of environmental issues currently facing you at EPA is very long and Joe Biden has a very ambitious environmental agenda. How will you prioritize these issues during your first six months?

The president-elect has a very ambitious, yet needed environmental agenda. I'm proud to, if confirmed, run point on the EPA agenda. The honest answer is we're going to have to walk and chew gum at the same time. The first goal is to reinvigorate the organization and the staff, make sure that I'm a great partner to the staff and that they know their voices will be heard. We're going to follow the science. We're going to follow the law. And we're going to apply that to the president's ambitious climate agenda, which has a critical role for the ag industry. We're going to tackle water quality issues, again, agriculture will be a significant partner there. And then we're going to look at environmental justice and equity, and agriculture is no stranger to that topic, either.

How quickly do you anticipate you'll be able to get your own staff in place and refill numerous open positions? Do you plan to have someone on your team charged with farm and rural outreach?

Luckily for us, EPA is full of very talented and dedicated public servants; people who have dedicated their lives, and are very passionate about protecting our environment, while growing our economy. And so, we have some really good folks in place. We will work with Congress on ensuring that we have the smoothest path forward. My confirmation, obviously, would be the first I'd hope to be confirmed. But after that we'll work with Congress to line up the confirmation for all of the other political appointees that require Senate confirmation. There are quite a few leadership roles that require that. But in the meanwhile, will rely on the steady hand of the civil servants who are not politically appointed, but very passionate about ensuring EPA's agenda moves forward.

We absolutely plan to have dedicated resources to farm and rural outreach and agricultural issues, whether that's an individual or team of people that we bring together, to be sure that agriculture is a priority. We're going to take a look at that on day one.

My goal is to leverage all of the resources at my fingertips to advance solutions for the agriculture industry. ... We're going to have an open-door policy. We're going to convene everyone we can. There's going to be an all-hands-on-deck approach.

Farmers and ranchers have been focused on the scope of the Waters of the U.S. (WOTUS) for many years. What's your recommendation for the next steps under a new Biden administration?

This is another opportunity for me to, first of all, consult with my legal team at EPA to determine what are all of the options on the table in terms of moving forward from a legal perspective. While they are evaluating that and advising me on the legal path forward, I also plan to convene all of the stakeholders that have been impacted to begin thinking through what we need to do to advance this topic. So, we'll look at the legal path forward and I'll consult with counsel, but we'll also reach out to our stakeholders about what are the avenues outside of litigation to advance this issue. This is a very important issue, and it's been a topic of discussion in North Carolina. It's been a topic of discussion across this country. What I do know is we have to choose a path forward that protects our water quality, protects our natural resources, but also is not overly burdensome on our small farmers. I think there's a way to do it, but it will require conversations and all hands on deck.

Should we anticipate that there will likely be some type of change, and that the status quo will not be acceptable?

I'll have to consult with the litigation counsel at EPA to determine where we are in the litigation and what's advisable there. But I don't foresee any outcomes that closes the door on a robust conversation.

North Carolina is a big pork-producing state with a lot of confined animal feeding operations. Is big necessarily bad when it comes to environmental protection?

We need to be sure that we are enforcing the regulations that are on the books to ensure that the larger farms are in compliance with the law in a way that are protective of our communities, the individuals that are living in these communities, as well as our air quality and water quality. If we need to revisit the law and have additional legislation to ensure that that protection is there, then we should have that conversation. We have to balance the protection of our communities and our water quality with the benefits that these farms produce, in terms of food production and other things. So, I would say that we need to revisit some of the larger production facilities to be sure that they are applying the rule of law, science and technology in a way that protects the farmer as well as the community and the water quality and air quality surrounding.

Expanding biofuel usage and implementing the Renewable Fuel Standard is another big topic of concern. Tell us more about how you view biofuels and their role in addressing climate change. What's your opinion on small refinery exemptions?

The president-elect has not been shy in indicating that biofuels, especially advanced biofuels, will be critical to help meet his ambitious climate agenda. I agree with that. Advanced biofuels will be very important. We will take a look at all of the science. We'll take a look at the laws that are on the books in terms of the applicability of these advanced biofuels, the application of new technology, and we will push that agenda with our agriculture partners in a way that demonstrates that agriculture can be part of the solution for mitigating this climate emergency.

I'll spend a lot of time with the experts at EPA evaluating the Renewable Fuel Standard, and its application. And the law is pretty clear in terms of small refinery exemptions. What I can pledge is, we will follow the law and will be transparent about how we're following the law. And the decisions that will be made by the agency will not be done as a surprise, but will be made through a transparent stakeholder engagement process where everyone can at least understand how the agency arrived at decisions.

Does the future of advanced biofuels include corn-based ethanol?

Corn ethanol is the traditional term used for biofuels. As we start to look at the science, that definition may evolve, based on best management practices, and the processing and the like. When you look at the full life-cycle of corn ethanol, and the evolution of how ethanol is produced and distributed, then it's somewhere on that trajectory that it fits within that definition.

There has been a lot of new science and innovation in the crop protection industry in recent years. But it's still very costly and time consuming to bring a new product through registration

and to market. Do you have any ideas about new ways to speed the process while focusing on safety?

What I would say is I've taken a look at the President's agenda with climate and beyond; taken a look at the full approach of government. What I plan to do as EPA Administrator, if confirmed, is partner with Secretary nominee Vilsack and Secretary nominee Granholm at the respective departments of agriculture and energy to ensure that we are putting the right research and development resources into bringing these new products through registration, and to market at a commercial level. There are also ways that we can collectively, put our heads together at three cabinet agencies to be sure that we're looking at all of the inefficiencies in the process, and streamline as much as possible. So, I believe, in collaboration, not only with the stakeholders that our decisions are impacting, but also the partners that I have across the other cabinet agencies and look forward to engaging with them on this.

Interested in more coverage and insights? Receive a free month of Agri-Pulse West.

Will EPA reverse course on FIFRA 24(c), which historically has allowed states to add restrictions to federal registrations, but which EPA now wants to be used only to allow more uses, or less restrictive use?

I'll spend some time with our counsel and the experts at EPA who have been following this issue to determine the best course of action. As the secretary of an environmental agency at the state level, my views are that cooperative federalism — when applied — really works. This is when the federal government sets the baseline, and then states have flexibility and autonomy to go beyond that baseline and apply it the way the state views is the most reasonable within the rule of law, because states are so much more familiar with their community and their constituencies. We would not want to move forward and restrict that flexibility that states have enjoyed for so long, so we'll be taking a look at that. But I'll be consulting with the experts on the particulars.

You've emphasized your commitment to environmental justice. What will be your first steps to accomplish this goal?

One of the top agenda items for the president-elect is environmental justice and equity. He is looking at a cabinet-level approach. What I hope to do If confirmed, is to consult with all of the experts at EPA who have been focused on this issue for so long, partner with Brenda Mallory at (the White House Council on Environmental Quality), but also partner with all of my fellow cabinet members to take a look at what we can do collectively to ensure that those who are disproportionately impacted are not only not disproportionately impacted, but that we are collectively investing resources into those communities as well. That is a topic that is near and dear to my heart. It is something that I have been working on for quite some time. I look forward to rolling up my sleeves and really getting to work on this issue. This is a marathon issue. There are a lot of tough issues that need to be resolved.

The pandemic has disrupted so many parts of our country, including food production and distribution. How do you find the right balance between the need to provide food security and the concerns of those who don't think there are enough restrictions on the way we produce food?

This is an excellent example of government itself not having all of the answers and the importance of convening diverse stakeholders to have robust discussions like this one. It's very important for all of the stakeholders — those who are impacted by EPA decisions — to understand the process that we're using to make these decisions, the science behind it, the laws that we're following, and understand that when we come to a solution which we hope is pragmatic, they can see themselves in that answer. ... What I found in North Carolina is when we've taken that approach, usually stakeholders are much more appreciative of the results, even if they don't completely agree 100% with the results. So, I will apply that recipe to this issue as well. It's worked for us in North Carolina and I believe it can work for the greater part of this country as well.

Message

From: Shaw, Carla [Shaw.Carla@epa.gov]
Sent: 1/22/2021 3:04:36 PM
To: Wehling, Carrie [Wehling.Carrie@epa.gov]; OGC WLO [OGC_WLO@epa.gov]
CC: Witt, Richard [Witt.Richard@epa.gov]
Subject: RE: People Plus

Thanks Carrie!

From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Friday, January 22, 2021 10:00 AM
To: Shaw, Carla <Shaw.Carla@epa.gov>; OGC WLO <OGC_WLO@epa.gov>
Cc: Witt, Richard <Witt.Richard@epa.gov>
Subject: RE: People Plus

Think the last part of the instructions we received yesterday is the answer 😊:
Time Reporting Code

Please note, excused absence for the Inauguration is not coded as holiday (i.e., HOLDY) in PeoplePlus nor will it auto-populate on the timecard. The correct PeoplePlus code is INAUG. Employees entitled to the holiday must add the code to their timecard.

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Shaw, Carla <Shaw.Carla@epa.gov>
Sent: Friday, January 22, 2021 9:50 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; OGC WLO <OGC_WLO@epa.gov>
Cc: Witt, Richard <Witt.Richard@epa.gov>
Subject: RE: People Plus

Below is the information for Wednesday.

Inauguration Day

On Wednesday, January 20, 2021, employees with official worksites in the statutorily defined inauguration day area are excused from duty to alleviate traffic delays and congestion. For EPA, this is limited to employees who work at the Federal Triangle and Potomac Yard complexes, including employees with an official worksite in:

- the District of Columbia;
- Maryland—Montgomery County and Prince Georges' County; and
- Virginia—Arlington County; Fairfax County and Fairfax City; City of Alexandria; City of Falls Church

Employees who normally report to the above duty locations, including those who are teleworking due to COVID-19, will receive the benefit of the additional holiday if the following conditions apply to them:

- The employee's official worksite is located in the inauguration area.
- But for the COVID-19 National Emergency, the employee would be scheduled to work at the official worksite at least two days per biweekly pay period.
- The employee's telework location on January 20 is one from which the employee regularly commuted to the employee's official worksite prior to the COVID-19 emergency or is within a realistic commuting distance from the official worksite (generally no more than 2.5 hours commuting time or 125 miles in distance).

Employees on detail from official duty stations and worksites outside of the inauguration area scheduled to work in the inauguration area on January 20 are excused from duty.

From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Friday, January 22, 2021 9:41 AM
To: Shaw, Carla <Shaw.Carla@epa.gov>; OGC WLO <OGC_WLO@epa.gov>
Cc: Witt, Richard <Witt.Richard@epa.gov>
Subject: RE: People Plus

Would it be INAUG?

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
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202-564-5492
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From: Shaw, Carla <Shaw.Carla@epa.gov>
Sent: Friday, January 22, 2021 9:38 AM
To: OGC WLO <OGC_WLO@epa.gov>
Cc: Witt, Richard <Witt.Richard@epa.gov>
Subject: FW: People Plus

Thanks Richard for asking that questions. Please enter Wednesday as a holiday.

From: Witt, Richard <Witt.Richard@epa.gov>
Sent: Friday, January 22, 2021 9:30 AM
To: Shaw, Carla <Shaw.Carla@epa.gov>
Subject: RE: People Plus

Good morning, Carla. I'm going ahead and doing my time early. Do you know how we enter Wednesday? As a holiday? It did not automatically come up as that. Thanks.

From: Shaw, Carla <Shaw.Carla@epa.gov>
Sent: Friday, January 22, 2021 9:27 AM

To: OGC WLO <OGC_WLO@epa.gov>
Subject: People Plus

Good Morning All,

All corrections from the previous pay period(s) are due on Tuesday by 1:00. The current timecards are due by 3:00 next Wednesday. If you need assistance please let me know. Thank you!

Carla Shaw
Program Assistant
OGC/WLO
Rm. 7519A
(202) 564-3319
"You are your best thing."
Toni Morrison

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 1/22/2021 3:35:19 PM
To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

I'm free now too. Crazed, but free.

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Friday, January 22, 2021 10:23 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Thanks Justina. I have a couple of questions – could we chat for 5 mins today? I am free now or could send an invite when we both look free.

Also, I share this with anyone (I'm thinking Carrie on close hold basis). Thanks.

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
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1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,
As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she

is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.

- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

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Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	*Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA*, Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	*Labor Council for Latin America, NRDC, et al. v. EPA*, Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	*NRDC v. Wheeler*, Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	*Walters v. Flint, EPA, et al.*, Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all I interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Skadowski, Suzanne [Skadowski.Suzanne@epa.gov]
Sent: 1/22/2021 8:49:51 PM
To: Holsman, Marianne [Holsman.Marianne@epa.gov]; Opalski, Dan [Opalski.Dan@epa.gov]; Baca, Andrew [Baca.Andrew@epa.gov]; Fordham, Tami [Fordham.Tami@epa.gov]; LaCroix, Matthew [LaCroix.Matthew@epa.gov]; Szelag, Matthew [Szelag.Matthew@epa.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]; Steiner-Riley, Cara [Steiner-Riley.Cara@epa.gov]; Johnson, Patrick [johnson.patrick@epa.gov]; Li, Beverly [Li.Beverly@epa.gov]; Drinkard, Andrea [Drinkard.Andrea@epa.gov]; Grandinetti, Cami [Grandinetti.Cami@epa.gov]; Bennett, Brittany [bennett.brittany@epa.gov]; Brown, Leah [Brown.Leah.Y@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Godsey, Cindi [Godsey.Cindi@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Hough, Palmer [Hough.Palmer@epa.gov]; Jensen, Amy A. [jensen.amy@epa.gov]; Johnson, Patrick [johnson.patrick@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; Lindsay, Andrea [Lindsay.Andrea@epa.gov]; McCracken, Betsy W. [mccracken.betsy@epa.gov]; Murphy, Stacy [Murphy.Stacy@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Szelag, Matthew [Szelag.Matthew@epa.gov]; Szerlog, Michael [Szerlog.Michael@epa.gov]; Vaughan, Molly [Vaughan.Molly@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Zokan, James [Zokan.Jim@epa.gov]
Subject: FYI ONLY | Pebble asks Army Corps to reconsider its mine plan in Southwest Alaska

Alaska Public Radio: Pebble asks Army Corps to reconsider its mine plan in Southwest Alaska

January 21, 2021 | Pebble Limited Partnership has filed an appeal with the Army Corps of Engineers, asking the agency to reconsider its application to build an open-pit gold mine upstream from Bristol Bay. In November, the Army Corps rejected the application, saying the mine would not comply with the Clean Water Act. The mine would be built on state land, but would include dredging and filling in federal waters and wetlands, which requires a permit from the Corps. Pebble Chairman and CEO John Shively said the decision was rushed, coming just days after the company submitted the final document — its plan to compensate for damage to the area. Mine opponents say the project is a threat to important salmon spawning streams and could ruin the region's sport and commercial fisheries. Two weeks ago, Alaska Gov. Mike Dunleavy announced the state would also appeal the permit rejection. Dunleavy said the decision endangers the state's right to develop its own resources.

Reuters: Developer of Alaska's Pebble mine files appeal over permit rejection

January 21, 2021 | Canadian miner Northern Dynasty Minerals Ltd said on Thursday its U.S. subsidiary Pebble Limited Partnership has filed an appeal with the U.S. Army Corps of Engineers over its decision to deny a key water permit for the contentious Pebble Mine in Alaska. The USACE denied the Clean Water Act permit in November because the plan submitted by the Pebble Limited Partnership detailing how it would handle the project's waste in the ecologically sensitive area did not comply with guidelines. The mine, one of the world's largest copper and gold deposits, has been through a roller coaster of regulation over the past 13 years. The denial of the permit had put the project's future in doubt. "Additional details about the Pebble Partnership's RFA (request for appeal) submission will be released in the days and weeks ahead," Northern Dynasty Minerals said on Thursday. The administration of former President Donald Trump had moved closer in July to approving the mine's permit, reversing a decision by his predecessor Barack Obama. But a prominent group of Republicans, including Trump's son Donald Trump Jr., had publicly voiced opposition, saying the mine would destroy areas of good fishing and hunting. Pebble Mine Partnership Chief Executive John Shively said at the time of the permit's denial that the decision was political and that the project had included necessary safeguards.

Message

From: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Sent: 1/23/2021 8:05:17 PM
To: OGC WLO [OGC_WLO@epa.gov]
Subject: FW: an ethics welcome to Melissa Hoffer and Dimple Chaudhary
Attachments: impartiality determination 1-19-21 redacted.pdf; enclosure to impartiality determination 1-19-21 updated 1-21-21.docx

FYI. I know folks will have questions about what this means (it gets a little confusing but I spent some time with Justina yesterday to try to understand better and in particular how it will work with WOTUS and 401, where Mass. and NRDC are parties to some rule challenges and not others). I'm working with her on nailing that down for WOTUS first and will share my communication with her with the WOTUS attorneys.

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,
As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.
- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	*Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA*, Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	*Labor Council for Latin America, NRDC, et al. v. EPA*, Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	*NRDC v. Wheeler*, Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	*Walters v. Flint, EPA, et al.*, Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all I interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: ODea, Elise [odea.elise@epa.gov]
Sent: 1/26/2021 3:26:12 PM
To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]
CC: Kupchan, Simma [Kupchan.Simma@epa.gov]; Hughes, Krista [hughes.krista@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]
Subject: RE: ethics next step - for immediate attention
Attachments: MH WOTUS Case List.docx; DC WOTUS Case List.docx

Hi Steve and Carrie,

Attached please find two documents listing the WOTUS cases that Melissa may participate in and the WOTUS cases that Dimple may participate in. I've also identified in each document which cases the other political is recused from (so that they can avoid discussing certain cases w/ each other). Please let me know if you would like me to make any changes to the documents or if you have any questions or concerns.

Also—I've flagged the recusals on the WOTUS district court litigation spreadsheet so that we can keep things straight on our end as well.

Thanks!
Elise

- -

Elise M. O'Dea
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4201

From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Tuesday, January 26, 2021 8:12 AM
To: ODea, Elise <odea.elise@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: FW: ethics next step - for immediate attention

Elise -- Would you be able to do this without too much trouble? I'm assuming by prior employer he's referring just to Mass for Melissa and NRDC for Dimple.....
Let me know if you have concerns/questions about this.....
Thanks, Elise.
Carrie

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Monday, January 25, 2021 5:42 PM
To: Messier, Dawn <Messier.Dawn@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: ethics next step - for immediate attention

Sharing Justina's response below which is complicated, so I called her and it and her message seemed orally pretty simple – that likely they CAN participate in any cases to which their prior employer was not a party. To help reach closure we agreed I would send her a list of the cases challenging the wotus and 401 rules to which their prior employers are not parties, and she would then forward that to melissa and dimple with her advice (I will review the email prior to its going to them).

So here is next steps:

Carrie and Diane – can you each have someone send me at their earliest convenience those case lists I can then forward to Justina – i.e., for each of them the WOTUS and 401 cases to which their prior employers are not a party. Please also list the case where Mass has filed amicus.

Thanks and let me know if you have any questions.

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 2:14 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Steve, Carrie and Dawn,
Often, I find it useful to just insert comments into the email itself, so see my comments in red below.
Justina

> As discussed, there is pending litigation in about 12 district courts challenging the WOTUS rule, and Massachusetts is a party to cases in California, New York and has filed an amicus brief in Massachusetts. NRDC is a party to cases in Massachusetts and So. Carolina. We discussed restrictions for them across the different cases and I've tried to capture what I took away from our conversation so can you please provide confirmation or clarification/correction.
> JUSTINA: To put the inquiry into our ethics vocabulary, these 12 cases are *particular matters involving specific parties*, also known as *specific party matters*. For our purposes, it doesn't matter that the subject matter of the specific party matter is a rulemaking, which is itself not a specific party matter. For ethics purposes, we focus on the "thing" at issue, which in this situation are those 12 separate cases.
>
> I'd like to ensure we understand the restrictions as soon as we are able as we are starting to prepare Monday for our first hot issues meeting with Melissa and Dimple this week. Thanks!

Melissa:

As explained in your email below, under her bar obligations, Melissa is precluded during her EPA tenure from participation in the two WOTUS cases to which Mass. is a party. In our call you explained that the "policy" decisions she may participate in pursuant to your impartiality determination include, for example, a policy decision not to defend the rule in litigation and requesting DOJ to seek abeyances in the cases for the Agency to reconsider its policy options. Your impartiality determination does not, however, permit her to participate in discussions of the litigation itself – e.g., deliberations on litigation strategy in light of such a policy decision, such as discussion whether to seek a remand, or other litigation options.

Question - Do the restrictions as you describe them apply to a case in which Mass. has participated as amicus in D.Mass?
JUSTINA: Assuming that MA was not a party to the case itself but filed an *amicus* brief only, then MA is not actually a party to the case. If the brief is filed by MA after she left the AG's office, then under the federal ethics rules ONLY, she might be permitted to work on it provided I grant an impartiality determination to allow her to work with MA during her one year cooling off period under the impartiality regulations. But if Melissa worked on that *amicus* brief filing or if the case is similar to the MA cases she worked on, then she may have bar restrictions. Remember, she must always preserve her former clients secrets and abide by rule 1.11 that preclude the former government official from "switching sides" on the same specific party matter. In some jurisdiction, the bar refers to the "same or *substantially related* specific party matter," which is not a term that arises in federal ethics. We refer attorneys to their own bar counsel for clarification.

With regard to the WOTUS cases to which Mass. is ***not*** a party, you discussed the question under the federal ethics rules and Melissa's bar restrictions (as she is not subject to the Biden ethics pledge since she is form a state).
JUSTINA: Right. Melissa's federal ethics obligations are found in the rules about loss of impartiality at 5 CFR 2635.502(b)(1)(iv): for one year after leaving MA, she cannot work on any particular matter in which her former employer or client (MA) is a party or represents a party unless she first obtains a written impartiality determination from OGC/Ethics. Because her former employer/client is a state, she is not subject to the additional restriction period under the Biden ethics pledge. And she remains subject to her bar rules.

Under the federal ethics rules, you indicated that Melissa may participate in such cases, notwithstanding the similar nature of those cases to the ones Mass is a party to in terms of the rules being challenged and the legal issues in the case, but you may advise her, as a prudential matter, to get the consent of her former employer before doing so.
JUSTINA: Yep. The federal ethics rules in this regard are in place to ensure that a new employee's loyalty is to the US government, not to the former employer. That's why we want a "cooling off" period. That said, we understand that it may be in the Agency's interest to have our new employee interact directly with the former employer, so the federal ethics rules allow for an ethics official to consider the impartiality factors at 5 CFR 2635.502(d)(1)-(6) to nevertheless allow the new employee to do so. The complicating factor for lawyers are their bar rules that preclude switching sides. Unlike the DC Bar, the MA bar rule 1.11 permits the former attorney to obtain the "informed consent" of the former client. We don't provide bar advice, so we urge attorneys to consult bar counsel on their own.

Under her bar restrictions, I believe you said that she may be able to participate in those cases if she received the consent of her former employer, but you were going to check the relevant bar rules. I wasn't sure which state bar rules you would need to check (it seemed like the location of the case was relevant – the first paragraph above lists the jurisdictions of the cases to which Mass is a party and filed an amicus brief).
JUSTINA: She will always be obliged to adhere to her own bar rules. If a case is in federal court, then she may have to abide by the bar rules in that jurisdiction as those rules may apply. The rules in question are always the duty of loyalty to the former client and that pesky rule about former government officials at 1.11. Remember, in DC, our rule 1.11 does not allow for any informed consent.

Dimple

I don't have notes of discussion of the federal ethics rules, but I assume the answer for Dimple is the same as above for Melissa – she may participate in WOTUS cases to which NRDC is not a party (subject to a potentially your prudential advice to obtain the consent of her former employer).
JUSTINA: What I said about Dimple is that, because she is subject to the Biden ethics pledge, her federal ethics rules are subsumed. The Biden pledge makes us look back two years (not just one), starts the recusal clock when she starts at EPA (not when she last provided the service), and the cooling off period lasts for two years (not just one).

Under her bar restrictions, since no WOTUS cases are listed for below, I think you said they do not restrict her participate in those cases.
JUSTINA: Correct, so long as NRDC is not a party to that litigation.

However, per your email, under the Biden ethics pledge she may not participate in any of the WOTUS cases to which NRDC is party for two years.
JUSTINA: Correct, she can't work on any specific party matter in which NRDC is a party or represents a party. And the Biden pledge further says that she can't attend any meeting or engage in any communication with NRDC as part of her official duties unless the subject matter of the meeting a particular matter of general applicability AND the meeting itself is "open to all interested parties," which we interpret as at least 5 entities representing diverse interests.

I hope this helps, but I know that ethics issues (particularly when overlaid with an additional ethics pledge and bar restrictions) are not necessarily intuitive. So let us know if you need more clarification!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Saturday, January 23, 2021 3:02 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Justina- thanks for the conversation yesterday about some of the circumstances we are dealing with in water for WOTUS cases. As discussed, there is pending litigation in about 12 district courts challenging the WOTUS rule, and Massachusetts is a party to cases in California, New York and has filed an amicus brief in Massachusetts. NRDC is a party to cases in Massachusetts and So. Carolina. We discussed restrictions for them across the different cases and I've tried to capture what I took away from our conversation so can you please provide confirmation or clarification/correction.

I'd like to ensure we understand the restrictions as soon as we are able as we are starting to prepare Monday for our first hot issues meeting with Melissa and Dimple this week. Thanks!

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Question - Do the restrictions as you describe them apply to a case in which Mass. has participated as amicus in D.Mass?

With regard to the WOTUS cases to which Mass. is ***not*** a party, you discussed the question under the federal ethics rules and Melissa's bar restrictions (as she is not subject to the Biden ethics pledge since she is form a state).

Under the federal ethics rules, you indicated that Melissa may participate in such cases, notwithstanding the similar nature of those cases to the ones Mass is a party to in terms of the rules being challenged and the legal issues in the case, but you may advise her, as a prudential matter, to get the consent of her former employer before doing so.

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Dimple

I don't have notes of discussion of the federal ethics rules, but I assume the answer for Dimple is the same as above for Melissa – she may participate in WOTUS cases to which NRDC is not a party (subject to a potentially your prudential advice to obtain the consent of her former employer).

Under her bar restrictions, since no WOTUS cases are listed for below, I think you said they do not restrict her participate in those cases.

However, per your email, under the Biden ethics pledge she may not participate in any of the WOTUS cases to which NRDC is party for two years.

Thanks so much for your help!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,

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MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.
- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	*Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA*, Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	*Labor Council for Latin America, NRDC, et al. v. EPA*, Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	*NRDC v. Wheeler*, Case No. 20-72794, 9th Cir.
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- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all I interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: McConkey, Diane [Mcconkey.Diane@epa.gov]
Sent: 1/26/2021 5:16:38 PM
To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
CC: Mullee, Alexander [Mullee.Alexander@epa.gov]
Subject: RE: 401 case list w/ parties - for immediate attention

Steve, here's the info after a quick consult with Alec. Let us know if you need more.

Cases challenging the 401 rule to which Massachusetts is not a party
Delaware Riverkeeper v. EPA, No. 2:20-CV-3412 (E.D. Pa)
South Carolina Coastal Conservation League, et al. v. EPA, No. 2:20-cv-03062-DCN (D. S.C.)

Cases challenging the 401 rule to which NRDC is not a party
Delaware Riverkeeper v. EPA, No. 2:20-CV-3412 (E.D. Pa)
In re CWA Rulemaking, No. 3:20 cv 00089 (N.D. Cal.)

From: McConkey, Diane
Sent: Tuesday, January 26, 2021 12:02 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Alec Mullee (Mullee.Alexander@epa.gov) <Mullee.Alexander@epa.gov>
Subject: RE: 401 case list w/ parties - for immediate attention

Sorry – Alec, could you send Steve a list of the 401 cases to which Melissa and Dimple's prior employers (Massachusetts and NRDC) are *not* parties?

My quick take is:
Cases to which Massachusetts is not a party – South Carolina and Pennsylvania cases
Cases to which NRDC is not a party – Pennsylvania and N. D. California cases

---

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Tuesday, January 26, 2021 11:56 AM
To: McConkey, Diane <Mcconkey.Diane@epa.gov>
Subject: FW: ethics next step - for immediate attention

Can someone please send me the 401 list as soon as possible. I have them for wotus and would like to get back to Justina. Thanks!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Neugeboren, Steven
Sent: Monday, January 25, 2021 5:42 PM
To: Dawn Messier <Messier.Dawn@epa.gov>; MaryEllen Levine <levine.marvellen@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: ethics next step - for immediate attention

Sharing Justina's response below which is complicated, so I called her and it and her message seemed orally pretty simple – that likely they CAN participate in any cases to which their prior employer was not a party. To help reach closure we agreed I would send her a list of the cases challenging the wotus and 401 rules to which their prior employers are not parties, and she would then forward that to melissa and dimple with her advice (I will review the email prior to its going to them).

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Carrie and Diane – can you each have someone send me at their earliest convenience those case lists I can then forward to Justina – i.e., for each of them the WOTUS and 401 cases to which their prior employers are not a party. Please also list the case where Mass has filed amicus.

Thanks and let me know if you have any questions.

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 2:14 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Steve, Carrie and Dawn,
Often, I find it useful to just insert comments into the email itself, so see my comments in red below.
Justina

> As discussed, there is pending litigation in about 12 district courts challenging the WOTUS rule, and Massachusetts is a party to cases in California, New York and has filed an amicus brief in Massachusetts. NRDC is a party to cases in Massachusetts and So. Carolina. We discussed restrictions for them across the different cases and I've tried to capture what I took away from our conversation so can you please provide confirmation or clarification/correction.
> JUSTINA: To put the inquiry into our ethics vocabulary, these 12 cases are *particular matters involving specific parties*, also known as *specific party matters*. For our purposes, it doesn't matter that the subject matter of the specific party matter is a rulemaking, which is itself not a specific party matter. For ethics purposes, we focus on the "thing" at issue, which in this situation are those 12 separate cases.
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> I'd like to ensure we understand the restrictions as soon as we are able as we are starting to prepare Monday for our first hot issues meeting with Melissa and Dimple this week. Thanks!

Melissa:

As explained in your email below, under her bar obligations, Melissa is precluded during her EPA tenure from participation in the two WOTUS cases to which Mass. is a party. In our call you explained that the "policy" decisions she may participate in pursuant to your impartiality determination include, for example, a policy decision not to defend the rule in litigation and requesting DOJ to seek abeyances in the cases for the Agency to reconsider its policy options. Your impartiality determination does not, however, permit her to participate in discussions of the litigation itself – e.g., deliberations on litigation strategy in light of such a policy decision, such as discussion whether to seek a remand, or other litigation options.

Question - Do the restrictions as you describe them apply to a case in which Mass. has participated as amicus in D.Mass?
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JUSTINA: Right. Melissa's federal ethics obligations are found in the rules about loss of impartiality at 5 CFR 2635.502(b)(1)(iv): for one year after leaving MA, she cannot work on any particular matter in which her former employer or client (MA) is a party or represents a party unless she first obtains a written impartiality determination from OGC/Ethics. Because her former employer/client is a state, she is not subject to the additional restriction period under the Biden ethics pledge. And she remains subject to her bar rules.

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JUSTINA: Yep. The federal ethics rules in this regard are in place to ensure that a new employee's loyalty is to the US government, not to the former employer. That's why we want a "cooling off" period. That said, we understand that it may be in the Agency's interest to have our new employee interact directly with the former employer, so the federal ethics rules allow for an ethics official to consider the impartiality factors at 5 CFR 2635.502(d)(1)-(6) to nevertheless allow the new employee to do so. The complicating factor for lawyers are their bar rules that preclude switching sides. Unlike the DC Bar, the MA bar rule 1.11 permits the former attorney to obtain the "informed consent" of the former client. We don't provide bar advice, so we urge attorneys to consult bar counsel on their own.

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Dimple

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However, per your email, under the Biden ethics pledge she may not participate in any of the WOTUS cases to which NRDC is party for two years.
JUSTINA: Correct, she can't work on any specific party matter in which NRDC is a party or represents a party. And the Biden pledge further says that she can't attend any meeting or engage in any communication with NRDC as part of her official duties unless the subject matter of the meeting a particular matter of general applicability AND the meeting itself is "open to all interested parties," which we interpret as at least 5 entities representing diverse interests.

I hope this helps, but I know that ethics issues (particularly when overlaid with an additional ethics pledge and bar restrictions) are not necessarily intuitive. So let us know if you need more clarification!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Saturday, January 23, 2021 3:02 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Justina- thanks for the conversation yesterday about some of the circumstances we are dealing with in water for WOTUS cases. As discussed, there is pending litigation in about 12 district courts challenging the WOTUS rule, and Massachusetts is a party to cases in California, New York and has filed an amicus brief in Massachusetts. NRDC is a party to cases in Massachusetts and So. Carolina. We discussed restrictions for them across the different cases and I've tried to capture what I took away from our conversation so can you please provide confirmation or clarification/correction.

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However, per your email, under the Biden ethics pledge she may not participate in any of the WOTUS cases to which NRDC is party for two years.

Thanks so much for your help!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,

As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.
- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	*Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA*, Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	*Labor Council for Latin America, NRDC, et al. v. EPA*, Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	*NRDC v. Wheeler*, Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	*Walters v. Flint, EPA, et al.*, Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all I interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Messier, Dawn [Messier.Dawn@epa.gov]
Sent: 1/26/2021 5:20:42 PM
To: OGC WLO [OGC_WLO@epa.gov]
Subject: Pandemic parent resources and home office ergonomics

Bringing specific attention to two sessions below that might be of special interest to many of you – both highlighted in yellow. There is one on home office ergonomics and another on navigating pandemic schooling, which includes discussion of k – 12 tutoring and parent coaching.

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

From: OMS-MassMailer-Mailbox <OMS-MassMailer-Mailbox@epa.gov>
Sent: Monday, January 25, 2021 4:07 PM
To: EPA-DynamicMassMailer <EPA-DynamicMassMailer@epa.gov>
Subject: First Quarter Wellness Webinars and Resources

EPA

OMS | Notification

Informational

2021 Wellness Webinars and Resources

Many exciting wellness resources are planned for agency employees this year. The Office of Human Resources is delighted to sponsor these events and will advertise all upcoming events quarterly, so be sure to bookmark the Benefits Corner SharePoint site to stay informed of future events!

Registration is not required for the LIVE webinars. Here's what's on tap for Q1:

Thriving Tuesdays

Medicare and How It Coordinates with the Federal Employee Health Benefits Program
March 16, 12:00 p.m. – 2:00 p.m. EDT
Attention Federal Employees Planning for Retirement: CareFirst BCBS will highlight the advantages of Medicare in an extremely comprehensive presentation; a Q&A period will follow.

Wellness Wednesdays

Teleworking and Ergonomics
January 27, 12:00 p.m. – 1:00 p.m. EDT
GEHA will present guidance on ergonomics and tips on how to make your home office work better for you.

The 'Why' Power – Emotional Goal Setting
February 10, 12:00 p.m. – 1:00 p.m. EDT
CareFirst BCBS will share how connecting your heartfelt desires to your goals creates the focus needed to overcome the obstacles between you and your goals in every area of your life.

Longevity Lifestyle Preparation
February 17, 12:00 p.m. – 2:00 p.m. EDT
David Voorhees from Waterford Wealth Management will share his unique perspectives on aging and tips on how to reduce stress for your mind, body, and finances.

Federal Health Benefits Service Day
Wednesday, March 10
Bookmark the Benefits Corner SharePoint site and stay tuned for more details.

Trending Thursdays

Navigating Pandemic School Disruptions, Free Tutoring, and Merit Scholarships
January 28, 12:00 p.m. – 1:00 p.m. EDT
Learn how Federal Employee Education and Assistance can help your children navigate K-12 school during the pandemic, including a program providing free K-12 tutoring, plus 1:1 parent coaching.

Phased Retirement
February 25, 12:00 p.m. – 2:00 p.m. EDT
Join OHR's Ramona Conway and Christina Hines as they discuss how Phased Retirement allows full-time employees to work 40 hours per pay period and receive partial retirement benefits.

Understanding the Impact of Post-Election Tax Changes (Tax Planning 101)
March 18, 12:00 p.m. – 2:00 p.m. EDT
Do you understand the difference in Ordinary Income, Capital Gains, and Net Investment Income? Join RetFed as they discuss important tax loopholes, the Secure Act of 2020, and more.

Tax Planning (formerly Taxes & The IRS)
March 25, 12:00 p.m. – 1:00 p.m. EDT
Get help with questions such as "Do I need a tax adviser?" and learn more about topics like tax avoidance, tax cuts, and the differences between tax deferral / tax deductible / tax free.

Contact
The OHR Work/Life/Wellness Program sponsors these webinars. Visit the Benefits Corner SharePoint site to learn more. For Closed Captioning Services, please contact Ramona J. Conway (202-564-7571).

Message

From: ODea, Elise [odea.elise@epa.gov]
Sent: 1/26/2021 7:01:38 PM
To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]
CC: Kupchan, Simma [Kupchan.Simma@epa.gov]; Hughes, Krista [hughes.krista@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]
Subject: RE: ethics next step - for immediate attention
Attachments: MH WOTUS Case List.docx; DC WOTUS Case List.docx

Hi Steve,

Attached please find revised WOTUS case lists for Melissa and Dimple that do not include the case status information, per your request.

Thanks!
Elise

- -

Elise M. O'Dea
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4201

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Tuesday, January 26, 2021 11:01 AM
To: ODea, Elise <odea.elise@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: ethics next step - for immediate attention

Thank you Elise!

Since their recusal status is unclear, can you please resend with just stating the rule that is challenged, but not the status information? I know that is likely all public information but I'd prefer to leave that stuff out of this communication. Thanks!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: ODea, Elise <odea.elise@epa.gov>
Sent: Tuesday, January 26, 2021 10:26 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: ethics next step - for immediate attention

Hi Steve and Carrie,

Attached please find two documents listing the WOTUS cases that Melissa may participate in and the WOTUS cases that Dimple may participate in. I've also identified in each document which cases the other political is recused from (so that they can avoid discussing certain cases w/ each other). Please let me know if you would like me to make any changes to the documents or if you have any questions or concerns.

Also—I've flagged the recusals on the WOTUS district court litigation spreadsheet so that we can keep things straight on our end as well.

Thanks!
Elise

- -

Elise M. O'Dea
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4201

From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Tuesday, January 26, 2021 8:12 AM
To: ODea, Elise <odea.elise@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: FW: ethics next step - for immediate attention

Elise -- Would you be able to do this without too much trouble? I'm assuming by prior employer he's referring just to Mass for Melissa and NRDC for Dimple.....
Let me know if you have concerns/questions about this.....
Thanks, Elise.
Carrie

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Monday, January 25, 2021 5:42 PM
To: Messier, Dawn <Messier.Dawn@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: ethics next step - for immediate attention

Sharing Justina's response below which is complicated, so I called her and it and her message seemed orally pretty simple – that likely they CAN participate in any cases to which their prior employer was not a party. To help reach closure we agreed I would send her a list of the cases challenging the wotus and 401 rules to which their prior employers

are not parties, and she would then forward that to melissa and dimple with her advice (I will review the email prior to its going to them).

So here is next steps:

Carrie and Diane – can you each have someone send me at their earliest convenience those case lists I can then forward to Justina – i.e., for each of them the WOTUS and 401 cases to which their prior employers are not a party. Please also list the case where Mass has filed amicus.

Thanks and let me know if you have any questions.

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
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1200 Penn. Ave., N.W.
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From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 2:14 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
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Justina

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From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Saturday, January 23, 2021 3:02 PM
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Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Justina- thanks for the conversation yesterday about some of the circumstances we are dealing with in water for WOTUS cases. As discussed, there is pending litigation in about 12 district courts challenging the WOTUS rule, and Massachusetts is a party to cases in California, New York and has filed an amicus brief in Massachusetts. NRDC is a party to cases in Massachusetts and So. Carolina. We discussed restrictions for them across the different cases and I've tried to capture what I took away from our conversation so can you please provide confirmation or clarification/correction.

I'd like to ensure we understand the restrictions as soon as we are able as we are starting to prepare Monday for our first hot issues meeting with Melissa and Dimple this week. Thanks!

Melissa:

As explained in your email below, under her bar obligations, Melissa is precluded during her EPA tenure from participation in the two WOTUS cases to which Mass. is a party. In our call you explained that the "policy" decisions she may participate in pursuant to your impartiality determination include, for example, a policy decision not to defend the rule in litigation and requesting DOJ to seek abeyances in the cases for the Agency to reconsider its policy options. Your impartiality determination does not, however, permit her to participate in discussions of the litigation itself – e.g., deliberations on litigation strategy in light of such a policy decision, such as discussion whether to seek a remand, or other litigation options.

Question - Do the restrictions as you describe them apply to a case in which Mass. has participated as amicus in D.Mass?

With regard to the WOTUS cases to which Mass. is ***not*** a party, you discussed the question under the federal ethics rules and Melissa's bar restrictions (as she is not subject to the Biden ethics pledge since she is form a state).

Under the federal ethics rules, you indicated that Melissa may participate in such cases, notwithstanding the similar nature of those cases to the ones Mass is a party to in terms of the rules being challenged and the legal issues in the case, but you may advise her, as a prudential matter, to get the consent of her former employer before doing so.

Under her bar restrictions, I believe you said that she may be able to participate in those cases if she received the consent of her former employer, but you were going to check the relevant bar rules. I wasn't sure which state bar rules you would need to check (it seemed like the location of the case was relevant – the first paragraph above lists the jurisdictions of the cases to which Mass is a party and filed an amicus brief).

Dimple

I don't have notes of discussion of the federal ethics rules, but I assume the answer for Dimple is the same as above for Melissa – she may participate in WOTUS cases to which NRDC is not a party (subject to a potentially your prudential advice to obtain the consent of her former employer).

Under her bar restrictions, since no WOTUS cases are listed for below, I think you said they do not restrict her participate in those cases.

However, per your email, under the Biden ethics pledge she may not participate in any of the WOTUS cases to which NRDC is party for two years.

Thanks so much for your help!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,
As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.
- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	*Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA*, Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	*Labor Council for Latin America, NRDC, et al. v. EPA*, Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	*NRDC v. Wheeler*, Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	*Walters v. Flint, EPA, et al.*, Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all I interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: ODea, Elise [odea.elise@epa.gov]
Sent: 1/26/2021 4:05:30 PM
To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]
CC: Kupchan, Simma [Kupchan.Simma@epa.gov]; Hughes, Krista [hughes.krista@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]
Subject: RE: ethics next step - for immediate attention

Will do! And yes, it's all public information, but I will remove it. Thanks!

- -

Elise M. O'Dea
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4201

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Tuesday, January 26, 2021 11:01 AM
To: ODea, Elise <odea.elise@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: ethics next step - for immediate attention

Thank you Elise!

Since their recusal status is unclear, can you please resend with just stating the rule that is challenged, but not the status information? I know that is likely all public information but I'd prefer to leave that stuff out of this communication. Thanks!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: ODea, Elise <odea.elise@epa.gov>
Sent: Tuesday, January 26, 2021 10:26 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: ethics next step - for immediate attention

Hi Steve and Carrie,

Attached please find two documents listing the WOTUS cases that Melissa may participate in and the WOTUS cases that Dimple may participate in. I've also identified in each document which cases the other political is recused from (so that they can avoid discussing certain cases w/ each other). Please let me know if you would like me to make any changes to the documents or if you have any questions or concerns.

Also—I've flagged the recusals on the WOTUS district court litigation spreadsheet so that we can keep things straight on our end as well.

Thanks!
Elise

- -

Elise M. O'Dea
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4201

From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Tuesday, January 26, 2021 8:12 AM
To: ODea, Elise <odea.elise@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: FW: ethics next step - for immediate attention

Elise -- Would you be able to do this without too much trouble? I'm assuming by prior employer he's referring just to Mass for Melissa and NRDC for Dimple.....
Let me know if you have concerns/questions about this.....
Thanks, Elise.
Carrie

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Monday, January 25, 2021 5:42 PM
To: Messier, Dawn <Messier.Dawn@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: ethics next step - for immediate attention

Sharing Justina's response below which is complicated, so I called her and it and her message seemed orally pretty simple – that likely they CAN participate in any cases to which their prior employer was not a party. To help reach closure we agreed I would send her a list of the cases challenging the wotus and 401 rules to which their prior employers are not parties, and she would then forward that to melissa and dimple with her advice (I will review the email prior to its going to them).

So here is next steps:

Carrie and Diane – can you each have someone send me at their earliest convenience those case lists I can then forward to Justina – i.e., for each of them the WOTUS and 401 cases to which their prior employers are not a party. Please also list the case where Mass has filed amicus.

Thanks and let me know if you have any questions.

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 2:14 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Steve, Carrie and Dawn,
Often, I find it useful to just insert comments into the email itself, so see my comments in red below.
Justina

> As discussed, there is pending litigation in about 12 district courts challenging the WOTUS rule, and Massachusetts is a party to cases in California, New York and has filed an amicus brief in Massachusetts. NRDC is a party to cases in Massachusetts and So. Carolina. We discussed restrictions for them across the different cases and I've tried to capture what I took away from our conversation so can you please provide confirmation or clarification/correction.
> JUSTINA: To put the inquiry into our ethics vocabulary, these 12 cases are *particular matters involving specific parties*, also known as *specific party matters*. For our purposes, it doesn't matter that the subject matter of the specific party matter is a rulemaking, which is itself not a specific party matter. For ethics purposes, we focus on the "thing" at issue, which in this situation are those 12 separate cases.
>
> I'd like to ensure we understand the restrictions as soon as we are able as we are starting to prepare Monday for our first hot issues meeting with Melissa and Dimple this week. Thanks!
>
> **Melissa:**
>
> As explained in your email below, under her bar obligations, Melissa is precluded during her EPA tenure from participation in the two WOTUS cases to which Mass. is a party. In our call you explained that the "policy" decisions she may participate in pursuant to your impartiality determination include, for example, a policy decision not to defend the rule in litigation and requesting DOJ to seek abeyances in the cases for the Agency to reconsider its policy options. Your impartiality determination does not, however, permit her to participate in discussions of the litigation itself – e.g., deliberations on litigation strategy in light of such a policy decision, such as discussion whether to seek a remand, or other litigation options.
>
> Question - Do the restrictions as you describe them apply to a case in which Mass. has participated as amicus in D.Mass?
> JUSTINA: Assuming that MA was not a party to the case itself but filed an *amicus* brief only, then MA is not actually a party to the case. If the brief is filed by MA after she left the AG's office, then under the federal ethics rules ONLY, she might be permitted to work on it provided I grant an impartiality determination to allow her to work with MA during her one year cooling off period under the impartiality regulations. But if Melissa worked

on that *amicus* brief filing or if the case is similar to the MA cases she worked on, then she may have bar restrictions. Remember, she must always preserve her former clients secrets and abide by rule 1.11 that preclude the former government official from "switching sides" on the same specific party matter. In some jurisdiction, the bar refers to the "same or *substantially related* specific party matter," which is not a term that arises in federal ethics. We refer attorneys to their own bar counsel for clarification.

With regard to the WOTUS cases to which Mass. is ***not*** a party, you discussed the question under the federal ethics rules and Melissa's bar restrictions (as she is not subject to the Biden ethics pledge since she is form a state).
JUSTINA: Right. Melissa's federal ethics obligations are found in the rules about loss of impartiality at 5 CFR 2635.502(b)(1)(iv): for one year after leaving MA, she cannot work on any particular matter in which her former employer or client (MA) is a party or represents a party unless she first obtains a written impartiality determination from OGC/Ethics. Because her former employer/client is a state, she is not subject to the additional restriction period under the Biden ethics pledge. And she remains subject to her bar rules.

Under the federal ethics rules, you indicated that Melissa may participate in such cases, notwithstanding the similar nature of those cases to the ones Mass is a party to in terms of the rules being challenged and the legal issues in the case, but you may advise her, as a prudential matter, to get the consent of her former employer before doing so.
JUSTINA: Yep. The federal ethics rules in this regard are in place to ensure that a new employee's loyalty is to the US government, not to the former employer. That's why we want a "cooling off" period. That said, we understand that it may be in the Agency's interest to have our new employee interact directly with the former employer, so the federal ethics rules allow for an ethics official to consider the impartiality factors at 5 CFR 2635.502(d)(1)-(6) to nevertheless allow the new employee to do so. The complicating factor for lawyers are their bar rules that preclude switching sides. Unlike the DC Bar, the MA bar rule 1.11 permits the former attorney to obtain the "informed consent" of the former client. We don't provide bar advice, so we urge attorneys to consult bar counsel on their own.

Under her bar restrictions, I believe you said that she may be able to participate in those cases if she received the consent of her former employer, but you were going to check the relevant bar rules. I wasn't sure which state bar rules you would need to check (it seemed like the location of the case was relevant – the first paragraph above lists the jurisdictions of the cases to which Mass is a party and filed an amicus brief).
JUSTINA: She will always be obliged to adhere to her own bar rules. If a case is in federal court, then she may have to abide by the bar rules in that jurisdiction as those rules may apply. The rules in question are always the duty of loyalty to the former client and that pesky rule about former government officials at 1.11. Remember, in DC, our rule 1.11 does not allow for any informed consent.

Dimple

I don't have notes of discussion of the federal ethics rules, but I assume the answer for Dimple is the same as above for Melissa – she may participate in WOTUS cases to which NRDC is not a party (subject to a potentially your prudential advice to obtain the consent of her former employer).
JUSTINA: What I said about Dimple is that, because she is subject to the Biden ethics pledge, her federal ethics rules are subsumed. The Biden pledge makes us look back two years (not just one), starts the recusal clock when she starts at EPA (not when she last provided the service), and the cooling off period lasts for two years (not just one).

Under her bar restrictions, since no WOTUS cases are listed for below, I think you said they do not restrict her participate in those cases.
JUSTINA: Correct, so long as NRDC is not a party to that litigation.

However, per your email, under the Biden ethics pledge she may not participate in any of the WOTUS cases to which NRDC is party for two years.

JUSTINA: Correct, she can't work on any specific party matter in which NRDC is a party or represents a party. And the Biden pledge further says that she can't attend any meeting or engage in any communication with NRDC as part of her official duties unless the subject matter of the meeting a particular matter of general applicability AND the meeting itself is "open to all interested parties," which we interpret as at least 5 entities representing diverse interests.

I hope this helps, but I know that ethics issues (particularly when overlaid with an additional ethics pledge and bar restrictions) are not necessarily intuitive. So let us know if you need more clarification!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Saturday, January 23, 2021 3:02 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Justina- thanks for the conversation yesterday about some of the circumstances we are dealing with in water for WOTUS cases. As discussed, there is pending litigation in about 12 district courts challenging the WOTUS rule, and Massachusetts is a party to cases in California, New York and has filed an amicus brief in Massachusetts. NRDC is a party to cases in Massachusetts and So. Carolina. We discussed restrictions for them across the different cases and I've tried to capture what I took away from our conversation so can you please provide confirmation or clarification/correction.

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Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

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Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

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MELISSA HOFFER

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- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	*Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA*, Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	*Labor Council for Latin America, NRDC, et al. v. EPA*, Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	*NRDC v. Wheeler*, Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	*Walters v. Flint, EPA, et al.*, Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all I interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Levine, MaryEllen [levine.maryellen@epa.gov]
Sent: 1/26/2021 8:21:54 PM
To: Dierker, Carl [Dierker.Carl@epa.gov]; Fugh, Justina [Fugh.Justina@epa.gov]; Stein, Mark [Stein.Mark@epa.gov]
CC: Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Clarke, Victoria [clarke.victoria@epa.gov]; Messier, Dawn [Messier.Dawn@epa.gov]
Subject: RE: ethics next step - for immediate attention

Hi Justina and Victoria,

Here's what I know. Melissa mentioned during the WLO staff meeting that she worked on the same permit issued to Merrimack Station on behalf of CLF circa 2007-ish. It is the same permit that we are defending now and CLF and environmental groups may comment on and challenge the permit as an affected party. CLF has done so. My understanding it that it took us many years to issue this permit (not uncommon for such a large complex power plant) and this is the same permit we are defending now.

I also do not have a dog in this fight – perhaps ORC 1 can provide more information or Melissa can provide more information. I have always been unclear as to what is OGC's role in the whole recusal process.

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Dierker, Carl <Dierker.Carl@epa.gov>
Sent: Tuesday, January 26, 2021 3:08 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; Stein, Mark <Stein.Mark@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: ethics next step - for immediate attention

Bringing Mark into the loop, as he probably has the best knowledge of CLF's role in developing and appealing the current NPDES permit.

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Tuesday, January 26, 2021 2:39 PM
To: Levine, MaryEllen <levine.maryellen@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>; Dierker, Carl <Dierker.Carl@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: ethics next step - for immediate attention

Hi,
I don't have a federal ethics dog in this fight. This is likely a professional responsibility issue for Melissa under her bar rules. But can you explain more about the situation? What does she mean she "worked on" it while at CLF? Isn't the permit issued between EPA and Merrimack Station? How might CLF be involved? Did they

comment on the permit in some way? Has the permit been revised at all over the years, or is the EAB litigation about the very same permit?
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Levine, MaryEllen <levine.maryellen@epa.gov>
Sent: Tuesday, January 26, 2021 1:59 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>; Dierker, Carl <Dierker.Carl@epa.gov>
Subject: FW: ethics next step - for immediate attention

Justina,

We are defending a permit for Merrimack Station before the EAB. Melissa mentioned she worked on the permit for Conservation Law Foundation, before her job at the Mass AG's office. CLF is challenging the permit – they are opposing counsel.

Are there any recusal issues we should be aware of?

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Monday, January 25, 2021 7:32 PM
To: Levine, MaryEllen <levine.maryellen@epa.gov>
Cc: Messier, Dawn <Messier.Dawn@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: Re: ethics next step - for immediate attention

I can't imagine there's a lifetime ban. You could check with Justina.

Steven Neugeboren
Associate General Counsel for Water
Environmental Protection Agency
Mails code 2355A
1200 Pennsylvania Ave, NW
Washington DC 20460
202-564-5488

On Jan 25, 2021, at 6:16 PM, Levine, MaryEllen <levine.maryellen@epa.gov> wrote:

I understand from ORC 1 that for CLF, Melissa worked on the Merrimack permit around 2012

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Monday, January 25, 2021 5:42 PM
To: Messier, Dawn <Messier.Dawn@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: ethics next step - for immediate attention

Sharing Justina's response below which is complicated, so I called her and it and her message seemed orally pretty simple – that likely they CAN participate in any cases to which their prior employer was not a party. To help reach closure we agreed I would send her a list of the cases challenging the wotus and 401 rules to which their prior employers are not parties, and she would then forward that to melissa and dimple with her advice (I will review the email prior to its going to them).

So here is next steps:

Carrie and Diane – can you each have someone send me at their earliest convenience those case lists I can then forward to Justina – i.e., for each of them the WOTUS and 401 cases to which their prior employers are not a party. Please also list the case where Mass has filed amicus.

Thanks and let me know if you have any questions.

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From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 2:14 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Steve, Carrie and Dawn,

Often, I find it useful to just insert comments into the email itself, so see my comments in red below.
Justina

As discussed, there is pending litigation in about 12 district courts challenging the WOTUS rule, and Massachusetts is a party to cases in California, New York and has filed an amicus brief in Massachusetts. NRDC is a party to cases in Massachusetts and So. Carolina. We discussed restrictions for them across the different cases and I've tried to capture what I took away from our conversation so can you please provide confirmation or clarification/correction.
JUSTINA: To put the inquiry into our ethics vocabulary, these 12 cases are *particular matters involving specific parties*, also known as *specific party matters.* For our purposes, it doesn't matter that the subject matter of the specific party matter is a rulemaking, which is itself not a specific party matter. For ethics purposes, we focus on the "thing" at issue, which in this situation are those 12 separate cases.

I'd like to ensure we understand the restrictions as soon as we are able as we are starting to prepare Monday for our first hot issues meeting with Melissa and Dimple this week. Thanks!

Melissa:

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JUSTINA: Yep. The federal ethics rules in this regard are in place to ensure that a new employee's loyalty is to the US government, not to the former employer. That's why we want a "cooling off" period. That said, we understand that it may be in the Agency's interest to have our new employee interact directly with the former employer, so the federal ethics rules allow for an ethics official to consider the impartiality factors at 5 CFR 2635.502(d)(1)-(6) to nevertheless allow the new employee to do so. The complicating factor for lawyers are their bar rules that preclude switching sides. Unlike the DC Bar, the MA bar rule 1.11 permits the former attorney to obtain the "informed consent" of the former client. We don't provide bar advice, so we urge attorneys to consult bar counsel on their own.

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Under her bar restrictions, since no WOTUS cases are listed for below, I think you said they do not restrict her participate in those cases.
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However, per your email, under the Biden ethics pledge she may not participate in any of the WOTUS cases to which NRDC is party for two years.
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I hope this helps, but I know that ethics issues (particularly when overlaid with an additional ethics pledge and bar restrictions) are not necessarily intuitive. So let us know if you need more clarification!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Saturday, January 23, 2021 3:02 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Justina- thanks for the conversation yesterday about some of the circumstances we are dealing with in water for WOTUS cases. As discussed, there is pending litigation in about 12 district courts challenging the WOTUS rule, and Massachusetts is a party to cases in California, New York and has filed an amicus brief in Massachusetts. NRDC is a party to cases in Massachusetts and So. Carolina. We discussed restrictions for them across the different cases and I've tried to capture what I took away from our conversation so can you please provide confirmation or clarification/correction.

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Thanks so much for your help!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,
As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.

- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	*Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA*, Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	*Labor Council for Latin America, NRDC, et al. v. EPA*, Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	*NRDC v. Wheeler*, Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	*Walters v. Flint, EPA, et al.*, Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all I interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.
Justina

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Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 1/26/2021 8:41:34 PM
To: Stein, Mark [Stein.Mark@epa.gov]; Dierker, Carl [Dierker.Carl@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]
CC: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]; Clarke, Victoria [clarke.victoria@epa.gov]
Subject: RE: ethics next step - for immediate attention

Oh, it's just a turn of phrase. I don't mean to imply any controversy. All I'm saying is that there is no federal ethics issue here.

From: Stein, Mark <Stein.Mark@epa.gov>
Sent: Tuesday, January 26, 2021 3:25 PM
To: Dierker, Carl <Dierker.Carl@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: ethics next step - for immediate attention

By the way, as far as having a "dog in the fight," the Region and I certainly don't have one. Just want to make sure things are done right and no one has any inadvertent problems.

From: Dierker, Carl <Dierker.Carl@epa.gov>
Sent: Tuesday, January 26, 2021 3:08 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; Stein, Mark <Stein.Mark@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: ethics next step - for immediate attention

Bringing Mark into the loop, as he probably has the best knowledge of CLF's role in developing and appealing the current NPDES permit.

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Tuesday, January 26, 2021 2:39 PM
To: Levine, MaryEllen <levine.maryellen@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>; Dierker, Carl <Dierker.Carl@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: ethics next step - for immediate attention

Hi,
I don't have a federal ethics dog in this fight. This is likely a professional responsibility issue for Melissa under her bar rules. But can you explain more about the situation? What does she mean she "worked on" it while at CLF? Isn't the permit issued between EPA and Merrimack Station? How might CLF be involved? Did they comment on the permit in some way? Has the permit been revised at all over the years, or is the EAB litigation about the very same permit?
Justina

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From: Levine, MaryEllen <levine.maryellen@epa.gov>
Sent: Tuesday, January 26, 2021 1:59 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>; Dierker, Carl <Dierker.Carl@epa.gov>
Subject: FW: ethics next step - for immediate attention

Justina,

We are defending a permit for Merrimack Station before the EAB. Melissa mentioned she worked on the permit for Conservation Law Foundation, before her job at the Mass AG's office. CLF is challenging the permit – they are opposing counsel.

Are there any recusal issues we should be aware of?

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Monday, January 25, 2021 7:32 PM
To: Levine, MaryEllen <levine.maryellen@epa.gov>
Cc: Messier, Dawn <Messier.Dawn@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
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I'd like to ensure we understand the restrictions as soon as we are able as we are starting to prepare Monday for our first hot issues meeting with Melissa and Dimple this week. Thanks!

Melissa:

As explained in your email below, under her bar obligations, Melissa is precluded during her EPA tenure from participation in the two WOTUS cases to which Mass. is a party. In our call you explained that the "policy" decisions she may participate in pursuant to your impartiality determination include, for example, a policy decision not to defend the rule in litigation and requesting DOJ to seek abeyances in the cases for the Agency to reconsider its policy options. Your impartiality determination does not, however, permit her to participate in discussions of the litigation itself – e.g., deliberations on litigation strategy in light of such a policy decision, such as discussion whether to seek a remand, or other litigation options.

Question - Do the restrictions as you describe them apply to a case in which Mass. has participated as amicus in D.Mass?

With regard to the WOTUS cases to which Mass. is ***not*** a party, you discussed the question under the federal ethics rules and Melissa's bar restrictions (as she is not subject to the Biden ethics pledge since she is form a state).

Under the federal ethics rules, you indicated that Melissa may participate in such cases, notwithstanding the similar nature of those cases to the ones Mass is a party to in terms of the rules being challenged and the legal issues in the case, but you may advise her, as a prudential matter, to get the consent of her former employer before doing so.

Under her bar restrictions, I believe you said that she may be able to participate in those cases if she received the consent of her former employer, but you were going to check the relevant bar rules. I wasn't sure which state bar rules you would need to check (it seemed like the location of the case was relevant – the first paragraph above lists the jurisdictions of the cases to which Mass is a party and filed an amicus brief).

Dimple

I don't have notes of discussion of the federal ethics rules, but I assume the answer for Dimple is the same as above for Melissa – she may participate in WOTUS cases to which NRDC is not a party (subject to a potentially your prudential advice to obtain the consent of her former employer).

Under her bar restrictions, since no WOTUS cases are listed for below, I think you said they do not restrict her participate in those cases.

However, per your email, under the Biden ethics pledge she may not participate in any of the WOTUS cases to which NRDC is party for two years.

Thanks so much for your help!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,
As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.
- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she

previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	*Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA*, Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	*Labor Council for Latin America, NRDC, et al. v. EPA*, Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	*NRDC v. Wheeler*, Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	*Walters v. Flint, EPA, et al.*, Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all I interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Levine, MaryEllen [levine.maryellen@epa.gov]
Sent: 2/1/2021 7:35:46 PM
To: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]
Subject: FW: Biden Administration day one actions re: environment and regulatory efforts
Attachments: list_actions_to_review_biden_admin_01-20-21.pdf; memo_modernizing_reg_review_01-20-21.pdf; eo_climate_env_biden_01-20-21.pdf; eo_revoking_trump_eos_biden_01-20-21.pdf; eo_equity_biden_01-20-21.pdf; memo_reg_freeze_01-20-21.pdf

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Levine, MaryEllen <levine.maryellen@epa.gov>
Sent: Friday, January 29, 2021 3:13 PM
To: Levine, MaryEllen <levine.maryellen@epa.gov>
Subject: FW: Biden Administration day one actions re: environment and regulatory efforts

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Wall, Tom <Wall.Tom@epa.gov>
Sent: Thursday, January 21, 2021 1:53 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Goodin, John <Goodin.John@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>
Subject: FW: Biden Administration day one actions re: environment and regulatory efforts

In case you haven't seen one or more of these yet:

Tom Wall, Director
Watershed Restoration, Assessment and Protection Division
Office of Wetlands, Oceans and Watersheds
U.S. EPA
Wall.tom@epa.gov

Cell: 202-906-9962

From: Weiler, Katherine <Weiler.Katherine@epa.gov>
Sent: Thursday, January 21, 2021 10:13 AM
To: Goodin, John <Goodin.John@epa.gov>; Connors, Sandra <Connors.Sandra@epa.gov>; Wall, Tom <Wall.Tom@epa.gov>
Cc: Frazer, Brian <Frazer.Brian@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Yusuf, Istanbul <Yusuf.Istanbul@epa.gov>; Shimkin, Martha <Shimkin.Martha@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>
Subject: FYI: Biden Administration day one actions re: environment and regulatory efforts

Just an FYI from Greg below.

From: Spraul, Greg <Spraul.Greg@epa.gov>
Sent: Thursday, January 21, 2021 9:26 AM
To: Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Trombley, Michael <Trombley.Michael@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Corr, Elizabeth <Corr.Elizabeth@epa.gov>; Weiler, Katherine <Weiler.Katherine@epa.gov>; Anderson, William <Anderson.William@epa.gov>; Lalley, Cara <Lalley.Cara@epa.gov>; Risley, David <Risley.David@epa.gov>; Aguirre, Janita <Aguirre.Janita@epa.gov>; Tiago, Joseph <Tiago.Joseph@epa.gov>; Vazquez, Sharon <Vazquez.Sharon@epa.gov>; Moody, Christina <Moody.Christina@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Klasen, Matthew <Klasen.Matthew@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>; Skane, Elizabeth <Skane.Elizabeth@epa.gov>; Shimkin, Martha <Shimkin.Martha@epa.gov>; Bowles, Jack <Bowles.Jack@epa.gov>
Subject: Biden Administration day one actions re: environment and regulatory efforts

Dear colleagues,

I thought I would pass along the E.O.s and the memos that I've seen so far that will impact OW's policy and reg work. This list is not exhaustive. Feel free to forward to others in your organization.

1. List of agency actions to be reviewed (includes NWPR (aka WOTUS), 401, LCR, Perchlorate, Corps nationwide permit, MD's Chesapeake Bay WIP, Bay Delta decisions)
2. Memo on Modernizing Regulatory Review – calls for the OMB director to produce.. "a set of recommendations for improving and modernizing regulatory review. These recommendations should provide concrete suggestions on how the regulatory review process can promote public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations. The recommendations should also include proposals that would ensure that regulatory review serves as a tool to affirmatively promote regulations that advance these values. These recommendations should be informed by public engagement with relevant stakeholders."
3. Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. See Section 7 that revokes several Trump E.O.s on WOTUS and infrastructure.
4. Executive Order on Revocation of Certain Executive Orders Concerning Federal Regulation. Includes revoking the Trump E.O. on guidance documents.
5. Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. Requires agencies to perform "equity" reviews.
6. Memo: Regulatory Freeze Pending Review. The typical memo freezing anything that has not published in the FR and examining recently published regs in the FR.

Greg Spraul
Senior Advisor for Congressional and Intergovernmental Affairs
Office of Water
U.S. Environmental Protection Agency
Direct: 202-564-0255

Message

From: Messier, Dawn [Messier.Dawn@epa.gov]
Sent: 10/28/2020 7:31:00 PM
To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Subject: FW: Excused Absence for Voting

Here you go .

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

From: MassMailer <massmailer@epa.gov>
Sent: Thursday, October 22, 2020 2:02 PM
To: MassMailer <massmailer@epa.gov>
Subject: Excused Absence for Voting

Dear Colleagues,

Election Day is Tuesday, November 3, 2020. According to federal guidelines, employees may be granted an excused absence (i.e., administrative leave) to vote depending on their work schedule and the polling times for their voting jurisdiction. There are additional considerations related to voting on Election Day, early voting, and non-partisan volunteering summarized below.

Voting on Election Day

If the difference between an employee's scheduled arrival and departure times and the polls' opening and closing time is less than three hours, an employee is entitled to administrative leave, up to a maximum of three hours. If the polls open or close at least three hours before or after an employee's work schedule, no excused absence may be granted.

If an employee's voting place is beyond normal commuting distance and voting by absentee ballot is not permitted, the agency may grant excused absence (not to exceed one day) to allow the employee to travel to the voting place to cast a ballot. If more than one day is needed, the employee may request annual leave or leave without pay for the additional period of absence.

Early Voting

In regards to early voting, the agency may grant excused absence on a scheduled workday only when: 1) the employee will be unable to vote on the day of the election because of activities directly related to the agency's mission (such as temporary duty travel) and cannot vote by absentee ballot; or 2) early voting hours are the same as, or exceed, voting hours on the day of the election. In such case, the general Election Day guidance above applies. If the polling place hours are shorter than on Election Day, the employee is not eligible for excused absence.

Non-Partisan Volunteer

An employee who requests time off to train and serve as a non-partisan volunteer election official to assist at polling stations may be granted excused absence to the maximum extent possible while accounting for the responsibilities and duties to carry out the agency's mission. The agency will try to accommodate the excused absence request so long as there are no negative impacts to critical mission work. Decisions about granting excused absence for this purpose are to be made on a case-by-case basis and require the employee's assistant administrator or regional administrator's approval after the local deputy ethics official or the Office of General Counsel's Ethics Office has determined the volunteer activity comports with ethics requirements. Approved administrative leave for participation in volunteer activities should not involve an employee being absent from the workplace for a significant period.

Any employee needing an excused absence to vote or volunteer should first seek approval from their first-line supervisor. If approved, the time must be documented in PeoplePlus using the following time reporting codes:

- **VOTIN** (Administrative Leave – Voting)
- **VOLRT** (Administrative Leave – Volunteer Activities)

Please refer to the U.S. Environmental Protection Agency's policies regarding official time off for voting and the use of administrative leave. Some of the agency's collective bargaining agreements contain similar language. Please refer to those agreements or the applicable union point of contact for further information.

