



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

March 20, 2019

MEMORANDUM

THE ADMINISTRATOR

SUBJECT: Updated Recusal Statement

FROM: Andrew R. Wheeler
Administrator

A handwritten signature in dark ink, appearing to read "Andrew R. Wheeler", written over the printed name and title.

TO: Assistant Administrators
General Counsel
Inspector General
Regional Administrators

As indicated in my prior recusal statement signed on May 24, 2018, I agreed to update my recusal statement if there were any changes to my EPA duties. On February 28, 2019, I became Administrator and have continued to consult with the Office of General Counsel/Ethics (OGC/Ethics) about my ethics obligations. This memorandum reiterates my existing and ongoing ethics obligations as described in my May 24, 2018 recusal statement, clarifies some of those obligations, and adds a new voluntary recusal for matters related to the Pebble Mine.

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 but will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

OBLIGATIONS UNDER EXECUTIVE ORDER 13770

Pursuant to Section 1, Paragraph 6 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer, **Faegre Baker Daniels LLP**, or any former client to whom I provided legal or consultative services during the

past two years is a party or represents a party. I have been advised by OGC/Ethics that the term “former client” is defined as any person for whom I have personally provided services to between April 20, 2016 and April 20, 2018, which is the two-year period prior to the date of my appointment.¹ I understand that my recusal lasts for two years from the date that I joined federal service.

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 representing a diversity of viewpoints. If my former employer or a former client is present, then I understand that, generally speaking, at least four other parties should be present to ensure that a diversity of viewpoints is represented and not the same united perspective.

Because I was formerly a federally registered lobbyist, I understand that I am also subject to the provisions of Section 1, paragraph 7 of the Executive Order. For a period of two years, I will not participate in any particular matter on which I lobbied in the preceding two years, nor will I participate in the specific issue area in which that particular matter falls.² This recusal encompasses issues that I lobbied on before EPA as well as before other federal agencies during the preceding two years including, for example, Section 202(c) of the Federal Power Act.

Set forth below are my former clients identified in consultation with OGC/Ethics that have or may have environmental interests that could potentially arise with respect to my duties here at EPA,³ as well as the specific issues areas from which I am recused:

¹ See Exec. Order 13770, Section 2(i) and the Office of Government Ethics (OGE) Legal Advisory DO-09-011 (March 26, 2009), which applies to Exec. Order 13770 pursuant to OGE Legal Advisory LA-17-03 (March 20, 2017).

² I am advised by OGC/Ethics that Section 1, paragraph 7 of the Executive Order applies to both “particular matters involving specific parties and “particular matters of general applicability,” but not the broader term, “matters” (e.g., the Clean Power Plan). See OGE Legal Advisory LA-17-03 (March 20, 2017) which defines “specific issue area” to mean a “particular matter of general applicability.”

³ For any former client that is not listed, I understand that I am personally obliged not to participate in specific party matters for the duration of my ethics obligations.

RECUSAL LIST PURSUANT TO EXECUTIVE ORDER 13770

In effect until April 20, 2020⁴

FORMER EMPLOYER: Faegre Baker Daniels LLP

FORMER CLIENTS:

Murray Energy
Sargento Food Inc.
Underwriters Laboratories
Energy Fuels Resources Inc.

Growth Energy
International Paper
Martin Farms
Xcel Energy

FORMER LOBBYING ISSUES:

Energy Star
Section 202(c) of the Federal Power Act

ADDITIONAL VOLUNTARY RECUSAL:

Matters related to the Pebble Mine near Bristol Bay, Alaska⁵

SUPERFUND SITES

To avoid any concerns about my ethical obligations, I am affirming that I will not participate in matters related to any Superfund sites at which my former clients are a potentially responsible party. Consistent with my obligations under the federal ethics regulations and Executive Order 13770, I will not participate in matters for those sites or any other at which my former client is involved until after April 20, 2020.

PEBBLE MINE

I am aware that my former employer, Faegre Baker Daniels LLP, provided services to a client regarding the Pebble Mine near Bristol Bay, Alaska. Though I did not personally provide any such services to that client, and have been advised by OGC/Ethics that their client is not considered a “former client” of mine for purposes of Executive Order 13770 and the Ethics Pledge, I am voluntarily recusing myself from participation in any matters related to the Pebble Mine for the duration of my EPA tenure.

⁴ Due to a typographical error in the May 24, 2018 recusal statement, this date has been changed to accurately reflect two years from the date that I was sworn into federal service.

⁵ Although not necessarily required, I am recusing myself from matters related to the Pebble Mine, including any associated litigation, settlement agreement, and permitting, to avoid the appearance of any ethical concerns in the role of Administrator.

VOLUNTARY RECUSAL	
SUBJECT MATTER:	DESCRIPTION:
Matters related to the Pebble Mine near Bristol Bay, Alaska	Includes any associated litigation, settlement agreement, and permitting

OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS

Pursuant to federal ethics rules, I understand that I have a one-year cooling off period with any organization in which I was an active participant. For one year after my resignation from the **National Energy Resources Organization (NERO)**, I am prohibited from participating personally and substantially in any particular matter involving specific parties in which NERO 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). That said, I acknowledge that NERO does not itself lobby or represents parties other than itself.

RECUSAL LIST FEDERAL ETHICS OBLIGATIONS	
NAME OF ENTITY:	DATE WHEN RECUSAL ENDS:
National Energy Resources Organization (NERO)	One year after my resignation but no later than April 20, 2019

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 while in private practice, unless my bar provides for and I first obtain informed consent and notify OGC/Ethics.

SCREENING ARRANGEMENT

In order to ensure that I do not participate in matters relating to any of the entities listed above, I will instruct Michael Molina, Deputy Chief of Staff, to assist in screening EPA matters directed to my attention that involve those entities. All inquiries and comments involving the entities on my recusal list should be directed to Mr. Molina without my knowledge or involvement until after my recusal period ends.

If Mr. Molina determines that a particular matter will directly involve any of the entities or matters listed on my "specific party" recusal list, then he will refer it for action or assignment to another, without my knowledge or involvement. In the event that he is unsure whether an issue is a particular matter from which I am recused, then he will consult with OGC/Ethics for a determination. I will provide a copy of this memorandum to my principal subordinates with a copy to David Cozad, Acting Designated Agency Ethics Official, and Justina Fugh, Director, Ethics Office.

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: Ryan Jackson, Chief of Staff
Michael Molina, Deputy Chief of Staff
David Cozad, Acting Designated Agency Ethics Official
Justina Fugh, Director, Ethics Office