



GAO GOVERNMENT ACCOUNTABILITY & OVERSIGHT



WHERE ENERGY, ENVIRONMENT, AND TRUTH MEET

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Bringing Transparency to Energy Policy

Bureaucrats thrive on secrecy. At EPA, we make sure you know what your government is up to and how it makes its decisions.

Documenting AGs' Plan to Impose Climate NAAQS/'Net Zero'

In coordination with Greens, SEEIC, Former EPA Officials

Summary I

- ❖ There is an “Affirmative climate litigation subgroup” of progressive AGs, coordinating w Bloomberg group.
- ❖ Regular calls. Share memos. Signed June 2019 GHG CIA. Consulted w former Obama and career EPA lawyers + other officials.
- ❖ Docs included CBD petition, *Mass v EPA* ‘historical docs’, GHG litigation strategy memos, “ClimateNAAQS.PPT” all in discussion of campaign to impose climate agenda under current law, acknowledging legislation has no prayer via Congress.
- ❖ 1st considered “CO2 as criteria pollutant” approach to trigger NAAQS, referencing law review articles stating the time has come.
- ❖ October 2019: Consulted w former Obama EPA climate chief Joe Goffman at Harvard Law School on approaches and activists to work with. AGs sign PM CIA. AGs connected w network of w former EPA career officials incl OGC attorneys turned activists.
- ❖ Ex-EPAers agree to help AGs develop approach. Goffman’s top referral counsels on CO2 NAAQS + recommends using secondary PM + Ozone NAAQS as backdoor. AGs then enter CIAs on ozone NAAQS, including w green groups, in Spring ’20.
- ❖ Documents track months of work, but AGs have not filed suit. Most likely reason is waiting for election as one candidate has promised to do what they would sue his EPA demanding it do. Biden EPA would not defend that suit: *GND via sue-and-settle*.

Summary II

- ❖ This began as ‘only hope’ because *WV v. EPA*, Trump election, Green New Deal rollout flop
- ❖ Political fortunes seemed to change, making it possible the agenda could avoid Congress, rule-making process, and political accountability with a consent decree: *we were sued/this was an order of the court*
- ❖ Documents track months of work
- ❖ AGs clamped down on further releases this Spring / Summer when requests became pointed re this plan
- ❖ Dozens of pages of inter-AG notices, and coordinated litigation postures, affirm AGs have now agreed among selves to stop further releases, make any further public record releases require a court order
- ❖ AAGs make helpful statements in recent proceedings, e.g., “this is a *very* confidential matter” (NM OAG), “the fact of the affirmative litigation is important here because it's not -- certainly not known to anyone” (WA OAG, 10/16/20 oral argument). In redacting / withholding these records, numerous AGs state the activists’ correspondence + presentations are prepared in anticipation of AGs’ litigation.

Who: Multistate AGs Group

- ❖ Multistate AG Coordination Group coordinating actions to compel GHG regulation
 - ❖ Climate Change — Affirmative Litigation Subgroup (Bloomberg's NYU co-manages)
 - ❖ “Small Group” (CA, OR, NY, MA, + DE, NJ less actively) initially managed “GHG outreach”
 - ❖ “Large Group” includes CT, DC, IL, ME, MD, MI, MN, NM, PA, NC, RI, VT, VA, WA (some pacts include CARB, PA DEP)
- ❖ Regularly scheduled calls of approved group
- ❖ “A little paranoid” re: security
- ❖ Co-organized by Bloomberg NYU Group, which also participates
- ❖ “Large group” and “small group” are led by NY OAG's Myers, OR DoJ Bloomberg “SAAG” Novick
- ❖ Bloomberg SAAGs are often among or are ‘the’ AGO reps
- ❖ AGs actively pursuing plan to revive, expand failed Clean Power Plan, expanding economy-wide to climate NAAQS, since June 2019
- ❖ “Small Group” handled GHG NAAQS outreach; “Large Group” brought in to the plan in January
- ❖ AGs took further step of entering a CIA for secondary Ozone NAAQS w green groups, and verbatim pact among selves, Spring 2020



July 22, 2019

Multistate AG Coordination Group – List of Subgroups

Subgroup	Coordinator(s)	Participating States	Regularly-scheduled calls?
Clean Energy/Resilience	Christophe Courchesne (MA) Megan Herzog (MA)		
Climate Change – Affirm. Litigation	Mike Myers (NY) Paul Garrahan (OR) Steve Novick (OR)		Every other Tuesday @ 2 pm eastern
Endangered Species	Matt Ireland (MA) Turner Smith (MA) Amanda Morejon (MA) George Torgun (CA) Erin Ganahl (CA) Tara Mueller (CA)		
Energy Efficiency	Jamie Jefferson (CA) Somerset Perry (CA) Lisa Kwong (NY)		
NEPA	Sarah Morrison (CA) Claiborne Walthall (NY) Aurora Janke (WA)		
Offshore Drilling	Josh Siegel (MD)		
PFAS	Matt Sinkman (NY) Norm Spiegel (NY)		
Toxics	Andy Goldberg (MA)		
Vehicle Emissions	Mike Myers (NY)	CA, CO, CT, DE, HI, IL, IA, ME, MD, MA, MN, NJ, NM, NY, NC, OR, PA, RI, VT, VA, DC	As needed
Water Quality Certifications (401)	Sarah Morrison (CA) Brian Lusignan (NY) Laura Watson (WA)		

From: Skip Pruss <pruss@5lakesenergy.com>
Sent: Friday, June 14, 2019 10:47 AM
To: Manning, Peter (AG)
Subject: FW: NYU Law School State Energy and Environment Impact Center
Attachments: State Impact Center Retainer agreement FINAL DRAFT.docx

With attachment.



GAO GOVERNMENT ACCOUNTABILITY & OVERSIGHT

From: Skip Pruss
Sent: Wednesday, June 12, 2019 5:14 PM
To: Nessel, Dana (AG) <NesselD34@michigan.gov>; Kelly Keenan (keenank@michigan.gov) <keenank@michigan.gov>
Subject: FW: NYU Law School State Energy and Environment Impact Center

I've been in contact with David Hayes, Executive Director, NYU Law School State Energy and Environment Impact Center. The non-partisan Impact Center was founded in 2017 and supports state AGs in defending and promoting clean energy, climate and environmental laws and policies.

David is keenly interested in supporting the MI AG office. The [Impact Center](#) could assist in several ways.

- The IC funds the salaries of 17 [Law Fellows who serve as SAAGs](#) in their respective states. State AGs recruit and select their own Law Fellows. (Although the program is completely transparent and ethical, it may engender backlash).
- The IC has a pro bono program providing assistance to states on energy and environmental issues from the Impact Center's own staff of attorneys. The IC pays all costs associated with its services. Five states have a formal agreement (attached) with the Impact Center for pro bono services – NY, MA, MD, MN and WA.
- The IC serves as a clearinghouse for [all AG actions](#) including litigation, rule-making, federal notices, and notice and comment opportunities. The information posted on its website is always current.
- The IC assists in coordinating multi-state actions in concert with Mike Myers from the NY AGs office who hosts [bi-weekly multi-state calls](#) (Neil Gordon participates in the calls). It also sponsors periodic networking opportunities in D.C. for state AAGs and publishes a bi-weekly [newsletter](#) on energy and environmental issues.

David and his Deputy Director Elizabeth Klein would like to come to Michigan to meet you both.

Prior, David was a Distinguished Visiting Lecturer at Law at Stanford Law School, Deputy Secretary and Chief Operating Officer of the Department of the Interior in the Obama Administration, and Deputy Secretary of the Interior during the Clinton Administration.

From: David J. Hayes <david.hayes@nyu.edu>
Sent: Wednesday, June 12, 2019 4:31 PM
To: Skip Pruss <pruss@5lakesenergy.com>
Subject:

Skip:

It was great to chat.

Please do sign up for our Legally Speaking newsletter. You can sign up here:

Subject: FW: Multistate AG Coordination Call
Location: Dial 866-394-████, code █████

Start: Tue 2/26/2019 2:00 PM
End: Tue 2/26/2019 3:00 PM
Show Time As: Tentative

Recurrence: (none)

Organizer: Myers, Michael



(daniel.salton@ct.gov); 'Joseph Yar'; Tom Y (WA); 'Elaine Meckenstock (Ca)'; 'William Grantham'; 'Jonathan Wiener (Ca)'; 'Tracy Triplett (Ma)'; 'Matthew Levine'; 'Dennis Ragen'; 'Timothy Sullivan (Ca)'; 'Kristen Furlan'; 'Courchesne'; Menard, Brenda (NC); Morgan Costello; 'David Zonana (Ca)'; 'Beth Mullin (DC)'; 'Steven J.'; Leslie Frederickson (MN PCA); Bo Reiley; Robyn Bender (DC AG); Michelle Moses (PA); 'Michele Van Gelderen'; Seth Schofield (MA); 'Elizabeth Wilkins'; Jeremy Magliaro; 'Amy Winn'; Blake Thomas (NC); 'david.hayes@nyu.edu'; 'Melissa Hoffer'; 'Valerie Edge (De)'; Jill Lacedonia (CT); 'Rob McDougall'; Mike Fischer (PA AG); 'Leslie Seffern'; 'Nick Persampieri'
Cc: 'djh466@nyu.edu'; 'Hoffer, Melissa (AGO)'; 'Reiley, Robert A.'
Subject: Multistate AG Coordination Call
When: Tuesday, November 14, 2017 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Dial 866-394-2346, code 4149570819

All--The security code for today's call is █████. Attached are a few items for discussion:

- EPA 2007 "reasonable possibility" NSR rule (rollback)
- Army Corps memo re. Clean Water Act permitting re. section 401 water quality certifications (rollback)
- House memo concerning oversight hearing today at 10:30 eastern on EPA enforcement, hearing link available at <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-epas-enforcement-program-environmental-cop-off-the> (enforcement)
- recent FERC decision approving liquid natural gas pipeline project (energy)

A couple of scheduling notes: Brendan Larkin (Cong. Tonko's office) cannot join us today; he has asked to join for our March 19 call. **The NYU State Impact Center will join us for the beginning part of our call today.**

From: Myers, Michael
Sent: Wednesday, June 27, 2018 11:00 AM
To: Myers, Michael; Kristen Mitchell (WA); 'Nick Persampieri'; Keith Salador (PA DEP); 'Ralph Durstein (De)'; 'elizabeth.klein@nyu.edu'; 'Scott Koschwitz Garrahan'; 'Jerry Reid'; Steve Novick (OR); Nur Ibrahim (MN AG); 'Patrick Flanagan (Hi)'; Wagner, Monica; Megan Hey (CA); Andrea Baker; Elizabeth Davis (PA DEP); 'Elaine Meckenstock (Ca)'; Peter Mulcahy (MA AG); Srolovic, Lemuel; 'David Zonana Courchesne'; 'Leslie Seffern'; 'Beth Mullin (DC)'; David Zaft (CA); 'Timothy Sullivan Goyette (CA); Costello, Morgan; 'Heather Leslie'; 'B. Legner (IL)'; Joe Iloe (PA DEP); 'Melissa Hoffer'; Asher Spiller; Mike Fischer (PA AG); 'Matthew Levine'; 'Jill Lacedonia (NC)'; 'Karen Olson'; Washburn, Peter; 'Max Kieley'; Dan Salton (NM); 'Amy Bircher (NC)'; 'Greg Schultz'; Michelle Moses (PA); Aaron Love (NJ); 'Bill F. Cooper (Hi)'; Leslie Sherman -- WA AG's office; 'Tracy Triplett (Ma)'; 'Liz Rumsey (Ca)'; Lynn Angotti; 'Greg Schultz'; Michelle Moses (PA); Aaron Love (NJ); 'Bill F. Cooper (Hi)'; Leslie Beck (CA); Menard, Brenda (NC); Leah Tulin (MD AG); 'Sally Magnani'; Burianek, Catuano (WA AG); Sarah Kogel-Smucker (DC); 'William Grantham'; 'Josh Auerbach (NJ)'; Francisco Benzoni (NC AG); McCabe, Gavin; Bo Reiley; 'Andy Goldberg'; Jill Rottenberg (IL); Emily Vainieri; Robyn Bender (DC AG); 'Valerie Edge (De)'; Tom Y (WA); 'Dennis Ragen'; 'Lauren Maxwell (DC)'; 'Matthew Dunn (IL)'; 'Jillian Riley'; 'James Gignac (MA)'; 'Kay Shirey (Wa)'; 'Tania Maestas'; Arsenio Mataka (CA)
Cc: 'djh466@nyu.edu'; 'Courchesne, Christophe (AGO)'; 'Patricelli, Maria (AGO)'; 'ek3041@nyu.edu'; Steward, David (AG)'; Lisa Morelli
Subject: State AG Coordination Call
When: Tuesday, July 24, 2018 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Dial 866-394-2346, code 4149570819

(OR); Steven Goldstein (MD); Susan Shinkman (DC); Tania Maestas; Taylor Crabtree (NC); Tim Nord; 'Timothy Sullivan (Ca)'; Tom Y (WA); 'Tracy Triplett (Ma)'; Tricia Jedele; Turner Smith (MA); 'Valerie Edge (De)'; Wagner, Monica; Washburn, Peter; William Grantham
Cc: David J. Hayes; 'elizabeth.klein@nyu.edu'; 'djh466@nyu.edu'; 'ek3041@nyu.edu'; 'jeanifer.fradel@law.njoag.gov';

1

ENVMTG; 'jhowardjr@gmail.com'
Subject: Multistate AG Coordination Call
When: Tuesday, June 11, 2019 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Dial 866-394-████, code █████

security code to be provided shortly before call
agenda provided at outset of call

Archived: Wednesday, February 14, 2018 11:48:35 AM
From: Myers, Michael
Sent: Tuesday, January 23, 2018 7:42:13 AM
To: 'Valerie Edge (De)'; 'Beth Mullin (DC)'; 'Jonathan Wiener (Ca)'; 'Karen Olson'; 'Sarah Morrison (CA AG)'; 'Gavin Me'; 'Matthew Gooch (Va)'; 'Nick Persampieri'; 'Francisco Benzoni (NC AG)'; Nur Ibrahim (MN AG); Robyn Bender (DC AG); 'Bill F. Cooper (Hi)'; 'Jeremy'; 'Christopher Courchesne'; 'Jerry Reid'; 'Dunn (IL)'; 'Max Kieley'; 'William Grantham'; Bill Sherman -- WA AG's office; Emily Vainieri; Brenda (NC); 'Greg Schultz'; Leah Tulin (MD AG); 'Andrea Baker'; 'Timothy Sullivan (Ca)'; 'Elaine Meckenstock (Ca)'; 'Donald Anderson (VA)'; 'Andrew Murphy (PA)'; 'Elaine Meckenstock (Ca)'; Ken Stalter (NM); 'Gregg J. Kinkadee (CT)'; 'daniel.salton@ct.gov'; 'Garrahan Paul'; 'Cheerful Catuano (WA AG)'; 'David Steward (Ia)'; 'Jillian Riley'; 'Santarsiero, Steven J.'; 'Flanagan, James'; 'Kimberly Childe (PA DEP)'; 'Robert A.'; 'Courchesne, Christophe (AGO)'; 'Steward, David (AG)'; 'Normal'

CC: Hey (CA), Joe Iloe (PA DEP), 'David Steward (Ia)', 'Michele Van Gelderen', Gerry Karr, David J. Hayes, 'B. Legner (IL)', 'Josh Auerbach', Martin Goyette (CA), Bill Sherman -- WA AG's office, 'Dennis Ragen', Marc Bernstein (NC), Srolovic, Lemuel, Burianek, Lisa, Margaret Murphy (PA), 'Heather Leslie', Peter Mulcahy (MA AG), 'Matthew Gooch (Va)', 'J. Daniel (Va)', Blake Thomas (NC), Courchesne Christophe (AGO), Larson Jacob (AG), 'ek3041@nyu.edu', Steward David (AG), emily.vainieri1@maryland.gov
Date: Dec 19, 2017 at 11:17 AM
Subject: RE: Multistate AG Coordination Call

All, the security code for today's call is 7121. Copied below are a few of links of interest.--Mike

<https://resources.regulations.gov/public/custom/jsp/navigation/main.jsp> (regulatory agendas)

<https://www.reginfo.gov/public/do/eAgendaEO13771> (regulatory reform)

https://www.epa.gov/sites/production/files/2017-12/documents/policy_memo.12.7.17.pdf (Pruitt NSR enforcement memo)

Michael J. Myers
Senior Counsel for Air Pollution and Climate Change Litigation

security code to be provided shortly before call
agenda to be provided at outset of call

(Ct)'; Seth Schofield (MA); Srolovic, Lemuel; Stephanie Cobb Williams; 'Tania Maestas'; Tom Y (WA); 'Tracy Triplett (Ma)'; 'Valerie Edge (De)'; Wagner, Monica; David J. Hayes; 'elizabeth.klein@nyu.edu'
Cc: 'Patricelli, Maria (AGO)'; 'Janke, Aurora (ATG)'; 'Courchesne, Christophe (AGO)'; 'ek3041@nyu.edu'; Steward, David (AG)'; Lisa Morelli
Subject: Multistate AG Coordination Call
When: Tuesday, May 22, 2018 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Dial 866-394-2346, code 4149570819

security code to be provided shortly before call

Morrison[Sarah.Morrison@state.ma.us]; 'Seth Schofield (MA)'; 'Stephanie Cobb Williams'; 'Tim.D.Nord@doj.ca.gov'; 'TomY@ATG.WA.GOV'; 'Valerie.Edge@state.de.us'; 'v.wagner, monica[wagner@ag.ny.gov]'; 'Washburn, Peter'; 'William Grantham'; 'wgrantham@nmag.gov'; 'Patricelli, Maria'; 'Janke, Aurora (ATG)'; 'AuroraJ@ATG.WA.GOV'; 'Christophe.Courchesne@MassMail.State.MA.US'; 'Steward, David (AG)'; 'David Steward (Ia)'; 'ek3041@nyu.edu'; 'ek3041@nyu.edu'
Cc: 'Megan Hey'; 'megan.hey@doj.ca.gov'; David Zonana[David.Zonana@doj.ca.gov]; Liz Rumsey
From: Liz Rumsey
Sent: Tue 5/22/2018 7:10:51 PM
Subject: RE: Multistate AG Coordination Call - 2-for-1 Order and Landfill Emission F

All, the security code for today's call is 11768
We will be joined for the first half of the call by David Hayes and Liz Klein from the NYU Law State Impact Ctr.
Hope to talk with you at 2.--Mike

Auerbach'; Santarsiero, Steven J.; 'Patrick Flanagan'; Washburn, Peter; 'david.hayes@nyu.edu'; 'Hoffer, Melissa (AGO)'; 'Kimberly Childe (PA DEP)'; 'James Gignac'; Megan Hey (CA); Mike Fischer (PA AG); 'djh466@nyu.edu'; 'ek3041@nyu.edu'; Reiley, Robert A.'; Courchesne, Christophe (AGO)
Subject: Multistate AG Coordination Call
When: Tuesday, January 23, 2018 2:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Dial 866-394-2346, code 4149570819

security code to be provide shortly before call
agenda to be provided at outset of call

PRIVILEGED & CONFIDENTIAL

**COMMON INTEREST AGREEMENT REGARDING THE SHARING OF
INFORMATION IN ANTICIPATION OF JUDICIAL OR ADMINISTRATIVE ACTIONS
TO REQUIRE THE FEDERAL GOVERNMENT (OR PRIVATE PARTIES) TO TAKE
ACTION (OR TO DEFEND THE FEDERAL GOVERNMENT'S AUTHORITY TO TAKE
ACTION) TO REDUCE OR LIMIT EMISSIONS OF GREENHOUSE GASES THAT
CAUSE CLIMATE CHANGE**



GAO GOVERNMENT ACCOUNTABILITY & OVERSIGHT

The parties to this common interest agreement (the "Agreement"), specifically Delaware, Illinois, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Vermont, Virginia, Washington, and any other government entity that completes the attached Addendum (each Party, or collectively "Parties"), anticipate participating as litigants or counsel for litigants in judicial or administrative actions under state or federal law, including but not limited to the Clean Air Act, to require the federal government and/or private parties to take action to reduce or limit the emission of greenhouse gases that cause climate change or to defend the federal government's authority to regulate greenhouse gas emissions under federal law ("the Litigation").