If you have questions regarding these guidelines, please contact the Policy and Accountability Branch, Office of Human Resources, at OHR_PPTD_PAB.

Best,
Donna J. Vizian
Principal Deputy Assistant Administrator, Office of Mission Support

Message

From: Goerke, Ariadne [Goerke.Ariadne@epa.gov]
Sent: 10/28/2020 5:47:40 PM
To: Marks, Matthew [Marks.Matthew@epa.gov]; OGC HQ ADDs [OGC_HQ_ADDs@epa.gov]
Subject: RE: Government Executive article on EO/Schedule F

Here it is:

https://www.govexec.com/management/2020/10/union-sues-and-democrats-introduce-bill-block-trump-order-politicizing-civil-service/169592/

Ariadne Goerke
Acting Associate Deputy General Counsel
Office of General Counsel
U.S. Enviromental Protection Agency
202-564-5471 *office*
202-505-0535 *cell*

From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Wednesday, October 28, 2020 1:45 PM
To: Goerke, Ariadne <Goerke.Ariadne@epa.gov>; OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>
Subject: RE: Government Executive article on EO/Schedule F

That looks like a proposed bill. Is there a different link for the article?

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
E: marks.matthew@epa.gov

From: Goerke, Ariadne <Goerke.Ariadne@epa.gov>
Sent: Wednesday, October 28, 2020 1:40 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>
Subject: Government Executive article on EO/Schedule F

Since this topic is on the agenda for the ADD meeting today, I thought this article (with a link to the NTEU lawsuit seeking an injunction to block the creation of Schedule F) would be of interest. The audio interview is also very informative.

https://connolly.house.gov/uploadedfiles/saving_the_civil_service_act.pdf

Ariadne Goerke
Acting Associate Deputy General Counsel
Office of General Counsel
U.S. Enviromental Protection Agency
202-564-5471 *office*
202-505-0535 *cell*

From: Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>
Sent: Tuesday, October 27, 2020 6:47 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>
Subject: Talbert-Duarte, Angelia shared "ADD FINAL Agenda_10.28.2020" with you.

Please add or delete items from the agenda by 12: p.m. 10/28.

Thanks

Angelia

This link only works for the direct recipients of this message.

ADD FINAL Agenda_10.28.2020

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Microsoft Corporation, One Microsoft Way, Redmond, WA 98052

Message

From: Messier, Dawn [Messier.Dawn@epa.gov]
Sent: 11/2/2020 8:09:42 PM
To: OGC WLO [OGC_WLO@epa.gov]
Subject: OGC in the news, fyi

Fyi. https://www.huffpost.com/entry/epa-trump-diversitty_n_5f9c6e7cc5b6cfec2f6d844b

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

Message

From: Messier, Dawn [Messier.Dawn@epa.gov]
Sent: 11/5/2020 1:14:32 PM
To: McConkey, Diane [Mcconkey.Diane@epa.gov]
CC: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]
Subject: RE: Please read before the weekly -- tomorrow and Friday

Sounds great -- thank you!

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

From: McConkey, Diane <Mcconkey.Diane@epa.gov>
Sent: Thursday, November 05, 2020 7:17 AM
To: Messier, Dawn <Messier.Dawn@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>
Subject: Re: Please read before the weekly -- tomorrow and Friday

Moving 401 up on agenda sounds fine. Also, our 2 hot topics are the 401 Supreme Court case and (I suggest) Heidi's Montana WQS litigation because that's likely to take 15 minutes so seems long for reg review.

Sent from my iPhone

On Nov 4, 2020, at 11:33 PM, Messier, Dawn <Messier.Dawn@epa.gov> wrote:

Steve is out so wanted to check in on a couple things:

1 -- I am going to need to leave the Weekly early -- Carrie, could you run the trains after I leave? Sweeney has a matter that is not on the Agenda, so be aware of that.
2 -- MEL, are we doing Region 1 first?
3 --Diane, I'd like to move 401 up closer to the beginning of the Agenda b/c I'd like to be there for that. If Region 1 goes first, maybe we can do 401 right after.
4 -- I am going to be at my computer but engaged on a personnel matter for much of the day, so if you need me, please call me instead of emailing. Diane, I will continue to focus on 401 as needed.
5 -- MEL, can you attend Senior Staff today for WLO?

FRIDAY -- I am going to take it off b/c I missed my day off last week (and, like Diane I'm sure, I am well over 80 for the week!) , but I will be reachable at any time. Would someone care to act?

Thanks Team! (I am hoping that the election is called before the weekly.... No reason really.... ☺)

Dawn Messier
Deputy Associate General Counsel for Water

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

Message

From: Levine, MaryEllen [levine.maryellen@epa.gov]
Sent: 11/5/2020 1:23:12 PM
To: Wehling, Carrie [Wehling.Carrie@epa.gov]; McConkey, Diane [Mcconkey.Diane@epa.gov]; Messier, Dawn [Messier.Dawn@epa.gov]
CC: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]; Curley, Michael [Curley.Michael@epa.gov]; Stein, Mark [Stein.Mark@epa.gov]
Subject: RE: Please read before the weekly -- I fo have a conflict at noon

- I told ORC/1 Michael that you might want him to go first
- I can attend senior staff meeting – but only for 30 minutes – I have a meeting at noon.

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Thursday, November 05, 2020 8:16 AM
To: McConkey, Diane <Mcconkey.Diane@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>
Subject: RE: Please read before the weekly -- tomorrow and Friday

Dawn – yes, I can run the weekly train after you leave, although I'm assuming I'm not needed for hot issues because Diane will run that. And I am available Friday if you need me to be acting.
Thanks.
Carrie

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: McConkey, Diane <Mcconkey.Diane@epa.gov>
Sent: Thursday, November 05, 2020 7:17 AM
To: Messier, Dawn <Messier.Dawn@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>
Subject: Re: Please read before the weekly -- tomorrow and Friday

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Sent from my iPhone

On Nov 4, 2020, at 11:33 PM, Messier, Dawn <Messier.Dawn@epa.gov> wrote:

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FRIDAY -- I am going to take it off b/c I missed my day off last week (and, like Diane I'm sure, I am well over 80 for the week!) , but I will be reachable at any time. Would someone care to act?

Thanks Team! (I am hoping that the election is called before the weekly.... No reason really.... ☺)

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

Message

From: Messier, Dawn [Messier.Dawn@epa.gov]
Sent: 11/5/2020 1:30:32 PM
To: McConkey, Diane [Mcconkey.Diane@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]
CC: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]
Subject: RE: Please read before the weekly -- tomorrow and Friday

Great. Thanks all for stepping in. ☺

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

From: McConkey, Diane <Mcconkey.Diane@epa.gov>
Sent: Thursday, November 05, 2020 8:24 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>
Subject: RE: Please read before the weekly -- tomorrow and Friday

Yes, I'll plan to run hot topics. Also, because Heidi only has one minor update (Missouri amicus filing) on the reg review agenda at this point, let's bump that to the end so she can address on the cusp between reg review and hot topics. She'll plan to call in about 10:30.

From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Thursday, November 05, 2020 8:16 AM
To: McConkey, Diane <Mcconkey.Diane@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>
Subject: RE: Please read before the weekly -- tomorrow and Friday

Dawn – yes, I can run the weekly train after you leave, although I'm assuming I'm not needed for hot issues because Diane will run that. And I am available Friday if you need me to be acting.
Thanks.
Carrie

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: McConkey, Diane <Mcconkey.Diane@epa.gov>
Sent: Thursday, November 05, 2020 7:17 AM
To: Messier, Dawn <Messier.Dawn@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>
Subject: Re: Please read before the weekly -- tomorrow and Friday

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Sent from my iPhone

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Thanks Team! (I am hoping that the election is called before the weekly.... No reason really.... ☺)

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

Message

From: Messier, Dawn [Messier.Dawn@epa.gov]
Sent: 11/5/2020 1:41:07 PM
To: Wehling, Carrie [Wehling.Carrie@epa.gov]; McConkey, Diane [Mcconkey.Diane@epa.gov]
CC: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]
Subject: RE: Please read before the weekly -- tomorrow and Friday

Thank you Carrie! Yes, would love for you to act tomorrow.

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Thursday, November 05, 2020 8:16 AM
To: McConkey, Diane <Mcconkey.Diane@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>
Subject: RE: Please read before the weekly -- tomorrow and Friday

Dawn – yes, I can run the weekly train after you leave, although I'm assuming I'm not needed for hot issues because Diane will run that. And I am available Friday if you need me to be acting.
Thanks.
Carrie

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: McConkey, Diane <Mcconkey.Diane@epa.gov>
Sent: Thursday, November 05, 2020 7:17 AM
To: Messier, Dawn <Messier.Dawn@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>
Subject: Re: Please read before the weekly -- tomorrow and Friday

Moving 401 up on agenda sounds fine. Also, our 2 hot topics are the 401 Supreme Court case and (I suggest) Heidi's Montana WQS litigation because that's likely to take 15 minutes so seems long for reg review.

Sent from my iPhone

On Nov 4, 2020, at 11:33 PM, Messier, Dawn <Messier.Dawn@epa.gov> wrote:

Steve is out so wanted to check in on a couple things:

1 -- I am going to need to leave the Weekly early -- Carrie, could you run the trains after I leave? Sweeney has a matter that is not on the Agenda, so be aware of that.
2 -- MEL, are we doing Region 1 first?
3 --Diane, I'd like to move 401 up closer to the beginning of the Agenda b/c I'd like to be there for that. If Region 1 goes first, maybe we can do 401 right after.
4 -- I am going to be at my computer but engaged on a personnel matter for much of the day, so if you need me, please call me instead of emailing. Diane, I will continue to focus on 401 as needed.
5 -- MEL, can you attend Senior Staff today for WLO?

FRIDAY -- I am going to take it off b/c I missed my day off last week (and, like Diane I'm sure, I am well over 80 for the week!) , but I will be reachable at any time. Would someone care to act?

Thanks Team! (I am hoping that the election is called before the weekly.... No reason really.... ☺)

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

Message

From: Wehling, Carrie [Wehling.Carrie@epa.gov]
Sent: 11/5/2020 1:43:02 PM
To: McConkey, Diane [Mcconkey.Diane@epa.gov]; Messier, Dawn [Messier.Dawn@epa.gov]
CC: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]
Subject: RE: Please read before the weekly -- tomorrow and Friday

Got it. thanks.

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: McConkey, Diane <Mcconkey.Diane@epa.gov>
Sent: Thursday, November 05, 2020 8:24 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>
Subject: RE: Please read before the weekly -- tomorrow and Friday

Yes, I'll plan to run hot topics. Also, because Heidi only has one minor update (Missouri amicus filing) on the reg review agenda at this point, let's bump that to the end so she can address on the cusp between reg review and hot topics. She'll plan to call in about 10:30.

From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Thursday, November 05, 2020 8:16 AM
To: McConkey, Diane <Mcconkey.Diane@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>
Subject: RE: Please read before the weekly -- tomorrow and Friday

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Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: McConkey, Diane <Mcconkey.Diane@epa.gov>
Sent: Thursday, November 05, 2020 7:17 AM
To: Messier, Dawn <Messier.Dawn@epa.gov>

Cc: OGC WLO MGMT <OGC_WLO_MGMT@epa.gov>
Subject: Re: Please read before the weekly -- tomorrow and Friday

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Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

Message

From: Curtin, James [curtin.james@epa.gov]
Sent: 11/12/2020 7:18:12 PM
To: Fotouhi, David [Fotouhi.David@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Messier, Dawn [Messier.Dawn@epa.gov]; McConkey, Diane [Mcconkey.Diane@epa.gov]; Priest, Andrea [Priest.Andrea@epa.gov]; Mullee, Alexander [Mullee.Alexander@epa.gov]
Subject: Judge Alsup's Privilege Log Order
Attachments: 401 case_Privilege Log Order 11.12.20.pdf

This just in – He ordered that the parties meet and confer and submit a proposal for a log by November 24.

"Here, the Administrator has been heard. He conceded that a considerable number of deliberative documents have been excluded from the administrative record (Dkt. Nos. 95 at 18–22; 92-3 at ¶¶ 30–35). This alone satisfies plaintiffs' burden. It's also worth noting that the final rule in question follows President Donald J. Trump's Executive Order 13,868, which directed the Administrator to reevaluate "[o]utdated [f]ederal guidance and regulations regarding section 401 of the Clean Water Act." 84 Fed. Reg. 15,495, 15,496 (April 15, 2020). Yet the administrative record index contains no other document shared between the White House and the Administrator. It strains credulity to suggest that the President imposed a six month deadline for the Administrator to overhaul a significant, complex, and contentious environmental-regulation scheme without so much as a heads-up note, a check in, or a follow up question by the Administrator.

In categorically excluding as privileged deliberative documents that may have been at least indirectly considered in the rulemaking, the Administrator used the wrong standard to compile the record before us. The Administrator is ORDERED to complete the administrative record and/or produce a log of documents withheld as privileged. Recognizing the time and effort required for compliance with this order, the parties SHALL meet, confer, and propose a stipulated order delineating the scope and timeline for completion of the record and production of a privilege log. If necessary, the parties shall propose amendments to the case management scheduling order (Dkt. No. 89). Such proposal is due NOVEMBER 24 AT NOON.

Jim

Jim Curtin
USEPA Office of General Counsel
Water Law Office
202-564-5482
William Jefferson Clinton North Rm. 7451

Message

From: Hough, Palmer [Hough.Palmer@epa.gov]
Sent: 11/12/2020 6:24:26 PM
To: Bennett, Brittany [bennett.brittany@epa.gov]; Brown, Leah [Brown.Leah.Y@epa.gov]; Drinkard, Andrea [Drinkard.Andrea@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Fordham, Tami [Fordham.Tami@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Godsey, Cindi [Godsey.Cindi@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Grandinetti, Cami [Grandinetti.Cami@epa.gov]; Herbst, John [herbst.john@epa.gov]; Holsman, Marianne [Holsman.Marianne@epa.gov]; Hough, Palmer [Hough.Palmer@epa.gov]; Jensen, Amy A. [jensen.amy@epa.gov]; Johnson, Patrick [johnson.patrick@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; LaCroix, Matthew [LaCroix.Matthew@epa.gov]; Lindsay, Andrea [Lindsay.Andrea@epa.gov]; McCracken, Betsy W. [mccracken.betsy@epa.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]; Murphy, Stacy [Murphy.Stacy@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Opalski, Dan [Opalski.Dan@epa.gov]; Ortiz, Michael [Ortiz.Michael@epa.gov]; Peterson, Erik [Peterson.Erik@epa.gov]; Skadowski, Suzanne [Skadowski.Suzanne@epa.gov]; Soden, Caitlin [Soden.Caitlin@epa.gov]; Steiner-Riley, Cara [Steiner-Riley.Cara@epa.gov]; Szelag, Matthew [Szelag.Matthew@epa.gov]; Szerlog, Michael [Szerlog.Michael@epa.gov]; Vaughan, Molly [Vaughan.Molly@epa.gov]; Wake, Neverley [wake.neverley@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Whitley, Annie [Whitley.Annie@epa.gov]
Subject: FYI only: Murkowski's latest Pebble action disappoints mine opponents (AK Public Media, 11-10-20)

FYI https://www.alaskapublic.org/2020/11/10/murkowskis-latest-pebble-action-disappoints-mine-opponents/

The appropriations bill report language referred to in this article can be found at:
https://www.appropriations.senate.gov/imo/media/doc/INTRept.pdf (see page 93)

Murkowski's latest Pebble action disappoints mine opponents

By
Liz Ruskin, Alaska Public Media
-
November 10, 2020

Opponents of the Pebble Mine are underwhelmed by Sen. Lisa Murkowski's latest bill to fund federal resource agencies.

Murkowski has an opportunity to erect hurdles for Pebble, as chair of the Appropriations subcommittee that writes the annual bills to sustain Interior and environmental agencies.

She released the bill Tuesday, and she included a 240-word passage on Pebble in the report that interprets the spending bill.

"I just hope that there's more to come from the senator," said SalmonState director Tim Bristol.

He said Murkowski appears to have passed up a chance to demonstrate that she really meant what she said in October, when she called it the wrong mine in the wrong place.

"I think if we would've seen something that essentially recommended no spending be allowed in the next fiscal year to move forward with the Pebble project, that would've been a little more reassuring. But this doesn't do that," Bristol said. "It just seems to sort of describe the situation as it is right now."

Murkowski's Pebble passage reiterates that the Army Corps of Engineers has determined the mine can't be permitted as proposed. It notes that Pebble has until mid-November to come up with a wetlands mitigation plan. The report also says that if the Pebble Limited Partnership can't come up with a complete and functional plan by the deadline, the Senate Appropriations Committee encourages the government to deny the permit.

Murkowski told an E&E News reporter she thinks Pebble won't be able to submit a plan that meets the requirements.

Murkowski spokeswoman Karina Borger said the senator wanted the Corps to know that it must hold the mitigation plan to a high standard, and that if Pebble can't meet it, now is the time to end the process.

Pebble spokesman Mike Heatwole said the company is still on track to produce a mitigation plan by Nov. 18. Pebble maintains the mine would do no measurable damage to the salmon populations of Bristol Bay.

Pebble officials have said they expect the Corps of Engineers could issue a permit decision before President Donald Trump leaves office and that it would be hard for President-elect Joe Biden to reverse course.

Palmer Hough, Environmental Scientist
office: 202.566.1374

Office of Wetlands, Oceans, and Watersheds
U.S. EPA Headquarters (MC 4504T)
1200 Pennsylvania Avenue, NW

Washington, DC 20460
www.epa.gov/wetlands

Message

From: Lattimore, Kraig [lattimore.kraig@epa.gov]
Sent: 11/23/2020 3:22:04 PM
To: Cerasani, Gina [Cerasani.Gina@epa.gov]; Jefferson, Tricia [Jefferson.Tricia@epa.gov]; Lewis, Jen [Lewis.Jen@epa.gov]; OGC HQ ADDs [OGC_HQ_ADDs@epa.gov]
CC: OGC RMO HR Team [OGC_RMO_HRTeam@epa.gov]; Ventrone, Laurie [Ventrone.Laurie@epa.gov]; Griffin, Chris [Griffin.Chris@epa.gov]
Subject: FW: Action: Request for FY21 & FY22 Diversity & Inclusion Training Materials (Due 11/27/20)

Importance: High

Hi everyone,

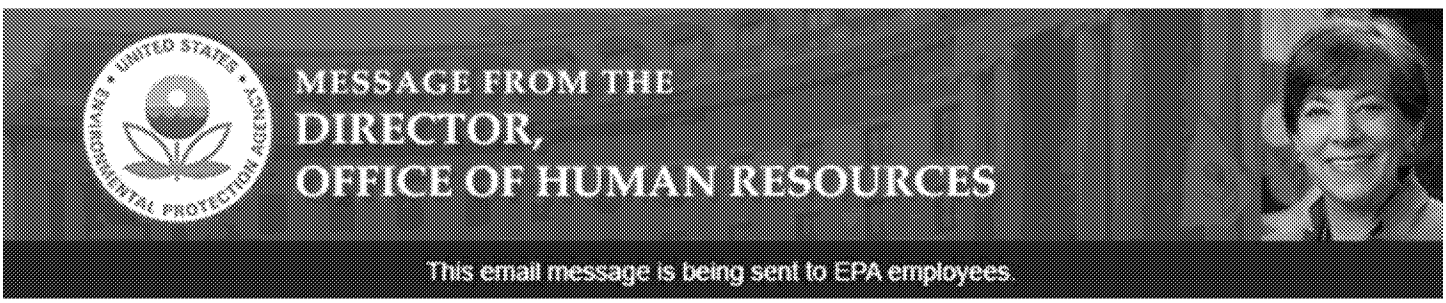
In response to the call memo below, does the your office or the ARAC have any Diversity and Inclusion Training planned for FY 2021 and FY 2022? To my knowledge, no training requests have been to submitted to RMO. Please respond by cob tomorrow 11/24/2020. You only need to respond if your answer is yes. Thanks.

From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Sunday, November 22, 2020 9:33 AM
To: Lattimore, Kraig <lattimore.kraig@epa.gov>; Lee, Terry <lee.terry@epa.gov>
Subject: FW: Action: Request for FY21 & FY22 Diversity & Inclusion Training Materials (Due 11/27/20)
Importance: High

Assume you guys are working on this, but want to be sure.

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: OHR DIRECTOR <OHR_DIRECTOR@epa.gov>
Sent: Thursday, November 19, 2020 4:35 PM
To: Leadership_Deputy_Regional_Administrators <Leadership_Deputy_Regional_Administrators@epa.gov>; Leadership_Deputy_Assistant_Administrators <Leadership_Deputy_Assistant_Administrators@epa.gov>
Cc: Regional Mission Support Division - Directors <Regional_Mission_Support_Division_Directors@epa.gov>; RHRO <RHRO@epa.gov>; OMS-ARM-OHR-PMOs <OMS-ARM-OHR-PMOs@epa.gov>; EEO Officers <EEO_Officers@epa.gov>
Subject: Action: Request for FY21 & FY22 Diversity & Inclusion Training Materials (Due 11/27/20)
Importance: High



Colleagues,

On September 22, 2020, President Trump issued Executive Order 13950 combatting race and sex stereotyping. This order requires federal agencies to "submit copies of any training, workshop, or similar programing having

to do with diversity and inclusion as well as information about the duration, frequency, and expense of such activities."

Additional guidance provided in OPM's memorandum "Mandatory Review of Employee Training under E.O. 13950 September 22, 2020" states:

The Executive Order applies to all diversity and inclusion training programs, including programs developed prior to the issuance of this Executive Order, as well as new programs that may be proposed or established after September 22, 2020. Coverage includes, but is not limited to, all training that is paid for with Federal funds or that Federal employees are required or permitted to view, listen to, or participate in while on Government-paid time. Included is training that is conducted or led by Government employees; training that is conducted or led by contractors or others; live training sessions conducted in person or by any electronic means, whether telephonic or video; materials posted on any Federal agency's public-facing or internal Internet or Intranet sites; and, written or video materials or other content that have been produced or procured with Federal funds and that are available to the general public or that Federal employees are required or permitted to read or view.

The Office of Human Resources will submit a single request to OPM on behalf of the U.S. Environmental Protection Agency. **By November 27, 2020**, please provide an overarching diversity and inclusion training plan for your organization covering FY2021 and FY2022. In this plan, include information about each diversity and inclusion training topic and title, vendor, instructor, cost and scheduled offering.

For planned training activities complete this form and for each planned training activity upload the following materials in an electronic document format (not a link) to the D&I Training Community Teams site (request access to site prior to loading documents):

- Course agenda
- Instructor guide
- Participant guides
- PowerPoint slides
- Any additional materials or handouts (including links to web-based course previews or other web-based content).

We understand vendors may have concerns about the proprietary nature of their materials. Please assure them the materials will be used for review purposes to ensure adherence to EO 13950 only.

Each agency is required to identify a senior political official to serve as a point of contact for OPM. For EPA, this is Dave Zeckman. Once all training materials are gathered, the single agency package will be submitted to OPM for review. OPM will evaluate packages on a "first in and first out" basis and will assess each training for compliance with the Executive Order. Any training arising after the EPA package is submitted should be sent to Claire Milam. Claire will work with Dave to determine if the new training is covered by the Executive Order and arranging for OPM assessment as needed.

Please direct any questions to Claire Milam, Acting Chief, Training Branch at 202-564-7582 or milam.claire@epa.gov.

Message

From: ODea, Elise [odea.elise@epa.gov]
Sent: 11/30/2020 3:50:26 PM
To: OGC WLO [OGC_WLO@epa.gov]
Subject: FYI - Inside EPA Article re: M. Leopold's Views on the NWPR

Biden Administration Might Struggle To Quickly Undo Trump WOTUS Rule

November 17, 2020

The incoming Biden administration will almost certainly make review of the Trump EPA's waters of the United States (WOTUS) rule a priority, but legal precedent and the complexity involved in defining WOTUS make it uncertain as to whether any regulatory changes can occur quickly, a former EPA official and other experts say.

Matthew Leopold, who served almost three years as the Trump EPA's general counsel before stepping down in September, said during a Nov. 16 environmental law event that "we are going to see a ping-ponging of a number of" regulatory positions reversed under President-elect Joe Biden's administration compared with the Trump EPA. And the WOTUS rule is "no doubt" one that will be revisited, he said.

But Leopold noted several differences in federal courts' response to the Trump Clean Water Act (CWA) jurisdiction rule compared with the Obama administration's 2015 rule that it replaced, and said, "The next EPA has to reckon with what has happened" and it "can't just flip the rule."

Leopold, now a partner with Hunton Andrews Kurth, spoke as part of an online discussion during the University of Maryland Agriculture Law Education Initiative's annual Agricultural and Environmental Law Conference.

Legal challenges to the Obama WOTUS rule from Republican-led states as well as industry and agriculture groups led initially to a nationwide stay of the rule. The since-rescinded rule later went into effect in only 22 states, with several federal district courts issuing stays of the rule or declaring the rule invalid in the other states.

In contrast, while there have been 13 challenges to the Trump WOTUS rule, implementation of the rule has only been stayed in Colorado, and a federal district judge in northern California rejected an attempt by California and 16 other Democratic-led states to stay the rule in those states or nationwide, Leopold noted. "It's different than how the Obama rule was met," he said.

The Justice Department has appealed the stay of the rule in Colorado to the U.S. Court of Appeals for the 10th Circuit, which is scheduled to hold oral argument Nov. 18.

"Chances are, this [Trump WOTUS] rule might be in effect" for several years, even if the Biden administration wants to change it, Leopold said. It took the Obama administration six years to develop its rule and the Trump administration three years, he said.

Developing a WOTUS rule is "not an easy task," Leopold said. While the Trump EPA tried to promulgate a rule that created "bright lines" between waters that fall within the scope of the CWA and those that do not, the agency recognizes that there has to be experts in the field to make some jurisdictional determinations, he said.

The Obama rule had a presumption that nearly all waters would be covered by the CWA, whereas the Trump rule aims for a balance between federal and state permitting, and between protection of water quality and allowing state and local governments to determine land uses, Leopold said.

'The Jury Is Still Out'

Don Parrish, senior director of regulatory relations for the American Farm Bureau Federation (AFBF) and a supporter of the Trump WOTUS rule, agreed with Leopold that the rule is "clearly an issue" the Biden administration will want to re-examine but that it is too soon to say what any changes might be.

"The jury is still out" on whether the Biden administration will want "to wade in to change things," Parrish said.

But if the Biden EPA opts for a new rule to define the CWA's scope, the agency should not "throw the baby out with the bath water," he said, adding that he hopes they listen to the agriculture community's concerns.

AFBF is part of a large industry coalition that has intervened in at least two of the pending challenges to the Trump WOTUS rule on behalf of EPA and the Army Corps of Engineers. These include Colorado's challenge to the Trump rule as well as a challenge brought by the South Carolina Coastal Conservation League and several other environmental groups. The federal judge in northern California denied the industry coalition's request to intervene in the case brought by the Democratic-led states, saying the case will be adjudicated on the administrative record.

Matt Pluta, the Choptank Riverkeeper and director of Riverkeeper Programs, said there are "a couple of paths" for the Biden administration to address the long-running debate about the scope of the CWA. One would be through a regulatory fix and the other would be with a legislative change, although he acknowledged an attempt to amend the CWA is unlikely.

Other CWA legal and regulatory experts have also downplayed the prospects for a legislative fix, saying it still remains uncertain whether amendments to the law can be passed, and whether they would actually solve the problem that has led to years of litigation over a variety of regulatory approaches.

"I do hope that they act fact," Pluta said of the Biden administration, "but on the basis of science."

Democratic-led states and environmental groups allege the Trump rule failed to reflect the best available science, as endorsed by EPA's Science Advisory Board.

But Leopold insisted the Trump rule "incorporated prior science." The 2020 rule acknowledges that waters are connected, but that is not enough to determine where the line should be between federal and state protections, he said. Science can inform but cannot answer where the line should be between where a permit can be granted and where it cannot, he said. -- Lara Beaven (lbeaven@iwpnews.com)

Message

From: Messier, Dawn [Messier.Dawn@epa.gov]
Sent: 12/3/2020 5:11:00 PM
To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Subject: RE: add notes

Thanks.

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Thursday, December 03, 2020 12:11 PM
To: Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: add notes

Ok. I'll pass that along.

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Messier, Dawn <Messier.Dawn@epa.gov>
Sent: Thursday, December 3, 2020 12:00 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: add notes

I don't have a strong view either. I'm ok going with the flow on this one. Thanks.

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Thursday, December 03, 2020 11:52 AM
To: Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: add notes

Reminder to please let me know what your preference is on the PARS elements. I read through the materials and don't have a strong view.

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Messier, Dawn <Messier.Dawn@epa.gov>
Sent: Thursday, December 3, 2020 11:41 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: add notes

thx

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Wednesday, December 02, 2020 4:04 PM
To: Messier, Dawn <Messier.Dawn@epa.gov>
Subject: add notes

Had to stop at certain point due to other work but didnk't seem to require notes if you were able to listen

ADD mtg
Elise
No chair of pro bono committee or need one co-chair (in addition to Elise O) of morale committee – asked us to encourage folks to volunteer. Good leadership opportunity and not a lot of time.
Putting out a hiring request for volunteers for committee (MEL has this covered but I am adding to mention at next week's staff mtg).
ELMS deployment on litigation reports – Elise asked that we make sure that one docket is reflecting all of litigation – making other things lighter so want to make sure reporting.

- ARLO asked about what info definitely needs to up to date versus good to have
- Elise – will ask folks – basic premiss is that what FO rely on when looking to see how cases are going;

<u>Transition</u>

- Lilian's mtg – went well; were able to answer the questions; got a fair opportunity to share what were accomplishments; asked some good questions – what would the advocates say about the program; FTE; policy issues that were around; appreciated the briefing paper; Elise – folks from last administration that knew the program – what's happened in the last 4 years and what need to know in first couple of months.
- Jim – David said not anticipating OGC being in other meetings.
    - One hour mtg – schedule oriented.
        - Actions agencies must take in first 100 days
        - Then actions could take within 100 days
        - Any other significant actions should know about

- Transition – "agency review team"; after inauguration, "first team"
- 3 types of forms used in 2016 – NDA, sharepoint site treated confidentially; for a request for non public information
- Briefing papers – Patrice Simms how helpful have been
- If anyone gets a request directly from transition team, refer to Wes Carpenter
- Convey thanks to law office transition coordinators who worked on briefing papers = thanks Dawn!

Kraig on summer law clerk program; I had to review a document so couldn't listen to that

- Cross office bronze medals
- IO sometimes put in for cross office bronzes
- Same deadline of 12/14
- Not part of allocation, but usually 2-4

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

Message

From: Levine, MaryEllen [levine.maryellen@epa.gov]
Sent: 12/7/2020 2:38:11 PM
To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Subject: RE: Somewhat urgent — Quick question

No unreasonable delay suit.

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Monday, December 07, 2020 9:18 AM
To: Levine, MaryEllen <levine.maryellen@epa.gov>
Subject: Re: Somewhat urgent — Quick question

The one public info would be if unreasonable delay lawsuit. So you know answer to that?

Steven Neugeboren
Associate General Counsel for Water
Environmental Protection Agency
Mails code 2355A
1200 Pennsylvania Ave, NW
Washington DC 20460
202-564-5488

On Dec 7, 2020, at 8:39 AM, Levine, MaryEllen <levine.maryellen@epa.gov> wrote:

Steve- I think we are not to give any information that isn't public; so awkward to answer this question.

Mary Ellen Levine
Assistant General Counsel
Water Law Office
(202) 564-1345
Room 7510c WJC North

Begin forwarded message:

From: "C. Scott Fulton" <fulton@eli.org>
Date: December 7, 2020 at 5:37:42 AM EST

To: "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
Cc: "Levine, MaryEllen" <levine.maryellen@epa.gov>
Subject: Somewhat urgent — Quick question

Hi Steve — Any idea of the status of EPA action on the petition for rulemaking filed by CDB and others in July of 2019 asking for CWA regulation of plastics? Has it been decided? Is it likely to be decided before Trump leaves office? Will it carry over to the Biden Administration? Any unreasonably delay litigation yet filed? I am giving a speech to NAS at noon today in which this might come up. Just trying to help them read the tea leaves in terms of carry over to the next administration. Thanks! Scott

Sent from my iPad

Message

From: Messier, Dawn [Messier.Dawn@epa.gov]
Sent: 10/7/2020 8:51:48 PM
To: Lewis, Jen [Lewis.Jen@epa.gov]
CC: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Subject: my notes from add meeting

Jen – please let me know if you have qs – didn't proofread....

NEED CFC keyworker identified by cob

Recent CDC guidance -- Importance of 6 foot diameter due to aerosols– possible but not highly likely around that – increased ventilation best approach to this – GSA and oar and ord working on our ventilation issues –

John Blevins new acting DRA in Region 4

At office hours – staff had heard from ADDs that we were thinking Phase III guidance coming out this week – she thought she had said close hold so please be careful. She said she was hopeful soon but have to wait and see b/c no control. Struck her that she wants to be careful about being clear on "close hold." Gonna try to do that by just saying what is pulically available – b/c vast majority of what she says IS CLOSE HOLD.

Do folks have to return Tuesday? Steve Wyman in RMO heard from Union said folks have to report in on Tuesday.

Decisions are made Thursdays. Under current publically avail structure, two weeks is transition. CLOSE HOLD – likely one additional week will be added after decision and before the transition period

Wendel – transition – issue came is that swerlo id'd gold king mine and now thinking one-paragraph variety instead after talking with Region 8 (assume Jen that you know about this) In one paragraph, please indicated that there is a broader paper from region 8 – wendel will circle back with Jen. [some confusing discussion of another paper that turns out to be irrelevant until after the election if there's a transition – landing paper training paper] They may be asking for additional input on other topics.

Wendy asked for more recognition that we are all overwhelmed with PARs etc and that the FO think through how quickly they need things. Elise said she'll talk to the policitcals and

Kraig nailing down whether we can have support staff enter all the new plans etc into the system

Steve said he doesn't wanted to think/talk about managing through covid b/c we are exhausted and just trying to get through (paraphrasing). Also, should just congratulate ourselves on how we ARE managing it all. Elise agreed that this might not be the time to do something different. Elise mentioned that "covid" also includes stress related to November.

Steve discussed the EAB brief discussion coming up with the RCs – best practices – particularly SWERLO and ARLO. Will send to Ariadne and KC – wants them to know. Great if SWERLO and ARLO can be part of conversation on OGC/RC call. Lots of potential for process improvement. Jim thanked everyone – Jen, he has connected with you. A week from today 4pm. Water law has most of these cases. Gonna send out the paper (asked by GS) – Steve said really just a discussion paper – conversation stater so not needed. GS was comfortable with not seeing it.

See PARS email from Kraig

Discussion about future discussion around making sure program specialists are doing projects at gs-11 level. Tim said think FOIA if that's an issue! Elise – mindful of everyone's stress levels right now, perfect point to think topic through

b/c new pars time (sometime before December need to enter new PARs for folks) Great for everyone to discuss. Some confusion on whether perf agreements were standard. If not, thye should be.

Elise woking on process for awards over 5000. Kraig said doing general SOP. Wendy hopes process doesn't dissuade our program partners from recognizing staff.

Joe has ELMs stuff –

Targets due by 10/16 – work with small measures person. Henry joining for next MBR. Reminder about employee ideas – get to adam by 10/8. Checking in on WLO measure.

David is totally of Matt's viewpoint that WLO appeals measure is appropriate for whole office. Discussing with Henry tomorrow. Have we missed anything? Wendy said there's been no problem in her office but they'll do it. Would have liked to weigh in more ahead instead of being directed. Elise will circle back after premeet with David tomorrow.

Standard leave before holidays – always authorized to give two hours of leave before holidays (Elise).

Program specialists can be made proxies – have to go to training – Kraig following up with details

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

Message

From: C. Scott Fulton [fulton@eli.org]
Sent: 12/7/2020 5:25:30 PM
To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
CC: Levine, MaryEllen [levine.maryellen@epa.gov]
Subject: Re: Somewhat urgent — Quick question

Got it. Thx

Scott Fulton
President
Environmental Law Institute (ELI)
https://gcc01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.eli.org%2F&data=04%7C01%7CNeugeboren.Steven%40epa.gov%7Cc390466a15f44ea71da808d89ad51973%7C88b378b367484867acf976aacbeca6a7%7C0%7C1%7C637429588094857567%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=Rd3iqq89nI5WxZYdLShoiTBt8Zvh6BVfnnhqxXimXfA%3D&reserved=0

> On 7 Dec 2020, at 6:01 pm, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:
>
> External Email - If suspicious, please contact blain@eli.org
>
> Scott - That's not something I feel able to opine on. Cheers.
>
> Steven Neugeboren
> Associate General Counsel for Water
> Environmental Protection Agency
> Mails code 2355A
> 1200 Pennsylvania Ave, NW
> Washington DC 20460
> 202-564-5488
>
>> On Dec 7, 2020, at 10:55 AM, C. Scott Fulton <fulton@eli.org> wrote:
>>
>> Thx, Steve. That helps. I will cloak as desired, but any sense whether the patient is likely to make it to the operating table in the time remaining? ;-)
>>
>> Scott Fulton
>> President
>> Environmental Law Institute (ELI)
>>
https://gcc01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.eli.org%2F&data=04%7C01%7CNeugeboren.Steven%40epa.gov%7Cc390466a15f44ea71da808d89ad51973%7C88b378b367484867acf976aacbeca6a7%7C0%7C1%7C637429588094857567%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=Rd3iqq89nI5WxZYdLShoiTBt8Zvh6BVfnnhqxXimXfA%3D&reserved=0
>>
>>>> On 7 Dec 2020, at 4:33 pm, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:
>>>
>>> External Email - If suspicious, please contact blain@eli.org
>>>
>>> Hi Scott - I am not aware of any decision on this matter nor any unreasonable delay litigation. Hope that helps.
>>>
>>> Steven Neugeboren
>>> Associate General Counsel for Water
>>> United States Environmental Protection Agency
>>> Maildcode 2355A
>>> 1200 Penn. Ave., N.W.
>>> Washington DC 20460
>>> (202) 564-5488
>>>
>>> -----Original Message-----
>>> From: C. Scott Fulton <fulton@eli.org>
>>> Sent: Monday, December 7, 2020 5:37 AM
>>> To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
>>> Cc: Levine, MaryEllen <levine.maryellen@epa.gov>
>>> Subject: Somewhat urgent – Quick question
>>>
>>> Hi Steve – Any idea of the status of EPA action on the petition for rulemaking filed by CDB and others in July of 2019 asking for CWA regulation of plastics? Has it been decided? Is it likely to be decided before Trump leaves office? Will it carry over to the Biden Administration? Any unreasonably delay litigation yet filed? I am giving a speech to NAS at noon today in which this might come up. Just trying to help them read the tea leaves in terms of carry over to the next administration. Thanks! Scott

>>>
>>>
>>> Sent from my iPad

Message

From: Messier, Dawn [Messier.Dawn@epa.gov]
Sent: 12/9/2020 5:30:39 PM
To: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]
Subject: FW: ACTION: For Review & Comment Draft 2021 OGC Brown Bag Schedule Attached
Attachments: Training Calendar 2021-v1B.docx

I'm going to go ahead and let Rich know that 6/17 is fine with us for a WLO brownbag, but if it is not, please let me know and I'll retract. Will say subject is TBD. Thanks.

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

From: Albores, Richard <Albores.Richard@epa.gov>
Sent: Tuesday, December 08, 2020 2:22 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC ASSISTANTS <OGC_ASSISTANTS@epa.gov>
Subject: ACTION: For Review & Comment Draft 2021 OGC Brown Bag Schedule Attached

Hello ADDs and Assistants:

It's the time of the year when we begin our planning for next year's brown bag series.

As you know, we are closing out the CY2020 schedule with seven brown bag events hosted by GLO, Ethics, CCILO (2), ARLO, ECRCO, and WLO. Thanks to all of the great and informative presentations your offices provided this year. If anyone wants to go back and review the materials for these events, we have a "new for 2020" OGC Brown Bag SharePoint located here: https://usepa.sharepoint.com/sites/OGCBrownBagTrainings - This SharePoint site now contains PowerPoint copies for 2017-2020 events, and some videos of 2019-2020 Brown Bag events.

For 2021, I have developed a straw calendar for your review and input. The schedule takes into account the inauguration transition, summer and winter breaks, and the Region 2 and 3 Continuing Legal Education programs hosted by Bruce Aber and Bill Smith for their ORC offices. We try to hold our brown bags on the third Thursday of the month, but make adjustments depending on conflicts that we might not have anticipated, or that come up unknowingly. Please take a look at the draft calendar and feel free to suggest alternate dates for your office to participate and what topic(s) you propose to share with EPA. Please let me know if our standing date interferes with any standing meetings your office may hold as well, so we can make sure as many offices as possible can attend throughout the year.

If you can provide your comments by the end of the month, I can send a final draft the first week in January 2021.

Let me know if you have any questions or concerns. Happy Holidays.

Thanks,

R

RICHARD L. ALBORES
Senior Attorney * Office of General Counsel * Solid Waste & Emergency Response Law Office * U.S. EPA * 1200

Pennsylvania Avenue, NW * MC2366A * Washington, DC 20460 * email: albores.richard@epa.gov * phone: 202.564.7102 * mobile: 202.809.8029

Message

From: Wehling, Carrie [Wehling.Carrie@epa.gov]
Sent: 12/9/2020 9:41:09 PM
To: OGC WLO [OGC_WLO@epa.gov]
Subject: Purely FYI re Federal Register deadline for publication before Jan. 20

I don't know anything more than what's here, but for what it's worth.....

E&E PM: EPA internal email: 1 week left to finish rollbacks

EPA is hurrying to finalize rules within a week to try to cement President Trump's environmental rollback agenda, an email obtained by E&E News shows. Mary Manibusan, an EPA division director, wrote to staff last week that the Office of the Federal Register has confirmed that Dec. 15 is a "good deadline" to focus on. "I have received several questions regarding the last possible date for submission to OFR for publication before January 20th," Manibusan wrote on Dec. 2. "OFR Legal has confirmed that while December 15th is not an absolute date, it's a good deadline to target." Manibusan added that given the number of documents expected in the coming weeks, "the majority of rules submitted after December 15 will probably not publish before January 20. It's likely that some will, but OFR has no way to know which subset of rules will get published until after they receive them."

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

Message

From: Levine, MaryEllen [levine.maryellen@epa.gov]
Sent: 12/17/2020 5:51:25 PM
To: OGC WLO [OGC_WLO@epa.gov]
Subject: Biden has picked Michael Regan to head EPA.

NC DEQ

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

Message

From: Messier, Dawn [Messier.Dawn@epa.gov]
Sent: 1/5/2021 7:25:18 PM
To: OGC WLO [OGC_WLO@epa.gov]
Subject: Info on Jan. 20 holiday

OPM memo mentioned at staff attached. Key excerpt explaining which employees are entitled to the holiday (nearly all, if not all, of WLO):

Due to the COVID-19 national emergency, many employees with official worksites in the Inauguration Day area are regularly teleworking. The COVID-19 national emergency is preventing such employees from being scheduled to work in the designated area on January 20. In light of these special circumstances, OPM is modifying the normal rules to consider teleworking employees to be "employed in" the Inauguration Day area even though they are scheduled to telework outside that area on January 20, if the following conditions are met:

- The employee's official worksite is located in the Inauguration Day area;
- But for the COVID-19 national emergency, the employee would be scheduled to work at the official worksite at least 2 days per biweekly pay period; and
- The employee's telework location on January 20 is one from which the employee regularly commuted to the employee's official worksite prior to the COVID-19 emergency or is within a realistic commuting distance from the official worksite (generally no more than 2.5 hours commuting time or 125 miles in distance).

Full-time and part-time employees to whom the Inauguration Day holiday applies are entitled to pay equal to the pay they otherwise would receive for a regular nonovertime workday, except that full-time employees on flexible work schedules are entitled to 8 hours of pay for the holiday. Unlike other Federal holidays, employees who are not regularly scheduled to work on January 20 are not entitled to a day off in lieu of the holiday.

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

Message

From: Hough, Palmer [Hough.Palmer@epa.gov]
Sent: 1/11/2021 3:55:07 PM
To: Bennett, Brittany [bennett.brittany@epa.gov]; Brown, Leah [Brown.Leah.Y@epa.gov]; Drinkard, Andrea [Drinkard.Andrea@epa.gov]; Eisenberg, Mindy [Eisenberg.Mindy@epa.gov]; Fordham, Tami [Fordham.Tami@epa.gov]; Frazer, Brian [Frazer.Brian@epa.gov]; Godsey, Cindi [Godsey.Cindi@epa.gov]; Goodin, John [Goodin.John@epa.gov]; Grandinetti, Cami [Grandinetti.Cami@epa.gov]; Holsman, Marianne [Holsman.Marianne@epa.gov]; Hough, Palmer [Hough.Palmer@epa.gov]; Jensen, Amy A. [jensen.amy@epa.gov]; Johnson, Patrick [johnson.patrick@epa.gov]; Kaiser, Russell [Kaiser.Russell@epa.gov]; LaCroix, Matthew [LaCroix.Matthew@epa.gov]; Lindsay, Andrea [Lindsay.Andrea@epa.gov]; McCracken, Betsy W. [mccracken.betsy@epa.gov]; McGrath, Patricia [mcgrath.patricia@epa.gov]; Murphy, Stacy [Murphy.Stacy@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]; Opalski, Dan [Opalski.Dan@epa.gov]; Ortiz, Michael [Ortiz.Michael@epa.gov]; Peterson, Erik [Peterson.Erik@epa.gov]; Skadowski, Suzanne [Skadowski.Suzanne@epa.gov]; Soden, Caitlin [Soden.Caitlin@epa.gov]; Steiner-Riley, Cara [Steiner-Riley.Cara@epa.gov]; Szerlog, Michael [Szerlog.Michael@epa.gov]; Vaughan, Molly [Vaughan.Molly@epa.gov]; Wake, Neverley [wake.neverley@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]; Whitley, Annie [Whitley.Annie@epa.gov]; Zokan, James [Zokan.Jim@epa.gov]
CC: Szelag, Matthew [Szelag.Matthew@epa.gov]
Subject: FYI: State of Alaska's Pebble Appeal Highlights Need for EPA Veto

https://alaska-native-news.com/state-of-alaskas-pebble-appeal-highlights-need-for-epa-veto/53170/

State of Alaska's Pebble Appeal Highlights Need for EPA Veto

By Mary Martin | Salmon State on Jan 10, 2021Comments Offon State of Alaska's Pebble Appeal Highlights Need for EPA Veto

ANCHORAGE— Friday's announcement from the State of Alaska that it will appeal the rejection of Pebble's permit application is deeply disappointing and once again shows the Dunleavy Administration prioritizes the interests of a disgraced foreign mining company over the thousands of Alaskans who depend on Bristol Bay's incredible wild salmon fishery for their livelihoods and ways of life.

"While science prevailed when the Army Corps rejected the proposed Pebble Mine's Clean Water Act permit, Governor Mike Dunleavy's continued interference on behalf of the Pebble Partnership shows Bristol Bay is far from safe," said SalmonState Executive Director Tim Bristol. "In announcing the State will appeal, the governor has chosen to ignore scientific fact and the large majority of Alaskans. The only way to stop this toxic project for good is with an EPA veto. We urge President-elect Biden and Congress to act swiftly and decisively to reenact lasting protections for Bristol Bay — a one-of-a-kind American resource."

Palmer Hough, Environmental Scientist
office: 202.566.1374

Office of Wetlands, Oceans, and Watersheds
U.S. EPA Headquarters (MC 4504T)

1200 Pennsylvania Avenue, NW
Washington, DC 20460
www.epa.gov/wetlands

Message

From: ODea, Elise [odea.elise@epa.gov]
Sent: 1/12/2021 1:03:04 PM
To: Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Subject: RE: Article

Thank you, Steve.

- -

Elise M. O'Dea
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4201

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Monday, January 11, 2021 8:50 PM
To: OGC WLO <OGC_WLO@epa.gov>
Subject: Article

If you haven't read this I found it to be one of the most insightful analysis of what's going on. It's long. You can also stream an audio of it at the link.

https://www.google.com/amp/s/www.nytimes.com/2021/01/09/magazine/trump-coup.amp.html

Steven Neugeboren
Associate General Counsel for Water
Environmental Protection Agency
Mails code 2355A
1200 Pennsylvania Ave, NW
Washington DC 20460
202-564-5488

Message

From: Wehling, Carrie [Wehling.Carrie@epa.gov]
Sent: 1/13/2021 1:25:30 PM
To: Sweeney, Stephen [Sweeney.Stephen@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; OGC WLO [OGC_WLO@epa.gov]
Subject: RE: Environment & Energy Report Newsletter

Such a remarkably bland and vague description of who he is and what he did at EPA.....

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Sweeney, Stephen <Sweeney.Stephen@epa.gov>
Sent: Wednesday, January 13, 2021 8:10 AM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>; OGC WLO <OGC_WLO@epa.gov>
Subject: RE: Environment & Energy Report Newsletter

https://www.troutman.com/insights/dave-ross-longtime-public-servant-in-federal-and-state-environmental-agencies-to-join-troutman-pepper.html

---

From: Kupchan, Simma <Kupchan.Simma@epa.gov>
Sent: Tuesday, January 12, 2021 4:16 PM
To: OGC WLO <OGC_WLO@epa.gov>
Subject: FW: Environment & Energy Report Newsletter

In case you missed this headline:

Ex-EPA Water Chief Joins Troutman Pepper Environmental Practice

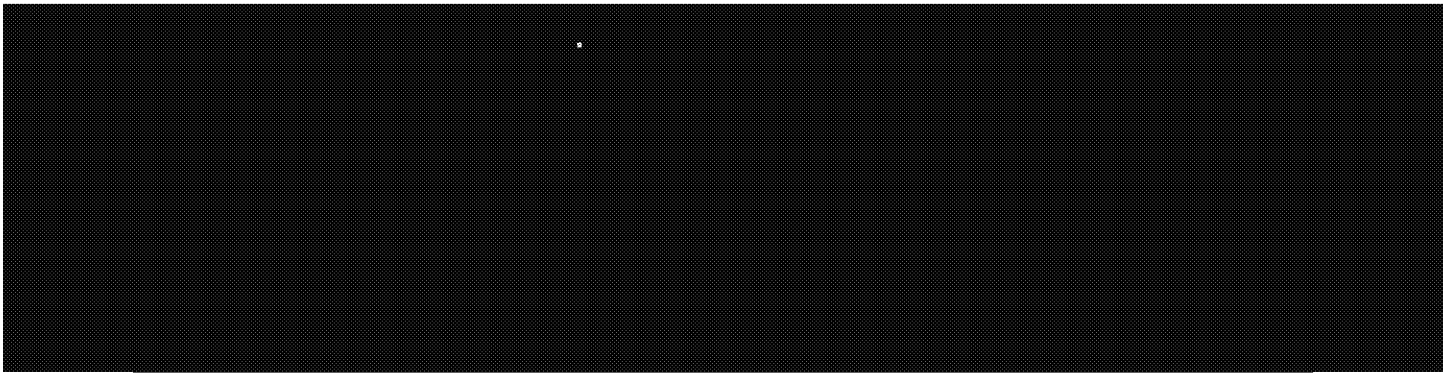
David Ross, former EPA assistant administrator for the water office, has joined Troutman Pepper Hamilton Sanders LLP as a partner in the firm's environmental and natural resources practice group in Washington, D.C.

READ MORE

(I looked on Troutman's website, for the announcement, but instead saw this announcement about another new partner: https://www.troutman.com/insights/former-us-attorney-for-middle-district-of-georgia-joins-troutman-peppers-white-collar-practice-in-atlanta.html).

Simma Kupchan
EPA Office of General Counsel
Water Law Office
WJC North Building # 7426Q
202-564-3105

From: Bloomberg Law <bloomberg@bna.com>
Sent: Tuesday, January 12, 2021 4:05 PM
To: Kupchan, Simma <Kupchan.Simma@epa.gov>
Subject: Environment & Energy Report Newsletter



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Environment & Energy Report

Tuesday, January 12, 2021

Inside: Energy & Natural Resources Chemicals EPA Climate Water Business and Practice Companies & Law Firms

Leading the News

Feds Challenge Decision Ordering More Climate Review for Leases

The Trump administration is challenging the latest court ruling to fault the Interior Department for inadequate analysis of the climate impacts of oil and gas leasing.

Documents Attached

READ MORE

Beating Biden's Day One Freeze Sparks Stampede to Lock in Rules

The rush to get last-minute regulations out before President-elect Joe Biden halts any rules not in place before his inauguration exacerbates a logjam at the federal government's daily journal.

READ MORE

Carbon Pollution Rule From EPA Sets Out Threshold for Industry

The Trump administration finalized a long-awaited carbon rule for new power plants Tuesday that sets a threshold for what sources "contribute significantly" to air pollution under the Clean Air Act.

Final Rule Attached

READ MORE

3M, Wolverine World Wide Seek Dismissal of Michigan PFAS Claims

3M Co. and Wolverine World Wide Inc. asked a federal district court to dismiss Michigan residents' efforts to seek medical monitoring and monetary damages for PFAS exposure and environmental contamination.

Documents Attached

READ MORE

Energy & Natural Resources

Energy Dept. Nuclear Official Joins Power Research Institute

Rita Baranwal, who served as the Energy Department's Assistant Secretary for Nuclear Energy, is joining the Electric Power Research Institute, according to a statement from the non-profit group.

READ MORE

World's Biggest Battery Race Gets New Contender in Australia

Another big battery project has been announced in Australia, as energy storage developers rush to profit from the nation's abundant sunshine and wind resources.

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Hunt for the Next Tesla Fuels Wave of Electric-Vehicle Deals (1)

Wall Street's obsession with electric vehicles is touching off a new round of public listings and helping clean-tech companies to forge partnerships with powerful allies.

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Mountain Valley Pipeline Forest Crossing Draws Legal Challenge

The U.S. Forest Service "bowed to political pressure" and improperly approved a plan allowing the Mountain Valley Pipeline to cross through Jefferson National Forest, according to environmental groups and a tribe challenging the decision in the Fourth Circuit.

Petition Attached

READ MORE

Enbridge: Pipelines to Keep Operating Despite Michigan Action

Enbridge Executive Vice President Vern Yu said the company has has no intention of shutting down pipelines, despite Michigan Governor Gretchen Whitmer's move to terminate an easement that has been in place since 1953.

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ENERGY BRIEFING: Western Caucus Leaders Aim for Bipartisanship

The incoming chairmen of GOP-led western caucuses say they see potential areas for bipartisan compromise with the Democratic-controlled Congress and White House.

READ MORE

Chemicals

'Forever Chemicals' Found in China's Drinking Water Sources

China's lack of control over industries that produce a toxic family of chemicals known as PFAS is leading to high levels of contamination in drinking water sources, scientists in Beijing say.

Document Attached

READ MORE

Industries Must Track Three More PFAS This Year, EPA List Says

The EPA has expanded the number of PFAS that companies and federal facilities will have to track this year for a report on their environmental releases in 2022.

Document Attached

READ MORE

Releases of Hazardous Chemicals Drop Nationwide, EPA Reports

Nationwide releases of designated, hazardous chemicals decreased by 9% between 2018 and 2019, illustrating the continued effectiveness of a decades-old chemical "right-to-know" program, according to new data the EPA published Tuesday.

READ MORE

EPA

EPA's 'Secret Science' Rule Draws Its First Legal Challenge (1)

The Environmental Defense Fund on Monday became the first to take aim at the EPA's final rule that sets limits on how science can be used in future agency rulemaking.

Complaint Attached

READ MORE

Ex-EPA Water Chief Joins Troutman Pepper Environmental Practice

David Ross, former EPA assistant administrator for the water office, has joined Troutman Pepper Hamilton Sanders LLP as a partner in the firm's environmental and natural resources practice group in Washington, D.C.

READ MORE

Climate

Investor Pressure Boosted Climate Disclosures in 2020, Says CDP

Companies are more than twice as likely to report climate risk data when investors actively pressure them to do so, according to a leading climate-disclosure platform.

READ MORE

River of Rain Threatens to Unleash Pacific Northwest Mudslides

Flooding rains will leave as much as 10 inches (25 centimeters) of rain throughout the Pacific Northwest, sending mud and debris down hillsides burned by wildfires last summer.

READ MORE

Water

Conservation Groups Fight EPA's Approval of Army Corps Pumps

Environmental conservation groups sued the EPA for allowing the U.S. Army Corps of Engineers to build a pumping plant in an ecologically sensitive part of the lower Mississippi River valley, in federal district court in Washington Tuesday.

Documents Attached

READ MORE

Pure Helium May Proceed With Construction Near Utah Gas Lease

Companies seeking to extract helium in Utah can proceed with construction despite claims by environmental groups that the government failed to study how the project could impact water use, a Washington, D.C., federal court ruled Tuesday.

Documents Attached

READ MORE

Business and Practice

GOP Lawmakers Hit by Boardroom Backlash for Bid to Undo Election

Major U.S. corporations are punishing Republicans in Congress who tried to overturn President-elect Joe Biden's electoral victory, vowing to pull their campaign contributions after a right-wing mob stormed the U.S. Capitol last week.

READ MORE

Companies

Mentioned in this issue

3M Co

Amazon.com Inc

BlackRock Inc

BP PLC

ConocoPhillips

DowDuPont Inc

Enbridge Inc

Facebook Inc

FedEx Corp

Goldman Sachs Group Inc/The

JPMorgan Chase & Co

Marriott International Inc/MD

MasterCard Inc

Microsoft Corp

Morgan Stanley

Nestle SA

Origin Energy Ltd

Pernod Ricard SA

Renault SA

Royal Dutch Shell PLC

Tesla Inc

Wolverine World Wide Inc

Law Firms

Mentioned in this issue

Baker Donelson

Beveridge & Diamond

Earthjustice

Troutman Pepper Hamilton Sanders

1801 South Bell Street, Arlington, VA 22202

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Message

From: Levine, MaryEllen [levine.maryellen@epa.gov]
Sent: 1/13/2021 7:56:03 PM
To: OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]
Subject: FW: Transition: Update to OGC briefing papers

I just asked for Carrie And Diane to have access – seems more efficient.

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Askew, Wendel <Askew.Wendel@epa.gov>
Sent: Wednesday, January 13, 2021 2:51 PM
To: Orlin, David <Orlin.David@epa.gov>; Pittman, Forrest <Pittman.Forrest@epa.gov>; Brooks, Jourdan <Brooks.Jourdan@epa.gov>; Stachowiak, Robert <Stachowiak.Robert@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>; Cope, Clayton <cope.clayton@epa.gov>; Rhodes, Julia <Rhodes.Julia@epa.gov>; Sisson, Ann <Sisson.Ann@epa.gov>
Cc: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>
Subject: Transition: Update to OGC briefing papers

Good afternoon,

We are one week out from the inauguration. I am asking that each office please provide any updates to the OGC briefing papers that we prepared a couple of months ago. Hopefully only minimal updates will be necessary given the relatively short period of time that has passed. We are still only including high-level publicly available information. The objective is to provide the updated papers to any new arrivals to OGC at the beginning of the new administration.

You will shortly receive a separate link to each of the seven briefing papers for this effort. Please make any updates by 2 pm on Friday or let me know if you need additional time. Thanks.

Wendel Askew
Assistant General Counsel for Assistance Law
Office of General Counsel
Mail Code 2399A
202-564-3987
7454H WJCN

Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 1/14/2021 6:21:47 PM
To: Wehling, Carrie [Wehling.Carrie@epa.gov]
CC: Messier, Dawn [Messier.Dawn@epa.gov]
Subject: RE: transition paper for WOTUS litigation

Excellent. Thanks.

Steven Neugeboren
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Washington DC 20460
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From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Thursday, January 14, 2021 1:20 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: transition paper for WOTUS litigation

Yes, those are the charts I am referring to. Elise is updating them for me, so I will send all three documents once I have hers.
Thanks.
Carrie

Caroline (Carrie) Wehling
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wehling.carrie@epa.gov

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Thursday, January 14, 2021 11:59 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: transition paper for WOTUS litigation

This is perfect. Thank you!

I spoke with Jim yesterday about maybe a wotus briefing for the new arrival very early week after inauguration. He didn't commit because hard to predict, but I will take this up with him again on the 21st because it's clearly necessary.

And we will be ready!

Ps – by elise's two charts I assume you mean her table and then the list of cases grouped by the rule challenged?

Thanks for helping us be ready.

Steven Neugeboren
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From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Thursday, January 14, 2021 10:53 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Messier, Dawn <Messier.Dawn@epa.gov>
Subject: transition paper for WOTUS litigation

Attached as discussed yesterday is my quick at-a-glance WOTUS overview – with pending cases, plus filings in the next few months. This would be attached to Elise's two litigation charts. Does this seem helpful?
Thanks.
Carrie

Caroline (Carrie) Wehling
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Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 1/21/2021 2:15:13 AM
To: Rodrigues, Cecil [rodrigues.cecil@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]
Subject: RE: FACT SHEET: LIST OF AGENCY ACTIONS FOR REVIEW

Thanks Cecil.

Steven Neugeboren
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From: Rodrigues, Cecil <rodrigues.cecil@epa.gov>
Sent: Wednesday, January 20, 2021 12:50 PM
To: Payne, James (Jim) <payne.james@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: FW: FACT SHEET: LIST OF AGENCY ACTIONS FOR REVIEW

Please see below. From BidenHarris press release on Agency Actions for review.

Heads up. Number 37 under EPA lists evaluation of MD's Phase III WIP as an agency action.

From: Rachel Felver <rfelver@chesapeakebay.net>
Sent: Wednesday, January 20, 2021 9:39 AM
To: Aunkst, Dana <aunkst.dana@epa.gov>; Jenkins, Bill <jenkins.bill@epa.gov>; Bisland, Carin <bisland.carin@epa.gov>; McDonnell, Lee <McDonnell.Lee@epa.gov>; Power, Lucinda <power.lucinda@epa.gov>; Barranco, Gregory <barranco.greg@epa.gov>; Damm, Thomas <Damm.Thomas@epa.gov>
Subject: FW: FACT SHEET: LIST OF AGENCY ACTIONS FOR REVIEW

FYI—I'm not sure personally, so wanted to see how you'd like me to respond (he's not media).

From: John Surrick - ext. 2045 <JSurrick@cbf.org>
Sent: Wednesday, January 20, 2021 8:27 AM
To: Rachel Felver <rfelver@chesapeakebay.net>
Subject: FW: FACT SHEET: LIST OF AGENCY ACTIONS FOR REVIEW

See item 37 under EPA. Any thoughts about why MD was singled out, not PA?

John Surrick
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CHESAPEAKE BAY FOUNDATION
Saving a National Treasure

From: Annie Snider <asnider@politico.com>
Sent: Wednesday, January 20, 2021 7:31 AM
To: John Surrick - ext. 2045 <JSurrick@cbf.org>; Lisa Caruso <LCaruso@cbf.org>
Subject: Fwd: FACT SHEET: LIST OF AGENCY ACTIONS FOR REVIEW

Any idea why a Biden is revising EPA's approval of Maryland's phase 3 WIP? And nothing re: PA, unless I'm missing it?

Sent from my iPhone

Begin forwarded message:

> **From:** Biden Transition Press <press@bidentransition.org>
> **Date:** January 20, 2021 at 5:01:37 AM EST
> **To:** Annie Snider <asnider@politico.com>
> **Subject: FACT SHEET: LIST OF AGENCY ACTIONS FOR REVIEW**
> **Reply-To:** Biden Transition Press <press@bidentransition.org>

EXTERNAL SENDER: Use caution with links and attachments.

View this email in your browser

FOR IMMEDIATE RELEASE
January 20, 2021

FACT SHEET:
LIST OF AGENCY ACTIONS FOR REVIEW

Actions Address the COVID-19 Pandemic, Provide Economic Relief, Tackle Climate Change, and Advance Racial Equity

This is a non-exclusive list of agency actions that heads of the relevant agencies will review in accordance with the Executive Order: "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." Additional agency actions also will be reviewed to determine consistency with Section 1 of the Executive Order.

Note that actions published in the January 20 Federal Register will be added to this list on January 20.

COUNCIL ON ENVIRONMENTAL QUALITY

1. "Guidance Document Procedures," 86 Fed. Reg. 1279 (January 8, 2021).
2. "Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act," 85 Fed. Reg. 43304 (July 16, 2020).

U.S. DEPARTMENT OF AGRICULTURE

1. "Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska," 85 Fed. Reg. 68688 (October 29, 2020).

U.S. DEPARTMENT OF COMMERCE

1. "Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico," 86 Fed. Reg. 5322 (January 19, 2021).
2. "Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat," 85 Fed. Reg. 81411 (December 16, 2020).
3. National Oceanic and Atmospheric Administration, Biological Opinion on Long Term Operation of the Central Valley Project and the State Water Project (October 21, 2019).
4. "Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat," 84 Fed. Reg. 45020 (August 27, 2019).
5. "Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation," 84 Fed. Reg. 44976 (August 27, 2019).

U.S. DEPARTMENT OF DEFENSE

1. "Reissuance and Modification of Nationwide Permits," 86 Fed. Reg. 2744 (January 13, 2021).

2. "The Navigable Waters Protection Rule: Definition of 'Waters of the United States,'" 85 Fed. Reg. 22250 (April 21, 2020).

U.S. DEPARTMENT OF ENERGY

1. "Energy Conservation Program: Energy Conservation Standards for Small Electric Motors," 86 Fed. Reg. 4885 (January 19, 2021).
2. "Energy Conservation Program: Establishment of New Product Classes for Residential Clothes Washers and Consumer Clothes Dryers," 85 Fed. Reg. 81359 (December 16, 2020).
3. "Test Procedure Interim Waiver Process," 85 Fed. Reg. 79802 (December 11, 2020).
4. "Energy Conservation Program: Establishment of a New Product Class for Residential Dishwashers," 85 Fed. Reg. 68723 (October 30, 2020).
5. "Energy Conservation Program for Appliance Standards: Procedures for Evaluating Statutory Factors for Use in New or Revised Energy Conservation Standards," 85 Fed. Reg. 50937 (August 19, 2020).
6. "Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment," 85 Fed. Reg. 8626 (February 14, 2020).
7. "Energy Conservation Program: Energy Conservation Standards," 85 Fed. Reg. 1378 (January 10, 2020).
8. "Energy Conservation Program: Energy Conservation Standards for General Service Incandescent Lamps," 84 Fed. Reg. 71626 (December 27, 2019).
9. "Final Determination Regarding Energy Efficiency Improvements in the 2018 International Energy Conservation Code (IECC)," 84 Fed. Reg. 67435 (December 10, 2019).
10. "Final Determination Regarding Energy Efficiency Improvements in ANSI/ASHRAE/IES Standard 90.1–2016: Energy Standard for Buildings, Except Low-Rise Residential Buildings," 83 Fed. Reg. 8463 (February 27, 2018).

U.S. ENVIRONMENTAL PROTECTION AGENCY

1. "Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984," 86 Fed. Reg. 5013 (January 19, 2021).
2. "National Primary Drinking Water Regulations: Lead and Copper Rule Revisions," 86 Fed. Reg. 4198 (January 15, 2021).

3. "Pollutant-Specific Significant Contribution Finding for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, and Process for Determining Significance of Other New Source Performance Standards Source Categories," 86 Fed. Reg. 2542 (January 13, 2021).
4. "Control of Air Pollution From Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures," 86 Fed. Reg. 2136 (January 11, 2021).
5. "Review of Dust-Lead Post Abatement Clearance Levels," 86 Fed. Reg. 983 (January 7, 2021).
6. "Hexachlorobutadiene (HCBD); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h)," 86 Fed. Reg. 922 (January 6, 2021).
7. "Pentachlorothiophenol (PCTP); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h)," 86 Fed. Reg. 911 (January 6, 2021).
8. "Phenol, Isopropylated Phosphate (3:1) (PIP 3:1); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h)," 86 Fed. Reg. 894 (January 6, 2021).
9. "Decabromodiphenyl Ether (DecaBDE); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h)," 86 Fed. Reg. 880 (January 6, 2021).
10. "2,4,6-tris(tert-butyl)phenol (2,4,6-TTBP); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h)," 86 Fed. Reg. 866 (January 6, 2021).
11. "Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information," 86 Fed. Reg. 469 (January 6, 2021).
12. "Review of the Ozone National Ambient Air Quality Standards," 85 Fed. Reg. 87256 (December 31, 2020).
13. "Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process," 85 Fed. Reg. 84130 (December 23, 2020).
14. "Review of the National Ambient Air Quality Standards for Particulate Matter," 85 Fed. Reg. 82684 (December 18, 2020).
15. "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act," 85 Fed. Reg. 73854 (November 19, 2020).
16. "Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments," 85 Fed. Reg. 72506 (November 12, 2020).
17. "NPDES Electronic Reporting Rule—Phase 2 Extension," 85 Fed. Reg. 69189 (November 2, 2020).

