

FOIA Request EPA-2021-006794

Document ID No.: ED_006414_00000550	Document Date: February 4, 2021
Document Title: “Power Sector Strategy: Climate, Public Health, Environmental Justice”	
Disposition: Release with Redactions. Exemption: Ex. 5 DPP	
Brief Description: Draft PowerPoint Presentation	
<p><i>Exemption 5 Deliberative Process Privilege</i></p> <p>The withheld material in this draft PowerPoint presentation consists of pre-decisional and deliberative material properly withheld under the deliberative process privilege of Exemption 5.</p> <p><u>The record is an inter-agency communication</u> The draft PowerPoint presentation was created to identify options, priorities, and other strategic considerations for addressing the effects of power sector pollution on human health and the environment. The draft document was prepared by an EPA official for discussion at a future briefing on the Agency’s proposed power sector strategy with the White House Office of Domestic Climate Policy. The draft document has never been released outside of the Executive Branch of the United States Government.</p> <p><u>The record is pre-decisional</u> This draft PowerPoint presentation was created as part of an Administration process to decide on a strategy for reducing pollution from the power sector. The material withheld from this draft PowerPoint presentation consists of proposed strategic, regulatory, and policy options under consideration for reducing power sector pollution and includes internal opinions on the pros and cons of the various identified options. Specifically, the withheld material is pre-decisional because it identifies and discusses the rules that EPA intended to consider promulgating, including rules to reduce emissions to help bring areas into attainment with the NAAQS, improve visibility in Class 1 areas, and address other polluting effects of the power sector. The withheld material also includes discussions of whether and how best to reduce GHGs through the use of section 111 of the Clean Air Act and whether and what standards to promulgate to that end. In each instance where information was withheld, a final decision on whether to promulgate the underlying proposed rule or pursue the identified action under consideration has not been made. In two slides, the Agency also withheld from release the slide headings because the headings themselves would reveal the Agency’s deliberations regarding strategy, priorities, and potential future rulemaking efforts for regulating the power sector that were, and are still, under active consideration by Agency officials. In this regard, the headings are identical to the “body” of those slides—the contents of their headings themselves, if released, would reveal pre-decisional information about the substance of the strategy under deliberation just as would releasing the unredacted substance in the “body” of the slides. In contrast, the headings that have been released either do not contain deliberative/pre-decisional information, or they do but were discretionarily released because they only revealed information at a higher level of generality—unlike the withheld headings—such that they would not prematurely disclose policies under</p>	

deliberation before final adoption. Since this draft PowerPoint presentation was created early in the Administration's process of policy development no final policy decisions on the withheld information have been made.

The record is deliberative

The withheld material is deliberative because it reflects the give-and-take of the consultative process that occurs when determining the Agency's regulatory strategy. Specifically, the selection of material in this PowerPoint reflects the Agency's first take on priorities and options for regulating the power sector, including Agency officials' preliminary thoughts, opinions, and recommendations about the advantages and disadvantages of each identified option under consideration. The thoughts, opinions, reflections, and strategies selected for inclusion in this PowerPoint reflect ongoing, internal Agency deliberations that were, and are, part of the Administration's power sector strategy decision-making process. All withheld material reflects matters that were, and still are, under consideration by Agency and Administration decision-makers. The deliberative nature of each redaction is addressed below:

Slide 3 (ED_006414_00000550-00003)

The withheld material from slide 3 is deliberative because it discusses, from a timing perspective, the pros and cons of different options for regulating emissions from the power sector. The selection of material appearing in this slide reflects the Agency's first take on how the identified timing considerations might impact the Agency's decision-making process for reducing pollution from the power sector. Additionally, the withheld material from slide 3 is pre-decisional because it identifies timing considerations for regulatory actions and potential future rulemakings that were, and are still, under consideration.

Slide 5 (ED_006414_00000550-00005)

The withheld material from slide 5 is deliberative because it discusses the pros and cons of potential options for regulating discharges of pollutants under the Clean Water Act and land pollution from the power sector under Resource Conservation and Recovery Act. The selection of material appearing in this slide reflects the Agency's first take on potential options under consideration for reducing pollution and discharges of pollutants from the power sector. Additionally, the withheld material from slide 5 is pre-decisional because it identifies potential future rulemakings and other regulatory actions that were, and are still, under consideration.

Slide 6 (ED_006414_00000550-00006)

The withheld material from slide 6 is deliberative because it discusses the pros and cons of potential Air Toxics strategies for the power sector. The selection of material appearing in this slide reflects the Agency's first take on how the proposed strategies might impact the Agency's decision-making process for reducing emissions from the power sector. Additionally, the withheld material from slide 6 is pre-decisional because it identifies potential future rulemakings and other regulatory actions under the Air Toxics program that were, and are still, under consideration.