The Parties to this Agreement have a common interest in the Federal government meeting its obligation to protect the public health, public safety, and the environment, which is threatened by climate change. The Parties thus share a common interest in pursuing the Litigation. This work includes the sharing of information, legal analyses, draft comments, draft court filings, and other documents among the Parties in their common interest throughout the preparations for the Litigation. The Parties agree to share information for the purpose of the Litigation, and such information and materials confidential, and to share information and materials to the extent authorized by law. Information of information, both written and oral, among the Parties, consultants, experts, clients, and counsel will be shared.

**ADDENDUM: PARTICIPATION BY ADDITIONAL PARTIES IN COMMON INTEREST
AGREEMENT REGARDING THE SHARING OF INFORMATION IN ANTICIPATION
OF JUDICIAL OR ADMINISTRATIVE ACTIONS TO REQUIRE THE FEDERAL
GOVERNMENT (OR PRIVATE PARTIES) TO TAKE ACTION (OR TO DEFEND THE
FEDERAL GOVERNMENT'S AUTHORITY TO TAKE ACTION) TO REDUCE OR
LIMIT EMISSIONS OF GREENHOUSE GASES THAT CAUSE CLIMATE CHANGE**

The State of Connecticut, by and through Daniel M. Salton, Assistant Attorney General,
desires to become a Party to the attached Agreement.

Now, therefore, counsel for The State of Connecticut, agrees to the terms of the Agreement (including Paragraph 11 thereof concerning modifications thereof) and agrees to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: 6/26/19

Bates Number Range of Withheld Document	Description of Withheld Document	Exemption/Reason for Withholding/Redacting
AGO0001- AGO0030	<p>A 30-page document consisting of a 5-page Common Interest Agreement and 25 signature pages, effective July 3, 2019 and last dated October 17, 2019, entered into by the State of Vermont on June 25, 2019 by Assistant Attorney General Nicholas F. Persampieri, other States, and other State governmental entities by their respective legal counsel on various dates between June and October 2019.</p> <p>The subject matter of the Common Interest Agreement concerns the sharing of information in anticipation of the parties participating as litigants or counsel for litigants in as-yet unfiled judicial or administrative actions under state or federal law involving common questions of fact and law regarding greenhouse gas emissions (hereinafter “the GHG</p>	<p>1 V.S.A. § 317(c)(4)</p> <p>“Records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege”</p>

	<p>Litigation”).</p> <p>The Common Interest Agreement (hereinafter “the GHG Litigation CIA”) describes the parties’ common legal interest relating to protecting the public health, public welfare, and the environment from the dangers posed by climate change and in pursuing the GHG Litigation to that end.</p> <p>The GHG Litigation CIA discusses how pursuit and advancement of this common legal interest requires and has required the sharing of certain documents, materials, information and communications between and among the parties’ governing boards, staff, management, consultants, experts, clients, and/or counsel that are privileged, protected, confidential, immune, or otherwise exempt from disclosure, such as under the attorney-client, attorney work product, common interest, joint defense, and other privileges and protections.</p> <p>The GHG Litigation CIA recites that the parties wish to pursue their common legal interest in the preparation for and conduct of the GHG Litigation by continuing to exchange such documents, information, and communications without waiving or affecting their privileged or confidential status.</p> <p>The GHG Litigation CIA memorializes that the parties’ sharing and disclosure of certain documents, materials, information, and communications that are privileged and confidential, without waiving or affecting their privileged or confidential status, is necessary and essential to the preparation, pursuit, and accomplishment of the parties’ common interests and objectives in the GHG Litigation. The GHG Litigation CIA notes that such privileged and confidential exchange will allow for the parties’ claims and defenses to be thoroughly investigated and prepared, an effective litigation strategy and joint legal positions to be developed, as well as legal briefs and other court filings efficiently prepared without giving undue advantage to the opposing side.</p>	<p>V.R.C.P. 26(b)(4) / Work Product Protection</p> <p>“[D]ocuments and tangible things otherwise discoverable . . . and prepared in anticipation of litigation or for trial by or for another party or for that other party’s representative”</p> <p>V.R.E. 502(b) / Lawyer-Client Privilege / Common Interest Privilege</p> <p>“A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between himself or his representative and his lawyer or his lawyer's representative . . . (3) by him or his representative or his lawyer, or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of</p>
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Origins

- ❖ June 2019 omnibus CIA
- ❖ October 2019 NY OAG, OR DoJ reach out to e.g., Joe Goffman for names to consult on GHG NAAQS
- ❖ 10/7 MI DAG privilege log entries, “Multi-state AGs discussing CO2 as a criteria pollutant”
- ❖ 10/22 Myers (NY) call w Goffman, who suggests Bachmann, “EPN folks”
- ❖ 10/29 “Small group” (CA, MA, NY, OR) schedule “GHG calls debrief” call (11/1)
- ❖ 10/3 - 11/18 AGs enter secondary PM NAAQS CIA

October

		Interest Privilege
1.28 AGO01019	An October 2, 2019 email from a lawyer in the Attorney General's Office of one of the signatory states to the GHG Litigation CIA to other signatory states, which advises of the cancellation of a scheduled call among the signatory states. Potential litigation to reduce greenhouse gas emissions was to be discussed on the call.	Exempt pursuant to 1 V.S.A. § 371(c)(4) V.R.C.P. 26(b)(4) / Work Product Protection

15

1.30 AGO01022-AGO01023	An October 17, 2019 email from a lawyer in the Attorney General's Office of one of the signatory states to the GHG Litigation CIA to other signatory states, which advises of the cancellation of a scheduled call among the signatory states. Potential litigation to reduce greenhouse gas emissions was to be discussed on the call. The email also mentions an action to be	Exempt pursuant to 1 V.S.A. § 371(c)(4) V.R.C.P. 26(b)(4) / Work Product Protection

16

	This email among signatory states to the GHG Litigation CIA was for the purpose of facilitating the rendition of professional legal services by the signatory Attorneys General offices to their respective states, and by the members of the Attorneys General offices to their respective Attorneys General, regarding matters of common interest to the states. The email was prepared in anticipation of litigation.
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	taken by the State which sent the email to further the state's consideration of potential litigation to reduce greenhouse gas emissions. This email among signatory states to the GHG Litigation CIA was for the purpose of facilitating the rendition of professional legal services by the signatory Attorneys General offices to their respective states, and by the members of the Attorneys General offices to their respective Attorneys General, regarding matters of common interest to the states. The email was prepared in anticipation of litigation. Also included in this record is the email described in entry 1.28.	V.R.E. 502(b) / Lawyer- Client Privilege / Common Interest Privilege
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DocType	Subject Line	Date	Author	Recipients (To)	Privilege Description	Privilege Assterted
Email	RE: Multi-state group discussing CO2 as a criteria pollutant	10/7/2019	Morrisseau, Elizabeth (AG) <MorrisseauE@michigan.gov>	Manning, Peter (AG) <ManningP@michigan.gov>; Gordon, Neil (AG) <GordonN1@michigan.gov>	Discussion of litigation	Work product
Email	RE: Multi-state group discussing CO2 as a criteria pollutant	10/7/2019	Morrisseau, Elizabeth (AG) <MorrisseauE@michigan.gov>	Manning, Peter (AG) <ManningP@michigan.gov>; Gordon, Neil (AG) <GordonN1@michigan.gov>	Discussion of litigation	Work product
Email	RE: Multi-state group discussing CO2 as a criteria pollutant	10/7/2019	Manning, Peter (AG) <ManningP@michigan.gov>	Morrisseau, Elizabeth (AG) <MorrisseauE@michigan.gov>; Gordon, Neil (AG) <GordonN1@michigan.gov>	Discussion of litigation	Work product
Email	FW: Climate Litigation	10/4/2019	Manning, Peter (AG) <ManningP@michigan.gov>	Schumaker, Kelly (AG) <SchumakerK@michigan.gov>	Discussion of litigation	wok
Email	FW: Climate Litigation	10/4/2019	Manning, Peter (AG) <ManningP@michigan.gov>	Bannister, Susan (AG) <BannisterS@michigan.gov>	Discussion of litigation	Work product

DEFENDANT’S FIRST AMENDED INDEX OF WITHHELD DOCUMENTS*
AS EXEMPT FROM PUBLIC INSPECTION AND COPYING PURSUANT TO 1 V.S.A. § 317(c)
June 26, 2020

*The 7 withheld documents are responsive to Item No. 4 in Plaintiff’s March 27, 2020 public records request to the Vermont Attorney General’s Office, a copy of which is attached as Exhibit A to Plaintiff’s Complaint in the above-referenced action, reading:

“4. any common interest agreements concerning i) carbon dioxide or CO2, ii) greenhouse gas emissions or GHG, and/or iii) National Ambient Air Quality Standards or NAAQS entered into by the Office of the Attorney General at any time in 2019 and/or 2020.”

The 7 withheld documents are bates numbered for purposes of this Index and the above-referenced action as AGO0001 through AGO0174.

Bates Number Range of Withheld Document and Short Title	Description of Withheld Document	Exemption/Reason for Withholding/Redacting
AGO0001- AGO0030 GHG Litigation CIA	<p>A 30-page document consisting of a 5-page Common Interest Agreement and 25 signature pages, effective July 3, 2019 and last dated October 17, 2019, entered into by the State of Vermont on June 25, 2019 by Assistant Attorney General Nicholas F. Persampieri, other States, and other State governmental entities by their respective legal counsel on various dates between June and October 2019.</p> <p>The subject matter of the Common Interest Agreement concerns the sharing of information in anticipation of the parties participating as litigants or counsel for litigants in as-yet unfiled judicial or administrative actions under state or federal law involving common questions of fact and law regarding greenhouse gas emissions (hereinafter “the GHG</p>	<p>1 V.S.A. § 317(c)(4)</p> <p>“Records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege”</p>

	<p>Litigation”).</p> <p>The Common Interest Agreement (hereinafter “the GHG Litigation CIA”) describes the parties’ common legal interest relating to protecting the public health, public welfare, and the environment from the dangers posed by climate change and in pursuing the GHG Litigation to that end.</p> <p>The GHG Litigation CIA discusses how pursuit and advancement of this common legal interest requires and has required the sharing of certain documents, materials, information and communications between and among the parties’ governing boards, staff, management, consultants,</p>	<p>V.R.C.P. 26(b)(4) / Work Product Protection</p> <p>“[D]ocuments and tangible things otherwise discoverable . . . and prepared in anticipation of litigation or for trial by or for another party or for that other party’s representative”</p>
--	---	---

From: Myers, Michael <Michael.Myers@ag.ny.gov>
Sent: Wednesday, October 16, 2019 3:27 PM
To: Goffman, Joseph <jgoffman@law.harvard.edu>
Subject: alternative call times

Joe, can you also let me know your availability for a call between 11-2 and 3-530 on Thurs., 10/24?
Figure on about 30-45 mins for the call. Thanks.

Michael J. Myers
Senior Counsel for Air
Environmental Protection
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 776-2382
michael.myers@ag.ny.gov

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From: Goffman, Joseph <jgoffman@law.harvard.edu>
Sent: Wednesday, October 16, 2019 3:34 PM
To: Myers, Michael <Michael.Myers@ag.ny.gov>
Subject: Re: alternative call times

[EXTERNAL]

I think I could do 11-11:45 on Thursday and 3-4. Tuesday better, but these times on Thursday
could work. Thanks.

On Oct 17, 2019, at 12:57 PM, Myers, Michael <Michael.Myers@ag.ny.gov> wrote:

Joe, would you be available Tuesday 10/22 at 2 for the call?

FOIL G000176-030920

Michael J. Myers -- New York State Office of the Attorney General -
Senior Counsel for Air Pollution and Climate Change Litigation
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 776-2382

Options come into focus

- ❖ 11/1 “GHG Calls debrief” call occurs, NJ joins
- ❖ 11/4 Myers outreach to Goffman, who emails Bachmann re connecting w Myers: “You may be able to talk him through the [sic] some NAAQS issues and/or identify others who would be good to talk to”
- ❖ 11/6 Myers call w Bachmann
- ❖ 11/7 Myers/Bachmann followup emails
 - ❖ discuss “people who have made the case for using NAAQS”, “steps needed to actually develop a GHG NAAQS”, “issues in setting the NAAQS” for “CO2 and other GHG”, that “new legislation requiring specific actions would be much better than NAAQS, and yet I’m mindful of the obvious problem of how to get such legislation even with a new administration”, and that CBD article is compelling that “there are reasons to push a GHG NAAQS approach other than an intent to actually do one” (article argues that even losing NAAQS in court might nonetheless erode oil cos. nuisance defense)
 - ❖ Myers cites CBD Georgetown Enviro Law Review article as the most recent “on the topic” (article topic is GHG NAAQS)
 - ❖ Arrange 11/18 call for Bachmann to brief “state folks”
- ❖ 11/15 Myers describes Bachmann call as “GHG call Monday”
- ❖ 11/17 Bachmann emails Myers about direct approach of CO2 NAAQS and secondary for ozone, “We can test run a GHG NAAQS now...” (ellipses in original)
- ❖ 11/17 Myers forwards Bachmann slides, “ClimateNAAQS.ppt”, to AGOs
- ❖ 11/17 Novick changes Subject field of Bachmann thread to read “GHG NAAQS — Structure of the discussion tomorrow at 3”
- ❖ 11/18 AGs/Bachmann have “NAAQS call”
- ❖ 11/19 Myers emails Goffman, *inter alia*: “Had a very good conversation with John Bachmann yesterday”

-----Original Appointment-----

From: Novick Steve <Steve.Novick@doj.state.or.us>

FOIL G000176-030920 001357

Sent: Tuesday, October 29, 2019 6:40 PM

e Office of the Attorney General -

To: Novick Steve; Elaine Meckenstock; Jonathan Wiener; Kavita Lesser; Costello, Morgan; Megan Herzog; Courchesne, Christophe (AGO) (Christophe.Courchesne@MassMail.State.MA.US); Garrahan Paul; Myers, Michael

Subject: GHG calls debrief

When: Friday, November 1, 2019 11:00 AM-12:00 PM (UTC-08:00) Pacific Time (US & Canada).

Where: Dial 888-270-9936, code [REDACTED]

[EXTERNAL]

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Early November

To: Goffman, Joseph[jgoffman@law.harvard.edu] - New York State Office of the Attorney General -
From: Myers, Michael[Michael.Myers@ag.ny.gov] - New York State Office of the Attorney General -
(FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CCC36034A08E4A41889E169996E3736B-EPAMJM]
Sent: Mon 11/4/2019 2:58:53 PM (UTC-05:00)
Subject: RE: alternative call times

Joe, was wondering if you could provide some contact info for the EPN folks you mentioned in our call on 10/22 would be good for us to follow up with. I wrote down one of the names as John Bachman. Thanks.--Mike

Michael J. Myers
Senior Counsel for Air Pollution and Climate Change Litigation
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 776-2382
michael.myers@ag.ny.gov

From: Goffman, Joseph <jgoffman@law.harvard.edu>
Sent: Thursday, October 17, 2019 1:25 PM
To: Myers, Michael <Michael.Myers@ag.ny.gov>
Subject: Re: alternative call times

Yes. Thanks

Sent from my iPhone

To: Myers, Michael[Michael.Myers@ag.ny.gov] - New York State Office of the Attorney General -
From: Goffman, Joseph[jgoffman@law.harvard.edu]
Sent: Mon 11/4/2019 3:39:29 PM (UTC-05:00)
Subject: Re: alternative call times

It's Bachmann, with two "n"s. I would definitely start with him. Want me to connect you?

Sent from my iPhone

On Nov 4, 2019, at 2:58 PM, Myers, Michael <Michael.Myers@ag.ny.gov> wrote:

Joe, was wondering if you could provide some contact info for the EPN folks you mentioned in our call on 10/22 would be good for us to follow up with. I wrote down one of the names as John Bachman. Thanks.--Mike

Michael J. Myers
Senior Counsel for Air Pollution and Climate Change Litigation
Environmental Protection Bureau
New York State Attorney General
The Capitol

e Office of the Attorney General -

To: johnbachmann@bellsouth.net
From: Goffman, Joseph[jgoffman@law.harvard.edu]
Sent: Mon 11/4/2019 4:03:50 PM (UTC-05:00)
Subject: Connect you with NY AG/Mike Myers?