18. "Pesticides; Agricultural Worker Protection Standard; Revision of the Application Exclusion Zone Requirements," 85 Fed. Reg. 68760 (October 30, 2020).

19. "EPA Guidance; Administrative Procedures for Issuance and Public Petitions," 85 Fed. Reg. 66230 (October 19, 2020).

20. "Steam Electric Reconsideration Rule," 85 Fed. Reg. 64650 (October 13, 2020).

21. U.S. Environmental Protection Agency, Memorandum Regarding Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans (October 9, 2020).

22. "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration," 85 Fed. Reg. 57398 (September 15, 2020).

23. "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review," 85 Fed. Reg. 57018 (September 14, 2020).

24. "Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; A Holistic Approach to Closure Part A: Deadline To Initiate Closure," 85 Fed. Reg. 53516 (August 28, 2020).

25. "Streamlining Procedures for Permit Appeals," 85 Fed. Reg. 51650 (August 21, 2020).

26. "Drinking Water: Final Action on Perchlorate," 85 Fed. Reg. 43990 (July 21, 2020).

27. "Clean Water Act Section 401 Certification Rule," 85 Fed. Reg. 42210 (July 13, 2020).

28. "Methylene Chloride (MC); Final Toxic Substances Control Act (TSCA) Risk Evaluation; Notice of Availability," 85 Fed. Reg. 37942 (June 24, 2020).

29. "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review," 85 Fed. Reg. 31286 (May 22, 2020).

30. "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks," 85 Fed. Reg. 24174 (April 30, 2020).

31. "The Navigable Waters Protection Rule: Definition of 'Waters of the United States,'" 85 Fed. Reg. 22250 (April 21, 2020).

32. "Air Plan Approval; Texas; Dallas-Fort Worth Area Redesignation and Maintenance Plan for Revoked Ozone National Ambient Air Quality Standards," 85 Fed. Reg. 19096 (April 6, 2020).

33. "Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program's Extension to Substitutes," 85 Fed. Reg. 14150 (March 11, 2020).

34. "On-Site Civil Inspection Procedures," 85 Fed. Reg. 12224 (March 2, 2020).

35. "Air Plan Approval; Texas; Houston-Galveston-Brazoria Area Redesignation and Maintenance Plan for Revoked Ozone National Ambient Air Quality Standards; Section 185 Fee Program," 85 Fed. Reg. 8411 (February 14, 2020).

36. "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act," 84 Fed. Reg. 69834 (December 19, 2019).

37. U.S. Environmental Protection Agency, Evaluation of Maryland's Phase III Watershed Implementation Plan (WIP) (December 19, 2019).

38. "Findings of Failure To Submit a Clean Air Act Section 110 State Implementation Plan for Interstate Transport for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)," 84 Fed. Reg. 66612 (December 5, 2019).

39. "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program," 84 Fed. Reg. 51310 (September 27, 2019).

40. "Adopting Requirements in Emission Guidelines for Municipal Solid Waste Landfills," 84 Fed. Reg. 44547 (August 26, 2019).

41. "Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h)," 84 Fed. Reg. 36728 (July 29, 2019).

42. "Chlorpyrifos; Final Order Denying Objections to March 2017 Petition Denial Order," 84 Fed. Reg. 35555 (July 24, 2019).

43. "Review of the Dust-Lead Hazard Standards and the Definition of Lead-Based Paint," 84 Fed. Reg. 32632 (July 9, 2019).

44. "Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations," 84 Fed. Reg. 32520 (July 8, 2019).

45. "Methylene Chloride; Regulation of Paint and Coating Removal for Consumer Use Under TSCA Section 6(a)," 84 Fed. Reg. 11420 (March 27, 2019).

46. "Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Amendments to the National Minimum Criteria (Phase One, Part One)," 83 Fed. Reg. 36435 (July 30, 2018).

47. "Financial Responsibility Requirements Under CERCLA Section 108(b) for Classes of Facilities in the Hardrock Mining Industry," 83 Fed. Reg. 7556 (February 21, 2018).

48. "Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act," 82 Fed. Reg. 33726 (July 20, 2017).

U.S. DEPARTMENT OF JUSTICE

1. "Prohibition on Settlement Payments to Non-Governmental Third Parties," 85 Fed. Reg. 81409 (December 16, 2020).

U.S. DEPARTMENT OF THE INTERIOR

1. "Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Northern Spotted Owl," 86 Fed. Reg. 4820 (January 15, 2021).
2. U.S. Department of the Interior, National Greater Sage-Grouse Land Use Planning Page (NEPA No. DOI-BLM-WO-WO2100-2017-0003-RMP-EIS) (last updated January 11, 2021).
3. "Regulations Governing Take of Migratory Birds," 86 Fed. Reg. 1134 (January 7, 2021).
4. "Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat," 85 Fed. Reg. 82376 (December 18, 2020).
5. "Forest Management Decision Protest Process and Timber Sale Administration," 85 Fed. Reg 82359 (December 18, 2020).
6. "Endangered and Threatened Wildlife and Plants; 12-Month Finding for the Monarch Butterfly," 85 Fed. Reg. 81813 (December 17, 2020).
7. "Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat," 85 Fed. Reg. 81411 (December 16, 2020).
8. "Notice of Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Bering Sea-Western Interior Planning Area, Alaska," 85 Fed. Reg. 78350 (December 4, 2020).
9. "Endangered and Threatened Wildlife and Plants; Eleven Species Not Warranted for Listing as Endangered or Threatened Species," 85 Fed. Reg. 78029 (December 3, 2020).
10. "Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (Canis lupus) From the List of Endangered and Threatened Wildlife," 85 Fed. Reg 69778 (November 3, 2020).
11. "Notice of Availability of the Record of Decision for the Proposed Willow Master Development Plan Project, Alaska," 85 Fed. Reg. 69351 (November 2, 2020).
12. "Procedures for Issuing Guidance Documents," 85 Fed. Reg. 67666 (October 26, 2020).
13. "Alaska; Hunting and Trapping in National Preserves," 85 Fed. Reg. 35181 (June 9, 2020).
14. U.S. Department of the Interior, M-37056: Status of Mineral Ownership Underlying the Missouri River within the Boundaries of the Fort Berthold Indian Reservation (North Dakota) (May 26, 2020).

15. "National Environmental Policy Act Implementing Procedures for the Bureau of Land Management (516 DM 11)," 85 Fed. Reg. 25472 (May 1, 2020).

16. U.S. Department of the Interior, M-37055: Withdrawal of Solicitor's Opinion M-37029, "The Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act" (March 9, 2020).

17. U.S. Department of the Interior, Guidance Regarding Application of the Coastal Barrier Resources Act to Non-Structural Projects for Shoreline Stabilization (November 4, 2019).

18. U.S. Fish and Wildlife Service, Biological Opinion for the Reinitiation of Consultation on the Coordinated Operations of the Central Valley Project and State Water Project (October 21, 2019).

19. "Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat," 84 Fed. Reg. 45020 (August 27, 2019).

20. "Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation," 84 Fed. Reg. 44976 (August 27, 2019).

21. "Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control Revisions," 84 Fed. Reg. 21908 (May 15, 2019).

22. "Notice of Availability of Record of Decision and Approved Resource Management Plan Amendment for Greater Sage-Grouse Conservation, Northwest Colorado," 84 Fed. Reg. 10327 (March 20, 2019).

23. "Notice of Availability of Record of Decision and Approved Resource Management Plan Amendment for Greater Sage-Grouse Conservation, Idaho," 84 Fed. Reg. 10325 (March 20, 2019).

24. "Notice of Availability of Record of Decision and Approved Resource Management Plan Amendment for Greater Sage-Grouse Conservation, Oregon," 84 Fed. Reg. 10324 (March 20, 2019).

25. "Notice of Availability of Record of Decision and Approved Resource Management Plan Amendment for Greater Sage-Grouse Conservation, Nevada and Northeastern California," 84 Fed. Reg. 10323 (March 20, 2019).

26. "Notice of Availability of Record of Decision and Approved Resource Management Plan Amendment for Greater Sage-Grouse Conservation, Wyoming," 84 Fed. Reg. 10322 (March 20, 2019).

27. "Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements," 83 Fed. Reg. 49184 (September 28, 2018).

28. U.S. Department of the Interior, Instruction Memorandum No. 2018-034: Updating Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews (January 31, 2018).

29. "Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule," 82 Fed. Reg. 61924 (December 29, 2017).

30. U.S. Department of the Interior, M-37050: The Migratory Bird Treaty Act Does Not Prohibit Incidental Take (December 22, 2017).

31. U.S. Department of the Interior, Order No. 3348: Concerning the Federal Coal Moratorium (March 29, 2017).

U.S. DEPARTMENT OF LABOR

1. "Financial Factors in Selecting Plan Investments," 85 Fed. Reg. 72846 (November 13, 2020).

U.S. DEPARTMENT OF TRANSPORTATION

1. "Hazardous Materials: Liquefied Natural Gas by Rail," 85 Fed. Reg. 44994 (July 24, 2020).

2. "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks," 85 Fed. Reg. 24174 (April 30, 2020).

3. "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program," 84 Fed. Reg. 51310 (September 27, 2019).

###

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Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 1/22/2021 4:47:48 PM
To: Wehling, Carrie [Wehling.Carrie@epa.gov]; Messier, Dawn [Messier.Dawn@epa.gov]
Subject: RE: FYI figuring out recusals for WOTUS cases

I just spoke with Justina for about a half hour. I told her I'd like to write up what I understand the advice to be, run it by you and then send back to her for confirmation. Big picture seems to be she should be able to participate in WOTUS cases where mass not a party (didn't get into amicus issue) if she gets permission from Mass to do so. Email for you to follow.

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From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Friday, January 22, 2021 11:00 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: FYI figuring out recusals for WOTUS cases

The discussion below is in response to the Justina recusal email for Melissa and Dimple – Elise got it from SWERLO.

Caroline (Carrie) Wehling
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From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Friday, January 22, 2021 10:15 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: FYI figuring out recusals for WOTUS cases

Thanks. Justina discussed a little at ADD mtg yesterday and sent something I haven't looked at so stay tuned.

Steven Neugeboren
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From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Friday, January 22, 2021 9:46 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: FYI figuring out recusals for WOTUS cases

Just so you can see our discussion about this.....

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From: ODea, Elise <odea.elise@epa.gov>
Sent: Friday, January 22, 2021 9:24 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Thanks, Carrie! Your summary seems right to me. So far I've determined that Massachusetts signed on to at least one amicus brief in another WOTUS case, *Conservation Law Foundation* (D. Mass.) (attached). I'm assuming Melissa would be recused from that case as well, unless different ethics rules apply where a client participates as amicus rather than as a plaintiff. I'll let the team know if I come across any other amicus briefs, etc., that would impact the recusals. I'll also add a note to the cases in the district court litigation spreadsheet indicating where Melissa and/or Dimple are recused so that we can keep that straight moving forward.

- -

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From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Friday, January 22, 2021 9:16 AM
To: ODea, Elise <odea.elise@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Thanks, Elise.....so here's what I take away for WOTUS litigation, interested in your thoughts/analysis/correction:

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    b. 2015 – Ohio and SD Texas

Caroline (Carrie) Wehling
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Washington DC 20004
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wehling.carrie@epa.gov

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Sent: Friday, January 22, 2021 8:21 AM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: FW: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

FYI—see below/attached. I'm sure Steve will circulate this to the rest of WLO, but I wanted to be sure to pass it on to our team ASAP given the conversation we had yesterday re: recusals in the WOTUS litigation. I haven't reviewed closely yet but plan to do so. Thanks!

- -

Elise M. O'Dea
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Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4201

From: Schmidt, Lorie <Schmidt.Lorie@epa.gov>
Sent: Thursday, January 21, 2021 9:49 PM
To: OGC SWERLO <OGC_SWERLO@epa.gov>
Subject: FW: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

FYI

Lorie J. Schmidt
Associate General Counsel
Solid Waste and Emergency Response Law Office
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
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Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 1/23/2021 6:54:24 PM
To: Dawn Messier [Messier.Dawn@epa.gov]; MaryEllen Levine [levine.maryellen@epa.gov]; McConkey, Diane [Mcconkey.Diane@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]
Subject: FW: an ethics welcome to Melissa Hoffer and Dimple Chaudhary
Attachments: impartiality determination 1-19-21 redacted.pdf; enclosure to impartiality determination 1-19-21 updated 1-21-21.docx

Sharing what Justina sent to the ADDs. I also had a conversation with her about circumstances like WOTUS where Mass has not participated in most, and that's a little complicated. I'm going to try to get clarification from her early next week in advance of our first hot issues.

Steven Neugeboren
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Sent: 1/23/2021 8:16:41 PM
To: ODea, Elise [odea.elise@epa.gov]; Simma Kupchan [Kupchan.Simma@epa.gov]; Hughes, Krista [hughes.krista@epa.gov]; Karyn Wendelowski [wendelowski.karyn@epa.gov]
CC: Carrie Wehling [Wehling.Carrie@epa.gov]; McConkey, Diane [Mcconkey.Diane@epa.gov]
Subject: email with justina about recusals and wotus litigation

To the wotus team - Per my last email, below is state of play on wotus. We will circle back with you once this sorts out but wanted to keep you apprised.

Diane – the advice we ultimately get will have implications for 401 a well so copying you.

Steven Neugeboren
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1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Neugeboren, Steven
Sent: Saturday, January 23, 2021 3:02 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Carrie Wehling <Wehling.Carrie@epa.gov>; Dawn Messier <Messier.Dawn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Justina- thanks for the conversation yesterday about some of the circumstances we are dealing with in water for WOTUS cases. As discussed, there is pending litigation in about 12 district courts challenging the WOTUS rule, and Massachusetts is a party to cases in California, New York and has filed an amicus brief in Massachusetts. NRDC is a party to cases in Massachusetts and So. Carolina. We discussed restrictions for them across the different cases and I've tried to capture what I took away from our conversation so can you please provide confirmation or clarification/correction.

I'd like to ensure we understand the restrictions as soon as we are able as we are starting to prepare Monday for our first hot issues meeting with Melissa and Dimple this week. Thanks!

Melissa:

As explained in your email below, under her bar obligations, Melissa is precluded during her EPA tenure from participation in the two WOTUS cases to which Mass. is a party. In our call you explained that the "policy" decisions she may participate in pursuant to your impartiality determination include, for example, a policy decision not to defend the rule in litigation and requesting DOJ to seek abeyances in the cases for the Agency to reconsider its policy options. Your impartiality determination does not, however, permit her to participate in discussions of the litigation itself – e.g., deliberations on litigation strategy in light of such a policy decision, such as discussion whether to seek a remand, or other litigation options.

Question - Do the restrictions as you describe them apply to a case in which Mass. has participated as amicus in D.Mass?

With regard to the WOTUS cases to which Mass. is ***not*** a party, you discussed the question under the federal ethics rules and Melissa's bar restrictions (as she is not subject to the Biden ethics pledge since she is form a state).

Under the federal ethics rules, you indicated that Melissa may participate in such cases, notwithstanding the similar nature of those cases to the ones Mass is a party to in terms of the rules being challenged and the legal issues in the case, but you may advise her, as a prudential matter, to get the consent of her former employer before doing so.

Under her bar restrictions, I believe you said that she may be able to participate in those cases if she received the consent of her former employer, but you were going to check the relevant bar rules. I wasn't sure which state bar rules you would need to check (it seemed like the location of the case was relevant – the first paragraph above lists the jurisdictions of the cases to which Mass is a party and filed an amicus brief).

Dimple

I don't have notes of discussion of the federal ethics rules, but I assume the answer for Dimple is the same as above for Melissa – she may participate in WOTUS cases to which NRDC is not a party (subject to a potentially your prudential advice to obtain the consent of her former employer).

Under her bar restrictions, since no WOTUS cases are listed for below, I think you said they do not restrict her participate in those cases.

However, per your email, under the Biden ethics pledge she may not participate in any of the WOTUS cases to which NRDC is party for two years.

Thanks so much for your help!

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Sent: 1/25/2021 2:23:10 PM
To: Wehling, Carrie [Wehling.Carrie@epa.gov]; Messier, Dawn [Messier.Dawn@epa.gov]
Subject: RE: FYI figuring out recusals for WOTUS cases

Thanks. Yes I realized that later.

Steven Neugeboren
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Washington DC 20460
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From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Monday, January 25, 2021 8:56 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: FYI figuring out recusals for WOTUS cases

Right. That was on my note below.

Caroline (Carrie) Wehling
Assistant General Counsel
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Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Saturday, January 23, 2021 2:00 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: FYI figuring out recusals for WOTUS cases

From the list I just sent Mass also a party in this.

- *New York et. al. v. Wheeler et. al.*, S.D.N.Y. 19-11673 - Challenge to the rule repealing the 2015 definition of "waters of the United States" under the CWA and reinstating the prior regulatory definition.

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From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Friday, January 22, 2021 9:46 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: FYI figuring out recusals for WOTUS cases

Just so you can see our discussion about this.....

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Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Thanks, Carrie! Your summary seems right to me. So far I've determined that Massachusetts signed on to at least one amicus brief in another WOTUS case, *Conservation Law Foundation* (D. Mass.) (attached). I'm assuming Melissa would be recused from that case as well, unless different ethics rules apply where a client participates as amicus rather than as a plaintiff. I'll let the team know if I come across any other amicus briefs, etc., that would impact the recusals. I'll also add a note to the cases in the district court litigation spreadsheet indicating where Melissa and/or Dimple are recused so that we can keep that straight moving forward.

- -

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Sent: 1/25/2021 6:27:29 PM
To: Fugh, Justina [Fugh.Justina@epa.gov]
Subject: RE: Followup re consent from Massachusetts for Melissa Hoffer

Sorry for the multiple pings (I forgot I had asked carrie to reach out to you). Thanks for attending to this so quickly on yiour day off!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 1:11 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: Followup re consent from Massachusetts for Melissa Hoffer

Hi,
Today's my compressed day off but I am working now. I just had to be off in the morning to take my older dog to the vet. So let me find Steve's note from the weekend and get back to you today.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Monday, January 25, 2021 12:53 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Messier, Dawn <Messier.Dawn@epa.gov>
Subject: Followup re consent from Massachusetts for Melissa Hoffer

Hi, Justina – Sorry to bother as I know you are super busy right now but wondering whether there has been any followup on the items noted in Steve's email below (see red below – i.e. re Melissa getting consent from her former employer, the State of Massachusetts). Just asking as we are needing to consult with Melissa ASAP about the WOTUS litigation….
Thanks.
Carrie

Caroline (Carrie) Wehling
Assistant General Counsel

Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Saturday, January 23, 2021 3:02 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Justina- thanks for the conversation yesterday about some of the circumstances we are dealing with in water for WOTUS cases. As discussed, there is pending litigation in about 12 district courts challenging the WOTUS rule, and Massachusetts is a party to cases in California, New York and has filed an amicus brief in Massachusetts. NRDC is a party to cases in Massachusetts and So. Carolina. We discussed restrictions for them across the different cases and I've tried to capture what I took away from our conversation so can you please provide confirmation or clarification/correction.

I'd like to ensure we understand the restrictions as soon as we are able as we are starting to prepare Monday for our first hot issues meeting with Melissa and Dimple this week. Thanks!

Melissa:

As explained in your email below, under her bar obligations, Melissa is precluded during her EPA tenure from participation in the two WOTUS cases to which Mass. is a party. In our call you explained that the "policy" decisions she may participate in pursuant to your impartiality determination include, for example, a policy decision not to defend the rule in litigation and requesting DOJ to seek abeyances in the cases for the Agency to reconsider its policy options. Your impartiality determination does not, however, permit her to participate in discussions of the litigation itself – e.g., deliberations on litigation strategy in light of such a policy decision, such as discussion whether to seek a remand, or other litigation options.

Question - Do the restrictions as you describe them apply to a case in which Mass. has participated as amicus in D.Mass?

With regard to the WOTUS cases to which Mass. is ***not*** a party, you discussed the question under the federal ethics rules and Melissa's bar restrictions (as she is not subject to the Biden ethics pledge since she is form a state).

Under the federal ethics rules, you indicated that Melissa may participate in such cases, notwithstanding the similar nature of those cases to the ones Mass is a party to in terms of the rules being challenged and the legal issues in the case, but you may advise her, as a prudential matter, to get the consent of her former employer before doing so.

Under her bar restrictions, I believe you said that she may be able to participate in those cases if she received the consent of her former employer, but you were going to check the relevant bar rules. I wasn't sure which state bar rules you would need to check (it seemed like the location of the case was relevant – the first paragraph above lists the jurisdictions of the cases to which Mass is a party and filed an amicus brief).

Dimple

I don't have notes of discussion of the federal ethics rules, but I assume the answer for Dimple is the same as above for Melissa – she may participate in WOTUS cases to which NRDC is not a party (subject to a potentially your prudential advice to obtain the consent of her former employer).

Under her bar restrictions, since no WOTUS cases are listed for below, I think you said they do not restrict her participate in those cases.

However, per your email, under the Biden ethics pledge she may not participate in any of the WOTUS cases to which NRDC is party for two years.

Thanks so much for your help!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,
As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.
- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:

Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	*Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA*, Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	*Labor Council for Latin America, NRDC, et al. v. EPA*, Case No. 19-1042, 2d Cir.
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Provided individual counseling to plaintiffs in Flint water crisis	*Walters v. Flint, EPA, et al.*, Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all I interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 1/25/2021 6:51:43 PM
To: McConkey, Diane [Mcconkey.Diane@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]
CC: Dawn Messier [Messier.Dawn@epa.gov]; Carrie Wehling [Wehling.Carrie@epa.gov]
Subject: FW: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

I am just making sure that Diane and Mary Ellen have this correspondence. Awaiting response from Justina.

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Neugeboren, Steven
Sent: Saturday, January 23, 2021 3:02 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Carrie Wehling <Wehling.Carrie@epa.gov>; Dawn Messier <Messier.Dawn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Justina- thanks for the conversation yesterday about some of the circumstances we are dealing with in water for WOTUS cases. As discussed, there is pending litigation in about 12 district courts challenging the WOTUS rule, and Massachusetts is a party to cases in California, New York and has filed an amicus brief in Massachusetts. NRDC is a party to cases in Massachusetts and So. Carolina. We discussed restrictions for them across the different cases and I've tried to capture what I took away from our conversation so can you please provide confirmation or clarification/correction.

I'd like to ensure we understand the restrictions as soon as we are able as we are starting to prepare Monday for our first hot issues meeting with Melissa and Dimple this week. Thanks!

Melissa:

As explained in your email below, under her bar obligations, Melissa is precluded during her EPA tenure from participation in the two WOTUS cases to which Mass. is a party. In our call you explained that the "policy" decisions she may participate in pursuant to your impartiality determination include, for example, a policy decision not to defend the rule in litigation and requesting DOJ to seek abeyances in the cases for the Agency to reconsider its policy options. Your impartiality determination does not, however, permit her to participate in discussions of the litigation itself – e.g., deliberations on litigation strategy in light of such a policy decision, such as discussion whether to seek a remand, or other litigation options.

Question - Do the restrictions as you describe them apply to a case in which Mass. has participated as amicus in D.Mass?

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Dimple

I don't have notes of discussion of the federal ethics rules, but I assume the answer for Dimple is the same as above for Melissa – she may participate in WOTUS cases to which NRDC is not a party (subject to a potentially your prudential advice to obtain the consent of her former employer).

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Thanks so much for your help!

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Washington DC 20460
(202) 564-5488

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

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MELISSA HOFFER

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is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.

- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

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Challenge to Methylene chloride rule	*Labor Council for Latin America, NRDC, et al. v. EPA*, Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	*NRDC v. Wheeler*, Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	*Walters v. Flint, EPA, et al.*, Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all I interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 1/26/2021 9:47:32 PM
To: ODea, Elise [odea.elise@epa.gov]; Wehling, Carrie [Wehling.Carrie@epa.gov]
CC: Kupchan, Simma [Kupchan.Simma@epa.gov]; Hughes, Krista [hughes.krista@epa.gov]; Wendelowski, Karyn [wendelowski.karyn@epa.gov]
Subject: RE: ethics next step - for immediate attention

Thank you!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: ODea, Elise <odea.elise@epa.gov>
Sent: Tuesday, January 26, 2021 2:02 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: ethics next step - for immediate attention

Hi Steve,

Attached please find revised WOTUS case lists for Melissa and Dimple that do not include the case status information, per your request.

Thanks!
Elise

- -

Elise M. O'Dea
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4201

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Tuesday, January 26, 2021 11:01 AM
To: ODea, Elise <odea.elise@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: ethics next step - for immediate attention

Thank you Elise!

Since their recusal status is unclear, can you please resend with just stating the rule that is challenged, but not the status information? I know that is likely all public information but I'd prefer to leave that stuff out of this communication. Thanks!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: ODea, Elise <odea.elise@epa.gov>
Sent: Tuesday, January 26, 2021 10:26 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: ethics next step - for immediate attention

Hi Steve and Carrie,

Attached please find two documents listing the WOTUS cases that Melissa may participate in and the WOTUS cases that Dimple may participate in. I've also identified in each document which cases the other political is recused from (so that they can avoid discussing certain cases w/ each other). Please let me know if you would like me to make any changes to the documents or if you have any questions or concerns.

Also—I've flagged the recusals on the WOTUS district court litigation spreadsheet so that we can keep things straight on our end as well.

Thanks!
Elise

- -

Elise M. O'Dea
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-4201

From: Wehling, Carrie <Wehling.Carrie@epa.gov>
Sent: Tuesday, January 26, 2021 8:12 AM
To: ODea, Elise <odea.elise@epa.gov>
Cc: Kupchan, Simma <Kupchan.Simma@epa.gov>; Hughes, Krista <hughes.krista@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: FW: ethics next step - for immediate attention

Elise -- Would you be able to do this without too much trouble? I'm assuming by prior employer he's referring just to Mass for Melissa and NRDC for Dimple.....
Let me know if you have concerns/questions about this.....
Thanks, Elise.
Carrie

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Monday, January 25, 2021 5:42 PM
To: Messier, Dawn <Messier.Dawn@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; McConkey, Diane <Mcconkey.Diane@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: ethics next step - for immediate attention

Sharing Justina's response below which is complicated, so I called her and it and her message seemed orally pretty simple – that likely they CAN participate in any cases to which their prior employer was not a party. To help reach closure we agreed I would send her a list of the cases challenging the wotus and 401 rules to which their prior employers are not parties, and she would then forward that to melissa and dimple with her advice (I will review the email prior to its going to them).

So here is next steps:

Carrie and Diane – can you each have someone send me at their earliest convenience those case lists I can then forward to Justina – i.e., for each of them the WOTUS and 401 cases to which their prior employers are not a party. Please also list the case where Mass has filed amicus.

Thanks and let me know if you have any questions.

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
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1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 2:14 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Steve, Carrie and Dawn,
Often, I find it useful to just insert comments into the email itself, so see my comments in red below.
Justina

> As discussed, there is pending litigation in about 12 district courts challenging the WOTUS rule, and Massachusetts is a party to cases in California, New York and has filed an amicus brief in Massachusetts. NRDC is a party to cases in Massachusetts and So. Carolina. We discussed restrictions for them across the different

cases and I've tried to capture what I took away from our conversation so can you please provide confirmation or clarification/correction.
JUSTINA: To put the inquiry into our ethics vocabulary, these 12 cases are *particular matters involving specific parties*, also known as *specific party matters.* For our purposes, it doesn't matter that the subject matter of the specific party matter is a rulemaking, which is itself not a specific party matter. For ethics purposes, we focus on the "thing" at issue, which in this situation are those 12 separate cases.

I'd like to ensure we understand the restrictions as soon as we are able as we are starting to prepare Monday for our first hot issues meeting with Melissa and Dimple this week. Thanks!

Melissa:

As explained in your email below, under her bar obligations, Melissa is precluded during her EPA tenure from participation in the two WOTUS cases to which Mass. is a party. In our call you explained that the "policy" decisions she may participate in pursuant to your impartiality determination include, for example, a policy decision not to defend the rule in litigation and requesting DOJ to seek abeyances in the cases for the Agency to reconsider its policy options. Your impartiality determination does not, however, permit her to participate in discussions of the litigation itself – e.g., deliberations on litigation strategy in light of such a policy decision, such as discussion whether to seek a remand, or other litigation options.

Question - Do the restrictions as you describe them apply to a case in which Mass. has participated as amicus in D.Mass?
JUSTINA: Assuming that MA was not a party to the case itself but filed an *amicus* brief only, then MA is not actually a party to the case. If the brief is filed by MA after she left the AG's office, then under the federal ethics rules ONLY, she might be permitted to work on it provided I grant an impartiality determination to allow her to work with MA during her one year cooling off period under the impartiality regulations. But if Melissa worked on that *amicus* brief filing or if the case is similar to the MA cases she worked on, then she may have bar restrictions. Remember, she must always preserve her former clients secrets and abide by rule 1.11 that preclude the former government official from "switching sides" on the same specific party matter. In some jurisdiction, the bar refers to the "same or *substantially related* specific party matter," which is not a term that arises in federal ethics. We refer attorneys to their own bar counsel for clarification.

With regard to the WOTUS cases to which Mass. is ***not*** a party, you discussed the question under the federal ethics rules and Melissa's bar restrictions (as she is not subject to the Biden ethics pledge since she is form a state).
JUSTINA: Right. Melissa's federal ethics obligations are found in the rules about loss of impartiality at 5 CFR 2635.502(b)(1)(iv): for one year after leaving MA, she cannot work on any particular matter in which her former employer or client (MA) is a party or represents a party unless she first obtains a written impartiality determination from OGC/Ethics. Because her former employer/client is a state, she is not subject to the additional restriction period under the Biden ethics pledge. And she remains subject to her bar rules.

Under the federal ethics rules, you indicated that Melissa may participate in such cases, notwithstanding the similar nature of those cases to the ones Mass is a party to in terms of the rules being challenged and the legal issues in the case, but you may advise her, as a prudential matter, to get the consent of her former employer before doing so.
JUSTINA: Yep. The federal ethics rules in this regard are in place to ensure that a new employee's loyalty is to the US government, not to the former employer. That's why we want a "cooling off" period. That said, we understand that it may be in the Agency's interest to have our new employee interact directly with the former employer, so the federal ethics rules allow for an ethics official to consider the impartiality factors at 5 CFR 2635.502(d)(1)-(6) to nevertheless allow the new employee to do so. The complicating factor for lawyers are their bar rules that preclude switching sides. Unlike the DC Bar, the MA bar rule 1.11 permits the former attorney to obtain the "informed consent" of the former client. We don't provide bar advice, so we urge attorneys to consult bar counsel on their own.

Under her bar restrictions, I believe you said that she may be able to participate in those cases if she received the consent of her former employer, but you were going to check the relevant bar rules. I wasn't sure which state bar rules you would need to check (it seemed like the location of the case was relevant – the first paragraph above lists the jurisdictions of the cases to which Mass is a party and filed an amicus brief).
JUSTINA: She will always be obliged to adhere to her own bar rules. If a case is in federal court, then she may have to abide by the bar rules in that jurisdiction as those rules may apply. The rules in question are always the duty of loyalty to the former client and that pesky rule about former government officials at 1.11. Remember, in DC, our rule 1.11 does not allow for any informed consent.

Dimple

I don't have notes of discussion of the federal ethics rules, but I assume the answer for Dimple is the same as above for Melissa – she may participate in WOTUS cases to which NRDC is not a party (subject to a potentially your prudential advice to obtain the consent of her former employer).
JUSTINA: What I said about Dimple is that, because she is subject to the Biden ethics pledge, her federal ethics rules are subsumed. The Biden pledge makes us look back two years (not just one), starts the recusal clock when she starts at EPA (not when she last provided the service), and the cooling off period lasts for two years (not just one).

Under her bar restrictions, since no WOTUS cases are listed for below, I think you said they do not restrict her participate in those cases.
JUSTINA: Correct, so long as NRDC is not a party to that litigation.

However, per your email, under the Biden ethics pledge she may not participate in any of the WOTUS cases to which NRDC is party for two years.
JUSTINA: Correct, she can't work on any specific party matter in which NRDC is a party or represents a party. And the Biden pledge further says that she can't attend any meeting or engage in any communication with NRDC as part of her official duties unless the subject matter of the meeting a particular matter of general applicability AND the meeting itself is "open to all interested parties," which we interpret as at least 5 entities representing diverse interests.

I hope this helps, but I know that ethics issues (particularly when overlaid with an additional ethics pledge and bar restrictions) are not necessarily intuitive. So let us know if you need more clarification!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Saturday, January 23, 2021 3:02 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Justina- thanks for the conversation yesterday about some of the circumstances we are dealing with in water for WOTUS cases. As discussed, there is pending litigation in about 12 district courts challenging the WOTUS rule, and

Massachusetts is a party to cases in California, New York and has filed an amicus brief in Massachusetts. NRDC is a party to cases in Massachusetts and So. Carolina. We discussed restrictions for them across the different cases and I've tried to capture what I took away from our conversation so can you please provide confirmation or clarification/correction.

I'd like to ensure we understand the restrictions as soon as we are able as we are starting to prepare Monday for our first hot issues meeting with Melissa and Dimple this week. Thanks!

Melissa:

As explained in your email below, under her bar obligations, Melissa is precluded during her EPA tenure from participation in the two WOTUS cases to which Mass. is a party. In our call you explained that the "policy" decisions she may participate in pursuant to your impartiality determination include, for example, a policy decision not to defend the rule in litigation and requesting DOJ to seek abeyances in the cases for the Agency to reconsider its policy options. Your impartiality determination does not, however, permit her to participate in discussions of the litigation itself – e.g., deliberations on litigation strategy in light of such a policy decision, such as discussion whether to seek a remand, or other litigation options.

Question - Do the restrictions as you describe them apply to a case in which Mass. has participated as amicus in D.Mass?

With regard to the WOTUS cases to which Mass. is ***not*** a party, you discussed the question under the federal ethics rules and Melissa's bar restrictions (as she is not subject to the Biden ethics pledge since she is form a state).

Under the federal ethics rules, you indicated that Melissa may participate in such cases, notwithstanding the similar nature of those cases to the ones Mass is a party to in terms of the rules being challenged and the legal issues in the case, but you may advise her, as a prudential matter, to get the consent of her former employer before doing so.

Under her bar restrictions, I believe you said that she may be able to participate in those cases if she received the consent of her former employer, but you were going to check the relevant bar rules. I wasn't sure which state bar rules you would need to check (it seemed like the location of the case was relevant – the first paragraph above lists the jurisdictions of the cases to which Mass is a party and filed an amicus brief).

Dimple

I don't have notes of discussion of the federal ethics rules, but I assume the answer for Dimple is the same as above for Melissa – she may participate in WOTUS cases to which NRDC is not a party (subject to a potentially your prudential advice to obtain the consent of her former employer).

Under her bar restrictions, since no WOTUS cases are listed for below, I think you said they do not restrict her participate in those cases.

However, per your email, under the Biden ethics pledge she may not participate in any of the WOTUS cases to which NRDC is party for two years.

Thanks so much for your help!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,
As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.
- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	*Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA*, Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	*Labor Council for Latin America, NRDC, et al. v. EPA*, Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	*NRDC v. Wheeler*, Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	*Walters v. Flint, EPA, et al.*, Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates

to a particular matter of general applicability and participation in the event is open to all I interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 1/29/2021 5:36:05 AM
To: Fugh, Justina [Fugh.Justina@epa.gov]
CC: Messier, Dawn [Messier.Dawn@epa.gov]; OGC WLO MGMT [OGC_WLO_MGMT@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; ODea, Elise [odea.elise@epa.gov]
Subject: Re: WOTUS Cases

Thanks Justina!

Steven Neugeboren
Associate General Counsel for Water
Environmental Protection Agency
Mails code 2355A
1200 Pennsylvania Ave, NW
Washington DC 20460
202-564-5488

On Jan 28, 2021, at 11:40 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi,
Here's what I sent to Dimple. She, too, can participate in the cases you provided to me in which her former employer is not a party, but she belongs to three bars. I ended up in the same place as with Melissa, but I wanted to think through Dimple's bar issues carefully since she didn't move from one government position to another. Two of them are easy to navigate, but DC (my own bar) is always overly complicated.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Fugh, Justina
Sent: Thursday, January 28, 2021 11:35 PM
To: Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: WOTUS Cases

Hi Dimple,
Attached is a list of cases pending at EPA in which your former employer, NRDC, is not a party. This note confirms for you that, for the purposes of the federal ethics rules and the Biden ethics pledge that you signed, you may participate personally and substantially on behalf of EPA in these cases. Because your former employer/client is not a party, these cases do not present any concern for you under the federal impartiality standards nor the Biden ethics pledge that you signed.

You will need to consider your own bar obligations. While OGC/Ethics does not give definitive bar advice, I looked up the bar rules in each of the three jurisdictions in which you are licensed. Massachusetts bar rule 1.11 and New York bar rule 1.11 apply the same special conflicts of interest rules for former *and current* government officials and employees. They provide that a lawyer now serving as a public officer or employee is precluded from participating in a matter in which she previously participated in personally and substantially. In both jurisdictions, the term "matter" refers to specific party matters and appears to apply only to those cases in which the lawyer participated personally and substantially herself.

By contrast, the DC rules introduce the vexing phrase "same or substantially related matter" in both rule 1.11 (that applies to those lawyers who leave government service) and in the rule that applies to you, Rule 1.9 – conflict of interest: former client. In DC, a lawyer who formerly represented a client in a matter is prevented from thereafter representing another in the same or *substantially related matter* in which the new client's interests are materially adverse to the interests of the former client, unless the former client gives informed consent. Interestingly, DC bar rule 1.9 allows for informed consent while DC bar rule 1.11 does not. Comment 3 of the bar rule advises that matters are considered "substantially related" for purposes of this rule "if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter."

Since you did not participate in any of the cases in the attached list, I don't see how bar counsel could conclude you have an issue under any of your bar rules. That's my guess, but I can't give you definitive bar advice. Set forth below is a process flowchart for the Associates to follow that Jim is currently reviewing that may be helpful going forward:

1) Review the list of cases from which Melissa and Dimple are recused
    a. If the case is on their list, then do not discuss with that principal
    b. If the case is not on their list, proceed to step 2.

2) Look to see if their former employer (Melissa = Massachusetts, Dimple = NRDC) is a party or intervenor
    a. If yes, then do not discuss with that principal
        i. <!--[if !supportLists]--><![endif]-->Please note that, for Melissa, OGC/Ethics will soon issue an impartiality determination to permit her to work on NEW specific party matters with Massachusetts but we haven't yet done so.
    b. If no, then you may discuss with that principal

3) If the former employer files an *amicus* brief, then
    a. Ascertain whether Melissa or Dimple worked on that brief.
        i. <!--[if !supportLists]--><![endif]-->If yes, then do not discuss
        ii. <!--[if !supportLists]--><![endif]-->If not, then:
            1. Do not discuss that brief with Melissa until after January 20, 2022 (unless OGC/Ethics advises otherwise)
            2. Do not discuss that brief with Dimple until after January 20, 2023

A final note: federal attorneys need to be active members of only one bar, but you told me that NY does not allow for "inactive" status. I tracked that down and, sure enough, in NY, all attorneys must register biennially and, except for those who certify that they have retired, must pay the required fee. NY Judiciary Law § 468-a[4]. Fascinating! NY also has CLE requirements, which DC does not, so allow me to pass along an "insider's tip." ORC Region 2 is an approved CLE provider for the NY Bar. When you take our online ethics training next year, you can coordinate with Bruce Aber of ORC Region 2 to get that course approved for ethics CLE. If you need ethics CLE for this year (2021), then I can send Bruce the

onboarding ethics materials I used for your initial ethics training so that he can wave his magic CLE want to get you approved for an hour of ethics CLE.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Thursday, January 28, 2021 10:30 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>
Subject: WOTUS Cases
Importance: High

Hi Justina,

As you know, the Commonwealth of Massachusetts is a party to several cases challenging the WOTUS rule. I understand from Steve N that you have advised that, with respect to the pending litigation concerning WOTUS that the Commonwealth of Massachusetts is ***not*** a party to, I am permitted to participate in litigation strategy decisions. Before I do that, I wanted to confirm that accurately reflects your advice, and request that you provide a confirmatory email before I proceed.

Thank you,
Melissa
<WOTUS and 401 Cases to which NRDC is not a party.docx>

Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 1/30/2021 10:05:53 PM
To: McConkey, Diane [Mcconkey.Diane@epa.gov]; Maher, Lauren [Maher.Lauren@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Marshall, Tom [marshall.tom@epa.gov]; Tod Siegal [Siegal.Tod@epa.gov]
Subject: FW: Washington's Human Health Criteria
Attachments: Joint Letter to EPA RE WA WQS from Tribes and State 1 29 2021.pdf

FYI

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Saturday, January 30, 2021 11:07 AM
To: Nishida, Jane21 <ActAdmJ21Nishida@epa.gov>; Garbow, Avi <Garbow.Avi@epa.gov>; Fox, Radhika <Fox.Radhika@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Cc: Pirzadeh, Michelle <Pirzadeh.Michelle@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Li, Beverly <Li.Beverly@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Messier, Dawn <Messier.Dawn@epa.gov>
Subject: Fwd: Washington's Human Health Criteria

Forwarding this 1/29/2021 letter sent to Jane and others here from State of Washington and six tribes, requesting reinstatement of certain 2016 human health criteria under Clean Water Act for State of Washington.

Jim
202-672-3727 cell

Sent from my iPhone

Begin forwarded message:

> **From:** "North, Teri (ECY)" <teno461@ecy.wa.gov>
> **Date:** January 29, 2021 at 5:50:20 PM EST
> **To:** "Nishida, Jane" <Nishida.Jane@epa.gov>
> **Cc:** "Pirzadeh, Michelle" <Pirzadeh.Michelle@epa.gov>, "Payne, James (Jim)" <payne.james@epa.gov>, Russell Hepfer <russell.hepfer@elwha.org>, "Mena, Sharlett (ECY)" <mesh461@ecy.wa.gov>
> **Subject: Washington's Human Health Criteria**
>
> Acting Administrator Nishida,
>
> Please find attached a letter sent on behalf of the State of Washington and six federally recognized Tribes (Lower Elwha Klallam Tribe, Makah Tribe, Port Gamble S'Klallam Tribe, Sauk-

Suiattle Indian Tribe, Stillaguamish Tribe, and Suquamish Tribe) requesting EPA's immediate action on Trump Administration decisions in regard to Washington's Human Health Criteria.

Please note that we have copied a number of additional EPA officials in the letter and on this email. Unfortunately, we have not been able to locate the EPA email addresses for three of the officials included in the copy list and request that the letter be forwarded to Mr. Garbow, Ms. Fox, and Ms. Hoffer.

Teri North
Executive Assistant to the Director
Washington State Department of Ecology
Office #: 360-407-7009
Cell #: 360-790-3934

Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 10/28/2020 7:39:46 PM
To: Messier, Dawn [Messier.Dawn@epa.gov]
Subject: RE: admin leave for election day

Totally.

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
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1200 Penn. Ave., N.W.
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(202) 564-5488

From: Messier, Dawn <Messier.Dawn@epa.gov>
Sent: Wednesday, October 28, 2020 3:32 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: admin leave for election day

Thanks!

I found the discussion on coordinating to learn and implement the new PARs system disheartening.

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Wednesday, October 28, 2020 3:30 PM
To: Messier, Dawn <Messier.Dawn@epa.gov>
Subject: RE: admin leave for election day

That makes sense. I hadn't read that email (cause I knew you would).

I saw you were on the add mtg (andi also got kicked off teams for a while) so here are my half baked notes.

Add mtg 10.28.20

Tomorrow is end of EVS survey. Offices without ten people – WLO
Kraig talked about USA performance; difficulty to uploading CEs; he has the questions in. at this point no way to manipulate forms or access what's been uploaded. Kraig will keep us updated.
Wendell – stay tuned on transition.
Elise – at Deputies mtg, leader of transition spoke about process; her position disappears if president is reelected so then it's just following what leadership says is needed.

Wendy – usa performance – 3 tiers; training didn't answer questions about how correlates with new. Just refer to language and apply case by case.
TEI – Elise will check;

Steven Neugeboren
Associate General Counsel for Water
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From: Messier, Dawn <Messier.Dawn@epa.gov>
Sent: Wednesday, October 28, 2020 3:03 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: RE: admin leave for election day

I'm not inclined to search out requests – everyone in the Agency received a mass mailer about this which set out the requirement for permission from their first line supervisor who then needs to check with the FO. I will forward. Let me know what you think.

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Wednesday, October 28, 2020 2:57 PM
To: Messier, Dawn <Messier.Dawn@epa.gov>
Subject: admin leave for election day

Can you please handle finding out if anyone wants admin leave for election day and if so send a note to Elise? Thanks!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
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Washington DC 20460
(202) 564-5488

Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 11/16/2020 9:20:52 PM
To: Messier, Dawn [Messier.Dawn@epa.gov]
Subject: RE: ADD check in notes -- short meeting

Thanks!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
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(202) 564-5488

From: Messier, Dawn <Messier.Dawn@epa.gov>
Sent: Monday, November 16, 2020 3:08 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: ADD check in notes -- short meeting

CLOSE HOLD – the associate depty admin has agreed to do a more long-term look at going into the office. At least Dec. 16 – then likely till inauguration. Really good news.

Transition – with peculiar limbo between phase I and II of transition, quite a bit of counselling going on about political looking for jobs/outboarding (despite press reports to the contrary)

Dashboard still going to be kept up to date despite.

Might drop one of the check ins during the week if DAAs drop one of theirs (some talk of it)

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 12/7/2020 3:33:09 PM
To: C. Scott Fulton [fulton@eli.org]
CC: Levine, MaryEllen [levine.maryellen@epa.gov]
Subject: RE: Somewhat urgent — Quick question

Hi Scott - I am not aware of any decision on this matter nor any unreasonable delay litigation. Hope that helps.

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

-----Original Message-----
From: C. Scott Fulton <fulton@eli.org>
Sent: Monday, December 7, 2020 5:37 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>
Subject: Somewhat urgent – Quick question

Hi Steve – Any idea of the status of EPA action on the petition for rulemaking filed by CDB and others in July of 2019 asking for CWA regulation of plastics? Has it been decided? Is it likely to be decided before Trump leaves office? Will it carry over to the Biden Administration? Any unreasonably delay litigation yet filed? I am giving a speech to NAS at noon today in which this might come up. Just trying to help them read the tea leaves in terms of carry over to the next administration. Thanks! Scott

Sent from my iPad

Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 12/7/2020 5:00:57 PM
To: C. Scott Fulton [fulton@eli.org]
CC: Levine, MaryEllen [levine.maryellen@epa.gov]
Subject: Re: Somewhat urgent — Quick question

Scott - That's not something I feel able to opine on. Cheers.

Steven Neugeboren
Associate General Counsel for Water
Environmental Protection Agency
Mails code 2355A
1200 Pennsylvania Ave, NW
Washington DC 20460
202-564-5488

> On Dec 7, 2020, at 10:55 AM, C. Scott Fulton <fulton@eli.org> wrote:
>
> Thx, Steve. That helps. I will cloak as desired, but any sense whether the patient is likely to make it to the operating table in the time remaining? ;-)
>
> Scott Fulton
> President
> Environmental Law Institute (ELI)
>
https://gcc01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.eli.org%2F&data=04%7C01%7CNeugeboren.Steven%40epa.gov%7C9fff42c254d14371112708d89ac85f2d%7C88b378b367484867acf976aacbeca6a7%7C0%7C1%7C637429533202006653%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=hJkrXYcg1bC1lcGlkHYDms%2BEPI%2F%2FqXEHYnqw2bz26BM%3D&reserved=0
>
>> On 7 Dec 2020, at 4:33 pm, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:
>>
>> External Email - If suspicious, please contact blain@eli.org
>>
>> Hi Scott - I am not aware of any decision on this matter nor any unreasonable delay litigation. Hope that helps.
>>
>> Steven Neugeboren
>> Associate General Counsel for Water
>> United States Environmental Protection Agency
>> Maildcode 2355A
>> 1200 Penn. Ave., N.W.
>> Washington DC 20460
>> (202) 564-5488
>>
>> -----Original Message-----
>> From: C. Scott Fulton <fulton@eli.org>
>> Sent: Monday, December 7, 2020 5:37 AM
>> To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
>> Cc: Levine, MaryEllen <levine.maryellen@epa.gov>
>> Subject: Somewhat urgent – Quick question
>>
>> Hi Steve – Any idea of the status of EPA action on the petition for rulemaking filed by CDB and others in July of 2019 asking for CWA regulation of plastics? Has it been decided? Is it likely to be decided before Trump leaves office? Will it carry over to the Biden Administration? Any unreasonably delay litigation yet filed? I am giving a speech to NAS at noon today in which this might come up. Just trying to help them read the tea leaves in terms of carry over to the next administration. Thanks! Scott
>>
>>
>> Sent from my iPad

Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 1/4/2021 11:08:41 PM
To: Messier, Dawn [Messier.Dawn@epa.gov]
Subject: RE: add notes

Thanks!

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Messier, Dawn <Messier.Dawn@epa.gov>
Sent: Monday, January 4, 2021 3:32 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Subject: add notes

Got go ahead to share who is acting – duties and functions of OGC. Not actually acting. Political Deputy is ". Delegated all authorities and duties to Jim Payne. Only one who can be delegated is principal. Jim's title is "Depty gc for media law and regions performing the duties and functions of the General Counsel." He won't be the only one – other offices (OW, OAR, OCSPP all will have similar titles).

Jim working with Wes Carpenter and Donna V about whose coming in. Talked with Kevin Minoli to prepare for this.

Looking at updating the OGC management directory.

Justina -- Expecting bakers dozen political around day 1 – starting on January 21 as political appointees. Not Administrator-designee. (Close hold)

No decision on acting administrator. Right now under Exec Order Acting RA for Region 2.

Jim -- Factor to consider. 4 years ago we weren't sure which are temp vs permanent. We'll learn more about that as we go along. Justina -- There are dif types of appointments – at beginning there aera limited term apportinments. Can be renewed or reupped or sent home etc. Non-career sesers and schedule cs. Limited term or expected to be longer lasting than 60 days.

Jen asked what type of help and expectations Jim will need/have. He's working on it.

SESers -- Need signed-off A3 project by Jan 31 (talk to Jim)

Jim – heads up on another round of kudos for David to send out next week – one or two sentences. 3 of those by the end of the week – Jim to send out email.

FYI – planning some type of plaque for David and the others – event perhaps end of next week.If any ideas for that let him know.

Jim – planning to do an updated management directory. Short bio and possibly pic. Flag for the moment – discuss later. Twice provided first 100 day schedule and the lastest we did was about a month ago – Wendel or Jim will send something out. No secret that with last two admin changes, there was a clawback memo that the new admin issued 12:01 on inauguration day. You can find them online. A good thing to be thinking about.

Four years ago we were given about 20 minutes to review matters that it applied to – worthy about giving thought to. Find the clawback memos online.

Andy talking with OP to prep for that – last time was a broad categorical clawback.

Dawn Messier
Deputy Associate General Counsel for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-5517

Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 1/11/2021 3:20:49 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: RE: EPA Order of Succession EO signed

Jim – does this mean that if a principle deputy is assigned to OGC after the inauguration that person would serve as acting general counsel and administrator?

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Monday, January 11, 2021 9:18 AM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Subject: EPA Order of Succession EO signed

Ensuring awareness that on Jan 8, 2021, the President signed an updated Order of Succession for EPA. And attaching FYI a personnel announcement last month.

https://www.whitehouse.gov/presidential-actions/executive-order-providing-order-succession-within-environmental-protection-agency/.

Jim
202-672-3727 cell

Message

From: Neugeboren, Steven [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: 1/12/2021 8:47:13 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: reg review on the 21st

Jim – I know you will be thinking about how the FO will manage mtgs with the law offices after inauguration generally, but there's one on the calendar for the 21st and I wanted to check with you about that. I'm sure your first day will be very busy. Also, given the off days on Monday and Wednesday I don't think it would be feasible for us to prepare the normal agenda (I don't think the "normal" agenda would necessarily be appropriate that week anyway). So my thought is to cancel for that day. Thoughts?

Steven Neugeboren
Associate General Counsel for Water
United States Environmental Protection Agency
Maildcode 2355A
1200 Penn. Ave., N.W.
Washington DC 20460
(202) 564-5488

Message

From: Sweeney, Stephen [Sweeney.Stephen@epa.gov]
Sent: 2/1/2021 3:51:38 PM
To: Packard, Elise [Packard.Elise@epa.gov]
CC: Talbert-Duarte, Angelia [talbert-duarte.angelia@epa.gov]; O'Lone, Mary [OLone.Mary@epa.gov]
Subject: Response from Sincere Harris -- for situational awareness only, no need to respond

---

From: Harris, Sincere <Harris.Sincere@epa.gov>
Sent: Saturday, January 30, 2021 4:41 PM
To: Sweeney, Stephen <Sweeney.Stephen@epa.gov>
Subject: RE: Question about senior managers at EPA -- RE: Vacancies table update, January 25, 2021

Sebastian – I am looping in my Deputy, Fernando, whose first day was this past Monday.
I had to read this twice, but it was VERY helpful. Thank you.

Sinceré A. Harris
White House Liaison, EPA
202-570-5675
@EPA

From: Sweeney, Stephen <Sweeney.Stephen@epa.gov>
Sent: Monday, January 25, 2021 4:55 PM
To: Harris, Sincere <Harris.Sincere@epa.gov>
Cc: Smith, Kathryn <Smith.Kathryn@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Subject: Question about senior managers at EPA -- RE: Vacancies table update, January 25, 2021

Hi Sinceré, nice to e-meet you as well.

I am a **staff attorney in the Office of General Counsel** who covers legal issues arising under the Federal Vacancies Reform Act and the Appointments Clause. Though you directed your question to Donna and Kathryn, I figured I should respond because I prepared (and update) the Table. The positions in the Table are the **14 positions at EPA that are positions filled by "Presidential Appointments Requiring Senate Confirmation" (PAS).** Each of the positions is created by a statute that either requires or allows the President to appoint an official by and with Senate advice and consent.

So **quick answer first**: **EPA *still* has vacancies for all the positions** (minus the Inspector General) ***but* there are now senior managers in place to manage and maintain EPA operations in every PAS position** (minus the Deputy Administrator position).

A **"vacancy" arises when the incumbent official dies, resigns, or otherwise becomes unable to perform** the functions and duties of the position and, in most circumstances, someone can serve as the "acting" official in that position.

The sequence of the positions in the Table corresponds to the Executive Order establishing the Order of Succession for the EPA Administrator in the event of vacancies in the positions of both the Administrator and Deputy Administrator. [Initially, I started preparing and updating the table for the personnel in EPA's Emergency Operations Center to provide real time updates in the event of a national security emergency. But because lots of other EPA staff use the Table for a variety of purposes, my distribution list has grown.]

The Federal Vacancies Reform Act says **who can perform the those functions and duties on a temporary basis and for how long.** Other than the Inspector General position (which is for a fixed period of years), each of the EPA positions became "vacant" at noon on the day of the Inauguration. **By default, the person in the position of "first assistant" becomes the acting official**. At EPA, some of the first assistant positions – **principal deputies** – are career officials, some are non-career. The President can override the default by directing another senior agency official to serve as the acting official. [This is how Jane Nishida came to be Acting Administrator.] **Normally, someone can be the acting official for 210 days** (seven months) after a vacancy, but that time period becomes extended and indeterminate if and when the President submits a nomination. For a Presidential inaugural transition, there is an additional 60 days so for now, **the acting officials can serve for 300 days, or until November 16th.**

We can provide you a fuller briefing once things settle down a little bit.

Hope this helps and **welcome to EPA**!

Steve

Stephen J. Sweeney
Office of General Counsel
U.S. Environmental Protection Agency
sweeney.stephen@epa.gov
202-564-5491 (desk)

From: Harris, Sincere <Harris.Sincere@epa.gov>
Sent: Monday, January 25, 2021 3:25 PM
Cc: Smith, Kathryn <Smith.Kathryn@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Subject: Re: Vacancies table update, January 25, 2021

Thanks Stephen! It's a pleasure to e-meet you.

Donna / Kathryn — do I read this correctly in that when it comes to OGC, there are no vacancies save the PAS positions of Administrator and Janet McCabe being confirmed?

Sent from my iPhone

> On Jan 25, 2021, at 7:38 AM, Sweeney, Stephen <Sweeney.Stephen@epa.gov> wrote:
>
> Updated to reflect management change in the Office of Chemical Safety and Pollution Prevention.
>
> Stephen J. Sweeney

Attorney-Advisor
Water Law Office
Office of General Counsel
U.S. Environmental Protection Agency
sweeney.stephen@epa.gov
202-564-5491 (desk)

<image001.png>

<Table January 25th 2021.docx>

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 10/23/2020 9:45:44 PM
To: Packard, Elise [Packard.Elise@epa.gov]
CC: Lattimore, Kraig [lattimore.kraig@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]
Subject: FW: ETHICS REMINDER: Excused Absence for Voting

Hi there,
Just letting you know that you may hear from people about the possibility of requesting an excused absence to volunteer for polls/election work. I addressed only the *ethics related* part of Donna Vizian's mass mailer by telling ethics officials to verify that their employee will be volunteering for a non-partisan group. I did not say anything about the fact that the existing administrative leave policy requires AA/RA approval:

> Decisions about granting excused absence for this purpose are to be made on a case-by-case basis and require the employee's assistant administrator or regional administrator's approval after the local deputy ethics official or the Office of General Counsel's Ethics Office has determined the volunteer activity comports with ethics requirements.

You may be asked whether David will want to review these requests personally, whether you can approve for him, or whether he's going to let the supervisors make the decision irrespective of the administrative leave policy cited above.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Fugh, Justina
Sent: Thursday, October 22, 2020 4:05 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>
Subject: ETHICS REMINDER: Excused Absence for Voting

Hi,
As you can see in the email recently sent by OMS, supervisors may grant an *excused absence* upon request to employees who want to serve as election officials or poll workers. It's always up to the supervisor to determine whether or not to grant an excused absence, and you can consider critical mission needs when making the decision about a request.

If you are asked to consider granting an excused absence, then here are the ethics rules:

- Verify that the employee is *volunteering*
  - EPA supervisors cannot grant an excused absence if the employee will be paid

    - If the employee will be paid, then s/he is ineligible for an excused absence and, instead, must request annual leave or leave without pay

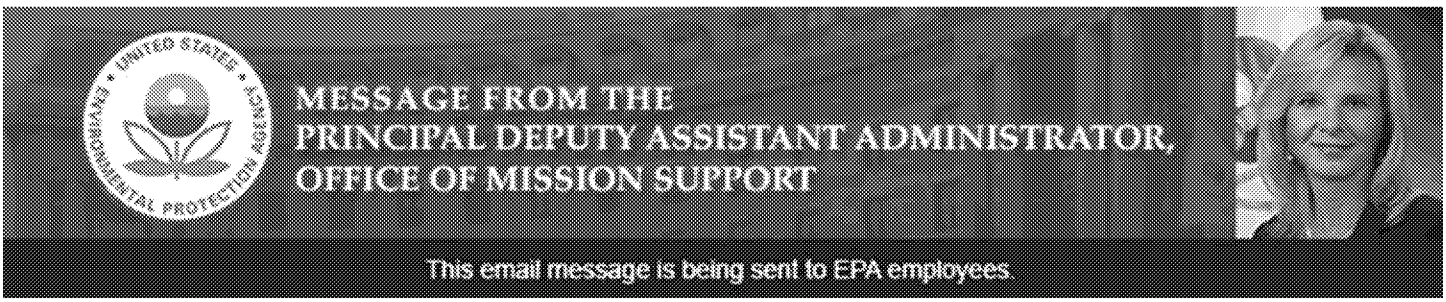
- Verify that the employee is volunteering for a *non-partisan entity*
    - State or county boards of elections are non-partisan
    - Just because an entity is non-profit (or says it is) does not also mean that it is non-partisan. If you are unsure about the status of a particular organization, ask ethics@epa.gov

- If the service is voluntary and non-partisan, then the supervisor may grant an excused absence consistent with the OMS guidance to both lesser restricted and further restricted employees under the Hatch Act.

Give a shout if you have any questions,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: MassMailer <massmailer@epa.gov>
Sent: Thursday, October 22, 2020 2:02 PM
To: MassMailer <massmailer@epa.gov>
Subject: Excused Absence for Voting



Dear Colleagues,

Election Day is Tuesday, November 3, 2020. According to federal guidelines, employees may be granted an excused absence (i.e., administrative leave) to vote depending on their work schedule and the polling times for their voting jurisdiction. There are additional considerations related to voting on Election Day, early voting, and non-partisan volunteering summarized below.

Voting on Election Day

If the difference between an employee's scheduled arrival and departure times and the polls' opening and closing time is less than three hours, an employee is entitled to administrative leave, up to a maximum of three hours. If the polls open or close at least three hours before or after an employee's work schedule, no excused absence may be granted.

If an employee's voting place is beyond normal commuting distance and voting by absentee ballot is not permitted, the agency may grant excused absence (not to exceed one day) to allow the employee to travel to

the voting place to cast a ballot. If more than one day is needed, the employee may request annual leave or leave without pay for the additional period of absence.

Early Voting

In regards to early voting, the agency may grant excused absence on a scheduled workday only when: 1) the employee will be unable to vote on the day of the election because of activities directly related to the agency's mission (such as temporary duty travel) and cannot vote by absentee ballot; or 2) early voting hours are the same as, or exceed, voting hours on the day of the election. In such case, the general Election Day guidance above applies. If the polling place hours are shorter than on Election Day, the employee is not eligible for excused absence.

Non-Partisan Volunteer

An employee who requests time off to train and serve as a non-partisan volunteer election official to assist at polling stations may be granted excused absence to the maximum extent possible while accounting for the responsibilities and duties to carry out the agency's mission. The agency will try to accommodate the excused absence request so long as there are no negative impacts to critical mission work. Decisions about granting excused absence for this purpose are to be made on a case-by-case basis and require the employee's assistant administrator or regional administrator's approval after the local deputy ethics official or the Office of General Counsel's Ethics Office has determined the volunteer activity comports with ethics requirements. Approved administrative leave for participation in volunteer activities should not involve an employee being absent from the workplace for a significant period.

Any employee needing an excused absence to vote or volunteer should first seek approval from their first-line supervisor. If approved, the time must be documented in PeoplePlus using the following time reporting codes:

- **VOTIN** (Administrative Leave – Voting)
- **VOLRT** (Administrative Leave – Volunteer Activities)

Please refer to the U.S. Environmental Protection Agency's policies regarding official time off for voting and the use of administrative leave. Some of the agency's collective bargaining agreements contain similar language. Please refer to those agreements or the applicable union point of contact for further information.

If you have questions regarding these guidelines, please contact the Policy and Accountability Branch, Office of Human Resources, at OHR_PPTD_PAB.

Best,
Donna J. Vizian
Principal Deputy Assistant Administrator, Office of Mission Support

Message

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 11/4/2020 1:59:34 PM
To: Packard, Elise [Packard.Elise@epa.gov]
Subject: The Legal Theories at the Heart of Trump's Order Politicizing the Civil Service - Government Executive

I just signed up for GovExec and saw this - you might already get these.

https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.govexec.com%2Fmanagement%2F2020%2F11%2Flegal-theories-heart-trumps-order-politicizing-civil-service%2F169765%2F&data=04%7C01%7CPackard.Elise%40epa.gov%7C88e7e13bfb1d4ca5137f08d880c9dc5b%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637400951753406970%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=o7eebqcmYDZd6PNPIQI4Gz1%2FigPWyzNuO3oDLciUIGc%3D&reserved=0

Sent from my iPhone

Message

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 10/7/2020 10:26:58 PM
To: Packard, Elise [Packard.Elise@epa.gov]
Subject: Fwd: Daily News Clips: Afternoon Edition 10-7-20

FYI, first article below inaccurately refers to an order to come back to work this Mon

Sent from my iPhone

Begin forwarded message:

> **From:** "Enos, Kendra" <Enos.Kendra@epa.gov>
> **Date:** October 7, 2020 at 5:08:20 PM EDT
> **To:** AO OPA OMR CLIPS <AO_OPA_OMR_CLIPS@epa.gov>
> **Subject: Daily News Clips: Afternoon Edition 10-7-20**

Agency
Rebuking Wheeler, EPA Workforce Resists 'Back To Office' Order
Agriculture
EPA Administrator Wheeler Visits Ohio Farm
Air
RCRA Air Compliance Initiative and Rescission of "Once In, Always In" Policy Present Federal and State Self-Audit Opportunities
Chemicals
The EPA's Record On Pesticides During The Trump Administration
EPA Grants Request for D4 Risk Evaluation
Victory! EPA Reduces Pesticide Testing on Animals | PETA
Land Management
EPA gives authority to state on environmental issues over tribal lands
EPA Grants State of Oklahoma Control Over Environmental Issues on Tribal Lands
Pollution
We Urge All Senators to Closely Examine Judge Barrett's Views on Environmental Law -- EDF
Superfund
EPA approves plan for Sidney Superfund site | Local News
Sustainability
EPA Awards $15,000 Grant for Sustainable Food Management
Hillphoenix Earns 9th Consecutive EPA GreenChill Excellence Award
Water:
EPA Administrator Visits Cleveland For Update On Lake Erie Conservation
EPA: New vessel discharge rule in works
Judge Tosses EPA Plan to Dredge and Fill Bay Area Salt Ponds
Ashtabula River is so clean it's no longer listed as EPA area of concern, Lorain and Cuyahoga rivers making progress
Cantwell, Murray, Colleagues Press EPA on Implementation of Trump Order to Withhold Federal Funding from Seattle, Portland, Major U.S. Cities | U.S. Senator Maria Cantwell of Washington
Lake Erie takes another step toward health
Congress Extends Chesapeake Bay Program
Agency
Rebuking Wheeler, EPA Workforce Resists 'Back To Office' Order
https://www.nationalmemo.com/rebuking-wheeler-epa-workforce-resists-back-to-office-order

Joe Maniscalco
October 07 | 2020
Hundreds of telecommuting employees at the Environmental Protection Agency are in open revolt. Agency head Andrew R. Wheeler this week drew their ire for what they say is a deadly and racist order to return to federal buildings despite the COVID-19 pandemic.
They refused Monday to be bullied back into a much higher risk of contracting COVID-19 just to buttress the president's foolish behavior. And they noted that such dangerous directives appear aimed only at the EPA, an agency whose mission Trump loathes.
On Monday, as Trump made a dramatic show of returning to the White House and posing for propaganda films, the union representing many EPA employees declared its support for science and listening to doctors.
We have a president who doesn't care if you live or die. Even our mid-level management is with us on this.
American Federation of Government Employees (AFGE) Council 238 held a no-confidence vote on EPA Administrator Wheeler, an action one step short of a strike, which federal law prohibits.
The Council 238 members voted 695 to 56 against Wheeler. That's an overwhelming 93 percent expressing no confidence.
Those voting included scientists, public health professionals and other people with enough education and sound judgment to recognize that Wheeler's order to work in an unsafe environment is worse than foolhardy, it's inhumane and potentially lethal.
Union leaders said that midlevel managers who by law cannot be in a union share their views that the Wheeler directive is not just unwise, it's likely to result in the deaths of some EPA employees or their loved ones.
Trump originally tapped Wheeler — a former coal industry lobbyist and climate change denier — for EPA leadership back in 2017, before ultimately succeeding in installing him as permanent administrator in February 2019.
During an online union hall meeting Monday night to announce the no-confidence vote resultsunion leaders reminded members of their lack of protections from deadly workplace conditions.
Loreen Targos of Local 704 noted that federal employees cannot legally strike, then added that federal employees "have a right to fight for our lives."

Union Says Don't Return

Gary Morton, president of AFGE Council 238, emphasized telecommuting's effectiveness against COVID-19's spread. He told the council's 9,000 members that they should not return to their EPA offices until a safe and effective vaccine against the virus is developed, they get it and it is widely available.
The unionists have been working remotely since March 15 without issue, the union says.
But forcing them back into office spaces where mask-wearing would not be enforced and measures to ensure social distancing in hallways and elevators have not been taken is a threat to workers' lives.
Just one infected worker who models Trump's mask-less behavior could make a whole building sick.
COVID-19 is expected to cause lifelong health problems in some of those affected. Infected workers can spread the disease to their family members, some of whom may be vulnerable due to age, pre-existing conditions and other factors not yet fully understood
Joyce Howell, a Local 3631 leader who has negotiated with management, called hypocrisy on the Trump administration.
"They [administrators] always say your health and safety is our priority — [but] if you spend 15 minutes at the bargaining table, you know that that's not true," Howell said. "I have no confidence employee health and safety are being considered during the reopening."
Wheeler's drive to pack bodies into traditional, and confined, office spaces where tiny droplets of moisture laced with the virus can spread disease is especially suspect to other union leaders. No other federal agency is being subjected to similar "phase three" return to federal buildings, they said.
"Seems like they are lining us up to push us over the cliff into phase three," President Bethany Dreyfus of Local 1236 said. "This whole time they were using us to make a political point."

