



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 1, 2021

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Recusal Statement

FROM: Tomás Elías Carbonell 
Deputy Assistant Administrator for Stationary Sources

TO: Joseph Goffman
Acting Assistant Administrator

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed, as well as my own attorney bar obligations.

FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest. I will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

OBLIGATIONS UNDER EXECUTIVE ORDER 13989

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer, **Environmental Defense Fund**, is a party or represents a party. Under the terms of the Ethics Pledge, this recusal lasts for two years from the date that I joined federal service, or until January 20, 2023.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”¹ Such a meeting must also include a diversity of interests. Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS

Pursuant to the federal ethics rules, I understand that I have a covered relationship and a one-year cooling off period with any organization in which I was an active participant. Therefore, I am prohibited from participating personally and substantially in any particular matter involving specific parties in which the **Institute for Policy Integrity** (NYU School of Law) is a party or represents a party, unless I am first authorized by OGC/Ethics to participate, pursuant to 5 C.F.R. § 2635.502(d). My recusal lasts for one year after my resignation from this organization.

I have an uncompensated adjunct faculty position with Howard University School of Law, but I am not currently teaching. In the event that I decide to teach in the future, I will consult with OGC/Ethics as appropriate. Thus, I am also prohibited from participating personally and substantially in any particular matter involving specific parties in which the **Howard University School of Law** is a party or represents a party, unless I am first authorized by OGC/Ethics to participate, pursuant to 5 C.F.R. § 2635.502(d).

ATTORNEY BAR OBLIGATIONS

Pursuant to my obligations under my bar rules, I recognize that I am obliged to protect the confidences of my former clients. I also understand that I cannot participate in any matter that is the same as or substantially related to the same specific party matter that I participated in personally and substantially, unless my bar provides for and I first obtain informed consent and notify OGC/Ethics. Thus, I will not participate in the following matters:

CASE NAME:	CITATION:
State of California v. EPA	No. 4:18-cv-03237-HSG (N.D. Cal.)
Nat'l Waste and Recycling Assoc., <i>et al.</i> v. EPA,	No. 16-1372 (D.C. Cir.)
<i>et al.</i>	
Nat'l Waste and Recycling Assoc., <i>et al.</i> v. EPA,	No. 16-1371 (D.C. Cir.)
<i>et al.</i>	
Environmental Defense Fund v. EPA	No. 19-1222 (D.C. Cir.)
Gas Processors Association v. EPA	No. 15-1473 (D.C. Cir.)
American Petroleum Institute v. EPA	No. 15-1020 (D.C. Cir.)
American Petroleum Institute v. EPA	No. 13-1108 (D.C. Cir.)

¹ See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

American Petroleum Institute v. EPA	No. 12-1405 (D.C. Cir.)
Natural Resources Defense Council, <i>et al.</i> v. EPA, <i>et al.</i>	No. 12-1409 (D.C. Cir.)
Natural Resources Defense Council, <i>et al.</i> v. EPA	No. 16-1425 (D.C. Cir.)
American Lung Association v. EPA	No. 19-1140 (D.C. Cir.)
Biogenic CO2 Coalition v. EPA, <i>et al.</i>	No. 15-1480 (D.C. Cir.)
State of North Dakota v. EPA	No. 15-1381 (D.C. Cir.)
Air Alliance Houston v. EPA	No. 20-1268 (D.C. Cir.)
Westmoreland Mining Holdings v. EPA	No. 20-1160 (D.C. Cir.)
American Academy of Pediatrics v. Wheeler	No. 20-1221 (D.C. Cir.)
Chesapeake Bay Foundation v. EPA	No. 13-1200 (D.C. Cir.)
Environmental Defense Fund, <i>et al.</i> v. EPA	No. 4:21-cv-00003-BMM-JTJ (D. Mont.)
California Communities Against Toxics, <i>et al.</i> v. EPA	No. 21-1024 (D.C. Cir.)

SCREENING ARRANGEMENT

In order to ensure that I do not participate in particular matters from which I am recused, I have asked the Chief of Staff, Ann Ferrio, to assist in screening EPA matters directed to my attention. All inquiries and comments involving my recusals should be directed to the Chief of Staff without my knowledge or involvement.

If the Chief of Staff determines I am recused, then she will take action or refer it for action or assignment to another, without my knowledge or involvement. In the event that the Chief of Staff is unsure whether an issue is a particular matter from which I am recused, then she will consult with OGC/Ethics for a determination.

UPDATE AS NECESSARY

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes to my screening arrangement, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Elizabeth Shaw, Deputy Assistant Administrator
Alejandra Nunez, Deputy Assistant Administrator for Mobile Sources
Eunjung Kim, Special Assistant
Justina Fugh, Director, Ethics Office