[EXTERNAL]

Would you be willing to have me share your contact info with him? You may be able to help him think through the some NAAQS issues and/or identify others who would be good to talk to. Thanks

Sent from my iPhone

>> -----Original Message-----
>> From: John Bachmann [mailto:]
>> Sent: Monday, November 4, 2019 4:55 PM
>> To: Goffman, Joseph <jgoffman@law.harvard.edu>
>> Subject: Re: Connect you with NY AG/Mike Myers?
>>
>> He's in the Environmental part of the AG's office? If you think I can help, sure.
>>
>>> On Nov 4, 2019, at 4:03 PM, Goffman, Joseph <jgoffman@law.harvard.edu> wrote:
>>>
>>> Would you be willing to have me share your contact info with him? You
>>> may be able to help him think through the some NAAQS issues and/or
>>> identify others who would be good to talk to. Thanks

FOIL APPEAL G000176 000003

>>>
>>> Sent from my iPhone

>>
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>>
>

<CBD law review article.pdf>

> -----Original Message-----
> From: John Bachmann
> Sent: Tuesday, November 5, 2019 4:36 PM
> To: Myers, Michael <Michael.Myers@ag.ny.gov>
> Subject: Re: Connect you with NY AG/Mike Myers?
>
> I'd be honored to talk tomorrow. Because almost no meeting ends on time how about 3:15 tomorrow, aka Wed? I have your number and will plan to call then, unless I get a note from you otherwise. My number is .
>
> John Bachmann
> Chapel Hill, NC
>
>> On Nov 5, 2019, at 3:42 PM, Myers, Michael <Michael.Myers@ag.ny.gov> wrote:
>>
>> Thanks Joe. John, would you have a few minutes tomorrow to touch base? I'm free 10-12 and 3-5.
>>
>> Michael J. Myers
>> Senior Counsel for Air Pollution and Climate Change Litigation
>> Environmental Protection Bureau New York State Attorney General The
>> Capitol Albany, NY 12224
>> (518) 776-2382
>> michael.myers@ag.ny.gov
>>
>> -----Original Message-----
>> From: Goffman, Joseph <jgoffman@law.harvard.edu>
>> Sent: Monday, November 4, 2019 5:17 PM
>> To: John Bachmann <johnbachmann@bellsouth.net>
>> Cc: Myers, Michael <Michael.Myers@ag.ny.gov>
>> Subject: RE: Connect you with NY AG/Mike Myers?
>>
>> [EXTERNAL]
>>
>> Introducing John and Mike. Thanks.
>>
>> Joseph Goffman | Executive Director
>> Harvard Law School | Environmental and Energy Law Program
>> 6 Everett Street, Suite 4121 | Cambridge, MA 02138
>> | jgoffman@law.harvard.edu
>> Twitter: @JosephGoffman
>>

From: John Bachmann
Sent: Thursday, November 7, 2019 11:07 AM
To: Myers, Michael <Michael.Myers@ag.ny.gov>
Subject: Re: Connect you with NY AG/Mike Myers?

[EXTERNAL]

Same here Mike. I am available 11/18 3-4 EST.

I found some other reading to do on the topic besides EPA's 2008 piece, and if you have any ready examples of people who have made the case for using NAAQS in writing, I'd appreciate it.

John B.

FYI, my NAAQS history

> On Nov 7, 2019, at 8:59 AM, Myers, Michael <Michael.Myers@ag.ny.gov> wrote:
>
> John, nice to make your acquaintance and chat a bit. Re. a follow up call, looks like 11/18 from 3-4 eastern works for the state folks. Can you confirm your availability at that date and time? I will send out a calendar invite once we have firmed up the date and time. Thanks.--Mike
>
> Michael J. Myers
> Senior Counsel for Air Pollution and Climate Change Litigation
> Environmental Protection Bureau
> New York State Attorney General
> The Capitol

> Albany, NY 12224
> (518) 776-2382
> michael.myers@ag.ny.gov
>

FOIL APPEAL G000176 000002

On Nov 7, 2019, at 11:23 AM, Myers, Michael <Michael.Myers@ag.ny.gov> wrote:

Thanks John. See the attached. There have been other scholarly publications on the topic, but this is the most recent one as far as I know. Look forward to talking with you on 11/18. I'll send out an invite in a minute.

Michael J. Myers
Senior Counsel for Air Pollution and Climate Change Litigation
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 776-2382
michael.myers@ag.ny.gov

From: John Bachmann [REDACTED]
Sent: Thursday, November 7, 2019 11:07 AM
To: Myers, Michael <Michael.Myers@ag.ny.gov>
Subject: Re: Connect you with NY AG/Mike Myers?

[EXTERNAL]

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John B.

FYI, my NAAQS history

> On Nov 7, 2019, at 8:59 AM, Myers, Michael <Michael.Myers@ag.ny.gov> wrote:

>

> John, nice to make your acquaintance and chat a bit. Re. a follow up call, looks like 11/18 from 3-4 eastern works for the state folks. Can you confirm your availability at that date and time? I will send out a calendar invite once we have firmed up the date and time. Thanks.--Mike

>

> Michael J. Myers
> Senior Counsel for Air Pollution and Climate Change Litigation
> Environmental Protection Bureau
> New York State Attorney General
> The Capitol

FOIL G000176-030920 001319

> Albany, NY 12224
> (518) 776-2382
> michael.myers@ag.ny.gov

>

> -----Original Message-----

> From: John Bachmann [REDACTED]
> Sent: Tuesday, November 5, 2019 4:36 PM
> To: Myers, Michael <Michael.Myers@ag.ny.gov>
> Subject: Re: Connect you with NY AG/Mike Myers?

>

> I'd be honored to talk tomorrow. Because almost no meeting ends on time how about 3:15 tomorrow, aka Wed? I have your number and will plan to call then, unless I get a note from you otherwise. My number is [REDACTED].

To: John Bachmann [REDACTED] e Office of the Attorney Gen
Sent: Thur 11/7/2019 11:23:30 AM (UTC-05:00)
Subject: RE: Connect you with NY AG/Mike Myers?
[REDACTED]

Thanks John. See the attached. There have been other scholarly publications on the topic, but this is the most recent one as far as I know. Look forward to talking with you on 11/18. I'll send out an invite in a minute.

Michael J. Myers
Senior Counsel for Air Pollution and Climate Change Litigation
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 776-2382
michael.myers@ag.ny.gov

From: John Bachmann [REDACTED]
Sent: Thursday, November 7, 2019 11:07 AM
To: Myers, Michael <Michael.Myers@ag.ny.gov>
Subject: Re: Connect you with NY AG/Mike Myers?

[EXTERNAL]

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> Michael J. Myers
> Senior Counsel for Air Pollution and Climate Change Litigation
> Environmental Protection Bureau
> New York State Attorney General
> The Capitol
> Albany, NY 12224
> (518) 776-2382
> michael.myers@ag.ny.gov

>

> -----Original Message-----

> From: John Bachmann [REDACTED]
> Sent: Tuesday, November 5, 2019 4:36 PM
> To: Myers, Michael <Michael.Myers@ag.ny.gov>
> Subject: Re: Connect you with NY AG/Mike Myers?

>

On Nov 7, 2019, at 11:23 AM, Myers, Michael <Michael.Myers@ag.ny.gov> wrote:

Thanks John. See the attached. There have been other scholarly publications on the topic, but this is the most recent one as far as I know. Look forward to talking with you on 11/18. I'll send out an invite in a minute.

Michael J. Myers
Senior Counsel for Air Pollution and Climate Change Litigation
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 776-2382
michael.myers@ag.ny.gov

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To: M
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>
<CBD law review article.pdf>

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>
> Johr
for the
have firmed up the date and time. Thanks.--Mike
>
> Michael J. Myers
> Senior Counsel for Air Pollution and Climate Change Litigation
> Environmental Protection Bureau
> New York State Attorney General
> The Capitol

> Albany, NY 12224
> (518) 776-2382
> michael.myers@ag.ny.gov
>
> -----Original Message-----
> From: John Bachmann
> Sent: Tuesday, November 5, 2019 4:36 PM
> To: Myers, Michael <Michael.Myers@ag.ny.gov>
> Subject: Re: Connect you with NY AG/Mike Myers?

e Office of the Attorney Gen

ARTICLES

Returning to Clean Air Act Fundamentals: A Renewed Call to Regulate Greenhouse Gases Under the National Ambient Air Quality Standards (NAAQS) Program

HOWARD M. CRYSTAL*, KASSIE SIEGEL**, MAYA GOLDEN-KRASNER***, AND CLARE LAKEWOOD****

TABLE OF CONTENTS

Introduction 234

I. The Climate Crisis and the EPA’s Responses to Date 242

 A. The Climate Crisis 242

 B. The EPA’s Efforts to Address the Climate Crisis to Date: Some Steps Forward, and Now Backward 245

 1. The Obama EPA’s Greenhouse Gas Regulations 245

 a. The Clean Power Plan 245

 b. Challenges to the Clean Power Plan 248

 c. The EPA’s Limited Progress Regulating Greenhouse Gas Emissions from Other Stationary Source Sectors 249

 d. The EPA’s Progress Regulating Greenhouse Gases from Mobile Sources 251

 2. De-regulating Greenhouse Gases under the Trump Administration: (Roll)Back to the Future 252

 a. Affordable Clean Energy Rule and Oil and Gas Regulation Roll-backs 252

 b. Roll-backs of Mobile Source Regulations 253

* Senior Attorney, Center for Biological Diversity Climate Law Institute and Professorial Lecturer in Law, George Washington University Law School. Georgetown University Law Center, J.D. 1993. The authors thank Lisa Heinzerling, Sean Hecht, Kevin Bundy, and Shaye Wolf for their valuable insight and thoughtful feedback. © 2019, Howard M. Crystal, Kassie Siegel, Maya Golden-Krasner, Clare Lakewood.

** Director, Center for Biological Diversity Climate Law Institute. University of California at Berkeley, School of Law, J.D. 2000.

*** Deputy Director, Center for Biological Diversity Climate Law Institute and Lecturer in Law, University of California, Los Angeles, School of Law. University of California, Los Angeles, School of Law, J.D. 2001.

**** Senior Attorney, Center for Biological Diversity Climate Law Institute. University of Melbourne Law School, L.L.M. 2014; University of Western Australia Law School, L.L.B. 2007.

DON'T SPEAK: It almost seems like Joe Biden just doesn't want to say the words "Green New Deal."

Why might that be?

- 1. He doesn't want Republicans to slam him as supporting the Green New Deal and
- 2. He doesn't want to commit to doing everything the left wants him to.

"The difference between me and the new Green Deal: they say automatically by 2030, we're going to be carbon-free. Not possible," Biden said in last night's town hall, reminding Josh of this classic Dr. Dre song.

Biden added, "The New Green Deal calls for elimination of all non-renewable energy by 2030. You can't get there."

The official Green New Deal resolution doesn't say that, as Josh noted last night, but Biden was likely referring to other iterations of the plan.

As smart tweeters noted, an infamous FAQ posted online by Rep. Alexandria Ocasio-Cortez' office called for a 10-year mobilization to "jumpstart the complete transition of our society away from fossil fuels to renewable energy." A "Green New Deal"-style campaign plan by Biden's rival, Bernie Sanders, called for 100% renewables by 2030.

Brett Hartl, chief political strategist of the Center for Biological Diversity Action Fund, who was critical of Biden's plans in the past, said the Democratic nominee is walking the line appropriately.

"He's trying to highlight his own plan, and create some distance between the more infeasible aspects of the Green New Deal," Hartl said. "Either way, it's night and day between him and Trump, whose climate plan is apparently to plant a trillion trees with no money."

One of the arguments against a greenhouse gas NAAQS concerns the statutory requirement that the EPA establish a deadline for the "attainment" of a primary NAAQS in no longer than ten years.²⁰ A ten-year deadline is currently impossible for greenhouse gases because they are long-lived in the atmosphere, and thus will take much longer than ten years to reduce to safe concentration levels. But the NAAQS program also has a separate provision for imposing secondary standards as necessary to protect "public welfare."²¹ This provision not only contains no strict deadline, it expressly calls on the EPA to take into account effects on "climate."²² The Court's treatment of "anyway sources" in *UARG* thus suggests a path by which the EPA could impose a secondary NAAQS, even if it were determined that the Agency does not have the authority to impose a primary standard.

Sixth, in 2015 the United States and the international community, under the auspices of the United Nations Framework Convention on Climate Change, entered into the Paris Agreement, which commits participating nations to taking

17. EPA v. EME Homer City Generation, L.P., 134 S. Ct. 1584, 1607 (2014).

18. *UARG v. EPA*, 134 S. Ct. 2457 (2014).

BEFORE THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

PETITION TO ESTABLISH NATIONAL POLLUTION LIMITS FOR
GREENHOUSE GASES PURSUANT TO THE CLEAN AIR ACT



Smokestacks by Philip J. Redman, USGS; polar bear © Thomas D. Mangelsen/Imagesofnaturestock.com; Times Square © Shadia Fayne Wood

Center for Biological Diversity
350.org
Petitioners

December 2, 2009

pollutant emissions.¹⁹

One of the arguments against a greenhouse gas NAAQS concerns the statutory requirement that the EPA establish a deadline for the “attainment” of a primary NAAQS in no longer than ten years.²⁰ A ten-year deadline is currently impossible for greenhouse gases because they are long-lived in the atmosphere, and thus will take much longer than ten years to reduce to safe concentration levels. But the NAAQS program also has a separate provision for imposing *secondary* standards as necessary to protect “public welfare.”²¹ This provision not only contains no strict deadline, it expressly calls on the EPA to take into account effects on “climate.”²² The Court’s treatment of “anyway sources” in *UARG* thus suggests a path by which the EPA could impose a *secondary* NAAQS, even if it were determined that the Agency does not have the authority to impose a primary standard.

Sixth, in 2015 the United States and the international community, under the auspices of the United Nations Framework Convention on Climate Change, entered into the Paris Agreement, which commits participating nations to taking

19. EPA, *IMPLEMENTING CLEAN AIR ACT REQUIREMENTS* 104 (2001).

reduce emissions of listed pollutants are beyond the scope of this Article, the salient point is that the NAAQS program activates the widest possible approach to tackling these emissions with maximum flexibility to choose those measures, across multiple sectors, which will allow each state to achieve SIP emission reduction requirements.¹³³

Importantly for purposes of envisioning a greenhouse gas NAAQS, the Clean Air Act also requires that each SIP address pollution that crosses state lines.

necessary to “protect the public welfare”¹²²—expressly defined to include, *inter alia*, “effects on soil, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate”¹²³—from the adverse effects of “such air pollutants in the ambient air.”¹²⁴ The EPA is not permitted to consider cost in determining the standards necessary to protect public health or welfare.¹²⁵

Once the primary and secondary NAAQS have been established, the EPA, with input from the states, must designate geographic areas of the nation as being in “attainment”—that is, areas that meet the “national primary or secondary ambient air quality standard for the pollutant”—or “nonattainment”—that is, areas that do *not* meet one or both of those standards.¹²⁶ This process may take up to three years to complete.¹²⁷

For areas designated as nonattainment, the EPA is required to determine the dates by which attainment can be achieved.¹²⁸ With respect to a primary air quality standard, the Act provides that **ten years** is the longest period that may be provided for reaching attainment.¹²⁹ Where an area’s nonattainment designation is with respect to a secondary standard, by contrast, the EPA must choose the date “by which attainment can be achieved as expeditiously as practicable.”¹³⁰ Under the NAAQS program, the states, and their air quality regions, then play the leading role in bringing about compliance with the NAAQS. Once the EPA has made its designations, each state must prepare—within three years—a SIP to obtain “implementation, maintenance and enforcement” of the standards.¹³¹ For nonattainment areas, these plans must include, *inter alia*, “the implementation of all reasonably available control measures as expeditiously as practicable”¹³²

As a practical matter, these broad mandates call for states to take action to reduce emissions on many fronts—from not only power plants, but also commercial and residential buildings, the transportation sector, the agricultural sector and elsewhere. Although the myriad of programs and approaches states may take to

122. *Id.* § 7409(b)(2).
123. *Id.* § 7602(h) (emphasis added).
124. *Id.* § 7409(b)(2).
125. *See, e.g.,* Whitman v. American Trucking Ass’ns, Inc., 531 U.S. 457, 471 (2001). In a recent memorandum, the EPA Administrator sought to weaken this feature of the NAAQS program, characterizing *Whitman* as authorizing the EPA to consider “adverse social, economic, or energy effects” in establishing NAAQS, *see* EPA, Back To Basics Process For Reviewing National Ambient Air Quality Standards, *supra* note 111, an interpretation flatly contrary to the Supreme Court’s ruling in *Whitman*.
126. 42 U.S.C. § 7407(d)(1) (2012).

reduce emissions of listed pollutants are beyond the scope of this Article, the salient point is that the NAAQS program activates the widest possible approach to tackling these emissions with maximum flexibility to choose those measures, across multiple sectors, which will allow each state to achieve SIP emission reduction requirements.¹³³

Importantly for purposes of envisioning a greenhouse gas NAAQS, the Clean Air Act also requires that each SIP address pollution that crosses state lines.

the primary and secondary standards are simply different forms of protection, set out in the statute itself, for regulating the *same* sources. Thus, the fact that Congress chose to direct the EPA to consider two different forms of protection indicates that even were a court to reject the promulgation of a primary standard in this instance, it would still remain within the EPA’s authority to impose the secondary standard.

To be sure, a faithful implementation of even only a secondary standard would still require sweeping changes across the many sectors with significant greenhouse gas emissions. Consequently, opponents are likely to argue that, in light of *UARG* even this more limited approach would go beyond what Congress intended in the NAAQS program.

In *UARG*, the Supreme Court rejected this approach as an impermissible “rewriting of the statutory thresholds,” which must be done by Congress, not by

Whitman concerned the EPA’s revised NAAQS for particulate matter and ozone. Petitioners claimed the EPA was required to consider economic implications when revising NAAQS, and that in any event the NAAQS program constituted an unconstitutional delegation of legislative authority to the EPA.¹⁴⁵ Rejecting both arguments, the Supreme Court unanimously found that the EPA may not consider costs in setting NAAQS, and that the Agency’s power to make NAAQS determinations raises no serious constitutional concerns.¹⁴⁶

This outcome should resolve any similar attack on a greenhouse gas NAAQS. Thus, while establishing and implementing a NAAQS may have far-reaching economic implications, the Court’s ruling in *Whitman* makes clear that Congress gave the EPA precisely that power in the NAAQS program.¹⁴⁷

141. *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427, 2444 (2014).

142. 42 U.S.C. § 7408(a)(1)(B) (1998).

143. It also bears emphasizing that EPA’s *failure* to impose a greenhouse gas NAAQS also has important economic implications, allowing ongoing emissions that inevitably contribute to the devastating economic harms caused by climate change. *See supra* at 243–45.

144. *Whitman v. American Trucking Ass’ns Inc.*, 531 U.S. 457, 471 (2001).

145. *Id.* As the Court explained, where a statute lacks any “intelligible principle” to guide agency action, the statute may be deemed to violate the non-delegation doctrine. *Id.* at 474.

146. *Id.*

147. Importantly, the Court noted that while economic factors are irrelevant to *establishing* NAAQS, the Act provides for “economic costs to be taken into account in *implementing* the air quality standards.” *Id.* at 467 (emphasis added); *see, e.g.*, 42 U.S.C. § 7502(a)(1)(A) (2017) (mandating that, in setting an attainment date, the EPA must consider “the availability and feasibility of the pollution control measures that the Administrator believes may be necessary to provide for attainment”). Thus, for example, while

171. Both the primary and secondary standards require EPA action “as expeditiously as practicable,” but it is the secondary standard that contains no firm deadline. 42 U.S.C. § 7502(a)(2).

172. *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014).

173. The only legislative history that appears to exist concerning secondary standards suggests Congress contemplated that they would be “generally more restrictive” than primary standards, which is consistent with Congress not providing a strict timetable for achieving them. *See ENVIRONMENTAL PROTECTION AGENCY, Legal Compilation: Air, Volume Three*, 1680 (1973).