AFGE Local 704's Felicia Chase further insists that Wheeler's plan to force employees back into traditional office spaces fails to consider COVID-19's disproportionate impact on black and brown people. Chase called Wheeler's directive "straight-up racist."

'Compliance' Next Week

The requirement for workers to return to their offices could come as early as Thursday evening with compliance expected Tuesday, Oct. 13, according to AFGE Council 238 members.
Eddie Guster, the council's sergeant-at-arms, said Trump's continuing dismissal of the deadly effects of COVID-19 and his returning to the White House while infectious is both "infuriating" and reckless. Because of the disease, "some of my friends lost parents," Guster said. "We have a president who doesn't care if you live or die. Even our mid-level management is with us on this."
Targos remains defiant while reminding rank and file EPA employees that solidarity has enabled them to confound Wheeler and Trump for this long.
"They have no idea what we're capable of," in resisting the dangerous order Targos said. "They haven't seen nothing, so far."

Agriculture
EPA Administrator Wheeler Visits Ohio Farm
https://agnewswire.com/2020/10/07/epa-administrator-wheeler-visits-ohio-farm/

EPA Administrator Wheeler Visits Ohio Farm
October 7, 2020
Environmental Protection Agency (EPA) Administrator Andrew Wheeler kicked off a swing through northeast Ohio Tuesday which included attending an Ohio Farm Bureau event on a dairy farm in Stark County where he highlighted EPA's commitment to working with Ohio's farmers on a number of environmental issues.
During the event, Administrator Wheeler delivered remarks to a group of farmers highlighting President Trump's commitment to the agriculture community, and the Trump EPA's efforts to strengthen partnerships with farmers and rebuild trust with rural America. Additionally, Administrator Wheeler discussed EPA's Navigable Waters Protection Rule (NWPR) that replaced the overreaching Obama Administration's Waters of the United States rule that lacked clarity. He reiterated that NWPR provides clarity on waters that are federally regulated, specifically noting they no longer include farm ditches or stock water ponds.
Administrator Wheeler also touted how EPA is ensuring crop protection tools are made available for the agriculture community. For example, following the 9th Circuit of Appeals decision in June that threatened to upend the growing season for many farmers, the Trump Administration fought to ensure farmers were able to use already-purchased dicamba.
Listen to Wheeler's press gaggle in Ohio here:
EPA Admin Andrew Wheeler in Ohio 4:42

Air
RCRA Air Compliance Initiative and Rescission of "Once In, Always In" Policy Present Federal and State Self-Audit Opportunities
https://www.jdsupra.com/legalnews/rcra-air-compliance-initiative-and-29533/

Key Takeaways

- What Happened: EPA urges self-audits for facilities subject to RCRA Parts 264/265 Subparts AA, BB and CC air emission standards to avoid potential for substantial penalties and injunctive relief
- Who's Impacted: Regulated entities with facilities subject to RCRA air standards, especially those newly subject to those standards after EPA's just-finalized withdrawal of the "once in, always in" policy for HAP major sources under the Clean Air Act
- What Impacted Entities Should Consider Doing in Response:

- Review relevant Compliance Initiatives
- Identify facilities subject to RCRA air standards
- Consider conducting a voluntary federal, state, or confidential compliance audit

The U.S. EPA Office of Enforcement and Compliance National Compliance Initiative focusing on reducing hazardous waste air emissions is alive and well. EPA's core goal is to foster compliance with the RCRA air rules in 40 CFR Parts 264 and 265, Subparts AA, BB and CC. EPA's June 2020 EPA Enforcement Alert describes numerous areas of RCRA noncompliance that EPA continues to find at hazardous waste large quantity generators (LQGs) and treatment, storage, and disposal facilities (TSDFs). In the Alert, EPA suggests specific proactive operational measures that operators can take to improve compliance and points to the benefits of self-disclosure utilizing state or EPA audit programs.

Now may be a particularly good time to self-audit RCRA air rules compliance given that EPA recently finalized rescission of the "once in, always in" policy under Clean Air Act (CAA) Section 112. Former hazardous air pollutant (HAP) major sources that recently became minor sources by taking an enforceable limit on HAP emissions may now be subject to RCRA air rules to which they were formerly exempt under the CAA and require coverage in the facility's RCRA permit. EPA points out this potentially unrecognized transition in the Alert, encouraging facilities to work with permitting authorities to address any associated compliance gaps.

EPA also notes the potential for noncompliance at major sources unaffected by the "once in, always in" policy withdrawal given the complex interplay between the RCRA air rules and CAA rules in 40 CFR Parts 60, 61 and 63. The CAA and RCRA each contain provisions to avoid duplication of requirements; e.g., with RCRA providing exemptions based on owner/operator certification that equipment that would be subject to Subparts AA or CC will operate in accordance with applicable CAA requirements.

With EPA now on the lookout for RCRA-CAA compliance gaps, voluntary self-auditing provides an EPA-encouraged avenue for identification and correction of noncompliance and potential mitigation of sizable penalties that might otherwise be imposed. The EPA Compliance Initiative points to enforcement cases where the penalties were in the hundreds of thousands of dollars and injunctive relief in the millions.

The EPA Audit Policy is not the only mechanism for undertaking a compliance audit. Many states have audit programs that are similar to EPA's program. Entities with facilities in two or more states can conduct simultaneous or sequenced audits pursuant to the EPA or state programs with careful logistical coordination of the discovery, disclosure, and correction of violations. Audits can also be conducted confidentially under the attorney-client privilege outside the EPA and state audit policies, although opportunities for disclosure and utilization of audit policies may be foreclosed where a state audit policy requires prior notice of an audit, such as in Texas, or where the deadline for disclosure has passed.

Now might also be an opportune time for companies to consider broader RCRA auditing, to include other aspects of RCRA compliance. For example, some EPA regions have an informal but highly active Generator Initiative that focuses on reporting, contingency plans, and emergency response training. Compliance with EPA's Hazardous Waste Generator Improvements Rule (effective May 30, 2017) in states that have received or will soon receive delegation may also present audit opportunities, given the number and complexity of regulatory changes in that rule.

Chemicals

The EPA's Record On Pesticides During The Trump Administration
https://www.wbur.org/hereandnow/2020/10/07/epa-trump-pesticides

05:33
"https://player.wbur.org/hereandnow/2020/10/07/epa-trump-pesticides"
October 07, 2020

Late last month, the Environmental Protection Agency announced that it was rejecting scientific evidence that the pesticide chlorpyrifos is linked with health problems. This comes after the Obama administration pledged to ban the pesticide.

Here & Now's Tonya Mosley speaks with NPR food and agriculture correspondent Dan Charles.

This segment aired on October 7, 2020.

EPA Grants Request for D4 Risk Evaluation
https://www.natlawreview.com/article/epa-grants-manufacturer-request-risk-evaluation-d4-posted-october-07-2020-lynn-l

Posted on October 07, 2020 by Lynn L. Bergeson
The U.S. Environmental Protection Agency (EPA) granted on October 6, 2020, a manufacturer request for a risk evaluation of octamethylcyclotetra-siloxane (D4), a chemical used to make other silicone chemicals and as an ingredient in some personal care products. Through the American Chemistry Council's Silicones Environmental, Health, and Safety Center, Dow Silicones Corporation, Elkem Silicones USA Corporation, Evonik Corporation, Momentive Performance Materials, Shin-Etsu Silicones of America, Inc., and Wacker Chemical Corporation requested a risk evaluation of D4 pursuant to Section 6 of the Toxic Substances Control Act (TSCA). For manufacturer-requested risk evaluations under TSCA Section 6, the manufacturers requesting the risk evaluation are responsible for payment of the associated fees. The fee for a manufacturer-requested risk evaluation of a chemical included in the 2014 update to the TSCA Work Plan is 50 percent of total actual costs, with a $1,250,000 initial payment. D4 is included in the 2014 update to the TSCA Work Plan. EPA notes that if the request is not withdrawn within 30 days, D4 will enter the TSCA risk evaluation process.

Victory! EPA Reduces Pesticide Testing on Animals | PETA
https://www.peta.org/blog/victory-epa-reducing-pesticide-tests-on-animals/

Published October 7, 2020 by Zachary Toliver.
In a breaking victory for animals, gentle rats, rabbits, and guinea pigs will be spared, now that the U.S. Environmental Protection Agency (EPA) has announced its plan to reduce pesticide experiments on them!
The EPA's latest progress toward humane science comes after the agency conducted a detailed scientific analysis with the National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods showing that a particular pesticide test doesn't provide information that protects humans. This move was prompted by a meeting with scientists from PETA and the Physicians Committee for Responsible Medicine.
According to the EPA, this victory will prevent approximately 750 rats, rabbits, or guinea pigs per year from being used in tests in which pesticides are applied to their shaved skin, after which they're killed—if they haven't already died from poisoning.
Rabbits just want to be left alone to protect their young, build nests, and hop around freely. Rats are caring mothers who dip their paws into cool water and gently smooth the fur around their infants' faces. Guinea pigs stress out when their food sources suddenly change. Can you imagine their terror when being handled by experimenters and smeared with toxic pesticides?
More than ever, the EPA is using common sense and taking steps to stop killing animals with deadly poisons.
Earlier this year, the agency announced a "common-sense policy" that no longer requires a test on birds in which experimenters feed them poisoned food. This announcement was made after a scientific analysis—conducted by the EPA and PETA scientists—showed that this test provided information already produced in another required test.
Avoiding this kind of useless testing allows the EPA and companies to focus on developing and implementing animal-free tests that will save animals and better protect humans and the environment.
These latest actions come after the EPA announced in 2019 that it will stop funding and requesting tests on mammals by 2035, and it's made a commitment to reducing the number of such tests in the interim.

Land Management
EPA gives authority to state on environmental issues over tribal lands
https://www.cherokeephoenix.org/Article/Index/165375

BY LINDSEY BARK
10/07/2020 02:00 PM

OKLAHOMA CITY – On Oct. 5, the U.S. Environmental Protection Agency announced that the Oklahoma government now has regulatory control over environmental issues on nearly all tribal lands in the state.

On July 22, Oklahoma Gov. Kevin Stitt requested authority from the EPA soon after the U.S. Supreme Court ruled in the McGirt v. Oklahoma case that much of the land in eastern Oklahoma remained the Muscogee (Creek) Nation's reservation, according to an Associated Press article.

"Unfortunately, the governor's decision to invoke a 2005 federal law ignores the longstanding relationships between state agencies and the Cherokee Nation," Cherokee Nation Principal Chief Chuck Hoskin Jr. said. "All Oklahomans benefit when the tribes and state work together in the spirit of mutual respect and this knee-jerk reaction to curtail tribal jurisdiction is not productive."

EPA Administrator Andrew Wheeler made the approval of the state's request. It applies to more than two dozen federal environmental programs overseen by several state agencies, including the Oklahoma Department of Environmental Quality, Department of Agriculture, Food and Forestry, Water Resources Board and the Oklahoma Corporation Commission.

Stitt made the request under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA) of 2005.

Section 10211(a) of SAFETEA states "...upon request of the State, the Administrator shall approve the State to administer the State program in the areas of the state that in in Indian country, without further demonstration of authority by the State."

"As Administrator Wheeler's letter correctly points out, the State of Oklahoma did not seek to expand or increase its regulation over new areas of the state, but rather to continue to regulate those areas where the state has consistently implemented these environmental programs under the steady oversight of the U.S. EPA," Stitt said in the AP article.

The underlying law, inserted as a midnight rider in SAFETEA, allows states to "seek environmental oversight in Indian Country," authored in 2005 by Oklahoma's Republican U.S. Sen. Jim Inhofe, a known ally of the oil and gas industry, according to the AP article.

A summary report was sent to Oklahoma tribes on Sept. 29 regarding a consultation process conducted earlier that month. Several tribes questioned the limited consultation, saying that it was not extensive enough.

One specific comment in the summary said, "The EPA cannot satisfy its statutory and policy obligations to the Cherokee Nation by merely engaging in a limited three-week consultation process."

Hoskin said he is disappointed that the CN's request to the EPA for individual consultation with affected Oklahoma tribes was ignored.

EPA Grants State of Oklahoma Control Over Environmental Issues on Tribal Lands
https://nativenewsonline.net/sovereignty/epa-grants-state-of-oklahoma-control-over-environmental-issues-on-tribal-lands

BY NATIVE NEWS ONLINE STAFF OCTOBER 07, 2020

OKLAHOMA CITY, Okla. — In a letter dated Oct. 1, 2020, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler sent to Oklahoma Gov. Kevin Stitt granted the state of Oklahoma regulatory control over environmental issues on nearly all tribal lands in the state.
The letter comes after Stitt requested on July 22, 2020 control of environmental regulations on tribal land involving a wide range of issues. All of Stitt's requests in his letter were granted by the EPA.
"EPA's letter grants Oklahoma's request to administer the State's EPA-approved environmental regulatory programs in certain areas of Indian country. EPA's letter resolves ambiguity and essentially preserves the regulatory status quo in Oklahoma," EPA spokesman James Hewitt said in a statement, adding that existing exemptions would still stand and that the agency would implement federal environmental programs.
"Additionally, if any tribe wants to apply for regulatory oversight of these environmental programs, then they can apply through EPA's Treatment as a State process," he added.
Wheeler's letter giving control to Oklahoma referenced the SAFETEA Act of 2005, a transportation bill sponsored by sponsored by Sen. James Inhofe (R-Okla.) that allows Oklahoma to oversee environmental issues "in the areas of the state that are in Indian country, without any further demonstration of authority by the state."
Tribal officials were not happy with the EPA's stance that comes so close to the historic U.S. Supreme Court McGirt v. Oklahoma on July 9, a ruling that gave major legal jurisdictional authority to tribes for almost half of the eastern part of Oklahoma.
The Muscogee (Creek) Nation responded to the EPA's decision in the following statement:
"The Muscogee (Creek) Nation is disappointed in the decision of the EPA to grant Governor Stitt's request to administer environmental regulation in certain areas of Indian Country under the SAFETEA Act of 2005. Like the SAFETEA Act itself, this was a swift move meant to circumvent the appropriate time and available information to adequately respond. The Muscogee (Creek) Nation submitted a request for tribal consultation just two days after the Governor submitted his request. The MCN was granted two consultations, but it seems the concerns raised did not suffice. The MCN will continue seeking remedies to the situation."
Tribal officials fear the EPA's decision establishes a pathway to potential environmental abuses on tribal land, including dumping hazardous chemicals like carcinogenic PCBs and petroleum spills, with no legal recourse by the tribes.
"It's disappointing the Cherokee Nation's request that EPA consult individually with affected Oklahoma tribes was ignored," Cherokee Nation Principal Chief Chuck Hoskin Jr. said in a statement to The Hill.
"Unfortunately, the governor's decision to invoke a 2005 federal law ignores the longstanding relationships between state agencies and the Cherokee Nation. All Oklahomans benefit when the Tribes and state work together in the spirit of mutual respect and this knee-jerk reaction to curtail tribal jurisdiction is not productive," he added.
The EPA decision comes after it consulted with tribes. The summary, however, says Indian Country opposed the decision.

Pollution

We Urge All Senators to Closely Examine Judge Barrett's Views on Environmental Law – EDF
https://www.edf.org/media/we-urge-all-senators-closely-examine-judge-barretts-views-environmental-law-edf

Statement of Environmental Defense Fund General Counsel | Vickie Patton – October 7, 2020
October 7, 2020
"Senate Majority Leader Mitch McConnell says he still plans to proceed with the confirmation of Judge Amy Coney Barrett to the Supreme Court prior to the November 3rd election. We urge all Senators, in accordance with their duty to the American people under the U.S. Constitution, to take the time needed before casting a vote to closely examine whether Judge Barrett respects the bedrock judicial precedents and statutes that protect public health and the environment for all Americans.
"When it comes to any nominee to the high Court, we ask whether the nominee, if confirmed, respects the congressional enactments and foundational legal precedents that make up our nation's public

health and environmental laws. Judge Barrett's record warrants close scrutiny for adherence to central tenets of environmental law.

"People threatened or injured by public health and environmental harms depend on access to the courts to redress those harms. This is a pillar of the American justice system, and we recommend Senators and the public carefully review Judge Barrett's position on it. Judge Barrett has ruled in several recent cases that plaintiffs lack standing to redress injuries. See, for example: Casillas v. Madison Ave. Assoc., 926 F.3d 329 (7th Cir. 2019) (held consumer lacked standing to challenge a debt collector's failure to adhere to the Fair Debt Collection Practices Act); and Protect Our Parks, Inc. v. Chicago Park District, 971 F.3d 722 (7th Cir. 2020) (held residents alleging violations of state public trust doctrine lacked standing to sue on that claim in a case where all parties agreed standing was not an issue). The Senate should thoroughly evaluate Judge Barrett's views on people's access to the courts in public health and environmental cases.

"Judge Barrett's commitment to precedent also warrants careful review. Under the fundamental judicial doctrine of stare decisis, judges are bound by precedent. More than thirteen years ago, the Supreme Court affirmed EPA's responsibility under existing statutory law to interpret the 'capacious' term 'air pollutant' to include climate pollution (Massachusetts v. EPA, 549 U.S. 497 2007). This precedent and other pillars of U.S. environmental law must be respected to ensure our nation's laws continue to protect Americans' health and well-being. The Senators must determine whether Judge Barrett has demonstrated such respect. See, for example: Groves v. United States, 941 F.3d 315 (7th Cir 2019) (overruling precedent allowing district courts to enlarge deadline for filing interlocutory appeals); and Amy Coney Barrett, Originalism and Stare Decisis, 92 Notre Dame L. Rev. 1921 (2017).

"Judge Barrett's academic career and short tenure on the U.S. Court of Appeals for the Seventh Circuit do not fully illuminate her views about environmental law and related areas of public law. Will she respect Congress's and state and local governments' powers to protect public health and welfare through legislation, including by authorizing administrative agencies with the expertise to implement these safeguards effectively? Does she respect the role of administrative agencies' scientific and technical expertise in administering federal law? Does she agree with the scientific consensus that human-caused climate change is causing extreme danger to public health and welfare?

"It is the responsibility of each Senator to carefully examine and weigh these vital questions if this nomination is considered."

Superfund

EPA approves plan for Sidney Superfund site | Local News
https://www.thedailystar.com/news/local_news/epa-approves-plan-for-sidney-superfund-site/article_eec67582-2adb-554d-b2fb-60a2d90c0d77.html

Staff Report

Sarah Eames | The Daily StarThe former site of GCL Tie and Treating in Sidney, a U.S. EPA Superfund cleanup site, is shown in this Oct. 7 photo.

Federal authorities have finalized their plan to clean up decades-old contamination in the village of Sidney.

The U.S. Environmental Protection Agency on Tuesday, Oct. 6, announced finalization of its plan to address creosote contamination at the GCL Tie and Treating Superfund Site along the Susquehanna River in the village. Creosote is an oily contaminant obtained from extracting coal tar at a high temperature and is commonly used as a wood preservative.

According to a media release, the final cleanup plan addresses the portion of the site where creosote contamination, in the form of non-aqueous phase liquid (NAPL), is impacting groundwater and includes heating the subsurface soil to reduce the thickness of the NAPL to the point that it can be better extracted through specialized extraction wells.

"EPA's previous actions under the Superfund program, including the removal of about 20,000 gallons of readily accessible creosote and the treatment of about 80,000 cubic yards of soil, significantly reduced the extensive creosote contamination impacting the soil and groundwater at the GCL Tie and Treating site," EPA Regional Administrator Pete Lopez said in the release. "Through this cleanup plan, we are upholding our commitment to protect the environment for future generations by addressing the remaining creosote contamination in soil and bedrock at the site."

The GCL Tie and Treating property comprises 26 acres of the 60-acre Superfund site in an industrial area of Sidney. The property formerly contained a sawmill, a wood-treating facility, and a light manufacturing company and is bordered by commercial and industrial properties, a railroad line, and undeveloped federal- and state-regulated wetlands. The non-GCL property is the remaining 34 acres and includes properties affected by creosote releases from the GCL Tie and Treating operations.

Under the selected cleanup plan, EPA will address the remaining contamination at the site that is continuing to contaminate groundwater by using thermal treatment. Thermal treatment works by applying very high temperatures directly underground to the contaminated area, which makes the creosote less viscous and enables it to move more easily through soil toward extraction wells where it is collected and piped to the surface to be treated. The heat can make the contaminated area hot enough to destroy some chemicals, the release said.

The estimated cost of the remedy is $25 million. EPA expects to address an ongoing source of groundwater contamination and help the aquifer to recover with the selected plan. A final action for the groundwater will be determined after the remedy is implemented, the release said.
EPA held a virtual public meeting on Sept. 3 to explain its cleanup plan, discuss the other cleanup options that were considered and solicit public comments.
According to information on the EPA website, the GCL site first came to the attention of the state Department of Environmental Conservation in 1986, after one of the pressure tanks used at the GCL facility malfunctioned, causing an estimated 30,000-gallon release of creosote.
EPA's selected cleanup plan for the site, outlined in the Record of Decision, can be found at:
www.epa.gov/superfund/gcl-tie

Sustainability
EPA Awards $15,000 Grant for Sustainable Food Management
http://www.publicnow.com/view/CFB1C74F2940C45E90F80620F0D00A27D866FA9B?1602091064

10/07/2020
EPA Awards $15,000 Grant for Sustainable Food Management
PHILADELPHIA (Oct.7, 2020) - The U.S. Environmental Protection Agency (EPA) is pleased to announce that the Composting Council Research & Education Foundation (CCREF) has been selected to receive funding to support a project to promote the beneficial use of compost under the agency's Sustainable Materials Management grant opportunity.
The CCREF works closely with the US Composting Council, a trade organization for the compost industry. USCC staff will assist CCREF on this project to will work with state agencies in the Mid-Atlantic Region to increase the use of compost in green infrastructure projects.
EPA anticipates that it will award CCREF a grant in the amount of $15,000 once all legal and administrative requirements are satisfied. Funding this project furthers the Administration's goal of helping state and local governments achieve their sustainability goals.
'I look forward to seeing this project assist our state and local partners who are using green infrastructure to manage stormwater in communities,' said EPA Regional Administrator Cosmo Servidio. 'In addition to the numerous environmental benefits, there is the additional benefit of building strong markets for compost products which supports the composting industry thereby increasing the opportunity to divert food waste from landfills. It's a win-win-win situation.'
Compost is made from recycled organic materials. Increasing the use of recycled materials in the U.S. is more critical than ever. CCREF will work with state and local agencies in the mid-Atlantic states to provide education and training on the use of compost for construction projects that will improve stormwater management and water quality. Compost can be used in a variety of applications including compost blankets and socks, rain gardens, and green roofs. CCREF will connect compost manufacturers with end users through educational and marketing activities to support implementation of these applications.
'It's so important to connect compost manufacturers with end users through educational and marketing activities in order to reap the well-documented environmental benefits of using compost. We look forward to working closely with EPA and the mid-atlantic states bridge that gap. CCREF is grateful for this opportunity to identify barriers, help expand the knowledge about the benefits of compost use and help develop plans to increase compost use,' said Frank Franciosi, CCREF Executive Director.

Hillphoenix Earns 9th Consecutive EPA GreenChill Excellence Award
https://www.prnewswire.com/news-releases/hillphoenix-earns-9th-consecutive-epa-greenchill-excellence-award-301147971.html

NEWS PROVIDED BY
Dover
Oct 07, 2020, 16:15 ET
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DOWNERS GROVE, Ill., Oct. 7, 2020 /PRNewswire/ -- Hillphoenix, part of Dover Food Retail and Dover (NYSE: DOV) and a pioneer in designing environmentally sustainable refrigeration systems, has earned the U.S. Environmental Protection Agency's (EPA) GreenChill 2019-20 Store Certification Excellence (non-supermarket) award.

This achievement recognizes the commercial refrigeration systems manufacturer that has installed more advanced refrigeration systems in GreenChill-certified stores than any other partnering manufacturer in the past year. During the 2019-2020 cycle, Hillphoenix systems were installed in 433 stores, over 84% of the GreenChill certified stores. This is Hillphoenix's ninth consecutive GreenChill recognition since the category was created in 2011.

"We are proud to be a founding member of the EPA's GreenChill program, which underlines Hillphoenix's continued commitment to sustainable technologies and refrigeration solutions," said Scott Martin, Director of Research, Industry Relations and Development at Hillphoenix. "We greatly appreciate the EPA's recognition of Hillphoenix's efforts to continually advance sustainable technologies in partnership with its customers."

"We congratulate Hillphoenix for their ongoing achievements as part of the GreenChill Store Certification Program," said Kirsten Cappel, GreenChill Program Manager. "By earning the Store Certification Excellence award for nine consecutive years, Hillphoenix has shown that supporting the supermarket industry's focus on reducing harmful refrigeration emissions and its transition to advanced refrigeration technologies is not only good for the environment, it is good business."

Hillphoenix has a consistent record of advancing sustainable refrigeration:

- In the mid-1990s, the company introduced Second Nature systems, one of the first cooling technologies to reduce global-warming emissions.
- Thousands of Second Nature systems have shipped by Hillphoenix utilizing low global warming potential and natural refrigerant solutions.

About the GreenChill Partnership:

EPA's GreenChill Program is a voluntary partnership with food retailers, refrigeration system manufacturers, and chemical manufacturers to reduce refrigerant emissions and decrease their environmental impacts. GreenChill provides supermarkets and other industry stakeholders with information and assistance to transition to environmentally friendlier refrigerants, reduce the amount of refrigerant they use, eliminate refrigerant leaks, implement environmental best practices, and adopt green refrigeration technologies. There are over 12,600 GreenChill Partner stores throughout the nation. For more information on EPA's GreenChill Program, please visit www.epa.gov/greenchill.

About Dover Food Retail:

Dover Food Retail, part of Dover Corporation with headquarters in Conyers, Georgia, is the partner to customers seeking to create unique food experiences. Employing the capabilities of our industry-leading brands, Anthony and Hillphoenix, we are able to provide insight and a comprehensive portfolio of innovative solutions that enables our customers to sell more food, more profitably. Our ability to evolve with the ever-changing market demands is driven by our passion for understanding our customers' business and providing them with the best quality products and services they need to succeed both today and in the future. Our focused, forward-thinking approach, combined with the strength of our brands, sets the stage for streamlined product development, a broader product portfolio, and cutting-edge technology resulting in redefining what is possible for customers in the food retail value chain.

About Hillphoenix and Anthony:

Hillphoenix branded products and services deliver advanced design and manufacturing of commercial refrigerated display cases and specialty products along with commercial and industrial refrigeration systems and integrated power distribution systems. Training, design, energy and aftermarket services are available through the Hillphoenix Learning and Design Centers and The AMS Group. Anthony branded products deliver innovative design and manufacturing of merchandising solutions in glass doors, lighting systems and display equipment for use in commercial refrigeration display systems. For more information visit hillphoenix.com, anthonyintl.com, or call (800) 283-1109.

About Dover:

Dover is a diversified global manufacturer and solutions provider with annual revenue of approximately $7 billion. We deliver innovative equipment and components, consumable supplies, aftermarket parts,

software and digital solutions, and support services through five operating segments: Engineered Products, Fueling Solutions, Imaging & Identification, Pumps & Process Solutions and Refrigeration & Food Equipment. Dover combines global scale, operational agility, world-class engineering capability and customer intimacy to lead the markets we serve. Recognized for our entrepreneurial approach for over 60 years, our team of over 23,000 employees takes an ownership mindset, collaborating with customers to redefine what's possible. Headquartered in Downers Grove, Illinois, Dover trades on the New York Stock Exchange under "DOV." Additional information is available at dovercorporation.com.

Water

EPA Administrator Visits Cleveland For Update On Lake Erie Conservation
https://www.ideastream.org/news/epa-administrator-visits-cleveland-for-update-on-lake-erie-conservation

U.S. EPA Administrator Andrew Wheeler visited the shores of Lake Erie and the U.S. Coast Guard in Downtown Cleveland Wednesday. [Taylor Haggerty / ideastream]
AUTHOR
Taylor Haggerty
PUBLISHED October 7, 2020
The Ashtabula River is on its way to being removed from a list of areas of concern for environmental degradation, U.S. Environmental Protection Agency Administrator Andrew Wheeler said Wednesday during a visit to Cleveland for an update on Lake Erie and the surrounding watershed.
"We are within sight of the finish line in terms of returning Ohio's rivers to health again so they can again become a place where people can swim, play, catch fish, and generally enjoy what this great state has to offer," Wheeler said.
The Ashtabula River is the first area of concern in the state of Ohio to undergo the delisting process, Wheeler said, which requires signoffs from the state, U.S. EPA and Canada, and will be completed next year.
Efforts that began in the mid-2000s have led to $67 million in government spending to remediate sediment and restore habitat in and around the river, he said.
"Since then, 500,000 cubic yards of contaminated sediment have been removed from inside and outside the navigation channel," Wheeler said.
Restrictions on dredging activities to aid in restoration efforts were lifted in September, Wheeler said, kicking off the delisting process.
The Black and Cuyahoga rivers are also making progress toward delisting, Wheeler said. The final list of management actions to restore and clean up the Cuyahoga River were approved last month, including the removal of the Cuyahoga Gorge Dam. All management actions for the Black River have been completed, Wheeler said, and it will undergo an evaluation process over the next several years.

EPA: New vessel discharge rule in works
https://www.marinelog.com/news/epa-new-vessel-discharge-rule-in-works/

EPA: New vessel discharge rule in works
Written by Nick Blenkey
The U.S. Environmental Protection Agency (EPA) yesterday proposed standards to reduce the environmental impact of discharges, such as ballast water, that are incidental to the normal operation of commercial vessels. When finalized, says EPA, the new rule will streamline the current patchwork of federal, state, and local requirements that apply to the commercial vessel community and will better protect U.S. waters.
EPA is proposing to establish national standards of performance for incidental discharges from commercial vessels as required under the Vessel Incidental Discharge Act (VIDA). The proposed rule includes discharge-specific standards for 20 different types of vessel equipment and treatment systems, as well as general performance standards that would apply more broadly to the full range of incidental discharges.

EPA's proposed standards would apply to:

- Commercial vessels greater than 79 feet in length.
- Other non-recreational, non-Armed Forces vessels, such as research and emergency rescue vessels.
- Ballast water only from small vessels (vessels less than 79 feet in length) and fishing vessels of all sizes.

The proposed rule also outlines procedures for states working through EPA or the U.S. Coast Guard to seek more stringent requirements, request emergency orders, or apply for no-discharge zones for one or more of the incidental discharges in any or all state waters.

EPA will accept comment on the proposal for 30 days, following publication in the Federal Register.

- You can see a prepublication version of the proposed rule HERE

Judge Tosses EPA Plan to Dredge and Fill Bay Area Salt Ponds
https://www.ecowatch.com/epa-salt-ponds-cargill-2648128372.html?rebelltitem=5#rebelltitem5

Jordan Davidson Oct. 07, 2020 11:49AM EST

A federal judge in a U.S. District Court in the Northern District of California vacated a decision by the U.S. Environmental Protection Agency (EPA) to dredge and fill salt ponds in Redwood City, a town on the San Francisco Bay, as the AP reported.

The judge in the case, William Alsup, determined on Monday that the EPA made a miscalculation in how the Clean Water Act is applied when it decided that large developments on the salt ponds were exempt from the act's regulations, according to Courthouse News.

In arguments, the EPA made the bold claim that the Redwood City Salt Ponds were a unique case upon which the judge lacked the expertise to decide, and therefore should defer to the EPA's wisdom. The EPA also argued that it relied on previous federal court decisions to determine that the salt ponds were not protected. Those two arguments struck the judge as contradictory.

"Either there is precedent or there is not," Alsup wrote in a 21-page ruling, as Courthouse News reported. "This order holds that there is precedent and that EPA headquarters misapplied that precedent."

The Redwood City Salt Ponds are south of San Francisco, between Palo Alto and San Mateo. They are 1,365 acres owned by the food giant Cargill. Cargill said it wanted to build a 12,000 unit housing development in 2009, but reversed course after a groundswell of opposition arose, as the AP reported.

The ponds are tidal pools and marshlands used for salt mining operations. If the Salt Ponds did not have protection under the Clean Water Act, they could be dredged, filled and developed.

Environmental activists, including Save the Bay, San Francisco Baykeeper, Committee for Green Foothills and Citizens' Committee to Complete the Refuge, joined California's attorney general in filing suit against the EPA, as Courthouse News and KTVU in Oakland reported.

"This is an important victory for protecting clean water in our communities. And it's a good reminder to the Trump Administration that it can't use the San Francisco Bay as its political playground," Attorney General Xavier Becerra said in a statement, as the AP reported. "The EPA can't ignore its own scientists and come up with an arbitrary rule that opens the door for development of a vital ecosystem."

The Trump administration had determined that the salt ponds were not "waters of the United States" since it was separated from the San Francisco Bay by a network of levees and dikes. That reversed a 2016 Obama-era EPA decision that the ponds should be covered by the Clean Water Act, according to the AP.

If the Trump-era EPA's decision had been upheld, then California would not have the right to review development plans to make sure that any new development was in compliance with the state's water quality regulations. It would have also restricted the state from requiring a developer to include public parks and protective wetlands, as Courthouse News reported.

In his decision, Alsup noted that much of the salt ponds would be inundated with water if there were not artificial barriers blocking the water. Since the water would be there, the ponds are part of the water owned by the U.S.

"Today's ruling makes clear that Cargill's future development of the salt ponds will be severely limited by Clean Water Act protections, resulting in a big legal win for San Francisco Bay," said Sejal Choksi-Chugh, executive director of San Francisco Baykeeper, in a statement on Monday, as Courthouse News reported.

Ashtabula River is so clean it's no longer listed as EPA area of concern, Lorain and Cuyahoga rivers making progress
https://www.cleveland.com/news/2020/10/ashtabula-river-is-so-clean-its-no-longer-listed-as-epa-area-of-concern-lorain-and-cuyahoga-rivers-making-progress.html

Updated 1:22 PM; Today 1:18 PM
By Cameron Fields, cleveland.com
CLEVELAND, Ohio -- The Ashtabula River is now so clean, it has cleared all requirements to remove the designation of a federal area of concern.
U.S. Environmental Protection Agency Administrator Andrew Wheeler announced Wednesday that the last "beneficial use impairment" was removed in September, meaning the river -- once a major shipping hub in Lake Erie -- can start the delisting process.
By the time it's "delisted" next year, the river will be the sixth cleared from the original 31 areas in the 1987 Great Lakes Water Quality Agreement. The EPA, state and federal partners and others have spent over $67.5 million to help rehabilitate the river.
The Lower Menominee River AOC in Wisconsin was the first to be delisted since 2014, said Kurt Thiede, the EPA Region 5 administrator and Great Lakes National Program manager.
"I'm proud – both as EPA Administrator and as an Ohioan – to announce that the Ashtabula River is the first AOC in the state to begin the delisting process," Wheeler said in a news release. "We are within sight of the finish line in terms of returning Ohio's rivers to health again – so they can again become a place where people can swim, play, catch fish, and generally enjoy what this great state has to offer."
Along with the Ashtabula River, improvements have also been made on the Black River in Lorain and the Cuyahoga in Cleveland, both tributaries to Lake Erie.
All management actions have been completed on the Black River, and Thiede said they would be monitored going forward. The next step will be to remove beneficial use impairments and eventually remove the designation of area of concern.
"Through a combination of Great Lakes Restoration Initiative funding and strong partnerships with our local, state and federal partners, more than $24 million has been spent on completing habitat restoration projects in the Black River AOC," Thiede said in a news release.
The Cuyahoga River is also making strides. The EPA and state agreed in September on a list of important management actions to remove the last seven beneficial use impairments for the river. That consists of 16 projects that will prioritize cleaning up contaminated sediments and restoring the wildlife habitat and fish.
Related: Cuyahoga River fish safe to eat, Ohio EPA says

Cantwell, Murray, Colleagues Press EPA on Implementation of Trump Order to Withhold Federal Funding from Seattle, Portland, Major U.S. Cities | U.S. Senator Maria Cantwell of Washington
https://www.cantwell.senate.gov/news/press-releases/cantwell-murray-colleagues-press-epa-on-implementation-of-trump-order-to-withhold-federal-funding-from-seattle-portland-major-us-cities

Letter comes as EPA considers withholding funds for cleaning up contaminated land and drinking water in Seattle and Portland
WASHINGTON DC – U.S. Senators Maria Cantwell (D-WA) and Patty Murray (D-WA) joined Oregon Senators Ron Wyden (D-OR) and Jeff Merkley (D-OR), New York Senators Chuck Schumer (D-NY) and Kirsten Gillibrand (D-NY), and Senator Tom Carper (D-DE), the top Democrat on the Environment and Public Works Committee, in a letter this week to Environmental Protection Agency (EPA) Administrator Andrew Wheeler requesting information about EPA's implementation of the White House

memorandum ordering federal agencies to withhold federal funds from cities that President Trump falsely claims are being run by "anarchists."

"We have learned that EPA, in its internal meetings related to the policy, has begun to identify funding sources that could be subject to the directive, some of which are vital for the provision of safe drinking water and the remediation of contamination," the senators wrote. "Setting aside the legally questionable and abhorrent nature of the President's directive, EPA's implementation thereof could endanger human health and the environment."

More than $1 billion of recent EPA funds to Seattle, Portland, New York City, and Washington, D.C. could be at risk if EPA were to implement the White House memorandum. In their letter, the senators cited multiple examples of funding the EPA may seek to halt, deny, or rescind as a result of President Trump's directive. These include a $192,200,000 Water Infrastructure Finance and Innovation Act (WIFIA) loan that the city of Seattle received to reduce combined sewer overflows, and as well as $27,914,000 awarded to the state of Washington in FY 2020 for the Clean Water State Revolving Fund, and $24,598,000 for the Drinking Water State Revolving Fund.

"We strongly urge you not to take any action that could result in the collective loss of more than a billion dollars of funding intended to clean up contamination and drinking water in these American cities," the senators continued. "To do so would be antithetical to EPA's mission of protecting human health and the environment."

The senators requested that EPA provide an initial response no later than October 9, 2020.

The full text of the letter is available below and HERE.

Dear Administrator Wheeler:

We write to express our grave concern and request information about EPA's plans to implement the September 21, 2020 White House memorandum that describes the first step in adopting the "policy that the Administration will not allow Federal tax dollars to fund cities that allow themselves to deteriorate into lawless zones." We have learned that EPA has begun internal meetings designed to comply with this directive, and that EPA is considering withholding funds that are intended to be used to clean up contaminated land and sources of drinking water in Seattle, Washington; Portland, Oregon; New York City, NY; and Washington, D.C. We strongly urge you not to do so.

The President first announced his legally questionable policy to deny federal funding to these cities on September 2, 2020, stating that "My Administration will not allow Federal tax dollars to fund cities that allow themselves to deteriorate into lawless zones. To ensure that Federal funds are neither unduly wasted nor spent in a manner that directly violates our Government's promise to protect life, liberty, and property, it is imperative that the Federal Government review the use of Federal funds by jurisdictions that permit anarchy, violence, and destruction in America's cities." The September 21 follow-up memo directs federal agencies to submit "a report to the Director of OMB detailing all Federal funds provided to Seattle, Portland, New York City, Washington, D.C., or any components or instrumentalities of the foregoing jurisdictions."

We have learned that EPA, in its internal meetings related to the policy, has begun to identify funding sources that could be subject to the directive, some of which are vital for the provision of safe drinking water and the remediation of contamination. We have also learned that on September 22, the day after the follow-up memorandum from the White House, you sent a letter[3] to the Governor of New York and Mayor of New York City threatening to relocate the EPA's Region 2 headquarters out of the current location at 290 Broadway in Manhattan due to nearby demonstrations, saying that "If you cannot demonstrate that EPA employees will be safe accessing our New York City offices," you would take steps to "move them to a location that can competently fulfill the basic mission of a local government."

Setting aside the legally questionable and abhorrent nature of the President's directive, EPA's implementation thereof could endanger human health and the environment. The retaliatory threat to move EPA's regional headquarters out of New York City would waste taxpayer dollars and endanger the jobs of the nearly 600 people who work there. Some examples of funding that EPA may seek to halt, deny or rescind include:

- Portland: The city was invited by EPA to apply for $554 million in Water Infrastructure and Finance Innovation Act (WIFIA) loans to "complete three projects to improve public health and water quality and increase drinking water system resiliency and reliability for nearly 1 million

people." The city also received $500,000 in Brownfields grant funding to clean up a site that "is contaminated with polycyclic aromatic hydrocarbons, ethylbenzene and metals" and $600,000 in Brownfields funding for the assessment of additional contaminated sites. The State of Oregon was allotted $18,133,000 in FY 2020 for the Clean Water State Revolving Fund (SRF) and $14,487,000 for the Drinking Water SRF.

- Seattle: The city received a $192.2 million WIFIA loan to "reduce combined sewer overflows to support public health, ecosystems and the economy in the Seattle metropolitan area." The State of Washington was awarded $27,914,000 in FY 2020 for the Clean Water SRF and $24,598,000 for the Drinking Water SRF.
- New York City: The city received $300,000 in Brownfields funding to clean up sites with "the intention of redeveloping vacant and abandoned properties and turning them into community assets such as housing, recreation and open space, health facilities, social services and commerce opportunities." The Port Authority of New York and New Jersey also received $420,000 in Diesel Emissions Reduction Act grant funding. The State of New York was allotted $177,173,000 in FY 2020 for the Clean Water SRF and $44,967,000 for the Drinking Water SRF.
- Washington, D.C.: The district received $158,000 in funding to test for lead in drinking water in schools. The district was allotted $7,880,000 in FY 2020 for the Clean Water SRF and $11,011,000 for the Drinking Water SRF.

We strongly urge you not to take any action that could result in the collective loss of more than a billion dollars of funding intended to clean up contamination and drinking water in these American cities. To do so would be antithetical to EPA's mission of protecting human health and the environment. So that we can understand the process by which EPA is responding to the President's misguided September, 2020 directive, we ask that you provide copies of:

1. The report cataloguing EPA funding to these cities requested by OMB on September 21, 2020 and due to be submitted to OMB on October 5, 2020.
2. All documents (including but not limited to calendar items, emails, presentations, meeting minutes, and memos) obtained or created by EPA that are related to EPA's compliance with the President's September 2, 2020 directive.
3. Documents listing and fully describing all decisions to rescind, halt, deny or otherwise modify any type of EPA funding to any of the cities listed above.

Thank you for your consideration of this important matter. Please provide your initial response no later than Friday, October 9, with additional materials to be provided on an ongoing basis thereafter until EPA's implementation of the September directive is complete. If you have any questions or concerns, please have your staff contact Michal Freedhoff of the Senate Environment and Public Works Committee staff (michal_freedhoff@epw.senate.gov).

Lake Erie takes another step toward health
https://www.thecentersquare.com/ohio/lake-erie-takes-another-step-toward-health/article_8f7df6e6-08c5-11eb-ae74-63c1195c5310.html

- By J.D. Davidson | The Center Square
- 45 min ago

(The Center Square) – Lake Erie continues to get healthier and another area is closer to being removed from the Environmental Protection Agency's area of concern.

On Wednesday, Ohio Senate President Larry Obhof, State Sen. Matt Dolan and EPA Administrator Andrew Wheeler announced from Lake Erie shores a series of accomplishments, including the removal of the last beneficial use impairment at the Ashtabula River Area of Concern.

Also announced was the completion of all management actions at the Black River Area of Concern.

"Some of these waterways, including the Ashtabula River, have faced significant environmental issues for decades," Obhof, R-Medina, said. "Today's announcements are a milestone in our efforts to clean up our waterways and to protect and preserve the Great Lakes. I thank Administrator Wheeler and the Trump Administration for making this a priority.

Beneficial use impairments is an EPA designation that means a change happened in the chemical, physical or biological integrity of the Great Lakes system that was enough to cause significant environmental degradation, according to the EPA website.
"I'm grateful that our federal government is recognizing the importance of Lake Erie to both the economy and our environment. Clean Water is critical to our quality of life," Dolan, R-Chagrin Falls, said. "Now, the state and federal partnership plays a significant role in the preservation and cleanup of Lake Erie."
Since the mid-2000s, the EPA, along with state and other federal partners and industries, have spent more than $67.5 million to clean up contaminated sediment and restore habitat in the Ashtabula AOC. With the final impairment lifted, which restricted dredging, Ohio can now move to delist the AOC.
"I'm proud – both as EPA administrator and as an Ohioan – to announce that the Ashtabula River is the first AOC in the state to begin the delisting process," Wheeler said. "We are within sight of the finish line in terms of returning Ohio's rivers to health again."

Congress Extends Chesapeake Bay Program
https://conduitstreet.mdcounties.org/2020/10/07/congress-extends-chesapeake-bay-program/

Alex Butler
October 7, 2020
Environment
Last week, Congress approved a broad package of conservation initiatives including the extension of the U.S. Environmental Protection Agency's (EPA) Chesapeake Bay Program.
The America's Conservation Enhancement Act includes several important provisions that reauthorizes the Bay Program for five additional years with a maximum allocation capped at $92 million per year. This year, Congress set aside $85 million for the program. Also reauthorized is the Chesapeake Gateways and Watertrails Network that works to connect people to the natural and cultural heritage of the Chesapeake region.
From coverage in the Bay Journal:
The legislation also creates the Chesapeake Watershed Investments for Landscape Development Program — dubbed WILD — within the U.S. Fish and Wildlife Service. The program is authorized to provide up to $15 million annually in grants that support fish and wildlife habitat projects in the Bay region. That could include things such as forest buffer plantings, wetland restoration, initiatives that improve stream health, removal of barriers to fish migration and efforts to improve habitats for species such as black ducks and brook trout.
The legislations also reauthorizes the North American Wetlands Conservation Act at $60 million annually until 2025. The bill now heads to the President to be signed into law.
For more information, view coverage in the Bay Journal, and the Grand Forks Herald.

Message

From: Fotouhi, David [Fotouhi.David@epa.gov]
Sent: 12/9/2020 4:26:26 PM
To: Payne, James (Jim) [payne.james@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]

FYI https://www.nytimes.com/2020/12/08/climate/biden-transition-trump.html?action=click&module=Top%20Stories&pgtype=Homepage

David Fotouhi

Acting General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 12/17/2020 3:38:25 AM
To: Payne, James (Jim) [payne.james@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]
Subject: Brenda Mallory, former EPA DAEO and OGC Principal Deputy GC ...

... is Biden's pick to be the head of the CEQ. She left EPA to become the GC of the CEQ towards the end of the Obama Administration.

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Block, Molly [block.molly@epa.gov]
Sent: 12/28/2020 9:01:00 PM
To: Labbe, Ken [Labbe.Ken@epa.gov]; AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: RE: Daily Media News Clips, December 28, 2020

Just fyi – the highlighted are all the same article from Reuters.

From: Labbe, Ken <Labbe.Ken@epa.gov>
Sent: Monday, December 28, 2020 3:58 PM
To: AO OPA OMR CLIPS <AO_OPA_OMR_CLIPS@epa.gov>
Subject: Daily Media News Clips, December 28, 2020

Daily Media Clips, December 28, 2020

Emissions
CNBC: U.S. EPA finalizing first-ever airplane emissions rules
KFGO: U.S. EPA finalizing first-ever airplane emissions rules
Hindustan Times: US Environment Protection Agency finalizing first-ever airplane emissions rules
Washington Examiner: EPA sets carbon limits for aircraft engines for the first time
Channel News Asia: US EPA finalising first-ever airplane emissions rules
The Hill: EPA finalizes greenhouse gas regs for airlines
Climate
Complex: Climate Change Linked to Fatal Skin Disease in Dolphins

U.S. EPA finalizing first-ever airplane emissions rules
https://www.cnbc.com/2020/12/28/us-epa-finalizing-first-ever-airplane-emissions-rules-.html
PUBLISHED MON, DEC 28 202010:06 AM EST

REUTERS

KEY POINTS

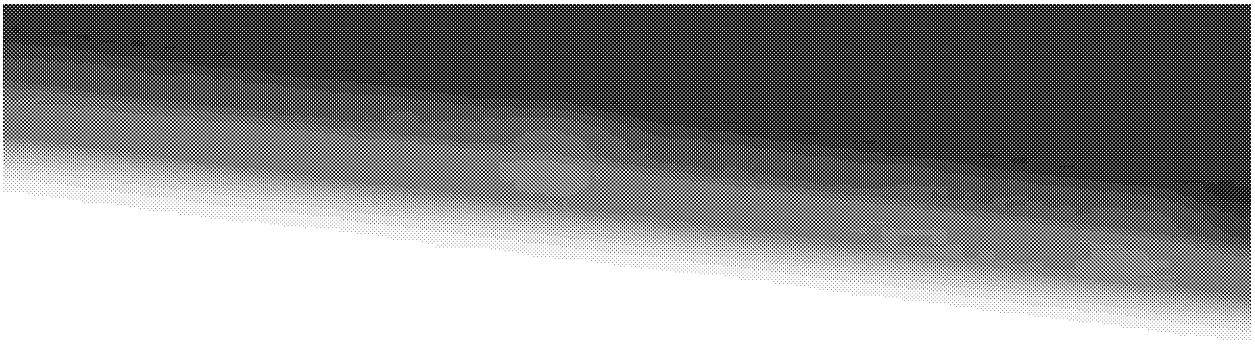
- The U.S. Environmental Protection Agency (EPA) on Monday will finalize the first-ever proposed standards regulating greenhouse gas emissions from airplanes, a spokeswoman told Reuters.

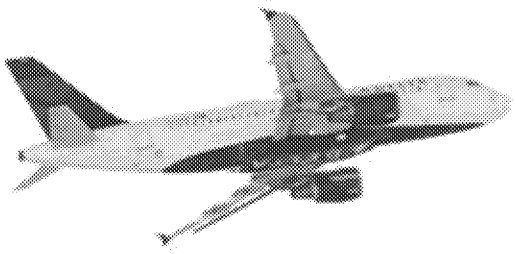
Julian Stratenschulte | picture alliance | Getty Images

The U.S. Environmental Protection Agency (EPA) on Monday will finalize the first-ever proposed standards regulating greenhouse gas emissions from airplanes, a spokeswoman told Reuters.

The EPA said in July its proposed requirements would align the United States with international standards. In 2016, the U.N. International Civil Aviation Organization (ICAO) agreed on global airplane emissions standards aimed at makers of small and large planes, including Airbus SE and Boeing Co, which both have backed the standards. Critics say the agency should have required tougher emissions rules.

U.S. EPA finalizing first-ever airplane emissions rules
https://kfgo.com/2020/12/28/u-s-epa-finalizing-first-ever-airplane-emissions-rules/
Fargo, ND, USA / The Mighty 790 KFGO | KFGO
Thomson Reuters
Dec 28, 2020 8:36 AM





WASHINGTON (Reuters) - The U.S. Environmental Protection Agency (EPA) on Monday will finalize the first-ever proposed standards regulating greenhouse gas emissions from airplanes, a spokeswoman told Reuters.

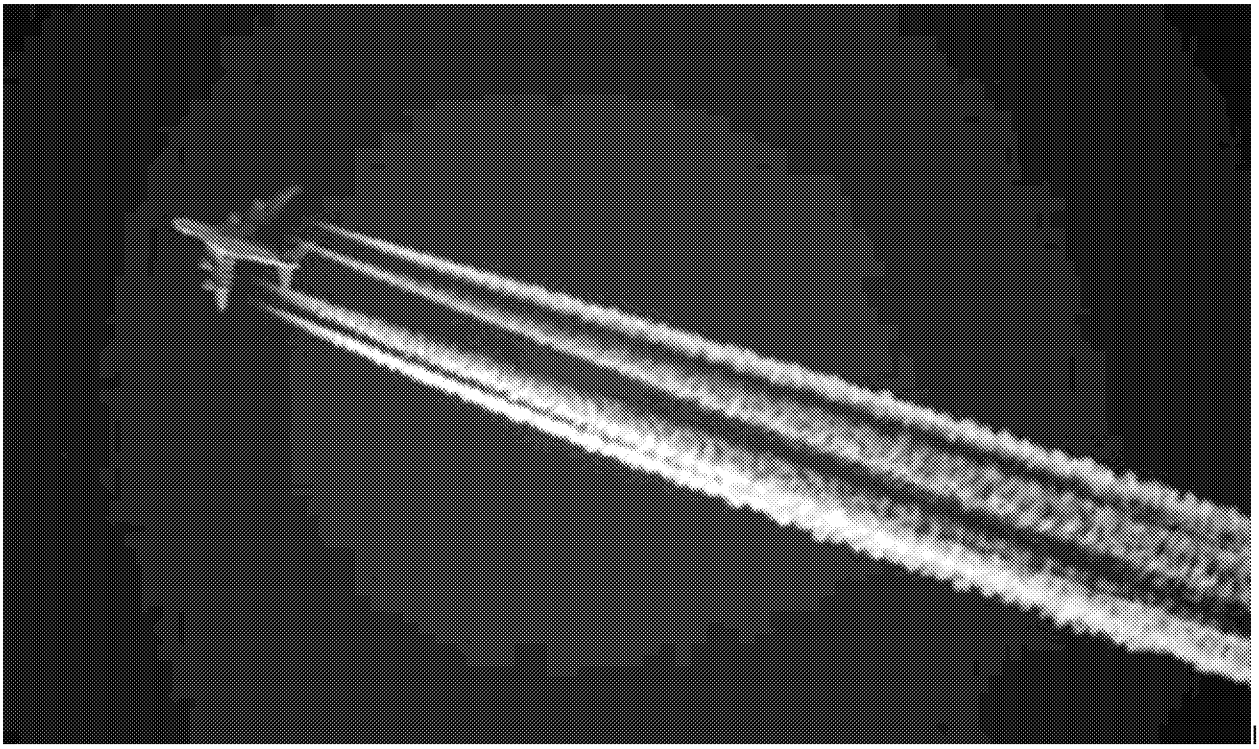
The EPA said in July its proposed requirements would align the United States with international standards. In 2016, the U.N. International Civil Aviation Organization (ICAO) agreed on global airplane emissions standards aimed at makers of small and large planes, including Airbus SE and Boeing Co, which both have backed the standards. Critics say the agency should have required tougher emissions rules.

US Environment Protection Agency finalizing first-ever airplane emissions rules
https://www.hindustantimes.com/environment/us-environment-protection-agency-finalizing-first-ever-airplane-emissions-rules/story-EWaZbYKKIzm3DfzcvpV0HP.html

The EPA said its new requirements for airplanes used in commercial aviation and for large business jets would align the United States with international standards.

ENVIRONMENT Updated: Dec 28, 2020, 22:36 IST

Reuters | Posted by Srivatsan K C
Washington


In 2016, the UN International Civil Aviation Organization (ICAO) agreed on global airplane emissions standards aimed at makers of small and large planes, including Airbus SE and Boeing Co, which both have backed the standards. (Reuters)

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In 2016, the UN International Civil Aviation Organization (ICAO) agreed on global airplane emissions standards aimed at makers of small and large planes, including Airbus SE and Boeing Co, which both have backed the standards.

The final rule “is vital for protecting the environment and supporting the sustainable growth of commercial aviation and the United States economy,” Boeing said on Monday in a statement.

Critics say the agency should have required tougher emissions rules.

Environmental Defense Fund international counsel Annie Petsonk said in a statement the EPA’s “do-nothing rule is totally inadequate in light of the climate crisis. It’s incumbent on the incoming Biden-Harris administration to move swiftly to tighten this standard.”

The EPA said in July the proposed requirements would apply to new-type designs as of January 2020 and to in-production airplanes or those with amended type certificates starting in 2028.

The EPA said Monday it anticipates nearly all affected airplanes to be compliant by the effective dates. The EPA said it expects "airplanes that are non-compliant will either be modified and re-certificated as compliant, will likely go out of production before the production compliance date of January 1, 2028, or will seek exemptions."

As a result "EPA is not projecting emission reductions associated with these GHG (greenhouse gas) regulations." It also does not project the rule "will cause manufacturers to make technical improvements to their airplanes that would not have occurred" otherwise.

In October, a group of 11 states led by California and the District of Columbia urged the EPA to strengthen the first-ever standards.

The 11 states and the District of Columbia said the EPA proposal would "lag existing technology by more than 10 years and would result in no GHG reductions at all compared to business-as-usual."

The airplanes covered by the proposed rule accounted for 10% of all US transportation greenhouse gas emissions and 3% of total US emissions. They have been the largest source of transportation greenhouse gas emissions not subject to rules. The new rules do not apply to military airplanes and take effect when formally published in the coming days.

EPA Administrator Andrew Wheeler said in July the proposal was based on "where the technology is today ... You can't really set the standard that can't be met."

The Federal Aviation Administration said Monday it expects to publish a proposed rule next year incorporating the EPA's emissions standard, including testing requirements and exemption procedures it will apply when certifying new airplanes.

EPA sets carbon limits for aircraft engines for the first time
https://www.washingtonexaminer.com/policy/energy/epa-sets-carbon-limits-first-time

by Abby Smith, Energy and Environment Reporter |

| December 28, 2020 11:25 AM
The Environmental Protection Agency has, for the first time, established carbon emissions standards for aircraft engines, adopting global climate rules the Obama administration helped negotiate.

EPA Administrator Andrew Wheeler, in a statement, touted the new rule as a "historic action" to reduce greenhouse gas emissions.

"This is the fourth concrete final regulation the Trump Administration's pragmatic approach to climate action has produced meaningful results without unnecessarily sacrificing American jobs or important domestic industries like our aircraft manufacturers," Wheeler said.

Other Trump EPA actions weakened Obama-era regulations limiting carbon dioxide from power plants, setting fuel economy standards for passenger cars, and reducing the potent greenhouse gas methane from oil and gas operations.

The EPA's aircraft rule, like its proposal, mirrors global greenhouse gas standards for new aircraft engines, using a fuel efficiency metric to encourage reductions in carbon dioxide and nitrous oxide. The International Civil Aviation Organization, of which more than 190 countries are members, adopted those limits in 2017 in a deal supported by major U.S. aircraft manufacturers.

The EPA, in its final rule, says adopting the ICAO limits "reflect U.S. efforts to secure the highest practicable degree of international uniformity in aviation regulations and standards." The agency also said many airplanes manufactured in the United States already meet the standards.

However, environmentalists and a dozen state attorneys general had urged the EPA to tighten the aircraft standards, arguing the agency's rule wouldn't do much to reduce greenhouse gas emissions from engines beyond business-as-usual.

The ICAO standards "lag existing technology by more than 10 years," wrote 12 attorneys general, led by California Attorney General Xavier Becerra, in comments to the EPA in October. "In fact, the EPA has not even considered any form of emission control that would reduce GHGs, despite the agency's determination that these emissions endanger public health and welfare."

Environmentalists are calling on the Biden administration to tighten the aircraft engine standards.

"This do-nothing rule is totally inadequate in light of the climate crisis," said Annie Petsonk, an international counsel for the Environmental Defense Fund, in a statement.

"That the EPA's rule is being finalized concomitantly with Congress issuing another multi-billion-dollar COVID-19 rescue package for airlines — with no enforceable requirements for airlines to improve their environmental performance — underscores the need for swift regulatory action by the next administration so that airlines put climate at the core of their recovery and build back better," she said.

US EPA finalising first-ever airplane emissions rules

https://www.channelnewsasia.com/news/business/us-epa-finalising-first-ever-airplane-emissions-rules-13855796

An airplane flies over Hartsfield–Jackson Atlanta International Airport in Atlanta, Georgia, U.S. Nov 23, 2020. (Photo: REUTERS/Chris Aluka Berry)

28 Dec 2020 10:40PM(Updated: 29 Dec 2020 01:11AM

WASHINGTON: The US Environmental Protection Agency (EPA) on Monday (Dec 28) said it was finalising the first-ever proposed standards regulating greenhouse gas emissions from airplanes.

The EPA said its new requirements for airplanes used in commercial aviation and for large business jets would align the United States with international standards.

In 2016, the UN International Civil Aviation Organization (ICAO) agreed on global airplane emissions standards aimed at makers of small and large planes, including Airbus and Boeing, which both have backed the standards.

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Critics say the agency should have required tougher emissions rules.

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The EPA said Monday it anticipates nearly all affected airplanes to be compliant by the effective dates. The EPA said it expects "airplanes that are non-compliant will either be modified and re-certificated as compliant, will likely go out of production before the production compliance date of Jan 1, 2028, or will seek exemptions".

As a result "EPA is not projecting emission reductions associated with these GHG (greenhouse gas) regulations." It also does not project the rule "will cause manufacturers to make technical improvements to their airplanes that would not have occurred" otherwise.

In October, a group of 11 states led by California and the District of Columbia urged the EPA to strengthen the first-ever standards.

The 11 states and the District of Columbia said the EPA proposal would "lag existing technology by more than 10 years and would result in no GHG reductions at all compared to business-as-usual."

The airplanes covered by the proposed rule accounted for 10% of all U.S. transportation greenhouse gas emissions and 3 per cent of total US emissions. They have been the largest source of transportation greenhouse gas emissions not subject to rules. The new rules do not apply to military airplanes and take effect when formally published in the coming days.

EPA Administrator Andrew Wheeler said in July the proposal was based on "where the technology is today ... You can't really set the standard that can't be met".

The Federal Aviation Administration said Monday it expects to publish a proposed rule next year incorporating the EPA's emissions standard, including testing requirements and exemption procedures it will apply when certifying new airplanes.

EPA finalizes greenhouse gas regs for airlines
https://thehill.com/policy/energy-environment/531838-epa-finalizes-greenhouse-gas-regs-for-airlines-not-expected-to
BY REBECCA BEITSCH - 12/28/20 02:18 PM EST 51

© getty

The Environmental Protection Agency (EPA) on Monday finalized a first-ever regulation to limit airline emissions, though it said it did not expect it to actually reduce emissions.

The rule adopts the 2017 emissions standards from the International Civil Aviation Organization, the United Nations's top aviation authority, which aimed to reduce greenhouse gas emissions from new aircraft by 4 percent over 12 years.

But both critics and the EPA found the standards would do little to improve emissions as they mirror advancements the industry is already making.

"EPA is not projecting emission reductions associated with today's proposed GHG regulations," the agency wrote in the rule.

Transportation is the largest source of greenhouse gas emissions in the U.S. and pollution from air travel is currently responsible for 9 percent of transportation emissions. However, it is also one of the fastest growing sources of greenhouse gas emissions, rising by 44 percent in the U.S. over the past 10 years.

"This rule is especially infuriating because there are effective ways for the aviation industry to modernize and decarbonize," Liz Jones, an attorney at the Center for Biological Diversity's Climate Law Institute, said in a release. "What we desperately need are technology-forcing standards to get the industry on track."

Her group has pushed for airlines to improve fuel efficiency by 3.5 percent each year until the industry is able to electrify their fleet.

Some Democratic senators have called for more stringent emissions caps on airlines as part of the relief included for pandemic-disrupted airlines in recovery packages, but no provisions have been included in any of the legislation.

"This do-nothing rule is totally inadequate in light of the climate crisis," Annie Petsonk, international counsel at the Environmental Defense Fund, said in a release. "That the EPA's rule is being finalized concomitantly with Congress issuing another multi-billion-dollar COVID-19 rescue package for airlines — with no enforceable requirements for airlines to improve their environmental performance — underscores the need for swift regulatory action by the next administration so that airlines put climate at the core of their recovery."

Airlines for America, the industry's lobby, did not immediately respond to request for comment.

The EPA called the rule precedent setting as the administration is the first to regulate greenhouse gas emissions from aircraft, part of a "pragmatic approach to climate action [that] has produced meaningful results without unnecessarily sacrificing American jobs."

Climate Change Linked to Fatal Skin Disease in Dolphins
https://www.complex.com/life/2020/12/climate-change-skin-disease-dolphins

BYALEX MONTROSE
Dec 28, 2020

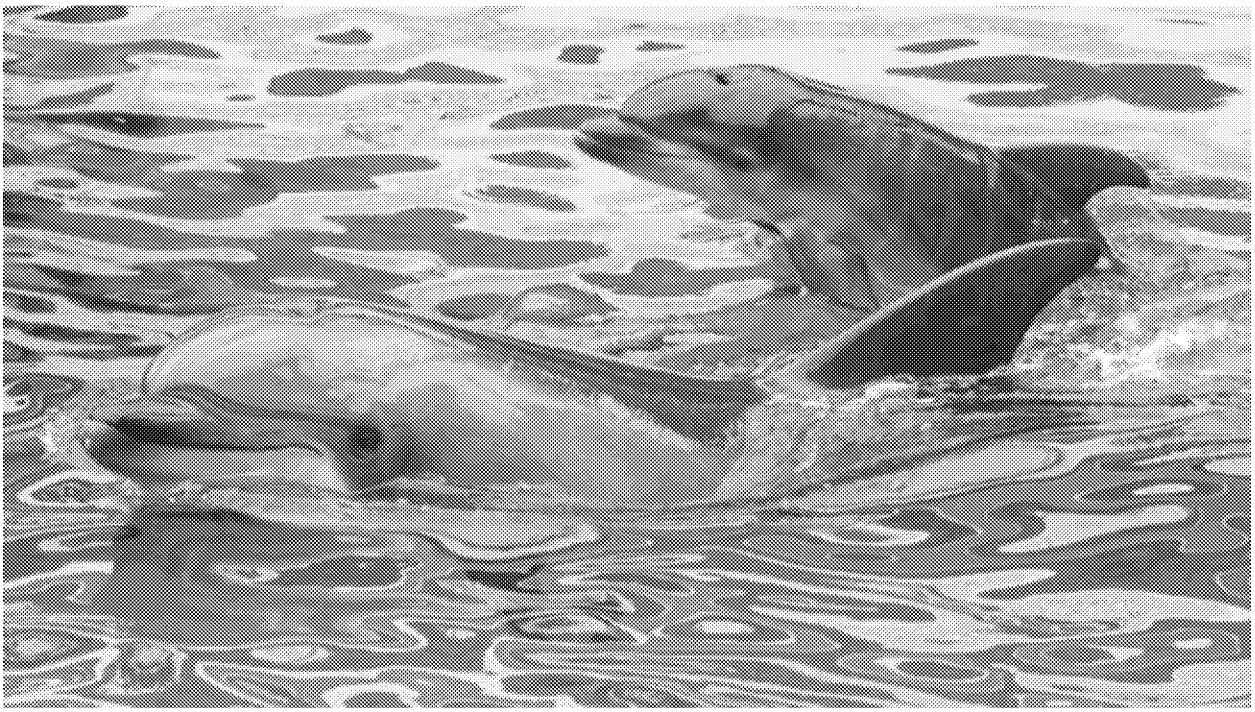

Image via Getty
On top of raging wildfires and intensifying hurricanes, the ocean's angelic and intelligent mammals, a.k.a. dolphins, are severely suffering from the impacts of the climate crisis. An international study recently published in *Scientific Reports* links a potentially-fatal skin disease in the animals to climate change.
According to the study, dolphins have developed a novel "fresh-water skin disease (FWSD)" that causes their skin to take on water to the point of their cells bursting. This happens as a result of an influx of freshwater reducing the salinity, or saltiness, of water along the coasts at a rate that dolphins have not been able to adapt to.

Scientists began investigating the previously unknown disease after seeing large numbers of dolphins die in 2007 and 2009.
"They were having these die-offs in dolphins, and we didn't know what they were," study author Pádraig Duignan told EcoWatch. "We couldn't find a link to any disease that had been described in the literature before. Then we looked to all this data. Sure enough, we saw that it's part of a pattern."
According to the study, when dolphins are in an environment that experiences a quick increase in freshwater, their skin cells take on the water through osmosis and swell. Some of these cells pop and create holes which can later become ulcers or lesions until "the skin no longer can serve as a healthy barrier against the outside world."

All the skin damage caused by FWSD can leave the dolphins extremely vulnerable, leading to organ dysfunction, infections, or death, among other health defects.

"Some of these animals lose 70% of their skin. There's no way back from that in the wild," Duignan said.

Outbreaks of this skin disease in dolphins have been documented in Louisiana, Mississippi, Alabama, Florida and Texas, where surges in freshwater result from increasing hurricanes and flooding in the Gulf region, linked to climate change. Unfortunately, researchers believe it's only going to get worse.

"We are concerned now about how this is being seen more frequently," Duignan said. "This year was a record hurricane season, and who knows about next year. More Katrinas and more Harveys might be on their way, and each time, this will be happening to the dolphins. I think it will get worse."

Kenneth T. Labbe
U.S. Environmental Protection Agency
Office of Public Affairs
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
Office: 202-564-1486
Cell: 202-740-3770

Message

From: Talbert-Duarte, Angelia [talbert-duarte.angelia@epa.gov]
Sent: 10/14/2020 6:04:12 PM
To: Packard, Elise [Packard.Elise@epa.gov]
Subject: FW: ADD meeting agenda
Attachments: ADD FINAL Agenda_10.14.2020.docx; Flexibilities during the 2020 Election.pdf

Hi Elise,

Would you please forward the meeting invite to Wendel? Jim asked him to join for transition updates? I am having him join at 3.

