



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

AUG 7 - 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Recusal Statement

FROM: Justin Schwab
Deputy General Counsel

TO: Kevin S. Minoli
Acting General Counsel
Designated Agency Ethics Official

A handwritten signature in black ink, appearing to read "Justin Schwab", is positioned to the right of the "FROM:" field.

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum updates my earlier recusal by specifying my former clients, but I have been complying and will continue to comply with my continuing obligations to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13770 and the Trump Ethics Pledge that I signed, as well as my own bar obligations.

FINANCIAL CONFLICTS OF INTEREST

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

OBLIGATIONS UNDER EXECUTIVE ORDER 13,770

Pursuant to Section 1, Paragraph 6 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my

former employer, **Baker and Hostetler LLP**, or any former client to whom I provided legal services during the past two years is a party or represents a party. I understand that my recusal lasts for two years from the date that I joined federal service.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means five or more parties. Set forth below are my former clients identified in consultation with OGC/Ethics that have or may have environmental interests that could potentially arise with respect to my duties here at EPA.¹

RECUSAL LIST	
In effect until January 23, 2019	
FORMER EMPLOYER: Baker and Hostetler LLP	
<p>FORMER CLIENTS:</p> <p>AK Steel Corporation American Bureau of Shipping American Fuel & Petrochemical Manufacturers Arcelormittal Usa LLC Association of Battery Recyclers Big River Steel, LLC Broadwood Investment Holdings, LP Cape Wind Associates, LLC Caterpillar, Inc. Cato Institute Chevron U.S.A. Inc. Colgate-Palmolive Company Competitive Enterprise Institute C.R. Bard, Inc. Grupo Ferré Rangel JTEKT North America Corporation Mississippi Silicon, LLC</p>	<p>NYK Line North America, Inc. Oldcastle Materials, Inc. Pentair Residential Filtration, LLC Resolute Forest Products Inc. Salt River Pima-Maricopa Indian Community Sanders Lead Company, Inc. Shamrock Foods Company State Government Leadership Foundation Sunoco, Inc. The Aluminum Association, Inc. The Center for Consumer Freedom The National Center for Public Policy Research The Scotts Company, LLC The Southern Company Trafigura Trading LLC United States Beet Sugar Association Valero Renewable Fuels Company, LLC</p>

¹ For my former clients that are not listed, I understand that I am personally obliged not to participate in specific party matters for the duration of my ethics obligations.

OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS

I am advised by OGC/Ethics that Executive Order 13770 defines “former employer” to exclude state government,² and the Office of Government Ethics has determined that the same exclusion applies to the definition of “former client.”³ But as an executive branch employee, I understand that I am also subject to the federal impartiality standards and have a one-year cooling off period with any former client who is a state government. Therefore, I will not participate personally and substantially in any particular matter involving specific parties in which the **State of Oklahoma** or the **Virginia House of Delegates** is a party or represents a party, unless I am first authorized by OGC/Ethics to participate, pursuant to 5 C.F.R. § 2635.502(d). For federal ethics purposes, I understand that my recusal remains in effect for one year from the date that I last provided services to that client, and this federal ethics limitation does not extend to particular matters of general applicability, such as rulemaking. My recusal will end with regard to the State of Oklahoma on September 23, 2017, and with regard to the Virginia House of Delegates on August 31, 2017.

ATTORNEY BAR OBLIGATIONS

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

SCREENING ARRANGEMENT

In order to ensure that I do not participate in matters relating to any of the entities listed above, I will instruct David Fotouhi, Deputy General Counsel, and Richard Albores, Associate Deputy General Counsel, to assist in screening EPA matters directed to my attention that involve these entities. I will provide a copy of this memorandum to my principal subordinates with a copy to Justina Fugh, Senior Counsel for Ethics. I will also instruct my principal subordinates that all inquiries and comments involving the entities on my recusal list should be directed to Justin and Rich without my knowledge or involvement until after my recusal period ends.

If Mr. Fotouhi or Mr. Albores determine that a particular matter will directly involve any of the entities listed on my “specific party” recusal list, then they will refer it for action or assignment to another, without my knowledge or involvement. In the event that they are unsure whether an issue is a particular matter from which I am recused, then they will consult with

² See Exec. Order 13,770, Section 2(j), which provides that “‘former employer’ does not include ... State government.”

³ See Office of Government Ethics Legal Advisory 17-02 (February 6, 2017), which states that, “[w]ith respect to Executive Order 13770, ethics officials and employees may continue to rely on OGE’s prior guidance regarding Executive Order 13490 to the extent that such guidance addresses language common to both orders,” and Office of Government Ethics Legal Advisory DO-09-011 (March 26, 2009), which states that “based on discussions with the White House Counsel’s office, OGE has determined that the definition of former client is intended to exclude the same governmental entities as those excluded from the definition of former employer.”

OGC/Ethics for a determination.

UPDATE AS NECESSARY

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

cc: Elise Packard, Acting Principal Deputy General Counsel
Erik Baptist, Senior Deputy General Counsel
David Fotouhi, Deputy General Counsel
Richard L. Albores, Associate Deputy General Counsel
OGC Associate General Counsels and Directors
Justina Fugh, Senior Counsel for Ethics
Regional Counsels