ARTICLES

Returning to Clean Air Act Fundamentals: A Renewed Call to Regulate Greenhouse Gases Under the National Ambient Air Quality Standards (NAAQS) Program

HOWARD M. CRYSTAL*, KASSIE SIEGEL**, MAYA GOLDEN-KRASNER***, AND CLARE LAKEWOOD****

TABLE OF CONTENTS

Introduction	234
I. The Climate Crisis and the EPA's Responses to Date	242
A. The Climate Crisis	242

At this point, I continue to feel that new legislation requiring specific actions would be much better than NAAQS, and yet I'm mindful of the obvious problem of how to get such legislation even with a new administration. I also agree that in addition to being hopelessly insufficient, the CPP turned out not to be particularly fast. Crystal et al also convinced me there are reasons to push a GHG NAAQS approach other than an intent to actually do one.

> On Nov 17, 2019, at 3:28 PM, Jonathan Wiener <Jonathan.Wiener@doj.ca.gov> wrote:

>

> Privileged & Confidential--subject to CIA

>

> [REDACTED]

[REDACTED]

>

> -----Original Message-----

> From: Novick Steve [mailto:Steve.Novick@doj.state.or.us]

> Sent: Sunday, November 17, 2019 2:30 PM

> To: Daniel.Resler@law.njoag.gov;

> Domenico.StocktonRossini@law.njoag.gov; Jameson.Tweedie@delaware.gov;

> Elaine Meckenstock <Elaine.Meckenstock@doj.ca.gov>; Jonathan Wiener

FOIL G000176-030920 001383

> <Jonathan.Wiener@doj.ca.gov>; Morgan.Costello@ag.ny.gov;

> megan.herzog@state.ma.us; Christophe.Courchesne@MassMail.State.MA.US;

> Kavita Lesser <Kavita.Lesser@doj.ca.gov>

> Cc: Garrahan Paul <Paul.Garrahan@doj.state.or.us>;

> Michael.Myers@ag.ny.gov

> Subject: GHG NAAQS Structure of the discussion tomorrow at 3

>

>

> Folks - see below and attached from Mike. [REDACTED]

>

> Steve Novick

> [REDACTED]

>

>

> Begin forwarded message:

>

> From: "Myers, Michael"

> <Michael.Myers@ag.ny.gov<mailto:Michael.Myers@ag.ny.gov>>

> To: "Novick Steve"

> <Steve.Novick@doj.state.or.us<mailto:Steve.Novick@doj.state.or.us>>,

> "Garrahan Paul"

> <Paul.Garrahan@doj.state.or.us<mailto:Paul.Garrahan@doj.state.or.us>>

> Subject: FW: Structure of the discussion tomorrow at 3

>

> See below and attached [REDACTED]

Organizer: Myers, Michael[Michael.Myers@ag.ny.gov]
From: Myers, Michael[REDACTED]
Attendees: Myers, Michael; Elaine Meckenstock; Jonathan Wiener; Kavita Lesser; Costello, Morgan; Megan Herzog; Courchesne, Christophe (AGO) (Christophe.Courchesne@MassMail.State.MA.US); Garrahan Paul; Steve Novick (OR); John Bachmann; Courchesne, Christophe (AGO); Tweedie, Jameson (DOJ)
Location: Dial 866-394-2346, code [REDACTED]
Importance: Normal
Subject: NAAQS call
Start Time: Mon 11/18/2019 3:00:00 PM (UTC-05:00)
End Time: Mon 11/18/2019 4:00:00 PM (UTC-05:00)
Required Attendees: Myers, Michael; Elaine Meckenstock; Jonathan Wiener; Kavita Lesser; Costello, Morgan; Megan Herzog; Courchesne, Christophe (AGO) (Christophe.Courchesne@MassMail.State.MA.US); Garrahan Paul; Steve Novick (OR); John Bachmann
Optional Attendees: Courchesne, Christophe (AGO); Tweedie, Jameson (DOJ)

From: Myers, Michael[REDACTED]
Attendees: Elaine Meckenstock; Jonathan Wiener; Kavita Lesser; Costello, Morgan; Megan Herzog; Courchesne, Christophe (AGO) (Christophe.Courchesne@MassMail.State.MA.US); Garrahan Paul; Steve Novick (OR); John Bachmann
Location: Dial 866-394-2346, code [REDACTED]
Importance: Normal
Subject: NAAQS call
Start Time: Mon 11/18/2019 3:00:00 PM (UTC-05:00)
End Time: Mon 11/18/2019 4:00:00 PM (UTC-05:00)
Required Attendees: Elaine Meckenstock; Jonathan Wiener; Kavita Lesser; Costello, Morgan; Megan Herzog; Courchesne, Christophe (AGO) (Christophe.Courchesne@MassMail.State.MA.US); Garrahan Paul; Steve Novick (OR); John Bachmann

Required Attendees: Myers, Michael; Elaine Meckenstock; Jonathan Wiener; Kavita Lesser; Costello, Morgan; Megan Herzog; Courchesne, Christophe (AGO) (Christophe.Courchesne@MassMail.State.MA.US); Garrahan Paul; Steve Novick (OR); John Bachmann
Optional Attendees: Courchesne, Christophe (AGO); Tweedie, Jameson (DOJ)

> -----Original Message-----
> From: Novick Steve [mailto:Steve.Novick@doj.state.or.us]
> Sent: Sunday, November 17, 2019 2:30 PM
> To: Daniel.Resler@law.njoag.gov;
> Domenico.StocktonRossini@law.njoag.gov; Jameson.Tweedie@delaware.gov;
> Elaine Meckenstock <Elaine.Meckenstock@doj.ca.gov>; Jonathan Wiener

> <Jonathan.Wiener@doj.ca.gov>; Morgan.Costello@ag.ny.gov;
> megan.herzog@state.ma.us; Christophe.Courchesne@MassMail.State.MA.US;
> Kavita Lesser <Kavita.Lesser@doj.ca.gov>
> Cc: Garrahan Paul <Paul.Garrahan@doj.state.or.us>;
> Michael.Myers@ag.ny.gov
> Subject: GHG NAAQS Structure of the discussion tomorrow at 3

>
>
> Folks - see below and attached from Mike. [REDACTED]
>
> Steve Novick
> [REDACTED]
>
> Begin forwarded message:
>
> From: "Myers, Michael"
> <Michael.Myers@ag.ny.gov<mailto:Michael.Myers@ag.ny.gov>>
> To: "Novick Steve"
> <Steve.Novick@doj.state.or.us<mailto:Steve.Novick@doj.state.or.us>>,
> "Garrahan Paul"
> <Paul.Garrahan@doj.state.or.us<mailto:Paul.Garrahan@doj.state.or.us>>
> Subject: FW: Structure of the discussion tomorrow at 3
>

> Capitol Albany, NY 12224

November 18, 2019

Monday

November 2019							December 2019						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
					1	2	1	2	3	4	5	6	7
3	4	5	6	7	8	9	8	9	10	11	12	13	14
10	11	12	13	14	15	16	15	16	17				
17	18	19	20	21	22	23	22	23	24				
24	25	26	27	28	29	30	29	30	31				

Novick, Garrahan (OR DoJ) Calendars

November 18, 2019

Monday

November 2019							December 2019						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
					1	2	1	2	3	4	5	6	7
3	4	5	6	7	8	9	8	9	10	11	12	13	14
10	11	12	13	14	15	16	15	16	17	18	19	20	21
17	18	19	20	21	22	23	22	23	24	25	26	27	28
24	25	26	27	28	29	30	29	30	31				

	MONDAY
	18
7 AM	
8	
9	filing memo - petitopn friday
10	
11	
12 PM	NAAQS call Dial 866-394-2346, code [REDACTED] Myers, Michael
1	clean office
2	[REDACTED] cancvel tomorrow call - mehew
3	clean office
4	
5	
6	

	MONDAY
	18
	Portland day
7 AM	
8	Private Appointment
9	
10	
11	
12 PM	NAAQS call Dial 866-394-2346, code 4149570819 Myers, Michael
1	
2	
3	

From: John Bachmann <johnbachmann@bellsouth.net>
Sent: Sunday, November 17, 2019 4:46 PM
To: Myers, Michael <Michael.Myers@ag.ny.gov>
Subject: Structure of the discussion tomorrow at 3

[EXTERNAL]

Hello,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

FOIL G000176-030920 001318

[REDACTED]

John Bachmann

PS, I am seriously considering using the recent CASAC draft letter recommending that climate be considered in setting a secondary PM NAAQS as a basis for recommending the same thing for ozone during public comments I'll deliver in person at CASAC's December 5th meeting down here. Ozone is short lived climate forcer, and it would force more attention on methane as a precursor. [REDACTED]

On Nov 7, 2019, at 11:23 AM, Myers, Michael
Thanks John. See the attached. There has been one as far as I know. Look forward to talking

climate forcer, and it would force more attention on methane as a precursor. We can test run a GHG NAAQS right now.....

From: John Bachmann <johnbachmann@bellsouth.net>
Sent: Sunday, November 17, 2019 4:46 PM
To: Myers, Michael <Michael.Myers@ag.ny.gov>
Subject: Structure of the discussion tomorrow at 3

[EXTERNAL]

Hello,

I did some homework for the meeting. I read Crystal et al with interest, took a look at EPA's 2008 ANPR, as well as a piece on use of 115 (I was part of the only attempt to use that one). FYI, I also wrote the first draft of 179B that Crystal offers as a solution to universal non-attainment issue.

I thought it would be helpful to look at the issue as we did back in the day EPA sorting 'new' pollutants or issues that might be regulated under the NAAQS or other sections. The first step was a look at the nature of the problem, and in a perfect world what would the 'technical' solution be - e.g. acid rain - set up a cap and trade program for SOx and NOx. Not a NAAQS. I also took a hard look at the steps needed to actually develop a GHG NAAQS, as well as to implement it, and that meant looking up more technical information on CO2 and other GHG distributions that turned out to be relevant.

I put my main observations and issues on the first page of the attached set of slides. The rest of the slides get more into details that support what is up front. I put more effort in developing the time and issues in setting the NAAQS than on details of implementation. Crystal is more sanguine about coming up with a US cumulative budget than I suspect is possible given the range of possibilities, but it would take me more time to dig into that - and it would be facilitated by discussing some of that with known experts on developing such budgets - something you would not want me to do at this stage.

I thought it might be helpful if, after introductions, I could start by going through that first page. I also think it would be good if everyone had a copy of the entire set of slides attached. It's possible some of the background material might be helpful in responding to questions.

At this point, I continue to feel that new legislation requiring specific actions would be much better than NAAQS, and yet I'm mindful of the obvious problem of how to get such legislation even with a new administration. I also agree that in addition to being hopelessly insufficient, the CPP turned out not to be particularly fast. Crystal et al also convinced me there are reasons to push a GHG NAAQS approach other than an intent to actually do one.

FOIL APPEAL G000176 000001

Let me know how you want to proceed in terms of sending materials ahead of time and starting with the one pager followed by questions.

John Bachmann

PS, I am seriously considering using the recent CASAC draft letter recommending that climate be considered in setting a secondary PM NAAQS as a basis for recommending the same thing for ozone during public comments I'll deliver in person at CASAC's December 5th meeting down here. Ozone is short lived climate forcer, and it would force more attention on methane as a precursor. We can test run a GHG NAAQS right now.....

To: Myers, Michael[Michael.Myers@ag.ny.gov] e Office of the Attorney General -
From: Goffman, Joseph[jgoffman@law.harvard.edu]
Sent: Tue 11/19/2019 6:03:28 PM (UTC-05:00)
Subject: RE: quick Q

[EXTERNAL]

I'm afraid it's mostly from memory. Last time I looked at the database was in 2010, when I ***think*** I saw only (b)-based floors.

Joseph Goffman | Executive Director
Harvard Law School | **Environmental and Energy Law Program**
6 Everett Street, Suite 4121 | Cambridge, MA 02138
[REDACTED] | jgoffman@law.harvard.edu
Twitter: [@JosephGoffman](https://twitter.com/JosephGoffman)

From: Myers, Michael [mailto:Michael.Myers@ag.ny.gov]
Sent: Tuesday, November 19, 2019 4:56 PM
To: Goffman, Joseph <jgoffman@law.harvard.edu>
Subject: quick Q

Hey Joe, I had a quick question about one aspect of the ACE rule paper. In Section E, in which you discuss EPA's attempt to link sections 111 and 165, it states on p. 15 that "EPA has issued dozens of NSPS under subsection 111(b), and only these 111(b) standards have served as the floor for BACT in innumerable individual source permits under section 165." Did that conclusion come from your own experience with those programs or from a review of permitting decisions (maybe RACT/BACT/LAER database)? Thanks and hope you're well.

Had a very good conversation with John Bachmann yesterday.--Mike

Michael J. Myers
Senior Counsel for Air Pollution and Climate Change Litigation
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 776-2382
michael.myers@ag.ny.gov

IMPORTANT NOTICE: This e-mail, including any attachments, may be confidential, privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

ENERGY POLICY ADVOCATES, a
Washington nonprofit
corporation,

Plaintiff,

vs.

STATE ATTORNEY GENERAL'S
OFFICE, an agency of
Washington State,

Defendant.

NO. 20-2-01433-34

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on October 16, 2020,
the above-entitled and numbered cause came on for a
merits hearing before the HONORABLE CHRIS LANESE, judge
of Thurston County Superior Court, Olympia, Washington.

Cheri L. Davidson
Official Court Reporter
Thurston County Superior Court
Olympia, Washington 98502
(360)786-5570
davidsc@co.thurston.wa.us

still being done on it. I mean, all of these records
here, we have evidence that -- well, they're quite
recent, the email I believe from the very beginning,
or excuse me, the very end of last year.

Let's see. The Attorney General's Office has
properly redacted the specific work product. We did
not redact work -- or information that wasn't work
product. The information was created and the
information that we redacted was created in
anticipation of potential affirmative litigation. It
discusses and analyzes the potential affirmative

DEFENDANT'S ARGUMENT

Merits Hearing - October 16, 2020

litigation, and it contains substan
you know, related to what the parti
Specific to the PowerPoint slides
withheld, those contain substantive
response to an inquiry from one of
interest states. Mr. Bachman, who
the email string below and who crea
slide, is a consulting expert, and
client. We don't need to have an a
relationship for the work product p
attach. We have not argued attorne
we're noting is that he's a consult
working potentially with the State
information to the State, and that

we're noting is that he's a consulting expert that's
working potentially with the State or providing some
information to the State, and that information the
department of justice from Oregon determined was, you
know, relevant to what they were discussing and so
forwarded that specific PowerPoint to our office
specifically related to discussing and analyzing the
potential litigation. You know, Bachman wasn't on
that email. That email was just between common
interest parties or, you know, within the common
interest, and requiring the Attorney General's Office
to reveal information in such a manner would hinder
future open discussions and really inhibit our
ability to participate in these multi-state

DEFENDANT'S ARGUMENT

Further Steps

- ❖ 12/6 OR DoJ forwards “ClimateNAAQS.ppt” to WA AGO
- ❖ 12/10 Bachmann followup w Myers on his outreach to “some EPA veterans involved in the ANPR who had some useful thoughts on the process and views on the issues” during the “2008 ANPR on GHG NAAQS”, and “the effects of climate in the review of the secondary standard for ozone”
- ❖ 12/11 Bachmann forwards Ketcham-Colwills’ 12/3 email, Subject: “Draft note on NAAQS lawyers and EPA GHG ANPR 2008 info”
 - ❖ Bachmann writes Myers, “They had thoughts on some retired EPA lawyers and I've left a message with probably the best one for your purpose”, “a NAAQS for GHG” and “bigger issue is picking a GHG level that doesn't create widespread non-attainment” which “might be messy” *a la* PSD
- ❖ 12/17 Myers passes baton of liaising with Ex-EPAers back to Novick
- ❖ 12/19 OR DoJ corresponds w Ketcham-Colwills re GHG NAAQS; Ketcham-Colwill says CO2 NAAQS was career highlight but “Bushies shat all over it”

December

Source: WA OAG



GAO GOVERNMENT ACCOUNTABILITY & OVERSIGHT

Rose-Johnston, Tanya M (ATG)

From: Novick Steve <Steve.Novick@doj.state.or.us>
Sent: Friday, December 6, 2019 10:39 AM
To: Watson, Laura J (ATG)
Subject: Bachmann
Attachments: ClimateNAAQS.ppt

CONFIDENTIAL – PROTECTED BY COMMON INTEREEST PRIVILEGE

[Redacted]

Steve Novick
Special Assistant Attorney General| Natural Resources Section | General Counsel Division
Oregon Department of Justice
100 SW Market, Portland OR 97201
971-673-1891 (Direct)
971-719-1377 (Mobile)

From: Myers, Michael [mailto:Michael.Myers@ag.ny.gov]
Sent: Sunday, November 17, 2019 2:03 PM
To: Novick Steve; Garrahan Paul
Subject: FW: Structure of the discussion tomorrow at 3

[Redacted] Thanks.

Michael J. Myers
Senior Counsel for Air Pollution and Climate Change Litigation
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 776-2382
michael.myers@ag.ny.gov

From: John Bachmann <johnbachmann@bellsouth.net>
Sent: Sunday, November 17, 2019 4:46 PM
To: Myers, Michael <Michael.Myers@ag.ny.gov>
Subject: Structure of the discussion tomorrow at 3

[EXTERNAL]

Hello,

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

John Bachmann

[Redacted]

On Nov 7, 2019, at 11:23 AM, Myers, Michael

[Redacted]

Thanks John

[Redacted]

Michael J. Myers
Senior Counsel for Air Pollution and Climate Change Litigation
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 776-2382
michael.myers@ag.ny.gov

From: John Bachmann <johnbachmann@bellsouth.net>
Sent: Thursday, November 7, 2019 11:23 AM
To: Myers, Michael <Michael.Myers@ag.ny.gov>
Subject: Re: Connect you with NY AG

[EXTERNAL]

Same here Mike. I am available 11/

John B.

FYI, my NAAQS history

> On Nov 7, 2019, at 8:59 AM, Myers, Michael

>
> John, nice to make your acquaintance. I work for the
eastern works for the state folks. Can I send you
out a calendar invite once we have finalized the
>

> Michael J. Myers
> Senior Counsel for Air Pollution and Climate Change Litigation
> Environmental Protection Bureau
> New York State Attorney General
> The Capitol
> Albany, NY 12224
> (518) 776-2382
> michael.myers@ag.ny.gov

> -----Original Message-----

> From: John Bachmann <johnbachmann@bellsouth.net>
> Sent: Tuesday, November 5, 2019 4:55 PM
> To: Myers, Michael <Michael.Myers@ag.ny.gov>
> Subject: Re: Connect you with NY AG

> I'd be honored to talk tomorrow. Because almost no meeting ends on time how about 3:15 tomorrow, aka Wed? I have your number and will plan to call then, unless I get a note from you otherwise. My number is 919 619-0769.