Thanks

Angelia Talbert-Duarte
Associate General Counsel
Civil Rights and Finance Law Office
(202) 564-8158 – Phone
(202) 564-5416 - Fax

From: Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>
Sent: Wednesday, October 14, 2020 1:54 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>
Subject: ADD meeting agenda

Final meeting agenda + attachment

Angelia Talbert-Duarte
Associate General Counsel
Civil Rights and Finance Law Office
(202) 564-8158 – Phone
(202) 564-5416 - Fax

Message

From: Levine, MaryEllen [levine.maryellen@epa.gov]
Sent: 1/12/2021 1:44:51 PM
To: Packard, Elise [Packard.Elise@epa.gov]
Subject: RE: Tuesday Morning Musings

Thank you for your wonderful note this morning. I have been thinking about finding the civil servants' oath I took in 1988 when I joined EPA and saying it out load again to fortify my resolve.

So much work to do.

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Tuesday, January 12, 2021 8:30 AM
To: OGC ALL USERS <OGC_ALL_USERS@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Subject: Tuesday Morning Musings

I can't start my musings this week without expressing my horror at the attack on the Capitol and our democracy. The images of a mob breaking into our Capitol and desecrating our civic spaces will forever be etched in our collective memories, an historic moment not to be honored but to be remembered and learned from. An example of what can be if we do not work together to protect and nourish our democratic norms. The image of the confederate flag in the rotunda continues to play in my mind, and the stark contrast to the response to the demonstrations in June, after the killing of George Floyd and others, resonates and serves as a call to renew our commitment to an anti-racist society. I was proud that after the Capitol was secured, our Congress worked through the night to ensure that the certification of Joe Biden's election as the next President of the United States was completed. Duty to the Constitution and Service to the American people prevailed. It is the same duty and service that I have experienced from all of you every day I have had the privilege to work with you, and it is my hope that it is that duty and service that will move this country forward, away from anarchy and mob violence, and towards a collective experience of dignity, equality, and community. We know that folks continue to process that experience (especially those who live near the Capitol and have altered their lifestyle to deal with this new reality); please reach out to the Front Office and the ADDs if we can help in anyway.

It is odd to go from the existential nature of grappling with that reality, to the more mundane aspects of an office, but that is the nature of musings. I am pleased to announce that, at the request of some staff during office hours, I have worked with OMS to get guidance on attaching our Government issued computers to any home printers we might wish to use. The guidance is attached. OMS is not equipped to provide tech support for this, it is purely in response to requests from staff who, as a matter of personal choice, want to use their home printers. Please remember to safeguard and manage your paper records in the same manner you handle electronic records, as federal records can be created in any form or format. There are additional requirements to keep in mind if you are printing documents that relate to a matter that is the subject of a litigation hold or responsive to an open FOIA request, so remember to print with care.

Inauguration Day, Wednesday January 20, is a holiday for some EPA employees. Employees who normally report to the DMV area, including those who are teleworking due to COVID-19, will receive the benefit of the additional holiday if the following conditions apply to them:

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REMINDER – Today is the Awards Ceremony – come help celebrate the remarkable achievements of your colleagues.

As we finish one administration and prepare for a new one, Jim and I are so proud to help lead the remarkable staff of OGC who have dedicated their careers to creating a civil service, whose duty is to ensure continuity for the American people, and on whose skill and expertise elected representatives rely to execute the policy for which the electorate has voted.

Thanks for everything you do.

Elise

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

Message

From: Monson, Mahri [Monson.Mahri@epa.gov]
Sent: 1/12/2021 1:55:53 PM
To: Packard, Elise [Packard.Elise@epa.gov]; Cole, Joseph E. [cole.josephe@epa.gov]
CC: Patrick, Monique [Patrick.Monique@epa.gov]
Subject: Agenda for today's 11:30 Bi-Weekly Check in w/ ELMS Coordinator

Elise and Joe,
Here are items I'd like to cover in our 1130 meeting today; I'll ask when we start whether you have anything to add.

Thanks!
Mahri

AGENDA

1. *(Thank you for sending OCFO the signed PDR!)*
2. Jan MBR on Inauguration Day--reschedule?
3. Stefan Martiyan at Jan or Feb MBR on Problem Up-Leveling and Response System (PURS)
4. Elise's Deep Dive Topic for Jan?
5. Recommend canceling Thursday's "Prep for the MBR" 430 meeting--ok?
6. Check in on ELMS Coordinator (and other OGC ELMS) role(s) going forward?

Created with Microsoft OneNote 2016.

Message

From: Simons, Andrew [Simons.Andrew@epa.gov]
Sent: 1/12/2021 2:23:32 PM
To: Packard, Elise [Packard.Elise@epa.gov]
Subject: SES hiring freeze

Not sure if you've seen this. ☹

https://www.govexec.com/management/2021/01/opm-issues-post-election-ses-hiring-freeze-weeks-later-previous-administrations/171329/

Andrew Simons
Acting Associate General Counsel
Cross-Cutting Issues Law Office
U.S. Environmental Protection Agency
Tel. 202-564-3649
WJC-N 7526E

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Please consider the environment before printing this email.

Message

From: Wooden-Aguilar, Helena [Wooden-Aguilar.Helena@epa.gov]
Sent: 1/13/2021 1:47:49 PM
To: Payne, James (Jim) [payne.james@epa.gov]; Vizian, Donna [Vizian.Donna@epa.gov]; Carpenter, Wesley [Carpenter.Wesley@epa.gov]; Richardson, RobinH [Richardson.RobinH@epa.gov]; Bloom, David [Bloom.David@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; McCluney, Lance [McCluney.Lance@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]
CC: Packard, Elise [Packard.Elise@epa.gov]
Subject: RE: Biden to Appoint Acting Agency Heads Due to Transition Delays - WSJ

Thanks Jim. Helena

Helena Wooden-Aguilar
Deputy Associate Administrator
Office of Policy
U.S. Environmental Protection Agency
202-564-0792 (Work)
202-302-6846 (Cell)
wooden-aguilar.helena@epa.gov

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Wednesday, January 13, 2021 8:36 AM
To: Vizian, Donna <Vizian.Donna@epa.gov>; Carpenter, Wesley <Carpenter.Wesley@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Bloom, David <Bloom.David@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; McCluney, Lance <McCluney.Lance@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>
Cc: Packard, Elise <Packard.Elise@epa.gov>
Subject: Biden to Appoint Acting Agency Heads Due to Transition Delays - WSJ

As mentioned at planning meet this am.

one excerpt:
"Mr. Biden is expected to sign dozens of orders on his first day designating nonpolitical appointees to lead agencies on a temporary basis until his nominees are confirmed by the Senate, transition officials said."

https://www.wsj.com/articles/janet-yellen-senate-confirmation-hearing-for-treasury-secretary-set-for-jan-19-11610467975

Sent from my iPhone

Message

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 1/14/2021 6:59:37 PM
To: Packard, Elise [Packard.Elise@epa.gov]
Subject: RE: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

As briefly discussed, never mind on below – thanks for checking.

From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Thursday, January 14, 2021 1:52 PM
To: Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

Based on Donna's ask, do you want to be added?

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Thursday, January 14, 2021 1:43 PM
To: Packard, Elise <Packard.Elise@epa.gov>
Subject: Re: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

Agree, not for COOP. If incoming appointees will not be in the bldg, then never mind here.

Sent from my iPhone

> On Jan 14, 2021, at 1:40 PM, Packard, Elise <Packard.Elise@epa.gov> wrote:
>
> I think only if other AA types would be on – hard to see why you'd have to go in for COOP, more likely not go in, but I can chck.
>
> Elise B. Packard
> Deputy General Counsel for Operations
> U.S. EPA Office of General Counsel, Rm. 4020A
> (202) 564-7729
>
> ---
>
> **From:** Payne, James (Jim) <payne.james@epa.gov>
> **Sent:** Thursday, January 14, 2021 1:32 PM
> **To:** Packard, Elise <Packard.Elise@epa.gov>
> **Subject:** FW: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM
>
> Include me for OGC? For unlikely event there'd be a sufficiently high need.
>
> ---
>
> **From:** Vizian, Donna <Vizian.Donna@epa.gov>
> **Sent:** Thursday, January 14, 2021 12:57 PM

To: Career Deputy Assistant Administrators <Career_Deputy_Assistant_Administrators@epa.gov>
Cc: Jackson, Yvette <Jackson.Yvette@epa.gov>; Bellerose, William <Bellerose.William@epa.gov>
Subject: FW: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

Hi Everyone, please see below. Do you need to have anyone in tomorrow through Wednesday? If you do, please send the names to Yvette and Bill Bellerose (copied here). If a name is not sent to the secret service, the person will ot be allowed in.

From: Jackson, Yvette <Jackson.Yvette@epa.gov>
Sent: Thursday, January 14, 2021 12:51 PM
To: Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Daniels, Alva <daniels.alva@epa.gov>
Subject: RE: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

Tomorrow through inauguration day.

From: Hitchens, Lynnann <hitchens.lynnann@epa.gov>
Sent: Thursday, January 14, 2021 12:49 PM
To: Jackson, Yvette <Jackson.Yvette@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Daniels, Alva <daniels.alva@epa.gov>
Subject: RE: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

What is the timeframe for the access? Tomorrow through Inauguration Day? Through the end of next week?

Thanks,

Lynnann

Lynnann Hitchens
Acting Deputy Assistant Administrator for
Administration and Resources Management
Office of Mission Support
US EPA
P: 202-564-3184
M: 202-617-0738

From: Jackson, Yvette <Jackson.Yvette@epa.gov>
Sent: Thursday, January 14, 2021 12:47 PM
To: Vizian, Donna <Vizian.Donna@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>
Cc: Daniels, Alva <daniels.alva@epa.gov>
Subject: FW: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM
Importance: High

Good afternoon Donna and Lynnann,

Bill Bellerose received a call from the USSS requesting a list of employees deemed essential and need access to the facility beyond tomorrow. The list was requested by this afternoon but we could possibly put it off until tomorrow morning. See Bill's short note below and let me know if you have questions.

Thanks,
Yvette

From: Bellerose, William <Bellerose.William@epa.gov>
Sent: Thursday, January 14, 2021 12:03 PM
To: Stewart, Neil <Stewart.Neil@epa.gov>; kevin.sheesley@gsa.gov; Karlton Chesson - WPM1D <karlton.chesson@gsa.gov>; Zanaya Donato - WPM1D <zanaya.donato@gsa.gov>; james.duvall@gsa.gov
Cc: HQSECURITY <HQSECURITY@epa.gov>
Subject: Access lit for GSA and EPA
Importance: High

Neil and GSA Team,

I just received a call from Secret Service and they have requested a list of all the staff that are deemed essential and will require building access during the Inauguration. The Secret Service is requesting that this list be provided to them today, but it may be tomorrow.

They are looking to begin securing the building tomorrow and the list will be used by the Secret Service to determine who is supposed to be in the building.

Please send me the access lists so I can send them on to the Secret Service.

Thank you,

William "Bill" Bellerose
Security Specialist
Headquarters Operations Branch
Facilities Management and Services Division
Desk: (202) 566-2191
Cell phone: (202) 510-5831

Message

From: Epp, Timothy [Epp.Timothy@epa.gov]
Sent: 1/19/2021 9:22:07 PM
To: Packard, Elise [Packard.Elise@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]
Subject: 1/14/2021 Letter by FOIA groups to Congress -- EPA is named.
Attachments: Envtl Groups Ltr Requesting FOIA Reform 01.14.21 .pdf

Importance: High

Hi Elise and Wendy – see attached letter that CBD, Sierra Club and other sent to various Senate and House Chairs regarding proposals for FOIA reform. Significantly, they identify FOIA disclosure delays at DOI, EPA and other agencies during the Trump Administration as the grounds for their proposals. They identify two matters at EPA: one appears to be fully resolved regarding Pruitt records but the other identifies EPA's conduct in litigation in late 2020 (request by CBD pertaining to discussions with CropLife and industry groups).
Tim

Timothy R. Epp
Associate General Counsel | National FOIA Office
U.S. Environmental Protection Agency | Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC 2310A)
Washington, D.C. 20460 | WJCN 7309B
Phone (202) 564-2830 | epp.timothy@epa.gov

National FOIA Office
EPA Office of General Counsel

Message

From: Nishida, Jane [Nishida.Jane@epa.gov]
Sent: 1/21/2021 1:52:09 AM
To: Payne, James (Jim) [payne.james@epa.gov]
CC: Hoffer, Melissa [hoffer.melissa@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]
Subject: RE: Agency Leadership Announcement

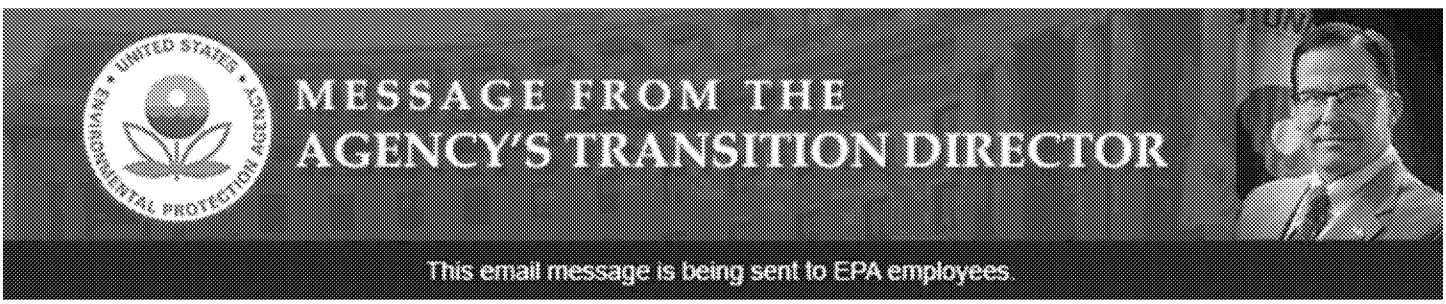
Thanks Jim. Look forward to working with you all.

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Wednesday, January 20, 2021 8:27 PM
To: Nishida, Jane <Nishida.Jane@epa.gov>
Cc: Hoffer, Melissa <hoffer.melissa@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: FW: Agency Leadership Announcement

Congratulations Jane! Elise and I are actively engaged with transition, and let us know any further way we can help. Also including here Melissa Hoffer, Principal Deputy General Counsel, to ensure you're connected. Melissa comes from the Massachusetts Attorney General Office, where she headed environmental litigation and other areas. Jim 202-672-3727 cell

---

From: MassMailer <massmailer@epa.gov>
Sent: Wednesday, January 20, 2021 8:00 PM
To: MassMailer <massmailer@epa.gov>
Subject: Agency Leadership Announcement



Dear Colleagues,

As you know, President Joseph Biden was inaugurated as our 46th President at noon today, so I am sharing some important transition information with all of you.

Shortly after being sworn in, President Biden signed an Executive Order naming acting heads of federal agencies, pending Senate confirmation of his nominees. For EPA, the President appointed Jane Nishida to serve as EPA's Acting Administrator until the new EPA Administrator is confirmed. Jane currently serves as the Principal Deputy Assistant Administrator for the Office of International and Tribal Affairs (OITA) where she is responsible for the full range of EPA's international and tribal programs. Jane has over 30 years of environmental experience working in federal and state government, and international and nongovernmental organizations. Prior to joining EPA in 2011, she served as the Senior Environmental Institutions Specialist at the World Bank, and from 1995 to 2002, she served as the Secretary of Maryland's Department of the

Environment. Jane received a Bachelor of Arts in International Affairs from Lewis & Clark College in Portland, Oregon, and a Juris Doctorate from Georgetown Law Center in Washington, D.C.

I know that you all will join me in supporting Jane as she assumes this important responsibility.

We appreciate everyone's support of the agency's transition activities over the past several months. I am proud of our work with the Biden-Harris Agency Review Team and extend my gratitude to the AO, and the national program and regional offices who provided a substantial level of support to this transition effort.

Wes Carpenter
Agency Transition Director

Message

From: Blake, Wendy [Blake.Wendy@epa.gov]
Sent: 1/22/2021 10:33:47 PM
To: Packard, Elise [Packard.Elise@epa.gov]
Subject: FW: Address from President Biden to the Federal Workforce

---

From: Nelson, Leverett <nelson.leverett@epa.gov>
Sent: Friday, January 22, 2021 5:11 PM
To: Blake, Wendy <Blake.Wendy@epa.gov>
Subject: FW: Address from President Biden to the Federal Workforce

As promised. Good talking to you.

-Rett

From: Nelson, Leverett
Sent: Friday, January 22, 2021 12:54 PM
To: R5 ORC EPA <R5_ORC_EPA@epa.gov>
Subject: Address from President Biden to the Federal Workforce

Dear ORC:

Here is the link:
https://m.youtube.com/watch?v=4bZqMdkoFAE&feature=share&fbclid=IwAR1BMMQVKftzLU5d1mb04sWgCU1xVdle2tga_Tk1FOrGkWcjCCkOXRHzTvw#dialog

President Biden's description of "core" values—humility, trust, collegiality, diversity and competence—definitely resonated with me. I think/hope/expect that we all share those values in ORC.

I hope that you have a moment to watch the video, and that you find it inspiring. Have a great weekend.

-Rett

Message

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 1/24/2021 10:54:44 PM
To: Packard, Elise [Packard.Elise@epa.gov]
Subject: Ex-DOJ Official Called 'Radioactive' After Alleged Election Plot - Bloomberg

FYI

https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.bloomberg.com%2Fnews%2Farticles%2F2021-01-23%2Fex-doj-official-called-radioactive-after-alleged-election-plot&data=04%7C01%7CPackard.Elise%40epa.gov%7C27819ced49e843da754408d8c0bb0aac%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637471256847660215%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=B%2BiYu2FkO6q4AQEgmdjsOeort%2F%2Fs1Bj3Uhc9jXMgXO8%3D&reserved=0

Sent from my iPhone

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 1/25/2021 12:06:20 AM
To: Packard, Elise [Packard.Elise@epa.gov]; Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]
Subject: RE: Tuesday Morning Musings

Powerful.

And, this printer instruction is ***exactly*** what I need. Been flummoxed.

From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Friday, January 22, 2021 6:29 PM
To: Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Subject: FW: Tuesday Morning Musings

Not a typical musings, but the printer information will likely be useful to you. ☺

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Packard, Elise
Sent: Tuesday, January 12, 2021 8:30 AM
To: OGC ALL USERS <OGC_ALL_USERS@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Subject: Tuesday Morning Musings

I can't start my musings this week without expressing my horror at the attack on the Capitol and our democracy. The images of a mob breaking into our Capitol and desecrating our civic spaces will forever be etched in our collective memories, an historic moment not to be honored but to be remembered and learned from. An example of what can be if we do not work together to protect and nourish our democratic norms. The image of the confederate flag in the rotunda continues to play in my mind, and the stark contrast to the response to the demonstrations in June, after the killing of George Floyd and others, resonates and serves as a call to renew our commitment to an anti-racist society. I was proud that after the Capitol was secured, our Congress worked through the night to ensure that the certification of Joe Biden's election as the next President of the United States was completed. Duty to the Constitution and Service to the American people prevailed. It is the same duty and service that I have experienced from all of you every day I have had the privilege to work with you, and it is my hope that it is that duty and service that will move this country forward, away from anarchy and mob violence, and towards a collective experience of dignity, equality, and community. We know that folks continue to process that experience (especially those who live near the Capitol and have altered their lifestyle to deal with this new reality); please reach out to the Front Office and the ADDs if we can help in anyway.

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REMINDER – Today is the Awards Ceremony – come help celebrate the remarkable achievements of your colleagues.

As we finish one administration and prepare for a new one, Jim and I are so proud to help lead the remarkable staff of OGC who have dedicated their careers to creating a civil service, whose duty is to ensure continuity for the American people, and on whose skill and expertise elected representatives rely to execute the policy for which the electorate has voted.

Thanks for everything you do.

Elise

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

Message

From: Berg, ElizabethG [Berg.ElizabethG@epa.gov]
Sent: 1/25/2021 4:21:32 PM
To: Packard, Elise [Packard.Elise@epa.gov]
Subject: RE: Momentum - FYI Plan to Submit Statement to OGC Immediate Office Leadership

Hi Elise,

Following up on our conversation, this is the written advice we received from Victoria Clarke regarding the survey:

- I understand that so far everyone in Momentum has been abiding by the limited use policy and has been working on this effort during their non-working hours. There's a Momentum teams page, but a Microsoft Teams page for coordinating this effort does not seem like it violates the Agency's limited use policies as it is a de minimis use of Agency resources. Kudos to everyone for remembering what Allison told them previously.

- We talked about a possible survey that would be sent to OGC employees. The survey would be brief and geared towards assessing if individuals in OGC supported the basic principles that the momentum group is trying to convey. Given that it is a short survey, it would be fine to distribute this to employees in OGC, provided that there is language stating that folks should take the survey during non-work hours and are supposed to answer the questions in their personal capacities. You can use an Agency email address to submit and receive answers, as it falls into the de minimis use exception, because I don't read this survey as falling into the "mass mailings and chain letter" prohibition in the limited use policy.

Thanks,
Liz

Elizabeth G. Berg
U.S. Environmental Protection Agency
Office of General Counsel
Solid Waste and Emergency Response Law Office (WJC North 7013B)
(202) 564-0905, *berg.elizabethg@epa.gov*

From: Berg, ElizabethG
Sent: Monday, January 25, 2021 11:04 AM
To: Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>
Cc: Garfinkle, Stacey <Garfinkle.stacey@epa.gov>; Hoppe, Allison <hoppe.allison@epa.gov>
Subject: Momentum - FYI Plan to Submit Statement to OGC Immediate Office Leadership

Good Morning Elise and Jim,

I am writing to inform of you of Momentum's plans to submit a statement to OGC Immediate Office leadership (including career and incoming Biden Administration staff) to urge the front office to serve as a partner and an ally in OGC's antiracism work. As described more fully below, we plan to circulate a survey today, Monday January 25, to gauge general support for this statement, with the expectation that we would submit the statement to the Immediate Office no later than this Friday January 29.

As I believe you are aware, Momentum is a staff-led effort within OGC. In October 2020, many of us in our personal capacities issued a statement in opposition to Executive Order 13950, *Combating Race and Sex Stereotyping*, and its related guidances. A number of OGC staff signed on to that statement and continue to seek robust action on antiracism initiatives in OGC.

Momentum's next effort is to issue a statement to the front office highlighting the urgent need to continue and grow OGC's antiracism work. We do not plan to obtain signatures. Rather, we plan to send a survey to OGC Associates, Directors, and staff to gauge support for this statement. That survey will be circulated later today. We expect to finalize the statement and send to OGC Immediate Office leadership no later than Friday January 29. We have consulted with Ethics, and this effort is being done in our personal capacities.

I am happy to discuss this effort with you over the phone and answer any questions you may have, but considering how busy you must be with transition matters at this time, we thought it would be preferable to just email you with an update.

Thanks,

Liz Berg
Allison Hoppe
Stacey Garfinkle

Elizabeth G. Berg
U.S. Environmental Protection Agency
Office of General Counsel
Solid Waste and Emergency Response Law Office (WJC North 7013B)
(202) 564-0905, berg.elizabethg@epa.gov

Message

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 1/26/2021 7:00:45 PM
To: Packard, Elise [Packard.Elise@epa.gov]
Subject: RE: Tuesday Musings

Thank you for including me – and great messages throughout - with fun reference to Queen's Gambit!

From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Tuesday, January 26, 2021 1:04 PM
To: OGC ALL USERS <OGC_ALL_USERS@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Subject: Tuesday Musings

Happy Tuesday all,

First musings of the new Administration.

This Week

I wanted to start by welcoming our new OGC folk, Melissa Hoffer is the Principal Deputy General Counsel, and, by virtue of that, is Acting General Counsel. Dimple Chaudhary is the Deputy General Counsel for Nationwide Resource Protection Programs. Their bios were included in the e-mail from the Chief of Staff introducing them to you last Thursday. We are also anticipating the arrival of one more Deputy General Counsel next week. We are still determining who will specialize in what area, so you may see any one of them for a while in your meetings. If you need to be in touch with them, Monique Patrick is supporting Melissa and Lila Razor is supporting Dimple, and you should continue to e-mail OGC Immediate Office Support to set up meetings. Jim and I are excited to welcome our new team and are looking forward to an active period as everyone begins to implement the Biden agenda and learn about the Federal government, EPA and OGC in particular.

In further news, our former General Counsel, Avi Garbow had returned to EPA's Office of the Administrator on a short-term basis to help facilitate the transition. So you may find him back in some of your meetings!

For those of you who have not had a chance to listen, I commend to you President Biden's address to career employees. He talked about appreciating government core values of humility, trust, collegiality, diversity and competence, many of the same underlying principles of the OGC core values. He also said that "America is defined, in my view, by a single word, possibilities." For those of you who may remember my possibilities sign from the days when we were actually in the office, I particularly loved this one. I start each day with the question "who am I as a possibility today?" If you haven't had a chance to see it you can find it at: https://www.youtube.com/watch?app=desktop&v=4bZqMdkoFAE&feature=share&fbclid=IwAR1BMMQVKftzLU5d1mb04sWgCU1xVdIe2tga_Tk1FOrGkWcjCCkOXRHzTvw#dialog

In case you haven't had a chance to look, President Biden has rescinded both Executive Order 13950, *Combating Race and Sex Stereotyping,* and the Executive Order establishing a new Schedule F. There are two new Executive Orders in these areas: Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government and Executive Order on Protecting the Federal Workforce that we will be working to achieve in the coming months and I recommend reading. I greatly appreciate the consistent messages on the importance and value of the federal career employees.

As the Chief of Staff mentioned, there is also a new Executive Order on addressing COVID in the Federal workspace https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-the-federal-workforce-and-requiring-mask-wearing/ and a recent OMB memo with more guidance for agencies https://www.whitehouse.gov/wp-content/uploads/2021/01/M-21-15.pdf. We are beginning to work

across the agency to address that guidance– more to come. In a nutshell though it encourages telework, requires masks and sets a 25% limit on building occupancy when there is high community prevalence or transmission, although there are exceptions.

A reminder that tomorrow at noon the agency will honor the life and legacy of Dr. Martin Luther King Jr. via a Teams Live Event. Our own Lilian Dorka, Director of the External Civil Rights Office will be on a panel discussing the current state of Civil Rights and its path forward. I invite you all to join!

Musings

I have to say that for the first time in COVID my family and I actually dove into Netflix series watching. With our son, we started Queen's Gambit – which is a little depressing for me (I really enjoy musicals and other "happy" pieces), but well done and interesting (Elliott and Bryan loved it). Bryan said "but it's about female empowerment" I said I prefer the empowerment without tranquilizers, but I do like it when she beats people at chess! Then Bryan and I started watching Bridgerton – much more my speed so far. Pretty costumes, strong characters and nothing too dismal yet. It was actually quite lovely to sit still and lose ourselves in television.

Have a great day.

Elise

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

Message

From: Anderson, Steve [Anderson.Steve@epa.gov]
Sent: 1/26/2021 6:05:39 PM
To: OGC Immediate Office MGMT [OGC_Immediate_Office_MGMT@epa.gov]; OGC Immediate Office Support [OGCFrontOfficeSupportStaff@epa.gov]
CC: Cole, Joseph E. [cole.josephe@epa.gov]; Fisher, Bethany [fisher.bethany@epa.gov]; Kaczmarek, Chris [Kaczmarek.Chris@epa.gov]
Subject: New Notice of Intent - TSCA
Attachments: 21-000-1668.pdf

On behalf of Asbestos Disease Awareness Organization et al, Sussman & Associates has filed a notice of intent to sue under section 20(a)(2) of TSCA in order "to compel the Environmental Protection Agency (EPA) to perform its non-discretionary duty to address the use and disposal of 'legacy' asbestos in its risk evaluation for asbestos under TSCA section 6(b). Legacy asbestos was not included in the final risk evaluation for asbestos recently issued by the Trump EPA."

//

Participating groups/individuals
Asbestos Disease Awareness Organization
American Public Health Association
Center for Environmental Health
Environmental Information Association
Safer Chemicals Healthy Families - A Program of Toxic-Free Future
Vermont Public Interest Research Group
Barry Castleman, ScD
Arthur Frank, MD, PhD
Raja Flores, MD
Philip Landrigan, MD, MSc
Richard Lemen, PhD, MSPH
Celeste Monforton, DrPH, MPH

Steve Anderson | 202.564.3137
Attorney-Advisor | Pesticides and Toxic Substances Law Office
U.S. EPA Office of General Counsel | anderson.steve@epa.gov

Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 1/28/2021 12:30:17 AM
To: Conrad, Daniel [conrad.daniel@epa.gov]; Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]
Subject: RE: OGC

Thank, Dan.

From: Conrad, Daniel <conrad.daniel@epa.gov>
Sent: Wednesday, January 27, 2021 4:42 PM
To: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: OGC

FYI:
https://m.huffpost.com/us/entry/us_5f9c6e7cc5b6cfec2f6d844b?7v

https://www.lgbtqnation.com/2020/11/epa-employees-launch-revolt-trumps-racist-policies-just-hours-polls-open/

https://thehill.com/policy/energy-environment/524318-epa-legal-staff-push-back-against-trump-order-on-diversity?amp

https://www.eenews.net/stories/1063717663/print

Daniel H. Conrad
Acting Associate Deputy General Counsel
U.S. Environmental Protection Agency
Office of General Counsel
Office: (202) 564-0903
Cell: (202) 507-2946

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From: Conrad, Daniel
Sent: Wednesday, January 27, 2021 4:32 PM
To: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: OGC

Pruitt Settlement Directive and Memo attached, they are on the web archive here:

https://archive.epa.gov/epa/newsroom/directive-promoting-transparency-and-public-participation-consent-decrees-and-settlement.html

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From: Conrad, Daniel
Sent: Wednesday, January 27, 2021 4:16 PM
To: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: OGC

Latest version of staff Q's in offline version.

Daniel H. Conrad
Acting Associate Deputy General Counsel
U.S. Environmental Protection Agency
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-----Original Appointment-----
From: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Sent: Monday, January 25, 2021 5:18 PM
To: Hoffer, Melissa; Chaudhary, Dimple; Packard, Elise; Payne, James (Jim); Conrad, Daniel
Cc: Razor, Lila
Subject: OGC
When: Wednesday, January 27, 2021 4:15 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Microsoft Teams Meeting

Microsoft Teams meeting

Join on your computer or mobile app
Click here to join the meeting

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Message

From: Talbert-Duarte, Angelia [talbert-duarte.angelia@epa.gov]
Sent: 10/29/2020 11:30:47 AM
To: Packard, Elise [Packard.Elise@epa.gov]
Subject: RE: Media Inquiry: Order of Succession
Attachments: per your request

Okay. This is what I sent you yesterday. Resending in case you want to keep the .pdf version handy.

Angelia Talbert-Duarte
Associate General Counsel
Civil Rights and Finance Law Office
(202) 564-8158 – Phone
(202) 564-5416 - Fax

From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Wednesday, October 28, 2020 6:19 PM
To: Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>
Subject: FW: Media Inquiry: Order of Succession

I got it – thanks.

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Vizian, Donna <Vizian.Donna@epa.gov>
Sent: Wednesday, October 28, 2020 5:09 PM
To: Packard, Elise <Packard.Elise@epa.gov>
Subject: FW: Media Inquiry: Order of Succession

Found it

From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Wednesday, April 15, 2020 1:05 PM
To: Woods, Andrea <Woods.Andrea@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Subject: RE: Media Inquiry: Order of Succession

https://obamawhitehouse.archives.gov/the-press-office/2017/01/13/executive-order-providing-order-succession-within-environmental

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Woods, Andrea
Sent: Wednesday, April 15, 2020 12:47 PM

To: Packard, Elise <Packard.Elise@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Subject: RE: Media Inquiry: Order of Succession

If you have it, that would be great.

From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Wednesday, April 15, 2020 12:29 PM
To: Vizian, Donna <Vizian.Donna@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Subject: RE: Media Inquiry: Order of Succession

It's an Executive Order from the President. Let me know if you need me to find it.

Thanks.

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Vizian, Donna
Sent: Wednesday, April 15, 2020 12:03 PM
To: Woods, Andrea <Woods.Andrea@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Subject: RE: Media Inquiry: Order of Succession

We do have an order of succession. I believe OGC is the keeper so copying Elise

---

From: Woods, Andrea <Woods.Andrea@epa.gov>
Sent: Wednesday, April 15, 2020 11:56 AM
To: Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Subject: FW: Media Inquiry: Order of Succession

Hi Donna,

Wanted to flag this inquiry for you. Can we confirm that we do have a plan in place? I don't think we need to comment on her second question.

From: Potter, Ellie <Ellie.Potter@spglobal.com>
Sent: Wednesday, April 15, 2020 11:27 AM
To: Press <Press@epa.gov>; Jones, Enesta <Jones.Enesta@epa.gov>
Subject: Media Inquiry: Order of Succession

Hi Enesta,

I hope you are doing well.

I saw President Trump had issued an executive order entitled "PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF THE INTERIOR" yesterday. Does EPA have an order of succession in place in case top officials were unable to perform their roles?

Does Trump plan to issue a similar executive order on EPA's order of succession as well?

Would it be possible to get a comment by 4 pm ET?

Thanks so much and have a good one,

Ellie

Ellie Potter

Energy Reporter

S&P Global Market Intelligence
1700 N. Moore St.
Arlington, VA 22209
703-373-0660
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Message

From: Packard, Elise [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6D4AD4C6ABB24F54A2C8C16FA17BA0FD-PACKARD, EL]
Sent: 10/28/2020 10:19:04 PM
To: Vizian, Donna [Vizian.Donna@epa.gov]
Subject: RE: Media Inquiry: Order of Succession

Ha – not to Nancy to Corey, thanks.

Elise B. Packard
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From: Vizian, Donna <Vizian.Donna@epa.gov>
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To: Packard, Elise <Packard.Elise@epa.gov>
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Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
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https://obamawhitehouse.archives.gov/the-press-office/2017/01/13/executive-order-providing-order-succession-within-environmental

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Sent: Wednesday, April 15, 2020 12:47 PM
To: Packard, Elise <Packard.Elise@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Subject: RE: Media Inquiry: Order of Succession

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From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Wednesday, April 15, 2020 12:29 PM
To: Vizian, Donna <Vizian.Donna@epa.gov>; Woods, Andrea <Woods.Andrea@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
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(202) 564-7729

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Sent: Wednesday, April 15, 2020 12:03 PM
To: Woods, Andrea <Woods.Andrea@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Subject: RE: Media Inquiry: Order of Succession

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Sent: Wednesday, April 15, 2020 11:56 AM
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Subject: FW: Media Inquiry: Order of Succession

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Sent: Wednesday, April 15, 2020 11:27 AM
To: Press <Press@epa.gov>; Jones, Enesta <Jones.Enesta@epa.gov>
Subject: Media Inquiry: Order of Succession

Hi Enesta,

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Ellie Potter

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Message

From: Packard, Elise [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6D4AD4C6ABB24F54A2C8C16FA17BA0FD-PACKARD, EL]
Sent: 10/29/2020 12:44:59 PM
To: Talbert-Duarte, Angelia [talbert-duarte.angelia@epa.gov]
Subject: RE: Media Inquiry: Order of Succession

I do – and I missed this, thanks!

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>
Sent: Thursday, October 29, 2020 7:31 AM
To: Packard, Elise <Packard.Elise@epa.gov>
Subject: RE: Media Inquiry: Order of Succession

Okay. This is what I sent you yesterday. Resending in case you want to keep the .pdf version handy.

Angelia Talbert-Duarte
Associate General Counsel
Civil Rights and Finance Law Office
(202) 564-8158 – Phone
(202) 564-5416 - Fax

From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Wednesday, October 28, 2020 6:19 PM
To: Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>
Subject: FW: Media Inquiry: Order of Succession

I got it – thanks.

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Vizian, Donna <Vizian.Donna@epa.gov>
Sent: Wednesday, October 28, 2020 5:09 PM
To: Packard, Elise <Packard.Elise@epa.gov>
Subject: FW: Media Inquiry: Order of Succession

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Sent: Wednesday, April 15, 2020 1:05 PM
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Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Subject: RE: Media Inquiry: Order of Succession

https://obamawhitehouse.archives.gov/the-press-office/2017/01/13/executive-order-providing-order-succession-within-environmental

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(202) 564-7729

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To: Woods, Andrea <Woods.Andrea@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
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To: Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>
Subject: FW: Media Inquiry: Order of Succession

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From: Potter, Ellie <Ellie.Potter@spglobal.com>
Sent: Wednesday, April 15, 2020 11:27 AM
To: Press <Press@epa.gov>; Jones, Enesta <Jones.Enesta@epa.gov>
Subject: Media Inquiry: Order of Succession

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Ellie Potter

Energy Reporter

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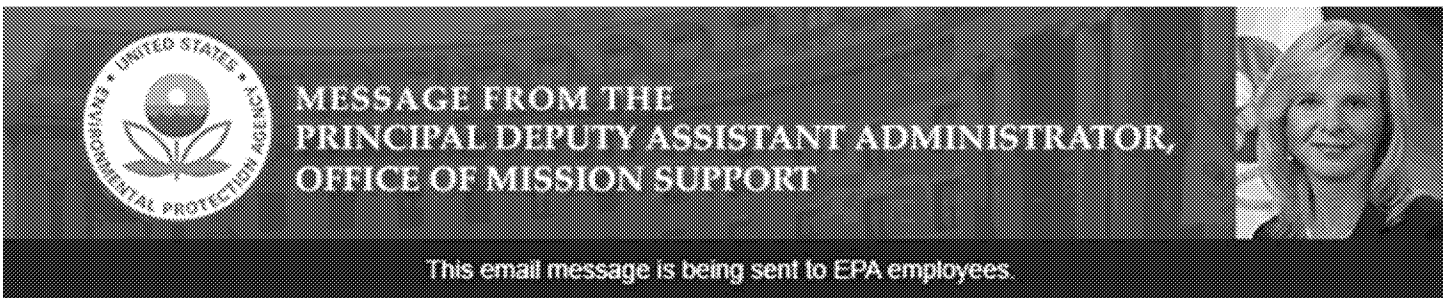
Message

From: Packard, Elise [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6D4AD4C6ABB24F54A2C8C16FA17BA0FD-PACKARD, EL]
Sent: 11/2/2020 10:39:42 PM
To: Fotouhi, David [fotouhi.david@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]
Subject: FW: Excused Absence for Voting

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: MassMailer <massmailer@epa.gov>
Sent: Thursday, October 22, 2020 2:02 PM
To: MassMailer <massmailer@epa.gov>
Subject: Excused Absence for Voting



Dear Colleagues,

Election Day is Tuesday, November 3, 2020. According to federal guidelines, employees may be granted an excused absence (i.e., administrative leave) to vote depending on their work schedule and the polling times for their voting jurisdiction. There are additional considerations related to voting on Election Day, early voting, and non-partisan volunteering summarized below.

Voting on Election Day

If the difference between an employee's scheduled arrival and departure times and the polls' opening and closing time is less than three hours, an employee is entitled to administrative leave, up to a maximum of three hours. If the polls open or close at least three hours before or after an employee's work schedule, no excused absence may be granted.

If an employee's voting place is beyond normal commuting distance and voting by absentee ballot is not permitted, the agency may grant excused absence (not to exceed one day) to allow the employee to travel to the voting place to cast a ballot. If more than one day is needed, the employee may request annual leave or leave without pay for the additional period of absence.

Early Voting

In regards to early voting, the agency may grant excused absence on a scheduled workday only when: 1) the employee will be unable to vote on the day of the election because of activities directly related to the agency's mission (such as temporary duty travel) and cannot vote by absentee ballot; or 2) early voting hours are the same as, or exceed, voting hours on the day of the election. In such case, the general Election Day guidance above applies. If the polling place hours are shorter than on Election Day, the employee is not eligible for excused absence.

Non-Partisan Volunteer

An employee who requests time off to train and serve as a non-partisan volunteer election official to assist at polling stations may be granted excused absence to the maximum extent possible while accounting for the responsibilities and duties to carry out the agency's mission. The agency will try to accommodate the excused absence request so long as there are no negative impacts to critical mission work. Decisions about granting excused absence for this purpose are to be made on a case-by-case basis and require the employee's assistant administrator or regional administrator's approval after the local deputy ethics official or the Office of General Counsel's Ethics Office has determined the volunteer activity comports with ethics requirements. Approved administrative leave for participation in volunteer activities should not involve an employee being absent from the workplace for a significant period.

Any employee needing an excused absence to vote or volunteer should first seek approval from their first-line supervisor. If approved, the time must be documented in PeoplePlus using the following time reporting codes:

- **VOTIN** (Administrative Leave – Voting)
- **VOLRT** (Administrative Leave – Volunteer Activities)

Please refer to the U.S. Environmental Protection Agency's policies regarding official time off for voting and the use of administrative leave. Some of the agency's collective bargaining agreements contain similar language. Please refer to those agreements or the applicable union point of contact for further information.

If you have questions regarding these guidelines, please contact the Policy and Accountability Branch, Office of Human Resources, at OHR_PPTD_PAB.

Best,
Donna J. Vizian
Principal Deputy Assistant Administrator, Office of Mission Support

Message

From: Packard, Elise [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6D4AD4C6ABB24F54A2C8C16FA17BA0FD-PACKARD, EL]
Sent: 1/5/2021 9:46:30 PM
To: Tina Sung [tsung@ourpublicservice.org]
Subject: RE: Question about something you said today

Don't know about a letter to resign one way or the other, but thought I should get hold of what you were talking about!

Thanks so much.

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Tina Sung <tsung@ourpublicservice.org>
Sent: Tuesday, January 05, 2021 4:44 PM
To: Packard, Elise <Packard.Elise@epa.gov>
Subject: Re: Question about something you said today

Hi Elise, It's OPMs 2020 Presidential Guide for Human Resources Management Matters, link here: https://www.opm.gov/about-us/our-people-organization/office-of-the-director/executive-secretariat/presidential-transition-guide-2020.pdf. Has EPA issued letters to their appointees to resign? Or still waiting for something from White House?

Plum book also out but has lots of errors. Missing agencies and positions.
Tina

Presidential Transition Guide to Federal Human Resources Management Matters, Election Year 2020

United StateS Office Of PerSOnnel ManageMent. Presidential Transition Guide to Federal Human Resources Management Matters. Election Year 2020. OPM.GOV. DECEMBER. 2020

www.opm.gov

From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Tuesday, January 5, 2021 4:29 PM
To: Tina Sung <tsung@ourpublicservice.org>
Subject: Question about something you said today

You mentioned a 100 page book that OPM sent the CHCO's, did you mean the plum book or is there something else I should be looking for?

Thanks!

Elise

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

Message

From: Packard, Elise [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6D4AD4C6ABB24F54A2C8C16FA17BA0FD-PACKARD, EL]
Sent: 1/14/2021 6:03:22 PM
To: Fotouhi, David [fotouhi.david@epa.gov]
Subject: RE: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

Never mind – political being done centrally.

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Packard, Elise
Sent: Thursday, January 14, 2021 12:59 PM
To: Fotouhi, David <fotouhi.david@epa.gov>
Subject: FW: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

Is anyone going in?

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Vizian, Donna <Vizian.Donna@epa.gov>
Sent: Thursday, January 14, 2021 12:57 PM
To: Career Deputy Assistant Administrators <Career_Deputy_Assistant_Administrators@epa.gov>
Cc: Jackson, Yvette <Jackson.Yvette@epa.gov>; Bellerose, William <Bellerose.William@epa.gov>
Subject: FW: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

Hi Everyone, please see below. Do you need to have anyone in tomorrow through Wednesday? If you do, please send the names to Yvette and Bill Bellerose (copied here). If a name is not sent to the secret service, the person will ot be allowed in.

From: Jackson, Yvette <Jackson.Yvette@epa.gov>
Sent: Thursday, January 14, 2021 12:51 PM
To: Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Daniels, Alva <daniels.alva@epa.gov>
Subject: RE: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

Tomorrow through inauguration day.

From: Hitchens, Lynnann <hitchens.lynnann@epa.gov>
Sent: Thursday, January 14, 2021 12:49 PM
To: Jackson, Yvette <Jackson.Yvette@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Daniels, Alva <daniels.alva@epa.gov>
Subject: RE: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

What is the timeframe for the access? Tomorrow through Inauguration Day? Through the end of next week?

Thanks,

Lynnann

Lynnann Hitchens
Acting Deputy Assistant Administrator for
Administration and Resources Management
Office of Mission Support
US EPA
P: 202-564-3184
M: 202-617-0738

From: Jackson, Yvette <Jackson.Yvette@epa.gov>
Sent: Thursday, January 14, 2021 12:47 PM
To: Vizian, Donna <Vizian.Donna@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>
Cc: Daniels, Alva <daniels.alva@epa.gov>
Subject: FW: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM
Importance: High

Good afternoon Donna and Lynnann,

Bill Bellerose received a call from the USSS requesting a list of employees deemed essential and need access to the facility beyond tomorrow. The list was requested by this afternoon but we could possibly put it off until tomorrow morning. See Bill's short note below and let me know if you have questions.

Thanks,
Yvette

From: Bellerose, William <Bellerose.William@epa.gov>
Sent: Thursday, January 14, 2021 12:03 PM
To: Stewart, Neil <Stewart.Neil@epa.gov>; kevin.sheesley@gsa.gov; Karlton Chesson - WPM1D <karlton.chesson@gsa.gov>; Zanaya Donato - WPM1D <zanaya.donato@gsa.gov>; james.duvall@gsa.gov
Cc: HQSECURITY <HQSECURITY@epa.gov>
Subject: Access lit for GSA and EPA
Importance: High

Neil and GSA Team,

I just received a call from Secret Service and they have requested a list of all the staff that are deemed essential and will require building access during the Inauguration. The Secret Service is requesting that this list be provided to them today, but it may be tomorrow.

They are looking to begin securing the building tomorrow and the list will be used by the Secret Service to determine who is supposed to be in the building.

Please send me the access lists so I can send them on to the Secret Service.

Thank you,

William "Bill" Bellerose
Security Specialist

Headquarters Operations Branch
Facilities Management and Services Division
Desk: (202) 566-2191
Cell phone: (202) 510-5831

Message

From: Packard, Elise [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6D4AD4C6ABB24F54A2C8C16FA17BA0FD-PACKARD, EL]
Sent: 1/14/2021 1:08:31 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: FW: Supplemental Guidance on Offboarding

FYI

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Packard, Elise
Sent: Thursday, January 14, 2021 8:08 AM
To: Lattimore, Kraig <lattimore.kraig@epa.gov>
Subject: FW: Supplemental Guidance on Offboarding

OK, they're putting this on us. Can you please go through and figure out who our political should be coordinating with? I'm happy to be the ultimate signatory. IF we can get a cheat sheet for them this morning that would be great as today may be their last day in the building.

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Carpenter, Wesley <Carpenter.Wesley@epa.gov>
Sent: Thursday, January 14, 2021 7:55 AM
To: Cody, Meredith <cody.meredith@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: RE: Supplemental Guidance on Offboarding

Meredith:

I assume Jim Payne or Elise Packard would serve as the FLS in OGC. Yes, I do think the annotated checklist applies to OGC noncareer executives and staff.

Wes

From: Cody, Meredith <cody.meredith@epa.gov>
Sent: Thursday, January 14, 2021 7:44 AM
To: Carpenter, Wesley <Carpenter.Wesley@epa.gov>
Subject: RE: Supplemental Guidance on Offboarding

Hi Wes,

Thanks. I work in the front office of OGC. Do you know who I would list as my immediate supervisor for purposes of the 3110-2 form? Also, would the annotated checklist that you sent apply to OGC?

Thanks,
Meredith

Meredith Cody
Attorney-Adviser
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-7161
cody.meredith@epa.gov

From: Carpenter, Wesley <Carpenter.Wesley@epa.gov>
Sent: Wednesday, January 13, 2021 3:10 PM
Subject: Supplemental Guidance on Offboarding

Noncareer Executives & Staff:

Good afternoon. As a follow-up to Micah Meadowcroft's email last night, I want to share supplemental information with you on the agency's offboarding requirements. First and foremost, please understand that this email focuses on AO noncareer executives and staff. The noncareer executives and staff in the NPMs and Regions should be coordinating internally within their own organizations on these requirements. The Office of Mission Support developed a more streamlined and centralized approach for offboarding to ease the amount of time that you need to spend on completing these requirements. The three attachments are provided to assist you, which include OMS's Supplemental Guidance, an Annotated Employee Separation Checklist highlighting in yellow only those offboarding requirements that you need to complete independently (those requirements not highlighted have already been completed by OMS (thanks to Donna and her team) for you), and the email message from Mandy on January 7 regarding resignations which you will use as your initial supervisory email. In reviewing the Supplemental Guidance and Annotated Employee Separation Checklist, please note which parts of the employee separation requirements you need to complete. Most items are self-explanatory, but there are some requirements that need additional clarification or guidance, which is provided in the following bullets:

- The AO Program Management Officer (PMO) is Terrence Jackson, the AO Personal Property Custodial Officer is Donna Jenkins and the Records Liaison Officer (RLO) is Lena Ferris. Please reach out to Terrence, Donna or Lena if you need any assistance or help from them.
- Form 3110-49 (Records Management): Please coordinate completing the records management requirements with Lena Ferris. You should have received a separate email from Lena to schedule a meeting with her closing out your records management requirements, including Litigation Holds. When the requirements are completed, Lena will sign the form and forward it to the First Line Supervisor for signing (see details on First Line Supervisors in the last bullet). The First Line Supervisor will then sign the form and return it back to you for uploading into your One Drive Share Folder or the First Line Supervisor will upload your form into your One Drive Share Folder on your behalf.
- Political Appointee Equipment Return Checklist – Your laptop, mobile devices (i.e., phones and tablets), PIV card, and office keys will be able to be left at your workstation or can be mailed back to the agency. There is a Political Appointee Equipment Return Checklist in the attached Supplemental Guidance that you need to complete. OMS will be providing all HQs noncareer executives and staff a preaddressed box with the agency's address for you to place these materials and completed checklist into. You can leave the box in your office when you depart the agency or you can take the box home and mail the materials back to the agency. Due to the security concerns next week with the Inauguration, I recommend you take all your materials, the completed checklist and the box with you home over the weekend, so you can mail these materials back to the agency if an incident occurs and you are not able to get back into the office next week. OMS will be delivering these boxes to your office today or tomorrow. Micah Meadowcroft will also have additional boxes if you did not receive one, so please coordinate with him if needed.
- Resignation Letter – please refer to Mandy's January 7 email (see attachment).

- OGC Ethics Offboarding Requirements – please contact Justina Fugh or the Ethics Office to complete the offboarding session; complete your Final Financial Disclosure (OGE-278) using the Integrity link, and complete the Notice of Negotiation Form (see attached Supplemental Guidance) and submit it to the Ethics Office using the email address provided. At that time, you should request OGC Ethics send you an email indicating that you have completed all ethics requirements, which you should include in your One Drive Share Folder.
- Mobile Device Acknowledgement Form – Nicole Smoot or Donna Jenkins have sent you an email with this form attached to complete and return back to them. If you have more than one device, you received a form for each device which needs to be completed, signed and returned. You do not need to worry about the original form you signed when you received the device(s). If you have any questions, please reach out to one or both of them.
- National Security Information Program Debriefing (only applies to those employees with a security clearance). The NSI Program Team is coordinating these debriefing sessions, so you should have received information from them. You should receive an email from the NSI Program Team when you have completed the requirement. Please upload this email into your One Drive Share Folder.
- Passports – Please reach out to the OITA POCs identified in the Supplemental Guidance, so you can return government issued passports and/or receive an email back from OITA indicating that you have completed this offboarding requirement. Please upload this email into your One Drive Share Folder.
- Travel Claims and Citi Bank Credit Card Balances – Please ensure you submit any outstanding vouchers or pay off credit card balances prior to departing the agency. If you have any questions, please contact me directly.
- Transit Subsidy Program Withdrawal Form (See attached Supplemental Guidance) – Please complete the form and submit it to the Transit Subsidy Office. You should receive an email message back from them, which you should upload into your One Drive Share Folder.
- Parking Permit & Parking Access Card – Please contact the OMS POC to complete this requirement if applicable, which is referenced in the attached Supplemental Guidance.
- Update Your Address in Employee Express – Please access EEX using the link or phone number provided in the Supplemental Guidance to update your address if needed.
- Time Cards for Pay Period January 18-29, 2021 – When completing your time card for the subject pay period, January 18 is a holiday, January 19 is a regular work day, January 20 is a hybrid of a half day as Admin Leave for the Inauguration for those at HQs (or a half day of work for non-HQs employees) and a half day of Leave Without Pay (LWOP), and January 21-22 and 25-29 is LWOP. Please complete your time card in accordance with these instructions, attest and submit your time card before departing the agency.
- Employee Separation Checklist (3110-2 Form) – When all the requirements are completed, please complete and sign your employee separation checklist and forward to your first line supervisor, which is the head career executive/manager in your organization, including Nancy Grantham (OPA), Robin Richardson (OCIR), Helena Wooden Aguilar (OP), Brian Hope (OEX), Lee Tanner (OPEEE), and me for everyone else.

OMS is also planning on facilitating some in-person offboarding sessions this Friday and next Tuesday if you have any questions or want to complete some of these requirements in-person. Please see the attached Supplemental Guidance for details.

For employees who have already started the offboarding activities, you can update your employee separation checklist by annotating those requirements that have been completed by OMS centrally if you have not done them already (see attached annotated employee separation checklist). If you have done them, you do not need to take any further action. OMS will be sharing the information they obtained from the requirements owners on those centrally completed requirements with the AO PMO (Terrence Jackson). Terrence will coordinate with the First Line Supervisors to ensure this documentation is uploaded into each of your One Drive Share Folders.

I am sorry for the lengthy email, but wanted to provide clarity on the various offboarding requirements to ease the burden on each of you. Please do not hesitate to contact me if you have any questions. Thanks, and have a nice day.

Wes

Wesley J. Carpenter
Acting Deputy Chief of Staff
EPA's Office of the Administrator
Tel. No.: 202-564-2019
Cell Phone: 202-497-4392
E-mail: carpenter.wesley@epa.gov

Message

From: Packard, Elise [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6D4AD4C6ABB24F54A2C8C16FA17BA0FD-PACKARD, EL]
Sent: 1/14/2021 6:52:10 PM
To: Vizian, Donna [Vizian.Donna@epa.gov]
Subject: RE: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

Nope, I'll let him choose – thanks for raising.

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Vizian, Donna <Vizian.Donna@epa.gov>
Sent: Thursday, January 14, 2021 1:43 PM
To: Packard, Elise <Packard.Elise@epa.gov>
Subject: RE: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

Sorry specific answer is no. Should we talk about it

From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Thursday, January 14, 2021 1:42 PM
To: Vizian, Donna <Vizian.Donna@epa.gov>
Subject: FW: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

Are you having other career DAA types on in case? Seems like we should do it consistently.

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Thursday, January 14, 2021 1:32 PM
To: Packard, Elise <Packard.Elise@epa.gov>
Subject: FW: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

Include me for OGC? For unlikely event there'd be a sufficiently high need.

From: Vizian, Donna <Vizian.Donna@epa.gov>
Sent: Thursday, January 14, 2021 12:57 PM
To: Career Deputy Assistant Administrators <Career_Deputy_Assistant_Administrators@epa.gov>
Cc: Jackson, Yvette <Jackson.Yvette@epa.gov>; Bellerose, William <Bellerose.William@epa.gov>
Subject: FW: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

Hi Everyone, please see below. Do you need to have anyone in tomorrow through Wednesday? If you do, please send the names to Yvette and Bill Bellerose (copied here). If a name is not sent to the secret service, the person will ot be allowed in.

From: Jackson, Yvette <Jackson.Yvette@epa.gov>
Sent: Thursday, January 14, 2021 12:51 PM
To: Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Daniels, Alva <daniels.alva@epa.gov>
Subject: RE: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

Tomorrow through inauguration day.

From: Hitchens, Lynnann <hitchens.lynnann@epa.gov>
Sent: Thursday, January 14, 2021 12:49 PM
To: Jackson, Yvette <Jackson.Yvette@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Daniels, Alva <daniels.alva@epa.gov>
Subject: RE: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM

What is the timeframe for the access? Tomorrow through Inauguration Day? Through the end of next week?

Thanks,

Lynnann

Lynnann Hitchens
Acting Deputy Assistant Administrator for
Administration and Resources Management
Office of Mission Support
US EPA
P: 202-564-3184
M: 202-617-0738

From: Jackson, Yvette <Jackson.Yvette@epa.gov>
Sent: Thursday, January 14, 2021 12:47 PM
To: Vizian, Donna <Vizian.Donna@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>
Cc: Daniels, Alva <daniels.alva@epa.gov>
Subject: FW: Access lit for GSA and EPA -- IMPORTANT ACTION ITEM
Importance: High

Good afternoon Donna and Lynnann,

Bill Bellerose received a call from the USSS requesting a list of employees deemed essential and need access to the facility beyond tomorrow. The list was requested by this afternoon but we could possibly put it off until tomorrow morning. See Bill's short note below and let me know if you have questions.

Thanks,
Yvette

From: Bellerose, William <Bellerose.William@epa.gov>
Sent: Thursday, January 14, 2021 12:03 PM
To: Stewart, Neil <Stewart.Neil@epa.gov>; kevin.sheesley@gsa.gov; Karlton Chesson - WPM1D <karlton.chesson@gsa.gov>; Zanaya Donato - WPM1D <zanaya.donato@gsa.gov>; james.duvall@gsa.gov
Cc: HQSECURITY <HQSECURITY@epa.gov>
Subject: Access lit for GSA and EPA
Importance: High

Neil and GSA Team,

I just received a call from Secret Service and they have requested a list of all the staff that are deemed essential and will require building access during the Inauguration. The Secret Service is requesting that this list be provided to them today, but it may be tomorrow.

They are looking to begin securing the building tomorrow and the list will be used by the Secret Service to determine who is supposed to be in the building.

Please send me the access lists so I can send them on to the Secret Service.

Thank you,

William "Bill" Bellerose
Security Specialist
Headquarters Operations Branch
Facilities Management and Services Division
Desk: (202) 566-2191
Cell phone: (202) 510-5831

Message

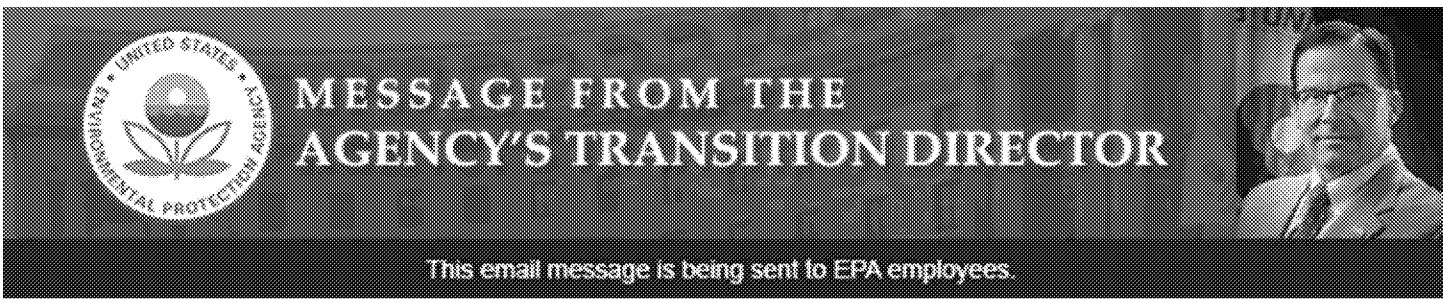
From: Packard, Elise [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6D4AD4C6ABB24F54A2C8C16FA17BA0FD-PACKARD, EL]
Sent: 1/21/2021 1:43:58 AM
To: Nishida, Jane [Nishida.Jane@epa.gov]
Subject: Fwd: Agency Leadership Announcement

We're in good hands - thanks for taking it on!

Sent from my iPhone

Begin forwarded message:

From: MassMailer <massmailer@epa.gov>
Date: January 20, 2021 at 8:01:38 PM EST
To: MassMailer <massmailer@epa.gov>
Subject: Agency Leadership Announcement



Dear Colleagues,

As you know, President Joseph Biden was inaugurated as our 46th President at noon today, so I am sharing some important transition information with all of you.

Shortly after being sworn in, President Biden signed an Executive Order naming acting heads of federal agencies, pending Senate confirmation of his nominees. For EPA, the President appointed Jane Nishida to serve as EPA's Acting Administrator until the new EPA Administrator is confirmed. Jane currently serves as the Principal Deputy Assistant Administrator for the Office of International and Tribal Affairs (OITA) where she is responsible for the full range of EPA's international and tribal programs. Jane has over 30 years of environmental experience working in federal and state government, and international and nongovernmental organizations. Prior to joining EPA in 2011, she served as the Senior Environmental Institutions Specialist at the World Bank, and from 1995 to 2002, she served as the Secretary of Maryland's Department of the Environment. Jane received a Bachelor of Arts in International Affairs from Lewis & Clark College in Portland, Oregon, and a Juris Doctorate from Georgetown Law Center in Washington, D.C.
I know that you all will join me in supporting Jane as she assumes this important responsibility.

We appreciate everyone's support of the agency's transition activities over the past several months. I am proud of our work with the Biden-Harris Agency Review Team and extend my gratitude to the AO, and the national program and regional offices who provided a substantial level of support to this transition effort.

Wes Carpenter

Agency Transition Director

Message

From: Packard, Elise [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6D4AD4C6ABB24F54A2C8C16FA17BA0FD-PACKARD, EL]
Sent: 1/22/2021 11:28:40 PM
To: Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]; Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Subject: FW: Tuesday Morning Musings
Attachments: Public Knowledge - Add a Personal Printer to a GFE Laptop.pdf

Not a typical musings, but the printer information will likely be useful to you. ☺

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Packard, Elise
Sent: Tuesday, January 12, 2021 8:30 AM
To: OGC ALL USERS <OGC_ALL_USERS@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Subject: Tuesday Morning Musings

I can't start my musings this week without expressing my horror at the attack on the Capitol and our democracy. The images of a mob breaking into our Capitol and desecrating our civic spaces will forever be etched in our collective memories, an historic moment not to be honored but to be remembered and learned from. An example of what can be if we do not work together to protect and nourish our democratic norms. The image of the confederate flag in the rotunda continues to play in my mind, and the stark contrast to the response to the demonstrations in June, after the killing of George Floyd and others, resonates and serves as a call to renew our commitment to an anti-racist society. I was proud that after the Capitol was secured, our Congress worked through the night to ensure that the certification of Joe Biden's election as the next President of the United States was completed. Duty to the Constitution and Service to the American people prevailed. It is the same duty and service that I have experienced from all of you every day I have had the privilege to work with you, and it is my hope that it is that duty and service that will move this country forward, away from anarchy and mob violence, and towards a collective experience of dignity, equality, and community. We know that folks continue to process that experience (especially those who live near the Capitol and have altered their lifestyle to deal with this new reality); please reach out to the Front Office and the ADDs if we can help in anyway.

It is odd to go from the existential nature of grappling with that reality, to the more mundane aspects of an office, but that is the nature of musings. I am pleased to announce that, at the request of some staff during office hours, I have worked with OMS to get guidance on attaching our Government issued computers to any home printers we might wish to use. The guidance is attached. OMS is not equipped to provide tech support for this, it is purely in response to requests from staff who, as a matter of personal choice, want to use their home printers. Please remember to safeguard and manage your paper records in the same manner you handle electronic records, as federal records can be created in any form or format. There are additional requirements to keep in mind if you are printing documents that relate to a matter that is the subject of a litigation hold or responsive to an open FOIA request, so remember to print with care.

Inauguration Day, Wednesday January 20, is a holiday for some EPA employees. Employees who normally report to the DMV area, including those who are teleworking due to COVID-19, will receive the benefit of the additional holiday if the following conditions apply to them:

- The employee's official worksite is located in the inauguration area.
- But for the COVID-19 National Emergency, the employee would be scheduled to work at the official worksite at least two days per biweekly pay period.

- The employee's telework location on January 20 is one from which the employee regularly commuted to the employee's official worksite prior to the COVID-19 emergency or is within a realistic commuting distance from the official worksite (generally no more than 2.5 hours commuting time or 125 miles in distance).

REMINDER – Today is the Awards Ceremony – come help celebrate the remarkable achievements of your colleagues.

As we finish one administration and prepare for a new one, Jim and I are so proud to help lead the remarkable staff of OGC who have dedicated their careers to creating a civil service, whose duty is to ensure continuity for the American people, and on whose skill and expertise elected representatives rely to execute the policy for which the electorate has voted.

Thanks for everything you do.

Elise

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

Message

From: Packard, Elise [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6D4AD4C6ABB24F54A2C8C16FA17BA0FD-PACKARD, EL]
Sent: 1/26/2021 6:47:16 PM
To: Moumbleaux, Joan [moumbleaux.joan@epa.gov]
Subject: RE: Tuesday Musings

I love Anne of Green Gables – red hair and orphan – totally see it (though I didn't before you pointed it out).

Thanks!

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Moumbleaux, Joan <moumbleaux.joan@epa.gov>
Sent: Tuesday, January 26, 2021 1:23 PM
To: Packard, Elise <Packard.Elise@epa.gov>
Subject: RE: Tuesday Musings

Elise, I have to say, I reacted in the same way to The Queen's Gambit. As I watched, I kept thinking that it seemed like a dark and modern take on Anne of Green Gables. With a quick internet search, I saw that may folks also saw the parallels. Everything old is new again!

Joan Moumbleaux
Government Information Specialist I National FOIA Office
U.S. Environmental Protection Agency I Office of General Counsel
1200 Pennsylvania Avenue, N.W. (MC2310A)
Washington, D.C. 20460 I WJCN 7426L
Phone (202) 564-7872 I Cell (202) 573-1835 I moumbleaux.joan@epa.gov

National FOIA Office
EPA Office of General Counsel

From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Tuesday, January 26, 2021 1:04 PM
To: OGC ALL USERS <OGC_ALL_USERS@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
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Have a great day.

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Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

Message

From: Packard, Elise [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6D4AD4C6ABB24F54A2C8C16FA17BA0FD-PACKARD, EL]
Sent: 1/26/2021 6:22:15 PM
To: Miller, Meredith [Miller.Meredith@epa.gov]
Subject: RE: Tuesday Musings

I had a friend tell me that too, and so far it seems fine, but I gather it gets worse! As it happens my son wouldn't be caught dead watching, so all is well. Thanks for the heads-up.

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
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From: Miller, Meredith <Miller.Meredith@epa.gov>
Sent: Tuesday, January 26, 2021 1:19 PM
To: Packard, Elise <Packard.Elise@epa.gov>
Subject: RE: Tuesday Musings

Bridgerton takes quite a racy turn, if you haven't yet been warned - be glad you aren't watching it with your son!

From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Tuesday, January 26, 2021 1:04 PM
To: OGC ALL USERS <OGC_ALL_USERS@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
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Message

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Sent: 1/26/2021 8:01:09 PM
To: Sweeney, Stephen [Sweeney.Stephen@epa.gov]
Subject: RE: Spoiler Alert (Queen's Gambit) RE: Tuesday Musings

I've read his Dark Materials – great books, I'll look that one up.

I watched Madam Secretary for a long time, but not quite to the end (my husband finished it up solo). Excellent show.

Delighted it ends well – that is going to make me feel much better about watching it. I'm the sort of person who reads the end first to make sure it ends well and then reads the book to see how they got there. ☺

THanks for the tips!

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Sweeney, Stephen <Sweeney.Stephen@epa.gov>
Sent: Tuesday, January 26, 2021 2:58 PM
To: Packard, Elise <Packard.Elise@epa.gov>
Subject: Spoiler Alert (Queen's Gambit) RE: Tuesday Musings

It ends well for her at the end. The whole thing, start to finish, is only the one season (ten episodes?) and I think the darkest it gets is around episode seven, then things start getting better for her before ending pretty well.

I'm not quite done with "Madame Secretary" (Tea Leoni as Secretary of State) but I'm in the last season (the SIXTH!) and this was my first binge … and my wife and I have been watching since November … I'm not going to get this involved in television again!

Bottom line: I was really pleased that the Queen's Gambit ended within just one season.

A friend recommended three more, one of which she flagged as "kid appropriate." Assuming that one is four seasons or fewer, that's my next one. Called "His Dark Materials"

From: Packard, Elise <Packard.Elise@epa.gov>
Sent: Tuesday, January 26, 2021 1:04 PM
To: OGC ALL USERS <OGC_ALL_USERS@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
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Elise

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Sent: 1/29/2021 12:36:17 AM
To: Sweeney, Stephen [Sweeney.Stephen@epa.gov]
CC: Talbert-Duarte, Angelia [talbert-duarte.angelia@epa.gov]; O'Lone, Mary [olone.mary@epa.gov]
Subject: RE: Non-urgent question -- updating the Vacancies Table Update distribution

I don't want it to come out of nowhere. Let me talk to Melissa, maybe the first one comes from her.