Slide 7 (ED_006414_00000550-00007)

The withheld material from slide 7 is deliberative because it discusses the pros and cons of different options for reducing emissions from the power sector under the non-attainment provisions of the Clean Air Act. The selection of material appearing in this slide reflects the Agency's first take on how the identified considerations might impact the Agency's decision-making process for reducing emissions from the power sector. Additionally, the withheld material from slide 7 is pre-decisional because it identifies potential future rulemakings and other regulatory actions through the use of the Clean Air Act's non-attainment provisions that were, and are still, under consideration.

Slide 8 (ED_006414_00000550-00002)

The withheld material from slide 8 is deliberative because it describes internal perspectives, potential future actions and rulemakings, and strategic considerations associated with regulating carbon dioxide emissions under Section 111(d) of the Clean Air Act under consideration by the Agency at the time the PowerPoint was created. The selection of material appearing in this slide reflects the Agency's first take on how the identified considerations might impact the Agency's decision-making process for reducing emissions from the power sector.

Slide 9 (ED_006414_00000550-00009)

The withheld material from slide 9 is deliberative because it discusses the pros and cons of regulating emissions from the power sector under the Regional Haze program. The withheld material bears directly on potential future actions still under consideration by the Agency. The selection of material appearing in this slide reflects the Agency's first take on how the identified Regional Haze considerations might impact the Agency's decision-making process for reducing emissions from the power sector. Additionally, the withheld material from slide 9 is pre-decisional because it identifies potential future regulatory actions under the Regional Haze program that were, and are still, under consideration.

Slide 10 (ED_006414_00000550-00010)

The withheld material from slide 10 is deliberative because it proposes next steps for regulating pollution from the power sector, and it identifies key strategic considerations associated with the proposed next steps. The selection of material appearing in this slide—both in the heading and in the body of the slide—reflects the Agency's first take on priorities associated with the action proposed in the slide and how the identified considerations in the slide might impact the Agency's decision-making process for this action. Additionally, the withheld material from slide 10 is pre-decisional because it identifies a specific sector of the regulated community for which the Agency is considering potential future regulatory opportunities. The Agency has not yet made a final decision on whether or how to pursue and implement any of the identified regulatory actions for the identified sector. Accordingly, the withheld material in slide 10 is pre-decisional.

Slide 11 (ED_006414_00000550-00011)

The withheld material from slide 11 is deliberative because it discusses potential options and strategic considerations for regulating emissions from the power sector under the Clean Air Act. The withheld material is still under consideration by the Agency as it moves towards finalizing a

decision on regulating the type of power plants discussed in the slide. The selection of material appearing in this slide reflects the pros and cons of the proposed paths forward and additional strategic considerations associated with the proposed paths forward. Additionally, the withheld material from slide 11 is pre-decisional because it identifies a specific sector of the regulated community for which the Agency is considering potential future regulatory opportunities. The Agency has not yet made a final decision on whether to pursue any of the identified regulatory actions for the identified sector, and if so, how such regulations would be implemented. Accordingly, the withheld material in slide 11 is pre-decisional.

Foreseeable harm

Release of the withheld information will cause foreseeable harm because it would discourage open and frank discussions between and among Agency and Executive Branch officials in sensitive decision-making processes such as regulation of the power sector. Because this draft PowerPoint presentation sets forth the Agency's options, priorities, and strategy for regulating the power sector that were under consideration when the document was created, release of the withheld information will have a chilling effect on similar, internal discussions on policy and regulatory options in the future by setting the precedent that Agency employees' sensitive discussions, opinions, and proposed strategies for proceeding with certain proposed regulatory actions without those discussions becoming public. The information withheld from this draft PowerPoint consists of the core recommendations, opinions, and impressions advanced by Agency employees in deciding on a strategy for regulation of pollution from the power sector. Protecting the confidentiality of such fundamentally deliberative material is critical at the Agency, as it promotes the candid exchange of internal advice, opinions, and strategic and policy options necessary for effectively executing its regulatory function. If Agency staff were aware from the outset that the withheld information would be subject to public disclosure, then concerns for such disclosure would discourage candid internal communications and deliberations about future regulatory actions. Further, release of the material would prematurely disclose proposed policies and strategic regulatory options under consideration before the Agency reaches a final decision on whether to adopt any of the proposals. To the extent any of the proposals in the PowerPoint are, in fact, adopted by the Agency, premature disclosure of the deliberative material in these slides threatens to cause public confusion by disclosing reasons and rationales that may not ultimately form the basis of EPA's actions.

Segregability

All non-exempt information in this record has been released, and there is no reasonably segregable information remaining.