>
> John Bachmann
> Chapel Hill, NC

>> On Nov 5, 2019, at 3:42 PM, Myers, Michael <Michael.Myers@ag.ny.gov> wrote:

>>
>> Thanks Joe. John, would you have a few minutes tomorrow to touch base? I'm free 10-12 and 3-5.

>>
>> Michael J. Myers
>> Senior Counsel for Air Pollution and Climate Change Litigation
>> Environmental Protection Bureau New York State Attorney General The
>> Capitol Albany, NY 12224
>> (518) 776-2382

>> michael.myers@ag.ny.gov

>>
>> -----Original Message-----
>> From: Goffman, Joseph <jgoffman@law.harvard.edu>
>> Sent: Monday, November 4, 2019 5:17 PM
>> To: John Bachmann <johnbachmann@bellsouth.net>
>> Cc: Myers, Michael <Michael.Myers@ag.ny.gov>
>> Subject: RE: Connect you with NY AG/Mike Myers?

>> [EXTERNAL]

>> Introducing John and Mike. Thanks.

>>
>> Joseph Goffman | Executive Director
>> Harvard Law School | Environmental and Energy Law Program
>> 6 Everett Street, Suite 4121 | Cambridge, MA 02138
>> 202.746 4693 | jgoffman@law.harvard.edu
>> Twitter: @JosephGoffman

>> -----Original Message-----

>> From: John Bachmann [mailto:johnbachmann@bellsouth.net]
>> Sent: Monday, November 4, 2019 4:55 PM
>> To: Goffman, Joseph <jgoffman@law.harvard.edu>
>> Subject: Re: Connect you with NY AG/Mike Myers?

>> He's in the Environmental part of the AG's office? If you think I can help, sure.

December

To: John Bachmann [REDACTED]
From: Myers, Michael [REDACTED]
Sent: Tue 12/10/2019 11:20:51 AM (UTC-05:00)
Subject: RE: I haven't forgotten...

Thanks John

Michael J. Myers
Senior Counsel for Air Pollution and Climate Change Litigation
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 776-2382
michael.myers@ag.ny.gov

From: John Bachmann [REDACTED]
Sent: Tuesday, December 10, 2019 8:38 AM
To: Myers, Michael <Michael.Myers@ag.ny.gov>
Subject: I haven't forgotten...

Not privileged, unredacted on appeal

[EXTERNAL]

Fyi, I did follow up with comments to CASAC last week on recommendations to consider the effects of climate in the review of the secondary standard for ozone. It's a bit in code as I'm playing off the CASAC draft letter that recommends an analysis in EPA's policy assessment for particulate matter.

Available here:

John B.

To: John Bachmann [REDACTED]
From: Myers, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CCC36034A08E4A41889E169996E3736B-EPAMJM]
Sent: Tue 12/10/2019 11:20:51 AM (UTC-05:00)
Subject: RE: I haven't forgotten...

Thanks John

Michael J. Myers
Senior Counsel for Air Pollution and Climate Change Litigation
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 776-2382
michael.myers@ag.ny.gov

From: John Bachmann [REDACTED]
Sent: Tuesday, December 10, 2019 8:38 AM
To: Myers, Michael <Michael.Myers@ag.ny.gov>
Subject: I haven't forgotten...

[EXTERNAL]

I found some EPA veterans involved in the ANPR who had some useful thoughts on the process and views on the issues back then (I'm asking for permission to send them to you directly). They had recommendations on former OGC lawyers and I'm going to follow up to see if any of them would be willing to talk - I have an order in mind in terms of implementation issues and I'll start with the most likely to be of help. I only used your name and NY in talking to the two EPA veterans so far - interestingly both of them are now working with another group on the Section 115 option, and I may get dragged into that.

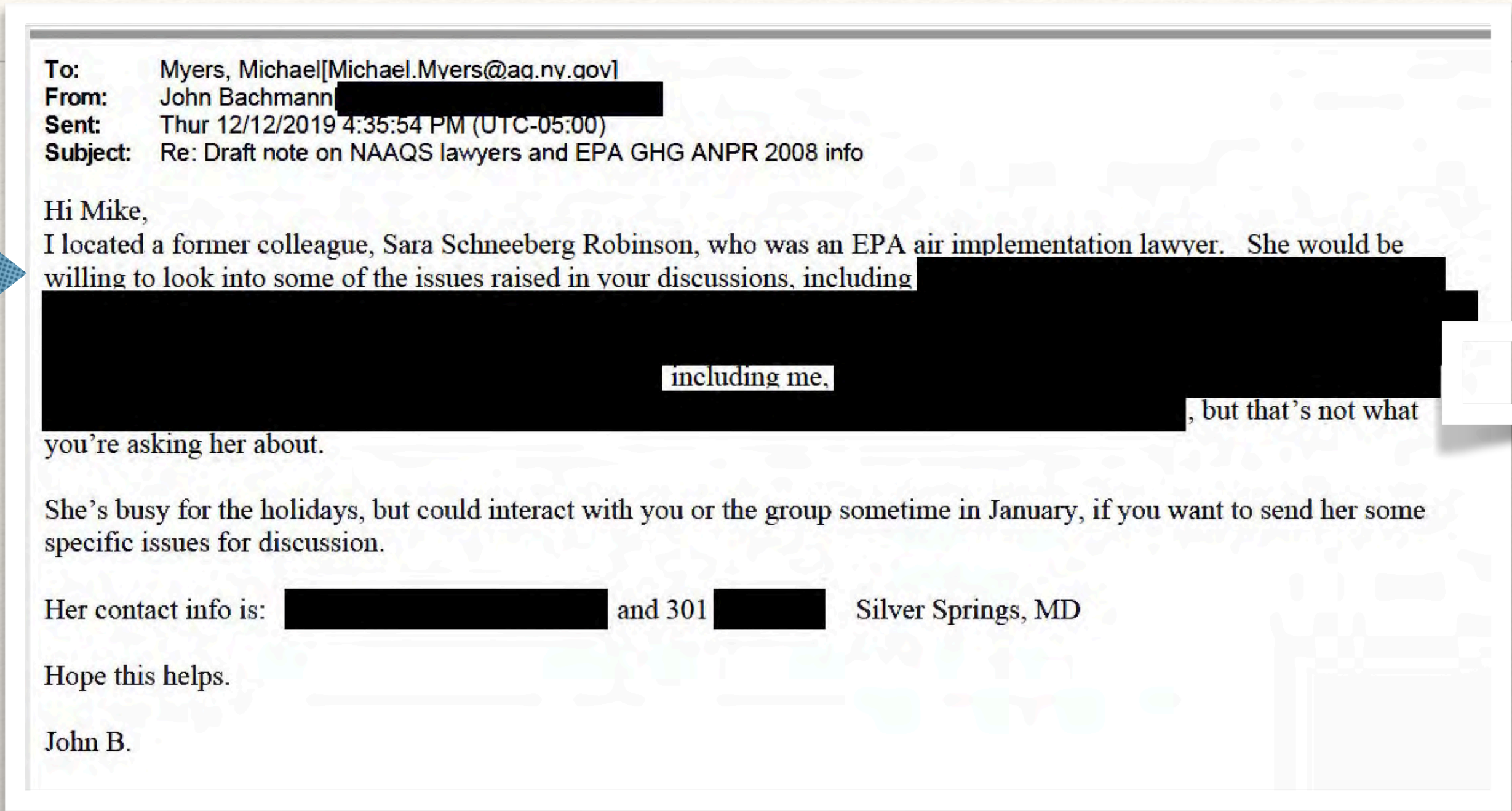
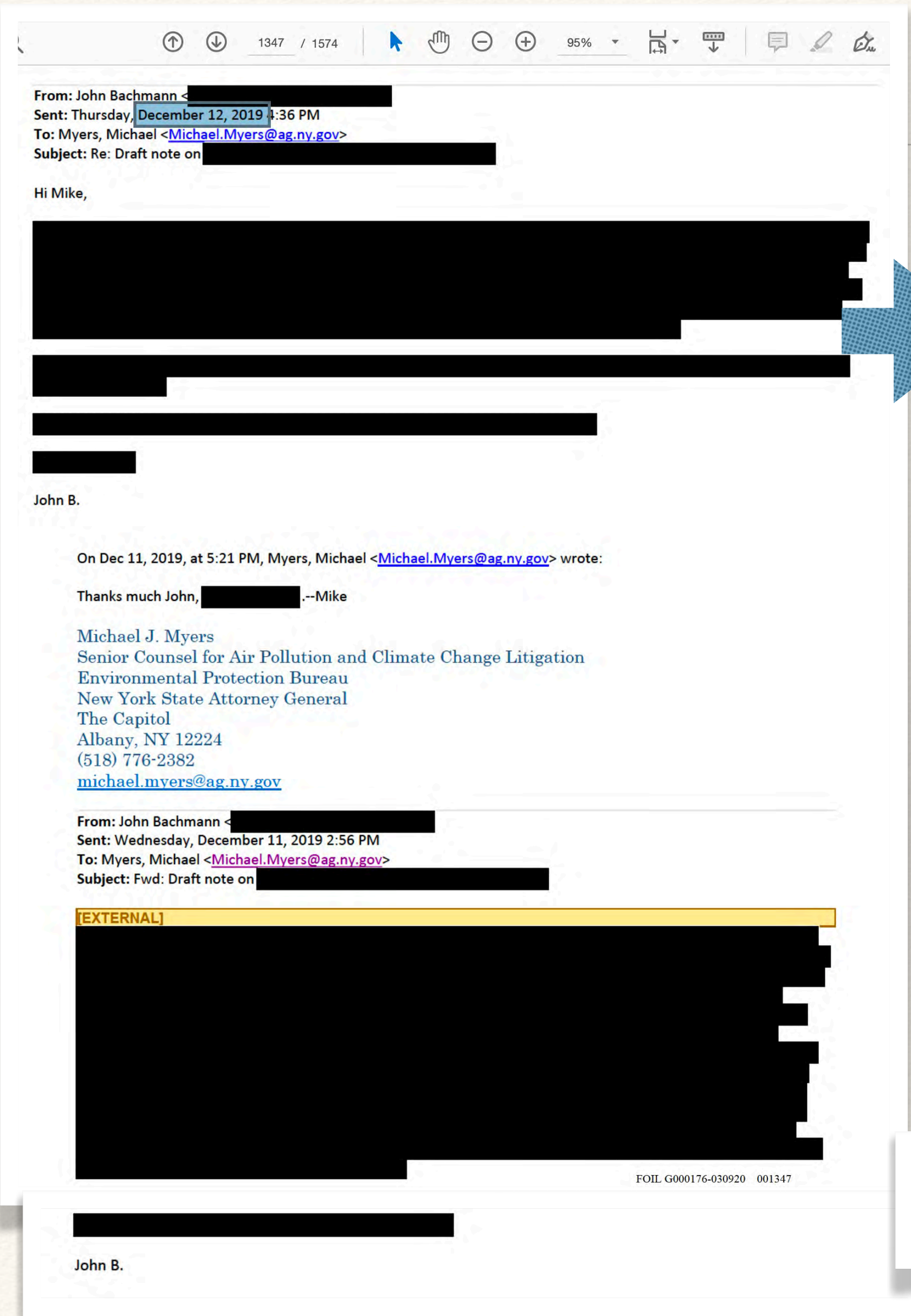
Fyi, I did follow up with comments to CASAC last week on recommendations to consider the effects of climate in the review of the secondary standard for ozone. It's a bit in code as I'm playing off the CASAC draft letter that recommends an analysis in EPA's policy assessment for particulate matter.

Available here:

[https://yosemite.epa.gov/sab/sabproduct.nsf/069F7DE6E6AB9573852584CB005F0D6B/\\$File/Presentation+and+comments+of+John+Bachmann+draft+ozone+PA+5+December+2019.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/069F7DE6E6AB9573852584CB005F0D6B/$File/Presentation+and+comments+of+John+Bachmann+draft+ozone+PA+5+December+2019.pdf)

John B.

December 12: Bachmann notes further success in recruiting Ex-EPA to help



Still not privileged

This, too, is not privileged, unredacted on appeal. See next slide

From: John Bachmann [REDACTED]
Sent: Wednesday, December 11, 2019 2:56 PM
To: Myers, Michael <Michael.Myers@ag.ny.gov>
Subject: Fwd: Draft note on NAAQS lawyers and EPA GHG ANPR 2008 info

[EXTERNAL]
Here's the email from Nancy and Jim Ketcham-Colwill who worked on parts of the ANPR at EPA. There's a follow up below on maintenance. So far I've only mentioned your (NY) interest in this. They had thoughts on some retired EPA lawyers and I've left a message with probably the best one for your purpose. I discussed some of the ANPR issues on NSR and PSD with a current EPA friend down here who worked on those issues, the one that came up with the approach on major sources that Scalia shot down - an implementation guy, not a lawyer. No names, and he won't talk about it. He has a dim view of EPA's record addressing areas that are attainment on first designation. He reminded me there are PM10 areas that were in attainment when the NAAQS was set and never were redesignated to non-attainment when their levels increased. Not a good track record in terms of pushing maintenance SIPs for areas that start out in attainment, which is one of your scenarios. But a bigger issue is picking a GHG eq level that doesn't create widespread non-attainment. (See the addition from Nancy and Jim on maintenance.) And my RTP friend noted the adoption of a NAAQS for GHG would change the current PSD requirements post Supreme Court responses - attainment areas would have PSD requirements and it might be messy in terms of defining major sources again (I'm not the guy to discuss this in any detail.).

FOIL APPEAL G000176 000006

More later assuming I have a lawyer who wants to help.

John B.

Begin forwarded message:

From: Nancy Ketcham-Colwill <[REDACTED]>
Subject: Re: Draft note on NAAQS lawyers and EPA GHG ANPR 2008 info
Date: December 3, 2019 at 12:57:26 PM EST
To: John Bachmann <[REDACTED]>
Cc: Jim Ketcham-Colwill [REDACTED]

On Tue, Dec 3, 2019 at 12:56 PM Nancy Ketcham-Colwill [REDACTED] wrote:

Hi John --

We've taken some time to look over the ANPR discussion of using the NAAQS for GHGs and locate various written resources (like the comments on the ANPR) on the issues that would be raised by such a quest. We've listed the resources below and included links. We've also listed the names of retired OGC lawyers who might be able and willing to help think through the various issues. The ANPR reflects the thinking of several of the folks listed below, but it also avoids weighing in for or against on some of the hardest issues. They may have opinions on how hard some of the issues are to crack. I think it would be a good idea for you or me to contact folks on the list before sending their names along so they aren't taken by surprise. I also think some folks are apt to be more helpful than others. We could discuss further, if that would help.

We also have a couple of thoughts of our own, based on our backgrounds in the relevant areas and some "blue sky" discussion with smart folks here.

[REDACTED]

We also have a couple of thoughts of our own, based on our backgrounds in the relevant areas and some "blue sky" discussion with smart folks here.

[REDACTED]

[REDACTED]

(Not privileged)

The Quest, cont.

ANPR information

GHG ANPR Federal Register notice, July 30, 2008. Discussion of potential ways the NAAQS authorities could be used, and issues that would arise, are on pp. 44476-44486. [REDACTED]

<https://www.govinfo.gov/content/pkg/FR-2008-07-30/pdf/E8-16432.pdf>

Fact sheet describing purpose and context of 2008 GHG ANPR:

<https://www3.epa.gov/climatechange/Downloads/anpr/ANPRFactSheet.pdf>

Public EPA briefing on 2008 GHG ANPR:

https://www.epa.gov/sites/production/files/2015-01/documents/2008_09_ghgfull.pdf

Public comments on 2008 GHG ANPR are still available at this link:

<https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=EPA-HQ-OAR-2008-0318>

Tens of thousands of public comments were submitted. We can send along a condensed list of the substantive comments, a complete list of all comments, and an Excel spreadsheet containing the same two lists, if that would be helpful. The condensed list of substantive comments is indexed to files on a CD containing the comments, which we have. We can copy the CD and send it to you, if you want it.

FOIL APPEAL G000176 000008

We also have a hard copy of Mary Nichol's testimony and another briefing on the NAAQS and GHGs that does a pretty good job of summarizing the issues. We could scan and send those if useful.

Cheers!

Nancy and Jim

Hi John — We belatedly remembered your saying [REDACTED]

(Not privileged)

IMPORTANT NOTICE: This e-mail, including any attachments, may be confidential, privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.

From: Novick Steve

Sent: Tuesday, December 17, 2019 10:54 AM

To: 'Myers, Michael'; Garrahan Paul; Elaine Meckenstock (Elaine.Meckenstock@doj.ca.gov); Jon Wiener (CA); Megan Herzog; Costello, Morgan; Kavita Lesser (CA); Courchesne, Christophe (AGO)

Subject: RE: Draft note on NAAQS lawyers and EPA GHG ANPR 2008 info

We will follow up. [REDACTED]

Steve Novick

Special Assistant Attorney General | Natural Resources Section | General Counsel Division

Oregon Department of Justice

100 SW Market, Portland OR 97201

971-673-1891 (Direct)

From: Myers, Michael [mailto:Michael.Myers@ag.ny.gov]

Sent: Friday, December 13, 2019 5:47 AM

To: Novick Steve; Garrahan Paul; Elaine Meckenstock (Elaine.Meckenstock@doj.ca.gov); Jon Wiener (CA); Megan Herzog; Costello, Morgan; Kavita Lesser (CA); Courchesne, Christophe (AGO)

Subject: FW: Draft note on NAAQS lawyers and EPA GHG ANPR 2008 info

privileged attorney work product, subject to common interest agreement

All— [REDACTED]

Passing the baton back to OR.--Mike

Michael J. Myers

Senior Counsel for Air Pollution and Climate Change Litigation

Environmental Protection Bureau

FOIL G000176-030920 001376

New York State Attorney General

The Capitol

Albany, NY 12224

(518) 776-2382

michael.myers@ag.ny.gov

From: John Bachmann [REDACTED] >

Sent: Thursday, December 12, 2019 4:36 PM

To: Myers, Michael <Michael.Myers@ag.ny.gov>

Subject: Re: Draft note on [REDACTED]

Hi Mike,

[REDACTED]



4

/ 45



100%



From: Novick Steve

Sent: Thursday, December 19, 2019 11:38:34 AM

To: 'johnbachmann@bellsouth.net'

Subject: Question

Importance: Normal

John - Mike forwarded your email from last week - thank you! We will reach out to Sara Schneeberg Robinson. Would it be OK if I also reached out to Nancy and Jim Ketcham-Colwill? I [REDACTED]
[REDACTED]

Best,

Steve Novick

Special Assistant Attorney General | Natural Resources Section | General Counsel Division

Oregon Department of Justice

100 SW Market, Portland OR 97201

971-673-1891 (Direct)

971-719-1377 (Mobile)

This is not privileged

From: John Bachmann
Sent: Thursday, December 19, 2019 12:18:38 PM
To: Novick Steve
Cc: Nancy Ketcham-Colwill; Jim Ketcham-Colwill
Subject: Re: Question
Importance: Normal

I they they have pretty much outed them selves on this topic, and I say so no problem going directly - but they can speak for themselves. They were directly involved in the ANPR and the comments on it as well as thinking about the issues.