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
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From: Sweeney, Stephen <Sweeney.Stephen@epa.gov>
Sent: Thursday, January 28, 2021 3:22 PM
To: Packard, Elise <Packard.Elise@epa.gov>
Cc: Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>; O'Lone, Mary <OLone.Mary@epa.gov>
Subject: Non-urgent question -- updating the Vacancies Table Update distribution

These are two positions that I normally would add to the distribution list:

Dorien Paul Blythers, Deputy Chief of Staff for Operations

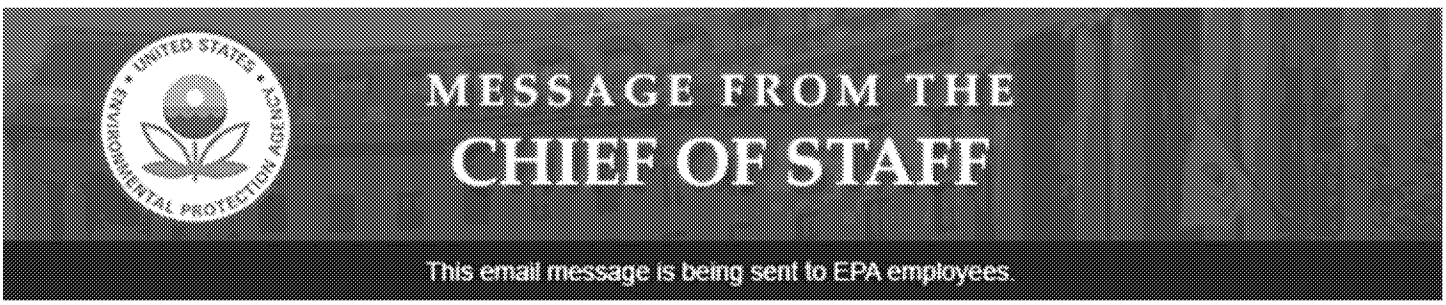
Fernando Mercado-Violand, Deputy White House Liaison

Should I add the names or wait to be asked?

Thanks,

Steve

From: Message from the Chief of Staff <messagefromthechiefofstaff@epa.gov>
Sent: Thursday, January 28, 2021 3:17 PM
To: Message from the Chief of Staff <messagefromthechiefofstaff@epa.gov>
Subject: Information on yesterday's Executive Orders and the latest political appointees to join EPA



Dear Colleagues,

Yesterday, President Biden took executive action to tackle the climate crisis at home and abroad while creating good-paying union jobs and equitable clean energy future, building modern and sustainable infrastructure, restoring scientific integrity and evidence-based policymaking across the federal government, and re-establishing the President's Council of Advisors on Science and Technology.

Yesterday's Executive Order on Tackling the Climate Crisis at Home and Abroad takes bold steps to combat the climate crisis and directs the Biden-Harris Administration to:

- Center the Climate Crisis in U.S. Foreign Policy and National Security Considerations
- Take a Whole-of-Government Approach to the Climate Crisis
- Secure Environmental Justice and Spur Economic Opportunity
- Leverage the Federal Government's Footprint and Buying Power to Lead by Example
- Rebuild Our Infrastructure for a Sustainable Economy
- Advance Conservation, Agriculture, and Reforestation
- Revitalize Energy Communities

The new order formalizes President Biden's commitment to make environmental justice a part of the mission of every agency by directing federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.

President Biden also signed an important Presidential Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking to send a clear message that the Biden-Harris Administration will protect scientists from political interference and ensure they can think, research and speak freely to provide valuable information and insights to the American people. The memorandum directs agencies to "make evidence-based decisions guided by the best available science and data."

Through another new Executive Order also signed yesterday, President Biden also established the President's Council of Advisors on Science and Technology. Leaders from across the Biden-Harris Administration, including the President and his senior advisors, will seek input, advice and the best-available science, data, and scientific and technological information from scientists, engineers and other experts in these areas.

These actions are at the heart of the work we do at the EPA. Our work in every program office and region will be grounded and guided by science as we work together to achieve these goals and to protect public health and the environment on behalf of all Americans.

I continue to be impressed by the team of dedicated professionals who we have had the privilege of getting to know over the past week.

As we continue to build out our leadership team and continue to work with all of you, I want to direct you to a new transition resource on the EPA intranet site. The site provides employees with transition-related information and introduces members of the new administration. We will be updating the site on an as-needed basis to share all relevant transition related information with you.

Finally, I want to take this opportunity to introduce additional members of our leadership team who have joined the agency this week. A list of these new personnel is provided at the end of this email.

Thank you again for your support and patience as we work through this transition. We are truly honored to be working alongside you.

Sincerely,

Dan Utech
Chief of Staff

Members of the incoming EPA leadership team who onboarded this week:

Dorien Paul Blythers, Deputy Chief of Staff for Operations
Dorien comes to EPA with over 10 years of experience in electoral and issue campaigns. Most recently he was the Political Director for End Citizens United & Let America Vote. He also served as a Regional Political Director for Kamala Harris For The People, maintaining national, state, and local relationships on behalf of the candidate. Dorien previously served as Public Engagement Program Manager for Climate Action Campaign, serving as chief relationship manager with external partners for African American, Faith, and Millennial constituencies. Dorien credits his commitment to social and environmental justice to Howard University– where he studied political science and was elected Student Body President for the College of Arts & Sciences.

Avi Garbow, Senior Counselor to the Administrator
Avi Garbow is a nationally-recognized environmental leader, lawyer, and advocate with decades of experience tackling the most critical threats to our air, water, and lands. Honored by the National Law Journal as an Energy and Environmental Trailblazer, Avi has most recently been serving as Patagonia's Environmental Advocate. Avi served as General Counsel at EPA from 2013-2017 – the longest to hold that position – and prior to that served as the Agency's Deputy General Counsel. Avi also helped lead the environmental practice of a major international law firm, was a distinguished federal environmental crimes prosecutor in the U.S. Department of Justice, and began his environmental law career nearly three decades ago in EPA's enforcement office. Avi received the Robert F. Kennedy Award for Public Service from the University of Virginia School of Law, obtained a master's degree in marine affairs, and has served on the Boards of non-profits and the Organic Trade Association.

Kathleen Lance, Director of Scheduling and Advance, Office of the Administrator
Kathleen Lance joins the EPA from the North Carolina Department of Environmental Quality where she served as special assistant to Secretary Michael Regan. In that role, she managed executive level support for the department leadership, playing a central role in the operations of a $2 billion, 1,600-person department. She has held multiple roles within the department and previously worked for the Arc of Hunterdon County, a non-profit organization. She is a graduate of Elon University where she studied political science.

Fernando Mercado-Violand, Deputy White House Liaison
Fernando graduated from the University of Virginia in 2014 with degrees in history and government. He began his career as an organizer for Senator Mark Warner's first re-election campaign, then served as a community organizer in Northern Virginia with the Legal Aid Justice Center working on health care and immigration issues. In 2016, he worked for Hilary Clinton's campaign in Iowa, Texas and Virginia. In 2017, he was the political director for Virginia Attorney General Mark Herring's campaign. In 2018, he took the role of policy coordinator for the Virginia House Democratic Caucus and later went on to serve as the first Director of Latino Outreach for Governor Ralph Northam. Most recently, he was the Deputy State and Political Director for the Biden-Harris

campaign in Virginia. Fernando was born in Bolivia, immigrated to the U.S. with his family when he was 5 years old, and is a die-hard UVA basketball fan.

Message

From: Clarke, Victoria [clarke.victoria@epa.gov]
Sent: 12/17/2020 7:55:54 PM
To: Payne, James (Jim) [payne.james@epa.gov]; Davis, Gail [Davis.Gail@epa.gov]; Fugh, Justina [Fugh.Justina@epa.gov]; Griffo, Shannon [Griffo.Shannon@epa.gov]; Keith, Jennie [Keith.Jennie@epa.gov]; Mosley, Ferne [mosley.ferne@epa.gov]; Ross, Margaret [Ross.Margaret@epa.gov]; Monson, Mahri [Monson.Mahri@epa.gov]; Patrick, Monique [Patrick.Monique@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]

and inauguration day...

Message

From: Monson, Mahri [Monson.Mahri@epa.gov]
Sent: 11/4/2020 3:30:28 PM
To: Dorka, Lilian [Dorka.Lilian@epa.gov]; Patrick, Monique [Patrick.Monique@epa.gov]; Talbert-Duarte, Angelia [talbert-duarte.angelia@epa.gov]; Rhodes, Julia [Rhodes.Julia@epa.gov]; Biffl, Betsy [Biffl.Betsy@epa.gov]; Johnson, Johahna [Johnson.Johahna@epa.gov]; O'Lone, Mary [OLone.Mary@epa.gov]; Wilson, Adam [wilson.adam@epa.gov]; Robinson, Brittany [Robinson.Brittany@epa.gov]; Bell, Aaron L. [Bell.Aaron@epa.gov]; Stein, Jonathan [Stein.Jonathan@epa.gov]; Nieves-Munoz, Waleska [Nieves-Munoz.Waleska@epa.gov]; Covington, Jeryl [Covington.Jeryl@epa.gov]; Harrison, Brenda [Harrison.Brenda@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]; Khan, Zahra [Khan.Zahra@epa.gov]; Rhines, Dale [rhines.dale@epa.gov]; Blitstein, Lisa [Blitstein.Lisa@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; 8:teamsvisitor:603a583547ae49f290e3d5c94ed407ed

FYI: https://www.huffpost.com/entry/epa-trump-diversitty_n_5f9c6e7cc5b6cfec2f6d844b

Appointment

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 10/23/2020 12:19:27 AM

Subject: Pre-Molina day after Election. FMC discussion? Sci Integ doc. OGC @50 doc. Transition table of 4 months (no SAFE entry) if wish to review or skim, OIG/GAO tracker.

Start: 10/23/2020 9:30:00 PM
End: 10/23/2020 10:00:00 PM
Show Time As: Busy

Recurrence: (none)

Appointment

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 12/11/2020 1:26:32 AM
To: Payne, James (Jim) [payne.james@epa.gov]

Subject: The Biden Administration: Climate and the Environment at a Critical Juncture (WEBINAR)
Location: Webinar only, United States

Start: 12/17/2020 5:00:00 PM
End: 12/17/2020 6:30:00 PM
Show Time As: Busy

Recurrence: (none)

a

Appointment

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 1/21/2021 8:27:04 AM

Subject: Election Day
Location: United States

Start: 11/8/2016 6:00:00 AM
End: 11/9/2016 6:00:00 AM
Show Time As: Free

Recurrence: (none)

Message

From: payne.james@epa.gov [payne.james@epa.gov]
Sent: 11/9/2020 7:36:17 PM
Subject: GSA Faces Pressure to Recognize Biden as Election Winner, Hand Over Keys to Formally Start Transition - Government Executive

https://www.govexec.com/management/2020/11/gsa-faces-pressure-recognize-biden-election-winner-hand-over-keys-formally-start-transition/169888/

Sent from my iPhone

Message

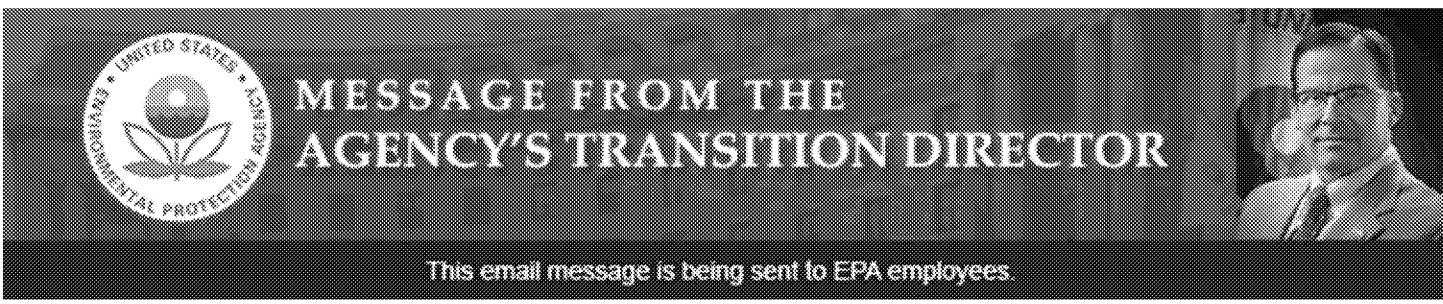
From: payne.james@epa.gov [payne.james@epa.gov]
Sent: 1/21/2021 1:11:56 AM
To: Nishida, Jane [Nishida.Jane@epa.gov]
CC: Packard, Elise [Packard.Elise@epa.gov]
Subject: Fwd: Agency Leadership Announcement

Congratulations Jane! We're available to help. Jim 202-672-3727 cell

Sent from my iPhone

Begin forwarded message:

> **From:** "Payne, James (Jim)" <payne.james@epa.gov>
> **Date:** January 20, 2021 at 8:03:00 PM EST
> **To:** "Carpenter, Wesley" <Carpenter.Wesley@epa.gov>
> **Subject: RE: Agency Leadership Announcement**
>
> Thanks for the note and handsome pic!
>
> ---
>
> **From:** MassMailer <massmailer@epa.gov>
> **Sent:** Wednesday, January 20, 2021 8:00 PM
> **To:** MassMailer <massmailer@epa.gov>
> **Subject:** Agency Leadership Announcement



Dear Colleagues,

As you know, President Joseph Biden was inaugurated as our 46th President at noon today, so I am sharing some important transition information with all of you.

Shortly after being sworn in, President Biden signed an Executive Order naming acting heads of federal agencies, pending Senate confirmation of his nominees. For EPA, the President appointed Jane Nishida to serve as EPA's Acting Administrator until the new EPA Administrator is confirmed. Jane currently serves as the Principal Deputy Assistant Administrator for the Office of International and Tribal Affairs (OITA) where she is responsible for the full range of EPA's international and tribal programs. Jane has over 30 years of environmental experience working in federal and state government, and international and nongovernmental organizations. Prior to joining EPA in 2011, she served as the Senior Environmental Institutions Specialist at the World Bank, and from 1995 to 2002, she served as the Secretary of Maryland's Department of the Environment. Jane received a Bachelor of Arts in International Affairs from Lewis & Clark College in Portland, Oregon, and a Juris Doctorate from Georgetown Law Center in Washington, D.C.

I know that you all will join me in supporting Jane as she assumes this important responsibility.

We appreciate everyone's support of the agency's transition activities over the past several months. I am proud of our work with the Biden-Harris Agency Review Team and extend my gratitude to the AO, and the national program and regional offices who provided a substantial level of support to this transition effort.

Wes Carpenter
Agency Transition Director

Message

From: payne.james@epa.gov [payne.james@epa.gov]
Sent: 10/18/2020 6:49:37 AM
Subject: article

FYI

https://www.nbcnews.com/think/opinion/trump-s-2020-election-transition-plan-bit-mystery-here-s-ncna1237752

Sent from my iPhone

Message

From: payne.james@epa.gov [payne.james@epa.gov]
Sent: 11/9/2020 4:10:30 PM
Subject: Biden Team Awaits GSA Certification of Election Win - WSJ.com

https://www.wsj.com/livecoverage/trump-biden-election-day-2020/card/jx3Ha1fOT6IA41bAlmtl

Sent from my iPhone

Message

From: payne.james@epa.gov [payne.james@epa.gov]
Sent: 11/9/2020 7:47:22 PM
Subject: background
Attachments: cidFF450F1E14E47E49960A2CE8BD59331C@usepa.onmicrosoft.com; ATT00001.htm

FYSA

https://www.govexec.com/management/2020/11/gsa-faces-pressure-recognize-biden-election-winner-hand-over-keys-formally-start-transition/169888/

PRESIDENTIAL TRANSITION BACKGROUND

Attached is GSA Administrator's 2008 ascertainment letter, sent pursuant to sec 3 of the 1963 Presidential Transition Act, which is excerpted below.

Note that since issuance of this 2008 letter, a later amendment to the 1963 Act – adopted in 2015 - created a GSA senior career position as **Federal Transition Coordinator** to carry out GSA role in a Presidential transition, but the legislation did **not seem to specify whether the Coordinator has a role with respect to the GSA Admr's ascertainment letter**under sec 3 of the 1963 Act. Under the 2015 amendment, the Coordinator will "carry out the duties and authorities of the [GSA] relating to Presidential transition under [the 1963 Act] or any other provision of law." P.L. 114-136, section 2.

1963 PRESIDENTIAL TRANSITION ACT – excerpt

Sec. 3, SERVICES AND FACILITIES AUTHORIZED TO BE PROVIDED TO PRESIDENTS-ELECT AND VICE PRESIDENTS-ELECT

(a) The Administrator of General Services, referred to hereafter in this Act as "the Administrator," is authorized to provide, upon request, to each President-elect and each Vice President-elect, for use in connection with his preparations for the assumption of official duties as President or Vice President necessary services and facilities, including ....

* * *

(c) The terms "President-elect" and "Vice-President-elect" as used in this Act shall mean such persons as are the apparent successful candidates for the office of the President and Vice President, respectively, as ascertained by the Administrator following the general elections held to determine the electors of the President and Vice-President in accordance with title 3, United States code, sections 1 and 2.

* * *

Message

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 1/12/2021 8:13:28 PM
To: Askew, Wendel [Askew.Wendel@epa.gov]
Subject: Re: Transition: Lessons learned

Thanks! And if haven't already, could you also review the other documents in the Sharepoint site, in case you draw any lessons learned from them or find anything else to flag or that might be helpful?

Sent from my iPhone

On Jan 11, 2021, at 6:26 PM, Askew, Wendel <Askew.Wendel@epa.gov> wrote:

Hi Jim,

I took a look through the lessons learned documents in CarolAnns' files. A good bit of it related to preparation in the year proceeding the election and inauguration. Examples include updating position descriptions and reviewing delegations of authority. There were also items related to prepping law office transition team members and interacting with the EPA transition team. Those items are not as useful to us at this point because we've done that work for this transition.

There are items that would have utility for where we are in the current transition process. I've cherry picked the items that seem most relevant to our current posture in the process. The attachment contains a few items that we might discuss with the ADDs as we prepare for the next few months.

Wendel Askew
Assistant General Counsel for Assistance Law
Office of General Counsel
Mail Code 2399A
202-564-3987
7454H WJCN

<2021.01.11 Lessons learned items .docx>

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 1/19/2021 12:31:57 PM
To: OGC Ethics [OGC_Ethics@epa.gov]
Subject: Biden to tighten restrictions on lobbyists and revolving door government workers. - The Washington Post

https://www.washingtonpost.com/politics/biden-ethics-administration/2021/01/18/56a9a97a-59bd-11eb-a976-bad6431e03e2_story.html

Sent from my iPhone

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 1/20/2021 7:09:36 PM
To: Pam.Giblin@bakerbotts.com
Subject: Re: PEOPLE: Here's who is running EPA -- Wednesday, January 20, 2021 -- www.eenews.net

Very kind, thank you Pam!

Sent from my iPhone

On Jan 20, 2021, at 1:55 PM, Giblin, Pam <pam.giblin@bakerbotts.com> wrote:

So thrilled to see you on this list! You're the best!

https://www.eenews.net/greenwire/2021/01/20/stories/1063723009?utm_campaign=edition&utm_medium=email&utm_source=eenews%3Agreenwire

Here's who is running EPA

Kevin Bogardus, E&E News reporter
Published: Wednesday, January 20, 2021

Charlotte Bertrand, EPA's deputy associate administrator for programs, has worked at the agency for over two decades. Senate Environment and Public Works Committee

EPA has named a number of career officials to run its program and regional offices until the incoming Biden administration's appointees arrive at the agency.

Charlotte Bertrand, a newly promoted career official at EPA, will serve at the top of the agency as administrator, according to an internal email obtained by E&E News. Last month, she was named associate deputy administrator for programs, leaving the agency's water office to join the administrator's office.

President Trump then issued an executive order changing the order of succession at EPA, adding Bertrand's new position to the line of power at the agency. A longtime career official, Bertrand is considered close to Trump's

political appointees and worked on several controversial rules during his administration (*Greenwire*, Jan. 11).

In the final days of the Obama administration, EPA also named career officials to manage the agency until Trump's team came on board (*E&E News PM*, Jan. 12, 2017).

Some EPA career officials will serve in leadership again for posts they once held four years ago as they waited for Trump's appointees. Those officials include David Bloom for the financial office, Sarah Dunham for the air office, Barry Breen for the solid waste office and Larry Starfield for the enforcement office.

Career officials can be at the top of EPA for weeks as they wait for a new president's nominees to be confirmed by the Senate. Catherine McCabe, then deputy regional administrator for EPA Region 2, spent nearly a month as acting administrator until Scott Pruitt's arrival in February 2017.

"During the transition period starting the afternoon of January 20, 2021, the agency leadership team will be as follows until otherwise superseded," outgoing EPA Chief of Staff Mandy Gunasekara said in the email sent yesterday to agency employees.

"Thank you to the leadership team for taking on this important responsibility and continuing the work of the agency."

Those EPA officials are as follows:

Administrator: Charlotte Bertrand

Office of the Chief Financial Officer: David Bloom

Office of Air and Radiation: Sarah Dunham

Office of Water: Andrew Sawyers

Office of Land and Emergency Management: Barry Breen

Office of Chemical Safety and Pollution Prevention: Tala Henry

Office of Research and Development: Jennifer Orme-Zavaleta

Office of General Counsel: Jim Payne

Office of Enforcement and Compliance Assurance: Larry Starfield

Office of International and Tribal Affairs: Jane Nishida

Office of Mission Support: Donna Vizian

Office of Policy: Helena Woods-Aguilar

Office of Congressional and Intergovernmental Relations: Robin Richardson

Office of Public Engagement and Environmental Education: Lee Tanner

Office of Public Affairs: Nancy Grantham

Region 1: Deb Szaro

Region 2: Walter Mugdan

Region 3: Diana Esher

Region 4: John Blevins

Region 5: Cheryl Newton

Region 6: David Gray

Region 7: Ed Chu

Region 8: Deb Thomas

Region 9: Deb Jordan

Region 10: Michelle Pirzadeh

Pamela M. Giblin
Office (512) 322-2509
Cell (512) 422-6821

Confidentiality Notice:

Please note that I have retired from the practice of law at Baker Botts. Any information contained herein does not constitute legal advice of Baker Botts L.L.P.

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 1/23/2021 3:41:29 AM
To: Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Subject: Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting AG - The New York Times

Gasp

https://www.nytimes.com/2021/01/22/us/politics/jeffrey-clark-trump-justice-department-election.html

Sent from my iPhone

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 1/24/2021 6:29:47 PM
To: Starfield, Lawrence [Starfield.Lawrence@epa.gov]
Subject: Re: Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting AG - The New York Times

Just FYI
https://www.bloomberg.com/news/articles/2021-01-23/ex-doj-official-called-radioactive-after-alleged-election-plot

Sent from my iPhone

On Jan 22, 2021, at 10:41 PM, Payne, James (Jim) <payne.james@epa.gov> wrote:

Gasp

https://www.nytimes.com/2021/01/22/us/politics/jeffrey-clark-trump-justice-department-election.html

Sent from my iPhone

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 1/24/2021 10:54:44 PM
To: Packard, Elise [Packard.Elise@epa.gov]
Subject: Ex-DOJ Official Called 'Radioactive' After Alleged Election Plot - Bloomberg

FYI

https://www.bloomberg.com/news/articles/2021-01-23/ex-doj-official-called-radioactive-after-alleged-election-plot

Sent from my iPhone

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 1/31/2021 8:30:55 AM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: Tracking environmental actions under Biden - Washington Post

https://www.washingtonpost.com/graphics/2021/climate-environment/biden-climate-environment-actions/

Sent from my iPhone

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 10/13/2020 4:51:40 PM
To: Razor, Lila [Razor.Lila@epa.gov]
Subject: Re: possible meeting for Jim Payne's calendar: Education Announcement: Preparing for the Presidential Election

Pls be sure to keep any pending items on Mon list, including some recent ones from Justina like this.

Sent from my iPhone

On Oct 9, 2020, at 10:05 AM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Lila,
The Office of Government Ethics is offering a training course on election readiness next week (see below). I thought Jim might be interested in attending. Does he already get these messages from the OGE listserve? The "from" line in my mailbox is "Ethics Mailinglist." He should also have received an email message from Nicole Stein (nstein@oge.gov) on 9/9/20 that invited him to the quarterly DAEO meeting on 10/21. If he's not getting these messages, then he's not on the OGE mailing list, so I will need to contact them to add him. Would you mind double checking for us?
Thanks!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: News and Info for Ethics Officials <oge-ethicsinfo@LISTSERV.GSA.GOV> **On Behalf Of** Ethics Mailinglist
Sent: Friday, October 09, 2020 9:56 AM
To: OGE-ETHICSINFO@LISTSERV.GSA.GOV
Subject: Education Announcement: Preparing for the Presidential Election

Join instructors from the Institute for Ethics in Government for some final planning ideas ahead of the Presidential election. In this live, 1 hour broadcast we will discuss:

- Resource Management & Planning
- Transition Planning
- Preparing New Leaders
- Coaching & Educating Nominees
- Off-boarding and On-boarding Employees

Date: October 15th
Time: Noon Eastern
Register:
https://extapps2.oge.gov/Training/OGETraining.nsf/OGECourse.xsp?action=openDocument&documentId=ABF0ABF96D103922852585FC004B6997

OGE Confidential Notice: This message may contain Controlled Unclassified Information (CUI) that requires safeguarding or dissemination control under applicable law, regulation, or Government-wide policy. This email, including all attachments, may constitute a Federal record or other Government property that is intended only for the use of the individual or entity to which it is addressed. If you are not the intended recipient or the employee or agent responsible for delivering the transmission to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this email or its contents is strictly prohibited. If you have received this email in error, please notify the sender by responding to the email and then immediately delete the email.

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 10/20/2020 8:37:23 PM
To: Fugh, Justina [Fugh.Justina@epa.gov]
Subject: Fwd: President Trump's political appointees' job negotiations while at EPA

Sent from my iPhone

Begin forwarded message:

From: "Fotouhi, David" <Fotouhi.David@epa.gov>
Date: October 20, 2020 at 4:09:22 PM EDT
To: "Block, Molly" <block.molly@epa.gov>, "Willey, Katharine" <willey.katharine@epa.gov>
Cc: "Hewitt, James" <hewitt.james@epa.gov>, "Payne, James (Jim)" <payne.james@epa.gov>
Subject: RE: President Trump's political appointees' job negotiations while at EPA

These folks almost certainly would have filed STOCK Act notifications with our Ethics office upon engaging in such negotiations. Copying DAEO Jim Payne for his help.

David Fotouhi

Acting General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Block, Molly <block.molly@epa.gov>
Sent: Tuesday, October 20, 2020 4:02 PM
To: Willey, Katharine <willey.katharine@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Hewitt, James <hewitt.james@epa.gov>
Subject: FW: President Trump's political appointees' job negotiations while at EPA

Who's the best POC on a response for this?

From: Kevin Bogardus <kbogardus@eenews.net>
Sent: Tuesday, October 20, 2020 3:59 PM
To: Hewitt, James <hewitt.james@epa.gov>; Block, Molly <block.molly@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Press <Press@epa.gov>
Subject: President Trump's political appointees' job negotiations while at EPA

Hey everyone,

It's Kevin Bogardus with E&E News. I hope all is well.

I'm working on a story about President Trump's political appointees at EPA entering job negotiations for employment outside EPA while still at EPA. My story will focus on former EPA Chief of Staff Ryan Jackson but it will mention other former political appointees from EPA as well. I'm quoting from and linking to notifications of job negotiations they filed while at EPA that I obtained under the Freedom of Information Act (please see below).

Those records are as follows:

-- Ryan Jackson's notifications of job negotiations on March 19 and March 29, 2018 (please see https://www.eenews.net/assets/2020/10/19/document_gw_01.pdf); on March 21, 2018 (please see https://www.eenews.net/assets/2020/10/19/document_gw_02.pdf); on Sept. 26, 2019 (please see https://www.eenews.net/assets/2020/10/19/document_gw_04.pdf); with the National Mining Association on Dec. 9, 2019 (please see https://www.eenews.net/assets/2020/10/19/document_gw_05.pdf); and on Jan. 10, 2020 (please see https://www.eenews.net/assets/2020/10/19/document_gw_06.pdf)

-- Erik Baptist's notifications of job negotiations on Jan. 10, 2019 (please see https://www.eenews.net/assets/2020/10/19/document_gw_08.pdf); on Jan. 16, 2019 (please see https://www.eenews.net/assets/2020/10/19/document_gw_07.pdf); and with Wiley Rein LLP on Jan. 22, 2019 (please see https://www.eenews.net/assets/2020/10/19/document_gw_09.pdf)

-- Troy Lyons' notifications of job negotiations on March 29, 2019 (please see https://www.eenews.net/assets/2020/10/19/document_gw_11.pdf); and with Massie Partners on April 15, 2019 (please see https://www.eenews.net/assets/2020/10/19/document_gw_12.pdf)

-- Lincoln Ferguson's notification of job negotiations with Continental Resources on June 22, 2018 (please see https://www.eenews.net/assets/2019/07/02/document_pm_02.pdf)

-- Holly Greaves' notification of job negotiations with the Public Company Accounting Oversight Board on July 22, 2019 (please see https://www.eenews.net/assets/2019/11/05/document_gw_07.pdf)

-- John Konkus' notification of job negotiations with AECOM on May 23, 2019 (please see https://www.eenews.net/assets/2020/10/19/document_gw_10.pdf)

I have a few questions about this, which are:

-- While at EPA, did Jackson recuse himself and not participate in "any particular matter" related to the non-federal entities he entered job negotiations with? If so, what were those EPA matters? I ask because he indicated on his notifications of job negotiations that he would not participate in EPA matters that would affect those entities.

-- While at EPA, did Baptist, Lyons, Ferguson, Greaves and/or Konkus recuse themselves and not participate in "any particular matter" related to the non-federal entities they entered job negotiations with? If so, what were those EPA matters? I ask because they indicated on their notifications of job negotiations that they would not participate in EPA matters that would affect those entities.

For your information, I have also asked Jackson, Baptist, Lyons, Ferguson, Greaves and Konkus if they did not participate in matters at EPA related to their job negotiations for employment outside EPA while still at EPA and if so, what were those EPA matters. I wanted to check with EPA to see if EPA had any thoughts as well.

Please get back to me as soon as possible. My deadline is close of business Wednesday, Oct. 21, but the sooner you get back to me, the more it helps my reporting. Also, since I'm working from home, please email me here or call my cell phone at 202-247-7844. Thank you for your help and stay safe, stay healthy!

Kevin Bogardus
E&E News Reporter
kbogardus@eenews.net
202-446-0401 (p)
202-247-7844 (c)
202-737-5299 (f)

Follow me @KevinBogardus

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EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM, E&ETV

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 10/18/2020 5:06:35 PM
To: Carpenter, Wesley [Carpenter.Wesley@epa.gov]
CC: Askew, Wendel [Askew.Wendel@epa.gov]
Subject: potential transition team's MOU on access to employees, facilities and documents

Hi Wes,

Do we know whether the potential transition team has entered into an MOU on access to agency employees, facilities and documents?

The 9/4/2020 OMB memo indicated that this MOU will be coming in advance of the election. I believe the Presidential Transition Act provides for these MOUs, usually by Oct 1. This MOU presumably would guide agency interactions with transition "Agency Review Teams" that could begin contacting agencies on Nov 4, if there is a Presidential transition.

I'm aware of the potential transition team's separate 9/3/2020 MOU w GSA for office space and equipment.

Trump transition team's 2016 access MOU is at link below.

Jim
202-672-3727 cell

https://presidentialtransition.org/wp-content/uploads/sites/6/2016/11/2913a11c367791bc5cbe730d7893c777-1490911271.pdf

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 10/27/2020 11:00:49 PM
To: Packard, Elise [Packard.Elise@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]
CC: Askew, Wendel [Askew.Wendel@epa.gov]
Subject: Fwd: potential transition team's MOU on access to employees, facilities and documents
Attachments: WH MOU on Transition 10-1-2020 (signed).pdf; ATT00001.htm

This is the potential transition team MOU on access, dated 9/30/2020. It does not appear to be publicly released, based on initial on-line searches.

An earlier potential transition team MOU on facility space has been released.

Sent from my iPhone

Begin forwarded message:

> **From:** "Carpenter, Wesley" <Carpenter.Wesley@epa.gov>
> **Date:** October 27, 2020 at 5:52:50 PM EDT
> **To:** "Payne, James (Jim)" <payne.james@epa.gov>
> **Cc:** "Askew, Wendel" <Askew.Wendel@epa.gov>
> **Subject: RE: potential transition team's MOU on access to employees, facilities and documents**
>
> Jim:
>
> Good evening. I participated in an agency transition director meeting earlier today with OMB/OPM/GSA. OMB/OPM/GSA provided an update on the latest with the transition activities, including discussing the attached MOU signed by the President's Chief of Staff and the Chair of the Biden Transition Team. The MOU covers Transition Procedures, Identification of Transition Contacts, and access to non-public government and transition information. I am sharing the MOU per your request and for situational awareness purposes. I have also shared it with Doug, Henry and Mandy. Typically, supplemental guidance or implementing instructions are provided with the MOU; however, OMB/OPM/GSA are not releasing the guidance or instructions at this time. If and when they do, I will share it with you. In the interim, please let me know if you have any questions or need additional information. Thanks.
>
> Wes
> Per your request, I have attached the MOU signed between the President's Chief of Staff and the Chair of the Biden Transition Team.
>
> ---
>
> **From:** Payne, James (Jim) <payne.james@epa.gov>
> **Sent:** Sunday, October 18, 2020 1:07 PM
> **To:** Carpenter, Wesley <Carpenter.Wesley@epa.gov>
> **Cc:** Askew, Wendel <Askew.Wendel@epa.gov>
> **Subject:** potential transition team's MOU on access to employees, facilities and documents
>
> Hi Wes,
>
> Do we know whether the potential transition team has entered into an MOU on access to agency employees, facilities and documents?

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Jim
202-672-3727 cell

https://presidentialtransition.org/wp-content/uploads/sites/6/2016/11/2913a11c367791bc5cbe730d7893c777-1490911271.pdf

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 10/29/2020 7:11:04 PM
To: Fugh, Justina [Fugh.Justina@epa.gov]
CC: Askew, Wendel [Askew.Wendel@epa.gov]
Subject: FW: potential transition team's MOU on access to employees, facilities and documents
Attachments: WH MOU on Transition 10-1-2020 (signed).pdf

Wes Carpenter said that this MOU w potential transition team is close hold. It includes ethics provisions. Let's touch base.

From: Payne, James (Jim)
Sent: Tuesday, October 27, 2020 7:01 PM
To: Packard, Elise <Packard.Elise@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>
Cc: Askew, Wendel <Askew.Wendel@epa.gov>
Subject: Fwd: potential transition team's MOU on access to employees, facilities and documents

This is the potential transition team MOU on access, dated 9/30/2020. It does not appear to be publicly released, based on initial on-line searches.

An earlier potential transition team MOU on facility space has been released.

Sent from my iPhone

Begin forwarded message:

> **From:** "Carpenter, Wesley" <Carpenter.Wesley@epa.gov>
> **Date:** October 27, 2020 at 5:52:50 PM EDT
> **To:** "Payne, James (Jim)" <payne.james@epa.gov>
> **Cc:** "Askew, Wendel" <Askew.Wendel@epa.gov>
> **Subject: RE: potential transition team's MOU on access to employees, facilities and documents**
>
> Jim:
>
> Good evening. I participated in an agency transition director meeting earlier today with OMB/OPM/GSA. OMB/OPM/GSA provided an update on the latest with the transition activities, including discussing the attached MOU signed by the President's Chief of Staff and the Chair of the Biden Transition Team. The MOU covers Transition Procedures, Identification of Transition Contacts, and access to non-public government and transition information. I am sharing the MOU per your request and for situational awareness purposes. I have also shared it with Doug, Henry and Mandy. Typically, supplemental guidance or implementing instructions are provided with the MOU; however, OMB/OPM/GSA are not releasing the guidance or instructions at this time. If and when they do, I will share it with you. In the interim, please let me know if you have any questions or need additional information. Thanks.
>
> Wes
> Per your request, I have attached the MOU signed between the President's Chief of Staff and the Chair of the Biden Transition Team.

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Sunday, October 18, 2020 1:07 PM
To: Carpenter, Wesley <Carpenter.Wesley@epa.gov>
Cc: Askew, Wendel <Askew.Wendel@epa.gov>
Subject: potential transition team's MOU on access to employees, facilities and documents

Hi Wes,

Do we know whether the potential transition team has entered into an MOU on access to agency employees, facilities and documents?

The 9/4/2020 OMB memo indicated that this MOU will be coming in advance of the election. I believe the Presidential Transition Act provides for these MOUs, usually by Oct 1. This MOU presumably would guide agency interactions with transition "Agency Review Teams" that could begin contacting agencies on Nov 4, if there is a Presidential transition.

I'm aware of the potential transition team's separate 9/3/2020 MOU w GSA for office space and equipment.

Trump transition team's 2016 access MOU is at link below.

Jim
202-672-3727 cell

https://presidentialtransition.org/wp-content/uploads/sites/6/2016/11/2913a11c367791bc5cbe730d7893c777-1490911271.pdf

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 10/30/2020 1:50:41 PM
To: Blake, Wendy [Blake.Wendy@epa.gov]; Fugh, Justina [Fugh.Justina@epa.gov]
CC: Askew, Wendel [Askew.Wendel@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]
Subject: Fwd: potential transition team's MOU on access to employees, facilities and documents
Attachments: WH MOU on Transition 10-1-2020 (signed).pdf; ATT00001.htm; Potential Agency Review Team Instructions for the Contigency of a Transition to a New Administration 20201029.pdf; ATT00002.htm

Close hold

Sent from my iPhone

Begin forwarded message:

From: "Carpenter, Wesley" <Carpenter.Wesley@epa.gov>
Date: October 30, 2020 at 7:52:10 AM EDT
To: "Payne, James (Jim)" <payne.james@epa.gov>
Cc: "Askew, Wendel" <Askew.Wendel@epa.gov>
Subject: RE: potential transition team's MOU on access to employees, facilities and documents

Jim:

Good morning. Late yesterday I received the attached implementing instructions from GSA to supplement the MOU I sent you. I am sharing for situational awareness purposes only. Please keep close hold and let me know if you have any questions. Thanks.

Wes

From: Carpenter, Wesley
Sent: Tuesday, October 27, 2020 5:53 PM
To: Payne, James (Jim) <payne.james@epa.gov>
Cc: Askew, Wendel <Askew.Wendel@epa.gov>
Subject: RE: potential transition team's MOU on access to employees, facilities and documents

Jim:

Good evening. I participated in an agency transition director meeting earlier today with OMB/OPM/GSA. OMB/OPM/GSA provided an update on the latest with the transition activities, including discussing the attached MOU signed by the President's Chief of Staff and the Chair of the Biden Transition Team. The MOU covers Transition Procedures, Identification of Transition Contacts, and access to non-public government and transition information. I am sharing the MOU per your request and for situational awareness purposes. I have also shared it with Doug, Henry and Mandy. Typically, supplemental guidance or implementing instructions are provided with the MOU; however, OMB/OPM/GSA are not releasing the guidance or instructions at this time. If and when they do, I will share it with you. In the interim, please let me know if you have any questions or need additional information. Thanks.

Wes
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From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Sunday, October 18, 2020 1:07 PM
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Trump transition team's 2016 access MOU is at link below.

Jim
202-672-3727 cell

https://presidentialtransition.org/wp-content/uploads/sites/6/2016/11/2913a11c367791bc5cbe730d7893c777-1490911271.pdf

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 11/3/2020 9:37:45 PM
To: David Fotouhi (fotouhi.david@epa.gov) [fotouhi.david@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]
Subject: Kevin M article in Bloomberg

FYI
https://news.bloomberglaw.com/environment-and-energy/how-much-impact-does-a-presidential-election-have-on-epa-work

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 11/4/2020 1:59:34 PM
To: Packard, Elise [Packard.Elise@epa.gov]
Subject: The Legal Theories at the Heart of Trump's Order Politicizing the Civil Service - Government Executive

I just signed up for GovExec and saw this - you might already get these.

https://www.govexec.com/management/2020/11/legal-theories-heart-trumps-order-politicizing-civil-service/169765/

Sent from my iPhone

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 11/11/2020 4:06:46 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: White House tells agencies not to cooperate with the Biden transition - The Washington Post

https://www.washingtonpost.com/politics/trump-transition-agencies-biden/2020/11/09/ad9f2ba2-22b7-11eb-952e-0c475972cfc0_story.html

Sent from my iPhone

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 11/9/2020 7:28:39 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: GSA Faces Pressure to Recognize Biden as Election Winner, Hand Over Keys to Formally Start Transition - Government Executive

https://www.govexec.com/management/2020/11/gsa-faces-pressure-recognize-biden-election-winner-hand-over-keys-formally-start-transition/169888/

Sent from my iPhone

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 11/11/2020 9:48:45 PM
To: Askew, Wendel [Askew.Wendel@epa.gov]
Subject: Re: Transition: Biden ART info

Thank you

Sent from my iPhone

On Nov 11, 2020, at 3:41 PM, Askew, Wendel <Askew.Wendel@epa.gov> wrote:

FYI – The link below provides some preliminary info on the Agency Review Team composition, including EPA.

https://buildbackbetter.com/the-transition/agency-review-teams/

Wendel Askew
Assistant General Counsel for Assistance Law
Office of General Counsel
Mail Code 2399A
202-564-3987
7454H WJCN

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 11/14/2020 6:51:55 PM
To: Fugh, Justina [Fugh.Justina@epa.gov]
Subject: Re: updated information

Thanks as always, Justina!

Sent from my iPhone

On Nov 13, 2020, at 9:56 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Jim,
Over the course of today, Ferne and I updated the "dearly departing" guide for PAS and non-career SES. Among other things, we changed the font, added the GC and AA/OECA examples to the "areas of responsibility" for the purposes of 18 USC 207(a)(2), and incorporated the Trump pledge paragraph 4 restrictions (for the Foreign Agents Registration Act). See attached. And Shannon, Jennie and I refined the *Negotiation Notification Form,* which is the new name for the former "STOCK Act form." Initially introduced in the STOCK Act, this requirement is now codified in the Ethics in Government Act, Chapter E, so we are forcing ourselves to adapt.

I double checked myself in the examples in the "Top Seven Things To Know" document:

EXAMPLES

Talking to a headhunter but you have no idea about the identity of possible employer	No need to recuse until you know the name of the possible employer
Talking to friends for general networking ideas or contacts	No need to recuse until you submit a resume or application to a specific job or company
You post your resume on LinkedIn or another social media site	You are NOT seeking employment with the world
"Not interested now, but talk to me after January 2021"	You are NOT seeking employment
"I'll make a decision on your situation and then we can talk about a possible job"	You need to recuse before making the decision

This example is drawn from the OGE regulation itself, example 9 to paragraph (b), which reads as follows:

> Three months prior to the end of the current administration, a political appointee at a large department receives a telephone call from the managing partner of an international law firm. The managing partner asks if the official would be interested in joining the law firm. The official says, "I am not talking to anyone about employment until I leave the Government." *The official has rejected the unsolicited employment overture and has not begun seeking employment.* (emphasis added).

OGE added this example in 2016 (see LA 16-06), which was toward the end of a second and final presidential term. But taken out of that historical context, isn't this example confusing? When you consider the current context of a first term but no ascertainment, what is the significance of "three months prior to the end of the current administration" mean? Is that

different from, say, four months? What this example says to me is that *politicals* can respond by saying something that, for career employees, we might consider to be a deferral not rejection. Given the current posture of the "t-word," I'm okay leaving the example as it reads now.

Finally, we'll work on getting information posted to our sharepoint site next week. And I've invited my team to observe the counseling session for Greg Sopkin on Monday as a skills development opportunity. We'll be ready for whatever enfolds!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Fugh, Justina
Sent: Thursday, November 12, 2020 10:31 PM
To: Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: Follow up to brief discussion re headhunter

Hi Jim,
The best way for me to explain these nuances is to give the talk, so here goes.

> You're allowed to seek other employment, but we always say that "seeking employment and negotiating for employment is more restrictive then you assume, while post-employment is not nearly as restrictive as you fear." You need to realize that the seeking employment rules were not designed to protect you as the employee but rather to protect the Agency and its operations. We want to be sure that, even if you are looking for another job, the work of this Agency continues without undue influence, bias or conflict. Consequently, you must recuse – which means completely disqualify yourself – from participating as part of your official duties on any particular matter that will have a direct and substantial effect upon the potential employer.
>
> How the ethics rules apply to your situation depend on what your job is and with whom you are seeking or negotiating for employment. That's why it's so hard to set out bright lines for every employee. What we can say – and do say, repeatedly – is that the employee must not work on particular matters that will affect the potential employer. But the ethical requirement, set forth at 5 CFR 2635.604(b), says the employee who becomes aware of the need to recuse "must take whatever steps are necessary to ensure that [s/he] does not participate." The regulation continues to say, "[a]ppropriate oral or written notification [of recusal] may be made to an agency ethics official, coworkers or a supervisor to document and help effectuate" the recusal." So the fundament requirement is *disqualification only,* not necessarily notification. That said, public filers must comply with the additional notification requirement at 5 CFR 2635.607, which refers to the former STOCK Act form.

Here's an easy way to view the restrictions:

SEEKING EMPLOYMENT

- <!--[if !supportLists]--><![endif]-->Unsolicited communication regarding possible employment
- <!--[if !supportLists]--><![endif]-->Any discussions with a view toward reaching an agreement on possible employment
- <!--[if !supportLists]--><![endif]-->You get a response to a job application or employment proposal indicating interest in you
- <!--[if !supportLists]--><![endif]-->You respond, other than rejection, to an unsolicited communication regarding a possible job

RECUSAL BECAUSE SEEKING EMPLOYMENT

- <!--[if !supportLists]--><![endif]-->You must recuse from working on particular matters that affect the prospective employer as a specific party
- <!--[if !supportLists]--><![endif]-->BUT if no response at all yet
- <!--[if !supportLists]--><![endif]-->THEN the restriction does NOT extend to rulemaking and other matters of general applicability

SEEKING EMPLOYMENT ENDS when ...

- <!--[if !supportLists]--><![endif]-->You or they reject the possibility of employment and all discussions cease, or
- <!--[if !supportLists]--><![endif]-->2 months have gone by but you haven't heard anything

NEGOTIATING FOR EMPLOYMENT

- <!--[if !supportLists]--><![endif]-->You enter into two-way discussions or communications with someone about possible job or compensation
- <!--[if !supportLists]--><![endif]-->Statutory requirement to submit "Notification of negotiation or agreement" form is triggered as soon as you take a meaningful step toward reaching an agreement (even if not quite at the point of discussion about actual terms of employment). Must submit form to OGC/Ethics within 3 business days.

RECUSAL BECAUSE NEGOTIATING FOR EMPLOYMENT

- <!--[if !supportLists]--><![endif]-->You must recuse from working on particular matters that affect the prospective employer as a specific party AND that affect it as a member of a class
- <!--[if !supportLists]--><![endif]-->Restriction DOES extend to rulemaking and other matters of general applicability

For your reference, I've attached three documents: (a) a cheat sheet for seeking employment that includes a couple of useful charts, (b) the Top Seven Things To Know About Seeking and Post-employment that is included in the Transition Book, and (c) our chatty guide to seeking/post employment for PAS and non-career SES (who are all most likely subject to 18 USC 207(c) as "senior officials").

Now let's turn to your questions:

- can an individual put in place their own recusal system, without involving others, if the system adequately ensures no involvement with recused matter?
  ANSWER: Probably yes, but if the individual is a public filer, then s/he must appropriately file a notification form when negotiations commence.

- is a written documentation of recusal system needed, such as with an email to self or an email to others?

ANSWER: Again, if the individual is a public filer, then s/he must file that notification of negotiation form. And, frankly, having a clear recusal process helps to protect the individual ensure that s/he doesn't inadvertently see something.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

-----Original Message-----
From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Thursday, November 12, 2020 7:02 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Follow up to brief discussion re headhunter

As to implementing a recusal:
- can an individual put in place their own recusal system, without involving others, if the system adequately ensures no involvement with recused matter?
- is a written documentation of recusal system needed, such as with an email to self or an email to others?

Sent from my iPhone
<Departing EPA for PAS and non career SES upated Nov 2020.docx>
<Negotiation Notification Form for digital signature.pdf>

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 11/20/2020 8:51:54 PM
To: Fugh, Justina [Fugh.Justina@epa.gov]
Subject: RE: scoop from DHS

Very helpful, thanks

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, November 16, 2020 2:05 PM
To: Payne, James (Jim) <payne.james@epa.gov>
Subject: scoop from DHS

Hi,
I got this information from my pal, Erica Dornburg, DAEO at DHS:

I heard news that there were reports on Executive Orders the Biden-Harris team would implement and through Washington Post article, found discussion: https://joebiden.com/governmentreform/#. High points include:

- Establishing a Commission for Ethics (CFE) enforcement agency and "ethics.gov" one-stop please for information – commission of 5 PASers
- Issue an improved Pledge to build on and improve the Obama-Biden Pledge, addressing not only lobbyists, but "ensuring an extra layer of review and scrutiny whenever policy proposals or recommendations come from a conflicted source"
- Demand strict compliance with ethics agreements of seniors
- New legislation to strengthen pledge practices
- Eliminate loophole re discretionary trusts
- Expand LDA disclosure to cover reporting on public officials and transparency in legislation and regulations proffered by lobbyists

Regrettably not much in terms of the pledge requirements or related policy initiatives but interesting.

Justina

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 11/20/2020 11:14:44 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: Trump's EPA Chief, Andrew Wheeler, Plans 2 Foreign Trips Before Leaving Office - The New York Times

https://www.nytimes.com/2020/11/19/climate/andrew-wheeler-epa.html

Sent from my iPhone

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 11/27/2020 5:23:26 PM
To: David Fotouhi (fotouhi.david@epa.gov) [fotouhi.david@epa.gov]
Subject: transition update
Attachments: PETT Redline - EPA NDA - 11_25_2020.pdf

Updates:

- as to NDA – response below and attached. It's in review. Wendy is expected to be available at 1:30pm to review and confer.

- as to other two forms – Wes said he discussed these with Patrice and was not hearing any comments. In response to a question from Patrice, Wes confirmed that the case-by-case request form was not needed for regular briefings that only contained public information.

- as to Orientation, I believe Wes is aiming for doing at 3pm today, though still conferring with Doug. Wendy would be available then.

Presumably would need to conclude discussions with transition team on NDA terms by 3pm, if Orientation happens then.

From: Payne, James (Jim)
Sent: Friday, November 27, 2020 12:16 PM
To: Blake, Wendy <Blake.Wendy@epa.gov>
Subject: FW: Transition Team Code of Conduct

Let's confer. Orientation might be at 3pm.

From: Carpenter, Wesley <Carpenter.Wesley@epa.gov>
Sent: Friday, November 27, 2020 11:22 AM
To: Payne, James (Jim) <payne.james@epa.gov>
Subject: Transition Team Code of Conduct

Jim:

Here is the information we discussed. Please review and follow backup with me. Thanks.

Wes

From: Patrice Simms <psimms@ptt.gov>
Sent: Friday, November 27, 2020 10:53 AM
To: Carpenter, Wesley <Carpenter.Wesley@epa.gov>
Subject: Transition Team Code of Conduct

Wes,

Thank you for your time this morning.

I am forwarding you the redline from our GC seeking to conform the NDA to the PTA and the MOU. Per our discussion this is necessary to allow the agency review team (ART) to effectively do its work to inform the appropriate internal transition-related processes. As we discussed, the 2019 amendments to the PTA strengthen the ethic requirements, and should obviate the need for overly strict agency by agency NDAs (the Transition Code of Conduct linked below includes non-disclosure obligations that manifest the new PTA requirements).
Our GC did not specifically address it, but we may also want to conform the language in the Record of Disclosure form to be consistent with the language of the final EPA-specific NDA. (I think only clause (3) in the second bullet under 'Steps Taken to Protect Non-Public Information').

Also, here is the code of conduct that every member of the Transition has signed.
https://www.gsa.gov/cdnstatic/Biden-Harris_Transition_Ethics_Plan_and_Code_of_Conduct.pdf

I look forward to working with you.

-patrice

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 11/28/2020 1:18:44 AM
To: Fotouhi, David [Fotouhi.David@epa.gov]
Subject: Fwd: Signed Record of Disclosure and Proposed Addition to NDA
Attachments: Simms Signed Record of Disclosure.PDF; PETT Redlinev2 - EPA NDA - 11_27_2020 (1).pdf

I'm reviewing and might try calling.

Sent from my iPhone

Begin forwarded message:

> **From:** "Carpenter, Wesley" <Carpenter.Wesley@epa.gov>
> **Date:** November 27, 2020 at 8:02:03 PM EST
> **To:** "Payne, James (Jim)" <payne.james@epa.gov>
> **Subject: Signed Record of Disclosure and Proposed Addition to NDA**
>
> Jim:
>
> Good evening. Here is the latest from Patrice. Please let me know if you are okay with the revised NDA language. Secondly, I assume I can provide the transition team members access to the SharePoint site now that the records form has been signed. Please advise. Thanks.
>
> Wes
>
> **From:** Patrice Simms <psimms@ptt.gov>
> **Sent:** Friday, November 27, 2020 7:56 PM
> **To:** Carpenter, Wesley <Carpenter.Wesley@epa.gov>
> **Subject:** Signed Record of Disclosure and Proposed Addition to NDA
>
> Wes,
>
> As we discussed. Here is the signed Record of Disclosure. I hope that is enough to get us into the share files.
>
> Also, my OGC asked for just a few additional words in the NDA. It relates to some language differences between the Code of Ethical Conduct as provided by the Presidential Transition Enhancement Act of 2019 and the code of conduct that team members sign.
>
> I am really sorry about the extra round of back and forth on the NDA. As I noted on the phone, it adds "or a substantially similar document", because the Biden Transition version added some additional content so is not exactly identical to the Code of Ethical Conduct.
>
> -p

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 11/30/2020 10:43:43 PM
To: David Fotouhi (fotouhi.david@epa.gov) [fotouhi.david@epa.gov]; Gustafson, Adam [Gustafson.Adam@epa.gov]; Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]
Subject: FW: Get The Guide to Federal Agency Rulemaking at 40% off + free shipping during the ABA Cyber Monday Book Sale

FYI

From: Payne, James (Jim)
Sent: Monday, November 30, 2020 5:43 PM
To: Gautam Srinivasan <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Dawn Messier <Messier.Dawn@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Lewis, Jen <Lewis.Jen@epa.gov>; Cole, Joseph E. <cole.josephe@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Jefferson, Tricia <Jefferson.Tricia@epa.gov>
Subject: FW: Get The Guide to Federal Agency Rulemaking at 40% off + free shipping during the ABA Cyber Monday Book Sale

Sharing FYI - ABA's offer for Lubbers 2018 rulemaking book for today/Cyber Monday.

From: Bennett, Francine <Francine.Bennett@americanbar.org>
Sent: Monday, November 30, 2020 4:38 PM
To: Bennett, Francine <Francine.Bennett@americanbar.org>
Subject: Get The Guide to Federal Agency Rulemaking at 40% off + free shipping during the ABA Cyber Monday Book Sale

Good afternoon, this annual one day sale ends tonight at 11:00 p.m. PT. You won't get this valuable guide at this price again until Cyber Monday 2021.

Trouble Viewing? View online.

Enter Discount Code CYBER2020 to Save!

AMBAR.ORG | CAREER CENTER | MEMBERSHIP | CALENDAR | CLE | PUBLISHING

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By Jeffrey S. Lubbers

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December 2018, 717 pages, 7x10
Product Code: 5010093

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By Paul Figley

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Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 12/3/2020 12:58:36 AM
To: Askew, Wendel [Askew.Wendel@epa.gov]
Subject: Fwd: Transition Team Code of Conduct
Attachments: PETT Redline - EPA NDA - 11_25_2020.pdf

pls include in OGC folder this research on Presidential Transition Act and 2019 amendments on transition team members signing a Code of Ethical Conduct that includes an NDA and ethics recusal

Sent from my iPhone

Begin forwarded message:

> **From:** "Payne, James (Jim)" <payne.james@epa.gov>
> **Date:** November 27, 2020 at 1:41:00 PM EST
> **To:** "Blake, Wendy" <Blake.Wendy@epa.gov>
> **Cc:** "Askew, Wendel" <Askew.Wendel@epa.gov>, "Fugh, Justina" <Fugh.Justina@epa.gov>, "Packard, Elise" <Packard.Elise@epa.gov>
> **Subject: FW: Transition Team Code of Conduct**
>
> This GSA link goes to the Presidential Transition Act, including 2019 amendments that include confidentiality obligations on transition team members for non-public information.
>
> https://www.gsa.gov/governmentwide-initiatives/presidential-transition-directory/external-transition-resources/guiding-legislation-presidential-transition-directory
> https://www.congress.gov/bill/116th-congress/senate-bill/394/text?q=%7B%22search%22%3A%5B%22Presidential+Transition%22%5D%7D&r=1&s=2 (2019 amendments)
>
> The 2019 amendments include, first, in section 2(b)(1), the following requirement for each transition team member to sign a Code of Ethical Conduct that binds the member to keep non-public agency information confidential:
>
> ``(iii) **a Code of Ethical Conduct, which each member of the transition team will sign and be subject to, that reflects the content of the ethics plans under this paragraph and at a minimum requires transition team members to--**
> ``(I) seek authorization from transition team leaders or their designees before seeking, on behalf of the transition, access to any nonpublic information;
> ``**(II) keep confidential any nonpublic information provided in the course of the duties of the member with the transition and exclusively use such information for the purposes of the**

transition; and
``(III) not use any nonpublic information provided in the course of transition duties, in any manner, for personal or private gain for the member or any other party at any time during or after the transition; and
``(iv) a description of how the transition team will enforce the Code of Ethical Conduct, including the names of the members of the transition team responsible for enforcement, oversight, and compliance.
``(C) <<NOTE: Web posting.>> Publicly available.--The transition team shall make the ethics plan described in this paragraph publicly available on the internet website of the General Services-

(Emphasis added).

And the 2019 amendments include, second, in section 2(b)(4), the following definition of "nonpublic information":

```
``(4) the term `nonpublic information'--
                    ``(A) means information from the Federal
Government
                that a member of a transition team obtains as part of
                the employment of the member that such member knows or
                reasonably should know has not been made available to
                the general public; and
                    ``(B) includes information that a member of the
                transition team knows or reasonably should know--
                          ``(i) is exempt from disclosure under
section
                      552 of title 5, United States Code, or otherwise
                      protected from disclosure by law; and
                          ``(ii) is not authorized by the appropriate
                      government agency or officials to be released to
                      the public; and'';
```

(Emphasis added).

From: Payne, James (Jim)
Sent: Friday, November 27, 2020 12:15 PM
To: Blake, Wendy <Blake.Wendy@epa.gov>
Subject: FW: Transition Team Code of Conduct

Let's confer. Orientation might be at 3pm.

From: Carpenter, Wesley <Carpenter.Wesley@epa.gov>
Sent: Friday, November 27, 2020 11:22 AM

To: Payne, James (Jim) <payne.james@epa.gov>
Subject: Transition Team Code of Conduct

Jim:

Here is the information we discussed. Please review and follow backup with me. Thanks.

Wes

From: Patrice Simms <psimms@ptt.gov>
Sent: Friday, November 27, 2020 10:53 AM
To: Carpenter, Wesley <Carpenter.Wesley@epa.gov>
Subject: Transition Team Code of Conduct

Wes,

Thank you for your time this morning.

I am forwarding you the redline from our GC seeking to conform the NDA to the PTA and the MOU. Per our discussion this is necessary to allow the agency review team (ART) to effectively do its work to inform the appropriate internal transition-related processes. As we discussed, the 2019 amendments to the PTA strengthen the ethic requirements, and should obviate the need for overly strict agency by agency NDAs (the Transition Code of Conduct linked below includes non-disclosure obligations that manifest the new PTA requirements).
Our GC did not specifically address it, but we may also want to conform the language in the Record of Disclosure form to be consistent with the language of the final EPA-specific NDA. (I think only clause (3) in the second bullet under 'Steps Taken to Protect Non-Public Information').

Also, here is the code of conduct that every member of the Transition has signed.
https://www.gsa.gov/cdnstatic/Biden-Harris_Transition_Ethics_Plan_and_Code_of_Conduct.pdf

I look forward to working with you.

-patrice

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 12/9/2020 5:35:36 PM
To: Carpenter, Wesley [Carpenter.Wesley@epa.gov]
Subject: article

FYI

https://www.nytimes.com/2020/12/08/climate/biden-transition-trump.html

Sent from my iPhone

Message

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Sent: 12/3/2020 1:08:33 AM
To: Askew, Wendel [Askew.Wendel@epa.gov]
Subject: Fwd: transition update
Attachments: WH MOU on Transition 10-1-2020 (signed).pdf; Where to find seeking / negotiating / post-employment information

PLS INCLUDE IN OGC FOLDER

Sent from my iPhone

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> **From:** "Payne, James (Jim)" <payne.james@epa.gov>
> **Date:** November 28, 2020 at 4:31:51 PM EST
> **To:** OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>, OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
> **Cc:** "Askew, Wendel" <Askew.Wendel@epa.gov>
> **Subject: transition update**

Hi all,

This is a transition update for ADDs, RCs and DRCs.

1. Agency Review Team for EPA. Transition team members for EPA are listed at https://buildbackbetter.gov/the-transition/agency-review-teams/. Government-wide, these transition teams are referred to as "Agency Review Teams," and initial new employees after Inauguration will be referred to as "First Teams."

At an initial Microsoft Teams meet yesterday, Wes Carpenter, Wendy Blake and I welcomed the EPA Agency Review Team members and briefed them on information law including three confidentiality forms. They have now signed EPA's **NDA**. They have also agreed to submit the agency's "request form" to Wes, as agency Transition Director, on a case-by-case basis for any **request for non-public information**, consistent with the attached government-wide 2020 transition MOU. The request form recites that a "senior Administration official" decides such requests. Presumably any such request ordinarily would be oriented to deliberative process material - and not other privileged or confidential material.

The Team now has access to the 200 or so **agency briefing papers** on an agency SharePoint site created for them. They do not have access to agency electronic documents and operations etc., beyond this one SharePoint site. Agency employees generally do not have access to this site. The Team also signed an **agreement to maintain the SharePoint briefing papers and other site materials as confidential**.

THANK YOU ALL FOR DEVELOPING AND/OR REVIEWING BRIEFING PAPERS.

FYI, the three confidentiality forms mentioned above - NDA, request form, and SharePoint site access agreement - are basically the same as ones EPA used in the 2016 transition. And for government-wide, the 2020 transition MOU is basically the same as the 2016 transition MOU.

As to **next steps** with the Agency Review Team, Wes is seeking to set up a **briefing schedule** for coming 2-3 weeks. As to OGC briefings, we are coordinating with OGC participants. We understand that the

Team mostly plans to **do its work virtually**, instead of using the EPA office space available to them. GSA provided Team members with mobile devices like laptops and cell phones.

The Team has indicated that they will only communicate through Wes, as agency Transition Director.

ANY EPA EMPLOYEE REQUESTS TO COMMUNICATE WITH THE AGENCY REVIEW TEAM (i.e., transition team) - OR ANY CONTACTS FROM THE TEAM - SHOULD BE REFERRED TO WES.

More below.

2. Out-boarding Ethics Counseling. Meanwhile, as to out-boarding of existing appointees, for weeks Justina and team have been providing daily ethics counseling and easy-to-use resources and forms, including an ethics SharePoint site with updated resources and forms for seeking employment and post-employment
restrictions. https://usepa.sharepoint.com/sites/OGC_Work/ethics/SitePages/Administration/Home.aspx (go to top right, "Other Ethics Topics A-Z"). More in Justina's attached email.

3. Misc. Finally, I'd like to thank **OGC Transition Coordinator Wendel Askew**, and ask OGC ADDs to please relay my thanks to the **OGC office transition coordinators**, including for helping coordinate development of OGC briefing papers and review by OGC/ORCs of HQ and Regional program briefing papers.

As to any legal or other questions, comments, suggestions etc., feel free to let Wendel or me know.

Have a good Thanksgiving 2020 weekend!

Jim
202-672-3727 cell

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"Esher, Diana" <Esher.Diana@epa.gov>, "Gray, David" <gray.david@epa.gov>, "Jordan, Deborah" <Jordan.Deborah@epa.gov>, "Mugdan, Walter" <Mugdan.Walter@epa.gov>, "Newton, Cheryl" <Newton.Cheryl@epa.gov>, "Pirzadeh, Michelle" <Pirzadeh.Michelle@epa.gov>, "Szaro, Deb" <Szaro.Deb@epa.gov>, "Thomas, Deb" <thomas.debrah@epa.gov>
Subject: Another Update on the EPA 2020 Presidential Transition Team Activities

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Good afternoon. I wanted to provide you another update on the Presidential Transition activities. Last night Jim Payne, Wendy Blake and I met with the transition team to discuss administrative and legal matters. The meeting was well received by the transition team and sets us up for success throughout the entire transition process. The team now has access to the SharePoint site. They are currently reviewing our briefing papers over the weekend, so they can hit the ground running next week.

I will be meeting with Doug Benevento on Monday to discuss next steps. Doug requested that Assistant and Associate Administrators or the senior noncareer staff in each organization participate in meetings on topics under their purview. I am currently updating the draft agendas and schedule to include those individuals in the meetings. Doug has also requested that the Assistant and Associate Administrators or the senior noncareer staff receive copies of the briefing materials two days before each meeting in order to prepare for it. I will need your help to ensure they receive those materials on time.

Finally, I am continuing to have discussions with the transition team lead, Patrice Simms, to finalize the list of briefing topics, which I will share with you at that time. This information is needed to finalize the briefing schedule, which I will also share with you.

In the interim, please let me know if you have any questions. Thanks, and have a nice weekend.

Wes

From: Carpenter, Wesley
Sent: Friday, November 27, 2020 11:53 AM
To: Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Bloom, David <Bloom.David@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Carpenter, Wesley <Carpenter.Wesley@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Kudarauskas, Paul <Kudarauskas.Paul@epa.gov>; Nishida, Jane <Nishida.Jane@epa.gov>; Noga, Vaughn <Noga.Vaughn@EPA.GOV>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Packard, Elise

<Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Robbins, Chris <Robbins.Chris@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Sheehan, Charles <Sheehan.Charles@epa.gov>; Shields, Edward <Shields.Ed@epa.gov>; Stanich, Ted <Stanich.Ted@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Terris, Carol <Terris.Carol@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>; Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Blevins, John <Blevins.John@epa.gov>; Chu, Ed <Chu.Ed@epa.gov>; Esher, Diana <Esher.Diana@epa.gov>; Gray, David <gray.david@epa.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>; Mugdan, Walter <Mugdan.Walter@epa.gov>; Newton, Cheryl <Newton.Cheryl@epa.gov>; Pirzadeh, Michelle <Pirzadeh.Michelle@epa.gov>; Szaro, Deb <Szaro.Deb@epa.gov>; Thomas, Deb <thomas.debrah@epa.gov>
Subject: Update on Presidential Transition Team Activities

DAAs/DRAs:

Good morning. I am sharing the initial list of topics, organizations and individuals the transition team wants to meet with as part of the transition activities. Patrice Simms, EPA Transition Team Lead, communicated that "**Given the truncated timeframe for transition, I am providing in advance a list of priority briefings that we would hope to schedule as soon as possible (and suggested EPA staff participants):**

- COVID-19 (response activities and internal agency protocols)
- Office of Atmospheric Programs/Office of Transportation and Air Quality (Chris Grundler and Sarah Dunham)
- Office of Atmospheric Programs/Office of Air Quality Planning and Standards (Chris Grundler, Peter Tsirigotis, Kevin Culligan, and Reid Harvey)
- Environmental Justice (Matthew Tejada and Charles Lee)
- Office of Civil Rights (Juan Carlos Hunt and Kevin Bailey)
- Office of Mission Support (Donna Vizian, Lynnann Hitchens and Mara Kamen)
- Office of Mission Support (Kim Balassiano, Jennie Campbell and Maja Lee)
- Office of Mission Support (Richard Allen, Vince Allen and Harvey Simon)
- Office of Congressional and Intergovernmental Affairs (Robin Richardson)
- Office of Chief Financial Officer (David Bloom and Carol Terris)
- Office of Enforcement and Compliance Assurance (Larry Starfield)
- Office of General Counsel (Steve Neugeboren, Gautam Srinivasan, Joseph Cole and Lori Schmidt)
- Office of Water and Office of Policy (Jennifer McLain, Andrew Sawyers, and Joel Scheraga)
- Office of Research and Development (Jennifer Orme-Zavaleta)
- Office of Chemical Safety and Pollution Prevention (Carol Ann Siciliano)"

Please keep in mind that this is an initial list from the transition team. Patrice Simms stated that the transition team has a more detailed list, but has not disclosed it yet. I will continue to keep you updated as I receive additional information.

On a separate but related note, the draft agendas and schedule I developed earlier this week are currently being reviewed by Doug Benevento. I plan on sharing the draft agendas and schedule with Patrice Simms once Doug completes his review and provides me feedback. At that time, Patrice will review the information and provide me his feedback, so we can finalize the agendas and schedule. I plan on sharing these agendas and schedule with you once finalized.

In the interim, please let me know if you have any questions. Thanks.

Wes

Wesley J. Carpenter
Acting Deputy Chief of Staff
EPA's Office of the Administrator
Tel. No.: 202-564-2019
Cell Phone: 202-497-4392
E-mail: carpenter.wesley@epa.gov

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 11/28/2020 9:37:28 PM
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Subject: FW: transition update
Attachments: WH MOU on Transition 10-1-2020 (signed).pdf; Where to find seeking / negotiating / post-employment information

Logistics update.

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From: Carpenter, Wesley
Sent: Friday, November 27, 2020 11:53 AM
To: Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Bloom, David <Bloom.David@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Carpenter, Wesley <Carpenter.Wesley@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>; Kudarauskas, Paul <Kudarauskas.Paul@epa.gov>; Nishida, Jane <Nishida.Jane@epa.gov>; Noga, Vaughn <Noga.Vaughn@EPA.GOV>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Robbins, Chris <Robbins.Chris@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Sheehan, Charles <Sheehan.Charles@epa.gov>; Shields, Edward <Shields.Ed@epa.gov>; Stanich, Ted <Stanich.Ted@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Terris, Carol <Terris.Carol@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>; Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Blevins, John <Blevins.John@epa.gov>; Chu, Ed <Chu.Ed@epa.gov>; Esher, Diana <Esher.Diana@epa.gov>; Gray, David <gray.david@epa.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>; Mugdan, Walter <Mugdan.Walter@epa.gov>; Newton, Cheryl <Newton.Cheryl@epa.gov>; Pirzadeh, Michelle <Pirzadeh.Michelle@epa.gov>; Szaro, Deb <Szaro.Deb@epa.gov>; Thomas, Deb <thomas.debrah@epa.gov>
Subject: Update on Presidential Transition Team Activities

DAAs/DRAs:

Good morning. I am sharing the initial list of topics, organizations and individuals the transition team wants to meet with as part of the transition activities. Patrice Simms, EPA Transition Team Lead, communicated that "**Given the truncated timeframe for**

transition, I am providing in advance a list of priority briefings that we would hope to schedule as soon as possible (and suggested EPA staff participants):

- COVID-19 (response activities and internal agency protocols)
- Office of Atmospheric Programs/Office of Transportation and Air Quality (Chris Grundler and Sarah Dunham)
- Office of Atmospheric Programs/Office of Air Quality Planning and Standards (Chris Grundler, Peter Tsirigotis, Kevin Culligan, and Reid Harvey)
- Environmental Justice (Matthew Tejada and Charles Lee)
- Office of Civil Rights (Juan Carlos Hunt and Kevin Bailey)
- Office of Mission Support (Donna Vizian, Lynnann Hitchens and Mara Kamen)
- Office of Mission Support (Kim Balassiano, Jennie Campbell and Maja Lee)
- Office of Mission Support (Richard Allen, Vince Allen and Harvey Simon)
- Office of Congressional and Intergovernmental Affairs (Robin Richardson)
- Office of Chief Financial Officer (David Bloom and Carol Terris)
- Office of Enforcement and Compliance Assurance (Larry Starfield)
- Office of General Counsel (Steve Neugeboren, Gautam Srinivasan, Joseph Cole and Lori Schmidt)
- Office of Water and Office of Policy (Jennifer McLain, Andrew Sawyers, and Joel Scheraga)
- Office of Research and Development (Jennifer Orme-Zavaleta)
- Office of Chemical Safety and Pollution Prevention (Carol Ann Siciliano)"

Please keep in mind that this is an initial list from the transition team. Patrice Simms stated that the transition team has a more detailed list, but has not disclosed it yet. I will continue to keep you updated as I receive additional information.

On a separate but related note, the draft agendas and schedule I developed earlier this week are currently being reviewed by Doug Benevento. I plan on sharing the draft agendas and schedule with Patrice Simms once Doug completes his review and provides me feedback. At that time, Patrice will review the information and provide me his feedback, so we can finalize the agendas and schedule. I plan on sharing these agendas and schedule with you once finalized.

In the interim, please let me know if you have any questions. Thanks.

Wes

Wesley J. Carpenter
Acting Deputy Chief of Staff
EPA's Office of the Administrator
Tel. No.: 202-564-2019
Cell Phone: 202-497-4392
E-mail: carpenter.wesley@epa.gov

Message

From: Payne, James (Jim) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=61B3204A683041079512B122C580A569-PAYNE, JAME]
Sent: 12/17/2020 5:14:41 PM
To: Jen Norman [norman@eli.org]
Subject: Re: Registration Confirmation - The Biden Administration: Climate and the Environment at a Critical Juncture (WEBINAR)

Thank you. I renewed and believe I reregistered, though am not seeing an email w link to view this event. As backup, I can watch the recording.

Sent from my iPhone

On Dec 10, 2020, at 5:40 PM, Jen Norman <norman@eli.org> wrote:

Hello,

We thank you for your interest in our activities. We noticed that you recently signed up at the ELI member rate for the upcoming event noted below, but your membership is currently Expired, as of October 31st, 2020.

You may go to https://www.eli.org/civicrm/contribute/transact?reset=1&id=2 to renew your ELI membership, and then re-register for the course at the member rate, OR you may re-register for the event at the appropriate non-ELI member rate.

We hope we will still have your participation.

Thank you,
Jen

Jen Norman (she/her)
Manager, Education and Membership Events
Environmental Law Institute
1730 M Street NW, Suite 700 | Washington DC | 20036
norman@eli.org | www.eli.org

From: ELI Events <events@eli.org>
Sent: Wednesday, December 9, 2020 6:22 PM
To: payne.james@epa.gov
Subject: Registration Confirmation - The Biden Administration: Climate and the Environment at a Critical Juncture (WEBINAR)

External Email - If suspicious, please contact blain@eli.org

Dear Mr. James O. Payne Jr.,

Thank you for registering. Please save this confirmation for your records. Webinar information will be sent the business day prior to the event. All times are EASTERN TIME. Event will begin 12 noon Eastern, 11 AM Central, 10 AM Mountain, 9 AM Pacific.

If you need to cancel your registration at any time prior to the event, please contact us; cancellation fees may apply (policy link available on event page).

Event Information and Location	
The Biden Administration: Climate and the Environment at a Critical Juncture (WEBINAR) Thursday December 17th, 2020 12:00 PM- 1:30 PM	
Webinar only,	
Download iCalendar File	
Event Fee(s)	

Item	Qty	Each	Total
Please choose your registration level: - ELI Member	1	$ 0.00	$ 0.00

Total Amount	$ 0.00
Registration Date	December 9th, 2020 6:21 PM
Transaction Date	December 9th, 2020 6:21 PM
Your Registration Info	
Email Address	payne.james@epa.gov
First Name	James
Last Name	Payne
Current Employer	USEPA

Message

From: Grantham, Nancy [Grantham.Nancy@epa.gov]
Sent: 1/7/2021 10:01:48 PM
To: Goerke, Ariadne [Goerke.Ariadne@epa.gov]; Jackson, Yvette [Jackson.Yvette@epa.gov]; Fugh, Justina [Fugh.Justina@epa.gov]; Vizian, Donna [Vizian.Donna@epa.gov]
CC: Hitchens, Lynnann [hitchens.lynnann@epa.gov]; Packard, Elise [Packard.Elise@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]; Molina, Michael [molina.michael@epa.gov]; Talbert-Duarte, Angelia [talbert-duarte.angelia@epa.gov]
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

I will move it to 9 a.m. .. so we can get started thanks ng

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

From: Goerke, Ariadne <Goerke.Ariadne@epa.gov>
Sent: Thursday, January 7, 2021 4:57 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Jackson, Yvette <Jackson.Yvette@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>
Cc: Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

We can make it at 9 or 9:30 am. Thanks.

Ariadne Goerke
Deputy Associate
Civil Rights and Finance Law Office
Office of General Counsel
U.S. Environmental Protection Agency
202-564-5471 *office*
202-505-0535 *cell*

From: Grantham, Nancy <Grantham.Nancy@epa.gov>
Sent: Thursday, January 7, 2021 4:55 PM
To: Jackson, Yvette <Jackson.Yvette@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>
Cc: Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

I just scheduled a call for 10 a.m. tomorrow thanksng

Nancy Grantham
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grantham.nancy@epa.gov

From: Jackson, Yvette <Jackson.Yvette@epa.gov>
Sent: Thursday, January 7, 2021 4:48 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>
Cc: Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Hi Justina,

I'm available tomorrow if you both are.

Thanks,
Yvette

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 07, 2021 4:45 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Vizian, Donna <Vizian.Donna@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Jackson, Yvette <Jackson.Yvette@epa.gov>
Cc: Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Hi everyone,
I started writing this message in the morning and now it's the afternoon already. Gosh, where does the time go? I've heard back from Nancy so I can frame the current issue as follows: how may the agency accept a donation of a completed oil portrait from a non-federal individual?

So, Nancy, I think that OGC (Ariadne and I) needs to talk with Yvette Jackson first.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Grantham, Nancy <Grantham.Nancy@epa.gov>
Sent: Thursday, January 07, 2021 9:56 AM
To: Vizian, Donna <Vizian.Donna@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Jackson, Yvette <Jackson.Yvette@epa.gov>
Cc: Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Will do

Nancy Grantham
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Environmental Protection Agency
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grantham.nancy@epa.gov

From: Vizian, Donna <Vizian.Donna@epa.gov>
Sent: Thursday, January 7, 2021 9:54 AM
To: Goerke, Ariadne <Goerke.Ariadne@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Jackson, Yvette <Jackson.Yvette@epa.gov>
Cc: Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Hi Everyone, it would be good if you include Yvette in the conversation. thanks

From: Goerke, Ariadne <Goerke.Ariadne@epa.gov>
Sent: Thursday, January 7, 2021 9:48 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Jackson, Yvette <Jackson.Yvette@epa.gov>
Cc: Vizian, Donna <Vizian.Donna@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Talbert-Duarte, Angelia <talbert-duarte.angelia@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Thanks Nancy. I would also like to be on the call, representing CRFLO, when you call Justina since both Ethics and CRFLO were asked by Elise and Jim to handle this in OGC. Adding Angelia Talbert-Duarte to this email chain.

Ariadne Goerke

Deputy Associate
Civil Rights and Finance Law Office
Office of General Counsel
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202-564-5471 *office*
202-505-0535 *cell*

From: Grantham, Nancy <Grantham.Nancy@epa.gov>
Sent: Thursday, January 7, 2021 9:46 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>; Jackson, Yvette <Jackson.Yvette@epa.gov>
Cc: Vizian, Donna <Vizian.Donna@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Justina .. I will call you on this thanks ng

Nancy Grantham
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grantham.nancy@epa.gov

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 7, 2021 9:31 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Jackson, Yvette <Jackson.Yvette@epa.gov>
Cc: Vizian, Donna <Vizian.Donna@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Nancy,
OGC's finance and ethics offices will be responding to your email about *how* the US Government may be able to accept a portrait once painted. For that, we will be conferring with our friends in facilities.

But in order for me to provide advice, I really need to understand the "origin" story here. Is someone offering already to pay for the portrait and, if so, who? Did an EPA employee solicit the idea or the donor? Will there will be a fund established to which people may make donations? Is that fund already established and, if so, is there active fundraising? My concern, of course, is that federal employees – while they are still employees – cannot fundraise with reference to their positions or titles, so any active fundraising now would be problematic. Moreover, any donations now may be considered impermissible gifts to the Administrator that he may also have to report on his financial disclosure report.

With whom can I speak to get more information about this idea, how it came to be, and whether a fund or donor is already established?
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Grantham, Nancy <Grantham.Nancy@epa.gov>
Sent: Monday, January 04, 2021 1:28 PM
To: Jackson, Yvette <Jackson.Yvette@epa.gov>
Cc: Vizian, Donna <Vizian.Donna@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Molina, Michael <molina.michael@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Hi --

Administrator Wheeler is looking for something in writing from the agency indicating that if he were to have an official portrait/painting done – the agency will definitely accept the painting (per the guidelines below). Who can provide that? We would need it prior to January 20, 2021.

Thanks ng

From: Jackson, Yvette <Jackson.Yvette@epa.gov>
Sent: Wednesday, December 9, 2020 4:19 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Hi Nancy,

I'll call you to discuss but the instructions are shown below.

1. The donor gifts the asset to the agency;
2. The Office Director or above notifies Justina Fugh and Steve Blankenship (RPSD);
3. RPSD researches/determines/verifies the netbook value;
4. RPSD notifies GSA and sends the title/appraisal;
5. GSA records it in their property records;
6. EPA asks for it back by completing the loan request and transfer it electronically back to the agency.

While this is happening, it is possible for the asset to remain in place.

Thanks,
Yvette

From: Grantham, Nancy <Grantham.Nancy@epa.gov>
Sent: Wednesday, December 09, 2020 1:42 PM
To: Jackson, Yvette <Jackson.Yvette@epa.gov>

Subject: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

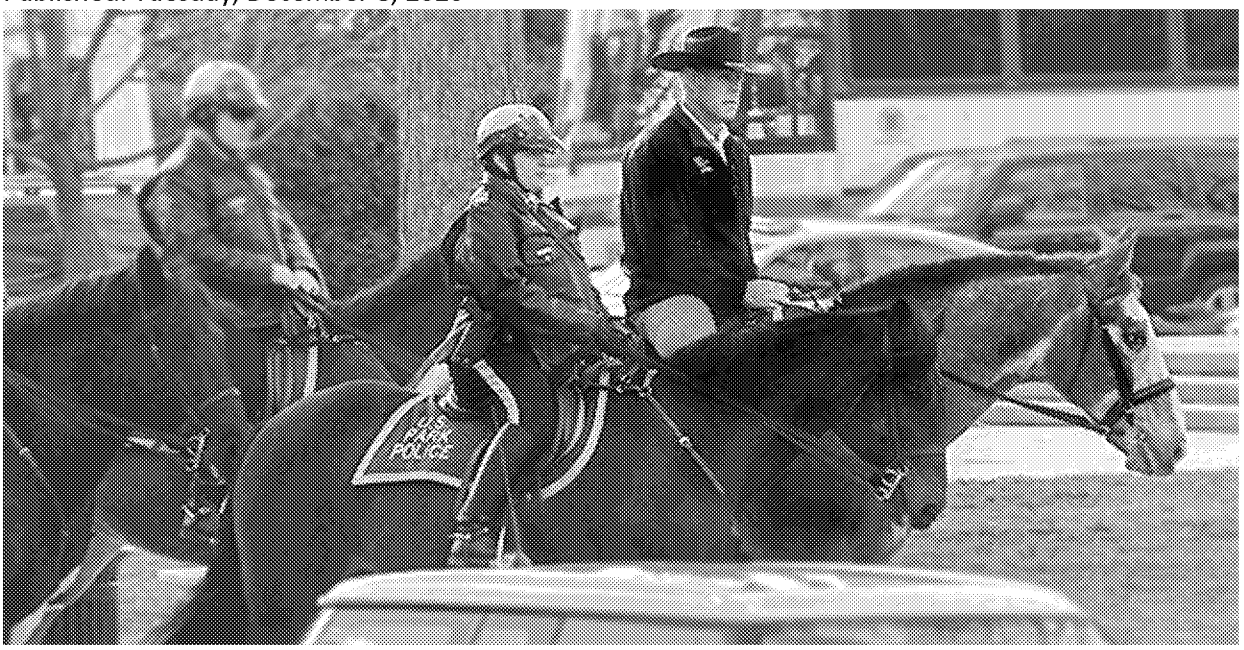
Also .. see below .. fyi .. need info asap thanks ng

INTERIOR

Zinke portrait makes a hushed entrance

Michael Doyle, E&E News reporter

Published: Tuesday, December 8, 2020



The Interior Department will unveil a formal portrait of former Interior Secretary Ryan Zinke at the department. Zinke is pictured here, flanked by the U.S. Park Police, riding to his first day at work on a horse named Tonto. @BSEEgov/Twitter

The Interior Department today was set to quietly unveil the official portrait of former Secretary Ryan Zinke.

In a markedly low-key event planned for this afternoon, officials are set to welcome the Zinke portrait to the department headquarters he vacated at the end of 2018. The painting by award-winning Montana-based artist Brent Cotton captures part of Zinke's nearly two years in the Trump administration.

"The painting features elements of his tenure as 52nd Secretary of Interior," one former department official said, text-messaging on condition of anonymity.

Raised on an Idaho cattle ranch and now a self-described avid outdoorsman, Cotton lives in the Bitterroot Valley of Montana, the state Zinke formerly represented in the House for one term before being tapped to be President Trump's first Interior secretary.

Interior spokesperson Ben Goldey said, "Secretary Zinke's official portrait was funded by private donations and accepted into Interior's collection as a gift."

The Eliminating Government-funded Oil-painting Act, signed by President Trump in March 2018, allows Cabinet secretary portraits but requires them to be privately financed.

"The President, Members of Congress, and heads of agencies are free to raise money for their portraits as they see fit. This cost should not be paid by the American taxpayer," a House committee report stated.

Zinke's portrait was unveiled one day after a portrait of former Energy Secretary Rick Perry was presented at Department of Energy headquarters. Perry, who left office last December, returned to Washington for the unveiling.

The portrait will "hang at DOE for years to come," Energy Secretary Dan Brouillette said via Twitter. "Thank you Rick, for your outstanding service to our department and nation!"

Perry, in an Instagram post, thanked DOE "for a wonderful unveiling of my official portrait." He called it a "great work of art" by Kenneth Turner (*Energywire*, Dec. 8).

Nancy Grantham
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grantham.nancy@epa.gov

Message

From: Askew, Wendel [Askew.Wendel@epa.gov]
Sent: 1/11/2021 11:26:39 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: Transition: Lessons learned
Attachments: 2021.01.11 Lessons learned items .docx

Hi Jim,

I took a look through the lessons learned documents in CarolAnns' files. A good bit of it related to preparation in the year proceeding the election and inauguration. Examples include updating position descriptions and reviewing delegations of authority. There were also items related to prepping law office transition team members and interacting with the EPA transition team. Those items are not as useful to us at this point because we've done that work for this transition.

There are items that would have utility for where we are in the current transition process. I've cherry picked the items that seem most relevant to our current posture in the process. The attachment contains a few items that we might discuss with the ADDs as we prepare for the next few months.

Wendel Askew
Assistant General Counsel for Assistance Law
Office of General Counsel
Mail Code 2399A
202-564-3987
7454H WJCN

Message

From: Jen Norman [norman@eli.org]
Sent: 10/12/2020 12:38:30 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: This Week at ELI, 10/12/20
Attachments: ATT00001.txt

October 12, 2020

Upcoming Events

***To register for any event*, please click on the individual event link.** All events have specific rsvp links and/or other important details that may apply to your registration.

- Reimagining Supply Chains for a Resilient and Just Future (2020 Corporate Forum)
October 13 – Webinar
- Monthly Climate Change Briefing
October 13 – Conference Call
- Environment 2021: Reimagining Environmental Governance (2020 Policy Forum)
October 14 – Webinar
- ELI 2020 Annual Award Ceremony/Networking Receptions
October 15 – Virtual
- Swept Away: Safeguarding Tribal Heritage from the Impacts of Climate Change
October 21 – Webinar
- What's for Dinner: Achieving Municipal Climate Mitigation Targets through Alternative Proteins
October 23 – Webinar
- *NEW* Using Citizen Science to Address Air Pollution (INECE Event)
October 23 – Webinar
- *NEW* Superfund at 40 Series
October 26 & December 8 – Webinar
- Sacred Sites: Balancing Scientific Progress & Native American Sovereignty
October 27 – Webinar
- Pro Bono Goes Green: How to Find Pro Bono Work that Helps the Environment
October 28 – Webinar
- Virtual Networking Event featuring Cathy Pagano, USPS (WELL-DC Event)
October 29 – Zoom
- Dismantling Environmental Racism
November 4 – Webinar

Attend the virtual ELI Award ceremony:

Sign up to attend the virtual Oct. 15 ELI Award Ceremony! You may also sign up/contribute to participate with our first virtual networking reception (5:30-7PM Eastern) with your environmental colleagues from around the country. See the details/register HERE!

Enlist Now!

Join fellow enlistees for the upcoming "virtual" ELI Eastern Boot Camp to be held on 3 consecutive Thursdays (Nov. 5, 12 & 19) and earn CLE! This intensive course explores the substance and practice of environmental law.
GO HERE to find out more and/or enlist!

- 29th Annual Eastern Boot Camp on Environmental Law **(CLE)**
November 5, 12 & 19 – Virtual
- Monthly Climate Change Briefing
November 9 – Conference Call
- Monthly Climate Change Briefing
December 14 – Conference Call

Suggestions for seminars? Email Caitlin McCarthy

Recent Seminar Recordings/Materials

- Pesticides, Farmworkers, Industry, and Environmental Justice
- Annual Supreme Court Review & Preview
- The Future of Pipelines: A Rocky Road for New Projects?
- Climate Change within the ESG Arena

More recordings are available to **ELI Members** at the ELI Events Archive page. To view materials/recordings via the events archive page, be sure to log in at https://www.eli.org/just-for-members.

ELI Alerts: *New postings*

Timely expert analysis on environmental law and policy issues published by ELI's Professional Program firms. For these and additional alerts, log in and visit https://www.eli.org/news/alerts :

- Oct. 9, Kirkland – House's Clean Economy Jobs and Innovation Act Would Create Opportunities and Impose Restrictions on Different Segments of the Energy and Infrastructure Sectors
- Oct. 9, Skadden – USTR Initiates Section 301 Investigations Into Vietnam's Currency and Timber Practices
- Oct. 8, Beveridge – In Wake of Industrial Accidents, TCEQ Seeks Revisions to Penalty Policy and Compliance History Rules
- Oct. 8, Bracewell – LNG in Europe 2020: Current Trends, The European LNG Landscape and Country Focus
- Oct. 8, Covington – FERC Takes Close Look at Carbon Pricing
- Oct. 8, DLA Piper – The energy transition and renewable energy in Chile: Top points for foreign investors.
- Oct. 8, K&L Gates – Carbon Quarterly - Volume 1
- Oct. 8, K&L Gates – Growing Opportunities in the Carbon Field for Agriculture and Forestry
- Oct. 8, Nossaman – ESA Amendments: Listing, Delisting & Critical Habitat
- Oct. 8, Sidley – EPA Revises National Emission Standards for Hazardous Air Pollutants General Provisions to Allow Major Sources to Reclassify as Area Sources
- Oct. 8, Sive – Council on Environmental Quality's New NEPA Regulations: An Analysis
- Oct. 8, Wilmer – USTR Launches Section 301 Probes of Vietnam's Currency and Timber Practices
- Oct. 7, Bergeson – EPA Grants Manufacturer Request for Risk Evaluation of D4
- Oct. 7, Beveridge – Federal Authority for Offshore Aquaculture Reappears on the Horizon

ELI Vibrant Environment Blog new posts:

- **Discounting Benefits of Saving Human Life**

ELI People Places Planet Podcasts:

- **The 2020 Hurricane season and implications for coastal communities**
- **Compensatory mitigation project review: impediments & best practices**
- **Engage the experts: the shifting landscape of renewable energy development**
- **Toward a global pact for the environment**

- Oct. 7, DLA Piper – PACTA for Banks brings climate scenario analysis to financial institutions
- Oct. 7, Hogan – Trump administration issues executive order to reduce reliance on imports of critical minerals
- Oct. 6, Babst – D.C. Circuit to Decide EPA's Authority to Regulate Greenhouse Gas Emissions
- Oct. 6, Latham – The IFRS Foundation Launches Consultation on Sustainability Reporting
- Oct. 6, Nossaman – Governor Newsom Signs Major Housing and Transit CEQA Streamlining Bill
- Oct. 5, Bergeson – EPA Accepting Public Comments for Candidates under Consideration for TSCA SACC Membership
- Oct. 5, Beveridge – RCRA Air Compliance Initiative and Rescission of "Once In, Always In" Policy Present Federal and State Self-Audit Opportunities
- Oct. 5, Bick – SCOTUS To Decide Procedural Issue In Oil Companies Climate Change Case
- Oct. 5, Bryan – Corporate PPAs: de-risking "green" power procurement
- Oct. 5, Holland – Energy and Natural Resources Quarterly Newsletter: Fall 2020
- Oct. 2, Jenner – Supreme Court Grants Review on Key Climate Change Case

Jobs

Employment & Fellowship Opportunities:
For more on the employment opportunities listed below, log in and visit the Jobs Bulletin Board. **Want to hire** an environmental law or policy professional? Send your job links to newsletter@eli.org for possible inclusion in our weekly newsletter.

- *NEW* **Environmental Justice Lead**, Washington, DC – Environmental Law Institute
- *NEW* **Attorney** I, Austin, TX – Texas Commission on Environmental Quality
- *NEW* Staff **Attorney**, Charleston, SC – Southern Environmental Law Center
- *NEW* **Attorney** Advisor, Seattle, WA – US EPA Reg. 10 ORC, Water Law Branch
- *NEW* Bertha Justice Legal **Fellow**, Washington, DC – EarthRights International
- *NEW* Land Use Litigation Assoc **Attorney**, Oakland, CA – Meyers Nave
- *NEW* **Senior Counsel**-Environmental, San Francisco, CA – PG&E
- *NEW* Staff **Attorney** 2, New Britain, CT – State of CT, Dept of Energy & Environmental Protection
- *NEW* Pesticide Regulatory **Consultant**, Remote – Bergeson & Campbell
- **Litigation Associate**, San Francisco, CA – Rogers Joseph O'Donnell
- **Attorney** Advisor, Washington, DC – US EPA, IELPG, CCILO
- Assistant **Attorney** General, Environmental Protection, New York, NY – New York State Attorney General
- Legislative and Policy **Director**, DC/AZ/CO/other – Grand Canyon Trust
- Senior **Attorney**, Portland, OR – Center for Biological Diversity
- **Executive Director**, Washington, DC – Center for Progressive Reform
- **Attorney** Advisor, Chicago, IL – US EPA Reg. 5 ORC, Multi-Media Branch
- Associate **Attorney**, NC/SC – Southern Environmental Law Center
- **Director**, Off of Envtl Quality & Sustainability, Dallas, TX – City of Dallas
- Dir **Corp Counsel**, Camden, NJ – American Water
- Staff **Attorney**, Zero Waste Proj, ME/NH/VT – Conservation Law Fdn

- 2021 Spring/Summer/Fall **Law Clerks**, Washington, DC – Environmental Integrity Proj
- National **Pgm Dir** for Sustainable & Healthy Communities Research Pgm, DC/NC/OH – US EPA ORD
- **Director**, Environmental Law & Justice Clinic, Washington, DC – Georgetown Univ Law School
- Associate **Counsel**-Environmental, Houston, TX – Phillips 66

- *For **additional job listings**, sign in to the Jobs Bulletin Board.*

Associates Bulletin Board

Upcoming Events of Interest:
You may log in to access direct links to these non-ELI events via the Workshops, Conferences & Seminars Board.

- **Oct. 14**, Webinar – REACH 30/30
- **Oct. 14**, Webinar – TSCA 30/30
- **Oct. 14**, Zoom – Environmental Justice – Fireside Chat: with Howard Law & GW Law
- *NEW* **Oct. 14-16**, Webinar – Key Regulatory Updates: Europe, Asia and the Americas
- **Oct. 15**, Webinar – The Global Fight for Environmental Justice and Pollution: Voices from the Ground
- **Oct. 15**, Webinar – Older or Wiser: NEPA's Golden Years
- **Oct. 15**, Webinar – The Future of International Environmental Law - Global Agreements & Climate Change
- *NEW* **Oct. 15**, Webinar – How will the election impact US engagement on climate change?
- *NEW* **Oct. 16**, Webinar – EPA's Cost-Benefit Analysis Rule: Too Prescriptive?
- *NEW* **Oct. 19**, Webinar – Greening Economic Stimulus: Lessons from the 2009 Recovery Act
- **Oct. 19, 21, 26 & 29**, Webinar – Invaluable training on the essentials of TSCA
- *NEW* **Oct. 20**, Webinar – DC EcoWomen EcoHour: Maxine Burkett
- **Oct. 21**, Webinar – Incorporating Equity in Disaster Mitigation and Climate Adaptation Programs
- **Oct. 23**, Webinar – Frackquakes: Litigation and Seismic Impact of Wastewater Injection Wells
- **Oct. 23 & 30**, Webinar – NYSBA Environmental And Energy Law Section Virtual Fall Meeting
- **Oct. 27**, Webinar – Women Experts and Entrepreneurs in Renewable Energy Tell All
- *NEW* **Oct. 27-29**, Webinar – Food Packaging Law Seminar
- *NEW* **Oct. 28**, Webinar – First Annual Sidley Battery School: Electric Vehicles: Technology, Law, and Policy
- *NEW* **Oct. 29**, Webinar – SPACs and the Energy Transition
- **Nov. 6**, Zoom – 19th Annual Environmental Law Fall Symposium
- **Nov. 12**, Webinar – Environmental Justice Stories: Community, Municipal, and State Updates (Boston, MA)
- **Nov. 17-19**, Webinar – National Clean Water Law & Enforcement Virtual Event

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Message

From: PayLeave List [PAYLIST@listserv.opm.gov]
on behalf of Internet, Paylist [Paylist.Internet@OPM.GOV]
Sent: 1/19/2021 1:31:28 PM
To: PAYLEAVE@LISTSERV.OPM.GOV
Subject: OPM Memo: Pay and Benefits for Noncareer Appointees Who Resign on Inauguration Day

OPM has issued a memorandum titled, "Pay and Benefits for Noncareer Appointees Who Resign on Inauguration Day." A 508-conformant version of this memorandum is available online for the benefit of readers with disabilities at: https://www.chcoc.gov/content/pay-and-benefits-noncareer-appointees-who-resign-inauguration-day-1.

To unsubscribe from the Pay and Leave list server, send an email to: listserv@listserv.opm.gov.
*In the **body** of the message enter:*
SIGNOFF PAYLEAVE

This email is best read in html format. If you are having issues reading this email in html format, please contact your agency's IT help desk for assistance.

Message

From: Hatchact Update [00000002b1f8701b-dmarc-request@LISTSERV.OSC.GOV]
Sent: 10/13/2020 4:11:48 PM
To: HATCHACT@LISTSERV.OSC.GOV
Subject: New Hatch Act FAQ on serving at the polls on election day

Below is a Hatch Act FAQ regarding service as a poll worker, poll watcher, election official, or in any other capacity at the polls on election day. The FAQ is also posted on OSC's website at https://osc.gov/Services/Pages/HatchAct-FAQ.aspx.

Q: May I serve as a poll worker, poll watcher, election official, or in any other capacity at the polls on election day?

Less Restricted Employees: Generally yes. The Hatch Act does not prohibit a less restricted federal employee from performing purely nonpartisan election administration duties on behalf of a state or local government, such as by serving as a municipal or county poll worker. Performing such duties is not "political activity" as defined in 5 C.F.R. § 734.101. However, other laws or regulations may apply. Therefore, employees should consult with an agency ethics official to determine whether there are any other possible restrictions on serving as a poll worker on behalf of a state or local government, including whether employees may accept compensation for such service.

The Hatch Act also does not prohibit a less restricted employee from working at the polls on behalf of a political party, partisan political group, or partisan campaign, such as by serving as a poll watcher or challenger, but certain restrictions do apply. Because volunteering on behalf of a political party, partisan political group, or partisan campaign is political activity, a less restricted employee may not do so while on duty, wearing an agency uniform or insignia, or using a government-owned or -leased vehicle. Provided that the employee complies with these restrictions, the Hatch Act does not prohibit a less restricted employee from working at the polls on behalf of, or in coordination with, a political party, partisan political group, or partisan campaign.

Further Restricted Employees: Possibly. A further restricted employee is not prohibited from performing purely nonpartisan election administration duties on behalf of a state or local government, such as by serving as a municipal or county poll worker. Some jurisdictions require that prospective poll workers identify their political party registration or affiliation during the application process. Further restricted employees are not prohibited from listing their party registration or affiliation on application materials. So long as the work the employee will perform on election day is purely nonpartisan and not on behalf of, or in coordination with, a political party, partisan political group, or partisan campaign, the Hatch Act would not prohibit the employee from working at the polls. Further restricted employees should consult with an agency ethics official to determine whether there are any other possible restrictions on serving as a poll worker on behalf of a state or local government, including whether employees may accept compensation for such service.

Further restricted employees may not, however, work at the polls on behalf of, or in coordination with, a political party, partisan political group, or partisan campaign. Accordingly, further restricted employees may not, for example, serve as poll watchers or challengers on behalf of a political party, partisan political group, or partisan campaign or otherwise act in concert with such a party, group, or campaign.

Please do not send a reply e-mail message to the above-listed address as it is not monitored. However, if you have any Hatch Act related questions, feel free to contact the Hatch Act Unit at 202-804-7002 or send an e-mail to Hatchact@osc.gov.

To unsubscribe from the HATCHACT list, click the following link:
http://listserv.osc.gov/scripts/wa-OSC.exe?SUBED1=HATCHACT&A=1

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 1/22/2021 7:05:05 PM
To: Harris, Sincere [Harris.Sincere@epa.gov]; Utech, Dan [Utech.Dan@epa.gov]; Cassady, Alison [Cassady.Alison@epa.gov]; Hoffer, Melissa [Hoffer.Melissa@epa.gov]; Hamilton, Lindsay [Hamilton.Lindsay@epa.gov]; Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]; Adhar, Radha [Adhar.Radha@epa.gov]; Fox, Radhika [Fox.Radhika@epa.gov]; Enobakhare, Rosemary [Enobakhare.Rosemary@epa.gov]; Fine, Philip [Fine.Philip@epa.gov]; Katims, Casey [Katims.Casey@epa.gov]; Arroyo, Victoria [Arroyo.Victoria@epa.gov]; Lucey, John [Lucey.John.D@epa.gov]; Goffman, Joseph [Goffman.Joseph@epa.gov]; Carbonell, Tomas [Carbonell.Tomas@epa.gov]
CC: OGC Ethics [OGC_Ethics@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]
Subject: your ethics obligations ... briefing materials, references and the pledge
Attachments: Biden Ethics Pledge for digital signature.pdf; Ethics Briefing Packet for Political Appointees.pdf

Hi there,
Thank you all for attending your initial ethics briefing on Thursday, January 21, 2021. All of us in OGC/Ethics appreciate your attentiveness and interest. Attached is the briefing material we promised you that includes information about your transaction reporting obligations, the form to use for notification of negotiation for non-federal employment, a handy Hatch Act chart, and a one-pager on embedding ethics in your calendaring process. The packet also includes a pdf of the Biden Executive Order on "Ethic Commitments" for your reference. And I have attached separately the Biden Ethics Pledge for you to sign digitally and return to ethics@epa.gov.

So what about your financial disclosure report? Well, I'm not ready for you to work on that if you haven't yet started. I need to set up new accounts for you using your EPA email addresses, then will send you a new email with instructions. I know that some of you already started your reports that were assigned to your personal email address, which is fine. That information is saved and will be transferred over to your new accounts under your EPA email addresses. Try to find something to occupy your time over the next day or so (ha!), and then you can spend a leisurely and frustrating time with the public financial disclosure report a bit later, once you get the email from me. Each of you will have a contact on the OGC/Ethics team to help you navigate your form and any ethics concerns you may have. Our contact information is included on the first page of your briefing material. We are all always just a call or an email away.

Happy Friday!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 10/14/2020 8:21:44 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: as promised
Attachments: Departing EPA for AD employees upated Jan 2020.docx; Departing EPA for career SES updated Jan 2020.docx; Departing EPA for PAS and non career SES upated Jan 2020.docx; Departing EPA for Sched C employees updated Jan 2020.docx; Top Ten Tips for Departure for politicals.docx; TRUMP PLEDGE RESTRICTIONS.docx

Hi Jim,
Here are our chatty guides to seeking and post employment for different types of employees. I've included a "top ten" list of reminders for departing politicals as well as the Trump pledge lobbying restrictions. And the post-employment regulations themselves at 5 CFR Part 2641 are really useful too!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 1/25/2021 6:25:07 PM
To: Marks, Matthew [Marks.Matthew@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
CC: Payne, James (Jim) [payne.james@epa.gov]; Clarke, Victoria [clarke.victoria@epa.gov]
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi,
Not yet but the bare bones are:

- GOFFMAN –Will have a conflict with Harvard University for two years. He's working on his public financial disclosure report now so that we can provide more direction on any possible financial conflicts. We are not aware of any case conflicts for him. He is cleared to work on particular matters of general applicability involving energy, oil and gas sectors.
- CARBONELL – will have bar restrictions on any cases he worked on personally and substantially (we don't yet have his list). Will have a 2 year cooling off period with EDF so if they are a party, then he can't work on that specific party matter at all, even if he hadn't worked on it before.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Monday, January 25, 2021 1:17 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

While we're piling on with the ethics questions, do we have a list of conflicts for Joe Goffman and Tomas Carbonell?

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
E: marks.matthew@epa.gov

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Monday, January 25, 2021 12:58 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Thanks. And one other clarification, if you please. The impartiality letter says that Melissa can participate in "policy determinations related to these cases." I had thought that meant Melissa could, say, participate in discussions about how EPA will regulated power plants, even if she is recused from the ACE litigation. But your email below says Melissa can participate in "policy decisions *about* that litigation" and lists a decision to stay as an example.

Assuming the formulation in your email is right, is there anything more you can provide on the scope of "policy decisions about" litigation? A question of whether to stay a case may involve discussion of the merits of the case. I'm unclear on how exactly to implement this aspect. Thanks again!

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 12:47 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hogan, Stephanie <Hogan.Stephanie@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Gautam,
Yes, please don't send it to them.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Monday, January 25, 2021 12:46 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hogan, Stephanie <Hogan.Stephanie@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Justina- Quick follow up on this. We have prepared a written summary/analysis of the ACE litigation (American Lung Association v. EPA). Both Massachusetts and NRDC were parties in the case. Given that, it seems like we should not be sending the summary to them. Do I have that right?

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM

To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,
As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.
- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	*Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA*, Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	*Labor Council for Latin America, NRDC, et al. v. EPA*, Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	*NRDC v. Wheeler*, Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	*Walters v. Flint, EPA, et al.*, Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all I interested

parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Sent: 1/25/2021 7:38:14 PM
To: Fugh, Justina [Fugh.Justina@epa.gov]
CC: Payne, James (Jim) [payne.james@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Clarke, Victoria [clarke.victoria@epa.gov]
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Thanks again!

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 2:23 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Gautam,
See my notes below:

- Even if Melissa is recused from a case, can we share with her publicly available information about it? I think the answer is yes.
  JUSTINA: yes, you may share and she may hear publicly available information.

- Variant- Melissa is recused from the ACE litigation. The decision in the ACE litigation vacated a regulation. That regulation is also the subject of a different case (case Y) that Melissa is NOT recused from. Could we say to Melissa- "The ACE decision vacated regulation X. In light of that vacatur, should we stop defending case Y?"
  JUSTINA: I had to insert a clarification just to be sure I'm following your hypothetical. Under the federal ethics rules, you may discuss Case Y with Melissa. My prudential advice to her, however, will be to consider seeking the consent of Massachusetts to ensure that she may work on "substantially related" specific party matters pursuant to MA bar rule 1.11.

- Could we say anything more? If Melissa said, "That's interesting. Tell me why the reasoning of the ACE decision leads to that conclusion in case Y," could we answer?
  JUSTINA: To be clear, in this hypo, there is already a decision that is publicly available, correct? If so, then yes, you may engage with her on this question because she is not discussing the merits of the ACE case but rather applying the decision made by the court to EPA's strategy in a different case.

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Monday, January 25, 2021 1:37 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Thanks much. Final question/variant. Even if Melissa is recused from a case, can we share with her publicly available information about it? I think the answer is yes. Variant- Melissa is recused from the ACE litigation. The decision in the ACE litigation vacated a regulation. That regulation is also the subject of a different case that Melissa is NOT recused from. Could we say to Melissa- "The ACE decision vacated regulation X. In light of that vacatur, should we stop defending case Y?" Could we say anything more? If Melissa said, "That's interesting. Tell me why the reasoning of the ACE decision leads to that conclusion in case Y," could we answer?

Sorry to get so granular.
++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 1:19 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Gautam,
When Lisa Jackson became the EPA Administrator, she came to us from the State of New Jersey. At the time, there was a "little" case called State of New Jersey v. EPA, but we anticipated that the new Obama Administration would not want to pursue it in the Supreme Court. So the impartiality determination we wrote allowed her to make the policy decision to cease pursuing it *without ever discussing the merits of the case.* That's the same analysis we applied to the situation for Melissa except that, unlike Lisa Jackson, Melissa is an attorney subject to her own bar restrictions, notably 1.6 (duty of confidentiality), 1.9 (duty to former client) and 1.11 (obligations of former government officials). She cannot discuss the merits of any case in which she previously participated because of her bar obligations. But she can make a policy decision about whether or not to proceed with the litigation of that case.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Monday, January 25, 2021 12:58 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Thanks. And one other clarification, if you please. The impartiality letter says that Melissa can participate in "policy determinations related to these cases." I had thought that meant Melissa could, say, participate in discussions about how EPA will regulated power plants, even if she is recused from the ACE litigation. But your email below says Melissa can participate in "policy decisions *about* that litigation" and lists a decision to stay as an example.

Assuming the formulation in your email is right, is there anything more you can provide on the scope of "policy decisions about" litigation? A question of whether to stay a case may involve discussion of the merits of the case. I'm unclear on how exactly to implement this aspect. Thanks again!

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 12:47 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hogan, Stephanie <Hogan.Stephanie@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Gautam,
Yes, please don't send it to them.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Monday, January 25, 2021 12:46 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hogan, Stephanie <Hogan.Stephanie@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Justina- Quick follow up on this. We have prepared a written summary/analysis of the ACE litigation (American Lung Association v. EPA). Both Massachusetts and NRDC were parties in the case. Given that, it seems like we should not be sending the summary to them. Do I have that right?

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(202) 564-5647 (o)
(202) 695-6287 (c)

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,
As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.
- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	*Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA*, Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	*Labor Council for Latin America, NRDC, et al. v. EPA*, Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	*NRDC v. Wheeler*, Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	*Walters v. Flint, EPA, et al.*, Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She

may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all I interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 1/25/2021 9:43:31 PM
To: Marks, Matthew [Marks.Matthew@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
CC: Payne, James (Jim) [payne.james@epa.gov]; Clarke, Victoria [clarke.victoria@epa.gov]
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi again,
First, I misspoke … the person who sent the email at 2 am overnight wasn't Alexis but Winnie Okoye. I just checked my email (I misremembered the subject of the case).

Depending on when you plan to talk to her, you could tee up the issues with my general advice. I'm planning to send an email to her later tonight anyway.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Marks, Matthew <Marks.Matthew@epa.gov>
Sent: Monday, January 25, 2021 4:11 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Justina,

In regards to your second response re: prudential advice, was this a conversation you would want to have with Melissa before we engage with her on this issue, or could we queue up the issue generally, note your advice, and see whether she wants to proceed to a full discussion or hold off until she speaks with you?

Matt

Matthew C. Marks
Deputy Associate General Counsel
Air and Radiation Law Office
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202-564-3276
E: marks.matthew@epa.gov

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 2:23 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>

Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Gautam,
See my notes below:

- Even if Melissa is recused from a case, can we share with her publicly available information about it? I think the answer is yes.
  JUSTINA: yes, you may share and she may hear publicly available information.

- Variant- Melissa is recused from the ACE litigation. The decision in the ACE litigation vacated a regulation. That regulation is also the subject of a different case (case Y) that Melissa is NOT recused from. Could we say to Melissa- "The ACE decision vacated regulation X. In light of that vacatur, should we stop defending case Y?"
  JUSTINA: I had to insert a clarification just to be sure I'm following your hypothetical. Under the federal ethics rules, you may discuss Case Y with Melissa. My prudential advice to her, however, will be to consider seeking the consent of Massachusetts to ensure that she may work on "substantially related" specific party matters pursuant to MA bar rule 1.11.

- Could we say anything more? If Melissa said, "That's interesting. Tell me why the reasoning of the ACE decision leads to that conclusion in case Y," could we answer?
  JUSTINA: To be clear, in this hypo, there is already a decision that is publicly available, correct? If so, then yes, you may engage with her on this question because she is not discussing the merits of the ACE case but rather applying the decision made by the court to EPA's strategy in a different case.

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From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Monday, January 25, 2021 1:37 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Thanks much. Final question/variant. Even if Melissa is recused from a case, can we share with her publicly available information about it? I think the answer is yes. Variant- Melissa is recused from the ACE litigation. The decision in the ACE litigation vacated a regulation. That regulation is also the subject of a different case that Melissa is NOT recused from. Could we say to Melissa- "The ACE decision vacated regulation X. In light of that vacatur, should we stop defending case Y?" Could we say anything more? If Melissa said, "That's interesting. Tell me why the reasoning of the ACE decision leads to that conclusion in case Y," could we answer?

Sorry to get so granular.

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 1:19 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Gautam,
When Lisa Jackson became the EPA Administrator, she came to us from the State of New Jersey. At the time, there was a "little" case called State of New Jersey v. EPA, but we anticipated that the new Obama Administration would not want to pursue it in the Supreme Court. So the impartiality determination we wrote allowed her to make the policy decision to cease pursuing it *without ever discussing the merits of the case*. That's the same analysis we applied to the situation for Melissa except that, unlike Lisa Jackson, Melissa is an attorney subject to her own bar restrictions, notably 1.6 (duty of confidentiality), 1.9 (duty to former client) and 1.11 (obligations of former government officials). She cannot discuss the merits of any case in which she previously participated because of her bar obligations. But she can make a policy decision about whether or not to proceed with the litigation of that case.
Justina

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From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Monday, January 25, 2021 12:58 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

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Sent: Monday, January 25, 2021 12:46 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hogan, Stephanie <Hogan.Stephanie@epa.gov>
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Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

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Message

From: Hoffer, Melissa [Hoffer.Melissa@epa.gov]
Sent: 1/26/2021 5:52:13 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: RE: NEW LITIGATION: California Communities Against Toxics v. EPA, No. 20-1024 (DC Cir.)

Thanks.

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Monday, January 25, 2021 7:27 PM
To: Hoffer, Melissa <Hoffer.Melissa@epa.gov>
Cc: Anderson, Lea <anderson.lea@epa.gov>; OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
Subject: Re: NEW LITIGATION: California Communities Against Toxics v. EPA, No. 20-1024 (DC Cir.)

I've confirmed they're aware.

Sent from my iPhone

> On Jan 25, 2021, at 6:46 PM, Hoffer, Melissa <Hoffer.Melissa@epa.gov> wrote:
>
> Jim, if we haven't already, can you let DOJ know.
>
> Thanks,
> M
>
> ---
>
> **From:** Anderson, Lea <anderson.lea@epa.gov>
> **Sent:** Monday, January 25, 2021 4:55 PM
> **To:** OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>; OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>
> **Cc:** Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
> **Subject:** RE: NEW LITIGATION: California Communities Against Toxics v. EPA, No. 20-1024 (DC Cir.)
>
> With the case this time…
>
> Lea Anderson
> (202) 564-5571
>
> ---
>
> **From:** Anderson, Lea
> **Sent:** Monday, January 25, 2021 2:03 PM
> **To:** OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>; OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>
> **Cc:** Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <marks.matthew@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>
> **Subject:** NEW LITIGATION: California Communities Against Toxics v. EPA, No. 20-1024 (DC Cir.)

We received notice today of a case filed on January 15, 2021 by a number of environmental groups. The challenge is to the MM2A rule ("Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act," 85 Fed. Reg. 73854 (November 19, 2020)). The rule challenged here is one of the EPA rules identified by the Biden Administration as an agency action to be reviewed.

Note that the case caption on the attached petition has a typo stating case number as "20-1024."

Scott Jordan is the staff attorney handling this case.

Lea Anderson | Assistant General Counsel for the Air Toxics, Consumer Products and Indoor Air Group |
US EPA | Office of General Counsel | Air and Radiation Law Office | phone: (202) 564-5571

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 1/27/2021 8:53:53 PM
To: Regional Ethics Officials [Regional_Ethics_Officials@epa.gov]
Subject: for your information and reference
Attachments: Ethics Briefing Packet for Political Appointees.pdf; Biden Ethics Pledge for digital signature.pdf; Rescission of EO 13770 BUT still obligated under federal post-emp statute

Hi there,
In case it's helpful, I'm sending you the briefing portfolio that OGC/Ethics created for the initial ethics training of incoming political appointees. By Monday of next week, we should have onboarded about 3 dozen appointees. This material includes a synopsis of the Biden pledge, which I have also attached as a reference. In addition, I'm including the email advice that I sent to then-Administrator Wheeler on 1/20/21 about the rescission of the Trump Ethics Pledge. Although the Trump appointees' *additional* restrictions under EO 13770 were lifted, they are still subject to the post-employment statutory restrictions at 18 U.S.C. § 207.
Cheers,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 1/28/2021 2:25:52 AM
To: OGC Ethics [OGC_Ethics@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]
Subject: notes from quarterly DAEO meeting

Hi,
I attended the quarterly DAEO meeting that had some technical audio issues. They insist on using a conference call line and, for whatever reason, could not do a "global mute." People had to remember to mute themselves individually, with varying degrees of success. Here are the notes:

WHITE HOUSE
Returning to the White House to do ethics are Dana Remus and Funmi Olorunnipa who had served in similar roles in the Obama Administration. Dana said that President Biden is dedicated to a "renewal of integrity and ethics in government" and to "restoring faith in government service." She said clearly that the White House considers itself a partner with OGE and that we are to rely upon OGE guidance on the pledge and to work with OGE as they will be doing. She then introduced three people who are working on ethics issues in the White House Presidential Personnel Office:
Jeanne Duross, Adam Raviv and Anjali Phillips.

Dana and Funmi reported that:

- All PAS appointees will need to resign from their employment and from all leadership positions, compensated or uncompensated
- There will be the usual exception for a leave of absence from tenured positions but only if consistent with university policy for a stated duration of time
- If they are a sole proprietor, then their business need not be dissolved, but they must put it into inactive status with no clients
- They can continue to hold positions in a real estate LLC if the asset(s) is property only
- Decisions about a continued position in a family trust will be considered on a case-by-case basis
- For decisions about a certificate of divestiture, the White House will "lean on the agencies to make determinations" as to whether divestiture is required or if recusal alone will be sufficient.

DAVE APOL

- OGE is working very hard to process the incoming new entrant reports as well as the outgoing termination reports. They have moved 14 of 15 reports for heads of agencies to the Senate already, along with 8 of 9 other PAS nominations. They have another 23 nominees pending with an expected 1000 PAS positions on the horizon. Thus far, they have certified over 70 termination reports.
- Expect a legal advisory soon about the Biden pledge but we can rely on their prior advisories. For example, holdover appointees will be required to sign the Biden pledge (which means, for us, we probably need to get the IG to sign again). For pledge interpretation, Dave particularly recommended LA 17-03 and its handy appendix that they will soon be updating.
- He noted that they have put out several advisories recently: crowdsourcing, book deals, interpretation of 18 USC 205 to routine submissions of applications

SHELLEY FINLAYSON

- They will soon put out an advisory summarizing legislative activity related to ethics
- OGE has a public facing and public friendly FAQ feature on its website about financial disclosure

- She mentioned that they are putting out a lot of training content with more coming (go to their Institute for Government Ethics section of their website)
- There are now over 24,000 Integrity users. If we need merge requests, submit them in a consolidated fashion once a day
- Next Integrity webinar is scheduled for February 10

CHIP CHRISTOPHER

- They are continuing their program reviews, follow ups and plenary reviews
- They understand that, in some cases, recommendations that can be resolved only by hard copy documents can't be addressed now. Just wait because they will be patient but they won't excuse those recommendations. They'll just wait on them for now.

That was about it.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 1/30/2021 6:07:17 AM
To: OGC Ethics [OGC_Ethics@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]
Subject: the grammarian in me is doing a happy dance!

Hi there,
As originally issued, the Biden executive order about ethics contained a glaring typographical error. It was titled "Executive Order on *Ethic* Commitments by Executive Branch Personnel." I was deeply aggrieved. "Ethic" is a noun, not an adjective, so my inner grammarian cringed. How would I ever get through the next years, referring to the executive order with that title? Would I have to insert "sic" and feel a little sick each time? Well, I just happened to check the WH website today, and the executive order has been reposted with the new title, "Executive Order on Ethics Commitments by Executive Branch Personnel." This is like chicken soup for the grammarian soul!
Justina

Message

From: Barker, Kendal [Barker.Kendal@epa.gov]
Sent: 10/15/2020 6:50:49 PM
To: Terwilleger, Brock [terwilleger.brock@epa.gov]; Molina, Michael [molina.michael@epa.gov]; Shimmin, Kaitlyn [shimmin.kaitlyn@epa.gov]; Coxen, Carrie [coxen.carrie@epa.gov]; Hoverman, Taylor [hoverman.taylor@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Block, Molly [block.molly@epa.gov]; Zimmer, Nathaniel [zimmer.nathaniel@epa.gov]; Benevento, Douglas [benevento.douglas@epa.gov]; Carter, Brittany S. [carter.brittanys@epa.gov]; Hewitt, James [hewitt.james@epa.gov]; Vella, Sophia [Vella.Sophia@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Scott, Corey [scott.corey@epa.gov]; Meadows, Carrie Vicenta [Meadows.CarrieVicenta@epa.gov]; Donahue, Sean [donahue.sean@epa.gov]; Bolen, Derrick [bolen.derrick@epa.gov]; McIntosh, Chad [mcintosh.chad@epa.gov]; Etheridge, George [Etheridge.George@epa.gov]; Ross, David P [ross.davidp@epa.gov]; Murray, William [Murray.William@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Landeene, Sarah [Landeene.Sarah@epa.gov]; Hanson, Paige (Catherine) [hanson.catherine@epa.gov]; Cook, Steven [cook.steven@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; Kasper, Amanda [Kasper.Amanda@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Struhar, Kirby [struhar.kirby@epa.gov]; Zeckman, David [zeckman.david@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Kolb, John (JohnMark) [kolb.john@epa.gov]; Allen, Jacob [Allen.Jacob@epa.gov]; Dominguez, Alexander [dominguez.alexander@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Wright, Peter [wright.peter@epa.gov]; Frye, Tony (Robert) [frye.robert@epa.gov]; White, Elizabeth [white.elizabeth@epa.gov]; Cory, Preston [Cory.Preston@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Brazauskas, Joseph [brazauskas.joseph@epa.gov]; Hoverman, Taylor [hoverman.taylor@epa.gov]; Cody, Meredith [cody.meredith@epa.gov]; Darwin, Henry [darwin.henry@epa.gov]; Dekleva, Lynn [dekleva.lynn@epa.gov]; Donahue, Sean [donahue.sean@epa.gov]; Dixon, Sean [dixon.sean@epa.gov]; Dunlap, David [dunlap.david@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; English, Katherine [english.katherine@epa.gov]; Fields, Jenifer [fields.jenifer@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Gulliford, Jim [gulliford.jim@epa.gov]; Hanson, Paige (Catherine) [hanson.catherine@epa.gov]; Harlow, David [harlow.david@epa.gov]; Hladick, Christopher [hladick.christopher@epa.gov]; Idsal, Anne [idsal.anne@epa.gov]; Jones, Lindsey [jones.lindsey@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Molina, Michael [molina.michael@epa.gov]; Tran, Victoria [tran.victoria@epa.gov]; Zimmer, Nathaniel [zimmer.nathaniel@epa.gov]; Willey, Katharine [willey.katharine@epa.gov]; Irving, John [Irving.John@epa.gov]; Leo, Diana [Leo.Diana@epa.gov]; Liebau, Joseph [Liebau.Joseph@epa.gov]; Meadows, Carrie Vicenta [Meadows.CarrieVicenta@epa.gov]; Gunasekara, Mandy [gunasekara.Mandy@epa.gov]; Teresa, Tyler [Teresa.Tyler@epa.gov]; KRAL.GARRET@EPA.GOV; Gilliard, Paige [Gilliard.Paige@epa.gov]; Dziadosz, Patricia [Dziadosz.Patricia@epa.gov]; Washam, Todd [Washam.Todd@epa.gov]; Hewitt, James [hewitt.james@epa.gov]; Allen, Jacob [Allen.Jacob@epa.gov]; Vella, Sophia [Vella.Sophia@epa.gov]; Mills, Madeline [Mills.Madeline@epa.gov]; BURGESS.OWEN@EPA.GOV; Axelrod, Julie [Axelrod.Julie@epa.gov]; Tatum, Stephen [Tatum.Stephen@epa.gov]; Etheridge, George [Etheridge.George@epa.gov]; Burgess, Michael [Burgess.Michael@epa.gov]; Hage, Christopher [hage.christopher@epa.gov]; Sethuraman, Jag [Sethuraman.Jag@epa.gov]; Hackett, Jonathan [hackett.jonathan@epa.gov]; Kral, Garrett [kral.garrett@epa.gov]
CC: Gunasekara, Mandy [gunasekara.Mandy@epa.gov]; Fugh, Justina [Fugh.Justina@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]
Subject: Hatch Act Reminders and Clarification
Attachments: pithy hatch act rules Oct 2020.docx; Hatch Act chart Sept 2020.docx

Good afternoon all,

Given the increased interest in volunteering for election-related activity in the coming weeks, Mandy asked me to send out some information our ethics team (Justina and Jim) provided. I've attached two documents. Please read through both of them thoroughly. Should you have any questions, feel free to reach out to Mandy and/or our ethics experts (both of which are cc'd).

Of note in the attached:

Working for a campaign -- If you are a lesser restricted employee (AD, Schedule C and non-career SES) and you want to work for a partisan campaign, then follow these rules:

- You must take annual leave or be on leave without pay or other non-work status. You cannot take sick leave or receive administrative leave to volunteer for a *partisan* campaign.
- Can't use your EPA title, position, badge, email address, computer, or any other EPA authority or equipment in connection with the political activity.
- Can't use official social media to further political activity
- You can be paid by the campaign or reimbursed for expenses
- But remember that you can't provide volunteer services to your EPA boss(es) and they can't accept them
- Never solicit, accept or receive political contributions

In addition, please forward this information to others in your office as I might've missed a few individuals (apologies if so)! Thank you in advance.

Best,
Kendal

Kendal Barker
Special Assistant
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20004
O: (202) 564-6624
C: (202) 834-6447
barker.kendal@epa.gov

Message

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 1/31/2021 8:30:55 AM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: Tracking environmental actions under Biden - Washington Post

https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.washingtonpost.com%2Fgraphics%2F2021%2Fclimate-environment%2Fbiden-climate-environment-actions%2F&data=04%7C01%7Cpayne.james%40epa.gov%7Cef11a88290324079dde508d8c5c28791%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637476786637822348%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=NammeuBgkV6iXcS3gXCmwsAGskPCJYhaCex4dNBRxZk%3D&reserved=0

Sent from my iPhone

Message

From: Barker, Kendal [Barker.Kendal@epa.gov]
Sent: 10/19/2020 5:24:38 PM
To: Deziel, Dennis [Deziel.Dennis@epa.gov]; Dixon, Sean [dixon.sean@epa.gov]; Lopez, Peter [lopez.peter@epa.gov]; McKeown, Paula [McKeown.Paula@epa.gov]; Servidio, Cosmo [Servidio.Cosmo@epa.gov]; Fields, Jenifer [fields.jenifer@epa.gov]; Walker, Mary [walker.mary@epa.gov]; Ashbee, Blake [ashbee.blake@epa.gov]; Thiede, Kurt [thiede.kurt@epa.gov]; Liebau, Joseph [Liebau.Joseph@epa.gov]; McQueen, Ken [McQueen.Ken@epa.gov]; Tatum, Stephen [Tatum.Stephen@epa.gov]; Gulliford, Jim [gulliford.jim@epa.gov]; Sopkin, Gregory [sopkin.gregory@epa.gov]; Sethuraman, Jag [Sethuraman.Jag@epa.gov]; Busterud, John [Busterud.John@epa.gov]; Munoz, Charles [munoz.charles@epa.gov]; Hladick, Christopher [hladick.christopher@epa.gov]
CC: Gunasekara, Mandy [gunasekara.Mandy@epa.gov]; Benevento, Douglas [benevento.douglas@epa.gov]; Fugh, Justina [Fugh.Justina@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]
Subject: Hatch Act Reminders and Clarification
Attachments: pithy hatch act rules Oct 2020.docx; Hatch Act chart Sept 2020.docx

Good afternoon all,

Happy Monday! Given the increased interest in volunteering for election-related activity in the coming weeks, Mandy asked me to send out some information our ethics team (Justina and Jim) provided. I've attached two documents. Please read through both of them thoroughly. Should you have any questions, feel free to reach out to Mandy and/or our ethics experts (both of which are cc'd).

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In addition, please circulate this information to others in your region. Thank you in advance.

Best,
Kendal

Kendal Barker
Special Assistant
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20004
O: (202) 564-6624
C: (202) 834-6447
barker.kendal@epa.gov

Message

From: Block, Molly [block.molly@epa.gov]
Sent: 10/21/2020 2:44:05 AM
To: Fotouhi, David [Fotouhi.David@epa.gov]
CC: Willey, Katharine [willey.katharine@epa.gov]; Fugh, Justina [Fugh.Justina@epa.gov]; Hewitt, James [hewitt.james@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]
Subject: Re: President Trump's political appointees' job negotiations while at EPA

Thanks all!

Sent from my iPhone

On Oct 20, 2020, at 10:03 PM, Fotouhi, David <Fotouhi.David@epa.gov> wrote:

Consistent with their statutory and regulatory ethics obligations, the identified former EPA employees filed prospective employment notification forms, including recusal statements, with the EPA Ethics Office. EPA ethics officials provided one-on-one counseling to each of the individuals regarding applicable recusal obligations.

Message

From: Bramer, Annmarie [Bramer.Annmarie@epa.gov]
Sent: 10/1/2020 1:26:27 PM
To: Adair, Jocelyn [Adair.Jocelyn@epa.gov]; Anderson, Lea [anderson.lea@epa.gov]; Anderson, Steve [Anderson.Steve@epa.gov]; Aranda, Amber [aranda.amber@epa.gov]; Averback, Jonathan [Averback.Jonathan@epa.gov]; Belser, Evan [Belser.Evan@epa.gov]; Bianco, Karen [Bianco.Karen@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Branning, Amy [Branning.Amy@epa.gov]; Buchsbaum, Seth [buchsbaum.seth@epa.gov]; Bunker, Byron [bunker.byron@epa.gov]; Caballero, Kathryn [Caballero.Kathryn@epa.gov]; Carrillo, Andrea [Carrillo.Andrea@epa.gov]; Charlton, Tom [Charlton.Tom@epa.gov]; Conrad, Daniel [conrad.daniel@epa.gov]; Cozad, David [Cozad.David@epa.gov]; Davis, Julian [davis.julian@epa.gov]; Dickinson, David [Dickinson.David@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Dubey, Susmita [dubey.susmita@epa.gov]; Dugan, Brett [Dugan.Brett@epa.gov]; Froikin, Sara [Froikin.Sara@epa.gov]; Garfinkle, Stacey [garfinkle.stacey@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Greenglass, Nora [Greenglass.Nora@epa.gov]; Hambright, Rosemary [Hambright.Rosemary.E@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Hoffman, Howard [hoffman.howard@epa.gov]; Hogan, Stephanie [Hogan.Stephanie@epa.gov]; Iddings, Brianna [Iddings.Brianna@epa.gov]; Igoe, Sheila [Igoe.Sheila@epa.gov]; Jordan, Deborah [Jordan.Deborah@epa.gov]; Jordan, Scott [Jordan.Scott@epa.gov]; Kaplan, Robert [kaplan.robert@epa.gov]; Kataoka, Mark [Kataoka.Mark@epa.gov]; Klepp, Robert [Klepp.Robert@epa.gov]; Knapp, Kristien [Knapp.Kristien@epa.gov]; Kodish, Jeff [Kodish.Jeff@epa.gov]; Krallman, John [krallman.john@epa.gov]; Kryman, Matthew [Kryman.Matthew@epa.gov]; Kulschinsky, Edward [Kulschinsky.Edward@epa.gov]; Lee, Michael [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; Manners, Mary [manners.mary@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; Matsumoto, Kimi [Matsumoto.Kimi@epa.gov]; McConkey, Diane [Mcconkey.Diane@epa.gov]; Meisenbach, Caitlin [Meisenbach.Caitlin@epa.gov]; Michaels, Lauren [Michaels.Lauren@epa.gov]; Morgan, Jeanette [Morgan.Jeanette@epa.gov]; Muller, Sheldon [Muller.Sheldon@epa.gov]; Nelson, Karen [nelson.karen@epa.gov]; Ng, Brian [Ng.Brian@epa.gov]; Nguyen, DucH [Nguyen.DucH@epa.gov]; Nguyen, Quoc [Nguyen.Quoc@epa.gov]; Oeler, Lawrence [Oeler.Lawrence@epa.gov]; OGC NFO FEAT [OGC_NFO_FEAT@epa.gov]; Okoye, Winifred [Okoye.Winifred@epa.gov]; Orlin, David [Orlin.David@epa.gov]; Palmer, Karen [Palmer.Karen@epa.gov]; Pastorkovich, Anne-Marie [Pastorkovich.Anne-Marie@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]; Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]; Portmess, Jessica [Portmess.Jessica@epa.gov]; Richheimer, Jesse [Richheimer.Jesse@epa.gov]; Rodman, Sonja [Rodman.Sonja@epa.gov]; Schaaf, Eric [Schaaf.Eric@epa.gov]; Schramm, Daniel [Schramm.Daniel@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Senn, John [Senn.John@epa.gov]; Shepherdson, Melanie [Shepherdson.Melanie@epa.gov]; Skinner-Thompson, Jonathan [Skinner-Thompson.Jonathan@epa.gov]; Snyder, Doug [Snyder.Doug@epa.gov]; Spina, Providence [Spina.Providence@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Stachowiak, Robert [Stachowiak.Robert@epa.gov]; Stahle, Susan [Stahle.Susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Steinberg, Kayla [steinberg.kayla@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]; Thompson, Christopher [Thompson.Christopher@epa.gov]; Thrift, Mike [thrift.mike@epa.gov]; Tierney, Jan [tierney.jan@epa.gov]; Ting, Kaytrue [Ting.Kaytrue@epa.gov]; Tozzi, Lauren [Tozzi.Lauren@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Vergeront, Julie [Vergeront.Julie@epa.gov]; Versace, Paul [Versace.Paul@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Williams, Christopher [Williams.Christopher@epa.gov]; Williams, Melina [Williams.Melina@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]
Subject: Air & Radiation Law News for October 1, 2020

Air & Radiation Law News for October 1, 2020

LEADING THE NEWS

Truck Trailer Efficiency Standards Stalled by D.C. Circuit Court

By Ellen M. Gilmer

Truckers won't have to meet federal efficiency standards for trailers, for now, after a federal court on Tuesday temporarily halted Obama-era requirements.

Desert Wildcatters Dream of Riches After Years of Dry Holes (1)

By Bobby Magill

Jim Franklin says his “MRI in the sky” tells him there’s a pool of oil bigger than an OPEC country’s in the central Nevada desert where no one has made a significant crude discovery in almost four decades.

ENERGY

Superior Energy Plans to Hand Company to Creditors in Bankruptcy

By Jeremy Hill

Superior Energy Services Inc. plans to file for bankruptcy in Texas as part of a deal to give ownership of the business to creditors and slash $1.3 billion of debt.

Shell to Cut Up to 9,000 Jobs as Virus Accelerates Overhaul (4)

By Laura Hurst

Royal Dutch Shell Plc will cut as many as 9,000 jobs as crude’s crash forces billions of dollars in cost savings and the oil and gas giant overhauls its business to embrace clean energy.

Oasis Petroleum Files for Bankruptcy as Oil Slump Hits Company

By Allison McNeely and Ken McCallum

Oasis Petroleum Inc. filed for bankruptcy after persistently low oil and gas prices made its debt load unsustainable.

UCLA, SUNY-Albany, Other Colleges Pivoting to Electric Vehicles

By Stephen Lee

The University of California, Los Angeles, and 11 other colleges in 10 states announced plans Wednesday to switch their fleets to electric vehicles.