On Dec 19, 2019, at 2:38 PM, Novick Steve <Steve.Novick@doj.state.or.us> wrote:

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[REDACTED]

Best,

Steve Novick
Special Assistant Attorney General | Natural Resources Section | General Counsel Division
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*****CONFIDENTIALITY NOTICE*****

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

From: Nancy
Sent: Thursday, December 19, 2019 1:35:06 PM
To: John Bachmann
Cc: Novick Steve; Jim Ketcham-Colwill
Subject: Re: Question
Importance: Normal

Hello all. We'd be happy to talk with Steve. It sounds strange but developing the ANPR was a high point of our careers. Lots of career folks got to communicate what they thought was useful. Of course, the Bushies then shat all over it in the 80 pages of screed that they stuck in the front of the FR notice, but the good stuff (science and technological summaries and legal and economics analyses) was still there. [REDACTED]

Happy holidays!
Nancy

Sent from my iPhone

This is not privileged

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Steve Novick
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Division
Oregon Department of Justice
100 SW Market, Portland OR 97201
971-673-1891 (Direct)
971-719-1377 (Mobile)

*****CONFIDENTIALITY NOTICE*****

From: Novick Steve
Sent: Thursday, December 19, 2019 2:59:06 PM
To: 'Nancy'; John Bachmann
Cc: Jim Ketcham-Colwill
Subject: RE: Question
Importance: Normal

That does not sound strange at all – it remains a fascinating read, 11 years later. Would you have some time to chat tomorrow or Monday? I'd love to follow up on [some of the issues you raised in the email John forwarded](#).

Best regards, and happy holidays to you as well,

Steve Novick
Special Assistant Attorney General| Natural Resources Section | General Counsel Division
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Best,

Greenhouse Gas (GHG) Advanced Notice of Proposed Rulemaking (ANPR)

July 30, 2008, Federal Register
Vol. 73, No. 147, p. 44354-44520



Full Presentation
September 18, 2008



Cynthia
Browne/DC/USEPA/US
11/10/2011 01:32 PM

To: Joseph Goffman
cc:
bcc:
Subject: NRDC NSPS GHG briefing

Meeting

Date: 11/15/2011 12:30:00 PM
Time: 12:30:00 PM to 01:30:00 PM
Chair: Roque_T_Sanchez
Invitees:
Required: Cindy Huang
Optional:
FYI:
Location: EEOB 230A, 202-395-6392,
8474450#

When: Tuesday, November 15, 2011 12:30 PM-1:30 PM (GMT-05:00) Eastern Time (US & Canada).
Where: EEOB 230A, [REDACTED], [REDACTED]

Note: The GMT offset above does not reflect daylight saving time adjustments.

NRDC, EDF, and Sierra Club technical briefing for Energy and Climate and CEQ regarding policy options under NSPS for GHGs. New York's Lead Petitioners will participate on the conference line:

Manifest:

David Hawkins- Director of Climate Programs at NRDC
David Doniger- Policy Director of the Climate and Clean Air Program at NRDC
Joanne Spalding- Managing Attorney at Sierra Club
John Coequyt- Senior Representative, Climate Change and Energy at Sierra Club
Vickie Patton- General Counsel at EDF

Participating from New York on the conference line:

Michael J. Myers- Assistant Attorney General in the AG's Environmental Protection Bureau
Morgan Costello- Assistant Attorney General in the AG's Environmental Protection Bureau
Alan Belenz- Chief Scientist of the Bureau in Albany
Jared Snyder- Assistant Commissioner at NY-DEC

Restarting what they'd worked on under Obama

Michael J. Myers

From: Michael J. Myers
Sent: Thursday, December 13, 2012 9:56 AM
To: 'Goffman.Joseph@epamail.epa.gov'
Bcc: Doniger, David; Morgan Costello; Joanne Spalding; 'Vickie Patton'; tballo@earthjustice.org; Alan Belenz
Subject: RE: your vmal

Thanks Joe. I'll plan to reach out to you shortly after New Year's. In the meantime, enjoy the holidays.
Michael J. Myers
Chief, Affirmative Litigation Section
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 402-2594
michael.myers@ag.ny.gov

From: Goffman.Joseph@epamail.epa.gov [mailto:Goffman.Joseph@epamail.epa.gov]
Sent: Wednesday, December 12, 2012 5:56 PM
To: Michael J. Myers
Subject: your vmal

Hi, Mike. Thanks for your messages yesterday and today. I doubt the government will have much opportunity to regroup on these matters before the holiday, but I've already started the discussion with Gina and with OGC, so we should be able to set something up for early in the new year. Thanks.

Joseph Goffman
Senior Counsel to the Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Doniger, David

From: Doniger, David
Sent: Thursday, February 21, 2013 11:36 AM
To: Michael J. Myers; Vickie Patton; Joanne Spalding; 'Megan Ceronsky'; Elaine Meckenstock; Susan Durbin (Susan.Durbin@doj.ca.gov); Hawkins, Dave
Cc: Henderson, Kelly; Morgan Costello; Alan Belenz
Subject: RE: Joe

He called me yesterday but we did not connect.

David D. Doniger
Policy Director, Climate and Clean Air Program
Natural Resources Defense Council
1152 15th Street, NW, Suite 300
Washington, DC 20005

Phone: (202) 289-2403
Cell: (202) 321-3435
Fax: (202) 289-1060
ddoniger@nrdc.org
on the web at www.nrdc.org
read my blog: <http://switchboard.nrdc.org/blogs/ddoniger/>

From: Michael J. Myers [mailto:Michael.Myers@ag.ny.gov]
Sent: Thursday, February 21, 2013 11:30 AM
To: Doniger, David; Vickie Patton; Joanne Spalding; 'Megan Ceronsky'; Elaine Meckenstock; Susan Durbin (Susan.Durbin@doj.ca.gov); Hawkins, Dave
Cc: Henderson, Kelly; Morgan Costello; Alan Belenz
Subject: Joe

I spoke with him yesterday late afternoon. Are folks available for a quick call today at 4 or 4:30 [REDACTED]
[REDACTED] David and Vickie, so you may hear from him directly before we talk.

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Environmental Protection Bureau
New York State Attorney General
The Capitol

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Sent: Thursday, February 21, 2013 11:51 AM
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Cc: Henderson, Kelly; Morgan Costello; Alan Belenz
Subject: RE: Joe

Sounds like 4 pm works. We can use my #: [REDACTED]

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Chief, Affirmative Litigation Section
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 402-2594
michael.myers@ag.ny.gov

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References Ketcham-Colwill email to Bachmann, forwarded to Novick

References Bachmann email to Myers, forwarded to Novick

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Hi John --

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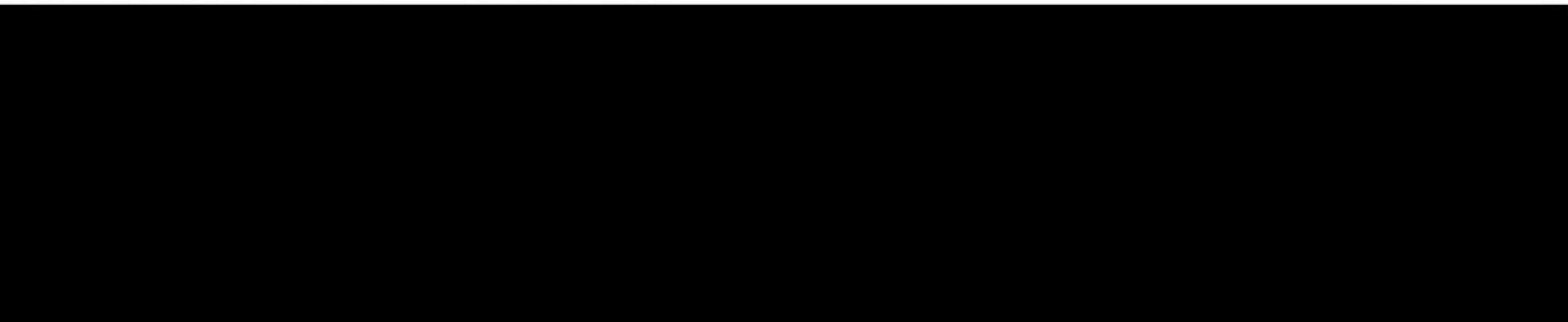
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Ketcham-Colwill email John forwarded



The New York Times

In Protesting Climate Change, Jane Fonda Brings Hollywood to Washington

The actress was joined by her “Grace and Frankie” co-star Lily Tomlin to headline a climate rally that offered plenty of chances to get arrested, but few takers.

From: Novick Steve
Sent: Saturday, December 21, 2019 11:10:17 AM
To: Nancy Ketcham-Colwill
Cc: Jim Ketcham-Colwill
Subject: Re: Jane now, Mary later
Importance: Normal
Attachments:
IMG_4504.jpg;

I was going to ask if I overstayed mine! Thanks so much for your time and for this GREAT PICTURE! I'm scared of technology myself so I'm impressed by anyone who can scan anything at home at all.

Steve Novick
971-719-1377

On Dec 21, 2019, at 9:07 AM, Nancy Ketcham-Colwill <nancyakc@gmail.com<mailto:nancyakc@gmail.com>> wrote:

Hi Steve —

Great to talk with you yesterday. We hope we didn't overstay our welcome.

Here's a photo of Jane with her good friends Gloria Steinem and Delores Huerta on their way to getting arrested at the Hart Building. Good for them!

We just bought a new computer and Jim is still figuring out to do things he could do quickly on the old computer, including scanning documents.

Happy holidays,
Nancy and Jim

<IMG_4504.jpg>

Sent from my iPad



From: [Jim Ketcham-Colwill](#)
Sent: Thursday, December 26, 2019 7:19:08 PM
To: [Novick Steve](#)
Cc: [Nancy Ketcham-Colwill](#); [John Bachmann](#)
Subject: Re: Question
Importance: Normal
Attachments:

Hi Steve and John,

Sorry for the delay -- I finally got my scanner to work with my new computer.

Happy holidays!
Jim

On Fri, Dec 20, 2019 at 11:39 AM Novick Steve <Steve.Novick@doj.state.or.us> wrote:
| Let's just make it 3 your time. Thanks! Oh, what's your number?

Steve Novick
971-719-1377

On Dec 19, 2019, at 8:21 PM, Nancy Ketcham-Colwill
<nancyakc@gmail.com<mailto:nancyakc@gmail.com>> wrote:

Hi Steve — Any time between 2 and 4 pm EST tomorrow would work. Monday morning am EST would also work but that would be pretty early for you. Your choice!

Nancy

Sent from my iPad

On Dec 19, 2019, at 5:59 PM, Novick Steve
<Steve.Novick@doj.state.or.us<mailto:Steve.Novick@doj.state.or.us>> wrote:

That does not sound strange at all – it remains a fascinating read, 11 years later. Would you have some time to chat tomorrow or Monday? I'd love to follow up on some of the issues you raised in the email John forwarded.

Followed by 10 pages of RIF

Further Steps

- ❖ 1/6/20 “small group” lets “large group” in on Bachmann consultation process, circulate “BachmannDoc.PPT”
 - ❖ Novick: “We have our bi-monthly group call tomorrow at 2 Eastern **[REDACTED, 3.5 lines]**. John was at EPA for 33 years and was the Associate Director for Science/Technology and New Programs for the Office of Air Quality Planning and Standards in Research Triangle Park, NC. And he’s been very generous with his time.
 - ❖ **[REDACTED, 2.5 lines]** we can talk tomorrow.”
 - ❖ This was a special notice about Bachmann’s input, in advance of discussing Bachmann advice on group call scheduled for next day
- ❖ 1/14 OR DoJ schedules call among large group re same, MI DAG privilege log describes as “Discussion of recommendation”
- ❖ 1/21 OR DoJ informs group he’ll extend consultation to “Sara Schneeberg Robinson, who John Bachmann put us in touch with”
- ❖ 1/30 OR consults on climate NAAQS w Schneeberg-Robinson
- ❖ Late April/early May 2020, AGs sign targeted Ozone CIA w greens (NY, NJ fulcrum), + identical CIA 5 days later among OAGs
- ❖ Spring/Summer, AGs begin consultation to coordinate oppo to records requests, force litigation for further releases on Bachmann et al.
- ❖ 10/16/20 OR DoJ assertion of privilege, WA AGO transcript re Bachmann docs acknowledge this is active, anticipate litigation, and no one does nor can know more about it

January 6, 2020

Monday

January 2020							February 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3	4						
5	6	7	8	9	10	11	12	13	14	15	16	17	18
19	20	21	22	23	24	25	26	27	28	29	30	31	

MONDAY	
6	
7 AM	
8	
9	
10	<div> - due Jan 13</div> <div> - NOPE FEB 12</div>
11	<div><div>Rule Discussion</div><div>Dial 866-394-2346, code Myers, Michael</div></div> <div>FW: 11:30 to 1 - NRS Staff Meeting - end 12:30 PDX Sauvie island - Salem Mahonia Conf Portland Sauvie Island</div>
12 PM	
1	
2	<div>Ing heck w ag</div>
3	<div> : deadline jan 9</div> <div>9th circuit admission see 1/3 email</div>
4	
5	

January 10, 2020

Friday

January 2020							February 2020						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3	4						1
5	6	7	8	9	10	11	12	13	14	15	16	17	18
19	20	21	22	23	24	25	26	27	28	29	30	31	

FRIDAY	
10	
7 AM	
8	
9	
10	
11	<div>Ing - press</div>
12 PM	<div>TOMORROW, JANUARY 10 ENDS 12:48</div> <div>1-877-820-7831 (Passcode:)</div> <div>Paskvan, Liam (AGO)</div>
1	<div>myers pri</div>
2	<div>myers call 10 mins</div>
3	<div>call w/ne;son</div>
4	
5	
6	

1.6.20: OR Lets Large Group in on Bachmann GHG NAAQS Consultation, Circulates Bachman PPT

To: Garrahan Paul[Paul.Garrahan@doj.state.or.us]; Myers, Michael[Michael.Myers@ag.ny.gov]; 'Elaine Meckenstock'[Elaine.Meckenstock@doj.ca.gov]; 'Gregory Schultz'[gSchultz@riag.ri.gov]; 'Kugelman, Paul'[PKugelman@oag.state.va.us]; 'Nick Persampieri'[nick.persampieri@vermont.gov]; 'Tweedie, Jameson (DOJ)'[Jameson.Tweedie@delaware.gov]; 'Valerie Edge (De)'[Valerie.Edge@state.de.us]; 'Jensen, Laura'[Laura.Jensen@maine.gov]; 'Sauer, Mary'[Mary.Sauer@maine.gov]; 'Morrisseau, Elizabeth (AG)'[MorrisseauE@michigan.gov]; 'Gordon, Neil (AG)'[GordonN1@michigan.gov]; 'Schumaker, Kelly (AG)'[SchumakerK@michigan.gov]; 'Daniel.Resler@law.njoag.gov'[Daniel.Resler@law.njoag.gov]; 'Lisa Morelli (NJ)'[Lisa.Morelli@law.njoag.gov]; 'Aaron Love'[Aaron.Love@law.njoag.gov]; 'Salton, Daniel'[Daniel.Salton@ct.gov]; 'Demjanick, Jennie'[jdemjanick@pa.gov]; 'Craig.Segall@arb.ca.gov'[Craig.Segall@arb.ca.gov]; 'Bo Reiley'[rreiley@state.pa.us]; 'Johnston, Ann R.'[ajohnston@attorneygeneral.gov]; 'Fischer, Michael J.'[mfischer@attorneygeneral.gov]; 'Larson, Jacob (AG)'[Jacob.Larson@ag.iowa.gov]; 'Rottenberg, Daniel'[DRottenberg@atg.state.il.us]; 'James, Jason'[JJJames@atg.state.il.us]; 'William Grantham'[wgrantham@nmag.gov]; 'Clay Clarke'[Clay.Clarke@coag.gov]; 'Amy Beatie'[Amy.Beatie@coag.gov]; 'Dan Graeve'[Dan.Graeve@coag.gov]; 'Tom Roan'[Tom.Roan@coag.gov]; 'Jonathan Wiener'[Jonathan.Wiener@doj.ca.gov]; 'Kavita Lesser'[Kavita.Lesser@doj.ca.gov]; 'Howard, JB'[jbhoward@oag.state.md.us]; 'Goldstein, Steven'[sgoldstein@oag.state.md.us]; 'Segal, Joshua'[jsegal@oag.state.md.us]; 'Megan Herzog'[megan.hertzog@state.ma.us]; 'Christopher Courchesne'[christophe.courchesne@state.ma.us]; 'Cooper, Bill F'[Bill.F.Cooper@hawaii.gov]; 'Kogel-Smucker, Sarah (OAG)'[Sarah.Kogel-Smucker@dc.gov]; 'Brian Caldwell (DC)'[brian.caldwell@dc.gov]; 'David Hoffman (DC)'[David.Hoffmann@dc.gov]; 'Nelson, Emily C (ATG)'[emily.nelson@atg.wa.gov]; 'Costello, Morgan'[Morgan.Costello@ag.ny.gov]; 'Spiller, Asher'[Aspiller@ncdoj.gov]; 'Thomas, Blake'[Bthomas@ncdoj.gov]; 'Crabtree, Taylor'[tcrabtree@ncdoj.gov]; 'Phillip M. Hoos'[PhillipM.Hoos@doj.ca.gov]; 'Alison Hoffman'[AHoffman@riag.ri.gov]; 'Surdo, Peter'[Peter.Surdo@ag.state.mn.us]; 'Tess, Rachel'[Rachel.Tess@ag.state.mn.us]; 'Skip Pruss'[pruss@5lakesenergy.com]; 'Dan P. Nubel'[DNubel@ag.nv.gov]; 'Laura Terlisner Mehew'[Laura.Mehew@coag.gov]; 'Daniel.Resler@law.njoag.gov'[Daniel.Resler@law.njoag.gov]; 'Domenico.StocktonRossini@law.njoag.gov'[Domenico.StocktonRossini@law.njoag.gov]

From: Novick Steve[Steve.Novick@doj.state.or.us]

Sent: Mon 1/6/2020 4:55:09 PM (UTC-05:00)

Subject: RE: Affirmative Climate Litigation - call tomorrow

[EXTERNAL]

CONFIDENTIAL - PROTECTED BY COMMON INTEREST PRIVILEGE

We have our now-bimonthly group call tomorrow at 2 Eastern / 11 Pacific. 888-270-9936; Access Code:

[REDACTED] John was at EPA for 33 years and was the Associate Director for Science/Policy and New Programs for the Office of Air Quality Planning and Standards in Research Triangle Park, NC. And he's been very generous with his time.

[REDACTED] we can talk through it tomorrow.