Peabody Energy Hit With Investor Suit Over Coal Mine Fire

By Jennifer Bennett

Peabody Energy Corp. investors say the company misled them about safety procedures and reopening delays after a 2018 fire in an Australian coal mine, according to their would-be class suit filed in federal court in New York.

LED Lighting Company Energy Focus Hires First Legal Chief

By Ruiqi Chen

Energy Focus, Inc. has hired former engineer and in-house lawyer Jim Warren as the sustainable LED lighting company's first general counsel, senior vice president, and corporate secretary.

Colorado Greenhouse Reduction Plan Calls for More Electric Cars

By Tripp Baltz

Colorado Gov. Jared Polis (D) released a draft road map on Wednesday showing how the state will work to reduce by half its greenhouse gas emissions by 2030 by significantly expanding adoption of electric cars, trucks, and buses.

Permit in Hand, Building of Alaska-Alberta Railway Set to Start

By Michael Bellusci

The team behind the proposed Alaska to Alberta railway aims to start prep work for construction in December, with a goal of getting the $17 billion cross-border railroad running by 2025.

ENERGY BRIEFING: Critics See Bailout in Feds Buying Oil Debt

By Brianna Jackson

The U.S. government has used emergency pandemic aid to purchase more than $355 million in bonds issued by companies in the battered oil and gas

industry, according to a report being released today by critics who say the investments amount to a bailout.

AIR, WATER, WASTE, AND ENVIRONMENTAL JUSTICE

White House Memo Not Slowing EPA Justice Work, Wheeler Says (1)

By Stephen Lee

A recent White House memo that scuttled an EPA training session on environmental problems in low-income communities of color won't affect the agency's overall environmental justice program, Administrator Andrew Wheeler told reporters Wednesday.

How Discriminatory Housing Created a Public Health Crisis

By Jeremy Deaton and Gloria Oladipo

Draw a map of Chicago and shade the areas with more poverty, more pollution and more coronavirus. You will find yourself coloring in Black neighborhoods in the south and west. At some point, it will start to look like being Black is a pre-existing condition.

CLIMATE AND ESG

Green Deal Forces Businesses to Gamble on the Price of Polluting

By Ewa Krukowska and William Mathis

During the past four years, Vittorio Borelli spent about 50 million euros ($58 million) buying equipment for his company's ceramic-making facility in northern Italy. New gas-fired kilns slashed the time necessary to heat porcelain at more than 1,000 degrees Celsius, saving energy and reducing carbon emissions.

German Minister Says Climate Fight Lifted by Vows From China, EU

By Ewa Krukowska

The global fight against climate change has reached a watershed moment with recent announcements from China and the European about deeper action, German Environment Minister Svenja Schulze said.

U.K.'s Labour Says Company Climate Reporting Should Be Mandatory

By Jessica Shankleman

The U.K.'s main opposition political party wants all listed companies to be forced to report on their exposure to climate-change risks by this time next year.

UN Biodiversity Summit Sees Leaders Calling for Climate Action

By Laura Millan Lombrana, Eric Roston and Jess Shankleman

The mass extinction of species will be catastrophic for economic development, global leaders warned as they lamented that the international community they themselves are part of has failed to meet any of the biodiversity targets set a decade ago.

ESG DAILY: Deutsche Bank Makes Increasing Bet on Green Assets

By Brian Parkin and Tim Quinson

Deutsche Bank plans to generate and provide 200 billion euros ($233 billion) of green asset financing in the next five years amid increasing demand from clients and investors, said CEO Christian Sewing.

AROUND THE GLOBE

Porsche Employees Probed by German Prosecutors Over Emissions

By Christoph Rauwald

Prosecutors in Germany have opened an investigation into several Porsche AG employees after the carmaker informed authorities of possible irregularities regarding emission labels for cars produced years ago.

China's Coal Industry Unflinching Over 2060 Zero-Carbon Goal (1)

By Bloomberg News

China's massive coal industry isn't worried about the nation's plan to drastically cut carbon emissions by 2060.

U.K. Plans to Create Offshore Grid to Connect Wind Farms (1)

By Rachel Morison

National Grid Plc outlined a plan for an offshore grid that will link new wind parks and interconnectors, saving consumers 6 billion pounds ($7.7 billion) by 2050.

A Fossil Fuel Fight in Australia Has Delivered a Win for Gas

By James Thornhill and David Stringer

Santos Ltd. won approval to proceed with a major natural gas project in Australia, securing a long-term role for fossil fuels even as their part in the global transition to cleaner energy is questioned.

INSIGHT

The CFTC Should Remain Neutral on Climate Change

The CFTC's new task force report on climate change marks the commission's entrance into politics, says Robert Zwirb, former counsel to two CFTC commissioners. He sees problems with this and warns it could lead the CFTC to push a political agenda and detract it from its core mission, regulating the financial derivatives markets.

Professional Civility Is Essential in the Pandemic

The pandemic is putting extraordinary home and work stresses on all employees, including attorneys. Elizabeth Holt Andrews, with Troutman Pepper, and Andrew Trask, with Williams & Connolly LLP, say that whether attorneys are in the midst of contentious litigation or protracted contract negotiations, they should consider unseen burdens colleagues may be carrying and showcase the profession's commitment to civility.

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Latest News

Newsom Enacts Disputed Bill Waiving CEQA For 'Climate Friendly' Projects

California Gov. Gavin Newsom (D) is enacting controversial legislation to exempt from the state's broad environmental protection review law transit and "climate-friendly" road projects, over strong objections from equity and environmental groups that the measure is far too broad and likely will increase pollution in disadvantaged communities. FULL STORY

D.C. Circuit Grants Trailer Makers' Bid For Unusual Stay Of NHTSA Fuel Rule

A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit has unanimously granted long-haul trailer makers' bid for an unusual stay of fuel economy limits imposed by the National Highway Traffic Safety Administration (NHTSA) while the court weighs a merits ruling on the policy. **FULL STORY**

Former EPA Chiefs, Health Experts Stress Equity In Future EPA Air Policies

Three former EPA administrators along with several public health experts say the agency must prioritize environmental justice (EJ) in its future Clean Air Act policies including regulations to reduce air pollution and greenhouse gases, with the former agency chiefs saying existing air rules "have come up really short" on protecting equity communities. **FULL STORY**

Wheeler Downplays OIG Report Faulting Rights Office, Touts EJ Efforts

EPA Administrator Andrew Wheeler is downplaying an Office of Inspector General's (OIG) report that said the Office of Civil Rights (OCR) is not doing enough to ensure that state programs comply with the Civil Rights Act, while also touting his agency's efforts to promote environmental justice (EJ) through new grants. **FULL STORY**

Daily Feed

EPA sends SSM air guidance for OMB review

The agency's guidance could allow states to grant industrial facility owners waivers from Clean Air Act emissions limits during periods of facility startup, shutdown or malfunction (SSM). **FULL STORY**

Quote-Unquote: What they're saying about . . .

. . . EPA Administrator Andrew Wheeler, in exclusive *Inside EPA* interview, answers critics. Plus: NEPA changes, a Supreme Court nominee, and plastics. **FULL STORY**

AFGE files unfair labor complaint over EPA Region 5 reopening plans

The American Federation of Government Employees representing EPA employees in the Midwest Region 5 claims the agency has failed to "bargain in good faith" over reopening offices during the pandemic. **FULL STORY**

Ewire: Trump-Biden debate prompts clash over climate, environment

In today's Ewire: At the first presidential debate of 2020, President Donald Trump faced questions on his views about climate science while Democratic nominee Joe Biden downplayed cost concerns over his climate plan. **FULL STORY**

ENN ENVIRONMENTAL NEWS NETWORK

SOMEDAY, EVEN WET FORESTS COULD BURN DUE TO CLIMATE CHANGE

Millions of years ago, fire swept across the planet, fueled by an oxygen-rich atmosphere in which even wet forests burned, according to new research by CU Boulder scientists.

Brought to you by the Office of General Counsel Law Library

The OGC Law Library has temporarily ceased operation of their in-person reference desk, but service is still available virtually.

If you need reference assistance, please contact the OGC Law Library via Ask a Librarian, https://usepa.servicenowservices.com/aal or via ogclibrary@epa.gov.

U.S. Environmental Protection Agency
Office of General Counsel
202-564-3971
ogclibrary@epa.gov

Ann-Marie Bramer Stewart
Supervisory Librarian – Headquarters and Chemical Libraries
Contractor – ASRC Federal Professional Services (AFPS)
202-566-0578

EPA Library Support During COVID-19 Pandemic

Tell us how we're doing - rate our customer service!
http://www.surveymonkey.com/s/epalibsurvey

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 10/29/2020 10:27:02 PM
To: Payne, James (Jim) [payne.james@epa.gov]
CC: Askew, Wendel [Askew.Wendel@epa.gov]
Subject: RE: potential transition team's MOU on access to employees, facilities and documents

Thanks, Jim.
The transition team members may not be EPA employees, so I won't have to advise them on federal ethics issues. That said, at paragraph 12, the MOU references 'government employees' and reminds us that we may not misuse our positions by sharing nonpublic information. The MOU provides an incorrect citation (it says "5 CFR 2640, which is for conflicting financial interests, instead of 5 CFR 2635.703, use of nonpublic information.

Seems to me that you should include Wendy Blake for the information law perspective, though.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Thursday, October 29, 2020 3:11 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Askew, Wendel <Askew.Wendel@epa.gov>
Subject: FW: potential transition team's MOU on access to employees, facilities and documents

Wes Carpenter said that this MOU w potential transition team is close hold. It includes ethics provisions. Let's touch base.

From: Payne, James (Jim)
Sent: Tuesday, October 27, 2020 7:01 PM
To: Packard, Elise <Packard.Elise@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>
Cc: Askew, Wendel <Askew.Wendel@epa.gov>
Subject: Fwd: potential transition team's MOU on access to employees, facilities and documents

This is the potential transition team MOU on access, dated 9/30/2020. It does not appear to be publicly released, based on initial on-line searches.

An earlier potential transition team MOU on facility space has been released.

Sent from my iPhone

Begin forwarded message:

From: "Carpenter, Wesley" <Carpenter.Wesley@epa.gov>
Date: October 27, 2020 at 5:52:50 PM EDT
To: "Payne, James (Jim)" <payne.james@epa.gov>
Cc: "Askew, Wendel" <Askew.Wendel@epa.gov>
Subject: RE: potential transition team's MOU on access to employees, facilities and documents

Jim:

Good evening. I participated in an agency transition director meeting earlier today with OMB/OPM/GSA. OMB/OPM/GSA provided an update on the latest with the transition activities, including discussing the attached MOU signed by the President's Chief of Staff and the Chair of the Biden Transition Team. The MOU covers Transition Procedures, Identification of Transition Contacts, and access to non-public government and transition information. I am sharing the MOU per your request and for situational awareness purposes. I have also shared it with Doug, Henry and Mandy. Typically, supplemental guidance or implementing instructions are provided with the MOU; however, OMB/OPM/GSA are not releasing the guidance or instructions at this time. If and when they do, I will share it with you. In the interim, please let me know if you have any questions or need additional information. Thanks.

Wes
Per your request, I have attached the MOU signed between the President's Chief of Staff and the Chair of the Biden Transition Team.

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Sunday, October 18, 2020 1:07 PM
To: Carpenter, Wesley <Carpenter.Wesley@epa.gov>
Cc: Askew, Wendel <Askew.Wendel@epa.gov>
Subject: potential transition team's MOU on access to employees, facilities and documents

Hi Wes,

Do we know whether the potential transition team has entered into an MOU on access to agency employees, facilities and documents?

The 9/4/2020 OMB memo indicated that this MOU will be coming in advance of the election. I believe the Presidential Transition Act provides for these MOUs, usually by Oct 1. This MOU presumably would guide agency interactions with transition "Agency Review Teams" that could begin contacting agencies on Nov 4, if there is a Presidential transition.

I'm aware of the potential transition team's separate 9/3/2020 MOU w GSA for office space and equipment.

Trump transition team's 2016 access MOU is at link below.

Jim
202-672-3727 cell

https://presidentialtransition.org/wp-content/uploads/sites/6/2016/11/2913a11c367791bc5cbe730d7893c777-1490911271.pdf

Message

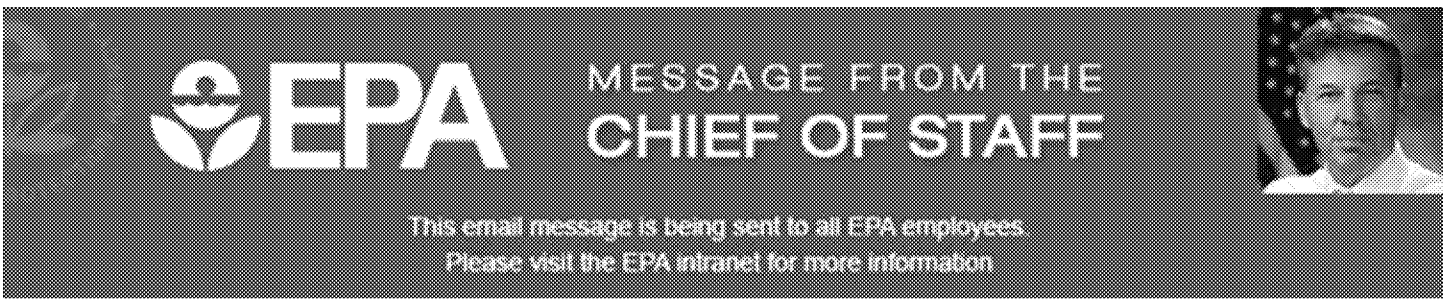
From: Askew, Wendel [Askew.Wendel@epa.gov]
Sent: 11/3/2020 7:36:25 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: Transition: 2016 Message from the Chief of Staff

Hi Jim,

I found the email below from the former Chief of Staff.

Wendel Askew
Assistant General Counsel for Assistance Law
Office of General Counsel
Mail Code 2399A
202-564-3987
7454H WJCN

From: Message from the Chief of Staff <messagefromthechiefofstaff@epa.gov>
Sent: Thursday, November 10, 2016 4:14 PM
To: Message from the Chief of Staff <messagefromthechiefofstaff@epa.gov>
Subject: Message from the Chief of Staff



Hi everyone,

As the Presidential transition gets underway, I would like to share next steps on the transition process. We expect members of President-elect Trump's EPA Landing Team will arrive soon to begin preparing for the new administration. To fulfill President Obama's commitment to ensuring the transition is as smooth, seamless and efficient as possible, we have been working for months to prepare. From now until the inauguration, the EPA Landing Team will be reviewing briefing materials and meeting with EPA senior officials to better understand the agency and its pressing issues.

An MOU between the current and incoming administrations has been signed, governing access to employees and facilities and the sharing of information with the Landing Team. Consistent with the MOU terms, if anyone from the EPA Landing Team contacts you for information related to the transition, you should direct them to our Transition Director, Shannon Kenny, to provide a timely and coordinated response. Also, as a reminder, if you receive any transition-related inquiries from outside EPA, including but not limited to media, you should send them to your Communications Director or Public Affairs Director.

Finally, as we go through this transition, it is important that we continue to work together and support one another. During times of change, it is normal to have questions or concerns, and if you do, please do not hesitate to discuss with the management in your program or region. We will continue to share the latest information we have, including through the EPA Transition site, and to provide opportunities to discuss questions you might have.

Thank you to the many people across the agency who have helped prepare for the transition. Because of your efforts, we are well-positioned to meet the President's charge so the new administration is ready to govern on day one.

And on behalf of the Administrator, thank you to everyone for your continued hard work and commitment to completing the important work of this administration.

Matt

Message

From: Bramer, Annmarie [Bramer.Annmarie@epa.gov]
Sent: 11/3/2020 3:02:27 PM
To: Adair, Jocelyn [Adair.Jocelyn@epa.gov]; Anderson, Lea [anderson.lea@epa.gov]; Anderson, Steve [Anderson.Steve@epa.gov]; Aranda, Amber [aranda.amber@epa.gov]; Averback, Jonathan [Averback.Jonathan@epa.gov]; Belser, Evan [Belser.Evan@epa.gov]; Bianco, Karen [Bianco.Karen@epa.gov]; Blake, Wendy [Blake.Wendy@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Branning, Amy [Branning.Amy@epa.gov]; Buchsbaum, Seth [buchsbaum.seth@epa.gov]; Bunker, Byron [bunker.byron@epa.gov]; Caballero, Kathryn [Caballero.Kathryn@epa.gov]; Carrillo, Andrea [Carrillo.Andrea@epa.gov]; Charlton, Tom [Charlton.Tom@epa.gov]; Conrad, Daniel [conrad.daniel@epa.gov]; Cozad, David [Cozad.David@epa.gov]; Davis, Julian [davis.julian@epa.gov]; Dickinson, David [Dickinson.David@epa.gov]; Doster, Brian [Doster.Brian@epa.gov]; Dubey, Susmita [dubey.susmita@epa.gov]; Dugan, Brett [Dugan.Brett@epa.gov]; Froikin, Sara [Froikin.Sara@epa.gov]; Garfinkle, Stacey [garfinkle.stacey@epa.gov]; Graham, Cheryl [Graham.Cheryl@epa.gov]; Greenglass, Nora [Greenglass.Nora@epa.gov]; Hambright, Rosemary [Hambright.Rosemary.E@epa.gov]; Hindin, David [Hindin.David@epa.gov]; Hoffman, Howard [hoffman.howard@epa.gov]; Hogan, Stephanie [Hogan.Stephanie@epa.gov]; Iddings, Brianna [Iddings.Brianna@epa.gov]; Igoe, Sheila [Igoe.Sheila@epa.gov]; Jordan, Deborah [Jordan.Deborah@epa.gov]; Jordan, Scott [Jordan.Scott@epa.gov]; Kaplan, Robert [kaplan.robert@epa.gov]; Kataoka, Mark [Kataoka.Mark@epa.gov]; Klepp, Robert [Klepp.Robert@epa.gov]; Knapp, Kristien [Knapp.Kristien@epa.gov]; Kodish, Jeff [Kodish.Jeff@epa.gov]; Krallman, John [krallman.john@epa.gov]; Kryman, Matthew [Kryman.Matthew@epa.gov]; Kulschinsky, Edward [Kulschinsky.Edward@epa.gov]; Lee, Michael [lee.michaelg@epa.gov]; Li, Ryland (Shengzhi) [Li.Ryland@epa.gov]; Mackey, Cyndy [Mackey.Cyndy@epa.gov]; Manners, Mary [manners.mary@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Mastro, Donna [Mastro.Donna@epa.gov]; Matsumoto, Kimi [Matsumoto.Kimi@epa.gov]; McConkey, Diane [Mcconkey.Diane@epa.gov]; Meisenbach, Caitlin [Meisenbach.Caitlin@epa.gov]; Michaels, Lauren [Michaels.Lauren@epa.gov]; Morgan, Jeanette [Morgan.Jeanette@epa.gov]; Muller, Sheldon [Muller.Sheldon@epa.gov]; Nelson, Karen [nelson.karen@epa.gov]; Ng, Brian [Ng.Brian@epa.gov]; Nguyen, DucH [Nguyen.DucH@epa.gov]; Nguyen, Quoc [Nguyen.Quoc@epa.gov]; Oeler, Lawrence [Oeler.Lawrence@epa.gov]; OGC NFO FEAT [OGC_NFO_FEAT@epa.gov]; Okoye, Winifred [Okoye.Winifred@epa.gov]; Orlin, David [Orlin.David@epa.gov]; Palmer, Karen [Palmer.Karen@epa.gov]; Pastorkovich, Anne-Marie [Pastorkovich.Anne-Marie@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]; Pettit, Elizabeth (Libby) [pettit.elizabetha@epa.gov]; Portmess, Jessica [Portmess.Jessica@epa.gov]; Richheimer, Jesse [Richheimer.Jesse@epa.gov]; Rodman, Sonja [Rodman.Sonja@epa.gov]; Schaaf, Eric [Schaaf.Eric@epa.gov]; Schramm, Daniel [Schramm.Daniel@epa.gov]; Seidman, Emily [seidman.emily@epa.gov]; Senn, John [Senn.John@epa.gov]; Shepherdson, Melanie [Shepherdson.Melanie@epa.gov]; Skinner-Thompson, Jonathan [Skinner-Thompson.Jonathan@epa.gov]; Snyder, Doug [Snyder.Doug@epa.gov]; Spina, Providence [Spina.Providence@epa.gov]; Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]; Stachowiak, Robert [Stachowiak.Robert@epa.gov]; Stahle, Susan [Stahle.Susan@epa.gov]; Starfield, Lawrence [Starfield.Lawrence@epa.gov]; Steinberg, Kayla [steinberg.kayla@epa.gov]; Sullivan, Tim [Sullivan.Tim@epa.gov]; Thompson, Christopher [Thompson.Christopher@epa.gov]; Thrift, Mike [thrift.mike@epa.gov]; Tierney, Jan [tierney.jan@epa.gov]; Ting, Kaytrue [Ting.Kaytrue@epa.gov]; Tozzi, Lauren [Tozzi.Lauren@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Vergeront, Julie [Vergeront.Julie@epa.gov]; Versace, Paul [Versace.Paul@epa.gov]; Vijayan, Abi [Vijayan.Abi@epa.gov]; Voyles, Travis [Voyles.Travis@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Wilcox, Geoffrey [wilcox.geoffrey@epa.gov]; Williams, Christopher [Williams.Christopher@epa.gov]; Williams, Melina [Williams.Melina@epa.gov]; Williamson, Timothy [Williamson.Tim@epa.gov]
Subject: Air & Radiation Law News for November 3, 2020

Air & Radiation Law News for November 3, 2020

Ballot Measures on Oil Drillers, Others Spur Billions in Spending

The 2020 general election is set to make history for the amount of money raised to sway voters on relatively few initiatives on the ballot today, as the coronavirus pandemic has transformed traditional politics.

Smallest in Decades: Voters cast ballots on 120 proposals nationwide—the least number of ballot measures in an even-numbered year this century, says the Initiative and Referendum Institute at the University of Southern California. The issues include an overhaul to Alaska's oil and gas production tax, and a Colorado move to reintroduce gray wolves on public lands.

Pandemic Changes: Fundraising to pass or defeat those proposals is on track to outpace 2018's $1.19 billion, according to Ballotpedia figures, as campaigns doled out cash for unanticipated costs including digital advertising, text messaging, and personal protective equipment. They also spent money on attorneys to ask courts for new rules to qualify measures that fell short on signatures as a result of the stay-at-home orders.

READ MORE

Leading the News

Barrett Makes Supreme Court Debut in Environmental Documents Case

Justice Amy Coney Barrett made her Supreme Court debut Monday, less than a week after being sworn in as the newest member of the court.

READ MORE

Green Groups Sue Over EPA's Power Plant Water Pollution Rule (2)

Several green and social justice groups are asking the Fourth Circuit and D.C. Circuit to review the EPA's decision to change a rule governing wastewater from power plants, according to separate petitions filed Monday.

Documents Attached

READ MORE

Pension Fund Sued for Not Being Green Enough Settles Aussie Case

A $41 billion pension fund sued in Australia over its disclosure of climate change risks settled the lawsuit on Monday with a commitment to net zero emissions in its portfolio by 2050 -- a case that may spur more litigation around the world.

READ MORE

Chart: Calculating Carbon

Norwegian oil major Equinor ASA has extended its net-zero climate pledge to now include emissions from its products by 2050 while also targeting increased oil and gas output.

READ MORE

Climate

GMO's Grantham Calls for Marshall Plan for Climate Change (1)

Jeremy Grantham, the money manager who's devoting his fortune to fight climate change, called on the next U.S. administration to start a major public works program akin to the Marshall Plan to revive economic growth amid the pandemic and threats caused by global warming.

READ MORE

China Proposes Max $4,500 Fine for Carbon Market Violations (1)

China's top environmental regulator is proposing a maximum fine of 30,000 yuan ($4,500) for participants in the country's new national carbon market that don't buy enough allowances to cover their greenhouse gas emissions.

READ MORE

Environmental Justice

NFL's Dolphins Sued by Black Neighbors Over Car Racing Plan (1)

The Miami Dolphins and Miami-Dade County, Fla., are facing a suit in the Southern District of Florida by residents of a predominantly Black community near Hard Rock stadium, seeking to bar Formula One racing at the facility scheduled to begin in May.

Documents Attached

READ MORE

InsideEPA
MORNING ALERT

Latest News

D.C. Circuit Queries Standing, Merits In Suit Over EPA NSR Reporting Rule

A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit at Nov. 2 oral argument asked tough questions of attorneys for EPA and New Jersey in the state's suit over a new source review (NSR) reporting rule, including queries about the state's legal standing to sue as well as the merits of the legal challenge. FULL STORY

EPA Revokes Obama-Era Utah Haze Plan, Approves 'Alternative' Measures

EPA has revoked an Obama-era federal plan imposing strict emissions controls on Utah power plants to reduce regional haze, replacing it with approval of a plan by the state that employs "alternative" measures to stringent source-specific control measures as part of a Trump administration policy of deferring more to states on such plans. FULL STORY

Biofuels Groups Prepare To Battle Democratic Push For Electric Vehicles

Biofuels groups are lobbying Iowa lawmakers to oppose Democrats' draft legislation to phase out liquid fuels in favor of electric vehicles (EVs) and hydrogen fuel-cell vehicles, preparing for

a major fight over the bill and other fuels and climate policies if Democratic presidential nominee Joe Biden wins the Nov. 3 election. FULL STORY

ACC Seeks Weaker EPA Ethylene Oxide Air Rule With Petition, Lawsuit

The American Chemistry Council (ACC) is fighting environmentalists' bid for a stricter EPA ethylene oxide (EtO) air rule for the miscellaneous organic chemical manufacturing (MON) sector, filing a lawsuit and an administrative petition for reconsideration saying EPA should weaken the rule because it overestimates EtO risks to the public. FULL STORY

Critics Declare Victory As Court Remands BLM Oil Leases For Climate Study

Environmental groups challenging the Bureau of Land Management's (BLM) environmental reviews for thousands of oil and gas leases on 1.9 million acres of public lands across the West are declaring at least a partial victory after a federal district court granted the bureau's request to remand the reviews for further climate change analysis. FULL STORY

Daily Feed

Environmental groups sue EPA over power plant ELG

"We have won court rulings to clean up toxic coal plants before, and we won't let the progress be undone," said Thomas Cmar, deputy managing attorney for the Coal Program at Earthjustice. FULL STORY

CCS group floats 2021 policy pitch to Biden, Trump teams

The Carbon Capture Coalition is urging both the Trump re-election campaign and the Biden transition to embrace research and incentives for carbon capture technologies. FULL STORY

Senate Democrats tout new corporate governance group

Four Democratic senators are citing various climate change and environmental issues as motivating factors for creating a new "working group" to assess corporate governance rules. FULL STORY

Ewire: Election tees up potential major pivot on climate change policy

In today's Ewire: The Nov. 3 elections will determine which party controls the White House and Congress, with major implications for climate mitigation policy. FULL STORY

Environment Next

Energy Researchers Tout Improved Cost-Benefit Review For CO2 Policies

Energy researchers at Columbia University are touting what they describe as a better methodology that compares the actual carbon dioxide reductions different policies and technologies achieve for the money spent, in response to concerns that potentially costly decarbonization policies can have little real impact in reducing CO2 emissions. FULL STORY

ENN ENVIRONMENTAL NEWS NETWORK

No news articles today.

Brought to you by the Office of General Counsel Law Library

The OGC Law Library has temporarily ceased operation of their in-person reference desk, but service is still available virtually.

If you need reference assistance, please contact the OGC Law Library via Ask a Librarian, https://usepa.servicenowservices.com/aal or via ogclibrary@epa.gov.

U.S. Environmental Protection Agency
Office of General Counsel
202-564-3971
ogclibrary@epa.gov

Ann-Marie Bramer Stewart
Supervisory Librarian – Headquarters and Chemical Libraries
Contractor – ASRC Federal Professional Services (AFPS)
202-566-0578

EPA Library Support During COVID-19 Pandemic

Tell us how we're doing - rate our customer service!
http://www.surveymonkey.com/s/epalibsurvey

Message

From: Hatchact Update [00000002b1f8701b-dmarc-request@LISTSERV.OSC.GOV]
Sent: 11/4/2020 3:39:04 PM
To: HATCHACT@LISTSERV.OSC.GOV
Subject: The Hatch Act & Activities after Election Day
Attachments: The Hatch Act and Activities after Election Day.pdf

Good morning. Attached is an advisory opinion from the U.S. Office of Special Counsel regarding post-Election Day activities and the Hatch Act. It also will be posted on our website.

Please do not send a reply e-mail message to the above-listed address as it is not monitored. However, if you have any Hatch Act related questions, feel free to contact the Hatch Act Unit at 202-804-7002 or send an e-mail to Hatchact@osc.gov.

To unsubscribe from the HATCHACT list, click the following link:
http://listserv.osc.gov/scripts/wa-OSC.exe?SUBED1=HATCHACT&A=1

Message

From: Clarke, Victoria [clarke.victoria@epa.gov]
Sent: 11/4/2020 5:16:54 PM
To: Willey, Katharine [willey.katharine@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]; Fugh, Justina [Fugh.Justina@epa.gov]
Subject: RE: Hatch Act and the Day After the Election

Thank you ever so much, Katharine.

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Willey, Katharine <willey.katharine@epa.gov>
Sent: Wednesday, November 04, 2020 12:11 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Hatch Act and the Day After the Election

Victoria—this is very helpful and user friendly. Really appreciate all the work you've done on Hatch Act training/awareness. Several individuals outside of OGC have passed along their gratitude as well. Just wanted to drop a quick note and say thank you and keep up the good work.

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Wednesday, November 4, 2020 11:49 AM
To: OGC ALL USERS <OGC_ALL_USERS@epa.gov>
Subject: Hatch Act and the Day After the Election

Hi everyone – this is Victoria, your Deputy Ethics Official.

I am sure some of you are wondering about the implications of the Hatch Act during this time period, and so I wanted to alert you to some guidance that the Office of Special Counsel put out this morning. You can read the attached guidance, and look at the chart below that OGC Ethics has put together that summarizes the OSC guidance:

HOW THE HATCH ACT APPLIES TO THE 2020 ELECTION (after 11/3/20)	
Wearing campaign items or displaying candidate photographs in the federal workplace (including telework locations) or on government time	Permissible
Expressing views about the election results or presidential or other partisan candidates in the federal workplace (including telework locations) or on government time	Permissible
Wearing or displaying items about *political parties* in the federal workplace (including telework locations) or on government time, including:	PROHIBITED

• Political party paraphernalia • Forwarding emails from a political party • Texting about partisan political events • Sharing a post from a political party on social media	
Engaging in any political fundraising at any time	PROHIBITED
Using official authority or resources to interfere with or affect the election	PROHIBITED
Engaging in certain post-Election Day activity *on behalf of a political party*, such as taking part in challenges, recounts, etc. on your own time	Permissible for lesser restricted; PROHIBITED for further restricted employees (e.g., career SES)

As always, if you have any questions, don't hesitate to reach out to ethics@epa.gov, or to me.

Also, don't forget to take your annual ethics training, if you haven't already!

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. |7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

Message

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 11/9/2020 7:28:39 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: GSA Faces Pressure to Recognize Biden as Election Winner, Hand Over Keys to Formally Start Transition - Government Executive

https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.govexec.com%2Fmanagement%2F2020%2F11%2Fgsa-faces-pressure-recognize-biden-election-winner-hand-over-keys-formally-start-transition%2F169888%2F&data=04%7C01%7Cpayne.james%40epa.gov%7C2f8c4fc0011a41b9dde308d884e5a9a9%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637405469208425173%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=swpcXIuJXdbhSrROB9EaLGt%2BBG7FppIffCO3Ouwx0e8%3D&reserved=0

Sent from my iPhone

Message

From: Askew, Wendel [Askew.Wendel@epa.gov]
Sent: 11/10/2020 1:43:59 PM
To: Fugh, Justina [Fugh.Justina@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]; OGC Ethics [OGC_Ethics@epa.gov]
Subject: RE: transition in the news ...

Hi Justina,

Thanks for passing this along. I saw the W. Post article last night.

Wendel Askew
Assistant General Counsel for Assistance Law
Office of General Counsel
Mail Code 2399A
202-564-3987
7454H WJCN

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, November 09, 2020 10:19 AM
To: Askew, Wendel <Askew.Wendel@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; OGC Ethics <OGC_Ethics@epa.gov>
Subject: transition in the news ...

Hi there,
A friend sent this article to me (and says there's a similar one in the NY Times). You will recall that GSA can no longer rely on the steady and wise counsel of Lenny Loewentritt, who served as the top career lawyer at GSA for 40+ years. Of course, this action is unprecedented, so even Lenny may not have been able to navigate around the iceberg.

> **A little-known Trump appointee is in charge of handing transition resources to Biden — and she isn't budging**
> The administrator of the General Services Administration has declined to sign paperwork officially starting the transition to the new administration.
>
> Read in The Washington Post: https://apple.news/A9SDaK6IvS3mTSzUuM_L2uQ

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 11/11/2020 4:06:46 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: White House tells agencies not to cooperate with the Biden transition - The Washington Post

https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.washingtonpost.com%2Fpolitics%2Ftrump-transition-agencies-biden%2F2020%2F11%2F09%2Fad9f2ba2-22b7-11eb-952e-0c475972cfc0_story.html&data=04%7C01%7Cpayne.james%40epa.gov%7C4487d221679246412f0508d8865bca5a%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637407076080125740%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=iBxE0pbCgUwHQmRZjCKIGp3tX5WeT0PPmTmaRwiMC1E%3D&reserved=0

Sent from my iPhone

Message

From: TrainingRegistration [TrainingRegistration@oge.gov]
Sent: 10/5/2020 2:31:20 PM
To: Michele Worthington [mworthin@oge.gov]
CC: Cheryl L. Kane-Piasecki [clkanepi@oge.gov]; Patrick Shepherd [pshephe@oge.gov]
Subject: OGE Announces Peer-to-Peer Learning Opportunities

OGE's Institute for Ethics in Government (IEG), in conjunction with the Agency Assistance Branch, is pleased to announce we will begin offering monthly peer-to-peer, small-group discussion sessions to allow ethics officials to meet informally to share experiences and expertise and to learn from one another.

Each month, beginning in October, OGE will offer from 2-4 virtual discussion sessions via WebEx for 8 ethics officials per session on a selected topic. IEG instructors and an OGE Desk Officer will facilitate each of the 90-minute-long discussions.

Highlights from each month's sessions will be made available to the ethics community via a recording posted in the Institute for Ethics in Government learning portal.

Registration
At the beginning of each quarter OGE, will send an announcement with links for each month's sessions to the DAEO/ADAEO/POC mailing list.
Each department/agency may register only one person per month. Registration will be on a first come/first serve basis.

Q1 Schedule

October: Pre-Election and Post-Election Readiness
Monday, October 19th—10:00am-11:30am
Friday, October 23rd—10:00am-11:30am
Monday, October 26th—10:00am-11:30am

November Confidential Financial Disclosure Season Planning
Monday, November 16th—10:00am-11:30am
Friday, November 20th—10:00am-11:30am

December Strategic Ethics Communications and Education Planning
Monday, December 11th—10:00am-11:30am
Friday, December 14th—10:00am-11:30am
Monday, December 18th—10:00am-11:30am
Friday, December 21st—10:00am-11:30am

Michele Worthington
Instructor
Institute for Ethics in Government
Program Counsel Division
U.S. Office of Government Ethics
(e) michele.worthington@oge.gov
(p) 202-482-9210

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Message

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 11/20/2020 11:14:44 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: Trump's EPA Chief, Andrew Wheeler, Plans 2 Foreign Trips Before Leaving Office - The New York Times

https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.nytimes.com%2F2020%2F11%2F19%2Fclimate%2Fandrew-wheeler-epa.html&data=04%7C01%7Cpayne.james%40epa.gov%7Ce111280e85ba4d7d392208d88daa114e%7C88b378b367484867acf976aacbeca6a7%7C0%7C0%7C637415108853055553%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=tD4GraqfNT9vPOvtROaiF7DEeV0en4Wc%2FmaOtLJqdFE%3D&reserved=0

Sent from my iPhone

Message

From: Payne, James (Jim) [payne.james@epa.gov]
Sent: 11/24/2020 3:01:23 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: Fwd: potential transition team's MOU on access to employees, facilities and documents
Attachments: WH MOU on Transition 10-1-2020 (signed).pdf

Sent from my iPhone

Begin forwarded message:

> **From:** "Payne, James (Jim)" <payne.james@epa.gov>
> **Date:** October 27, 2020 at 7:00:50 PM EDT
> **To:** "Packard, Elise" <Packard.Elise@epa.gov>, "Blake, Wendy" <Blake.Wendy@epa.gov>
> **Cc:** "Askew, Wendel" <Askew.Wendel@epa.gov>
> **Subject: Fwd: potential transition team's MOU on access to employees, facilities and documents**
>
> This is the potential transition team MOU on access, dated 9/30/2020. It does not appear to be publicly released, based on initial on-line searches.
>
> An earlier potential transition team MOU on facility space has been released.
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "Carpenter, Wesley" <Carpenter.Wesley@epa.gov>
> > **Date:** October 27, 2020 at 5:52:50 PM EDT
> > **To:** "Payne, James (Jim)" <payne.james@epa.gov>
> > **Cc:** "Askew, Wendel" <Askew.Wendel@epa.gov>
> > **Subject: RE: potential transition team's MOU on access to employees, facilities and documents**
> >
> > Jim:
> >
> > Good evening. I participated in an agency transition director meeting earlier today with OMB/OPM/GSA. OMB/OPM/GSA provided an update on the latest with the transition activities, including discussing the attached MOU signed by the President's Chief of Staff and the Chair of the Biden Transition Team. The MOU covers Transition Procedures, Identification of Transition Contacts, and access to non-public government and transition information. I am sharing the MOU per your request and for situational awareness purposes. I have also shared it with Doug, Henry and Mandy. Typically, supplemental guidance or implementing instructions are provided with the MOU; however, OMB/OPM/GSA are not releasing the guidance or instructions at this time. If and when they do, I will share it with you. In the interim, please let me know if you have any questions or need additional information. Thanks.
> >
> > Wes

Per your request, I have attached the MOU signed between the President's Chief of Staff and the Chair of the Biden Transition Team.

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Sunday, October 18, 2020 1:07 PM
To: Carpenter, Wesley <Carpenter.Wesley@epa.gov>
Cc: Askew, Wendel <Askew.Wendel@epa.gov>
Subject: potential transition team's MOU on access to employees, facilities and documents

Hi Wes,

Do we know whether the potential transition team has entered into an MOU on access to agency employees, facilities and documents?

The 9/4/2020 OMB memo indicated that this MOU will be coming in advance of the election. I believe the Presidential Transition Act provides for these MOUs, usually by Oct 1. This MOU presumably would guide agency interactions with transition "Agency Review Teams" that could begin contacting agencies on Nov 4, if there is a Presidential transition.

I'm aware of the potential transition team's separate 9/3/2020 MOU w GSA for office space and equipment.

Trump transition team's 2016 access MOU is at link below.

Jim
202-672-3727 cell

https://presidentialtransition.org/wp-content/uploads/sites/6/2016/11/2913a11c367791bc5cbe730d7893c777-1490911271.pdf

Message

From: Askew, Wendel [Askew.Wendel@epa.gov]
Sent: 10/5/2020 8:57:06 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: 2016 President elect GSA MOU
Attachments: GSA-MOU-and-Trump-Transition.pdf

Wendel Askew
Assistant General Counsel for Assistance Law
Office of General Counsel
Mail Code 2399A
202-564-3987
7454H WJCN

Message

From: TrainingRegistration [TrainingRegistration@oge.gov]
Sent: 10/6/2020 6:09:42 PM
To: Michele Worthington [mworthin@oge.gov]
CC: Cheryl L. Kane-Piasecki [clkanepi@oge.gov]; Patrick Shepherd [pshephe@oge.gov]
Subject: CORRECTION: OGE Announces Peer-to-Peer Learning Opportunities

The day and date are incorrect for all December sessions. If you have already registered for one of these sessions your registration status is not affected.

The correct days and dates are:

December Strategic Ethics Communications and Education Planning
Friday, December 11th—10:00am-11:30am
Monday, December 14th—10:00am-11:30am
Friday, December 18th—10:00am-11:30am
Monday, December 21st—10:00am-11:30am

OGE's Institute for Ethics in Government (IEG), in conjunction with the Agency Assistance Branch, is pleased to announce we will begin offering monthly peer-to-peer, small-group discussion sessions to allow ethics officials to meet informally to share experiences and expertise and to learn from one another.

Each month, beginning in October, OGE will offer from 2-4 virtual discussion sessions via WebEx for 8 ethics officials per session on a selected topic. IEG instructors and an OGE Desk Officer will facilitate each of the 90-minute-long discussions.

Highlights from each month's sessions will be made available to the ethics community via a recording posted in the Institute for Ethics in Government learning portal.

Registration
At the beginning of each quarter OGE, will send an announcement with links for each month's sessions to the DAEO/ADAEO/POC mailing list.
Each department/agency may register only one person per month. Registration will be on a first come/first serve basis.

Q1 Schedule

October: Pre-Election and Post-Election Readiness
Monday, October 19th—10:00am-11:30am
Friday, October 23rd—10:00am-11:30am
Monday, October 26th—10:00am-11:30am

November Confidential Financial Disclosure Season Planning
Monday, November 16th—10:00am-11:30am
Friday, November 20th—10:00am-11:30am

December Strategic Ethics Communications and Education Planning
Monday, December 11th—10:00am-11:30am
Friday, December 14th—10:00am-11:30am
Monday, December 18th—10:00am-11:30am

Friday, December 21st—10:00am-11:30am

Michele Worthington
Instructor
Institute for Ethics in Government
Program Counsel Division
U.S. Office of Government Ethics
(e) michele.worthington@oge.gov
(p) 202-482-9210

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Message

From: Cody, Meredith [cody.meredith@epa.gov]
Sent: 11/30/2020 3:48:11 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: RE: transition team MOU on access to employees, facilities and documents

Hi Jim,

I was out most of last week, but I'm back today. Please let me know if there is anything I can do to help.

Thanks,
Meredith

Meredith Cody
Attorney-Adviser
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-7161
cody.meredith@epa.gov

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Wednesday, November 25, 2020 12:04 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>; Blake, Wendy <Blake.Wendy@epa.gov>; Cody, Meredith <cody.meredith@epa.gov>
Cc: Packard, Elise <Packard.Elise@epa.gov>
Subject: RE: transition team MOU on access to employees, facilities and documents

David - yes.

Wendy – I'd welcome conferring for any suggestions or similar existing material.

Meredith – will welcome conferring here.

Jim
202-672-3727 cell

From: Fotouhi, David <Fotouhi.David@epa.gov>
Sent: Wednesday, November 25, 2020 11:25 AM
To: Payne, James (Jim) <payne.james@epa.gov>
Subject: RE: transition team MOU on access to employees, facilities and documents

Doug has asked that we pull together a list of guiding principles that could assist AAs and RAs when determining what information is appropriate to share in meetings with the transition team. I envision this being something of a hybrid between typical privileges that we would protect and principles described in this MOU. Could you or someone else pull this together by early next week? I think Meredith has bandwidth to help as necessary.

David Fotouhi

Acting General Counsel
U.S. Environmental Protection Agency

Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Tuesday, November 24, 2020 10:11 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Subject: transition team MOU on access to employees, facilities and documents

This access MOU includes cite to general statutory provision in par 2. The MOU is very similar to 2016 MOU, including provisions as to non-public information.

Sent from my iPhone

Begin forwarded message:

From: "Payne, James (Jim)" <payne.james@epa.gov>
Date: October 27, 2020 at 7:00:50 PM EDT
To: "Packard, Elise" <Packard.Elise@epa.gov>, "Blake, Wendy" <Blake.Wendy@epa.gov>
Cc: "Askew, Wendel" <Askew.Wendel@epa.gov>
Subject: Fwd: potential transition team's MOU on access to employees, facilities and documents

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From: "Carpenter, Wesley" <Carpenter.Wesley@epa.gov>
Date: October 27, 2020 at 5:52:50 PM EDT
To: "Payne, James (Jim)" <payne.james@epa.gov>
Cc: "Askew, Wendel" <Askew.Wendel@epa.gov>
Subject: RE: potential transition team's MOU on access to employees, facilities and documents

Jim:

Good evening. I participated in an agency transition director meeting earlier today with OMB/OPM/GSA. OMB/OPM/GSA provided an update on the latest with the transition activities, including discussing the attached MOU signed by the President's Chief of Staff and the Chair of the Biden Transition Team. The MOU covers Transition Procedures, Identification of Transition Contacts, and access to non-public government and transition information. I am sharing the MOU per your request and for situational awareness purposes. I have also shared it with Doug, Henry and Mandy. Typically, supplemental guidance or implementing instructions are provided with the MOU; however,

OMB/OPM/GSA are not releasing the guidance or instructions at this time. If and when they do, I will share it with you. In the interim, please let me know if you have any questions or need additional information. Thanks.

Wes
Per your request, I have attached the MOU signed between the President's Chief of Staff and the Chair of the Biden Transition Team.

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Cc: Askew, Wendel <Askew.Wendel@epa.gov>
Subject: potential transition team's MOU on access to employees, facilities and documents

Hi Wes,

Do we know whether the potential transition team has entered into an MOU on access to agency employees, facilities and documents?

The 9/4/2020 OMB memo indicated that this MOU will be coming in advance of the election. I believe the Presidential Transition Act provides for these MOUs, usually by Oct 1. This MOU presumably would guide agency interactions with transition "Agency Review Teams" that could begin contacting agencies on Nov 4, if there is a Presidential transition.

I'm aware of the potential transition team's separate 9/3/2020 MOU w GSA for office space and equipment.

Trump transition team's 2016 access MOU is at link below.

Jim
202-672-3727 cell

https://presidentialtransition.org/wp-content/uploads/sites/6/2016/11/2913a11c367791bc5cbe730d7893c777-1490911271.pdf

Message

From: Clarke, Victoria [clarke.victoria@epa.gov]
Sent: 12/14/2020 3:30:28 PM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: RE: advice - important

Hi Jim,

Forgive me, but I have no idea why the AO thinks that I am its point of contact for ethics matters. I'm not, and I'm not sure how that rumor got started. I'm also going to respond to Helena, but I want to make sure my advice is consistent with advice that Justina has previously given to career SESers.

Also, it has barely been an hour since the email was sent, so I don't know whether to be worried or insulted that Helena has elevated this to my senior management.

But yes, I am happy to talk. Just let me finish my cup of coffee first? ☺

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel
Washington, D.C. |7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Monday, December 14, 2020 10:27 AM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: Fwd: advice - important

Touch base?

Sent from my iPhone

Begin forwarded message:

> **From:** "Packard, Elise" <Packard.Elise@epa.gov>
> **Date:** December 14, 2020 at 10:11:33 AM EST
> **To:** "Payne, James (Jim)" <payne.james@epa.gov>
> **Subject: Fwd: advice - important**
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "Wooden-Aguilar, Helena" <Wooden-Aguilar.Helena@epa.gov>
> > **Date:** December 14, 2020 at 9:43:46 AM EST
> > **To:** "Packard, Elise" <Packard.Elise@epa.gov>, "Fugh, Justina" <Fugh.Justina@epa.gov>
> > **Subject: FW: advice - important**

Elise and Justina – I am forwarding a message I sent to Victoria C today. She is AO's ethics poc. Thanks, Helena

Helena Wooden-Aguilar
Deputy Associate Administrator
Office of Policy
U.S. Environmental Protection Agency
202-564-0792 (Work)
202-302-6846 (Cell)
wooden-aguilar.helena@epa.gov

From: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>
Sent: Monday, December 14, 2020 9:10 AM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: advice - important

Good Morning Victoria – I am emailing to let you know that I was formally contacted by the Biden-Harris transition administration. My name was referred to them. I am interested but before I did anything I wanted to reach out to ethics for your advice. They have stated that if I am interested I need to fill out a form by December 16th. I plan to notify Donna Vizian in OMS as I am SES and want to make sure I am following all rules of the road. Appreciate your help. Helena

Helena Wooden-Aguilar
Deputy Associate Administrator
Office of Policy
U.S. Environmental Protection Agency
202-564-0792 (Work)
202-302-6846 (Cell)
wooden-aguilar.helena@epa.gov

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 12/17/2020 5:47:56 AM
CC: Payne, James (Jim) [payne.james@epa.gov]; OGC Ethics [OGC_Ethics@epa.gov]
Subject: Reminder about your ethics obligations: check in with OGC/Ethics!
Attachments: Departing EPA for Schedule C Appointees updated Nov 2020.pdf; Negotiation Notification Form for digital signature.pdf

Dear Schedule C Appointees:

On behalf of the Designated Agency Ethics Official, Jim Payne, and OGC/Ethics, I am writing to remind you that we are here to explain your ethics obligations while you are still employed at EPA and also after you depart. The Transition Guide you have received or will soon receive outlines your basic ethics obligations but we also prepared an in-depth summary of the rules for your type of appointment (see attached).

If you are looking for another job while still employed at EPA, then you are subject to the *seeking and negotiating for employment* rules. Then, after you leave, you will be subject to the criminal post-employment rules as well as obligations under the Trump Ethics Pledge. **We strongly encourage you to make an appointment with one of us in OGC/Ethics prior to your departure so that you understand your ethics obligations and restrictions.** To set up a one-on-one appointment, send an email to ethics@epa.gov.

For your convenience, the Ethics Office will be hosting general sessions to review the seeking and post-employment rules for employees who are leaving federal service. Feel free to drop in and ask questions, or schedule a one-on-one with us by emailing ethics@epa.gov.

GENERAL ETHICS OFFBOARDING SESSION	LINK TO SESSION
Friday, December 18 at 2 pm eastern	Click here to join the meeting
Wednesday, December 23 at 2 pm eastern	Click here to join the meeting
Wednesday, December 30 at 2 pm eastern	Click here to join the meeting
Wednesday, January 6 at 2 pm eastern	Click here to join the meeting
Wednesday, January 13 at 2 pm eastern	Click here to join the meeting

Here are the important ethics reminders for you to know:

- You must disqualify yourself from participating in EPA matters affecting the financial interests of a potential employer when you begin to seek employment;
- You must complete the *Notification of Employment Negotiation Form* (attached) within 3 business days of engaging in an employment negotiation with a non-federal entity;
- You must file a termination financial disclosure report (OGE Form 278) within 30 days of your departure, but you may file it **within 15 days of your departure** so that you can access the electronic filing system with your PIV card;
- **There is a $200 late filing fee penalty that is imposed by law if your OGE Form 278 report is received more than 30 days after the due date**. If you need an additional 45 days, then send an email ethics@epa.gov prior to the due date; and
- Failure to file a termination OGE Form 278 will result in referral to the Department of Justice for civil action that will include civil penalties as high as $50,000. Several years ago, we had to refer a former EPA appointee for

failure to file a termination report, despite almost two years of reminders. In the end, that person filed and paid a civil penalty of $15,000. **We strongly encourage you to file your report before you leave.**

After your departure, please remember that we are still here to answer your post-employment questions. A little "small print" for your consideration: an opinion from an ethics official may be a mitigating factor in any prosecution for an alleged violation of the criminal post-employment rules, provided that you fully disclosed all relevant facts and relied upon our advice in good faith. So, really, ask us before you do something, okay?

We look forward to hearing from you!

Justina and the OGC/Ethics team

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 1/5/2021 3:06:43 AM
To: Payne, James (Jim) [payne.james@epa.gov]
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Hi,
Elise and/or Angelia will be able to provide information about those wretched portraits. I can just tell you, anecdotally, that they used to be done in oils under a GSA contract. They aren't cheap, and as I recall, "everyone" got torqued when Carol Browner insisted on having her portrait repainted not once but twice (at EPA expense). So then the idea was to get a really big portrait quality photo instead. I haven't looked closely at Lisa Jackson's portrait, so I can't recall if hers is the first photo or the last oil. Anyway, in 2018, President Trump signed the "Eliminating Government-funded Oil Painting Act" that now prohibits the use of federal funds for official portraits.

My problem, from an ethics perspective, is that the Administrator can't solicit the gift of the oil painting. We have no information about how this "idea" came to pass. Is there some sort of "portrait fund" that is going on because, if so, we have a lot of ethics issues about fundraising and not using anyone's title or position in connection with that fundraising.

I'm involved only because ethics gets dragged into how to address the disposition problem of unacceptable paintings, rugs, etc. For example, OITA has a Rauschenberg lithograph hanging in a conference room that someone wanted to take home (NO!). Using my handy dandy art history degree, I made an educated guess at the value and then alerted EPA Property and GSA. That's what Yvette is remembering when she referenced me.

You can't go blindly into GSA. We have to remind them that EPA does not have gift acceptance authority, which is unusual. If Lenny Loewentritt were still alive, I'd ask him. I do know some ethics people who may be able to help, but apart from ethics, GSA's OGC is probably a closer match to Angelia's group as this is really a property question.
Justina

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Monday, January 04, 2021 9:25 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Fwd: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Is there a GSA OGC contact or other GSA contact who can assist here, as GSA would accept the gift?

Also, do you happen to know how the agency usually arranges portraits - eg, whether the agency has fiscal ability to pay directly?

Sent from my iPhone

Begin forwarded message:

From: "Grantham, Nancy" <Grantham.Nancy@epa.gov>
Date: January 4, 2021 at 4:02:17 PM EST
To: "Fugh, Justina" <Fugh.Justina@epa.gov>, "Jackson, Yvette" <Jackson.Yvette@epa.gov>
Cc: "Vizian, Donna" <Vizian.Donna@epa.gov>, "Hitchens, Lynnann" <hitchens.lynnann@epa.gov>, "Packard, Elise" <Packard.Elise@epa.gov>, "Payne, James (Jim)" <payne.james@epa.gov>, "Molina, Michael" <molina.michael@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Thanks – Elise and Jim – is there an email/letter that OGC can send to AAW – in coordination with OMS (Yvette's info below)?

Thanks ng

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 4, 2021 2:52 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Jackson, Yvette <Jackson.Yvette@epa.gov>
Cc: Vizian, Donna <Vizian.Donna@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Molina, Michael <molina.michael@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

EPA as an agency does not have gift acceptance authority, so we cannot wave a magic wand – like Interior – to accept any such gift. Instead, we would need to turn to GSA, which does have gift acceptance authority, to accept a gift of something like a portrait and then ask through Facilities that the GSA property be loaned to EPA for display.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Grantham, Nancy <Grantham.Nancy@epa.gov>
Sent: Monday, January 04, 2021 1:28 PM
To: Jackson, Yvette <Jackson.Yvette@epa.gov>
Cc: Vizian, Donna <Vizian.Donna@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Molina, Michael <molina.michael@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Hi --

Administrator Wheeler is looking for something in writing from the agency indicating that if he were to have an official portrait/painting done – the agency will definitely accept the painting (per the guidelines below). Who can provide that? We would need it prior to January 20, 2021.

Thanks ng

From: Jackson, Yvette <Jackson.Yvette@epa.gov>
Sent: Wednesday, December 9, 2020 4:19 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Hi Nancy,

I'll call you to discuss but the instructions are shown below.

1. The donor gifts the asset to the agency;
2. The Office Director or above notifies Justina Fugh and Steve Blankenship (RPSD);
3. RPSD researches/determines/verifies the netbook value;
4. RPSD notifies GSA and sends the title/appraisal;
5. GSA records it in their property records;
6. EPA asks for it back by completing the loan request and transfer it electronically back to the agency.

While this is happening, it is possible for the asset to remain in place.

Thanks,
Yvette

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 1/6/2021 1:13:37 AM
To: Bodine, Susan [bodine.susan@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; McIntosh, Chad [mcintosh.chad@epa.gov]; adm15.arwheeler.email [adm15.arwheeler.email@epa.gov]; Wright, Peter [wright.peter@epa.gov]
CC: Payne, James (Jim) [payne.james@epa.gov]
Subject: Reminder about your ethics obligations: check in with OGC/Ethics!
Attachments: Departing EPA for PAS and non career SES updated Nov 2020.pdf; Negotiation Notification Form for digital signature.pdf

Hi there,

On behalf of the Designated Agency Ethics Official, Jim Payne, and OGC/Ethics, I am writing to remind you that we are here to explain your ethics obligations while you are still employed at EPA and also after you depart. The Transition Guide you received outlines your basic ethics obligations but we also prepared an in-depth summary of the rules for your type of appointment (see attached).

If you are looking for another job while still employed at EPA, then you are subject to the *seeking and negotiating for employment* rules. Then, after you leave, you will be subject to the criminal post-employment rules as well as obligations under the Trump Ethics Pledge. **We strongly encourage you to make an appointment with one of us in OGC/Ethics prior to your departure so that you understand your ethics obligations and restrictions.** To set up a one-on-one appointment, send an email to me directly or to ethics@epa.gov.

For your convenience, the Ethics Office will be hosting general sessions to review the seeking and post-employment rules for employees who are leaving federal service. Feel free to drop in and ask questions, or schedule a one-on-one with us by emailing ethics@epa.gov.

GENERAL ETHICS OFFBOARDING SESSION	LINK TO SESSION
Wednesday, January 6 at 2 pm eastern	Click here to join the meeting
Wednesday, January 13 at 2 pm eastern	Click here to join the meeting

Here are the important ethics reminders for you to know:

- You must disqualify yourself from participating in EPA matters affecting the financial interests of a potential employer when you begin to seek employment;
- You must complete the *Notification of Employment Negotiation Form* (attached) within 3 business days of engaging in an employment negotiation with a non-federal entity;
- We assigned you a termination financial disclosure report (OGE Form 278) using your EPA email address as your user ID. The report is due on 2/19/21, which is 30 days after your departure date, but you may file it now using your PIV card. If you are going to file the report after you leave EPA, then you need to provide me with a personal email address so that I can change your user ID. And if you want an extension of time to file, you have to ask before your deadline expires;
- **There is a $200 late filing fee penalty that is imposed by law if your OGE Form 278 report is received more than 30 days after the due date**. If you need an additional 45 days, then send an email ethics@epa.gov prior to the due date; and
- Failure to file a termination OGE Form 278 will result in referral to the Department of Justice for civil action that will include civil penalties as high as $50,000. Several years ago, we had to refer a former EPA appointee for

failure to file a termination report, despite almost two years of reminders. In the end, that person filed and paid a civil penalty of $15,000. **We strongly encourage you to file your report before you leave.**

After your departure, please remember that we are still here to answer your post-employment questions. A little "small print" for your consideration: an opinion from an ethics official may be a mitigating factor in any prosecution for an alleged violation of the criminal post-employment rules, provided that you fully disclosed all relevant facts and relied upon our advice in good faith. So, really, ask us before you do something, okay?

We look forward to hearing from you!

Justina and the OGC/Ethics team

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 1/6/2021 11:11:31 PM
To: Packard, Elise [Packard.Elise@epa.gov]
CC: Payne, James (Jim) [payne.james@epa.gov]; Goerke, Ariadne [Goerke.Ariadne@epa.gov]
Subject: Re: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

I'll draft something tonight for Ariadne's review.

Sent from my iPhone

On Jan 6, 2021, at 5:24 PM, Packard, Elise <Packard.Elise@epa.gov> wrote:

Hi Justina and Ariadne,

Jim and I conferred and we think the best course of action would be for your two offices to get with Yvette Jackson and come up with a course of action. Seems to us that going through Yvette's contacts at GSA would make sense, with maybe some handholding by OGC. Then once there is a plan you all can circle with Nancy.

Let us know if you need anything from us.

Elise

Elise B. Packard
Deputy General Counsel for Operations
U.S. EPA Office of General Counsel, Rm. 4020A
(202) 564-7729

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Monday, January 04, 2021 10:39 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>
Subject: Re: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Thanks Justina. Adding Elise, and we can confer.

Sent from my iPhone

On Jan 4, 2021, at 10:06 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi,
Elise and/or Angelia will be able to provide information about those wretched portraits. I can just tell you, anecdotally, that they used to be done in oils under a GSA contract. They aren't cheap, and as I recall, "everyone" got torqued when

Carol Browner insisted on having her portrait repainted not once but twice (at EPA expense). So then the idea was to get a really big portrait quality photo instead. I haven't looked closely at Lisa Jackson's portrait, so I can't recall if hers is the first photo or the last oil. Anyway, in 2018, President Trump signed the "Eliminating Government-funded Oil Painting Act" that now prohibits the use of federal funds for official portraits.

My problem, from an ethics perspective, is that the Administrator can't solicit the gift of the oil painting. We have no information about how this "idea" came to pass. Is there some sort of "portrait fund" that is going on because, if so, we have a lot of ethics issues about fundraising and not using anyone's title or position in connection with that fundraising.

I'm involved only because ethics gets dragged into how to address the disposition problem of unacceptable paintings, rugs, etc. For example, OITA has a Rauschenberg lithograph hanging in a conference room that someone wanted to take home (NO!). Using my handy dandy art history degree, I made an educated guess at the value and then alerted EPA Property and GSA. That's what Yvette is remembering when she referenced me.

You can't go blindly into GSA. We have to remind them that EPA does not have gift acceptance authority, which is unusual. If Lenny Loewentritt were still alive, I'd ask him. I do know some ethics people who may be able to help, but apart from ethics, GSA's OGC is probably a closer match to Angelia's group as this is really a property question.
Justina

From: Payne, James (Jim) <payne.james@epa.gov>
Sent: Monday, January 04, 2021 9:25 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Fwd: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Is there a GSA OGC contact or other GSA contact who can assist here, as GSA would accept the gift?

Also, do you happen to know how the agency usually arranges portraits - eg, whether the agency has fiscal ability to pay directly?

Sent from my iPhone

Begin forwarded message:

> **From:** "Grantham, Nancy" <Grantham.Nancy@epa.gov>
> **Date:** January 4, 2021 at 4:02:17 PM EST
> **To:** "Fugh, Justina" <Fugh.Justina@epa.gov>, "Jackson, Yvette" <Jackson.Yvette@epa.gov>
> **Cc:** "Vizian, Donna" <Vizian.Donna@epa.gov>, "Hitchens, Lynnann" <hitchens.lynnann@epa.gov>, "Packard, Elise" <Packard.Elise@epa.gov>, "Payne, James (Jim)" <payne.james@epa.gov>, "Molina, Michael"

<molina.michael@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Thanks – Elise and Jim – is there an email/letter that OGC can send to AAW – in coordination with OMS (Yvette's info below)?

Thanks ng

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 4, 2021 2:52 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Jackson, Yvette <Jackson.Yvette@epa.gov>
Cc: Vizian, Donna <Vizian.Donna@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Molina, Michael <molina.michael@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

EPA as an agency does not have gift acceptance authority, so we cannot wave a magic wand – like Interior – to accept any such gift. Instead, we would need to turn to GSA, which does have gift acceptance authority, to accept a gift of something like a portrait and then ask through Facilities that the GSA property be loaned to EPA for display.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Grantham, Nancy <Grantham.Nancy@epa.gov>
Sent: Monday, January 04, 2021 1:28 PM
To: Jackson, Yvette <Jackson.Yvette@epa.gov>
Cc: Vizian, Donna <Vizian.Donna@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Molina, Michael <molina.michael@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Hi --

Administrator Wheeler is looking for something in writing from the agency indicating that if he were to have an official portrait/painting done – the agency will definitely accept the painting (per the guidelines below). Who can provide that? We would need it prior to January 20, 2021.

Thanks ng

From: Jackson, Yvette <Jackson.Yvette@epa.gov>
Sent: Wednesday, December 9, 2020 4:19 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Hi Nancy,

I'll call you to discuss but the instructions are shown below.

1. The donor gifts the asset to the agency;
2. The Office Director or above notifies Justina Fugh and Steve Blankenship (RPSD);
3. RPSD researches/determines/verifies the netbook value;
4. RPSD notifies GSA and sends the title/appraisal;
5. GSA records it in their property records;
6. EPA asks for it back by completing the loan request and transfer it electronically back to the agency.

While this is happening, it is possible for the asset to remain in place.

Thanks,
Yvette

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

<image001.png>

Message

From: Fugh, Justina [Fugh.Justina@epa.gov]
Sent: 1/7/2021 3:28:59 PM
To: Grantham, Nancy [Grantham.Nancy@epa.gov]; Payne, James (Jim) [payne.james@epa.gov]
Subject: RE: info on the AAW portrait

Got it! Thanks!

From: Grantham, Nancy <Grantham.Nancy@epa.gov>
Sent: Thursday, January 07, 2021 9:50 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>
Subject: info on the AAW portrait

Justina .. the Administrator is planning to pay for the portrait himself/personally.

Thanks ng

Nancy Grantham
Principal Deputy Associate Administrator
Environmental Protection Agency
Office of Public Affairs
202-564-6879 (desk)
202-253-7056 (cell)
grantham.nancy@epa.gov

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 7, 2021 9:31 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Jackson, Yvette <Jackson.Yvette@epa.gov>
Cc: Vizian, Donna <Vizian.Donna@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Goerke, Ariadne <Goerke.Ariadne@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Nancy,
OGC's finance and ethics offices will be responding to your email about *how* the US Government may be able to accept a portrait once painted. For that, we will be conferring with our friends in facilities.

But in order for me to provide advice, I really need to understand the "origin" story here. Is someone offering already to pay for the portrait and, if so, who? Did an EPA employee solicit the idea or the donor? Will there will be a fund established to which people may make donations? Is that fund already established and, if so, is there active fundraising? My concern, of course, is that federal employees – while they are still employees – cannot fundraise with reference to their positions or titles, so any active fundraising now would be problematic. Moreover, any donations now may be considered impermissible gifts to the Administrator that he may also have to report on his financial disclosure report.

With whom can I speak to get more information about this idea, how it came to be, and whether a fund or

donor is already established?
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Grantham, Nancy <Grantham.Nancy@epa.gov>
Sent: Monday, January 04, 2021 1:28 PM
To: Jackson, Yvette <Jackson.Yvette@epa.gov>
Cc: Vizian, Donna <Vizian.Donna@epa.gov>; Hitchens, Lynnann <hitchens.lynnann@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Molina, Michael <molina.michael@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

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Thanks ng

From: Jackson, Yvette <Jackson.Yvette@epa.gov>
Sent: Wednesday, December 9, 2020 4:19 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: RE: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Hi Nancy,

I'll call you to discuss but the instructions are shown below.

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4. RPSD notifies GSA and sends the title/appraisal;
5. GSA records it in their property records;
6. EPA asks for it back by completing the loan request and transfer it electronically back to the agency.

While this is happening, it is possible for the asset to remain in place.

Thanks,
Yvette

From: Grantham, Nancy <Grantham.Nancy@epa.gov>
Sent: Wednesday, December 09, 2020 1:42 PM
To: Jackson, Yvette <Jackson.Yvette@epa.gov>
Subject: could you give me a call -- I need information on the Administrator portrait oil painting issue -- donating to GSA etc

Also .. see below .. fyi .. need info asap thanks ng

INTERIOR

Zinke portrait makes a hushed entrance

Michael Doyle, E&E News reporter
Published: Tuesday, December 8, 2020

The Interior Department will unveil a formal portrait of former Interior Secretary Ryan Zinke at the department. Zinke is pictured here, flanked by the U.S. Park Police, riding to his first day at work on a horse named Tonto. @BSEEgov/Twitter

The Interior Department today was set to quietly unveil the official portrait of former Secretary Ryan Zinke.

In a markedly low-key event planned for this afternoon, officials are set to welcome the Zinke portrait to the department headquarters he vacated at the end of 2018. The painting by award-winning Montana-based artist Brent Cotton captures part of Zinke's nearly two years in the Trump administration.

"The painting features elements of his tenure as 52nd Secretary of Interior," one former department official said, text-messaging on condition of anonymity.

Raised on an Idaho cattle ranch and now a self-described avid outdoorsman, Cotton lives in the Bitterroot Valley of Montana, the state Zinke formerly represented in the House for one term before being tapped to be President Trump's first Interior secretary.

Interior spokesperson Ben Goldey said, "Secretary Zinke's official portrait was funded by private donations and accepted into Interior's collection as a gift."

The Eliminating Government-funded Oil-painting Act, signed by President Trump in March 2018, allows Cabinet secretary portraits but requires them to be privately financed.

"The President, Members of Congress, and heads of agencies are free to raise money for their portraits as they see fit. This cost should not be paid by the American taxpayer," a House committee report stated.

Zinke's portrait was unveiled one day after a portrait of former Energy Secretary Rick Perry was presented at Department of Energy headquarters. Perry, who left office last December, returned to Washington for the unveiling.

The portrait will "hang at DOE for years to come," Energy Secretary Dan Brouillette said via Twitter. "Thank you Rick, for your outstanding service to our department and nation!"

Perry, in an Instagram post, thanked DOE "for a wonderful unveiling of my official portrait." He called it a "great work of art" by Kenneth Turner (*Energywire*, Dec. 8).

Nancy Grantham
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