Best,

Steve Novick

Special Assistant Attorney General, Natural Resources Section | General Counsel Division

These are the Same Email

From: Novick Steve <Steve.Novick@doj.state.or.us>
Sent: Monday, January 6, 2020 4:55 PM
To: Garrahan Paul; Myers, Michael; 'Elaine Meckenstock'; 'Gregory Schultz'; 'Kugelman, Paul'; 'Nick Persampieri'; 'Tweedie, Jameson (DOJ)'; 'Valerie Edge (De)'; 'Sauer, Mary'; 'Morrisseau, Elizabeth (AG)'; 'Gordon, Neil (AG)'; 'Schumaker, Kelly (AG)'; 'Daniel.Resler@law.njoag.gov'; 'Lisa Morelli (NJ)'; 'Aaron Love'; 'Salton, Daniel'; 'Demjanick, Jennie'; 'Craig.Segall@arb.ca.gov'; 'Bo Reiley'; 'Johnston, Ann R.'; 'Fischer, Michael J.'; 'Larson, Jacob [AG]'; 'Rottenberg, Daniel'; 'James, Jason'; 'William Grantham'; 'Clay Clarke'; 'Amy Beatie'; 'Dan Graeve'; 'Tom Roan'; 'Jonathan Wiener'; 'Howard, JB'; 'Goldstein, Steven'; 'Segal, Joshua'; 'Megan Herzog'; 'Christopher Courchesne'; 'Cooper, Bill F'; 'Kogel-Smucker, Sarah (OAG)'; 'Brian Caldwell (DC)'; 'Nelson, Emily C (ATG)'; 'Costello, Morgan'; 'Spiller, Asher'; 'Crabtree, Taylor'; 'Phillip M. Hoos'; 'Alison Hoffman'; 'Surdo, Peter'; 'Skip Pruss'; 'Dan P. Nubel'; 'Laura Terlisner Mehew'; 'Daniel.Resler@law.njoag.gov'; 'Domenico.StocktonRossini@law.njoag.gov'; 'RE: Affirmative Climate Litigation - call tomorrow' [2e]
Subject: RE: Affirmative Climate Litigation - call tomorrow [2e]
Attachments: JUSTICE-#9975424-v1-[2e] BachmannDoc.PPT

CONFIDENTIAL - PROTECTED BY COMMON INTEREST PRIVILEGE

[2e]
[REDACTED]
[REDACTED]

Best,

Steve Novick
Special Assistant Attorney General | Natural Resources Section | General Counsel Division Oregon Department of Justice
100 SW Market, Portland OR 97201
971-673-1891 (Direct)
971-719-1377 (Mobile)

To: Garrahan Paul[Paul.Garrahan@doj.state.or.us]; Myers, Michael[Michael.Myers@ag.ny.gov]; 'Elaine Meckenstock'[Elaine.Meckenstock@doj.ca.gov]; 'Gregory Schultz'[gSchultz@riag.ri.gov]; 'Kugelman, Paul'[PKugelman@oag.state.va.us]; 'Nick Persampieri'[nick.persampieri@vermont.gov]; 'Tweedie, Jameson (DOJ)'[Jameson.Tweedie@delaware.gov]; 'Valerie Edge (De)'[Valerie.Edge@state.de.us]; 'Jensen, Laura'[Laura.Jensen@maine.gov]; 'Sauer, Mary'[Mary.Sauer@maine.gov]; 'Morrisseau, Elizabeth (AG)'[MorrisseauE@michigan.gov]; 'Gordon, Neil (AG)'[GordonN1@michigan.gov]; 'Schumaker, Kelly (AG)'[SchumakerK@michigan.gov]; 'Daniel.Resler@law.njoag.gov'[Daniel.Resler@law.njoag.gov]; 'Lisa Morelli (NJ)'[Lisa.Morelli@law.njoag.gov]; 'Aaron Love'[Aaron.Love@law.njoag.gov]; 'Salton, Daniel'[Daniel.Salton@ct.gov]; 'Demjanick, Jennie'[jdemjanick@pa.gov]; 'Craig.Segall@arb.ca.gov'[Craig.Segall@arb.ca.gov]; 'Bo Reiley'[rreiley@state.pa.us]; 'Johnston, Ann R.'[ajohnston@attorneygeneral.gov]; 'Fischer, Michael J.'[mfischer@attorneygeneral.gov]; 'Larson, Jacob [AG]'[Jacob.Larson@ag.iowa.gov]; 'Rottenberg, Daniel'[DRottenberg@atg.state.il.us]; 'James, Jason'[JJJames@atg.state.il.us]; 'William Grantham'[wgrantham@nmag.gov]; 'Clay Clarke'[Clay.Clarke@coag.gov]; 'Amy Beatie'[Amy.Beatie@coag.gov]; 'Dan Graeve'[Dan.Graeve@coag.gov]; 'Tom Roan'[Tom.Roan@coag.gov]; 'Jonathan Wiener'[Jonathan.Wiener@doj.ca.gov]; 'Kavita Lesser'[Kavita.Lesser@doj.ca.gov]; 'Howard, JB'[jbhoward@oag.state.md.us]; 'Goldstein, Steven'[sgoldstein@oag.state.md.us]; 'Segal, Joshua'[jsegal@oag.state.md.us]; 'Megan Herzog'[megan.herzog@state.ma.us]; 'Christopher Courchesne'[christophe.courchesne@state.ma.us]; 'Cooper, Bill F'[Bill.F.Cooper@hawaii.gov]; 'Kogel-Smucker, Sarah (OAG)'[Sarah.Kogel-Smucker@dc.gov]; 'Brian Caldwell (DC)'[brian.caldwell@dc.gov]; 'David Hoffman (DC)'[David.Hoffmann@dc.gov]; 'Nelson, Emily C (ATG)'[emily.nelson@atg.wa.gov]; 'Costello, Morgan'[Morgan.Costello@ag.ny.gov]; 'Spiller, Asher'[Aspiller@ncdoj.gov]; 'Thomas, Blake'[Bthomas@ncdoj.gov]; 'Crabtree, Taylor'[tcrabtree@ncdoj.gov]; 'Phillip M. Hoos'[PhillipM.Hoos@doj.ca.gov]; 'Alison Hoffman'[AHoffman@riag.ri.gov]; 'Surdo, Peter'[Peter.Surdo@ag.state.mn.us]; 'Tess, Rachel'[Rachel.Tess@ag.state.mn.us]; 'Skip Pruss'[pruss@5lakesenergy.com]; 'Dan P. Nubel'[DNubel@ag.nv.gov]; 'Laura Terlisner Mehew'[Laura.Mehew@coag.gov]; 'Daniel.Resler@law.njoag.gov'[Daniel.Resler@law.njoag.gov]; 'Domenico.StocktonRossini@law.njoag.gov'[Domenico.StocktonRossini@law.njoag.gov]
From: Novick Steve[Steve.Novick@doj.state.or.us]
Sent: Mon 1/6/2020 4:55:09 PM (UTC-05:00)
Subject: RE: Affirmative Climate Litigation - call tomorrow

RE: Affirmative Climate Litigation - call tomorrow

[EXTERNAL]

CONFIDENTIAL - PROTECTED BY COMMON INTEREST PRIVILEGE

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[REDACTED] we can talk through it tomorrow.

Best,

Steve Novick
Special Assistant Attorney General | Natural Resources Section | General Counsel Division Oregon Department of Justice
100 SW Market, Portland OR 97201

<p>1.35 AGO01061-AGO01071</p>	<p>A chain of emails, which includes: (1) A January 6, 2020 email from a lawyer in the Attorney General's Office of one of the signatory states to the GHG Litigation CIA to other signatory states, which describes matters to be discussed in an upcoming call among the signatory states (those matters are in furtherance of the signatory states' consideration of potential litigation to reduce greenhouse gas emissions), and transmits an attached Powerpoint presentation prepared for the signatory states by a third party. The Powerpoint addresses issues relevant to potential litigation to reduce greenhouse gas emissions; (2) A December 2, 2019 email from a lawyer in the Attorney General's Office of one of the signatory states to the GHG Litigation CIA to other signatory states, which discusses the scheduling of calls among the signatory states. Potential litigation to reduce greenhouse gas emissions was to be discussed on the calls at issue.</p> <p>These emails among signatory states to the GHG Litigation CIA, and the Powerpoint attached to the January 6, 2020 email, were for the purpose of facilitating the rendition of professional legal services by the signatory Attorneys General offices to their respective states, and by the members of the Attorneys General offices to their respective Attorneys General, regarding matters of common interest to the states. The documents were prepared in anticipation of litigation. To the extent that the Powerpoint is deemed to not have been prepared by a representative of one or more of the signatory states, disclosing its transmission among the states would reveal mental impressions of counsel.</p> <p>The email chain also includes the emails described in entries 1.33 and 1.34.</p>	<p>Exempt pursuant to 1 V.S.A. § 371(c)(4)</p> <p>V.R.C.P. 26(b)(4) / Work Product Protection</p> <p>V.R.E. 502(b) / Lawyer- Client Privilege / Common Interest Privilege</p>
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18 18. Admit that to AGO's information or belief that attachment it received whose title
19 is or contains "BachmannDoc.PPT" was created by John Bachmann.
20 **ANSWER: Defendant objects because the RFA seeks information that is irrelevant, even**
21 **under the broad definition of relevance in CR 26(b)(1). This is a PRA lawsuit involving**
22 **records produced in two public records requests: PRR 2020-042 and PRR 2020-164. Who**
23 **prepared a particular record that was not responsive to either of these records requests is**
24 **not relevant to the PRA lawsuit. Defendant objects to this RFA to the extent that Plaintiff**
25 **refers to the “AGO” taking some action and does not identify any person or persons who are**
26 **purported to have taken such action, thereby making the requests unduly vague and**

INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS
TO THE ATTORNEY GENERAL'S
OFFICE AND DEFENDANT'S
ANSWERS AND RESPONSES

17

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

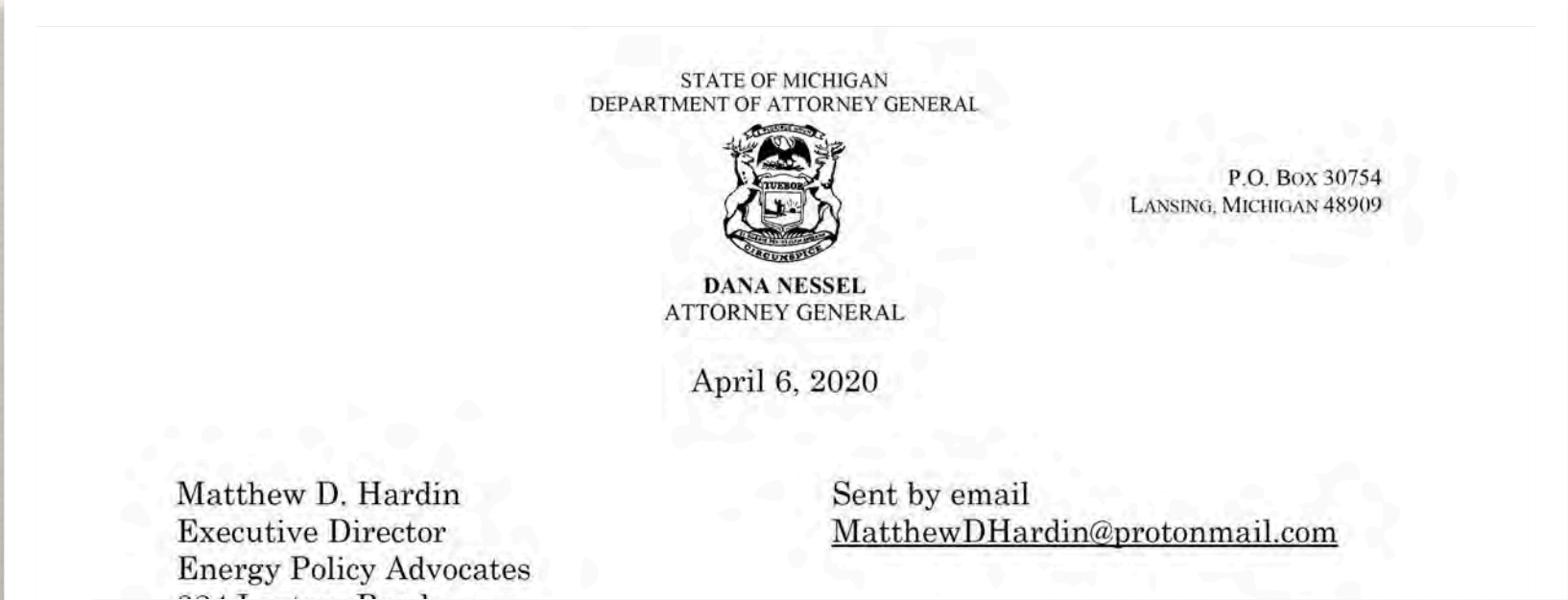
Source: WA OAG

1 **burdensome to answer. Defendant objects because the RFA seeks information that is**
2 **protected by the work product privilege. Privileged information is beyond the scope of CR**
3 **26. CR 26(1). Based on these objections and without waiving the objections, Defendant**
4 **answers as follows: Upon information and belief, Defendant admits.**

5 19. Admit that the document whose title included "BachmannDoc.PPT" is the same
6 as "ClimateNAAQS.ppt".

7 **ANSWER: Defendant objects because the RFA seeks information that is irrelevant, even**
8 **under the broad definition of relevance in CR 26(b)(1). This is a PRA lawsuit involving**
9 **records produced in two public records requests: PRR 2020-042 and PRR 2020-164.**
10 **Defendant objects because the RFA seeks information that is protected by the work**
11 **product privilege. Privileged information is beyond the scope of CR 26. CR 26(1). Based**
12 **on these objections and without waiving the objections, Defendant can neither admit nor**
13 **deny RFA No. 19.**

January Followup on Recommendation



[C]opies of the following records:

1. all electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, *infra*), including also any attachments, a) sent to or from or copying (whether as cc: or bcc:) i) Elizabeth Morriseau and/or ii) Stanley “Skip” Pruss, that b) includes, *anywhere*, whether in an email address, in the sent, to, from, cc, bcc fields, or the Subject fields or body of an email or email “thread”, including also in any attachments, i) Bachmann, and/or ii) Goffman, and c) is dated from November 1, 2019 through the date you process this request, inclusive;

Doc Type	Subject Line	Date	Author	Recipients (To)	Privilege Description	Privilege Asserted
Email	RE: Affirmative Climate Litigation - call tomorrow	1/6/2020	Steve.Novick@doj.state.or.us	paul.garrahan@doj.state.or.us; Michael.Myers@ag.ny.gov; Elaine.Meckenstock@doj.ca.gov; gSchultz@riag.ri.gov; PKugelman@oag.state.va.us; nick.persampieri@vermont.gov; Jameson.Tweedie@delaware.gov; Valerie.Edge@state.de.us; Laura.Jensen@maine.gov; Mary.Sauer@maine.gov; MorriseauE@michigan.gov; GordonN1@michigan.gov; SchumakerK@michigan.gov; Daniel.Resler@law.njoag.gov; Lisa.Morelli@law.njoag.gov; Aaron.Love@law.njoag.gov; Daniel.Salton@ct.gov; jdemjanick@pa.gov; Craig.Segall@arb.ca.gov; rreiley@state.pa.us; ajohnston@attorneygeneral.gov; mfischer@attorneygeneral.gov; Jacob.Larson@ag.iowa.gov; DRottenberg@atg.state.il.us; JJJames@atg.state.il.us; wgrantham@nmag.gov;	Discussion of work product	Attorney-work product



GAO

GOVERNMENT ACCOUNTABILITY & OVERSIGHT

January Followup on Recommendation



[C]opies of the following records:

1. all electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, *infra*), including also any attachments, a) sent to or from or copying (whether as cc: or bcc:) i) Elizabeth Morriseau and/or ii) Stanley “Skip” Pruss, that b) includes, *anywhere*, whether in an email address, in the sent, to, from, cc, bcc fields, or the Subject fields or body of an email or email “thread”, including also in any attachments, i) Bachmann, and/or ii) Goffman, and c) is dated from November 1, 2019 through the date you process this request, inclusive;

Calendar appointment	Affirmative Climate Litigation Conference Call/Novick	1/14/2020	Borg Emma T <emma.t.borg@doj.state.or.us>	Discussion of recommendation	Work product
----------------------	---	-----------	---	------------------------------	--------------

From: Novick Steve <Steve.Novick@doj.state.or.us>
Sent: Tuesday, January 21, 2020 1:08 PM
To: Herzog, Megan (AGO) <megan.hertzog@state.ma.us>; Myers, Michael <Michael.Myers@ag.ny.gov>; Garrahan Paul <Paul.Garrahan@doj.state.or.us>; 'Elaine Meckenstock (Elaine.Meckenstock@doj.ca.gov)' <Elaine.Meckenstock@doj.ca.gov>; 'Jon Wiener (CA)' <Jonathan.Wiener@doj.ca.gov>; Costello, Morgan <Morgan.Costello@ag.ny.gov>; 'Kavita Lesser (CA)' <kavita.lesser@doj.ca.gov>; Courchesne, Christophe (AGO) <christophe.courchesne@state.ma.us>; 'Daniel.Resler@law.njoag.gov' <Daniel.Resler@law.njoag.gov>; Tweedie, Jameson (DOJ) <Jameson.Tweedie@delaware.gov>; 'Domenico.StocktonRossini@law.njoag.gov' <Domenico.StocktonRossini@law.njoag.gov>
Subject: RE: Affirmative climate litigation:: Sara Schneeberg Robinson

[EXTERNAL]

Small affirmative climate group --

I've been neglecting to set up a call with Sara Schneeberg Robinson, who john Bachmann put us in touch with. She says she's generally free before 11:30 a.m. and after 3:30 p.m. eastern time. I'd prefer 3:30 if that works for folks. Would this Friday or next Monday at 3:30 be feasible for everyone?

John's email:

[Redacted]

*****CONFIDENTIALITY NOTICE*****

This e-mail may contain information that is privileged

To: Herzog, Megan (AGO)[megan.hertzog@state.ma.us]; Myers, Michael[Michael.Myers@ag.ny.gov]; Garrahan Paul[Paul.Garrahan@doj.state.or.us]; 'Elaine Meckenstock (Elaine.Meckenstock@doj.ca.gov)'[Elaine.Meckenstock@doj.ca.gov]; 'Jon Wiener (CA)'[Jonathan.Wiener@doj.ca.gov]; Costello, Morgan[Morgan.Costello@ag.ny.gov]; 'Kavita Lesser (CA)'[kavita.lesser@doj.ca.gov]; Courchesne, Christophe (AGO)[christophe.courchesne@state.ma.us]; 'Daniel.Resler@law.njoag.gov'[Daniel.Resler@law.njoag.gov]; Tweedie, Jameson (DOJ)[Jameson.Tweedie@delaware.gov]; 'Domenico.StocktonRossini@law.njoag.gov'[Domenico.StocktonRossini@law.njoag.gov]
From: Novick Steve[Steve.Novick@doj.state.or.us]
Sent: Tue 1/21/2020 1:07:41 PM (UTC-05:00)
Subject: RE: Affirmative climate litigation:: Sara Schneeberg Robinson

[EXTERNAL]

Small affirmative climate group --

I've been neglecting to set up a call with Sara Schneeberg Robinson, who john Bachmann put us in touch with. Here's john's email listing the issues she could help us with (below). She says she's generally free before 11:30 a.m. and after 3:30 p.m. eastern time. I'd prefer 3:30 if that works for folks. Would this Friday or next Monday at 3:30 be feasible for everyone?

John's email:

I located a former colleague, Sara Schneeberg Robinson, who was an EPA air implementation lawyer. She would be willing to look into some of the issues raised in your discussions, including [Redacted] including me, [Redacted] but that's not what you're asking her about.

*****CONFIDENTIALITY NOTICE*****

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

1443 / 1574 95%

To: Myers, Michael[Michael.Myers@ag.ny.gov]; Novick Steve[Steve.Novick@doj.state.or.us]; Herzog, Megan (AGO)[megan.hertzog@state.ma.us]; Garrahan Paul[Paul.Garrahan@doj.state.or.us]; Elaine Meckenstock[Elaine.Meckenstock@doj.ca.gov]; Costello, Morgan[Morgan.Costello@ag.ny.gov]; Kavita Lesser[Kavita.Lesser@doj.ca.gov]; Courchesne, Christophe (AGO)[christophe.courchesne@state.ma.us]; 'Daniel.Resler@law.njoag.gov'[Daniel.Resler@law.njoag.gov]; Tweedie, Jameson (DOJ)[Jameson.Tweedie@delaware.gov]; 'Domenico.StocktonRossini@law.njoag.gov'[Domenico.StocktonRossini@law.njoag.gov]
From: Jonathan Wiener[Jonathan.Wiener@doj.ca.gov]
Sent: Wed 1/22/2020 11:01:29 AM (UTC-05:00)
Subject: Re: Affirmative climate litigation:: Sara Schneeberg Robinson

Same here.

From: Myers, Michael <Michael.Myers@ag.ny.gov>
Sent: Wednesday, January 22, 2020 7:54:47 AM
To: Novick Steve; Herzog, Megan (AGO); Garrahan Paul; Elaine Meckenstock; Jonathan Wiener; Costello, Morgan; Kavita Lesser; Courchesne, Christophe (AGO); 'Daniel.Resler@law.njoag.gov'; Tweedie, Jameson (DOJ); 'Domenico.StocktonRossini@law.njoag.gov'
Subject: RE: Affirmative climate litigation:: Sara Schneeberg Robinson

Steve, I'm available either of those times. Thanks.--Mike

Michael J. Myers
Senior Counsel for Air Pollution and Climate Change Litigation
Environmental Protection Bureau
New York State Attorney General
The Capitol
Albany, NY 12224
(518) 776-2382
michael.myers@ag.ny.gov

From: Novick Steve <Steve.Novick@doj.state.or.us>
Sent: Tuesday, January 21, 2020 1:08 PM
To: Herzog, Megan (AGO) <megan.hertzog@state.ma.us>; Myers, Michael <Michael.Myers@ag.ny.gov>; Garrahan Paul <Paul.Garrahan@doj.state.or.us>; 'Elaine Meckenstock (Elaine.Meckenstock@doj.ca.gov)' <Elaine.Meckenstock@doj.ca.gov>; 'Jon Wiener (CA)' <Jonathan.Wiener@doj.ca.gov>; Costello, Morgan <Morgan.Costello@ag.ny.gov>; 'Kavita Lesser (CA)' <kavita.lesser@doj.ca.gov>; Courchesne, Christophe (AGO) <christophe.courchesne@state.ma.us>; 'Daniel.Resler@law.njoag.gov' <Daniel.Resler@law.njoag.gov>; Tweedie, Jameson (DOJ) <Jameson.Tweedie@delaware.gov>; 'Domenico.StocktonRossini@law.njoag.gov' <Domenico.StocktonRossini@law.njoag.gov>
Subject: RE: Affirmative climate litigation:: Sara Schneeberg Robinson

[EXTERNAL]

Small affirmative climate group --

I've been neglecting to set up a call with Sara Schneeberg Robinson, who john Bachmann put us in touch with. She says she's generally free before 11:30 a.m. and after 3:30 p.m. eastern time. I'd prefer 3:30 if that works for folks. Would this Friday or next Monday at 3:30 be feasible for everyone?

John's email:

[Redacted]

*****CONFIDENTIALITY NOTICE*****

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If

From: Novick Steve
Sent: Thursday, January 16, 2020 4:22:13 PM
To: sara.tapdancer@verizon.net
Subject: RE: John Bachmann / [REDACTED] followup
Importance: Normal

I just realized it's halfway through January and I haven't followed up with you! Are you still available most days before 830 and after 330? (And am I right in assuming that's eastern time?)

Best,

Steve Novick
Special Assistant Attorney General| Natural Resources Section | General Counsel Division
Oregon Department of Justice
100 SW Market, Portland OR 97201
971-673-1891 (Direct)
971-719-1377 (Mobile)

From: sara.tapdancer@verizon.net <sara.tapdancer@verizon.net>
Sent: Friday, December 20, 2019 12:05 AM
To: Novick Steve <Steve.Novick@doj.state.or.us>
Subject: RE: John Bachmann / [REDACTED] followup

Hi Steve, I should be generally available in January. I tend to have commitments most days between 11:30 and 3:30, but most days before 11:30 and after 3:30 I should be available to talk. Have a great and I'll speak with you in January.

On Thursday, December 19, 2019 Novick Steve <Steve.Novick@doj.state.or.us> wrote:

Dear Ms. Schneeberg Robinson,

[REDACTED]

Best regards and happy holidays,

Steve Novick
Special Assistant Attorney General| Natural Resources Section | General Counsel Division
Oregon Department of Justice

From: Novick Steve
Sent: Thursday, December 19, 2019 11:48:38 AM
To: 'sara.tapdancer@verizon.net'
Subject: John Bachmann / [REDACTED] followup
Importance: Normal

Dear Ms. Schneeberg Robinson,

[REDACTED]

Best regards and happy holidays,

Steve Novick
Special Assistant Attorney General| Natural Resources Section | General Counsel Division
Oregon Department of Justice
100 SW Market, Portland OR 97201
971-673-1891 (Direct)
971-719-1377 (Mobile)

January 30, 2020

Thursday

January 2020						February 2020					
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th
				1	2	3					1
5	6	7	8	9	10	11	2	3	4	5	6
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19	20	21	22	23	24	25	16	17	18	19	20
26	27	28	29	30	31		23	24	25	26	27

THURSDAY	
30	
7 AM	
8	
9	
10	
11	Clean Power Plan Repeal and ACE Rule Discussion Lusignan, Brian
12 PM	
1	<div>Sara Scheeberg Robinson call</div> <div>Novick Steve</div> <div>call</div>
2	
3	NRS Updates Continued-mwc; Paul's Office - Portland; Collingham Mandy
4	Erin Donald: AAG Performance check-in Mtg; Paul's office (PDX); Garrahan Paul
5	
6	

Novick, Garrahan (OR DoJ) Calendars

January 30, 2020

Thursday

January 2020						February 2020					
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th
				1	2	3					1
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19	20	21	22	23	24	25	16	17	18	19	20
26	27	28	29	30	31		23	24	25	26	27

THURSDAY	
30	
7 AM	
8	revised via [redacted]
9	pay bar dues??
10	[redacted]
11	<div>Clean Power Plan Repeal and ACE Rule Lusignan, Brian</div> <div>FW: Clean Power Plan [redacted]</div> <div>Canceled: Clean Power Plan Update Call Lusignan, Brian</div> <div>Canceled: Clean Power Plan Weekly Update Lusignan, Brian</div> <div>Canceled: Tax Meeting Conf Robertson1 Mahoni; Cunningham Melisse S</div>
12 PM	<div>Canceled: [redacted] -- Privileged and Confidential</div> <div>Bi-Weekly Conference Call Kwong, Lisa</div> <div>Novick Steve</div>
1	elaine record email
2	
3	[redacted]
4	
5	

Acknowledgements

9/24/20 NM AAG

- ❖ Explaining why AGO is taking what local counsel described as an unprecedented spouter in his 30 years of practice, and math we will get nothing, and no further responses to discovery, no admissions about the correspondence with other AGOs about this and the “CIA”:
 - ❖ “This is a...*very* confidential issue”.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

ENERGY POLICY ADVOCATES, a
Washington nonprofit
corporation,

Plaintiff, NO. 20-2-01

vs.

STATE ATTORNEY GENERAL'S
OFFICE, an agency of
Washington State,

Defendant.

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on October
the above-entitled and numbered cause came on
merits hearing before the HONORABLE CHRIS LANE
of Thurston County Superior Court, Olympia, Wa

Cheri L. Davidson
Official Court Reporter
Thurston County Superior Court
Olympia, Washington 98502
(360)786-5570
davidsc@co.thurston.wa.us

As you're aware, the two records at issue in this
case -- excuse me. There are two public records
requests at issue in this case, and the emails that
are -- excuse me. The records that are under dispute
at this point involve an email string that's
five pages long and that has an attached record
that was the ClimateNAAQS.ppt, and that record
withheld in its entirety. That email that's
is an email string. The last email, which was
only one to come to our office, was sent from

DEFENDANT'S ARGUMENT

Merits Hearing - October 16, 2020

Oregon Department of Justice attorney to a
AAG, a former senior AAG at our office, and
marked specifically confidential and protected
work product privilege, and we carefully reviewed
work product that was present in that email
email string below it. The ClimateNAAQS.ppt
attached to that email was only attached at
that it came from the Oregon Department of
our office. And so that was clearly a common
interest party discussing potential anticipated
litigation, and the attachment was specifically
related to that and, again, marked privilege

10/16/20 WA AAG

The other record at issue was involved in the
second public records request wherein EPA asked for
the records that justified the common interest
agreement that had been -- or the common interest
privilege that we had cited, you know, as
justification for exemptions in the first request.
And so that's the common interest agreement. It was
withheld entirely because it, you know, involved
un-filed potential litigation that the parties are
actively working on.

DEFENDANT'S ARGUMENT

Merits Hearing - October 16, 2020

important here because it's not -- certainly not
known to anyone, and it's necessary for the parties
to be able to collaborate and discuss these types of
issues in order to analyze and determine whether or
not to proceed with a specific lawsuit. The common
interest agreement itself contains, you know, the
parties that are involved, the potential, you know,

10/16/20 OR DoJ

----- Forwarded message -----

From: **Foltz Andrew** <andrew.foltz@doj.state.or.us>
Date: Fri, Oct 16, 2020 at 5:37 PM
Subject: Public Records Request
To: Neal Cornett <ncornettlaw@gmail.com>
Cc: Anderson Emily J <emily.j.anderson@doj.state.or.us>

Good afternoon Mr. Cornett. This responds to the attached records request, as modified below. After reviewing the additional 29 emails responsive to the request, we have determined that they are exempt in their entirety under ORS 192.345(1) (pending or anticipated litigation) and ORS 192.355(9)(a), incorporating ORS 40.225 (lawyer-client privilege, including the common interest privilege). Please note that under ORS 40.225, if a record is a confidential communication, the requirement to separate exempt and nonexempt material does not apply. See Port of Portland v. Oregon Ctr for Environmental Health, 238 Or. App. 404 (2010). In accordance with ORS 192.329(2)(f), you may seek a review of these determinations pursuant to 192.401, 192.411, 192.415, 192.418, 192.422, 192.427 and 192.431.

Also, we initially estimated it would take an hour of attorney time, at a cost of \$143.00, to review these documents, but the review only took approximately 30 minutes. Accordingly, we owe you a refund of \$71.50 on this request. If you have not already sent the check for the fee estimate we provided yesterday for Novick's calendar, then you can reduce the amount by \$71.50, from \$214.50 to \$143.00. If that check's already in the mail, then we can keep the \$71.50 on credit or send you a refund. Just let me know what you prefer.

Regards,

Andrew C. Foltz
Senior Assistant Attorney General | Public Records Counsel | General Counsel Division
Oregon Department of Justice
1162 Court Street NE, Salem OR 97301-4096
503.947.4540
andrew.foltz@doj.state.or.us

Rose-Johnston, Tanya M (ATG)

From: Novick Steve <Steve.Novick@doj.state.or.us>
Sent: Friday, December 6, 2019 10:39 AM
To: Watson, Laura J (ATG)
Subject: Bachmann
Attachments: ClimateNAAQS.ppt

PROTECTED BY COMMON INTEREST PRIVILEGE

[2e]

Attorney General | Natural Resources Section | General Counsel Division
Department of Justice
Portland OR 97201
cc:
file:

Michael Myers [mailto:Michael.Myers@ag.ny.gov]
November 17, 2019 2:03 PM
Garrahan Paul
Structure of the discussion tomorrow at 3

[2e]

Thanks.

ers
d for Air Pollution and Climate Change Litigation
l Protection Bureau
te Attorney General

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ag.ny.gov

and pursuant to the Oregon Public Records Law, ORS 192.311, *et seq.*, please provide copies of all electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, *infra*), including also any attachments, a) sent to or from or copying (whether as cc: or bcc:) Steve Novick and/or Paul Garrahan, that b) includes, *anywhere*, whether in an email address, in the sent, to, from, cc, bcc fields, or the subject fields or body of an email or email “thread”, including also in any attachments, i) “GHG NAAQS”, ii) “climate NAAQS”, iii) “CO2 NAAQS”, iv) “secondary NAAQS”, and/or v) “ozone NAAQS”, and c) is dated from February 1, 2020 through the date you process this request, inclusive

We request entire “threads” of which any responsive electronic records are included, regardless whether any portion falls outside of the above time period.

11/12/20 OR DoJ

----- Forwarded message -----

From: **Foltz Andrew** <andrew.foltz@doj.state.or.us>

Date: Thu, Nov 12, 2020 at 7:20 PM

Subject: FW: Public Records Request

To: Neal Cornett <ncornettlaw@gmail.com>

Cc: Muller Christine K <christine.k.muller@doj.state.or.us>, Anderson Emily J <emily.j.anderson@doj.state.or.us>

Good afternoon Mr. Cornett. The fee associated with processing the attached request is \$824.00, calculated as 6 hours of attorney review at \$143.00/hr and 30 minutes of IT time at \$75.00/hr, less the \$71.50 credit you have with us. Please be aware that an initial review of responsive records revealed that much of the information is likely exempt from disclosure under ORS 192.355(9)(a), incorporating ORS 40.225 (lawyer-client privilege, including common interest privilege) and ORCP 36B (attorney work product); and [ORS 192.345 \(pending/anticipated litigation\)](#).

If you would like to proceed with your request, please issue a check or money order for \$824.00, made payable to the Oregon Department of Justice, and send it to: Oregon Department of Justice, General Counsel Division, Attn: Emily Anderson, 1162 Court Street NE, Salem, OR 97301.

Regards,

Andrew C. Foltz

Senior Assistant Attorney General | Public Records Counsel | General Counsel Division

Oregon Department of Justice

1162 Court Street NE, Salem OR 97301-4096

That's Not How "Common Legal Interest" Works

32. Finally, each of the CIAs concerns specific matters of common interest between the signatory parties, as described in the Docket No. 173-4-20 First Amended *Vaughn* Index.

33. These common interests variously consist of protecting the public health and welfare of the respective parties, their natural resources, finances, economies, operations and activities from the harms, liabilities, risks and uncertainties posed by climate change caused by greenhouse gases, as well as other environmental impacts, that are created, worsened or permitted by actual or anticipated litigation opponents.

health and welfare...their natural resources, finances, economies, operations and activities from the harms, liabilities, risks and uncertainties posed by climate change caused by greenhouse gases, as well as other environmental impacts.” One is left to wonder whether the vast scope of AGO’s asserted common interests encompass the chicken in every pot, and five-cent cigars.

If this Court accepts AGO’s arguments, the Common Interest Doctrine will not merely be imported into Vermont law, it will be imported without any of the limits which other states have applied. Common interests will no longer have to be tied to the joint defense of a claim or to active litigation at all. Instead, interests common to all of mankind (such as protecting “health and welfare”) will be a permissible claim to shield otherwise public communications of Vermont’s agencies. We see that this includes not only matters of a “joint defense” nature, but even an attempt to create a privilege for using the Office of Attorney General as an annex to outside tort counsel for

prepared, selected for attachment, sent or received the AGO Emails and their Attachments because of similar expectations of confidentiality and motivations related to facilitating their rendition of professional legal services to their respective clients.

77. Finally, each of the AGO Emails and their Attachments concerns specific matters of common interest between the signatory parties to the various environmental-related common interest agreements described above and in the Docket No. 173-4-20 First Amended *Vaughn* Index, as well as in the Docket No. 207-6-20 *Vaughn* Index.

78. These common interests variously consist of protecting the public health and welfare of the respective parties, their natural resources, finances, economies, operations and activities from the harms, liabilities, risks and uncertainties posed by climate change caused by greenhouse gases, as well as other environmental impacts, that are created, worsened or permitted by actual or anticipated litigation opponents.

79. As discussed above, these various environmental-related common interest agreements reflect agreements between the parties to pursue joint strategies in the ongoing or anticipated litigation described therein.

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IN THE VERMONT SUPERIOR COURT
WASHINGTON COUNTY CIVIL DIVISION

ENERGY POLICY ADVOCATES,) Case No. 173-4-20 Wncv
Plaintiff,)
-against-) Montpelier, Vermont
ATTORNEY GENERAL'S OFFICE,) October 5, 2020
Defendant.) 9:15 AM
)

TRANSCRIPT OF HEARING ON MOTION TO STAY DEADLINES

BEFORE THE HONORABLE ROBERT R. BENT,
SUPERIOR COURT JUDGE

APPEARANCES (All present by video or telephone):

MATTHEW HARDIN, ESQ.
Attorney for the Plaintiff

JON T. ALEXANDER, ESQ.
Attorney for the Defendant

Transcription Services:

eScribers, LLC
7227 N. 16th Street
Suite 207
Phoenix, AZ 85020
(973) 406-2250

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And so in several of these lawsuits around the country, the State of Vermont is not a formal party, but it has, in conjunction with several other attorney general's offices submitted amicus briefs. And federal case law holds that correspondence and documents and drafts prepared by an amicus is still protected by the work product privilege even if they're not formal parties.

THE COURT: Well, I guess I'm concerned, the attorney general's office seems to think that it's got a right to take the lance and go joust at any -- in any place that it wants. This is an Attorney General-made-policy decision, as opposed to the Attorney General being of necessity, apparently.

So don't you think there's some limit to what the Attorney General's Office can get involved in, and then say hey, we're representing the State of Vermont, because somebody decided in the Attorney General's Office that they were going to represent the -- they were going to jump in?